TAX CONNECT
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TAX CONNECT

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The Bengal Chamber of Commerce & Industry

INCOME TAX

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EDITORIAL

Friends,

From 2019, commerce students in Gujarat will also be calculating GST. Gujarat Secondary and Higher Secondary Education Board (GSHSEB) has decided to introduce lessons on GST from the academic year 2019-20, for commerce students of classes XI and XII.

Textbooks of the National Council of Educational Research and Training (NCERT) introduced demonetization and GST from this year.

Further, it has been clarified that:

-while applying for registration as a casual taxable person, the amount of advance tax which should be calculated after considering the due eligible ITC which might be available to such taxable person.

- in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.

-where the ISD distributes the credit in contravention of section 20 resulting in excess distribution, the excess credit so distributed shall be recovered from such recipients u/s 73 or 74 using FORM GST DRC-07 along with interest and penalty if any. The excess amount may voluntarily be paid along with interest if any by using FORM GST DRC-03.

In Income Tax, Rajasthan High Court] has held that the burden entirely lay upon a person who asserts a fact. In the given case of in the case of Pr. Commissioner Of Income Tax Central, Jaipur, Versus Daksha Jain W/O Shri Virendra Modi, Adarsh Nagar, Sirohi, the burden lay on AO first to establish that there existed a loan or advance and the contentious payment in repayment of such loan.

In Customs, the Government vide **Circular No. 45/2018-Customs dated 19.11.2018** has clarified that the **notification No. 45/17-Cus, and 46/2017-Cus, both dated 30th June 2017** are also applicable to the re-imports of goods which were earlier exported through Post.

The relevant notifications and circulars have been discussed further in the bulletin.

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 25th NOVEMBER , 2018 to 1st DECEMBER, 2018	Description
30th November 2018	Form 26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of October, 2018
30th November 2018	Form 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of October, 2018
30th November 2018	Income Tax Return	Annual return of income for the assessment year 2018-19 in the case of an assessee if he/it is required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
30th November 2018	Form 3CA/3CB & 3CD	Audit report under section 44AB for the assessment year 2018-19 in the case of an assessee who is also required to submit a report pertaining to international or specified domestic transactions under section 92E
30th November 2018	Form 3CEB	Report to be furnished in respect of international transaction and specified domestic transaction
30th November 2018	Form 3CEAA	Report by a constituent entity of an international group for the accounting year 2017-18
30th November 2018	Form 3CEAD	Country-By-Country Report in by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the accounting year 2016-17.
30th November 2018	Form 64	Statement of income distribution by Venture Capital Company or venture capital fund in respect of income distributed during 2017-18
30th November 2018	Form 64D	Statement to be furnished by Alternative Investment Fund (AIF) to Principal CIT or CIT in respect of income distributed (during previous year 2017-18) to units holders
30th November 2018	Form 3CEFA	Due date to exercise option of safe harbour rules for international transaction
30th November 2018	Form 3CEFB	Due date to exercise option of safe harbour rules for specified domestic transaction
30th November 2018	Form No. 64A	Due date for filing of statement of income distributed by business trust to unit holders during the financial year 2017-18. This statement is required to be filed electronically to Principal CIT or CIT
30th November 2018	Form 3CEJ	Due date for e-filing of report by an eligible investment fund in respect of arm's length price of the remuneration paid to the fund manager.
30th November 2018	Form 9A	Application for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2018)
30th November 2018	Form 10	Statement in to be furnished to accumulate income for future application under section 10(21) or 11(2) (if the assessee is required to submit return of income on November 30, 2018)
30th November 2018	Form 67	Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2017-18 and of foreign tax deducted or paid on such income (if due date of submission of return of income is November 30, 2018).

GST: CGST/IGST/SGST/UTGST

NOTIFICATIONS/CIRCULARS

CLARIFICATIONS OF ISSUES UNDER GST RELATED TO CASUAL TAXABLE PERSON AND RECOVERY OF EXCESS INPUT TAX CREDIT DISTRIBUTED BY AN INPUT SERVICE DISTRIBUTOR

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 71/45/2018-GST dated 26-11-2018** has clarified:

1. Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?

Clarification While applying for registration as a casual taxable person, the FORM GST REG-1 (S. No. 11) seeks information regarding the "estimated net tax liability" only and not the gross tax liability. Hence, the amount of advance tax which should be calculated after considering the due eligible ITC which might be available to such taxable person.

2. As per section 27 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), period of operation by causal taxable person is 90 days with provision for extension of same by the proper officer for a further period not exceeding 90 days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.

Clarification It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person. The allotment letter/consent letter granting him permission to use the premises for the exhibition shall be treated as the proper document as a proof for his place of business and he would not be required to pay advance tax for the purpose of registration.

3. Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in section 20 of the CGST Act.

Clarification: According to Section 21 of the CGST Act where the ISD distributes the credit in contravention of section 20 resulting in excess distribution, the excess credit so distributed shall be recovered from such recipients u/s 73 or 74 using FORM GST DRC-07 along with interest and penalty if any. The excess amount may voluntarily be paid along with interest if any by using FORM GST DRC-03. The ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.

INCOME TAX

NOTIFICATIONS/CIRCULARS

INCOME–TAX (TWELFTH AMENDMENT) RULES, 2018

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **NOTIFICATION NO. 82/2018 dated: 19-11-2018** has made Income–tax (Twelfth Amendment) Rules, 2018 which shall come into force from the 5th day of December, 2018.

Amendments have been made in Rule 114 - Application for allotment of a permanent account number and in Appendix II, in Form number 49A and Form number 49AA.

Please refer the notification for details.

CASE LAW

PR. COMMISSIONER OF INCOME TAX CENTRAL, JAIPUR, VERSUS DAKSHA JAIN W/O SHRI VIRENDRA MODI, ADARSH NAGAR, SIROHI [RAJASTHAN HIGH COURT]

BRIEF: The burden entirely lay upon AO first to establish that there existed a loan or advance and the contentious payment in repayment of such loan.

OUR COMMENTS: In the given case, the Assessing Officer was having books of accounts of the assessee, including the cash book evincing the contentious payment. He thus recorded the finding that there existed a loan or deposit or advance by the said recipient viz. Adarsh Credit Cooperative Society. In absence of any loan or advance by the ACCS, the cash payment made to it does not fall foul to Section 269T of the Act of 1961.

There is nothing on record to show that there existed a loan or advance by said ACCS, repayment of which has been made in cash.

The assessee was asked to establish that the payment was not in violation to Section 269T.

However, it is a settled proposition that the burden to prove lies upon a person who asserts a fact. In the facts of the present case assessee took a stand that there existed no loan or advance from ACCS and the amount was paid towards her contribution in the society.

As such the burden entirely lay upon AO first to establish that there existed a loan or advance and the contentious payment in repayment of such loan.

That being the factual and legal position, it was held that there is no violation of the provisions of Section 269T of the Act of 1961 and consequently, levy of penalty under Section 271E of the Act of 1961 was uncalled for.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

CLARIFICATION FOR RE-IMPORTS THROUGH POST UNDER NOTIFICATION NO. 45/17-CUS, DATED 30.06.17 AND 46/17-CUS, DATED 30.06.17

OUR COMMENTS: **Notification No. 45/17-Cus, and 46/2017-Cus, both dated 30th June 2017** exempt customs duty on reimport of goods that are exported from India as specified.

These notifications have been issued in supersession of notification No. 94/96-Cus, dated 16.12.1996, because of different duty structure before and on or after the 1st July, 2017 on account of introduction of GST.

Notification No. 45/17-Cus applies to the goods exported on or after 01.07.17 and **No. 46/17-Cus** applies to the goods exported before 1.7.2017.

Para 2 of these notifications has been interpreted to the effect these notifications apply only to the re-imports of goods that were exported upon clearance for exports under section 51 of the Customs Act, 1962. Section 51 does not apply to the exports made through post parcels which is regulated under section 82, 83 & 84 of the Customs Act, 1962.

Clarification

The harmonious reading of these two notifications make it clear that the intention of the said paras 2 is only to prescribe cutoff date for applicability of said notifications. In all other respect, the concessions available under notification No. 94/96-Cus (in the pre-GST period) have been continued through these notifications.

i.e. reference to section 51 does not seek to deny the benefit to the goods to which section 51 may not apply. By implication, if section 51 does not apply to certain goods the para 2 may not apply.

The intended nature of duty/tax concession is clearly stated in the opening para of these notifications e.g. 45/2017-Cus provides exemption from duties as applicable after introduction of GST.

Accordingly, the Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 45/2018-Customs dated 19.11.2018** has clarified that the notification No. 45/17-Cus, and 46/2017-Cus, both dated 30th June 2017 are also applicable to the re-imports of goods which were earlier exported through Post.

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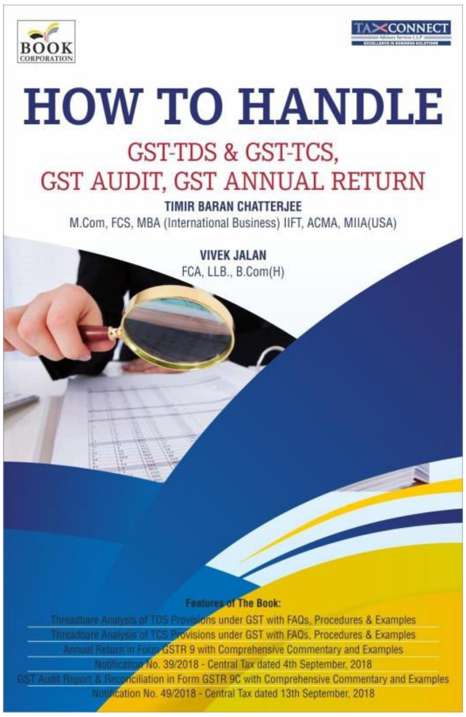
HOW TO HANDLE GST-TDS & GST-TCS, GST AUDIT, GST ANNUAL RETURN



ABOUT THE BOOK: This book provides an insight into the following:

1. **Threadbare Analysis of TDS Provisions under GST with FAQs, Procedures & Examples**
2. **Threadbare Analysis of TCS Provisions under GST with FAQs, Procedures & Examples**
3. **Annual Return in Form GSTR 9 with Comprehensive Commentary and Examples**
4. **Notification No. 39/2018 – Central Tax dated 4th September, 2018**
5. **GST Audit Report & reconciliation in Form GSTR 9C with Comprehensive Commentary and Examples**
6. **Notification No. 49/2018 – Central Tax dated 13th September, 2018**

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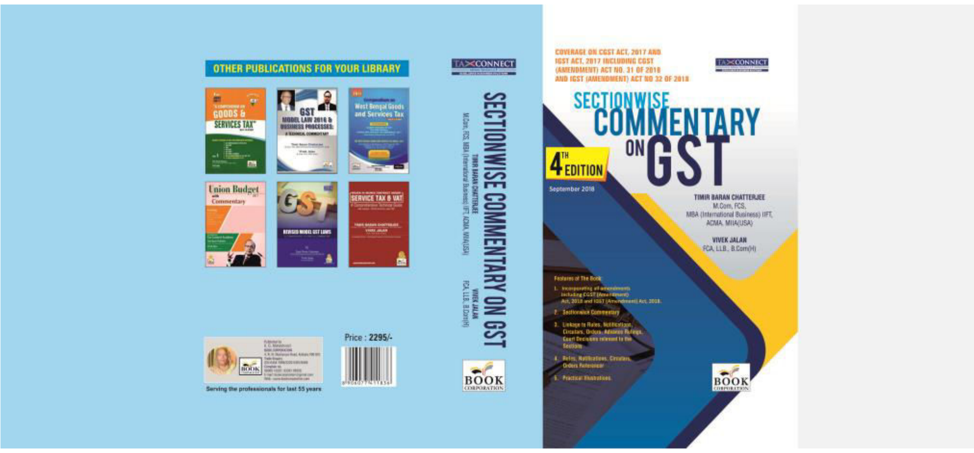
IN STANDS

SECTION WISE COMMENTARY ON GST UPDATED TILL DATE



ABOUT THE BOOK: **This book provides an insight into the following:**

1. **Incorporating all amendments**
2. **Section wise commentary**
3. **Linkages to Rules, Notifications, Circulars, Orders, Advance Rulings, Court Decisions relevant to the Sections**
4. **Rules, Notifications, Circulars, Orders Referencer**
5. **Practical Illustrations**

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