India Tax Konnect

November 2017

Contents

Editorial

Industrial production grew at a nine-month high at 4.3 per cent in August, mainly on account of robust performance of mining and power sectors coupled with higher capital goods output. As per the Central Statistics Office, Factory output growth measured in terms of Index of Industrial Production stood at 4 per cent in August 2016.

Consumer Price Index (CPI) inflation in India remained steady in September as the rise in food prices softened, keeping the macro indicator below the Reserve Bank of India's (RBI) medium-term target. Consumer prices in September rose 3.28 per cent over the same month last year. The lower inflation is in contrast to RBI's expectations.

The government is in the process to overhaul its half-century-old direct tax laws as it is seeking to increase the share of collections from the lowest in a decade. It is also working to ensure that taxpayers do not need to submit multiple returns and have quicker options of redress if a dispute arises.

The Finance Minister said that three months into the Goods and Services Tax (GST) rollout, the new indirect tax regime has consistently given INR93,000 - 94,000 crore in taxes every month on the back of an encouraging response from the industry. The number of businesses registered under GST has crossed 1 crore, which includes 72 lakh entities which migrated from earlier excise, service tax and Value Added Tax (VAT) regime, and 28 lakh fresh registrations.

The Bangalore Tribunal in the case of Electrical Material Center Co. Ltd. held that only solar days and not man days are to be considered for determining Service Permanent Establishment (PE) under the India-Saudi Arabia tax treaty. Since the stay of the taxpayer's engineers in India was only for 90 days which is less than the required 182 days under a PE article of the tax treaty, it did not constitute a PE in India. The Tribunal also observed that Fees for Technical Services (FTS) clause is missing in the tax treaty, therefore, income from services is taxable under the 'other income' article of the tax treaty. As per the 'other income' article, the taxpayer's income was held to be taxable in the state of residence i.e. Saudi Arabia.

We at KPMG in India would like to keep you informed of the developments on the tax and regulatory front and its implications on the way you do business in India. We would be delighted to receive your suggestions on ways to make this Konnect more relevant.

International tax

Decisions

Solar days to be considered and not man days for determining Service PE under the India-Saudi Arabia tax treaty. In the absence of an FTS article under a tax treaty, services are taxable under 'Other Income' article

The taxpayer, a company based in Saudi Arabia, received income from provision of services. The services were provided by the taxpayer's four engineers in India. The Assessing Officer (AO) held that the taxpayer constituted a Service PE in India under the India-Saudi Arabia tax treaty, due to presence of four service engineers in India for 90 days each. The AO considered man days of services rendered instead of the period for which activities continued in India (i.e. solar days) as per the tax treaty. Further the AO held that since the FTS clause is missing in the tax treaty, taxability of a payment should be under the provisions of the Income-tax Act, 1961 (the Act).

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The Tribunal also observed that FTS clause is missing in the tax treaty, therefore, income from services is taxable under the 'other income' article of the tax treaty. As per the 'other income' article, the taxpayer's income was held to be taxable in the state of residence i.e. Saudi Arabia.

Electrical material Center Co. Ltd vs DDIT [ITA(TP) No. 1104 (Bang) 2013, dated 28 September 2017]

Notifications/Circulars/Press Releases

CBDT issues clarification related to guidelines for establishing POEM in India

The Finance Act, 2015 introduced the concept of Place of Effective Management (POEM) under the provisions of Section 6(3) of the Act. It provides that a company is said to be resident in India in any previous year, if it is an Indian company; or its POEM in that year is in India. These provisions have come into effect from Assessment Year 2017-18 onwards. On 24 January 2017, Central Board of Direct Taxes (CBDT) issued the guiding principles (POEM guidelines) for determination of POEM of a company.

Various stakeholders have raised concerns that as per the guidelines, POEM may be triggered in the cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India and consequently, their income from operations outside India may be taxed in India. The guidelines state that the POEM in case of a company engaged in active business outside India shall be presumed to be outside India if majority Board of Directors' (BoD) meetings of the company are held outside India. However, if on the basis of facts and circumstances, it is established that the BoD of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then the POEM shall be considered to be in India. Merely because the BOD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of payroll functions, accounting, Human Resource (HR) functions, IT infrastructure and network platforms, supply chain functions, routine banking operational procedures, and not being specific to any entity or group of entities per se, would not constitute a case of BoD of companies standing aside.

Recently, the CBDT issued a circular clarifying that as long as the regional headquarter operates for subsidiaries/group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of payroll functions, accounting, HR functions, IT infrastructure and network platforms, supply chain functions, routine banking operational procedures, and not being specific to any entity or group of entities per se; it would not constitute a case of BOD of companies standing aside and such activities of regional headquarter in India alone will not be a basis for establishment of POEM for such subsidiaries/group companies. The CBDT has also clarified that the provisions of General Anti Avoidance Rules (GAAR) may get triggered in such cases where the above clarification is found to be used for abusive/aggressive tax planning.

CBDT Circular No. 25 of 2017, dated 23 October 2017

Corporate tax

Decisions

The taxpayer is eligible for interest under Section 244A on refund of interest

The taxpayer came into existence after an Act was rolled out by the Parliament called National Dairy Development Board Act, 1987. The AO made several additions for AY 2007-08, against which an appeal was filed before the Commissioner of Income-tax (Appeal) [CIT(A)]. The CIT(A) confirmed certain additions made by the AO and granted relief in respect of some other additions. The taxpayer contended that while giving appeal effect, the AO misinterpreted the directions of the CIT(A) in respect of certain issue and denied relief claimed by the taxpayer. On further appeal, the CIT(A) decided the issue in favour of the taxpayer. Accordingly, the AO passed another order giving effect to the order of the CIT(A) which resulted into refund and computed interest under Section 244A of the Act on principal amount of refund. However, as per the taxpayer, the interest under Section 244A entitled to the taxpayer was more than that was calculated by the AO. According to the taxpayer, interest under Section 244A of the Act was to be provided even on excess amount of interest paid under Section 234B of the Act. Accordingly, the taxpayer carried the matter before the CIT(A) assailing wrong calculation of interest by the AO. The CIT(A) revisited the issue and found merit in the case of the taxpayer.

The CIT(A) had considered the dictionary meaning of the word 'refund', and held that it can be said that it is an act of repayment or reimbursement of what one has paid earlier, and this test was satisfied in the taxpayer's case. The CIT(A) had observed on the issue whether interest paid by the taxpayer under Section 234B of the Act has to be taken out of the payment of tax or penalty for granting interest under Section 244(l)(b), the expression 'tax or penalty found in the clause (b) in later part of the Section 244A(1) would not qualify or restrict the scope of the expression 'amount' found in the opening part of the section to mean only 'tax or penalty'. Aggrieved, the tax department, filed an appeal before Ahmedabad Tribunal.

The Tribunal observed that as per income-tax computation form prepared by the AO, interest under Section 234B of the Act was originally computed at INR 4.09 crore which was reduced to INR1.41 crore due to reversal of certain additions in the second round of appeal before the CIT(A). This resulted in reduction of interest chargeable to the taxpayer by an amount of INR2.68 core. Consequently, this has resulted in enhancement of refund amount. The Tribunal observed that the AO while giving effect to the order of the CIT(A) in the second round of proceedings, omitted to calculate interest under Section 244A on the excess interest charged earlier under Section 234B of the Act and which led to reduction of the principal amount of tax refund to the extent of excess interest.

The Tribunal observed that the taxpayer sought claim of interest under Section 244A on the enhanced amount of refund on applying revised and correct liability under Section 234B of the Act. The Tribunal held that the CIT(A) has dealt with the issue threadbare and applied correct legal principles while granting relief to the taxpayer. The Tribunal does not consider it necessary to reiterate the similar finding and adopt the findings of the CIT(A). The Tribunal held that the tax liability including interest was to be determined on the correct assessed income and the taxpayer was entitled to interest on excess tax paid beginning from date of payment of tax to the date on which refund is granted.

ACIT vs National Dairy Development Board (ITA No.1384/Ahd/2014) – Taxsutra.com

Short-term capital gain does not arise in the absence of extinguishment of 'block of asset' in amalgamating company's hand

Pursuant to the scheme of amalgamation approved by the High Court, the India Branch of Makino Asia Pte Ltd. was amalgamated with Makino Machine Tools India Pvt. Ltd. (the taxpayer) with effect from 1 April 2002. Consequent to amalgamation, the taxpayer filed a revised return of income declaring loss including depreciation. The AO under Section 143(3) of the Act disallowed depreciation which was further allowed under Section 154 of the Act when the taxpayer produced requisite details. However, the CIT(A) held that Makino Asia Pte Ltd. sold its block of assets and earned Short Term Capital Gain (STCG) of INR 29.95 lakh which was also offered to tax by the said company. Therefore, post amalgamation/merger the taxpayer is also required to offer the STCG under Section 50(1) of the Act.

The Tribunal observed that, in the aforesaid case Makino Asia Pte Limited sold its entire block of assets of plant and machinery during relevant AY, but the transfer was post amalgamation in view of approval of the scheme. Therefore, consequent to the amalgamation, this transaction of transfer of the assets would be treated as transfer by the entity came into existence post amalgamation. The Tribunal observed that, after transfer, the taxpayer had balance in the block of assets of plant and machinery, and hence conditions stipulated under Section 50 were not satisfied for capital gain to arise.

The Tribunal also observed that, in the revised return, the taxpayer had claimed depreciation on the consolidated block of assets which was reduced after giving the effect of transfer. Thus, the Tribunal held that, though transfer of block of assets had resulted into STCG to Makino Asia Pte Limited, it existed only as long as there was no amalgamation. The Tribunal observed that once amalgamation was effected, transactions thereafter would be treated as those of the new entity post amalgamation. Thus, when there is no extinguishment of block of assets of plant and machinery in the hand of the taxpayer then the transfer of assets in question after 1 April 2002 would not result in deemed capital gain under Section 50 of the Act. The Tribunal observed that, the tax department had not disputed facts relating to the transfer of the assets and hence Section 50 cannot be invoked. Accordingly, the Tribunal deleted the addition on account of STCG and ruled in favour of the taxpayer.

Makino India Pvt Ltd vs ACIT (ITA No. 1015/Bang/ 2014) – Taxsutra.com

Notifications/Circulars/Press Releases

CBDT issues instruction in respect of conduct of assessment proceedings electronically in time-barring scrutiny cases

The CBDT issued an Instruction covering various aspects of conducting scrutiny assessments electronically in cases which are getting time barred during the Financial Year (FY) 2017-2018. The e-assessments will be conducted using the Income-Tax Business Application (ITBA) which is an integrated platform to conduct various tax-proceedings electronically through the ‘e-Proceeding’ facility and is a part of Income-tax Department’s digital transformation of its business processes.

CBDT Instruction No.8/2017, dated 29 September 2017

Transfer pricing

Decisions

Transaction-by-transaction analysis to be considered; Bundled benchmarking approach is neither automatic nor mandate of law

- The taxpayer entered into certain international transactions. For the purpose of benchmarking, the international transactions of import of raw materials/purchase of finished goods and sale of finished goods, the taxpayer in its TP report, segregated the transactions in two broad segments - 'Manufacturing' and 'Trading' (purchase of finished goods). The manufacturing segment was further subdivided into 'Manufacturing-Domestic' Segment (import of raw materials), and 'Manufacturing-Export' Segment (sale of finished goods).

- The Trading segment was benchmarked using the Resale Price Method and gross profitability (GP/sales) based on the segmented financial details as the appropriate Profit Level Indicator (PLI). The 'Manufacturing - Export' Segment was benchmarked using Transactional Net Margin Method while the 'Manufacturing - Domestic' Segment was benchmarked using Cost Plus Method (CPM) and the GP margin earned by the Associated Enterprises (AEs) from sale of materials to the taxpayer.

Tribunal's ruling

- For sale and purchase of meters, the Tribunal held that bundled benchmarking approach is neither an automatic application nor any mandate of law. The transactions should be bundled and benchmarked only when they could not be segregated and benchmarked independently. In the instant case, the taxpayer furnished segmental profitability statement for benchmarking transactions subsumed under each of the segment and hence transaction-by-transaction approach should be followed instead of bundled approach.

- The Tribunal accordingly directed the Transfer Pricing Officer to consider the certified segmental profitability to determine the arm's length price of the relevant international transactions.

- Further, for import of raw materials and components, the Tribunal upheld AE to be a tested party and using CPM as the Most Appropriate Method for benchmarking the transaction.

Kolkata Tribunal in the case of DCIT vs Landis+Gyr Limited (I.T.A No. 584/Kol/2015 and I.T.A No. 549/Kol/2016)

Notifications/Circulars/Press Releases

Due date for furnishing a Country-by-Country Report for the first fiscal year in India extended to 31 March 2018

The Finance Act, 2016 introduced Section 286 of the Act providing for furnishing of Country-by-Country (CbC) report in respect of an international group. Sub-section (2) of Section 286 of the Act provides for furnishing the CbC report by the 'due date' specified under Section 139(1) of the Act for furnishing the return of income for the relevant accounting year i.e. 30 November.

In this regard, considering that FY 2016-17 is the first reporting year for furnishing of CbC report and since the rules for furnishing of CbC report have been released recently, CBDT has extended the due date for furnishing CbC report only for FY 2016-17 to 31 March 2018.

CBDT Circular No. 26/2017 dated 25 October 2017

Final rules on Master File and CbC reporting released by Indian Government

In keeping with India's commitment to implement the recommendations of BEPS Action Plan 13, the Finance Act, 2016 introduced Section 286 of the Act providing for furnishing of CbC report in respect of an International Group. Section 92D of the Act which contained provisions for preparing TP documentation was also amended to provide for furnishing of Master File. The CBDT, on 6 October 2017, released draft rules and forms in relation to Master File and CbC report and sought recommendations and suggestions from the relevant stakeholders till 16 October 2017. After due consideration, on 31st October, 2017, the CBDT has released the Final Rules.

Rules 10DA and 10DB have been inserted in the Income-tax Rules, 1962 (the Rules). Forms 3CEAA to 3CEAE have also been notified under the Rules.

Master File (MF) - Rule 10DA

Applicability and timelines

Rule 10DA (Sub Rules 1 to 8) has been inserted in the Rules. Sub rule 1 provides dual monetary thresholds for the maintenance of Master File. Sub rule 2 provides the proposed due dates for filing of the required information. The following table 1 captures these requirements:

Table 1

Particulars	Threshold (Sub rule 1)	Timeline for filing (Sub rule 2)
1. Consolidated revenue of the 'international group' for the accounting year exceeds	INR500 crore (USD77 million)	FY 2016-17 To be filed on or before 31 March 2018 Subsequent years To be filed on or before the due-date for filing of Return of Income
And		
2. Aggregate value of international transaction a. During the accounting year, as per books of accounts exceeds Or b. In respect of purchase, sale, transfer, lease or use of intangible property during the accouning year, as per the books of accounts, exceeds	INR50 crore (USD7.7 million) Or INR10 crore (USD1.5 million)	

The following forms are prescribed in respect of Master File:

- **Form 3CEBA**: The Rules require filing of Master File in Form 3CEAA. The form consists of two parts - (a) Part A is required to be filed by every Constituent Entity (CE) of an international group whether or not it satisfies the aforesaid dual thresholds. This part requires disclosure of basic details such as name of the group, number of CEs in India, their names, addresses and Permanent Account Number (PAN) etc. (b) Part B of the form is required to be filed only by those CEs which satisfy both of the thresholds mentioned in the table above.

- **Form 3CEAB**: Where an international group has more than one CEs resident in India, the group may opt to designate a CE that shall be obliged to file Form 3CEAA (only Part A or both Part A and B, as may be applicable). In such case, the Form 3CEAA has to be filed only by the CE which has been designated by the international group, and intimation of the same is filed by the designated CE in Form 3CEAB with the Director General of Income-tax (Risk assessment). Form 3CEAB is required to be filed at least 30 days prior to the due date of filing the Form 3CEAA.

CbC Report - Rule 10DB

Applicability and timelines

Rule 10DB (Sub Rules 1 to 8) which provides for filing of CbC report, has been inserted in the Rules. Most requirements are in line with the prescribed requirements under OECD Action Plan 13. The details of filing requirements and filing of relevant forms is provided below:

- **Threshold**: Sub Rule 6 provides the consolidated group revenue threshold of INR5,500 crore (USD846 million) of the accounting year preceding the reporting accounting year, for filing of CbC report or the CbC reporting notification, as the case may be. The deadline for filing of CbC report for Financial Year (FY) 2016-17 has been extended to 31 March 2018 vide circular dated 25 October 2017.

  The rules specify that where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year shall be used as the rate of exchange for arriving at the value in INR.

Entities satisfying the above-mentioned threshold can fall into any of the following three categories. The requirements and applicable due dates for each of those is mentioned in Table 2 below.

Table 2

	Category	Requirement	Applicable due date
1	Parent entity or alternate reporting entity, resident in India (Section 286 (2))	File CbC report in Form 3CEAD (for every reporting accounting year). The information included in the Form is similar to those recommended in Action Plan 13	**For FY 2016-17** - 31 March 2018 **For subsequent years** - Due date of filing tax return
2	Constituent entity resident in India, of Parent entity not resident in India (Section 286 (1))	File CbC reporting notification in Form 3CEAC to the Director General of Income-tax (Risk Assessment). Vide this Form the CE intimates • Whether it is alternate reporting entity of the group; or • The details of parent entity or the alternate reporting entity and the country/territory of which said entity is a resident	At least two months prior to the date of furnishing of CbC report in Form 3CEAD. *Since the deadline for filing of CbC report for FY 2016-17 has been extended to 31 March 2018, the deadline for filing the Form 3CEAC is 31 January 2018.*
3	Constituent entity resident in India, of parent entity not resident in India – Specified cases (*Section 286 (4) i.e.* no agreement for exchange of CbCR or systematic failure)	File CbC report in Form 3CEAD (for every reporting accounting year). In case there are more than one CEs resident in India, the international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. The intimation of the same needs to be filed by the designated CE in Form 3CEAE with the Director General of Income-tax (Risk assessment)	For filing of CbC report in Form 3CEAD - same due dates as mentioned earlier in the table For filing of intimation of designated CE in Form 3CEAE - the due date of filing this form has not been prescribed.

CBDT Notification No. 92 /2017/ F. No. 370142/25/2017-TPL dated 31 October 2017

Indirect tax

Central Excise

Decisions

CENVAT credit on GTA service towards transportation of goods from factory gate to depot and to the port of shipment is held admissible

The fact of the case was that the taxpayer had availed CENVAT credit in respect of Good and Transport Agency (GTA) services used for clearances of finished goods from Roha factory to Bhivandi, Ahmedabad and Udaipur for further sale. They also availed the credit on GTA service towards transportation of goods from factory to port of shipment. The Commissioner of Central Excise (CCE) denied the CENVAT credit on the ground that the CENVAT credit on GTA from factory gate onwards was not admissible.

The taxpayer submitted that, in both the cases i.e. supply of goods a) up to depot and b) to the port of export, the place of removal was not a factory gate but it was a port, or depot, as the case may be, where the goods are sold/exported. The taxpayer placed reliance on the judgement of Menon Pistons ltd vs CCE, Kolhapur [2015 (40) STR 283 (Tri. Mum) /2013-TIOL-243-CESTAT-MUM].

In this background, the CESTAT has held that in case of depot, the place of removal was a depot and in case of export, the place of removal was port of export. Therefore, CENVAT credit was admissible on GTA service up to the place of removal i.e. depot/port of export. Accordingly, impugned order was set aside and appeal was allowed.

Rathi Dye Chem Pvt Ltd [2017-TIOL-3638-CESTAT-Mum]

Service tax

Decisions

Service tax paid on pest control services to preserve the records is admissible as CENVAT credit

The only dispute in the present appeal was whether the service tax paid on pest control services shall entitle the taxpayer to avail CENVAT credit of the tax so paid.

Pest control being necessary to preserve the records, there is an inextricable link between the input service and the business. Therefore, it was held that CENVAT credit claimed by the taxpayer was admissible.

JSW Steel (Salav) Ltd [2017-TIOL-3623-CESTAT-MUM]

In the absence of statutory provisions, CENVAT credit cannot be denied merely on the ground that serial no. on the invoices were hand written

The facts of the case were that, credit was denied on the ground that the serial number on the invoices on which the credit was taken was hand written. The taxpayer argued that there is no provision in law which mandates that the serial number has to be pre-printed. The impugned order relied on para 3.2 of Chapter 4 of Central Board of Excise and Custom (CBEC) Manual of supplementary instructions, which is not a statutory provision and therefore, credit cannot be denied on account of the said instructions.

In this background the CESTAT has held that, the impugned order do not identify any statutory provision which mandates the pre-printing of the serial number. Para 3.2 of Chapter 4 of CBEC manual, thereof are merely departmental instructions and therefore, in the absence of any statutory provision, the credit cannot be denied. On this count, the appeal is consequently allowed.

AA Trailers [2017-TIOL-3621-CESTAT-Mum]

Customs

Notifications/Circulars/Press Releases

Exempts goods imported by EOUs from integrated tax and compensation cess

Integrated tax and compensation cess leviable thereon under sub sections (7) and (9), respectively of Section 3 of the Customs Tariff Act for EOUs is being exempted till 31 March 2018, thereby amending principal notification no. 52/2003 – Customs dated 31 March 2003 and last amended notification no. 59/2017 – customs dated 30 June 2017.

Notification No. 78/2017 – Customs dated 13 October 2017

Implementing electronic sealing for containers by exporters under self-sealing procedure

In order to ensure that electronic seals deployed are of a reliable quality, the board has adopted international standards laid down under ISO 17712:2013 for high security seals and prescribed that vendors intending to offer Radio Frequency Identification (RFID) seals should furnish certifications required under the ISO standard. Further, the data elements prescribed under para 4(a) of circular 36/2017-Customs have to be incorporated.

As a measure of data integrity and security of sealing, vendors are also required to ensure that the Tag Identification (TID) number is captured in their data base and the IEC code of the exporter is linked to the same at the time of sale of the seals. Upon reading at the port/ ICD, the software application shall ensure that the seal's identity is checked with its TID.

Considering the difficulties expressed by trade associations in locating vendors of RFID seals, the board has decided that the date for mandatory self-sealing and use of RFID container seals is deferred to 1 November 2017. The existing practice may continue till such time. It is also provided that exporters are free to voluntarily adopt the new self-sealing procedure based upon RFID sealing, if readers are in place at the customs station of export from 1 October 2017.

Circular 37/2017 – Customs dated 20 September 2017

Amendment to Customs valuation rules – Notification No.91/2017 (NT) dated 26th September 2017

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) contain the detailed provisions for arriving at the transaction value of the imported goods, on which the customs duty is levied.

The government has amended the CVR vide Notification No. 91/2017 (NT) dated 26 September, 2017, as explained below:

Definition of the term 'place of importation'

The term 'place of importation' has been used in the CVR; however, the term was not defined. To bring in clarity, the 'place of importation' has been defined as:

'Place of importation' means the customs station where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse'.

In view of the above definition, the transaction value of the imported goods in terms of Section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation, as defined above.

Treatment of the loading, unloading and handling charges

By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods. Thus, only charges incurred for delivery of goods 'to' the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

Computation of freight and insurance

Now, the second& fourth provisos to Rule 10(2) impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known.

Treatment of transshipment costs

In the erstwhile fourth proviso to Rule 10(2), while the transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods, there was no mention of a similar treatment to transshipment of goods by sea or air. Now, by virtue of the sixth proviso to Rule 10 (2), costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport, etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

Circular no.39/2017, Customs dated 26th September 2017

Pilot Implementation of Paperless Processing under SWIFT – Uploading of Supporting Documents

Para 8 of the board's circular no.10/2016 dated 15 March 2016 stated that, CBEC was in the process of procuring IT infrastructure to capture digitally signed copies of the supporting documents. Under project 'Saksham', CBEC has upgraded its IT infrastructure, which would inter alia be used for the introduction of paperless processing under SWIFT.

With the objective of reducing physical interface between customs/regulatory agencies and the trade and to increase the speed of clearance it is proposed to introduce a facility to upload digitally signed supporting documents on a pilot basis to be launched shortly at Air Cargo complex, New Delhi and Chennai Customs House. The pilot will cover all types of imports under ICES. After the completion of the pilot, the facility will be extended to all ICES locations.

Circular No. 40/2017, Customs dated 13 October 2017

VAT

Decisions

SC upholds double input tax credit reduction on furnace oil, natural gas and light diesel oil used in the manufacture of goods, once in the case branch transfer outside state and again during usage as fuel for the purpose of manufacture

The taxpayer is a registered dealer under the Gujarat Value Added Tax Act, 2003 (GVAT Act) and is engaged in the business of manufacturing of polymers and chemicals in the state of Gujarat, by consuming raw materials such as furnace oil, natural gas and light diesel oil. VAT, at the applicable rates, is paid by the taxpayer on raw materials purchased. Manufactured goods are transferred for sale to various branches of the tax payer, located across the country.

Section 11(1) of the GVAT Act entitles a registered dealer to claim tax credit on taxable goods purchased, subject to the provisions of sub-section (2) to (12) of the said section. Extract of Section 11(3)(b), which is relevant in the present case has been reiterated below:

'Notwithstanding anything contained in this section, the amount of tax credit shall be reduced by the amount of tax calculated at 4 per cent on taxable turnover of purchases within the state-

I. Of taxable goods consigned or dispatched for batch transfer or to his agent outside the state, OR

II. Of taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the state.

III. Of fuels used for the manufacture of goods.'

The Assessing Officer (AO) has contended that the raw materials purchased by taxpayer falls under both the sub-clauses i.e. (ii) and (iii), for the reason that same is used for the manufacture of goods by taxpayer and involves purchase of fuels, respectively. Accordingly, input tax credit shall be reduced at the rate of 8 per cent (4 per cent + 4 per cent).

Aggrieved by the order of the AO, the taxpayer filed an appeal before the Joint Commissioner of Commercial Taxes (JCT). The JCT also upheld the order of AO on similar grounds. Thereafter, the taxpayer preferred an appeal before the Gujarat Value Added Tax Tribunal (Tribunal). The Tribunal concluded in the favour of the taxpayer on the grounds that the deduction can be at 4 per cent only and there cannot be double reduction in tax credit. Further, the High Court also upheld the Tribunal's order on the grounds that, proviso to Section 11(3)(b) states that if the input tax credit available to a dealer is less than 4 per cent, then the reduction should be limited to such credit and thus, legislature does not have any intention to reduce the input tax credit beyond 4 per cent.

Against such order, state filed an appeal before the Supreme Court on the contention that the High Court has failed to understand the scheme of tax credit and its related provisions, which clearly mentions that input tax credit shall be reduced by 4 per cent when a case is covered under sub-clause (ii) and again at the rate of 4 per cent when the matter is covered under sub-clause (iii). Further, the appellant also contended that sub-clause (ii) as well as sub-clause (iii) are attracted in different circumstances and, therefore, the reduction stipulated therein could not be treated as double taxation. Thus, legislature's intent is very clear to reduce input tax credit in each of the circumstances.

In response to the above, the taxpayer contended that reduction rate cannot be more than the eligible input tax credit. Hence, in respect of furnace oil, where the VAT is payable at 4 per cent if the contention of the appellant is accepted, deduction there on would be at the rate of 8 per cent (4 per cent under sub-clause (ii) and 4 per cent under sub-clause (iii)) and it would result in an anomalous position as tax credit earned on the said furnace oil is only 4 per cent.

The Supreme Court examined that submissions of both the parties and referred to the provisions of relevant section and also, various judicial pronouncements. Basis this, the Supreme Court held that there is no question of overlap between sub-clause (i) and sub-clauses (ii) and (iii) since this is separated with disjunctive 'or'. However, in case of sub-clauses (ii) and (iii), where there is a possibility of overlap, there is no word 'or' used between sub-clauses (ii) and (iii). Sub-clause (ii) finishes with punctuation mark full stop and then sub-clause (iii) starts. SC stated that this depicts the intention of the Legislature that reduction of input tax credit is not confined to the one sub-clause. Further, the Supreme C also relied upon various judgments which pronounced the manner in which punctuations are to be interpreted.

In view of the above, the SC held that reduction of 4 per cent would be applied whenever a case gets covered by sub-clause (ii) and again, when similar case is covered under sub-clause (iii). However, the Supreme Court has clarified that it would be subject to one limitation i.e. reduction shall be limited to the amount of input tax credit available in respect of a particular item.

State of Gujarat vs Reliance Industries Limited [TS-282-SC-2017-VAT]

Notifications/Circulars/Press Releases

Delhi

Commissioner of Delhi VAT Department has extended the due date for filing online return in Form 9 to 31 December 2017 for the FY 2016-17. Before such amendment, as per rule 4 of Central Sales Tax (Delhi) Rules, 2005, the dealers were required to file such reconciliation return within the period of six months from the end of financial year. Further, such return is required to be filed by the dealers who have made interstate sales at concessional rate against 'C-Forms' or stock transferred against 'F- Forms' or sold goods against H Forms to dealers (other than Delhi) or claimed deduction from taxable turnover against E-I/E-II Form or I/J Form, etc.

The dealers who have not made any sales as mentioned aforesaid during the FY 2016-17, are not required to file reconciliation return under Form 9.

Circular No. 16 of 2017-18

GST

Notifications/Circulars/Press Releases

TDS Section 51(1) made applicable from 18 September 2017 and person responsible to deduct tax under clause (d) of Section 51(1) notified.

Notification No. 33/2017 – Central Tax New Delhi, 15 September 2017

August-17 to December-17 specified as months for which return in form-GSRT-3B to be filed by 20th of subsequent month.

Notification No. 35/2017 – Central Tax New Delhi, 15 September 2017

Extended facility of Letter of Undertaking to all registered persons who intend to export of goods/services without payment of IGST (including supply to SEZ developer or unit).

Notification No. 37/2017 – Central Tax New Delhi, 4 October 2017

The time period for filing GSTR 4, GSTR 5A and GSTR 3 has been extended as per table given below:-

Form	Applicable to	Period	Extended date
GST R-4	composition supplier	For the quarter July to September-2017	15 November 2017
GST R-5A	person supplying online information and database access or retrieval services	July, August & September, 2017	20 November 2017
GST R-6	input service distributor		15 November 2017

Notification No. 41, 42 & 43/2017 – Central Tax New Delhi, 13 October 2017

Aggregate turnover limit for person opting to pay tax under composition scheme has been enhanced to INR1 crore for states other than northeastern and INR75 lakh for northeastern states.

Notification No. 46/2017 – Central Tax New Delhi, 13 October 2017

Exempts supplies of goods or services received by a registered person from unregistered person till 31 March 2018.

Notification No. 38/2017 – Central Tax (Rate) New Delhi, 13 October 2017

Exempts supplies of taxable goods by a registered supplier to a recipient for export, in excess of the amount calculated at the rate of 0.1 per cent subject to fulfillment of conditions specified in the Notification.

Notification No. 40/2017 – Central Tax (Rate) & 41/2017 – Integrated Tax (Rate), New Delhi, 23 October 2017

The Commissioner (GST), on the recommendations of the Council, extended time limit for filing declaration in FORM GST TRAN-1 till 31 October 2017

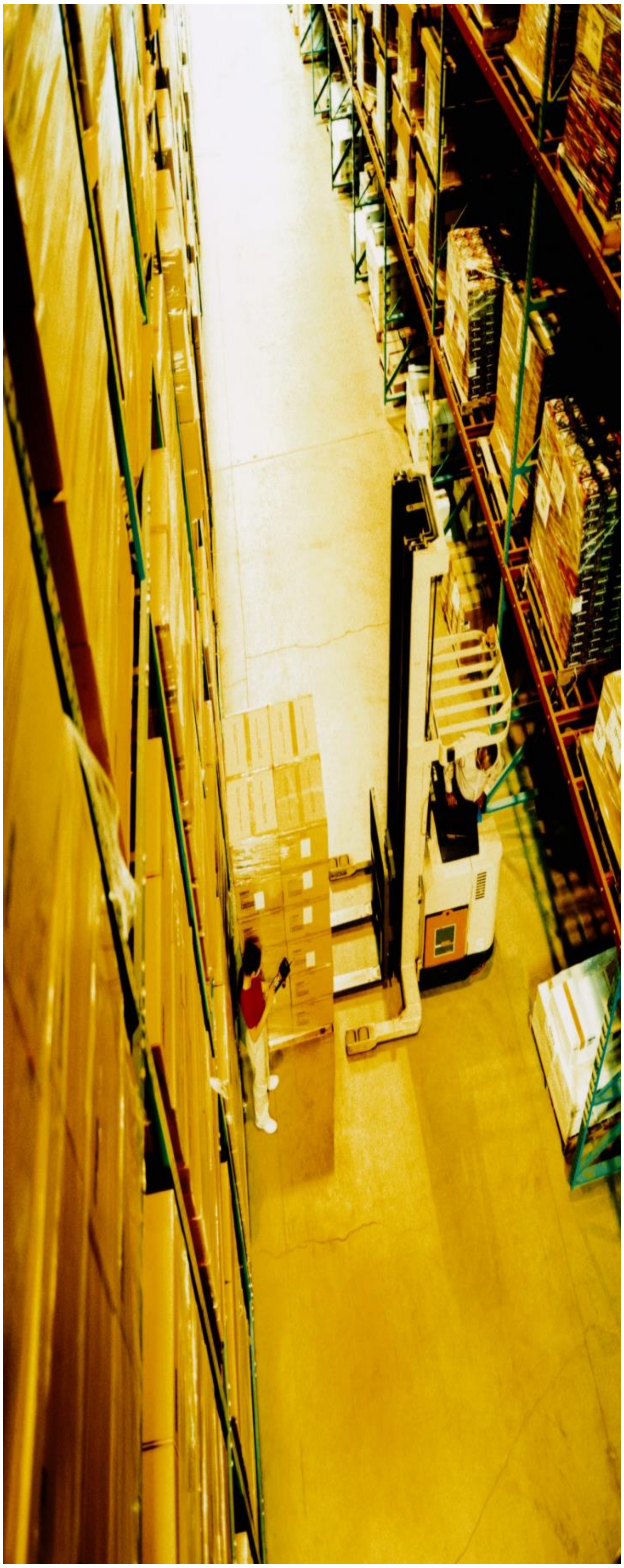
Order No. 03/2017-GST, New Delhi, 21 September, 2017

Service provider having turnover of less than INR20 lakh is exempted from mandatory registration for provision of interstate supply of services.

Notification No 10/2017-Integrated Tax

The registered person (recipient) has been exempted from payment of IGST under reverse charge mechanism in case of interstate supply of goods or services or both by an unregistered supplier.

Notification No 32/2017-Integrated Tax –Rate



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