



# INDIA TRADE AND TAX SCAN

## WHAT'S INSIDE

### I. TAX UPDATES

#### DIRECT TAX

- CBDT extends due date for filing returns
- Enhancement of monetary limits for filing of appeals by Income Tax Department
- Revised guidelines for compounding of offences under the Income Tax Act
- Power to condone delay in filing returns enhanced
- Form 12 BAA for salaried employees notified
- Tolerance range for Arm's Length Pricing notified for Assessment Year 2024-25
- Due date for filing audit report by trusts extended
- Clarification regarding requirement of Income-Tax Clearance Certificate
- CBDT invites suggestions for comprehensive review of Income Tax Act
- Direct Tax Vivad Se Vishwas Scheme 2024

#### INDIRECT TAX - Customs

- Mandatory personal hearings in virtual mode in Customs, GST, Excise and Service Tax
- MOEFCC restricts import of used High End and High Value used/refurbished Medical Equipment
- Guidelines issued for conducting investigation of Commercial intelligence / fraud cases
- Issuance of ETA on a self-declaration by the importer for wireless equipment operating under license-exempt frequency bands
- CBIC clarifies Third Party Invoicing permissible under FTAs
- Clarification on retrospective issuance of certificates of origin under the India-UAE CEPA
- Retrospective exemption on "Simply Sawn Diamonds" for the period July 01, 2017, till February 01, 2022
- Mandatory additional qualifiers / identifiers notified for import / export of Synthetic or Reconstructed Diamonds
- Transitional period for furnishing cargo declarations extended

#### INDIRECT TAX - Central Excise

- Tariff heading for Blended Aviation Turbine Fuel inserted under Excise Act

contd.

## WELCOME TO OUR TRADE AND TAX NEWSLETTER

We are pleased to present the second edition of our Trade and Taxation Newsletter, sharing important updates, key developments, and practical insights on trade and taxation, all tailored to help you stay ahead in an ever-changing regulatory environment.

We hope you find this newsletter useful and informative, and we look forward to your continued engagement.

*The Hon'ble Supreme Court in Canon India review judgement referred 'Craies on Statute Law' book (97th Ed., pg 83): "the language of statutes is not always that which a rigid grammarian would use, it must be borne in mind that a statute consists of two parts, the letter and the sense".*



TAX TRIVIA



### Analysis of GST Amnesty Scheme

Reena Asthana Khair (Senior Partner)  
interviewed by Manish Dembla (Partner)



### Supreme Court overturns Canon India Judgement

Reena Asthana Khair (Senior Partner)

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## WHAT'S INSIDE

### INDIRECT TAX - Goods and Services Tax

- No Exemption to affiliation services provided by universities to colleges and by Central/ State Boards to schools
- GST exempt on flying training courses provided by DGCA approved Flying Training Organisations (FTOs)
- CBIC clarifies ancillary services such as loading, unloading, packing, unpacking, warehousing, transshipment etc. to be taxed at 5%
- Waiver of late fees for delayed filing of GSTR-7 returns
- Taxability of Preferential Location Charges (PLC) clarified
- No GST on import of services without consideration, by an establishment of a foreign airlines
- No GST on support services provided by an electricity transmission or distribution facility
- Time limit prescribed for self-invoicing by a registered person liable under RCM on supplies from unregistered person
- Procedure for availment of delayed credits notified
- Clarifications on Amnesty Scheme

### II. SPOTLIGHT ON JUDICIAL PRONOUNCEMENTS

#### DIRECT TAX - International Tax Cases

- PE of a foreign company in India is deemed as independent profit centre
- Subscription Fee for Cloud based services paid to Non-resident not taxable in India
- Income from aircraft leasing is excluded from definition of 'Royalty'
- LLCs incorporated in the US are tax residents of US and eligible for Treaty benefits
- Salary for services in UK not taxable in India even if received in India

#### DIRECT TAX - Income Tax Cases

- Taxation and Other Laws Act, 2020 (TOLA), will override Income Tax Act in respect of procedure for issue of notices for reassessment
- Time-limit set by CBDT Circular for filing of compounding application is invalid
- Incentive money given by Government for exploring new market is capital receipt

#### INDIRECT TAX

- Supreme Court restores DRI, DGCEI officers as 'Proper Officer' to issue demand notice under Customs Act

contd.

## I. TAX UPDATES

### DIRECT TAX

#### **CBDT extends due date for filing returns**

CBDT has extended the due date for filing return of income by companies and persons whose accounts are statutorily required to be audited, from October 31 to November 15, 2024. [CBDT Circular No. 13/2024, dated October 26, 2024]

#### **Enhancement of monetary limits for filing of appeals by Income Tax Department**

The monetary limits for filing departmental appeals or Special Leave Petitions (SLPs) have been revised to INR 60 lakh in respect of appeals to be filed before the Tribunal, INR 2 crore in respect of appeals to be filed before High Courts, and INR 5 crore in respect of SLPs to be filed before Supreme Court. [CBDT instruction No. 2/2024 dated September 17, 2024]

#### **Revised guidelines for compounding of offences under the Income Tax Act**

The CBDT has issued revised guidelines for compounding of offences under the Income Tax Act, 1961 in supersession of the extant guidelines. The new guidelines apply to pending as well as new applications. The Applicants will have to pay all taxes, interest & other sums relating to offence for which compounding sought, undertake to pay the compounding charges, and withdraw any appeals filed by them, related to the offence. Compounding charges have been rationalised.

The guidelines permit consolidation of all TDS related defaults for any period in a single compounding application. Compounding charges for TDS defaults have been restricted to 1.5% per month of the TDS amount. [CBDT Circular F. NO. 285/08/2014-IT (INV. V)/163 dated 17.10.2024]

#### **Power to condone delay in filing returns enhanced**

CBDT has enhanced the income limits up to which different departmental authorities can condone delays for filing of returns for refund and returns for claiming carry forward of loss etc. However, condonation application shall not be entertained beyond 5 years from the end of the relevant assessment year. [CBDT Circular No. 11/2024, dated 01.10.2024]



## WHAT'S INSIDE

- Delhi HC grants interim relief to Jindal Stainless Ltd. against GST levy on Corporate Guarantees
- Bombay HC quashes show cause notice pending adjudication for 15 years
- Adjudication order relying upon statements without any cross-examination set-aside
- Rule 96(10) of the CGST declared ultra vires
- Attachment of property acquired prior to period of commission of alleged offence treated as proceeds of crime
- Delhi High Court quashes SCNs issued pursuant to Northern Operating judgement demanding GST on salaries paid to seconded employees

### III. INTERNATIONAL TRADE BRIEF

- US Sanctioned Indian entities and 2 individuals for supplying dual use items to Russia
- China unveils the regulations on Export Control of Dual-Use Items
- Filing of Annual RoDTEP Return (ARR) made mandatory for claiming RoDTEP benefits
- DGFT exempts Quality Control Orders issued by Ministry of Heavy Industries for products used in exports
- NOC from Drug Controller and Narcotics Commissioner of India not required for procuring Acetic Anhydride
- No import authorization or registration under Import Monitoring Systems for import/ re-import of "Exhibits and Samples"
- Introduction of electronic system facilitating digitization of Appendix 4H certificates
- Amendment in export policy
- Amendment in import policy
- Duties imposed or extended by the Ministry of Finance on import of products
- Duties recommended by the Ministry of Commerce on products

### Form 12 BAA for salaried employees notified

Finance Act 2024 had amended the provisions of section 192 of Income Tax Act relating to deduction of tax from salaries by employers, to enable salaried employees to provide to the employer information relating to tax deducted or collected at source in respect of their income from other sources. The purpose was to enable the employees to claim credit of all taxes deducted or collected at source in their name by different deductors. CBDT has now notified new Form 12BAA in which an employee can submit these details to his employer. [CBDT Notification No. G.S.R. 639(E) dated 15.10.2024]

### Tolerance range for Arm's Length Pricing notified for Assessment Year 2024-25

In order to reduce transfer pricing disputes, CBDT notifies every year tolerance range within which variations between arm's length price determined as per section 92C of Income Tax Act and the price at which an 'international transaction' or a 'specified domestic transaction' has been undertaken, will be accepted by the Income tax Department. This year the CBDT has notified that if such variation does not exceed 3%, the price at which such transaction has been undertaken shall be accepted as its arm's length price. However, for transactions of the nature of 'wholesale trading' the tolerance range will be 1%. [CBDT Notification No. 116/2024 dated 18.10.2024]

### Due date for filing audit report by trusts extended

CBDT has extended due date for filing audit report in Form No. 10B/10BB, by charitable trusts, institutions, and funds to 10th November 2024. [CBDT Order F. No. 173/118/2024-ITA-I, dated October 07, 2024]

### Clarification regarding requirement of Income-Tax Clearance Certificate

In a Press Release CBDT has stated that it is being erroneously reported that all Indian citizens have to obtain Tax clearance certificate (ITCC) before leaving the country. The correct position is that only in rare cases, such as (a) where a person is involved in serious financial irregularities or (b) where a tax demand of more than Rs. 10 lakh is pending and not stayed by any authority, a resident domiciled in India may be asked by the Income Tax department to obtain ITCC. This will be done only with the approval of the Chief Commissioner of Income-tax. [CBDT press release, dated August 20, 2024]



### **CBDT invites suggestions for comprehensive review of Income Tax Act**

Following the announcement in Budget 2024-25 speech of the Finance Minister, the CBDT has set up an internal committee for review of the Income Tax Act. The committee has invited suggestions in four categories: Simplification of language, Litigation reduction, Compliance reduction, and Removal of redundant provisions. These can be provided online at the following link: <https://eportal.incometax.gov.in/iec/foservices/#/pre-login/ita-comprehensive-review> [CBDT Press release, dated October 07, 2024]

### **Direct Tax Vivad Se Vishwas Scheme 2024**

The Vivad Se Vishwas Scheme (Scheme) has been introduced to settle ongoing tax disputes. Under this Scheme, all taxpayers are eligible, except those already convicted or undergoing prosecution under the Income Tax Act, BNS 2023, or COFEPOSA, subject to conditions. Declarations under the Scheme can be made in respect of tax disputes whether pending before Dispute Resolution Panel or in Appeals, Revisions, Writ Petitions or Special Leave Petition as on 22.07.24, other than (i) cases of assessment or reassessment based on search actions, (ii) cases where prosecution proceedings have been initiated, and (iii) cases relating to undisclosed assets outside India.

Key benefits of the Scheme include waiver or reduction of interest and penalties, immunity from prosecution, and reduced litigation expenses. Additionally, the Scheme assures that settlements for one year or one taxpayer won't set precedents for others. Taxpayers cannot, however, selectively settle some issues within the same assessment order while leaving others unresolved.

Amount payable under the scheme:

<b>Condition</b>	<b>Disputed Tax &amp; Interest</b>	<b>Disputed Interest &amp; Penalty</b>
<i>Declarations filed on or before December 31, 2024</i>		
Appeals filed before January 31, 2020	110% of the disputed tax	30% of the disputed tax
Appeals filed between January 31, 2020, and July 22, 2024	100% of the disputed tax	25% of the disputed tax
<i>Declarations filed after December 31, 2024</i>		
Appeals filed before January 31, 2020	120% of the disputed tax	35% of the disputed tax
Appeals filed between January 31, 2020, and July 22, 2024	110% of the disputed tax	30% of the disputed tax

\*In cases where the pending appeals have been filed by tax authorities, the Settlement amount would be 50% of the above

The declaration process is straightforward, conducted online through the Income Tax portal. After paying the Settlement amount and withdrawing the appeal, writ, or SLP, a certificate will be issued online within a designated timeframe.



## INDIRECT TAX

### CUSTOMS

#### **Mandatory personal hearings in virtual mode in Customs, GST, Excise and Service Tax**

The CBIC has issued an instruction vide which virtual hearing has been made compulsory under Customs, GST and erstwhile laws for all departmental, quasi-judicial, and appellate authorities. However, physical hearing may be allowed upon receipt of specific request by the parties and after recording reasons in writing. [Instruction issued under F.No. 390/Misc/3/2019-Judicial cell dated November 5, 2024]

#### **MOEFCC restricts import of used High End and High Value used/refurbished Medical Equipment**

The Ministry of Environment, Forest and Climate Change (MOEFCC) has issued a revised list of 38 High End and High Value used/refurbished medical equipment, allowed to be imported, by actual users or traders on behalf of actual users, Original Equipment Manufacturers (OEM) or by an Indian Subsidiary of an OEM, with the permission of the MOEFCC. [Customs Instructions No. 25/2024 dated October 28, 2024]

#### **Guidelines issued for conducting investigation of Commercial intelligence / fraud cases**

a. To promote ease of doing business, the CBIC has issued guidelines to Customs field formations for handling commercial intelligence (CI) and fraud investigations (excluding smuggling cases).

- i. **Time bound investigations** - to be concluded normally within one year.
- ii. **Summons to be avoided** - Documents should ideally be requested through written letters, providing reasonable time for the recipient to respond or appear. The relevance and appropriateness of requested information should be documented (in the e-file).
- iii. **Nature of Inquiry to be informed** - Letters requesting information or documents must specify the nature of inquiry

iv. **Option to appear through authorised agent** to be given against summons

v. **Timely Closure Report**

vi. **Grievance redressal** by Commissioner

[Customs Instruction No. 27/2024 dated November 01, 2024]

#### **Issuance of ETA on a self-declaration by the importer for wireless equipment operating under license-exempt frequency bands**

CBIC has issued instructions allowing importers to obtain the Equipment Type Approval (ETA) certificate on a self-declaration basis for wireless equipment devices operating under license – exempt frequency bands. Importers have to submit an application on SARAL Sanchar Portal. Upon successful submission of the application, the applicants can download the ETA certificates from the portal. [Customs Instruction No. 24/2024 dated October 22, 2024]

#### **CBIC clarifies Third Party Invoicing permissible under FTAs**

The CBIC has clarified that FTA benefits cannot be denied when import is made against a third-party invoice from a third country, as long as the Rules of Origin requirements are met. This third-party invoice would be relevant for customs valuation, and not for determining origin. Additionally, in cases of conflict between Section 28A and Trade Agreements, the Trade Agreements will take precedence. [Customs Instructions No. 23/2024 dated October 21, 2024]

#### **Clarification on retrospective issuance of certificates of origin under the India-UAE CEPA**

CBIC has issued clarification on various representations received from Trade on issue pertaining to non-acceptance of retrospectively issued certificates of origin under the India- UAE CEPA. The CBIC clarified that India – UAE CEPA Rules specifically permit retrospective issuance of COO. The Rules also indicate that where preferential treatment was not claimed or extended at the time of import, the importer



does not lose the right to claim the benefit upon subsequent submission of a valid COO within stipulated time frame, provided that authenticity of COO and product origin are not in dispute. [Customs Instruction No. 21/2024 dated October 16, 2024]

**Retrospective exemption on “Simply Sawn Diamonds” for the period July 01, 2017, till February 01, 2022**

With a view to resolve a long-standing ambiguity, retrospective exemption from Customs Duty has been provided on “Simply Sawn Diamonds” imported during July 01, 2017, to February 01, 2022, in view of the generally prevalent practice of non-levy on “Rough Diamonds (industrial or non-industrial) by exemption Notification No. 50/2017-Customs dated June 30, 2017. [Notification No. 70/2024 - Customs (NT) dated October 23, 2024]

**Mandatory additional qualifiers / identifiers notified for import / export of Synthetic or Reconstructed Diamonds**

CBIC vide Circular has made it mandatory for an importer/ exporter of Synthetic or Reconstructed Diamonds (Lab Grown Diamond) to declare the method used for producing these goods, i.e. Chemical Vapour Disposition (LGD 001), High Pressure High Temperature (LGD 002) or other (LGD 0003) on import and export. [Customs Circular No. 21/2024 dated October 30, 2024]

**Transitional period for furnishing cargo declarations extended**

Sea Cargo Manifest and Transshipment Regulations, 2018 amended to extend the applicability of Cargo Declaration Forms under the erstwhile Import Manifest (Vessels) Regulations, 1971 and Export Manifest (Vessels) Regulations, 1976, till January 15, 2025, on all Customs Ports except for Tuticorin, Vishakhapatnam, Ennore, Kattupali, and Cochin, Mumbai, Kandla, Mangalore and Mormugao. [Notification No. 74/2024 - Customs (NT) dated October 30, 2024]

**CENTRAL EXCISE**

**Tariff heading for Blended Aviation Turbine Fuel inserted under Excise Act**

By a notification, Sub-heading “2710 19 33” for “Blended Aviation Turbine Fuel” has been inserted, as well as Supplementary Notes under Chapter 27 (Minerals), defining “Blended Aviation Turbine Fuel” to mean “Aviation turbine fuel containing by weight 70% or more of Petroleum Oils or Oils obtained from Bituminous Minerals, blended with Synthesized Hydrocarbons conforming to Indian Standards Specification of Bureau of Indian Standards IS 17081:2019.

Further exemption has been provided for Blended Aviation Turbine Fuel as under:

Blended Aviation Turbine Fuel drawn by the selected airlines operators or cargo operators for the regional connectivity scheme flights from Regional Connectivity Scheme (RCS) - Ude Deshka Aam Nagrik (UDAN) airport or heliport or waterdrome.	2%
Blended Aviation Turbine Fuel	11%

[Notification Nos. 26/2024 Central Excise dated October 24, 2024 & Notification No. 27/2024-Central Excise dated October 28, 2024]

**GOODS & SERVICES TAX**

**No Exemption to affiliation services provided by universities to colleges and by central/ state boards to schools**

It has been clarified that affiliation services provided by universities to colleges are not related to admission of students or conduct of examination and hence not covered by exemption available to educational institutions under Notification No. 12/2017-CT(R) dated June 28, 2017. This may result in higher operational costs for affiliated colleges, potentially limiting access to education for students from lower-income background. [Circular No. 234/28/2024- GST]



## **GST exempt on flying training courses provided by DGCA approved Flying Training Organisations (FTOs)**

Exemption for educational institutions extended to training courses conducted by FTOs approved by DGCA, with mandatory requirement to issue completion certificates. [Notification No. 12/2017- CT (Rate) dated June 28, 2017 read with Circular No. 234/28/2024- GST dated October 11, 2024]

## **CBIC clarifies ancillary services such as loading, unloading, packing, unpacking, warehousing, transshipment etc. to be taxed at 5%**

Doubts were raised whether GST @ 18% is applicable on ancillary services such as loading, unloading, packing/ unpacking, transshipment, warehousing provided in relation to transportation of goods, when these are charged separately in the invoice. CBIC has clarified that the manner of invoicing, would not make the services taxable separately. Such ancillary services when provided along with transportation of goods, will be considered as a composite supply and taxed at 5%. This clarification offers significant relief to the industry by reducing operating costs for users of GTA services. [Circular No. 234/28/2024- GST dated October 11, 2024]

## **Waiver of late fees for delayed filing of GSTR-7 returns**

As a further relaxation to the reduction in late fees made in 2021, a complete waiver has been provided for failure to file Form GSTR-7, if TDS in the said month is NIL, effective November 1, 2024. [Notification No. 23/2024- Central Tax dated October 08, 2024]

## **Taxability of Preferential Location Charges (PLC) clarified**

The CBIC has clarified that PLC charged by developers for choice of better locations are a part of the consideration for supply of construction services, and form a composite supply, attracting the same rate of tax as the principal supply. [Circular No. 234/28/2024- GST dated October 11, 2024]

## **No GST on import of services without consideration, by an establishment of a foreign airlines**

Import of Services by an establishment of a foreign airlines in India, from a related entity or any of its other establishment outside India, without consideration, has been exempted with effect from October 10, 2024. The GST Council has further recommended to regularise payment of GST on such services on an 'as is where is' basis for the past period [from July 1, 2017 till October 9, 2024]. As part of regularisation, payments made at lower rate of tax or Nil rate will be accepted as full discharge of tax liability for past period and refund will not be made if tax has been paid at higher rate. [Notification No. 08/2024 - Integrated Tax (Rate) dated October 8, 2024 and Circular No. 234/28/2024- GST dated October 11, 2024]

## **No GST on support services provided by an electricity transmission or distribution facility**

With effect from October 10, 2024, support services such as renting of metering equipment, testing for meters/ capacitors, shifting transmission lines which are incidental to transmission or distribution of electricity provided by an electricity transmission or distribution facility to their consumers have been made exempt under GST. [Notification No. 08/2024 - CT(Rate) dated October 8, 2024, and Circular No. 234/28/2024- GST dated October 11, 2024]

## **Time limit prescribed for self-invoicing by a registered person liable under RCM on supplies from unregistered person**

Rule 47A has been inserted in the CGST Rules, 2017, prescribing a time limit of 30 days for issuing a self-invoice from date of receiving the goods or services, by a registered person liable to pay tax under RCM on supplies from unregistered persons, effective from November 01, 2024. [Notification No. 20/2024- Central Tax dated October 08, 2024]



## Procedure for availment of delayed credits notified

The CBIC has notified the procedure pursuant to insertion of Sections 16(5) and 16(6) by which time limit for claiming ITC for FY 2017-18 to 2020-21 was extended. As per the prescribed procedure, a rectification application has to be filed against the order denying ITC, within 6 months from the date of this Notification (i.e. October 8, 2024) along with a proforma (provided in Annexure A). The rectification order has to be passed within 3 months from date of the application. In cases where demand notice and/ or order under Section 73 or Section 74 has not been issued or appeal is pending, the CBIC has directed the GST authorities to pass appropriate orders by taking cognizance of Sections 16(5) and 16(6). [Notification No. 22/2024-Central Tax dated October 8, 2024 and Circular No. 237/31/2024-GST dated October 15, 2024]

## Clarifications on Amnesty Scheme

**Scope:** Covers Show Cause Notice (SCN) to Appellate/Revisionary Orders, provided the notice is under Section 73. The Amnesty Scheme does not cover late fees, refunds, penalties related to e-way bills, or IGST paid on imports.

**Time limit for availing Scheme:** Payment of tax must be made by March 31, 2025, and applications have to be submitted within three months thereafter.

Notices issued under Section 74 but demand confirmed under Section 73 upon re-adjudication: Applications are required to be filed within six months from the date of the re-adjudication order.

**Mode of Payment:** Either through Electronic Cash Ledger (ECL) or through Electronic Credit Ledger (ECRL) (cash and ITC).

**Restrictions/ Limitations:** If penalty or interest has already been paid before opting for the scheme, these amounts will not be refundable. For cases involving multiple tax periods, the entire tax must be paid, even if part of the period is not covered by the scheme.

If tax liability is enhanced in departmental appeal, additional payment to be made.

**Procedure:** Upon filing an application under the scheme:

-The proper officer may issue an order extending amnesty within three months of the application.

-The proper officer may also issue a notice, grant a hearing, and determine whether the amnesty benefit is admissible. This decision is not appealable.

-If no order is issued within three months of the application, acceptance of the amnesty is deemed.

## II. SPOTLIGHT ON JUDICIAL PRONOUNCEMENTS

### DIRECT TAX - International Tax Cases

#### PE of a foreign company in India is deemed as independent profit centre

Article 7 of India's Tax Treaties with various countries provides that where a non-resident entity is engaged in business in India through a Permanent Establishment (PE), profits reasonably attributable to such PE can be taxed in India.

In this case the non-resident entity had suffered a loss at global level. It, therefore, claimed that no profit could be attributed to its PE in India. Delhi High Court noted that Article 7(2) stipulates that where an enterprise carries on business through a PE, profits are required to be attributed to that PE as if it were a distinct and separate enterprise engaged in similar activities independent of the global enterprise. It, therefore, held that where an assessee had a PE in India, it would be liable to pay tax on income attributable to that PE notwithstanding that it had suffered a loss at entity level. [Hyatt International Southwest Asia Ltd. vs. ADIT - ITA No. 216 of 2020 decided on September 19, 2024]

#### Subscription Fee for Cloud based services paid to Non-resident not taxable in India

In the case of a US based company providing cloud computing infrastructure to its Indian clients through subscription agreement, Delhi High Court had held that even though cloud-based services were based on patents/copyright, but subscribers did not get any right of reproduction.



Thus, subscription fee was a consideration for online access of cloud computing services and would not be taxable as 'royalty' in India. SLP against this judgment was dismissed by Supreme Court. [CIT (International Taxation) v. MOL Corporation - ITA No. 101 (Del) of 2023]

### **Income from aircraft leasing is excluded from definition of 'Royalty'**

The taxpayer had received a certain sum from a company in Ireland for leasing of aircraft, which was sought to be taxed as royalty. The Delhi High Court pointed out that Article 12(3)(a) of the DTAA excludes receipts from aircraft leasing from the definition of 'royalty'. It further held that section 9(1)(vi) of the Income Tax Act cannot be invoked as provisions of the Tax Treaty are more beneficial to the assessee, and will, therefore, override provisions of domestic law. [Milestone Aviation Asset Holding No. 25 Ltd. vs. ACIT - W.P.(C) No. 5220 of 2022 decided on August 29, 2024]

### **LLCs incorporated in the US are tax residents of US and eligible for Treaty benefits**

Tax residents of US are eligible to avail benefits of the Tax Treaty between India and the US. In the case of a Limited Liability Company (LLC) the Indian tax authorities took a view that since under the US laws LLCs are fiscally transparent entities, i.e., their income is not subject to tax in their own hands in US, they will not qualify as residents of US in terms of Article 4 of the Tax Treaty. The Mumbai Appellate Tribunal examined this issue, noting that U.S. law allows LLCs the option to be taxed either as a corporation or as a disregarded entity. In the latter case, the LLC's income is combined with that of its owner, who then pays tax on their share of income.

Furthermore, since an LLC is independently incorporated under U.S. law, it exists separately from its members and qualifies as a distinct "person" under Article 4 of the Treaty. Therefore, Treaty benefits are available to LLCs. [General Motors Company vs. ACIT - ITA No. 2359 (Del) of 2022 decided on September 05, 2024]

### **Salary for services in UK not taxable in India even if received in India**

A non-resident Indian sent on an assignment in the UK and continued to receive his salary in India with UK taxes covered by the UK employer. Indian tax authorities argued that, since salary was received in India and no tax was paid by him in the UK, it should be taxable in India. The Chennai Tribunal ruled that, as the individual was a UK resident performing services there, his salary is not taxable in India under Article 16(1) of the India-UK Tax Treaty. [Sanjay Ajit vs. ITO (International Tax) - ITA No. 1317 (Chennai) of 2023 decided on September 03, 2024]

### **ESOPs granted to employee of Indian company for work in UK not taxable in India**

The taxpayer in this case was an employee of IBM India. He was sent to United Kingdom on an assignment. He received stock options as perquisites for services rendered in the UK while he was a tax resident of UK. The Kolkata Tribunal held that the stock options being of the nature of perquisites are a part of salary income and would not be taxable in India as services were rendered in the UK. [Santanu Sanyal v. ACIT - ITA No. 41 (KOL.) of 2024 decided on July 23, 2024]

## **DIRECT TAX - Income Tax Cases**

### **Taxation and Other Laws Act, 2020 (TOLA), will override Income Tax Act in respect of procedure for issue of notices for reassessment**

The Supreme Court addressed the issue whether the Taxation and Other Laws Act, 2020 (TOLA), which extended statutory deadlines during COVID-19, applies to reassessment notices issued after April 1, 2021, despite amendments in the Finance Act, 2021. TOLA extended deadlines for actions under the Income Tax Act for cases where the original time limit fell between March 20, 2020, and March 31, 2021, pushing them to June 30, 2021.



The Finance Act, 2021, amended reassessment procedures by reducing the time limit for reopening assessments to three years for cases of income escaping assessment under INR 50 lakh, and ten years for other cases. Additionally, the Finance Act specified that cases already time-barred under the old rules could not be reopened under the new provisions. This raised concerns as over 90,000 reassessment notices were issued during TOLA's extended period.

The Supreme Court ruled that TOLA overrides the amendments, holding that reassessment notices issued during the extended period remain valid. It concluded that TOLA's extensions continue to apply for cases impacted by COVID-19 disruptions, even post-April 2021. This judgment brings clarity and confirms that TOLA governs extended deadlines, providing stability for reassessments amidst legislative changes. [Union of India v. Rajeev Bansal - Civil Appeal Nos. 8629 of 2024 decided on October 03, 2024]

### **Time-limit set by CBDT Circular for filing of compounding application is invalid**

The Madras High Court ruled that since provisions of section 279 of the Income Tax Act do not prescribe any time limit for filing applications for compounding of prosecution complaints, nor confer any power on CBDT to do so, the limitation period of 36 months prescribed administratively by CBDT for this purpose vide its Circular dated 16-9-2022, is invalid. [Eyeball Media Pvt Ltd. v. CCIT (TDS) - W.P. No. (Mad) 22453 of 2024 decided on August 13, 2024]

### **Incentive money given by Government for exploring new market is capital receipt**

The Chennai Tribunal held that incentive money provided by Government of India under its Market Linked Focus Products Scheme notified in terms of Foreign Trade Policy-2015 for exploring new markets across the globe, is capital receipt. It cannot be treated as income either under section 2(24) or section 28 of the Income Tax Act. [ACIT vs Eastman Exports Global Clothing - ITA Nos.3326 (Chennai) of 2019, decided on September 20, 2024]

## **INDIRECT TAX**

### **Supreme Court restores DRI, DGCEI officers as 'Proper Officer' to issue demand notice under Customs Act**

A three-judge bench of the Supreme Court overturned its earlier decision in Canon India Private Limited Vs Commissioner of Customs [Canon India, 2021]. Earlier the Court had held that only the officer which undertakes assessment was a 'Proper Officer' under Section 28(4) of the Customs Act. However, the Court in its review order has again empowered the DRI, DGCEI, Customs Preventive, and other similarly situated officers to issue show cause notice under the Customs Act. The Court held that functions of assessment and re-assessment under Section 17 and the recovery of duty under Section 28 are distinct. The departure from its earlier decision has been made primarily on following grounds:

- Notification No. 44/2011-Cus dated July 6, 2011, which assigned powers and functions of the Proper Officer and Board Circular No. 4/199 dated February 15, 1999, which empowered DRI Officers to issue show cause notice were not brought to the attention of the Court during earlier proceedings in Canon India.
- The scheme of relevant provisions of Customs Act which deals with definition, powers and function of Proper Officer were not considered appropriately.

As regards the challenge to Section 97 of the Finance Act, 2022 which retrospectively validated the Show Cause Notices issued under Section 28 of the Customs Act by the DRI and other officers, the Court held it to be constitutional.

So far, the Courts across India had followed Canon India, 2021 decision and struck down notices on jurisdictional ground alone. However, it will be important for both the Assessee and the Department to revisit the cases post change in stance by the Supreme Court.



Additionally, specific timelines have been provided to decide the pending matters challenging jurisdictional grounds for Show Cause Notice. Accordingly, 8 weeks' time have been given to Assessee to file appeals before the CESTAT where the Order-in-Original has been challenged before the High Court or Supreme Court. [Commissioner Of Customs Vs. M/s Canon India Pvt. Ltd. Review Petition No. 400 Of 2021 in Civil Appeal No. 1827 Of 2018]

#### **Delhi HC grants interim relief to Jindal Stainless Ltd. against GST levy on Corporate Guarantees**

Following the decision in the case of Sterlite Power Transmission Ltd & Ors. Vs UOI & Ors, the Delhi High Court has granted protection from coercive action for recovery of GST on corporate guarantee. The case is set for the next hearing on November 12, 2024. [Jindal Stainless Ltd v. UOI] [W.P. (C) 14622/2024]

#### **Bombay HC quashes show cause notice pending adjudication for 15 years**

Following the decision of the coordinate Division benches, the Bombay High Court set aside a show cause notice dated May 16, 2008, pending adjudication for 15 years, holding that when faced with such inordinate and unexplained delay, the show cause notice must be quashed and cannot be allowed to proceed. [Paresh H. Mehta Vs. The Union of India 2024 (10) TMI 1412 - BOMBAY HIGH COURT]

#### **Adjudication order relying upon statements without any cross-examination set-aside**

The Delhi High Court dismissed appeals filed by the Customs département, holding that statements cannot be relied upon in adjudication without cross-examining the person giving the statements in terms of Section 138B of the Act. [Commissioner of Customs (Export), ID Tughlakabad Vs. Shri Manish Singhal & Ors. 2024 (10) TMI 1190 - DELHI HIGH COURT]

#### **Rule 96(10) of the CGST declared ultra vires**

The Kerala High Court has declared Rule 96(10) of the Central Goods and Services Tax (CGST) Rules 2017 as ultra vires of Section 16 of the Integrated Goods and Services Tax (IGST) Act, 2017. Rule 96(10) restricted refunds where benefit of advance authorisation or deemed export scheme had been availed. This has given full effect to the principle of zero duty exports under Section 16 of the Act. [Sance Laboratories Pvt. Ltd. Vs UOI TS-700-HC(KER)-2024-GST]

#### **Attachment of property acquired prior to period of commission of alleged offence treated as proceeds of crime**

While interpreting the provisions of Section 2(1)(u) of PMLA, the High Court held that 'proceeds of crime' would include any property derived or obtained, directly or indirectly, through criminal activity relating to a scheduled offense. This includes assets acquired prior to the commission of the offence, and held outside India, then authorities in India are empowered to attach equivalent value property in India. [Sterling Futures & Holidays Ltd. & Ors vs DOE 2024 (10) TMI 60 – Madras High Court]

#### **Delhi High Court quashes SCNs issued pursuant to Northern Operating judgement demanding GST on salaries paid to seconded employees**

The Delhi High Court quashed the SCNs demanding GST on the secondment of employees from the foreign parent. The notices were triggered by the Supreme Court judgement in Northern Operating Systems Pvt Ltd, Relying on Para 3.7 of the CBIC Circular No. 210/4/2024-GST, the High Court held that where no invoice is raised by the related domestic entity, for services rendered by Foreign Affiliates, the value of the services would be deemed to have been declared as "nil" and may be deemed as open market value in terms of second proviso to Rule 28(1) of CGST Rules. As no invoice had been issued in that case, and credit was available to the domestic entity, no tax was payable on secondment.



The High Court further held that as CBIC Circulars were binding on the Department, the High Court need not apply its mind to the wisdom of the Circular.

[Metal One Corporation India Pvt. Ltd. vs. Union of India & Ors, reported in TS-697-HC(DEL)-2024-GST]

### III. INTERNATIONAL TRADE BRIEF

#### **US Sanctioned Indian entities and 2 individuals for supplying dual use items to Russia**

US Authorities including Department of State (DOS), Department of Trade (DOT), Bureau of Industry and Security (BIS) recently sanctioned 275 individuals and entities in third countries including India. As per the sanctioned list, several Indian entities which were involved in supplying U.S.-origin aircraft components, electronic integrated circuits, central processing units, and other fixed capacitors, electric components, tantalum capacitors, roller bearings and roller assemblies etc. were covered in the list.

#### **China unveils the regulations on Export Control of Dual-Use Items**

The new regulations put in place a permit system for the export of dual use goods and create a list of restricted goods. Exporters of such goods will have to disclose the ultimate user and the intended use of the exported goods. This new regulation will take effect from Dec. 1, 2024.

#### **Filing of Annual RoDTEP Return (ARR) made mandatory for claiming RoDTEP benefits**

Handbook of Procedures 2023, amended to include a provision of filing annual RODTEP return on DGFT portal by March 31st of the next Financial Year. Procedure for filing annual return also notified. [DGFT Notification No. 27 /2024-25 dated October 23, 2024, read with Public Notice 27/2024-25 dated October 23, 2024]

#### **DGFT exempts Quality Control Orders issued by Ministry of Heavy Industries for products used in exports**

Appendix 2Y containing list of Ministries/Departments whose notifications on mandatory QCOs, that are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products have been amended to include Ministry of Heavy Industries. [DGFT Public Notice No. 31/2024-2025 dated November 5, 2024]

#### **NOC from Drug Controller and Narcotics Commissioner of India not required for procuring Acetic Anhydride**

Conditions prescribed under Para 4.08 (ii) of Handbook of Procedure, 2023 not applicable in case of procurement of Acetic Anhydride by an Advance Authorisation holder from an SEZ unit against certificate of supplies provided the same is manufactured by a unit operating inside SEZ. [DGFT Policy Circular No. 08/2024-25 dated October 11, 2024]

#### **No import authorization or registration under Import Monitoring Systems for import/ re-import of "Exhibits and Samples"**

DGFT has clarified that import/ re-import of "Exhibits and Samples" for demo, display, exhibition and participation in fairs or participation of the same in India or abroad shall be regulated under Para 2.60 of the Handbook of Procedures. It shall not be subject to authorization or registration under Import Monitoring Systems. [DGFT Trade Notice No. 20/2024-25 dated October 7, 2024]

#### **Introduction of electronic system facilitating digitization of Appendix 4H certificates**

DGFT launched an electronic facility for uploading of signed documents by CA/ CS/ Cost Accountant in terms of Para 1.04(f) of the Handbook of Procedures. [DGFT Trade Notice No. 21/2024-25 dated October 17, 2024]

**Amendment in export policy**

Product	Change in export policy
Meat and Meat Products	New policy condition notified including streamlining of Halal Certification Process w.e.f. October 16, 2024
Cough syrup	Mandatory testing of the export sample of 'Cough Syrup' exempted in specified cases
Non-Basmati White Rice	Requirement of Minimum Export Price (MEP) lifted with immediate effect

**Amendment in import policy**

Product	Change in import policy
Synthetic Knitted Fabrics	Minimum Import Price (MIP) on specified Synthetic Knitted Fabrics extended from September 15, 2024, to December 31, 2024. Further, MIP imposed on several types of Synthetic Knitted Fabrics.
Parts of Lighter	Import of parts of pocket lighters, gas fuelled, non-refillable or refillable lighters 'restricted', with immediate effect

Duties imposed or extended by the Ministry of Finance on import of following products:

Type of Duty	Product	Country/s	Customs Notification No. & Date	Range of duties
Anti-Dumping	Unframed Glass Mirror	People's Republic of China	Notification No. 18/2024- Customs (ADD) dated October 21, 2024	USD 234/MT
Anti-Dumping	Thermoplastic Polyurethane (TPU)	China PR	Notification No. 19/2024- Customs (ADD) dated October 22, 2024	USD Nil-1.58/Kg
Anti-Dumping	Cellophane Transparent Film	China PR	Notification No. 20/2024- Customs (ADD) dated October 22, 2024	USD Nil-1.34/Kg
Anti-Dumping	Sulphur Black	China PR	Notification No. 21/2024- Customs (ADD) dated October 22, 2024	USD 271-389/MT
Anti-Dumping	Isopropyl Alcohol	China PR	Notification No. 22/2024- Customs (ADD) dated October 22, 2024	USD 82-217/MT
Anti-Dumping	Welded Stainless-Steel Pipes and Tubes	Thailand and Vietnam	Notification No. 23/2024- Customs (ADD) dated November 4, 2024	USD Nil-307.79/MT



·Duties recommended by the Ministry of Commerce on following products:

Type of Duty	Product	Country/s	Final Findings Date	Range of duties
Anti-Dumping	Telescopic Channel Drawer Slider	China PR	Final Findings dated October 19, 2024	USD Nil-422/MT
Provisional Anti-Dumping	Polyvinyl Chloride Suspension Resin	China PR, Indonesia, Japan, Korea RP, Taiwan, Thailand and United States of America	Final Findings dated October 30, 2024	USD Nil-339/MT



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