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TAX CONNECT

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EDITORIAL

Friends,

Exports are the life blood of an economy and The Govt watches it with a close eye. The Current Account Deficit has risen from 1.3% in the recent to 2%. This has been on account of rising crude prices even though the exports are slowly recovering from the jolt of GST.

Post GST Implementation, exporters have had various issues in getting their refunds, most of it as a reason of Human Issues involved and granting of refunds in a semi Automated environment due to the GST Portal not being completely operational.

The refund of tax paid for the goods exported out of India is governed by Section 54 of CGST Act, 2017 and Rule 96 of CGST Rules, 2017. Board vide Circular No. 17/17/2017 – GST dated 15th November 2017 and Circular No. 24/24/2017 – GST dated 21st December 2017 clarified various issues in relation to processing of claims for refund. Now the CBEC has issued Circular No 37/11/2018 which clarifies the issues raised as below:

1. Non-availment of drawback:

A supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess. Further that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

2. Amendment through Table 9 of GSTR-1:

If a taxpayer has committed an error while entering the details of an invoice / shipping bill / bill of export in Table 6A or Table 6B of FORM GSTR-1, he can rectify the same in Table 9 of FORM GSTR-1.

Hence, while processing refund claims on account of zero rated supplies, information contained in Table 9 of FORM GSTR-1 of the subsequent tax periods should be taken into cognizance, wherever applicable.

in case of discrepancies between the data furnished by the taxpayer in FORM GSTR-3B and FORM GSTR-1, the officer shall refer to the Circular No. 26/26/2017 – GST dated 29th December, 2017, wherein the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided, and process the refund application accordingly.

3. Exports without LUT:

In some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

It is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

4. Exports after specified period:

It is emphasised that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

EDITORIAL

5. Deficiency memo:

There can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in FORM GST RFD-01A. This fresh application would be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier.

Further, once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

6. Self-declaration for non-prosecution:

Asking for self–declaration to the effect that the claimant has not been prosecuted, with every refund claim where the exports have been made under LUT is not warranted.

7. Refund of transitional credit:

The transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

8. Discrepancy between values of GST invoice and shipping bill/bill of export:

During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.

9. Refund of taxes paid under existing laws

The procedures laid down under the existing laws viz., Central Excise Act, 1944 and Chapter V of the Finance Act, 1994 read with above referred sub-sections of section 142 of the CGST Act shall be followed while processing such refund claims.

10. Filing frequency of Refunds:

The exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

11. BRC / FIRC for export of goods:

Insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon

12. Supplies to Merchant Exporters:

The exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

13. Requirement of invoices for processing of claims for refund:

It is necessary to provide invoices for scrutiny. A list of documents required for processing the various categories of refund claims on exports is provided in the circular.

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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TAX CALENDAR

Due date	COMPLIANCES FROM 18th MARCH, 2018 to 24th MARCH, 2018	Description
20th March 2018	GSTR 3B	Monthly return for February 2018

NOTIFICATIONS/CIRCULARS

PROCESSING OF REFUND APPLICATIONS FOR UIN (UNIQUE IDENTITY NUMBER) ENTITIES

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Circular No.36/10/2018-GST, dated 13th March 2018** hereby circulated regarding processing of refund applications for UIN (Unique Identity Number) entities.

Non-availment of drawback

The third provision to section 54(3) of the CGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.

Amendment through GSTR-1

It is advisable that while processing refund claims on account of zero rated supplies, information contained in Table 9 of FORM GSTR-1 of the subsequent tax periods should be taken into cognizance, wherever applicable.

Exports without LUT

Export of goods or services can be made without payment of integrated tax under the provisions of rule 96A of the Central Goods and Services Tax Rules, 2017 (the CGST Rules). Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the jurisdictional Commissioner before effecting zero rated supplies.

A detailed procedure for filing of LUT has already been specified vide Circular No. 8/8/2017 -GST dated 4th October, 2017. It has been brought to the notice of the Board that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.

In this regard, it is emphasised that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT may be allowed on ex post facto basis taking into account the facts and circumstances of each case.

Exports after specified period

Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India.

It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasised that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

For further information kindly refer the above mentioned circular.

ANALYSIS

E-WAY BILL

In the 26th meeting held here today, the GST Council has recommended the introduction of e-way bill for inter-State movement of goods across the country from 01st April 2018. For intra-State movement of goods, e-way bill system will be introduced w.e.f. a date to be announced in a phased manner but not later than 01st June, 2018.

Major improvements over the last set of rules, as approved by the Council now, are as follows:

- E-way bill is required to be generated only where the value of the consignment exceeds Rs. 50000/-. For smaller value consignments, no e-way bill is required.

- The provisions of sub-rule (7) of Rule 138 will be notified from a later date. Therefore, at present there is no requirement to generate e-way bill where an individual consignment value is less than Rs. 50,000/-, even if the transporter is carrying goods of more than Rs. 50,000/- in a single conveyance.

- Value of exempted goods has been excluded from value of the consignment, for the purpose of e-way bill generation.

- Public conveyance has also been included as a mode of transport and the responsibility of generating e-way bill in case of movement of goods by public transport would be that of the consignor or consignee.

- Railways has been exempted from generation and carrying of e-way bill with the condition that without the production of e-way bill, railways will not deliver the goods to the recipient. But railways are required to carry invoice or delivery challan etc.

- Time period for the recipient to communicate his acceptance or rejection of the consignment would be the validity period of the concerned e-way bill or 72 hours, whichever is earlier.

- In case of movement of goods on account of job-work, the registered job worker can also generate e-way bill.

- Consignor can authorize the transporter, courier agency and e-commerce operator to fill PART-A of e-way bill on his behalf.

- Movement of goods from the place of consignor to the place of transporter up to a distance of 50 Km [increased from 10 km] does not require filling of PART-B of e-way bill. They have to generate PART-A of e-way bill.

- Extra validity period has been provided for Over Dimensional Cargo (ODC).

- If the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period in case of transhipment or in case of circumstances of an exceptional nature.

- Validity of one day will expire at midnight of the day immediately following the date of generation of e-way bill.

- Once verified by any tax officer, the same conveyance will not be subject to a second check in any State or Union territory, unless and until, specific information for the same is received.

- In case of movement of goods by railways, airways and waterways, the e-way bill can be generated even after commencement of movement of goods.

- Movement of goods on account of Bill-To-Ship-To supply will be handled through the capturing of place of despatch in PART-A of e-way bill.

GST: SGST/UTGST

NOTIFICATIONS/CIRCULARS

BIHAR GOODS AND SERVICES TAX RULES, 2018

OUR COMMENTS: The Commercial Taxes Department, Government of Biharvide**Notification No.S.O. 148 , dated07th March 2018** hereby makes amendment in Bihar Goods and Services Tax Rules, 2017.

It is further notified that amendments are made in Rule 117, 138, 138A, 138B, 138C, 138D of Bihar 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 Commercial Taxes Department, Government of Biharvide**Notification No.S.O. 149 , dated07th March 2018** hereby makes amendment in the **Notification No. S.O. 126 dated 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.

GUJARAT GOODS AND SERVICES TAX RULES, 2018

OUR COMMENTS: The Commercial Taxes Department, Government of Gujarat vide **Notification No.12, dated07th March 2018** hereby makes amendment in Gujarat Goods and Services Tax Rules, 2017.

It is further notified that amendments are made in Rule 117, 138, 138A, 138B, 138C, 138D of Gujarat 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 Commercial Taxes Department, Government of Gujarat vide **Notification No.13 , dated07th March 2018** hereby makes amendment in the **Notification No. 6/2018 State Tax , dated 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.

RAJASTHAN GOODS AND SERVICES TAX RULES, 2018

OUR COMMENTS: The Commercial Taxes Department, Government of Rajasthanvide**Notification No.F.12(46)FD/TAX/2017-PT-III-202, dated07th March 2018** hereby makes amendment in Rajasthan Goods and Services Tax Rules, 2018.

It is further notified that amendments are made in Rule 117, 138, 138A, 138B, 138C, 138D of Rajasthan Goods and Services Tax 2018 & FORM GST EWB-01, 02, 03, 04, FORM GST INV-1,FORM GST RFD-01 & 01A & Insertion of rule 109A.

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 Commercial Taxes Department, Government of Rajasthanvide**Notification No.F.12(46)FD/TAX/2017-PT-IV-203, dated07th March 2018** hereby makes amendment in the **Notification No. F.12(46)FD/Tax/2017-Pt-IV-161 dated 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.

INCOME TAX

NOTIFICATIONS/CIRCULARS

CBDT AMENDMENT TO INCOME TAX NOTIFICATION

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Notification No.14/2018 dated 13th March 2018** hereby makes amendment in the **Notification No. 49/2015 dated 22nd June 2015.**

It is further notified that in theexisting notification, the following shall be substituted:-

- The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3(ii) vide notification number S.O. 969(E), dated the 26th March, 1962 and last amended by the Income-tax (7th Amendment) Rules, 2015, vide notification number S.O. No. 1014(E), dated 15th April, 2015.
- By giving retrospective effect to this notification, no one will be adversely affected.
- This notification shall be deemed to have come into force from the 22nd day of June, 2015.

For further information kindly refer the above mentioned notification.

OPTION TO ASSESSEE FOR HIGHER AND LOWER TDS/TCS FOR OPTIMIZATION OF TAX COLLECTION AND REFUNDS

There seems no option or other mechanism whereby one can ask the tax deductor (TDS) or tax collector (TCS) to deduction or collect tax at higher rate. For higher tax deduction one may chose not to provide PAN and get higher deduction. However that will pose problem in getting credit of TDS.

Many persons / assesses, particularly those have higher rate of tax applicable has to pay advance tax or self-assessment in addition to TDS/ TCS. This increases work, and compliance costs to such people.

Particularly in case of senior citizens and others who have stronger capital base and have achieved break-even in operations , have no costs or little costs in earning such income due to loans having been repaid , no costs or low costs on account of rent, and interest and administrative expenses, and also who have incomes in which low cost is involved like, income by way of interest , rent ,royalty and professional fees at higher levels of fees rate etc.

In such cases receiver of income can be granted an option to declare and request to the tax deductor to deduct tax at higher that prescribed rates. The optional higher rates can be kept flexible and income receiver can change rate of TDS from time to time.

In case of young people, new business and profession where break-even is not achieved or after break-even there is low revenue, higher costs on account of rent, interest and fixed costs are involved, we find that income is low and in many cases loss is also suffered. In such cases even TDS/TCS at prescribed rates is very high and it becomes refundable.

It is true and ground reality that people want to avoid Tax Officers to get lower TDS/TCS certificates. Only large and organized assesses opt for this option. Reasons are obvious, chances of harassment by tax authorities, greater chances of scrutiny etc.

Therefore, option can be given to income receiver to declare to the tax deductor / tax collector to deduct or collect tax at lower rate. In this case also flexibility can be provided to opt appropriate rate so that reasonable amount of tax is deducted or collected in accordance with tax liability.

There will be no adverse impact because in case TDS/ TCS fall short, assesse is required to pay advance tax in instalments and in case still there is shortfall assesse has to pay self-assessment tax. Assesse also has to pay interest for short payments.

CUSTOM

NOTIFICATIONS/CIRCULARS

IMPOSITION OF ANTI-DUMPING DUTY ON IMPORTS OF O-ACID ORIGINATING IN OR EXPORTED FROM CHINA PR

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.6/2018 - Customs (ADD), dated 12th March, 2018** hereby notifies regarding imposition of anti-dumping duty on imports of O-Acid originating in or exported from China PR.

It is notified that in case of of import of 'O-Acid' falling under Chapter 29 of the First Schedule to the Customs Tariff Act, 1975 originating in, or exported from China PR and imported into India, the designated authority vide its preliminary findings published in the Gazette of India, Extraordinary, Part I, Section 1, vide Notification No. 14/31/2016-DGAD, dated the 23rd May, 2017, had recommended imposition of provisional anti-dumping duty on the imports of subject goods, originating in or exported from subjects country.

Moreover on the basis of aforesaid findings of the designated authority, the Central Government had imposed provisional anti-dumping duty on the subject goods vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2017-Customs (ADD) dated the 13th July, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G. S. R. 879 (E) dated the 13th July, 2017.

It is further stated that the designated authority in its final findings vide Notification No. 14/31/2016-DGAD dated 19th December, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 19th December, 2017, has come to conclusion that:-

- the product under consideration has been exported to India from the subject country below its normal value, resulting in dumping
- the Domestic Industry has suffered material injury due to dumping of the product under consideration from the subject country;

Thus the material injury has been caused by the dumped imports from the subject country and has recommended imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry.

IMPOSITION OF ANTI-DUMPING DUTY ON THE IMPORTS OF "SULPHONATED NAPHTHALENE FORMALDEHYDE" ORIGINATING IN OR EXPORTED FROM CHINA PR

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministryof Finance, Government of India vide **Notification No.7/2018 - Customs (ADD), dated 13th March, 2018** hereby notifies regarding imposition of anti-dumping duty on the imports of "Sulphonated Naphthalene Formaldehyde" originating in or exported from China PR.

It is notified that in case of of"Sulphonated Naphthalene Formaldehyde" falling under tariff item 3824 40 90 of the First Schedule to the Customs Tariff Act, 1975 originating in, or exported from China PR and imported into India, the designated authority in its final findings vide Notification No.14/15/2016-DGAD dated the 30th December, 2017, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 30th December, 2017, has come to the conclusion that:-

- The product under consideration has been exported to India from the subject country below its normal value, resulting in dumping.
- The Domestic Industry has suffered material injury due to dumping of the product under consideration from the subject country.
- The material injury has been caused by the dumped imports from the subject country.

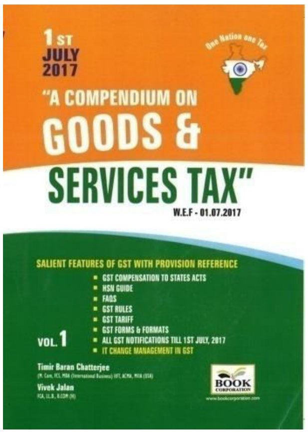
It is further stated that the designated authority has recommended the imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

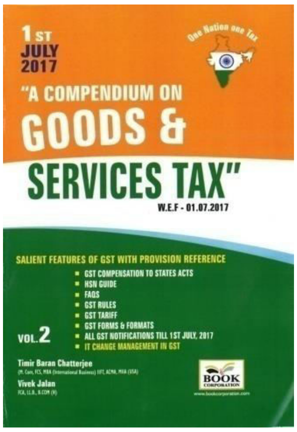
For further information kindly refer the above mentioned notification.

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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