TAX CONNECT
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TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

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EDITORIAL

Friends,

The Hon'ble High Court of Allahabad in the matter of M/S Continental India Private Limited And Another Vs Union Of India [Writ Petition No. - 67 of 2018], directed The Respondents to reopen TRAN 1 the portal within two weeks from 24th January 2018 or accept the petitioner's manual application of Transitional ITC. The Industry has appealed relentlessly to open the TRAN 1 Portal to rectify certain errors which they might have made. Yet The all powerful GST Council seems unmoved.

We are all aware that the GST Portal failed more often than it has worked since its very inception and assesses have suffered tremendously for the same. Now, considering the norms of justice and fair play and even after genuine calls of Industry to open the portal for filing & Revision of TRAN 1, it is not done, then it will lead to huge litigation.

On another GST portal issue, The Goods and Services Tax Practitioners' Association of Maharashtra and the Central and State Level Commissioners had met on 1st March 2018 as per the orders passed by the Hon'ble Bombay High Court in WP (L) 424/2018 and WPST 2230/2018 in the matter of Padmavati Enterprise Vs The Union Of India & Anr and in the matter Abicor & Binzel Technoweld Pvt Ltd Vs The Union Of India & Anr. The minutes of the meeting suggested that the meeting may not have yielded the desired results. A brief of the same as available is as follows –

1. The Commissioners have no power to give relief regarding TRAN 1. GST Council will have to take a decision in this regard.

2. The State GST Commissioner cannot use his exclusive statutory powers to extend deadlines for filing returns etc, without the consent of the GST Council.

3. Alternate Manual modes of filing returns cannot be considered other than by GST Council

4. Facilitation Centres as envisaged under the Rules cannot be set up by the Department

5. Only GST Council has the power to give any directions to the GST Network for non blockage of returns for non-payment of late fees

6. The return filing system is completely automated and run by the GST Network. The Commissioners have no powers to direct the GST Network to effect any changes. Such directions are issued only by the GST Council.

7. Manual Payment of tax cannot be permitted as it is beyond the powers of the Commissioners.

8. Concerns were expressed over the Commissioners abdicating their statutory powers in favour of the GST Council. It was pointed out that the Legislature in its wisdom, at many places, had purposely vested

certain powers in the Commissioners to be exercised without consent of the GST Council. To this it was replied that a policy decision has been taken to not exercise any powers without consent of the GST Council.

9. Although there is no provision either in the Constitution or in the GST Acts and Rules which grants administrative or any other sort of control of the GST Network to the GST Council, yet the ground realities are that the GST Network answers only to the GST Council. No instruction sent by any Commissioner will be implemented by the GST Network. Any notification issued simply cannot be implemented since the digital systems do not allow statewise variances in the system.

10. Concerns were also expressed with respect to whether the Commissioners can even assure that any grievance of the taxpayers will be placed before the GST Council. The Commissioner expressed their helplessness in this matter.

We do hope that this bulletin adds value to your professional sphere.

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

Truly Yours

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SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FROM 11th MARCH, 2018 to 17th MARCH, 2018	Description
15th March 2018	Income Tax Form: ITNS - 280	Advance Income Tax in case of non-corporate assessee.
15th March 2018	Income Tax Form: ITNS - 280	Advance Income Tax in case of company
15th March 2018	PF ESI	Monthly - Payment of Provident Fund Contribution for the previous month (plus grace period of 5 days)
15th March 2018	PF ESI	Monthly - EPF - Return of Employees qualifying for membership to the EPF for the first time during previous month.
15th March 2018	PF ESI	Monthly - EPF - Return of member leaving service during the previous month
15th March 2018	PF ESI	Exempted establishment - EPS/ EDLIS - Monthly Return of members joining service during the previous month.
15th March 2018	PF ESI	Exempted extablishment - EPS/EDLIS - Monthly Return of Members Leaving Service During the previous Month

SPECIAL SECTION - ARTICLE

MANNER OF PARTICIPATION BY STRATEGIC INVESTOR(S) IN INVITS & REITS

SEBI (Real Estate Investment Trusts) Regulations, 2014 ("REIT Regulations") vide amendment notification dated December 15, 2017, inter- alia, define strategic investors under Regulation 2(1)(ztb) of the REIT Regulations and allows them to participate in REITs. In this regard the operational strategies, for the participation by the strategic investors in InvITs and REITs shall be as under:

An InvIT/REIT, if chooses to invite subscriptions from the strategic investors shall undertake the same in the following manner:

i. The strategic investor(s) shall, either jointly or severally, invest not less than 5% and not more than 25% of the total offer size.

ii. The investment manager or manager on behalf of the InvIT/REIT, shall enter into a binding unit subscription agreement with the strategic investor(s), which propose(s) to invest in the public issue of InvIT/REIT.

iii. Subscription price per unit, payable by the strategic investor(s) shall be set out in the unit subscription agreement and the entire subscription price shall be deposited in a special escrow account prior to opening of the public issue.

iv. The price at which the strategic investor(s) has/have agreed to buy units of the InvIT/REIT shall not be less than the issue price determined in the public issue. Thus, if the price determined in the public issue is higher than the price at which the allocation is to be made to strategic investor(s), the strategic investor(s) shall bring in the additional amount within two working days of the determination of price in the public issue. However, if the price determined in the public issue is lower than the price at which the allocation is to be made to strategic investor, the excess amount shall not be refunded to the strategic investor and the strategic investor shall take allotment at the price at which allocation was agreed to be made to it in unit subscription agreement.

v. The draft offer document or offer document, as applicable, shall disclose details of the unit subscription agreement. Such details shall include name of each strategic investor, the number of units proposed to be subscribed by it or the investment amount, proposed subscription price per unit, etc.

vi. The unit subscription agreement shall not be terminated except in the event the issue fails to collect minimum subscription.

The units subscribed by strategic investors, pursuant to the unit subscription agreement, will be locked-in for a period of 180 days from the date of listing in the public issue.

This Circular is issued in exercise of powers conferred under Section 11(1) of Securities and Exchange Board of India Act, 1992 read with Regulation 33 of REIT Regulations and Regulation 33 of InvIT Regulations.

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NOTIFICATIONS/CIRCULARS

CENTRAL GOODS AND SERVICES TAX (SECOND AMENDMENT) RULES, 2018

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Notification No.12, dated 07th March 2018** hereby notifies regarding amendments made in the Central Goods and Services Tax 2018.

It is further notified that amendments are made in Rule 117, 138, 138A, 138B, 138C, 138D of Central Goods and Services Tax 2018 & FORM GST EWB-01, 02, 03, 04, FORM GST INV-1.

For further information kindly refer the above mentioned notification.

REDUCTION OF LATE FEE IN CASE OF DELAYED FILING OF FORM GSTR-5A

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Notification No.13, dated 07th March 2018** hereby makes amendment in the **NotificationNo. 6/2018 - Central Tax, dated the 23rd January, 2018** regarding reduction of late fee in case of delayed filing of FORM GSTR-5A.

For further information kindly refer the above mentioned notification.

TAXABLE SERVICES PROVIDED AMONG JOINT VENTURE

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Circular No.35/9/2018-GST, dated 05th March 2018** hereby circulated regarding taxable services provided by the members of the Joint Venture to the Joint Venture and vice versa and between the members of the Joint Venture.

It is further notified that CBEC vide Circular No. 179/5/2014 - ST issued from F.No. 179/5/2014-ST dated 24 September 2014 had clarified that if cash calls are merely transaction in money, then they are excluded from the definition of service provided in Section 65B (44) of the Finance Act, 1994. Whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

The Circular clarifies that cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services received from joint venture and that payments made out of cash calls pooled by a joint venture towards taxable services received from a member or a third party is in the nature of consideration and hence attracts Service Tax. The Circular further stated that Joint Venture being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various joint venture agreements holds the key to understanding of the taxation of transactions involving taxable services between the joint venture and its members or between the members of a joint venture. Therefore, officers in the field formations were advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each joint venture agreement.

For further information kindly refer the above mentioned circular.

ANALYSIS
GST ON SUPPLY OF USED VEHICLE

The second-hand car market in India is highly un-organized and fragmented. The transaction happens mainly in following ways:-

Individual sells to individual/un-registered dealer

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Sale of personal used car by an individual will not attract GST (neither in the hands of buyer nor seller) because it is not covered within the meaning & scope of supply, since the element of 'furtherance of business' test is missing.

Individual sells to registered second-hand dealer

The Buyer is also not liable to pay GST on said purchase by virtue of Notification No.10/2017-Central Tax (Rate), dated 28th June, 2017.

Sale of Old & used vehicle by registered dealer

The expression 'supply' as per Sec 7(1) of CGST Act, 2017 includes sale, lease, disposal. Therefore sale/disposal of old or used vehicle by a registered dealer for a consideration, is in the course or furtherance of business and hence it will qualify to be a supply. So, GST is applicable.

Leasing of Motor Vehicle

The term supply also includes 'Lease'. So, leasing of Motor Vehicles whether new or old are also leviable to tax under GST. If, there is a transfer of title involves in the lease transaction, it will be considered as supply of goods otherwise it will be treated as supply of services. In case of vehicle purchased & leased subsequent to 01-07-2017, GST shall be applicable @ GST applicable on similar kind of vehicle including compensation cess.

Margin Scheme

Normally GST is charged on the transaction value of the goods. However, in respect of second hand goods/car , a person dealing is such goods may be allowed to pay tax on the margin. in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored. The purpose of the scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply and the economic supply chain.

Valuation of used Goods/Car:

As per Rule 32(5) of the CGST Rules, 2017, where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. The proviso to the above rule further provides that in case of the purchase value of goods repossessed from a unregistered defaulting borrower, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Rate of GST on leasing of Old/Used Vehicles

Notification No.37/2017 Central Tax (Rate) Dated.13-10-17 Leasing of vehicles purchased and leased prior to 1st July, 2017 would attract GST at a rate equal to 65% of the applicable GST rate (including Compensation Cess).

GST: SGST/UTGST

NOTIFICATIONS/CIRCULARS

RESCISSION OF THE DATE FROM WHICH E-WAY BILL RULES SHALL COME INTO FORCE

OUR COMMENTS: The Commercial Taxes Department, Government of Delhi vide Notification No. **11/2018-State Tax , dated01st March 2018** hereby makes amendment in the Notification No. 74/2017-State Tax dated 31st January, 2018, regarding rescindingof the date of E-Way Bill Rules.

For further information kindly refer the above mentioned notification.

RESCISSION OF REDUCTION IN LATE FEE IN CASE OF DELAYED FILING OF FORM GSTR-5A

OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradeshvide**Notification No. F. A-3-05-2018-1-V-(32)., dated 07th March 2018** hereby notifies regarding rescision of reduction in late fee in case of delayed filing of FORM GSTR-5A

It is further notified that in reference to Section 128 of the Madhya Pradesh Goods and Services Tax Act, 2017 the State Government, on the recommendations of the Council, hereby rescinds the **Notification No. F. A-3-05-2018-1-V-(6) dated the 23rd January, 2018** of this department, except as respects things done or omitted to be done before such rescission.

MADHYA PRADESH GOODS AND SERVICES TAX RULES, 2017

OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradeshvide Notification No. **NO. F A 3-08-2018-1-V(33) , dated07th March 2018** hereby makes amendment in Madhya Pradesh Goods and Services Tax Rules, 2017.

It is further notified that amendments are made in Rule 117, 138, 138A, 138B, 138C, 138D of Madhya Pradesh Goods and Services Tax 2018 & FORM GST EWB-01, 02, 03, 04, FORM GST INV-1.

For further information kindly refer the above mentioned notification.

BUDGETARY SUPPORT TO THE MANUFACTURING UNITS IN THE SHAPE OF REIMBURSEMENT OF CENTRAL TAXES

OUR COMMENTS: The Commercial Taxes Department, Government of Jammu and Kashmir vide **Notification No. SRO 121and NotificationNo. SRO 122, dated 05th March 2018** hereby notifies regarding budgetary support to the manufacturing units in the shape of reimbursement of Central Taxes.

It is further notified that a partial modification has been made in**Notification No. SRO 521 and Notification No. SRO 63 dated 21-12-2017**, regarding Budgetary support to the manufacturing units in the shape of reimbursement of Central Taxes for promotion of Industries in the State of Jammu and Kashmir, in which the government hereby direct that the following provision shall be deemed to have existed ab-initio.

Moreover it is further stated that for the period from July 2017 to December 2017, the eligible unit shall file an application on prescribed format notified by Commissioner Commercial Taxes on or before 15th April, 2018.

MANUAL FILING OF FORM GST APL-01

OUR COMMENTS: The Commercial Taxes Department, Government of Jharkhandvide**Notification No. S.O.No. 24dated 05th March 2018** hereby notifies regarding manual filing of FORM GST APL-01.

It is further notified that in reference to Section 107 of the Jharkhand Goods and Services Tax Act, 2017 with Rule 108 of the Jharkhand Goods and Services Tax Rules, 2017, an appeal to the Appellate Authority under Section 107(1) of the SGST Act to be filed in FORM GST APL-01 electronically, may be filed manually till the system for filing of Appeal electronically is enabled.

NOTIFICATIONS/CIRCULARS

SETTING UP OF AN INDUSTRIAL PARK

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Notification No.13 dated 01st March 2018** hereby notified regarding approval of the Government of India for setting up of an industrial park by M/s. Abhilash Software Development Centre, Bengaluru.

It is further notified that in reference to S.O. 910(E) the Central Government in exercise of the powers conferred by section 80-IA(4)(iii) of the Income-tax Act, 1961 and hereby notifies a scheme for industrial park, by the notifications of the Government of India vide No. S.O. 354(E), dated 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March,2006.

M/s Abhilash Software Development Centre having its registered office at 10, 3rd Floor, 80ft Road, R.M.V. 2nd Stage, Bengaluru- 560094 has developed an industrial park located at Plot No. 96 & 104 P2, E.P.I.P.Area, Whitefield, Bengaluru- 560066.

The Central Government has approved the said Industrial Park vide Ministry of Commerce andIndustry letter No. 15(1)/2003-IP &ID dated 08.08.2003.

Moreover the Central Government has also subsequently approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/61/2005-IP&ID dated 13.04.2006.

The Central Government cancelled the above approval granted vide Ministry of Commerce and Industry letter No. 15/61/2005-IP&ID-II dated 08.03.2013. The Hon'ble High Court of Karnataka by its order dated 18.11.2015 in writ petition no. 13172 of2013 quashed the above cancellation order dated 08.03.2013.

Further the DIPP, Department of Industrial Policy and Promotion, has filed a Writ Appeal no. 3298 of 2016against the order of Hon'ble High Court of Karnataka in writ petition no. 13172 of 2013. The Empowered Committee has revoked the order for withdrawal of approval dated 08.03.2013 incompliance to the directions of Hon'ble High Court of Karnataka subject to the outcome of Writ appeal no. 3298 of 2016 filed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Therefore, in exercise of the powers conferred by section 80-IA(4)(iii) of the Income-tax Act, 1961 and in pursuance of directions of Hon'ble High Court of Karnataka in the order dated 18.11.2015 in writ petition no.13172 of 2013 and subject to the outcome of Writ appeal no. 3298 of 2016 filed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry in the Hon'ble High Court of Karnataka, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s Abhilash Software Development Centre, Bengaluru, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification.

For further information kindly refer the above mentioned notification.

CUSTOM

NOTIFICATIONS/CIRCULARS

PRESCRIBING EFFECTIVE RATE OF BCD ON VARIOUS GOODS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.27/2018-Customs, dated 23rdFebruary, 2018** hereby makes amendment in the **Notification No.50/2017-Customs, dated 30th June 2017** regarding prescribing of effective rate of BCD on various goods.

It is further notified that for all goods other than screw and SIM socket / Other Mechanical items (Metal) for cellular mobile phone, the standard reate is 10% with no conditions applicable and nil rate of IGST.

The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.29/2018-Customs, dated 01st March, 2018** hereby makes amendment in the **Notification No.50/2017-Customs, dated 30th June 2017** regarding prescribing of effective rate of BCD on various goods.

It is further notified that for Kabuli Chana, the standard reate is 40% with no conditions applicable and nil rate of IGST.

For further information kindly refer the above mentioned notification.

INCREASES IN BCD TARIFF RATE ON CHICKPEAS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.28/2018-Customs, dated 01st March, 2018** hereby notifies regarding increasein BCD tariff rate on Chickpeas.

It is further notified that the Central Government on being satisfied that the import duty leviable on goods falling under the First Schedule to the Customs Tariff Act, 1975 should be increased and that circumstances may exist which render it necessary to take immediate action.

Moreover in reference to section 8A(1) of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in accordance to the First Schedule to the Customs Tariff Act, the rate shall be substituted to 60%.

For further information kindly refer the above mentioned notification.

IMPOSITION OF DEFINITIVE ANTI-DUMPING DUTY ON IMPORTS OF 'TOLUENE DI-ISOCYANATE

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.5/2018 - Customs (ADD), dated 23rd February, 2018** hereby makes amendment in the **Notification No. 3/2018-Customs (ADD), dated 23rd January, 2018** regarding imposition of definitive anti-dumping duty on imports of 'Toluene Di-Isocyanate originating in or exported from China PR, Japan and Korea RP.

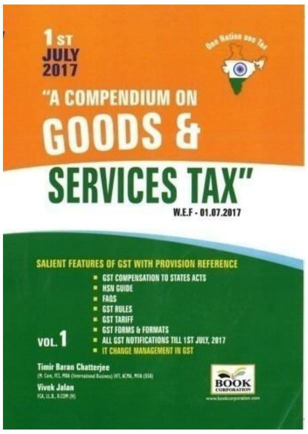
The anti-dumping duty shall be effective for a period of five years unless revoked, superseded or amended earlier from the date of imposition of the provisional anti-dumping duty, that is, the 5th June, 2017 and shall be payable in Indian currency.

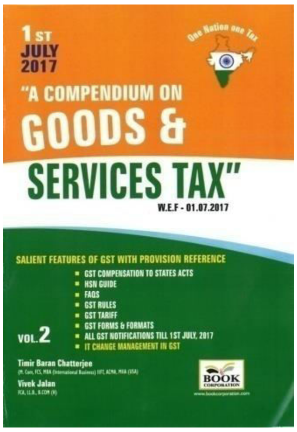
Moreover it is further stated that the anti-dumping, duty shall not be levied for the period commencing from the date of the lapse of the provisional anti-dumping duty, that is, the 5th December, 2017 to 22nd January, 2018.

For further information kindly refer the above mentioned notification.

AVAILABLE IN STANDS

A COMPENDIUM ON GOODS & SERVICES TAX
(Including ALL Notifications till 09th July, 2017)





ABOUT THE BOOK: PART A of the Book provides a Chapter wise and Topic wise Analysis of the Law. Along with this it provides Section and Rules where in the reader may find the Legal Provisions. It will help the reader to first understand the provision and then to exactly locate the provision. It provides an insight into the following:

1. Section-wise Compilation of IT Changes under GST
2. The GST Rates as finalised by The GST Council along with the HSN Code Referencer.
3. FAQs on GST
4. CGST, IGST, UTGST and The GST Compensation to States Acts
5. The Rules related to GST available in public Domain as on 17th June 2017.
6. The Forms and formats related to GST available in public Domain as on 17th June 2017.

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AVAILABLE IN STANDS

A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX

(Including ALL Notifications till date)

ABOUT THE BOOK: PART A of the Book provides a Chapter wise and Topic wise Analysis of the Law. Along with this it provides Section and Rules where in the reader may find the Legal Provisions. It will help the reader to first understand the provision and then to exactly locate the provision. It provides an insight into the following:

1. The Rules related to WBGST available in public Domain till date.
2. The Notifications, Circulars and Orders issued by The SGST Authority till date.
3. The Forms and formats related to GST available in public Domain till date.

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