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EDITORIAL

Friends,

In **Income Tax,** the Central Board of Direct Taxes to give effects to the E-assessment Scheme, 2019 made following directions:-

The provisions of various applicable sections and chapter XXI of the Act shall apply to the assessment made in accordance with the said scheme except where the assessment made as per the procedure mentioned in the Notification No. 62/2019 dated 12.09.2019 and in other cases as specified in the notification.

For details please refer to the **Notification No. 62/2019 dated 12.09.2019**.

The Ministry of Finance **vide Notification No. 63/2019 dated 12.09.2019** has notified **Cost Inflation Index (CII)** for the Financial Year 2019-20 as **289** whereas for the previous year **CII** was **280**.

In GST, the GST Council is expected to resolve issues with inverted duty structure for various sectors in its **37th meeting** scheduled to take place in Goa on **20th September 2019**.

The inverted duty structure, where there is higher duty on input(s) and lower duty on output, has caused two problems:-

First is the refund in the GST regime, and **second** such a structure encourages imports hurting the domestic industry. There are at least seven industries including textiles and railway wagon facing difficulties on account of inverted duty structure.

Senior Finance Ministry officials confirmed that efforts are on to resolves the problems especially related with refund and therefore rates related with inverted duty structure are being restructured under GST.

In order to improve farm credit flow, the RBI panel recommended Government of India:-

- To set up a federal institution, on the lines of GST Council, having participation from both the Centre as well as the states to suggest and implement reforms in the field of agriculture.
- To avoid farm loan waivers and interest subvention or subsidy given on farm loans should be replaced with Direct Benefit Transfer (DBT), which is being implemented in host of government schemes like subsidy on LPG and fertiliser.
- The banks should increase credit for allied farm activities as well and give consumption loans to farmers up to a sanctioned limit of Rs 1 lakh.

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
15th September, 2019	Form 24G	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2019 has been paid without the production of a challan.
15th September, 2019	Challan 280	Due date for payment of second installment of advance tax for the assessment year 2020-21
15th September, 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 August, 2019
20th September, 2019	GSTR-3B	Summary Return of outward and inward supplies for the month of August, 2019.
20th September, 2019	GSTR-5	Return for Non-resident taxable person for the month of August, 2019.
20th September, 2019	GSTR-5A	Details of supplies for the month of August, 2019 of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India.

INCOME TAX

NOTIFICATION/ CIRCULAR

NOTIFICATION OF INCOME TAX (SIXTH AMENDMENT) RULES, 2019

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 60/2019 dated 5.09.2019** has amended the Income Tax Rules, 1962 thereby introducing Income Tax (Sixth Amendment) Rules, 2019 with effect from 05/11/2019 with respect to:

- grant of approval for exemption under section 10(23C)(iv), (v), (vi), (via), the application for which is to made electronically in form 56,
- requirements for approval of an institution or fund under section 80G through form 10G furnished electronically,
- form 10G and 56 in Appendix- II and omission of form 56D.

PROCEDURE FOR IDENTIFICATION AND PROCESSING OF CASES FOR PROSECUTION UNDER DIRECT TAX LAWS

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 24/2019 dated 9.09.2019** has issued guidelines for the procedure for identifying and examining the cases for initiating prosecution under Direct Tax laws and has laid down criteria for launching prosecution in respect of the categories as mentioned below-

- **Offence under section 276B- Failure to pay tax under chapter XII-D and XVII-B:** In case of non- payment of tax deducted at source is up to Rs. 25 lakhs for less than 60 days shall not be processed for prosecution but in case of habitual defaulters prosecution may be initiated with previous administrative approval based on particular facts and circumstances.
- **Offences under section 276BB- Failure to pay tax collected at source.**
- **Offences under section 276C(1)- Willful attempt to evade tax etc.:** In case of amount of tax sought to be evaded or tax on under reported income is up to Rs. 25 lakhs shall be processed for prosecution only with prior administrative approval.
- **Offences under section 276CC- Failure to furnish Income Tax Returns:** In case of failure to furnish Income Tax Returns in order to evade tax and the tax amount involved is up to Rs 25 lakhs then it shall not be processed for prosecution without prior administrative approval.

Further the circular explains the meaning of the collegium of two CCIT/DGIT rank officers.

RELAXATION OF TIME FOR APPLICATION OF COMPOUNDING OF OFFENCES UNDER DIRECT TAX LAWS AS A ONE-TIME MEASURE

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 25/2019 dated 9.09.2019** has in order to mitigate the hardship of taxpayers to apply for compounding of offences beyond 12 months relaxed the time limit of filling application for compounding if the same shall be filed before the competent authority up to 31.12.2019 and it is available only in respect of an offence which is generally/normally compoundable.

GST: CGST/IGST/SGST/UTGST

CASE LAW

G NXT POWER CORP. VERSUS UNION OF INDIA, REPRESENTED BY ITS SECRETARY, GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPT. OF REVENUE (CENTRAL BOARD OF EXCISE AND CUSTOMS) , NEW DELHI, CENTRAL BOARD OF INDIRECT TAXES AND CUSTIOMS, NEW DELHI, COMMISSIONER OF CUSTOMS, COCHIN AND DEPUTY COMMISSIONER OF CUSTOMS (REFUNDS AND DRAWBACK) , COCHIN

<u>Brief:</u> Whether the refund of IGST allowed on export of goods which is a zero-rated transaction?

<u>OUR COMMENTS:</u> In the given case, an exporter filed a writ petition contending that he is entitled for IGST paid during the transition period for exported goods which comes under IGST for which drawback of Central Excise component was granted but IGST paid as cash was denied.

The petitioner submitted that the amended claim for refund could be submitted in terms of Section 149 of Customs Act, 1962 and the denial of refund of IGST on a transaction which is zero-rated transaction is illegal, contrary to Article 265 of Constitution of India and prays for appropriate directions for refund of the IGST paid by the petitioner. The petitioner refers to and also relies on the judgment in **M/s. Amit Cotton Industries through Partner, Veljibhai Virjibhai, Ranipa Vs. Principal Commissioner of Customs Judgment dated 27.06.2019in R/Special Civil Application No.20126 of 2018.**

Further, the learned Standing Counsel appearing for respondents does not dispute the fact that the subject transaction come under Section 16 of IGST Act and are zero-rated. It was also not disputed that the voluntary or erroneous payment of IGST is required to be refunded to petitioner. The objection pointed out by the respondent was that the petitioner had already drawn or availed the higher rate of duty drawback and therefore while ordering refund of IGST the petitioner was required to refund the higher rate of duty drawback already availed by the petitioner with interest. The petitioner by way of reply submitted that the respondents if insist upon refund of higher rate of duty drawback by the petitioner with interest, the respondents are also required to pay interest to petitioner from the date on which the petitioner requested for refund of IGST.

After hearing the counsel on the adjustment, **the Hon'ble Supreme Court** has suggested refund of IGST after adjusting the higher rate of duty drawback availed by the petitioner without refunding IGST amount. The counsel had consented to disposing of the writ petition by this order that:

- the respondents can refund the IGST paid after adjusting the higher rate of duty drawback already availed by the petitioner within 6 weeks from the date of receipt of judgement.

- the respondents if commit default in payment as directed would be obligated to pay interest @ 7% along with the balance amount payable from the date on which request for refund was made by the petitioner till the date of payment.

Hence the petition was allowed.

[Decided in favour of the appellant]

FEMA

CASE LAW

M/S VIDEOCON INDUSTRIES LTD. ANOTHER VERSUS STATE OF MAHARSHTRA & OTHERS

Brief: Whether the Supreme Court was justified in allowing the appeals filed by Videocon Industries Ltd.?

OUR COMMENTS: In the given case, the tribunal arrived at a conclusion that the appellant cannot be held guilty for Section 18(2) read with Section 18(3) of FER Act, 1973 and the advise of the Reserve Bank of India given in its letters dated 21.1.1992 and 18.2.1994 was accepted as they were totally in consonance with legal provisions. The High Court, without an assail to the order passed by the tribunal, adverted to the same and opined that it does not subscribe to the view expressed by the tribunal that Section 18(2) and 18(3) of the Act were not applicable to the transaction in question. The High Court could not have done that. **The Hon'ble Supreme Court** noted that the High Court after stating that has reproduced paragraph 38 and (vi) and opined that the findings given by the tribunal are based on technical grounds and, therefore, the prosecution is liable to continue. As **the Hon'ble Supreme Court** perceived, the judgment of the tribunal was on merits, in as much as findings have been recorded after analysis of facts and the conclusion has been arrived at that the appellants have not violated the provisions of the Act. In such a situation, it cannot be said that it is a judgment rendered on technical grounds and, therefore, **the Hon'ble Supreme Court** held that the High Court has totally erred in law.

Thus the appeal was allowed, setting aside the judgments and order passed by the High Court as well as by the learned Additional Sessions Judge and direct that the order passed by the learned Magistrate discharging the accused persons shall stand restored.

[Decided in favour of the appellants]

BIPINCHANDRA GAMANLAL CHOKSHI AND ANOTHER VERSUS STATE OF GUJARAT AND OTHERS

Brief: Whether the Supreme Court was justified in allowing the appellant to assail the order of his detention?

OUR COMMENTS: In the present case, it is apparent, that the order of detention under Section 3 of the COFEPOSA Act was passed on 11.6.1976. Immediately after the passing of the aforesaid order, on the same day, the Government of Gujarat issued a declaration under Section 12A, with reference to the detention of the appellant. Again, on the lifting of the emergency on 21.3.1977, the declaration under Section 12A ceased to be operative, with reference to the detention of the appellant. At the beginning of the order of detention, and at the time of revocation thereof, whilst the detention order subsisted only within the limited scope of Section 3 of the COFEPOSA Act read with Section 12A thereof, there was really no occasion for the appellant to assail the same thereafter, on any of the grounds as may have been available to him.

The Hon'ble Supreme Court were satisfied, that in the facts and circumstances of the case, specially the position highlighted by the learned counsel for the appellant, as has been noticed hereinabove, the appellant had no occasion whatsoever to challenge to the order of his detention, on the grounds available to him, while the detention order subsisted under the limited scope of Section 3 of the COFEPOSA Act read with Section 12A thereof after 21.3.1977, as the order under Section 3 could not have been the subject matter of challenge as the detenu was released on the same day.

In the present controversy, the appellant had no opportunity to assail the order of his detention, after his release. As soon as the declaration under Section 12A of the COFEPOSA Act was revoked, the appellant was ordered to be released. His release undoubtedly was a release from detention under Section 3 of the COFEPOSA Act.

In the above view of the matter, **The Hon'ble Supreme Court** was of the view, that the determination rendered by the High Court in not allowing the appellant to raise a challenge to the order of his detention dated 11.6.1976, was wholly unjustified. The order passed by the High Court was liable to be set aside and the appellant was relegated back to the High Court, so as to enable him to press his claim, on the grounds as may be available to him (to assail the order of his detention dated 11.6.1976). It was only after the determination of the High Court, that it will be open to the authorities to proceed with the action taken against the appellant under Section 6 of the SAFEMA Act, and that too, if the appellant fails in his attempt, to successfully assail the order of his detention.

[Decided in favour of the appellants]

CUSTOMS

NOTIFICATION/ CASE LAW

AMENDMENT TO NOTIFICATION NO. 2/2016-CUSTOMS (ADD), DATED 28.1.2016

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 34/2019- Customs (ADD) dated 6.09.2019** has made amendments to the Notification No. 2/2016- Customs (ADD) dated 28th January, 2016.

WITHDRAWL OF NOTIFICATION NO. 11/2018-CUSTOMS (ADD), DATED 20.3.2018

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 35/2019- Customs (ADD) dated 6.09.2019** has withdrawn the notification no. 11/2018-Customs (ADD) dated 20.03.2018.

ISSUANCE OF CORRIGENDUM TO NOTIFICATION NO. 33/2019- CUSTOMS (ADD) DATED 26.08.2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide F.No.354/110/2019- TRU dated 6.09.2019** issued a corrigendum to amend the notification no. 33/2019-Customs (ADD) dated 26.08.2019.

BIPINCHANDRA GAMANLAL CHOKSHI AND ANOTHER VERSUS STATE OF GUJARAT AND OTHERS

Brief: Valuation of branded goods from related party.

OUR COMMENTS: The electrical decorative lightings, normally, are not highly branded products, exceptions apart. In the given case, though the imports were under the brand names 'Diyas' and 'mAntra', they were not trademarks of such nature as would make them an exclusive product. It appeared that there had been some mix up in the understanding of a trademark protection, as the same had been compared with 'patented goods'. Thus, data was certainly available, which could have been utilised to obtain the pricing for imports from the U.K., of identical goods or similar goods.

If the competent authority thought that these were goods where trademark was of significance, it could not simultaneously have ignored the imports under the same trademark, from different countries, where there were no related parties. Naturally, there would have to be made adjustments for the distance from which the import was made, or the size of the consignment, if applicable, as set out in Rules 3 to 5. There was really no occasion to straightaway proceed to determine the transactional value by relying on Rules 7 to 9 - this principle of sequential application would apply, especially in view of Rule 3(4), which provides that there has to be a sequential implementation of the Rules, i.e., that Rules 3 to 5 would have to be exhausted first, and only in the eventuality of an inability to apply the Rules would the assessing authority proceeded to impose Rules 7 to 9.

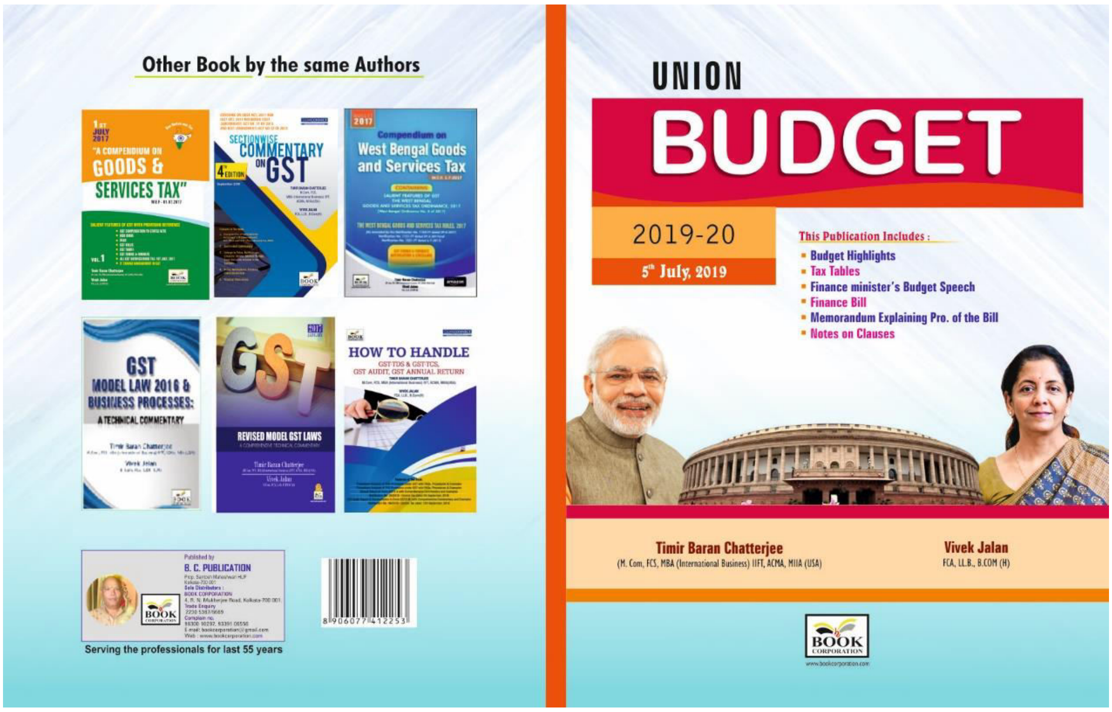
Thus, there it appeared to be a fundamental mistake committed in the manner of implementation of the statutory Rules. Once the statutory Rules exist and provide for sequential implementation, the assessing authority had no option but to proceed in accordance with those Rules, in that manner.

The matter remitted back to the Principal Commissioner of Customs (Preventive), Customs, New Delhi, to proceed afresh with the matter in accordance with the observations aforesaid, and thus, it is Rules 3 to 5 which would have to be applied first, as it is provided for the Rules to apply "sequentially" - appeal allowed by way of remand.

[Decided in favour of the appellants]

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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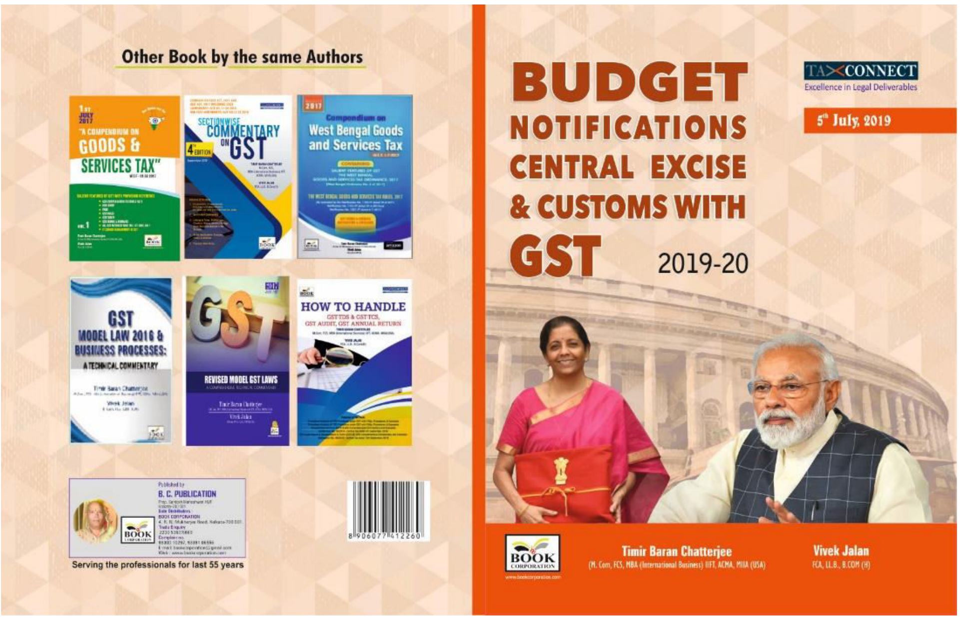
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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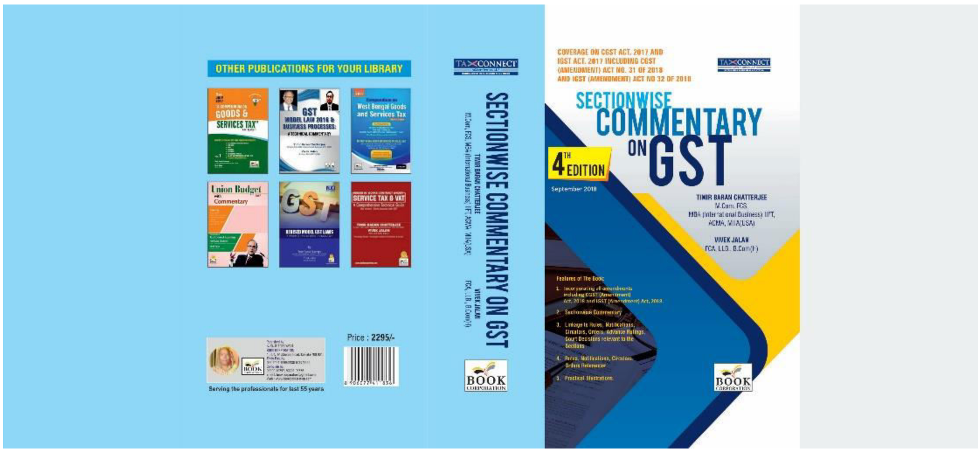
IN STANDS

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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