TAX CONNECT
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TAX CONNECT

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EDITORIAL

Friends,

In the **second leg of the Budget session held on Thursday, 8 March, Prime Minister Narendra Modi** expected a break through on GST Bill and said that it will be discussed in a more democratic manner in the House with attention towards issues related to the poor.

He is also hoping that GST process will be completed before the session concludes next month.

Finance Minister, Arun Jaitley has said the GST measures are running on track, however, there will always be influence of cooperation from opposition and also the results from five states, including Uttar Pradesh, that have just voted.

The three bills that need to be cleared will be introduced as Money Bills, so after receiving clearance from the Lower House or Lok Sabha, the Rajya Sabha or Upper House can only recommend changes.

Hence, with the BJP having comfortable majority in the Lok Sabha, GST bills can be sent for President's consent even if the Rajya Sabha votes against it. However, the opposition might allege that it is violating the democratic principles for a reform as crucial and big as the GST.

Now coming to the present taxes,

In Service Tax, it has been held that Cenvat credit on Legal services and Chartered Accountant services cannot be denied on the ground of nexus.

In Customs, all Assistant Directors of The Central Economic Intelligence Bureau appointed as Officers of Customs.

In Central Excise, it has been held by Hon'ble CESTAT of Chandigarh that the income surrendered before the income tax department cannot be presumed as profit of manufactured goods without any cogent evidence that the said income is out of manufacturing activity of the assessee.

The above case law has been discussed in detail further in the bulletin.

Just to reiterate that we remain available over a telecom or e-mail.

Truly Yours

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SYNOPSIS

GOODS & SERVICE TAX (GST)

GST IMPACT ON INTERNAL BANKING TRANSACTIONS

Under the upcoming GST regime, banks and financial institutions are finding themselves in trouble due to increase in complexity in paying taxes because of the following reasons:

- As per the current structure and provisions under the draft GST law, transactions between two branches of same bank is set to trigger a tax. This might prove to be cumbersome.
  e.g. if branch of a bank in Delhi provides a service to another branch in Mumbai, GST will be applicable on such a service.
  i.e. If a resident in Mumbai withdraws money from a New Delhi ATM, the bank would first be required to value this service and then pay GST on that.
  This, seems impossible to comply with.

- Support provided by the head office to a regional office or a branch and vice versa or sales and after sales support will have to be valued first. GST will be have to paid on this value.

- GST being levied on branch transactions could be cumbersome because of the enormous number of financial transactions being carried out everyday.

- It will be difficult for banks and finance institutions to value services provided by one branch to another and then pay GST on that.

- It has been argued that there is no need to levy GST on the inter-branch supply of services as to distribute credit, there is already a simpler concept of input service distributor.

- The challenge will also be to identify intra company transactions and value them and then carry out compliances

- Concerns have been raised that valuation of supply of services can trigger dispute, prone to misinterpretation and promote corruption.

Both the private and public sector banks have approached the government to modify the GST framework involving self-supply of services, as it is not practical for the banks to bear the operational and compliance load which is set to applicable even on the same bank but different branches. Banks have asserted that they would not have the capacity to agree to such a control as it’s difficult to assess such services.

TAX CALENDAR

DUE DATE	COMPLIANCES FROM 12th Mar, 2017 to 18th Mar, 2017	STATUTE
14th Mar, 2017	Deposit of VAT of previous month (VAT Act)	Rajasthan
	Deposit of Entry tax of previous month (Entry Tax Act)	Rajasthan
15th Mar, 2017	Deposit of VAT of previous month (VAT Act)	Bihar Haryana (if Tax> Rs. 1 lac) Jharkhand Kerala Sikkim
	Filing of VAT return (VAT Act)	Kerala
	Deposit of WCT of previous month (VAT Act)	Bihar Chandigarh Delhi Haryana Jharkhand Punjab Rajasthan Himachal Pradesh
	Filing of WCT return (VAT Act)	Punjab
	Issuance of WCT certificate (VAT Act)	Haryana, Jharkhand, Himachal Pradesh
	PF deposit of previous month (EPF Act)	All India
	Deposit of Ptax of previous month (Commercial Tax Act)	Sikkim Gujarat
	Deposit of Entry tax of previous month (Entry Tax Act)	Bihar
	Advance income-tax for 4th quarter (Income-Tax Act)	All India

COURT DECISIONS

STEEL CITY SECURITIES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX VISAKHAPATNAM-I [CESTAT HYDERABAD]

Brief: Cenvat credit on Legal services and Chartered Accountant services cannot be denied on the ground of nexus.

OUR COMMENTS: In the above case, the assessee is registered with the Department for rendering stock broker services. He avails CENVAT Credit of service tax paid on Chartered Accountant Services and Legal Services as per Rule 3 of the CENVAT Credit Rules.

The Department has disallowed the CENVAT credit of service tax paid on the above input services for the reason that the services do not qualify as input services.

The assessee contended that the services of Chartered Accountant and Legal Services were received by him for the purpose of providing financial and due diligence review report on the proposals of acquiring the share warrants of a company. The said proposal did not crystalise due to various commercial reasons.

The Department denied the credit on the ground that the assessee did not accept the proposal put forward in these reports.

It was also contended by the assessee that the **definition of input services amended w.e.f. 01/04/2011, mentions services like accounting services and legal services** and the authorities have erred in denying the credit.

The Hon'ble CESTAT held that whether due diligence report has been accepted and acted upon, is wholly an internal matter of the company which the Department cannot dictate. The assessees might have dropped the proposal as it is not commercially viable or for any other reason.

The only facts that to be looked into are as follows:

- **whether the service was received,**
- **whether service tax was paid and**
- **whether it was for providing output services.**

The assessee is engaged in providing stock broker services and therefore the due diligence report obtained before committing the purchase of share warrants is definitely a service which qualifies as input service.

Further, the service tax was also paid by the assessee.

Accordingly, it was held that the assessee is eligible for credit and the impugned order disallowing the credit was set aside.

[Decided in favour of assessee]

COURT DECISIONS

FRIENDS AUTO INDUSTRIES (REGD.) VERSUS CCE, LUDHIANA [CESTAT CHANDIGARH]

Brief: The income surrendered before the income tax department cannot be presumed as profit of manufactured goods without any cogent evidence that the said income is out of manufacturing activity of the assessee.

OUR COMMENTS: In the above case, the assessee is engaged in manufacture of auto components. During an income tax survey, he surrendered some income u/s 133-A of Income Tax Act, 1962 on the following grounds.

(a) Difference in Receivables

(b) Difference in cash

(c) Difference in stock

(d) Difference in Assets

The Department presumed that the income is surrendered to the income tax department is the profit of the manufacturing business of the assessees firm. The show cause notice was issued to the assessee to demand duty on account of clandestine removal of goods along with interest and to impose penalty.

The Hon'ble CESTAT noted the following:

As per the Central Excise Act, duty is payable on the goods manufactured but in the case in hand the income has been surrendered by the assessee before the income tax authority during the course of survey under section 133-A of Income Tax Act, 1962.

The income surrendered by the assessee has been presumed by the Revenue that the said income has been earned by manufacturing excess goods. Tt is a presumption of the department and no evidence has been produced on record that the appellant has manufactured excess gods and cleared the same without payment of duty clandestinely.

In the case of Kipps Education Centre, Bathinda V. CCE, Chandigarh reported in 2009 (13) STR 422 (Tri. Del.), it was held by this Tribunal that income voluntarily disclosed before the income tax authorities could not be added to the taxable value unless there is evidence to prove the same

Therefore, the income surrendered before the income tax department cannot be presumed as profit of manufactured goods without any cogent evidence that the said income is out of manufacturing activity of the assessee.

The demand was accordingly set aside.

Other references:

Mayfair Resorts reported in 2011 (21) STR 589 (Tri. Del.)

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

AMENDMENT TO NOTIFICATION NO.09/2012-CUS REG. ENABLING EXEMPTION TO EXPORTATION AND RE-IMPORTATION OF CUT AND POLISHED DIAMONDS BY AUTHORISED OFFICES OR AGENCIES IN INDIA OF THE LABORATORIES SPECIFIED

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 07/2017-Customs dated 01.03.2017 has made** amendments in the notification No. 9/2012- Customs, dated the 9th March, 2012, and provided that the exemption contained in this notification shall also be applicable, if the exportation and re-importation of cut and polished diamonds as stated above are undertaken by the authorised offices or agencies in India of the laboratories mentioned under paragraph 4.74 of Handbook of Procedures 2015-2020 on behalf of the exporters subject to the fulfillment of specified conditions.

AMENDMENT IN NOTIFICATION NO. 62/94 CUSTOMS (N.T), DATED THE 21ST NOVEMBER, 1994

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 15/2017-Customs (N.T.) dated 02.03.2017** has amended **Notification No.62/94-Customs, dated 21.11.1994** with respect to class of goods to be loaded and unloaded at Revdanda port.
X c b bb
The readers may refer the notification for details.

COURIER IMPORTS AND EXPORTS (CLEARANCE) AMENDMENT REGULATIONS, 2017

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 16/2017-Customs (N.T.) dated 03.03.2017 has made** amendments in Regulation 6 of the Courier Imports and Exports (Clearance) Regulations, 1998.

These regulations may be called the Courier Imports and Exports (Clearance) Amendment Regulations, 2017 and shall come into force on the date of their publication in the Official Gazette.

The readers may refer the notification for details.

ALL ASSISTANT DIRECTORS OF THE CENTRAL ECONOMIC INTELLIGENCE BUREAU APPOINTED AS OFFICERS OF CUSTOMS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 18/2017-Customs (N.T.) dated 03.03.2017 has** amended **Notification No.31/97-Customs dated 07.07.1997** and appointed all Assistant Directors of the Central Economic Intelligence Bureau as Officers of Customs.

Earlier, all Intelligence Officers of the Central Economic Intelligence Bureau were authorized to be Officers of Customs.

COURT DECISIONS

HERO CYCLES (P.) LTD. VERSUS COMMISSIONER OF INCOME-TAX (CENTRAL) , LUDHIANA [SUMPREME COURT]

BRIEF: If the assessee has incurred any expenditure which is not under any legal obligation, still it is allowable as a business expenditure if it was incurred on grounds of "commercial expediency".

The expression "commercial expediency" includes such expenditure as a prudent businessman incurs for the purpose of business. And the expression "for the purpose of business" is wider in scope than the expression "for the purpose of earning profits".

OUR COMMENTS: In the above case, the assessee had borrowed money from bank and paid thereon. It utilized the borrowed money for giving advance its subsidiary company M/s. Hero Fibers Limited without charging any interest. It claimed deduction of interest paid to bank as business expenditure.

The Department contended that assessee diverted the borrowed money by giving advance to M/s. Hero Fibres Limited on which no interest was charged by the assessee. Therefore, the money borrowed was not for business purposes and no deduction could be allowed for interest.

The Hon'ble Supreme Court held that once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot put itself in the position of the Board of Directors and decide how much is a reasonable expenditure for business.

Further, it was held **that no businessman can be compelled to maximize his profit.** The authorities must look at the matter as a prudent businessman.

In the given case, the advance would provide additional margin to M/s. Hero Fibres Limited to meet the working capital for meeting any cash loses. Also, the assessee's controlling share in the company necessitated giving of such an undertaking to the financial institutions. The advance was given in compliance of the stipulation laid down by the three financial institutions under a loan agreement which was entered into between M/s. Hero Fibres Limited and the said financial institutions. Thus, the advance to M/s. Hero Fibres Limited became imperative as a business expediency.

Hence, the order of the High Court was set aside and the interest was allowed as business expenditure.

[Decided in favour of assessee]

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STATE TAXES

ASSAM

ONLINE ISSUE OF ROAD PERMIT

OUR COMMENTS: The Office of The Commissioner of Taxes, Government of Assam, **vide Circular No. 05/2017** dated **06.03.2017** has launched a new e-service for issuance of online Road Permit (Form No. 62) for registered dealer under the AVAT Act and Assam Entry Tax Act, 2008. The same is operational from 06.03.2017. The existing manual form will also continue.

For unregistered dealer/individual/ organization/firm, manual procedure will continue.

For basic requirements and procedures, the readers may refer the Circular.

ENROLMENT OF EXISTING DEALERS IN GST PORTAL

OUR COMMENTS: The Office of The Commissioner of Taxes, Government of Assam, **vide Circular No. CT/GST-8/2016/48** dated **06.03.2017** has issued the following instructions with respect to enrolment of existing dealers in GST Portal being the last date of migration is 15th March, 2017:

1. The registration certificates of the existing dealer need to be uploaded in GST portal for enrollment. Print out of the same shall be provided to the dealers instantly.

2. PAN amendment must be done in existing registration process through an application in plain paper along with self attested copy of new PAN.

3. The dealers should not be insisted for scrutiny, assessment, utilization of statutory forms and other pending obligations.

4. The activities of scrutiny and assessment should be kept in abeyance till completion of migration schedule.

Further, vide Circular No. 04/2017 dated **04.03.2017**, guidelines have been issued for strict compliance by all the units as the planned roll out date of GST regime is approaching fast.

ORISSA

PAYMENT OF SERVICE TAX IN RESPECT OF WORKS CONTRACT EXECUTED BY GOVERNMENT DEPARTMENTS, STATE PSUS AND CONSTRUCTION CORPORATIONS

OUR COMMENTS: The Finance Department, Government of Odisha vide **No. 5178/F dated 25.02.2017** has issued an Office Memorandum with respect to payment of Service Tax in respect of Works Contract executed by Government Departments, State PSUs and Construction Corporations.

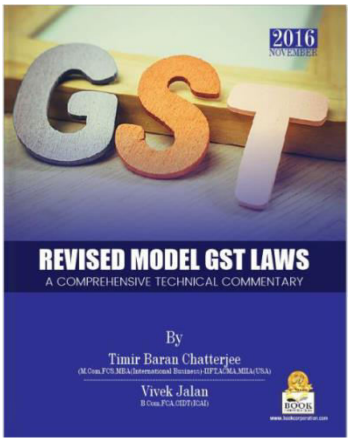
The readers may refer the aforesaid memo for details.

TAMIL NADU

INCREASE IN VAT ON PETROL AND DIESEL

OUR COMMENTS: The Commercial Taxes And Registration (B1), Government of Tamil Nadu vide **Notification No. G.O. (Ms) No. 18 dated 03.03.2017** has increased the Vt rate on petrol from 27% to 34% and of diesel from 21.43% to 25%, w.e.f. midnight of 4th March/5th March 2017.

IN STANDS: REVISED MODEL GST LAWS : A COMPREHENSIVE TECHNICAL COMMENTARY



ABOUT THE BOOK: While the Government is moving at a rapid pace, yet it is still a question whether the Corporates are GST Ready or not. It is high time that the law needs to be analysed and implemented into every facet of the business including sales and marketing, Logistics, procurement, HR, IT and of course Finance and Taxation. The book contains an exhaustive coverage of the Revised Model GST in the form of a Section wise technical commentary. It provides an insight into the following:

1. Brief about the major changes between the Revised law and the earlier law.
2. Revised Model GST Law November 2016
3. Revised Model IGST Law November 2016
4. GST Compensation Law
5. GST Return Rules
6. GST RefundRules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

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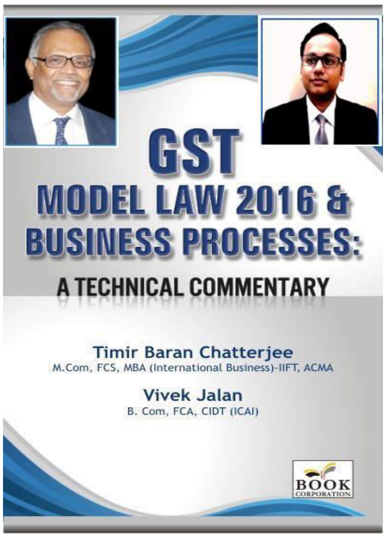
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



ABOUT THE BOOK: GST Bill is going to be passed in July 2016 and GST is expected to go live from 1st April 2017! In this backdrop, as our initiative to get GST READY, we have launched this publication. This books provides an insight into the following –

1. Procedural provisions under The Model GST Law 2016
2. Glimpse of the Model GST Law 2016
3. Model GST Law 2016
4. GST Valuation (Determination of The Value of Supply of Goods and Services) Rules, 2016
5. The Integrated Goods and Services Tax Act, 2016
6. GST Registration Process
7. GST Return Process
8. GST Payment Process
9. GST Refund Process
10. Eco system for GST and GST Suvidha Provider

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BOOK EXCLUSIVELY ON WORKS CONTRACT (SERVICE TAX AND VAT)

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Works Contract has been one of the most complex and litigation prone areas in Indirect Taxes. However with good understanding of all the provisions under Service Tax & VAT which hit Works Contracts & proper planning, Trade & Industry can not only avoid litigation but can also save around 5% - 10% on indirect taxes which by no means is an ordinary saving in the competitive market. For Trade & Industry, the problems on the subject have been many. Over the last few years we have received queries and replied to the issues at various forums.

Vide this publication, we have made an attempt to cover in detail all issues related to **Service Tax:** Valuation, Point of Taxation, Place of Taxation, Abatement, Reverse Charge, Input Tax Credit Mechanism & **VAT**: Contractual Transfer Price, Modes of Valuation, WIP, STDS as well as **GST** . We have also focused on the issues faced by various sectors on account of Works Contract.

This book is divided into Seven Parts covering several broad areas. Each area has the provisions directly from the Statue in the beginning and detailed discussions on the provisions in the form of questions and answers thereafter. Since litigations on the subject have been manifold, we have also covered judicial pronouncements extensively.

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