TAX CONNECT
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TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

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TAX CONNECT

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EDITORIAL

Friends,

The Income Tax Department has launched 'e-Verify Return' for e-Verification of ITR without login. The same can be accessed by clicking 'e-Verify Return' button in home page under 'Quick Links'.

The Income Tax Department has directed its officers to accept the declarations of companies which were tagged as start-ups in the middle of a scrutiny for income tax payable on capital raised by unlisted firms by issuing shares where the share price is considered in excess of the fair market value. The excess realisation is treated as income and hence taxable under section 56(2)(viib) of the act which was earlier exempted by the Department of Promotion of Industry and Internal Trade (DPIIT). The tax department issued the circular laying down procedures to be followed by assessing officers in case of recognised start-ups along with the procedures for unrecognised start-ups as per which in case of recognised start-up, he tax officer will not pursue the demand in respect of Section 56(2) (viib).

In recent audit finding, a total income tax demand arrears are found at Rs 11 lakh crore till the end of F.Y 2017-18 of which more than Rs 10.94 lakh crore, or 98% of this arrears are difficult to recover, owing to different reasons as per the Comptroller and Auditor General of India (CAG). The CAG listed reasons for difficulty in tax recoveries, including no assets, inadequate assets for recovery, cases under liquidation, assessees not traceable, demand stayed by courts or tribunals, mismatch in TDS, etc.

The FMCG petitioned the government to remove GST on the amount received by dealers and retailers as reimbursement against discounts and for promotional programmes to boost sales since they offer discounts on the printed price to consumers to boost sales. These discounts, offered at the retail level by retailers or dealers, are borne by the company, which reimburses the difference to them and the dealers has to bear GST on the price inclusive of the discount, as per the current provisions and they do not receive credit against tax paid on the discount portion. Unless the earlier stocks get depleted, the distributor won't buy fresh stock. So additional discounts are being given by companies to the distributor to do away with existing inventory.

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
11th August, 2019	GSTR-1	Details of outward supplies of goods or services or both for the month of July, 2019 for Persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year.
13th August, 2019	GSTR-6	Return for the month of July, 2019 applicable for input service distributors (ISD)
15th August, 2019	Form-16A	Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending June 30, 2019
15th August, 2019	Form-24G	Due date for furnishing of Form 24G by an office of the Government where TDS for the month of July, 2019 has been paid without the production of a challan
15th August, 2019	Form-3BB	Due date for furnishing statement by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of July, 2019

INCOME TAX

NOTIFICATION/ CIRCULAR/ CASE LAW

PERSUANT TO SECTION 10 CLAUSE 46, CERTAIN INCOME SPECIFIED AS EXEMPT IN RELATION TO BANGALORE WATER SUPPLY AND SEWERAGE BOARD

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 56/2019 dated 2.08.2019** has notified certain income to be exempted for the Bangalore Water Supply and Sewerage 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.

PROCESSING OF RETURNS WITH REFUND CLAIMS UNDER SECTION 143(1) OF THE INCOME-TAX ACT, 1961 BEYOND THE PRESCRIBED TIME LIMITS IN NON-SCRUTINY CASES

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **F. No. 225/194/2019/ITA-II dated 5.08.2019** has received certain representations to enable processing of returns, which though covered under earlier orders/ instructions No 18/2013 dated 18.12.2013; Instruction/Order dated 25.10.2016; and Instruction No 5/2018 dated 21.8.2018 which allowed processing of validly filed time barred returns with refund claims up to 31.03.2019, where the statutory time-frame for sending intimation under section 143(1) had lapsed., could not be processed for various reasons and in order to resolve the same the Board has extended the time frame and directed that all validly filed returns up to assessment year 2017-18 with refund claims, which could not be processed under section 143(1) of the Act and have become time-barred, subject to the exceptions mentioned in the order, can be processed now with prior administrative approval of Pr. CCIT/CCIT concerned and intimation of such processing under section 143(1) of the Act can be sent to the assessee concerned by 31.12.2019.

ANIL ANEJA VERSUS ACIT CIRCLE-61 (1) NEW DELHI

BRIEF: Payment by the appellant though jointly held with his wife, who is separately assessed to tax and made separate deposit in capital gain account scheme - multiple flats constructed have to be construed as one house.

OUR COMMENTS: In the present case, the assessee filed submitted his computation of income along with the computation of income of wife before the Assessing Officer and the CIT(A) persuing which it was found that the assessee duly deposited his share of ₹ 75,00,000/- in Capital Gain Accounts before 31.03.2011. The assessee demolished the existing residential property which was jointly owned by him and constructed four new flats but has claimed only as per his own share excluding the wife's share as well.

All the criteria of Section 54 were fulfilled by the assessee and the assessee's wife got the relief for her share as claimed by her from the Revenue in respect of Capital Gains Scheme. Thus, the Assessing Officer should have not rejected assessee's claim on the different footing which was rightly claimed by the assessee.

Therefore, it was concluded by the ITAT that the Assessing Officer as well as CIT(A) was not right in making the addition on this account and thus appeal filed by the assessee is allowed.

CASE LAW

AUTHORITY FOR ADVANCE RULING, KARNATAKA
IN RE: M/S. DURGA PROJECTS AND INFRA STRUCTURE PRIVATE LIMITED

BRIEF: Applicability of GST on partially completed fiats in cases where customers are identified before implantation of GST, after implementation of GST and where customers are not at all identified.

OUR COMMENTS: The applicant, a construction company which sells residential apartments and residential complex based under joint development agreement executed projects under JDA with Land Owners for an agreed ratio of built-up area and the construction was commenced during pre-GST regime and also continued under GST regime, out of which substantial portion of the work has been sub-contracted to another registered person.

As per the applicant, construction activities relating to immovable property have been treated as "Works Contract" under the GST Law; construction and sale of residential flats falls under the "Works Contract" and hence classified as supply of Service that are leviable to GST, but the GST is not leviable where entire consideration is received after issuance of completion certificate, by the Competent Authority or after its first occupation, whichever is earlier and as per section 141, 142 and 143 of CGST Act, tax was leviable under earlier law to the extent of work executed under earlier law and not under GST Law and therefore in respect of partially completed flats, tax is applicable on the value of work to be executed under GST and not on the value of work already executed under earlier law, irrespective of whether payments are received or not and hence concluded that in the first case, tax is leviable as per earlier law on the value of work executed under earlier law and liable to tax under GST Law only on the value of work executed under GST and in the second and last case, not liable to tax under earlier law on the portion of work executed under earlier law, as held by Hon'ble Supreme Court in L&T case that the activity / transaction amounts to work contract only from the stage of entering agreement with customer, and attract tax under GST Law on the value of work executed under GST Law.

Further as per the authority:-

- In the first case, since the agreement with the customer was executed pre- GST, therefore the Applicant is liable to pay service tax for the services provided up to 30.06.2017 and from 01.07.2017 onwards liable to pay GST for the services effective from 01.07.2017, as per Section 142(11)(b) of the CGST Act 2017.

- In the second case, since the agreement has been entered prior to completion of the construction and also before issuance of the completion certificate from the Competent authority, as per section 13 of the CGST Act, 2017 liability to pay tax under the Act arises at the time of supply which is described under section 13(2) and the applicant shall be liable to pay the applicable tax.

- In the last case, if the applicant completes the activity of construction and also obtains the occupancy/completion certificate from the competent authority and then enters into a transaction with a recipient then the applicant is not liable to pay GST as the transactions are initiated prior to the issue of completion/ occupancy certificate then it will be the same situation as in the second case and the same conclusion shall be applied.

FEMA

CASE LAW

M/S. GUNASHEELA & ASSOCIATES VERSUS THE ASSISTANT DIRECTOR OF ENFORCEMENT, DIRECTORATE OF ENFORCEMENT BENGALURU

BRIEF: Availability of alternative and efficacious remedy of appeal.

OUR COMMENTS: In the present case, the petitioner filed the writ petition to quash the order dated 31.8.2017 passed by the 1st respondent - Adjudicating Authority to expunge the adverse remarks made against him. As per the objection raised with regard to the writ petition by the learned CGC for Respondents the proceedings were initiated under Section 7(3) of the FEMA and the impugned order passed by the Adjudicating Authority under Section 13(1) of the FEMA and therefore the petitioners have got an alternative and efficacious remedy of appeal before the Appellate Authority under Section 17 of the FEMA. However as per the contention of the learned counsel for the petitioner certain adverse remarks were made against the petitioners in the impugned order by the Adjudicating Authority and the Appellate Authority cannot expunge the adverse remarks passed by the Adjudicating Authority for which the writ petition was filed.

Further as per section 17(4), the Special Director (Appeal) can pass such order on receipt of the appeal as he thinks fit, confirming, modifying or setting aside the order appealed against. Therefore, the contention of the learned counsel for the petitioners that the Appellate Authority cannot expunge the adverse remarks passed by the Adjudicating Authority cannot be accepted and the Appellate Authority has the right to confirm, modify or set aside the order appealed against. Hence the Appellate Authority can also expunge the adverse remarks, if any. Therefore the petitioner has to avail the alternative remedy of appeal.

In view of the above, the writ petitions are disposed of as not maintainable with liberty to the petitioners to avail the alternative remedy of appeal under Section 17 of the FEMA within a period of three weeks from the date of receipt of copy of the order.

The petitioners were also permitted to file an application before the Appellate Authority for exclusion of the time spent before this Court. If such an application is filed, the Appellate Authority shall consider the same and proceed with the appeal and pass orders in accordance with law.

KNIGHT RIDERS SPORTS PVT. LTD. & ORS. VERSUS THE SPECIAL DIRECTOR DIRECTORATE OF ENFORCEMENT, KOLKATA

BRIEF: Whether the appeals filed against the impugned orders are maintainable.

OUR COMMENTS: The appeal was filed under Section 19 of the FEMA against the impugned order dated 30th October, 2017 passed by Special Director, Directorate of Enforcement at Mumbai, with prayers to set aside the impugned order and permitting the appellant to fully and effectively cross-examine the complainant Mrs. V. Kalyani and the Investigating Officer Mr. D.K. Sinha.

As per section 19(1), a party aggrieved by an order which affects the party's right or liability has a right to appeal. But if the present types of orders are allowed to be agitated than there will be no end to litigation and the very purpose of the relevant provisions and intention of the legislature would be defeated.

The scope of the words "an order" of Adjudicating Authority is not as wide as "any order" or "every decision or order" in the context of Sections 19 (1), 19 (6) & Section 35 respectively of FEMA. As held by Hon'ble Supreme Court, in many judgments, only those orders which affect the rights and liabilities of the parties can only be appealable.

After considering the materials on record, oral and written submissions of learned counsels and the relevant judgments in the present appeals, the Division Bench did not found any materials to support that the present impugned orders in any way affects the rights and liabilities of the parties and hence it was held that these impugned orders are not covered within the scope of the words "an order" occurring in Section 19 (1) of FEMA, for the purpose of filing an appeal as required under the said section. Therefore, these appeals are not maintainable.

CUSTOMS

NOTIFICATION/ CIRCULAR

RATE OF EXCHANGE OF JAPANESE YEN INTO INDIAN CURRENCY

OUR COMMENTS: The Central Board of Indirect taxes and Customs **vide Notification No. 56/2019- Customs (N.T.) dated 5.08.2019** has specified the rate of exchange of conversion of Japanese Yen into Indian currency for imported goods as ₹ 67.75 and for exported goods as ₹ 65.20.

AMENDMENT TO THE NOTIFICATION NO. 12/2019-CUSTOMS (ADD) DATED 26.02.2019

OUR COMMENTS: The Central Board of Indirect taxes and Customs **vide Notification No. 31/2019-Customs (ADD) dated 6.08.2019** has amended the notification no. 12/2019-Customs (ADD) dated 26.02.2019.

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

OUR COMMENTS: The Central Board of Indirect taxes and Customs **vide Notification No. 57/2019- Customs (N.T.) dated 8.08.2019** has specified tariff value of edible oils, brass scrap, poppy seeds, areca nut, gold and silver thereby making amendments to the notification no. 36/2001- Customs (N.T.) dated 3.08.2001.

CLARIFICATION REGARDING APPLICABILITY OF NOTIFICATION 45/2017- CUSTOMS DATED 30.06.2017 ON GOODS WHICH WERE EXPORTED EARLIER FOR EXHIBITION PURPOSE/CONSIGNMENT BASIS

OUR COMMENTS: The Central Board of Indirect taxes and Customs **vide Public Notice No. 26/2019 dated 2.08.2019** has given clarifications on re-import of certain goods earlier exported for participation in exhibition or consignment basis that sending / taking the specified goods out of India does not constitute supply under section 7 of the CGST Act as there is no consideration at that point in time and since such activity is not a supply, the same cannot be considered as Zero rated supply as per the provisions contained in Section 16 of the IGST Act, 2017. Also that there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

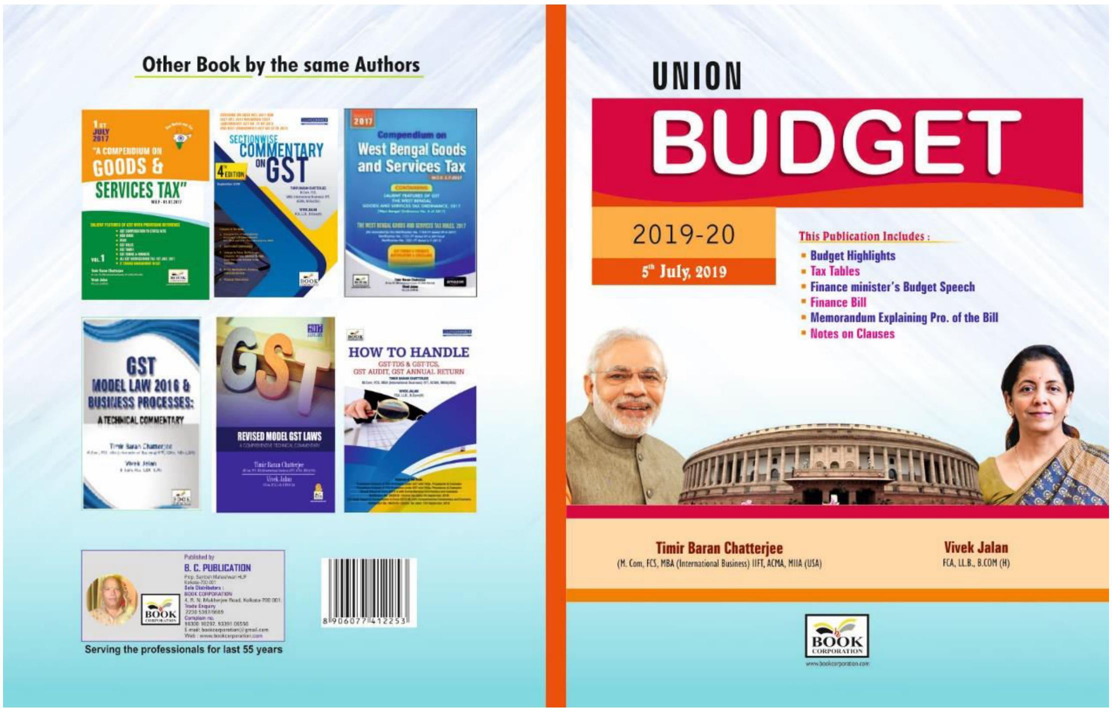
Further, there are some situations mentioned in Notification No. 45/2017- Customs dated 30.07.2017 which require payment at the time of re-import of IGST not paid initially at the time of export, for availing exemption under the said notification. As in the case of re-import of specified goods, no IGST was required to be paid for specified goods at the time of taking these out of India, the activity being not supply, hence the said condition requiring payment of IGST at the time of re-import of specified goods in such cases is not applicable. It is clarified that such re-import cannot be taken to be falling under situation at Sl. No.1 (d) of the said Notification, Such cases will fall more appropriately under residuary entry at Sl. No. 5 of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/ taking specified goods out of India is neither a supply not zero rated supply.

CLARIFICATION REGARDING APPLICABILITY OF ALL INDUSTRY RATES OF DUTY DRAWBACK WHILE FIXING BRAND RATE OF DUTY DRAWBACK IN POST GST ERA

OUR COMMENTS: The Central Board of Indirect taxes and Customs **vide Circular No. 24/2019- Customs dated 8.08.2019** has given clarifications on the applicability of Circular Nos. 83/2003 dated 18.09.2003 and 97/2003 dated 14.11.2003 to the cases of Brand Rate fixation in the post GST era that since Central Excise Duty on inputs and Service Tax on input services have been subsumed in GST in the new regime for which input tax credit/refund is available thereunder, the basic premise for applicability of AIRs for calculation of Brand Rate of duty drawback no longer exists for exports made in GST regime.

IN STANDS

UNION BUDGET 2019-20



ABOUT THE BOOK: This publication includes:

1. **Budget Highlights**
2. **Tax tables**
3. **Finance Minister's Budget Speech**
4. **Finance Bill**
5. **Memorandum Explaining Pro. Of the Bill**
6. **Notes on Clauses**

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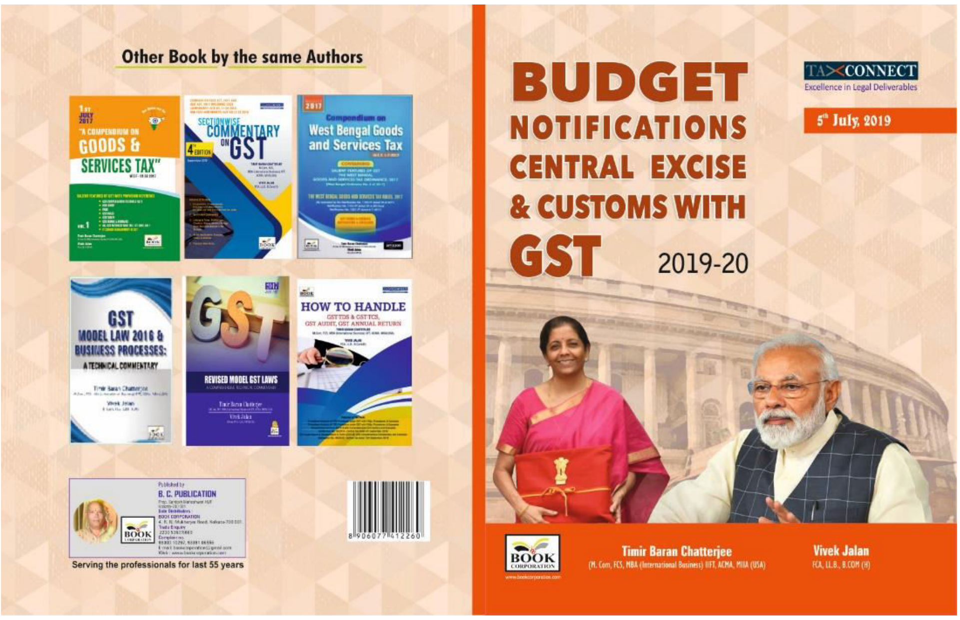
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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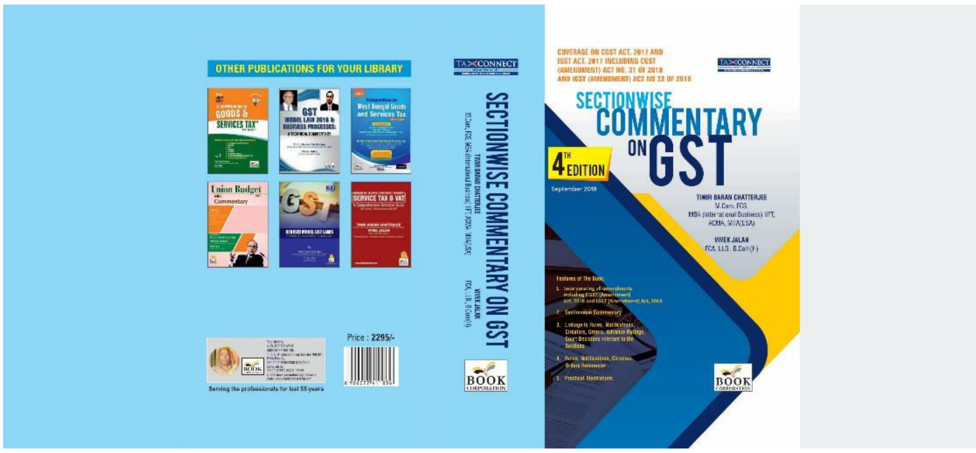
IN STANDS

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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