TAXCONNECT

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TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

TAX CONNECT

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EDITORIAL

Friends,

The Income tax Department conducted search and seizure in a business group dealing in the business of transportation, manufacturing of silk yarn, hospitality, retail trading of Kashmir Arts & Crafts etc. located at Srinagar covering 8 premises and 1 premise each at Bangalore and Delhi since the members of the group are irregular in filing the Income Tax Returns and non-payment of loan amounting to Rs 170crore taken from the J&K Bank.

In the given case, the assessee group received loan of Rs 170 crore from the J&K Bank. As a one-time settlement with the bank, the group restructured for a sum of Rs. 77 crore out of which only payment of Rs 50.34 crore has been made to the bank and balance of Rs 27.66 crore is yet to be paid. During the search, as per the statement, the evidence collected indicates that there was an active involvement of the senior officer of the bank in the one-time settlement of the loan from the bank.

Further, the collected evidence also indicates that the bank has granted loan of Rs. 50.34 crore to the associate which is of the same amount that has been repaid by the group to the bank to create a layer of transaction.

During the search more evidence detected relating to :

- Sale of undisclosed property amounting to Rs 22 crore
- agreement to sell Transport business for Rs.9.10 crore
- undisclosed profit of Rs.15-20 crore on account of sale of Cold Storage plant at Lassipora. The cost of this project was inflated to Rs 47 crore instead of the actual cost of Rs.17 crore, for
- claiming more subsidy from the government by raising inflated and bogus bills. The loan for this project was taken from J&K Bank.
- undisclosed properties at Sonmarg (Rs.2.68 crore), Pahalgam (Rs.3.55 crore) and Bangalore (Rs.1 crore)
- one shop in partnership in Delhi purchased for Rs.1.02 crore

During the search, digital evidence found has been seized, analysis of which is in progress.

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	Form	Description
30th June, 2019	Form 15J	Particulars under the third proviso to section 194C(3)(i) to be furnished by a contractor responsible for paying any sum to such sub-contractor shall be in Form No. 15J. – A copy shall be furnished before Commissioner of Income Tax for the Financial Year ending March 31.

INCOME TAX

NOTIFICATION/ CIRCULAR

PERSUANT TO SECTION 10 CLAUSE 46, CERTAIN INCOME SPECIFIED AS EXEMPT IN RELATION TO CENTRAL SILK BOARD, BENGALURU

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 45/2019/ F.No.300196/3/2019-ITA-I dated 20.06.2019** has notified certain income to be exempted for the Central Silk Board and not to be included in the computation of its Total Income provided it satisfies all the conditions laid down in the said notification.

PERSUANT TO SECTION 10 CLAUSE 42, CERTAIN INCOME SPECIFIED AS EXEMPT IN RELATION TO INTERNATIONAL SERICULTURAL COMMISSION, BENGALURU

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 46/2019/F.No. 197/10/2014-ITA-I dated 20.06.2019** notified certain income to be exempted for the 'International Sericultural Commission and not to be included in the computation of its Total Income.

TERMS AND CONDITIONS NOTIFIED FOR MAINTAINANCE AND OPERATION AS AN INDUSTRIAL PARK

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 47/2019/ F. No. 178/47/2017-ITA-I dated 20.06.2019** has notified certain terms and conditions subject to which M/s. Magrath Properties Pvt. Ltd needs to be maintained and operated as an industrial park.

The Dept. has earlier approved the industrial park developed by M/s. Magrath Properties Pvt. Ltd. **vide Ministry of Commerce and Industry letter No. 15/177/2005-IP&ID dated 25.07.2006**.

PERSUANT TO SECTION 10 CLAUSE 42, CERTAIN INCOME SPECIFIED AS EXEMPT IN RELATION TO INTERNATIONAL SERICULTURAL COMMISSION, BENGALURU

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 13/2019 dated 24.06.2019** has clarified that the Disability Pension received by the armed forces personnel who have been invalided from service on account of bodily disability attributable to or aggravated by such service shall be non- taxable and taxable for personnel who have been retired on superannuation or otherwise.

Clarifications are also received that the exemption is applicable to all the disabled officers and Jawans of the Armed Forces.

NOTIFICATION/ CASE LAW/ ARTICLES

APPOINTMENTMENT DATE OF THE PROVISIONS OF THE CENTRAL GOODS AND SERVICES TAX (FOURTEENTH) AMENDMENT RULES, 2018

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 25 /2019 – Central Tax dated 21.06.2019** notified that the provisions of the Central Goods and Services Tax (Fourteenth) Amendment Rules, 2018 shall be effective from 21st August,2019.

WHETHER INPUT TAX CREDIT ON PURCHASE OF MOTOR VEHICLES FOR SUPPLYING RENT-A-CAB SERVICE IS ADMISSIBLE: MOHANA GHOSH, CARRYING ON BUSINESS UNDER THE TRADE NAME M/S REESHAM ASSOCIATES

OUR COMMENTS: In the given case, the applicant submitted that she supplies rent-a-cab service and as per section 17(5)(a)(B) of the GST Act the input tax paid on the purchase of motor vehicles are allowed when it is used for supplying passenger transportation service.

Further, the officer submitted that, as per the provisions of section 17(5)(b)(iii) of the GST Act, the input tax credit on rent-a-cab service is not allowed.

Therefore, as per section 17(5), the applicant can claim input tax credit on her inward supplies except as provided under section 17(5)(a) of the act which provides that input tax credit shall not be available on inward supply of motor vehicles for transportation of persons having approved seating capacity of up to thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely-

(A) a further supply of such motor vehicles; or

(B) transportation of passengers: or

(C) imparting training on driving such motor vehicles.

On the basis of above conclusions the Advance Ruling Authority gave the ruling as the Input Tax Credit on GST paid on the inward supply of motor vehicles for supplying rent-a-cab service is not available.

CASES WHERE THE RESPONSIBILITY OF THE SUPPLIER UNDER GST IS SHIFTED ON TO THE BUYER

OUR COMMENTS:

- **Reverse Charge Mechanism:** A registered buyer is liable to pay tax under reverse charge basis on certain specified goods and in case of receipt of specified goods or services or both from an unregistered person.
- **Self-Invoice:** A registered person who is liable to pay tax under reverse charge should issue an invoice in respect of goods or services received by him.
- **E-way Bill in case of purchase from an unregistered person:** In case of purchase of goods from an unregistered person the registered buyer has to generate the e-way bill.
- **Import of goods or services:** A registered buyer importing taxable goods from a foreign vendor is liable to pay tax to clear the goods. And in case of import of service the tax is payable by the receiver.

FEMA

CASE LAW

SH. SACHIN A. MEHTA VERSUS THE SPECIAL DIRECTOR DIRECTORATE OF ENFORCEMENT, KOLKATA

OUR COMMENTS: In the given case, there are recovery of US $ 3,30,400/- at Aizwal airport on 27.10.2006 from Shri Thlabik who had taken the name of the appellant in his statement. Further, there are allegation against the appellant that he had received a sum of Rs. 35,00,000/- from Shri Thlabik which were recovered at the time of search of the premises. As per the appellant the money represents the payment which was owned by two purchasers of Jewellery at Mizoram.

Furthermore, the department has allowed him to cross examination of main witness (accused) Shri Thlabik, however, the said witness was not produced for the said purpose. When verified, it was informed that he was absconding and could not be produced for cross-examination.

Thus, on the basis of above, under the circumstances, the appeal is allowed.

SHRI BHARAT HANSRAJ THAKKAR, MRS. YASMIN M.V. VALIBHOY VERSUS THE JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT, MUMBAI

OUR COMMENTS: In the given case, the order against Sh. Bharat Hansraj Thakkar without any valid findings pertaining to penalties is not sustainable in law. As far as Hansraj Thakkar is concerned, the penalty was imposed against the dead party despite of having the knowledge about his death.

Appeal is allowed in the case of Sh. Bharat Hansraj Thakkar of a penalty of Rs. 5.00 crores and the impugned order against him is rejected as invalid as there is no reasoning in the Adjudication Order.

The show cause notice seeks to hold the Sh. Bharat Hansraj Thakkar liable on account of “abetment” in terms of Section 64 of FERA, sine repealed. Once the order passed against Sh. Hansraj Thakkar, the main offender, is a nullity, being passed against a dead person “abettor” cannot be held guilty in the absence of guilt adjudged against main offender. The matter is 32 years old. Both alleged accused and abettor have already expired long ago. Against the accused, when the order was passed he was no more and against abettor there are no discussion and reasons for imposing the penalties.

The order of penalty or conviction passed against a dead person leads to acquittal of deceased person with consequence of acquittal as presumption of innocence continues till finding of guilt on account of death of main offender, the proceedings get “abated” and “abettor” cannot be thus held guilty. The order against Sh. Bharat Hansraj Thakkar is liable to also be set aside on this ground also.

CUSTOMS

NOTIFICATIONS/CASE LAW

FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, POPPY SEEDS, ARECA NUT, GOLD AND SILVER

OUR COMMENTS: The Central Board of Indirect Taxes & Customs vide **Notification No. 47/2019-Customs(N.T) dated 25.06.2019** has fixed the Tariff value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver thereby amending the **Notification No. 36/2001-Customs(N.T) dated 03.08.2001.**

EXTENSION OF TIME FOR LEVIATION OF ANTI-DUMPING DUTY

OUR COMMENTS: The Central Board of Indirect Taxes & Customs vide **Notification No. 26/2019-Customs(ADD) dated 24.06.2019** has extended the period of leviation of anti-dumping duty on imports of paracetamol from China up to 9th July, 2019.

IMPOSITION OF DEFINITIVE COUNTERVAILING DUTY ON IMPORT OF SPECIFIED GOODS FROM CHINA

OUR COMMENTS: The Central Board of Indirect Taxes & Customs vide **Notification No. 1/2019-Customs(CVD) dated 24.06.2019** notified the imposition of definitive countervailing duty on the imports of new/unused pneumatic radial tyres with or without tubes and/or flap of rubber used in buses and lorries/trucks from China.

CONTINUANCE OF ANTI- DUMPING DUTY ON IMPORT OF DUCTILE IRON PIPES FROM CHINA

OUR COMMENTS: The Central Board of Indirect Taxes & Customs vide **Notification No. 25/2019-Customs (ADD) dated 23.06.2019** has notified further continuance of anti- dumping duty on imports of Ductile Iron Pipes from China up to 9th October, 2019.

COMPOSITE TECHNOLOGIES PVT. LTD. VERSUS C.C-BANGALORE-CUS

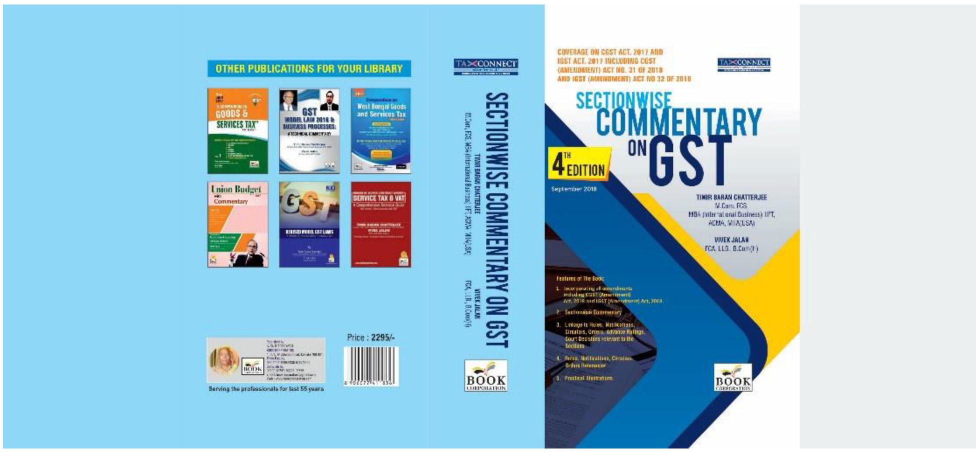
OUR COMMENTS: In the given case, the appellant imported capital goods under EPCG scheme. The appellant could not fulfill the export obligation on account of reasons as he has suffered huge financial loses and his factory was closed in 2007 - further the appellant have paid the entire customs duty foregone amounting to Rs. 22,14,833/- as on date.

Furthermore, the appellant received the order to pay the redemption fine in terms of Section 125 of the Act - the confiscation, redemption fine of Rs. 5 lakhs in lieu of confiscation and penalty of Rs. 2.5 lakhs.

However, the authorities of the Tribunal have not considered the earning foreign exchange of Rs. 28,28,256/- as export and hence there is no justification for redemption fine in lieu of confiscation and penalty and the appellant are liable to pay interest on delayed payment of custom duty forgone.

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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