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EDITORIAL

Friends,

It is a well settled principle that the substantive benefits cannot be denied on account of procedural lapses by the assessee. Let's discuss some of the landmark judicial pronouncements in this regard:

In **'LALLUBHAI AMICHAND LIMITED [2011 (7) TMI 1094] - GOVERNMENT OF INDIA**, the assessee had filed declaration as required under Notification No. 21/2004-CE (NT), dated 06.09.2004 as amended, for Aluminium sheets for which the input-output ratio was approved by the Assistant Commissioner. However, the assessee did not use Aluminium sheets instead had used aluminium circles, for which neither any declaration was filed nor was any permission taken. The Government held that the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. In that case, the government held that the core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned.

In the UNION OF INDIA V. A.V. NARASIMHALU - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

Similar observation was made by the Apex Court in the **FORMICA INDIA V. COLLECTOR OF CENTRAL EXCISE - 1995 (77) E.L.T. 51 (S.C.)** in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed.

While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in MANGALORE CHEMICALS AND FERTILIZERS LTD. V. DY. COMMISSIONER - 1991 (55) E.L.T. 437 (S.C.).

It was also held by the Hon'ble PUNJAB & HARYANA HIGH COURT, in the case of COMMISSIONER CENTRAL EXCISE COMMISSIONERATE, ROHTAK VERSUS M/S INDIAN OIL CORPORATION LTD. PANIPAT, that substantive benefits provided by a notification cannot be denied on account of procedural lapses by the assessee.

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	Form	Description
30th September, 2019	Form No.26QB	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of August, 2019
30th September, 2019	Form 26QC	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of August, 2019

INCOME TAX

NOTIFICATION/ CIRCULAR

NOTIFICATION OF INCOME TAX (9TH AMENDMENT) RULES 2019

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 69/2019 dated 20.09.2019** has introduced Income Tax (9th Amendment) Rules 2019 and amended the depreciation as mentioned below:

Motor cars other than for business of running on hire	Acquired after 1/04/1990	Depreciation @ 15%
	Acquired after 23/08/2018 and before 1/04/2020	Depreciation @ 30%
Motor buses, lorries and taxis used in business of running on hire	Other than those acquired after 23/08/2018 and before 1/04/2020	Depreciation @ 30%
	Acquired after 23/08/2018 and before 1/04/2020	Depreciation @ 45%

EXEMPTION FROM TDS ON CASH WITHDRAWAL U/S194N FOR MAKING PAYMENT TO FARMERS - CENTRAL GOVERNMENT SPECIFIES THE COMMISSION AGENT OR TRADER, OPERATING UNDER AGRICULTURE PRODUCE MARKET COMMITTEE (APMC)

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 70/2019 dated 20.09.2019** has exempted from deducting TDS on payment to commission agent or trader operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market of the concerned State subject to the specified terms and conditions.

CLARIFICATIONS IN RESPECT OF FILLING-UP OF RETURN FORMS FOR THE ASSESSMENT YEAR 2019-20 - INCOME TAX

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 26/2019 dated 26.09.2019** has given clarifications related to the issues raised regarding filling of forms ITR-5, ITR-6 and ITR-7 for the assessment year 2019-20.

CONDUCT OF ASSESSMENT PROCEEDINGS THROUGH 'E-PROCEEDING' FACILITY DURING FINANCIAL YEAR 2019-20

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Circular No. 27/2019 dated 26.09.2019** has clarified that in case where assessments needs to be framed under section 143(3) of the Income Tax Act for the financial year 2019-20, the proceedings shall be conducted electronically subject to certain specified exemptions.

CASE LAW

INDIA LOGISTICS AND CARGO MOVERS VERSUS THE STATE OF GUJARAT

Brief: Detention of goods along with the truck.

OUR COMMENTS: In the given case, 14 invoices were not properly signed, due to which the authorities exercised powers under section 130 of the CGST Act and calculated tax, penalty and fine thereunder. If that be so, since none of the 14 invoices relate to the parties whose goods are confiscated, under the circumstances, the goods belonging to them could not have been confiscated by the respondent authorities.

It was an admitted position that in this case no detention order under section 129 of the CGST Act/GGST Act has been made in this case and the respondents have directly resorted to the provisions of confiscation under section 130 of the said Acts.

On reading the impugned order of confiscation in its entirety, it was manifest that the third respondent had not assigned any reason whatsoever as to why the goods and conveyance were required to be confiscated. Despite the fact that the petitioner and Anjani Synthetics Limited had submitted explanations in respect of the discrepancies noticed by the third respondent, there was no reference to the same in the impugned order. Thus, the third respondent without applying his mind to the facts of the case appearred to have mechanically passed the impugned order without assigning any reasons worth the name for confiscating the goods and conveyance.

The impugned order had been passed without any application of mind and without considering the explanation submitted by the petitioner and Anjani Synthetics Limited and in undue haste. Moreover, despite the fact that out of 61 consignments, the third respondent had noticed deficiencies only in respect of three consignments, the conveyance of the petitioner is also sought to be confiscated, that too without assigning any reasons as to how the petitioner had sought to evade payment of tax - it was incumbent upon the third respondent to give reasons in support of his conclusion that the goods in question and the conveyance are required to be confiscated. However, the impugned order is totally bereft of any reasons, in the absence of which the order stands vitiated due to non-application of mind on the part of the maker of the order. The impugned order dated 28.5.2019, therefore, cannot be sustained.

Petition allowed.

[Decided in favour of the appellant]

FEMA

CASE LAW

SANJAY AGARWAL AJAY AGARWAL VERSUS UNION OF INDIA AND OTHERS

Brief: Sufficient ground for invoking the extraordinary measure of preventive detention.

OUR COMMENTS: In the given case, it is apparent to the Court that the Detaining Authority was unclear about the grounds on which it should authorise the detention of Mr. Sanjay Agarwal. This is evident from the reading of para 34 where repeatedly the word 'or' is used to separate out the different grounds. This is suggestive of two things: first, the Detaining Authority was unsure if the facts brought on record constituted one or more of these grounds; and second, there was in fact non-application of mind as simply taking the wording of the Section 3(1) COFEPOSA and repeating it as part of the grounds would not constitute a finding arrived at after an application of mind - This is not an issue of mere vagueness, but of absolute non-application of mind.

The detention order in respect of Ajay Aggarwal sites past instances but nothing in the present. The absence of any live link with any present instance is nowhere discernible on a reading of the grounds of detention. Further, by not referring to the conditions attached to the grant of anticipatory bail, to simply state that Mr. Ajay Aggarwal would continue to indulge in activities related to smuggling demonstrates a non-application of mind by the Detaining Authority to the facts governing his case.

The detention orders dated 1st June 2018 passed in respect of each of the Petitioners, i.e. Mr. Sanjay Agarwal and Mr. Ajay Agarwal, to be unsustainable in law and they are accordingly hereby quashed - petition allowed.

[Decided in favour of the appellants]

TULIP STAR HOTELS LTD., PETER KERKAR VERSUS SPECIAL DIRECTOR OF ENFORCEMENT

Brief: Sale of foreign currency at higher value.

OUR COMMENTS: In the given case, sale affected by the Appellants on a rate higher than the rate prevailing in the market was not the basis for the alleged violation of paragraph 3 of the FLM read with Sections 6(4), 6(5) and 7 of FERA. In the confiscation order passed by the Customs Authorities, where again the Appellants were also one of the noticees, no fault was found as against the Appellants on that ground that impugned orders by which the Appellants were found guilty of the violation of paragraph 3 of FLM read with Sections 6(4), 6(5) and 7 of FERA and the consequential imposition of penalty of Rs.50,000/- was wholly unjustified. The impugned orders are liable to be set aside and they are accordingly set aside. If the Appellants have parted with the penalty amount imposed under the impugned orders, the Respondent is directed to refund the same to the Appellants along with simple interest at the rate of 6% per annum, within two months from the date of this judgment.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATION/ PUBLIC NOTICE

IMPOSITION OF ANTI-DUMPING DUTY ON IMPORTS OF 'HIGH-SPEED STEEL OF NON-COBALT GRADE' FROM BRAZIL, CHINA AND GERMANY

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.38/2019- Customs (ADD) dated 25.09.2019** has imposed anti-dumping duty and definitive anti-dumping duty on import of High -Speed Steel of Non-Cobalt Grade from China, Brazil and Germany for a period of 5 years at the specified rate per metric tonnes in US Dollar to be paid in Indian currency.

CLARIFICATION REGARDING DUTY DRAWBACK ALLOWED IN CASES OF SHORT REALISATION OF EXPORT PROCEEDS DUE TO BANK CHARGES DEDUCTED BY FOREIGN BANKS

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Public Notice No. 41/2019 dated 20.09.2019** has stated that on realisation of export proceeds the short realisation shall be considered as the bank charges charged by the intermediary banks for the services provided and are not short realisation. Hence, such short realised export sale proceeds may be considered as full realisation and that duty drawback not be recovered for such short realisation.

For details please consider the said public notice.

PROCEDURE FOR A PILOT ON TRANSHIPMENT OF EXPORT CARGO FROM BANGLADESH TO THIRD COUNTRIES THROUGH LAND CUSTOMS STATIONS (LCSS) TO NHAVA SHEVA PORT, IN CONTAINERS OR CLOSED BODIED TRUCKS

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.37/2019- Customs (ADD) dated 14.09.2019** decided that a pilot program will be initiated for a period of six months, to gain experience and obtain feedback from industry, so as to build a regulation which is facilitative and also to include safeguards against any cargo diversion. The pilot was further extended for 3 months till 05th August, 2019. Since the matter is under examination and to prevent disruption of operations under pilot, Board has decided to further extend it for another 6 months, i.e. till 05th February, 2020. Further, the facility is available from the following LCSs and ports/air cargo complexes w.e.f. 5th November 2018:

Sl. No.	Name of LCSs	Name of Port/Cargo
1	LCS Petrapole	By road to Nhava Sheva port
2	LCS Petrapole	By rail to Nhava Sheva port
	LCS Gede/Ranaghat	

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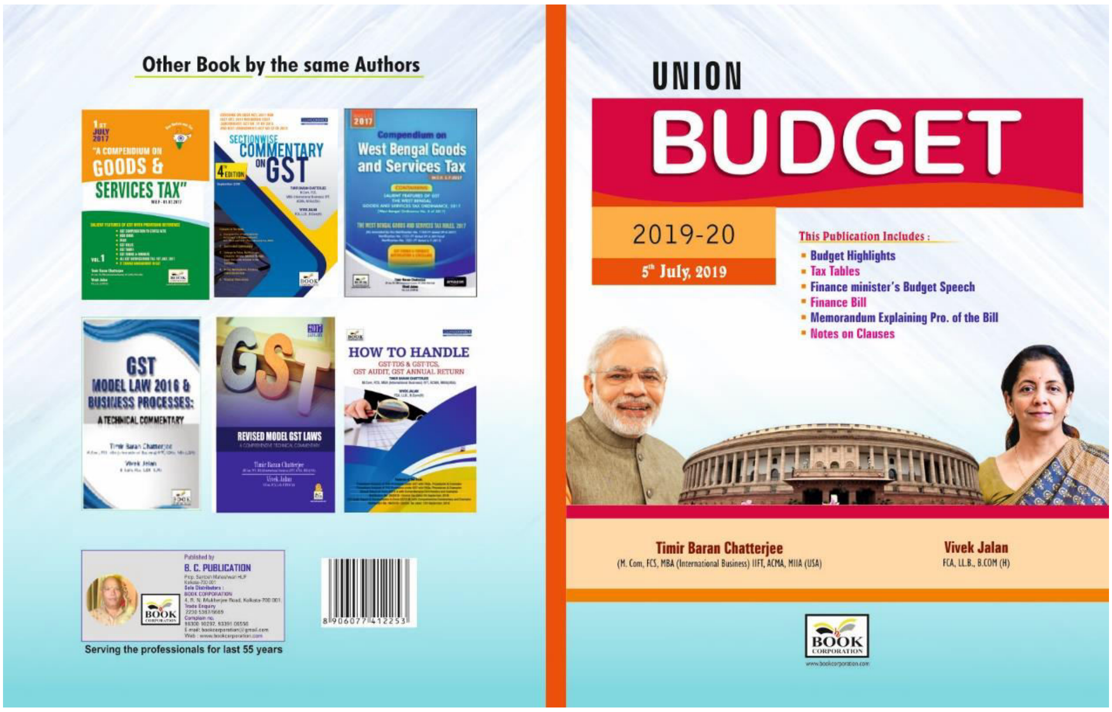
IN STANDS

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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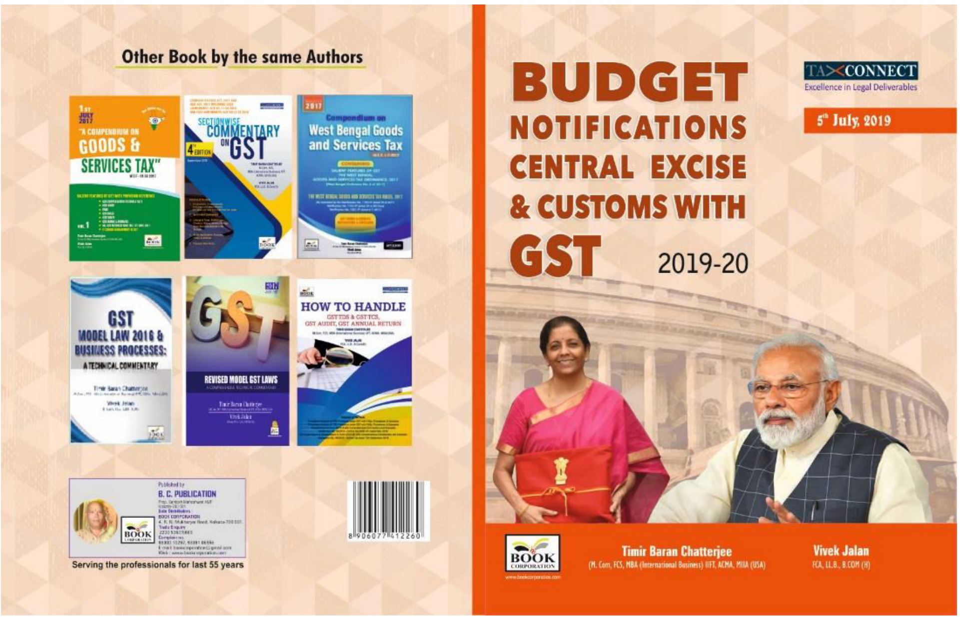
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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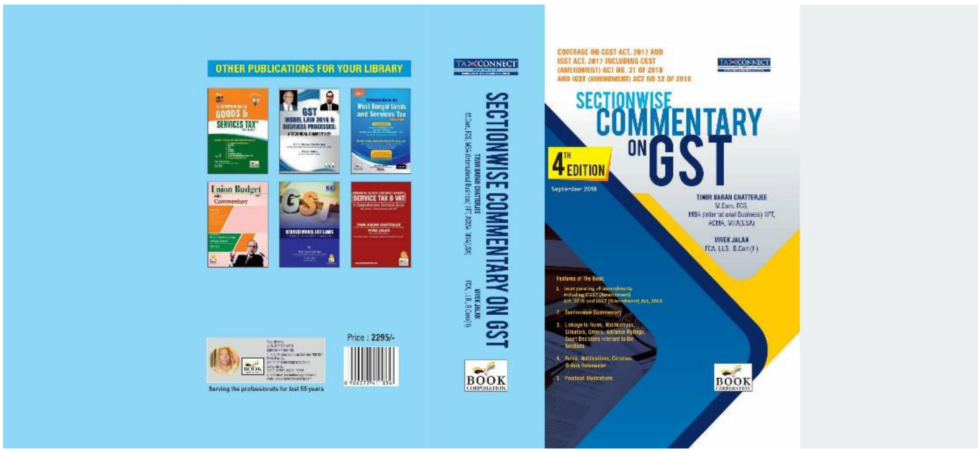
SECTION WISE COMMENTARY ON GST UPDATED TILL DATE



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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