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TAX CONNECT

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The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

FEMA

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EDITORIAL

Friends,

As per the tweet of CNBC-TV18, the Government is likely to extend the due date of furnishing GSTR-9 and GSTR-9C till 30th November, 2019.

The Direct Tax Task Forces, has proposed changes to the tax brackets, review of the surcharges levied on income tax, a regime that encourages startups and a revamp of the I-T Act to make it taxpayer-friendly, to bring significant relief for the middle and upper middle class, a rate of 25% for both domestic as well as foreign companies which face 40% tax now and a concept of negotiated settlement via mediation that's popular overseas.

The financial institution has temporarily banned the Chinese companies involved in the projects and China funded infrastructure projects in various Asian parts have come under the scanner of the World Bank for alleged gross financial malpractices. China Railway Construction Corporation and its wholly owned subsidiaries, China Railway 23rd Bureau Group Co and China Railway Construction (International) were also debarred by the World Bank for nine months, citing misconduct during the procurement process for the 'East-West Highway Corridor Improvement Project' in Georgia. This project is part of China's mega Belt & Road Initiative (BRI).

The Reserve Bank of India has allowed consumers to make recurring payments of up to Rs 2,000 by giving an e-mandate from next month by setting auto pay instructions for small value repetitive This means one can set auto pay instructions for small-value repetitive transactions such as subscription payments and bill payments on mobile wallets or debit and credit cards without having to put in the second factor of authentication every time a payment is made.

Further the Reserve Bank of India declared that it has been decided to permit processing of emandate on cards for recurring transactions (merchant payments) with AFA (additional factor of authentication) during e-mandate registration, modification and revocation, as also for the first transaction.

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 August, 2019	Form 26QB	Due Date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of July 2019
30th August, 2019	Form 26QC	Due Date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IC for the month of July 2019
31st August, 2019	Income Tax Return	Annual return of income for the assessment year 2019-20 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) working partner of a firm whose accounts are required to be audited or (d) an assessee who is required to furnish a report under section 92E.

INCOME TAX

CIRCULAR/ CASE LAW

CLARIFICATION REGARDING TREATMENT OF FARM-IN EXPENDITURE INCURRED BY THE OIL EXPLORATION AND PRODUCTION (E&P) COMPANIES

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 20/2019 dated 19.08.2019** has given clarifications on whether 'Farm in' expenditure being in nature of rights should be allowed to be treated as an 'intangible asset' in the case of an Oil & Gas block, E&P companies buying ('Farm in') and selling ['Farm out') their participating interests (PI) in the 'Production Sharing Agreement' (PSC).

2019 (8) TMI 933 - HIMACHAL PRADESH HIGH COURT LABH SINGH VERSUS PRINCIPAL INCOME TAX COMMISSIONER & ANR

Brief: Writ Petition filed against 2nd respondent who filed income tax return for A.Y 2014-15 to 2017-18 before the election to the Lok Sabha for Mandi Constituency along with the condonation application for delay in filling the returns.

OUR COMMENTS: In the given case, the second respondent elected to the Lok Sabha for Mandi Constituency in the election concluded in May 2019 and filed his Income Tax Returns for the assessment year 2014-15 to 2017-18 just before the election along with an application for condonation of delay in filling the returns for which the first respondent condoned the delay in the order passed.

Further, the petitioner who was a voter in the constituency filed a petition contending that the order was completely arbitrary and there were no grounds for the condonation of delay and if the delay is not condoned the second respondent would be deemed to be a person who has not complied with law, inviting civil and penal consequences and in the penal consequences getting attracted his very entitlement to contest would have come to be in question which is the motive behind the present writ petition.

Furthermore, section 119(2)(b) of the Income Tax Act, 1961 provides powers to the first respondent to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by this Act for making such application or claim and deal with the same on merits in accordance with law only when there was any genuine hardship for the applicant to be avoided.

However in the present case, once the discretion available under section 119(2)(b) has been exercised, there was no scope for the court to interfere and therefore, the court concluded that the petitioner has no right to appear in the court to challenge the impunged order.

Hence, the petition was dismissed.

GST: CGST/IGST/SGST/UTGST

NOTIFICATION

EXTENSION OF THE DATE OF APPLICABILITY OF NOTIFICATION NO. 22/2019- CENTRAL TAX DATED 23.04.2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 36/2019- Central Tax dated 20.08.2019** has extended the applicability date of blocking and unblocking of E-Way Bill facility as per the provision of rule 138E of CGST Rules 2017 from 21.08.2019 up to 21.11.2019.

EXTENSION OF DATE FOR FILING GSTR-3B FOR THE MONTH OF JULY, 2019 FOR ALL TAXPAYERS, FOR FLOOD AFFECTED DISTRICTS OF SPECIFIED STATES, AND FOR TAXPAYERS IN JAMMU & KASHMIR

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 37/2019- Central Tax dated 21.08.2019** has amended Notification No. 29/2019 dated 28.06.2019 and extended the due date of furnishing Form GSTR-3B for the month of July, 2019 electronically through the common portal up to 22.08.2019.

Further, for registered persons whose principal place of business is in the district mentioned in the said notification and is in the state of Jammu & Kashmir due date has been extended up to 20.09.20.

NITESH JAIN MANGAL CHAND VERSUS THE SENIOR INTELLIGENCE OFFICER

Brief: Petitioner sought for a copy of the statement recorded from the petitioner and the copies of the documents that were seized from the premises of the petitioner.

OUR COMMENTS: In the given case, business premises and residence of the writ petitioner were searched by the Senior Panel Counsel (GST) on 24.01.2019, during which various documents/electronic devices were seized and taken into custody, and writ petitioner was taken into custody on 26.01.2019 and was subsequently enlarged on bail vide an order dated 09.03.2019.

Further, the petitioner sought for a copy of the statement recorded from him and the copies of the documents seized from his premises on non-receipt of which he filed the writ petition praying for the copies.

However, the learned counsel for the petitioner abridged his prayer in the letter and requested for dispose of his request for aforesaid copies within specified time frame. This request letter from the petitioner mailed by the speed post with acknowledgement due and submitted that the request letter received by the respondent on 30.07.2019 after which learned revenue counsel for the respondent submitted that a decision is required to be taken depending on the nature of the documents that have been sought for, on behalf of the investigation. As per section 67(5) of the CGST Act 2017, the person whose documents are seized are entitled to the copies or extract of the documents seized in presence of an authorized officer at such place and time as the officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

On the basis of the above, the court directed the respondent to dispose of or to respond to petitioner's request letter on its own merits and in accordance with law.

CIRCULAR/ CASE LAW

ACCEPTANCE OF DEPOSITS BY ISSUE OF COMMERCIAL PAPERS REMOVED FROM FOREIGN EXCHANGE MANAGEMENT (DEPOSIT) (AMENDMENT) REGULATIONS, 2019

OUR COMMENTS: The Reserve Bank of India **vide Circular No. 06 dated 16.08.2019** in order to maintain consistency removed regulation 6(6) of Foreign Exchange Management (Deposit) (Amendment) Regulations, 2019 where companies were allowed to accept deposit through issue of Commercial Paper whereas section 45U(b) of RBI Act, 1934 and section 2(c) of Companies (Accept of Deposits) Rules 2014 excludes commercial papers from definition of deposits.

SHRI D.P. AGARWAL VERSUS THE SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI

Brief: Acquiring and transferring foreign exchange equivalent to ₹ 208 crores without the prior general or special permission of the RBI.

OUR COMMENTS: In the given case, the appellants were charged under section 68(1) for the contravention of the provisions of section 8(1) of FERA, 1973 for acquiring and transferring foreign exchange of ₹ 208 crores without prior general or special permission of the RBI against which 4 appeals were filed.

As per the learned counsel for the appellant the allegation in the show cause notice was that M/s Twinstar Holding Limited (THL) an offshore company registered in Mauritius had invested ₹ 208 crores during the period 1993 to 1999 into the Indian companies of M/s. Sterlite Industries (India) Limited (SIL) and four other companies and since M/s. THL was having a capital of only US$ 100, the source of funding by THL was held to be a suspect. Further, the entire case is based on allegations against M/s. THL but not against the noticees and no show cause notice or any other proceedings were held against M/s. THL and hence in such a situation holding the present appellant company and its Directors liable for action under FERA is illegal.

Further as per the learned counsel for respondent, it was a case of round tripping of funds where the funds were remitted by SIL to THL and then the same money was remitted back by THL into SIL and 4 other companies. Furthermore, THL does not have enough funds to invest Rs. 208 crores since its capital was only 100 US $ and the directors of both the companies were same having common pool of interest between both the companies.

Hence, from the above discussion, the show cause notice and the impunged order, it was concluded that THL did not provided any documents to prove the source of funds which they have invested in SIL and since some of the Directors were common it was held that the money was actually funded by SIL to THL and then back to SIL.

However, the court did not found any documentary or any other evidence on which the adjudicating authority relied upon to prove the above charges and the appellant had the strong case on merits and stayed the pre- deposit.

CUSTOMS

CASE LAW

INDIAN OIL CORPORATION LTD. VERSUS CENTRAL BOARD OF EXCISE AND CUSTOMS (DRAWBACK DIVISION) , JOINT SECRETARY TO THE GOVERNMENT OF INDIA, COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, JOINT COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX

Brief: Condonation of delay in filing petition incurred in the process of gathering information from its marketing location covering different Land Customs Station.

OUR COMMENTS: In perusal of the file, the court noted that no formal order was passed in this regard although the consideration of condonation application and its disposal was a quasi-judicial discharge by the Commissioner of Central Excise.

There is no contest on merits of the claim as well as on the entitlement of the petitioner to seek a brand rate rather the only impediment on such relief is the delay whatsoever. In other words, if the delay is condoned, the relief is consequential.

It is through a file noting and a simple query by the Commissioner as to the ‘grounds for condonation’ which has been interpreted as a rejection of the application. The file noting confirms that the Commissioner has simply noted that a condonation can be considered where an applicant had provided adequate evidence of being prevented by sufficient cause in filing the application within the prescribed time but if no reason has been cited then on what grounds the condonation can be granted - other lacuna of the proceeding is that in case the Commissioner was not satisfied on the reasons assigned by the petitioner in his condonation application, he should have afforded an opportunity to the petitioner to clarify the position but certainly the manner of disposal of the condonation application leaves much to be desired.

The remarks of the Commissioner on the condonation application would not amount to rejection of the condonation application in absence of any order to such effect. Besides, the fact that such remark was interfered by the Commissioner (Appeals) to find merit in the explanation to the delay given by the petitioner coupled with the revised time limit under the Circular dated 24.6.2010, the order of the Joint Secretary dated 16.11.2015 in purported exercise of revisional jurisdiction impugned at Annexure-5 together with letter dated 03.05.2017 of the Under Secretary, Government of India in its Ministry of Finance impugned at Annexure-7 are on complete misappreciation of the legal position and are accordingly quashed and set aside.

M/S RAJKALP MUDRANALAYA PVT. LTD VERSUS UNION OF INDIA

Brief: Request to extend the Export Obligation Period for 2 years prospectively so as to enable the petitioners to complete their export obligation under the EPCG Authorization issued to them as stipulated under Foreign Trade Policy.

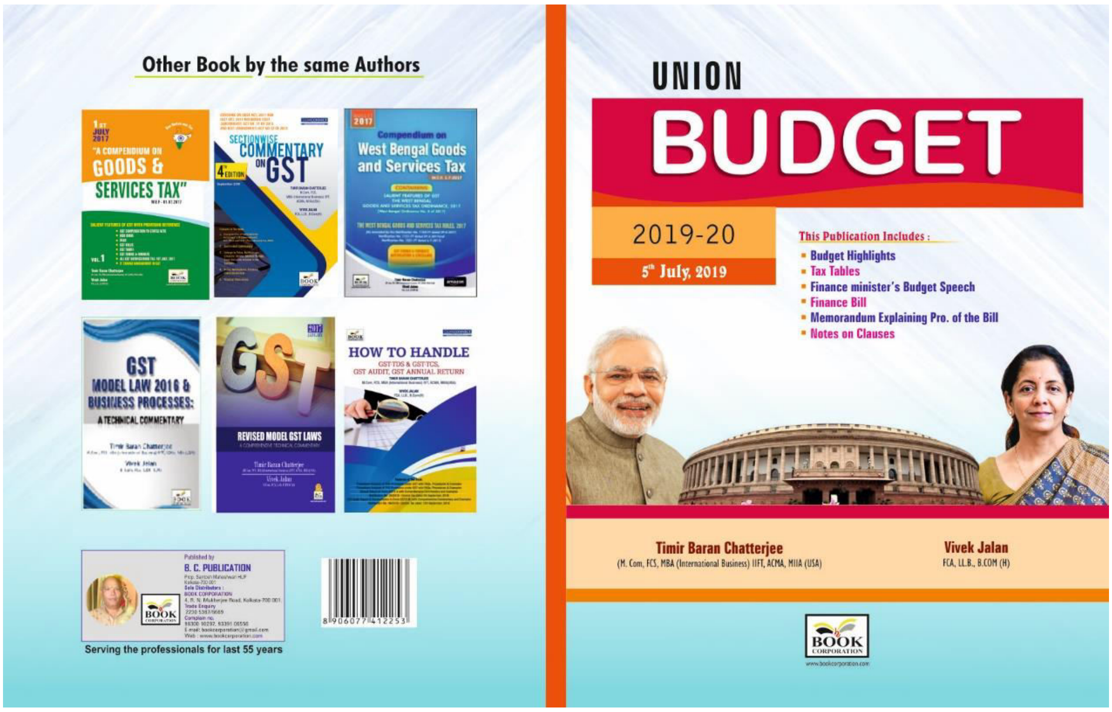
OUR COMMENTS: In the given case, the petitioner did not fulfilled the export obligations did not applied for extension in time even for the First Block and even the application for second obligation has also been rejected.

The prayer of the petitioner to grant the extension for a period of two years cannot be accepted. The respondent authority has power to grant extension for two years, which the respondent authority has granted and such extension has been granted by the respondent authority from the date of expiry of original export obligation period and not from the date of approval by the DGFT. Even for the sake of arguments it is presumed that such extension can be granted for a period of two years, then also when the extension for two years was granted vide order dated 2/1/2017, the extension would have expired on 2/1/2019. Therefore, there is no substance in the submissions and prayer prayed for by the petitioner in the present petition.

Further, the petitioner firm has not availed the option of approaching the Grievance Redressal Committee under FTP 2006-07. Under the circumstances, there is no merit in the present petition.

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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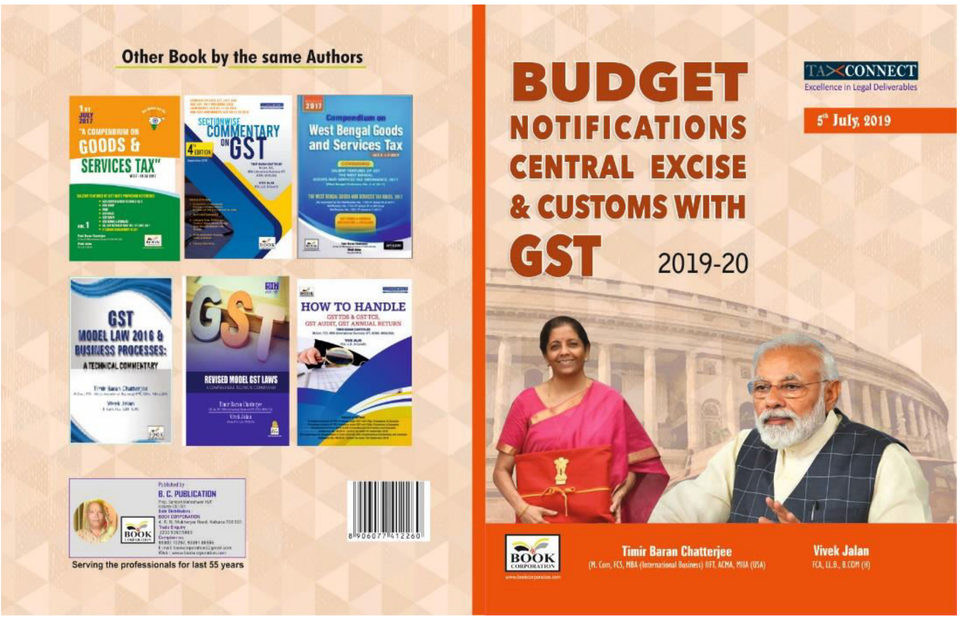
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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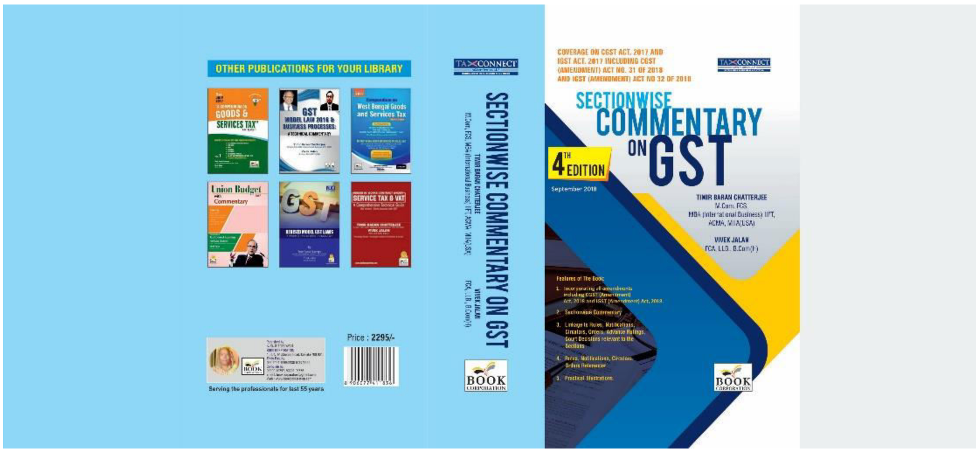
IN STANDS

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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