TAX CONNECT
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TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

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EDITORIAL

Friends,

Advisory note issued on features of making payment on voluntary basis (Form GST DRC-03) on GST Portal by taxpayer:

- Payment on voluntary basis can be made through form GST DRC-03 after logging into the GST Portal as follows-

  Navigate to Services > User Services > My Applications and Select the Intimation of Voluntary Payment - DRC – 03, from the Application Type drop-down list

- The above voluntary payment can be made for self-ascertained liability, in response to the show cause notice (SCN) raised by the tax authorities, u/s 73 or 74 of the CGST Act, 2017, within 30 days of issuance of SCN or even before issuance of the SCN but the partial payment of the same cannot be made, in case of audit, investigation, annual return, reconciliation statement or any other reason.

- The above draft of Application can be saved for a maximum period of 15 days and if the same is not filed within 15 days, the saved draft will be removed. The saved application can be viewed as follows-

  Navigate to Services > User Services > My Saved Applications option

- Payment can also be made beforehand and a payment reference number (PRN) can be generated which can be used at the time of filing form GST DRC-03.
- The form can be filed with the help of DSC or EVC as the case may be and an acknowledgement will be generated in form GST DRC-04 and the status of the application filed will be changed to “Pending for approval by Tax Officer”.

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
13th October 2019	GSTR-6	Return for the month of July, 2017 to April 2018 applicable for input service distributors (ISD)
15th October 2019	Form 24G	Due date for furnishing of Form 24G by an office of the Government where TDS for the month of September, 2019 has been paid without the production of a challan
15th October 2019	Form 16B	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of August, 2019
15th October 2019	Form 16C	Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of August, 2019
15th October 2019	Form 15CC	Due date for quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) for quarter ending September, 2019
15th October 2019	Form 27EQ	Quarterly statement of TCS deposited for the quarter ending September 30, 2019.
15th October 2019	Form 15G/15H	Upload declarations received from recipients in Form No. 15G/15H during the quarter ending September, 2019.
18th October, 2019	GSTR-4	Summary Return of outward and inward supplies by Composition Scheme Dealer for 2nd quarter, 2019-20

INCOME TAX

CASE LAW

ALLAHABAD HIGH COURT- THE COMMISSIONER OF INCOME TAX, MORADABAD & ANR. VERSUS M/S DHAMPUR SUGAR MILLS LTD.

Brief: Sale of bagasse to sister concern at lower rate as compared to market rate.

OUR COMMENTS: In the given case, the two sister concern companies the assessee that is M/s Dhampur Sugar Mills Ltd. and U.P. Straw Board Project Pvt. Ltd. entered into an agreement at the beginning of the year to sale bagasse at concessional rate of Rs. 10/- against the fluctuating market rate of Rs. 7.65/- to Rs. 23/- in order to maintain continuous supply of bagasse for producing electricity as founded by the ITAT. As per the judgement of **the Hon'ble High Court** such an agreement among two sister concern companies was reasonable or justified.

[Decided in favour of the assessee]

Brief: Whether the Hon'ble Tribunal was legally justified in upholding the order of CIT (A), who directed to treat tube well as a plant?

OUR COMMENTS: As per the submissions of the learned counsel for revenue tube well is not included within the definition of the word 'plant' to be given depreciation under Section 32 (1) (i) of the Income Tax Act and the sugar industry is not water intensive industry nor does it require water as raw material and hence the drawing of water by tube well cannot be treated to be for the purpose of business and thus the Tribunal had erroneously allowed depreciation on tube well. However, the CIT(A) recorded that water coolers are a part of the production department for the sustenance of the workers as required under the Factories Act and supplying drinking water to the workers/employees is, therefore, part of the plant and machinery required for its business. It may be further noted that the assessee in the present case is engaged in the activity of manufacturing of ball bearings, taper bearings and textile machinery components. Water cooler supplying drinking water cannot be called apparatus, appliance or fitting.

Even if sugar mill is not water intensive industry, **the Hon'ble High Court** cannot visualise that industry can run without water. The water drawn from tube well may be stored in tanks. The water is essential for the purposes of various processes involved in manufacture of sugar and its by-product such as molasses and bagasse. It cannot be said that use of water is not necessary for manufacturing of sugar. In the circumstances, **the Hon'ble High Court** hold that the tube well including its machinery and building would be used for the purpose of business or profession would fall within the definition of word 'plant' and on which depreciation would be allowed under Section 32 (1) of the Act. The question is decided in favour of the assessee and against the department.

[Decided in favour of the assessee]

NOTIFICATION

NOTIFICATION OF DUE DATE OF FURNISHING VARIOUS GST RETURNS FOR THE PERIOD OF OCTOBER 2019 TO MARCH 2020

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide various notifications** notified the due date to furnish various GST Returns and the payment of tax liability, interest, penalty or fees for the period October 2019 to March 2020 shall be filed electronically as mentioned below:-

Notification No.	Form	Due Date (day of month succeeding such month/ quarter)
44/2019-Central Tax dated 9.10.2019	GSTR-3B and Payment of Tax	20th day
45/2019-Central Tax dated 9.10.2019	GSTR-1 for small taxpayer having aggregate turnover up to 1.5 crores	30th/ 31st day
46/2019-Central Tax dated 9.10.2019	GSTR-1 for large taxpayer having aggregate turnover more than 1.5 crores	11th day

NOTIFICATION TO PROVIDE OPTION TO SMALL TAXPAYERS TO FURNISH ANNUAL RETURN

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 47/2019 dated 9.10.2019** notified that the taxpayers having aggregate turnover of up to 2 crores shall have option to file annual GST returns in form GSTR-9 for the financial years 2017-18 and 2018-19.

AMENDMENT TO NOTIFICATION NO 41/2019-CENTRAL TAX DATED 31.08.2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 48/2019 dated 9.10.2019** has made amendments to the notification no. 41/2019-Central Tax dated 31.08.2019 and waived the late filing fee if:-

Condition	Form	Filed up to
Large taxpayer having aggregate turnover of more than 1.5 crores having principal place of business in the specified states for July 2019.	GSTR-1	11.10.2019
Large taxpayer having aggregate turnover of more than 1.5 crores having principal	GSTR-1	11.10.2019

GST: CGST/IGST/SGST/UTGST

place of business in the state of Jammu & Kashmir for July 2019.		
Registered taxpayer having principal place of business in Jammu & Kashmir for July-August 2019.	GSTR-7	10.10.2019
	GSTR-3B	20.10.2019

INTRODUCTION OF CENTRAL GOODS AND SERVICES (SIXTH AMENDMENT) RULES

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 49/2019-Central Tax dated 9.10.2019** has introduced Central Goods and Services Tax (Sixth Amendment) Rules 2019.

[For details please refer to the said notification]

CLARIFICATIONS REGARDING NIL REFUND CLAIMED INADVERTENTLY

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 110/29/2019-GST dated 3.10.2019** has given clarifications on issue raised on inadvertently NIL refund claim for certain period for certain categories filed by registered persons on common portal in Form GST RFD-01A/RFD-01 inspite of having genuine claim for refund for that period under said category since the common portal does not allow to re-file the refund claim for the same month under the same category.

PROCEDURE TO CLAIM REFUND IN FORM GST RFD-01 SUBSEQUENT TO FAVOURABLE ORDER IN APPEAL OR ANY OTHER FORUM

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 111/29/2019-GST dated 3.10.2019** has given clarifications on the procedure to be followed by a registered person to claim refund subsequent to a favourable order in appeal or any other forum against rejection of a refund claim in FORM GST RFD-06 in order to ensure uniformity in the implementation of the provisions of the law.

[For details please refer to the said notification]

WITHDRAWL OF CIRCULAR NO. 112/29/2019-GST DATED 28.06.2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 112/29/2019-GST dated 3.10.2019** withdrawn circular no. 105/24/2019-GST dated 28.06.2019.

FEMA

CASE LAW

CANARA BANK, M/S. CANARA BANK & ORS., M.M. CHUNGATH, SMT. S.A. LAKSHMI, SMT. S.A. LAKSHMI, P. UPADHYAYA VERSUS THE SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI

Brief: Penalties against the appellants for the contravention of Sections 6(4), 6(5) r/w Sections 49, 8(1), 9(1)(a) and 9(1)(e) along with Para 10.3 (ii).

OUR COMMENTS: In the given case, it is stated that from a conjoint reading of the facts and the definitions that there was neither any commission nor any omission on the part of the Appellant. Cheques issued by BFEA on an account maintained with Canara Bank were presented in the normal course of clearing and these cheques were honoured by Canara Bank. Canara Bank did not know at that point of time that the proceeds of those cheques would be remitted abroad after being credited to a convertible rupee account maintained at the ANZ Grindlays Bank.

In any event the Canara Bank had nothing whatsoever to do with the crediting of money to the convertible rupee account of GIRO bank maintained at ANZ Grindlays Bank. It is settled law that to constitute abetment it must be established that there was active complicity and intentional aiding. Counsel has referred the reported case of Shri Ram vs. State of U.P. AIR 1975 SC 175 paragraph 6. It is alleged that it is not sufficient that an act on the part of the alleged abettor happens to facilitate the commission of the offence. Therefore no case of abetment is sustainable against the Appellants. The Adjudicating Authority has failed to show that the ingredients of abetment have been fulfilled in order to hold the Appellant guilty of abetment.

As further submitted that as far as the Appellant is concerned the money was transferred from an account in India to another account maintained in India. The fact that the said money was later on transferred abroad was not within the knowledge of the Appellants. The same was not a part of the transaction over which the Appellant had any control. It is not the case of the respondents that the Canara Bank had cleared the cheque which was to be credited to a convertible account.

It is pointed out that the ANZ Grindlays Bank presented the drafts to the Appellant for payment in normal clearance without being accompanied by the required form A3 and in the circumstances the Appellant had no reason to believe or to apprehend that the proceeds of the said draft were to have been remitted outside India or to be credited to the Vostro account of Girobank Plc. by ANZ Grindlays Bank.

The finding reached by the Special Director in his order dated 30.11.2007 in Para 30 clearly shows that at the most the only allegation that can stand against the appellants is that of negligence and not of abetment. Negligence can under no stretch of imagination be raised to a case of abetment.

As stated on behalf of appellant that in any event since ANZ Grindlays Bank had brought the foreign exchange back to India the offence had, if at all, been mitigated and therefore punishment should have been commensurate with the gravity of economic loss to the country. Since there was no economic loss in the instant case, penalty, if any should have been of a token amount.

As advised by the RBI, the Appellant has surrendered to TBI USD 5,196,506 by purchasing from the markets at the value on 29.10.2003 i.e. ₹ 31.37 per USD and have paid ₹ 16,30,14,393/-; whereas the Appellant had received only ₹ 13,09,07,900/-; at the prevailing exchange rate in the Year 1991 and has incurred a loss of ₹ 3,21,06,493/- and hence the appellant has already been penalized.

The Adjudicating Authority has without considering the role of the officers of Canara Bank imposed penalty on them. S.A. Laxmi, one of the notices was not even concerned with the Vostro section of Canara Bank and was therefore not a person concerned with the transaction and could therefore not have been punished at all. The above said appeals were heard after the hearing of appeals filed by Standard Chartered Bank and other. Many of the issues in both set of appeals are common. The decision passed would have impact in the present set of appeals.

The detailed order has been passed allowing all appeals which may also be read in the present set of appeals.

As the main issues are decided in favour of Standard Chartered Bank Ltd. and Ors. including the issue of abetment of any offence does not arise. The appeals are accordingly allowed.

[Decided in favour of the appellant]

FEMA

CASE LAW

AUTHORIZED OFFICER, STATE BANK OF TRAVANCORE AND ANOTHER VERSUS MATHEW K.C.

<u>Brief:</u> Stay of further proceedings at the stage of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for failure to make payment of dues.

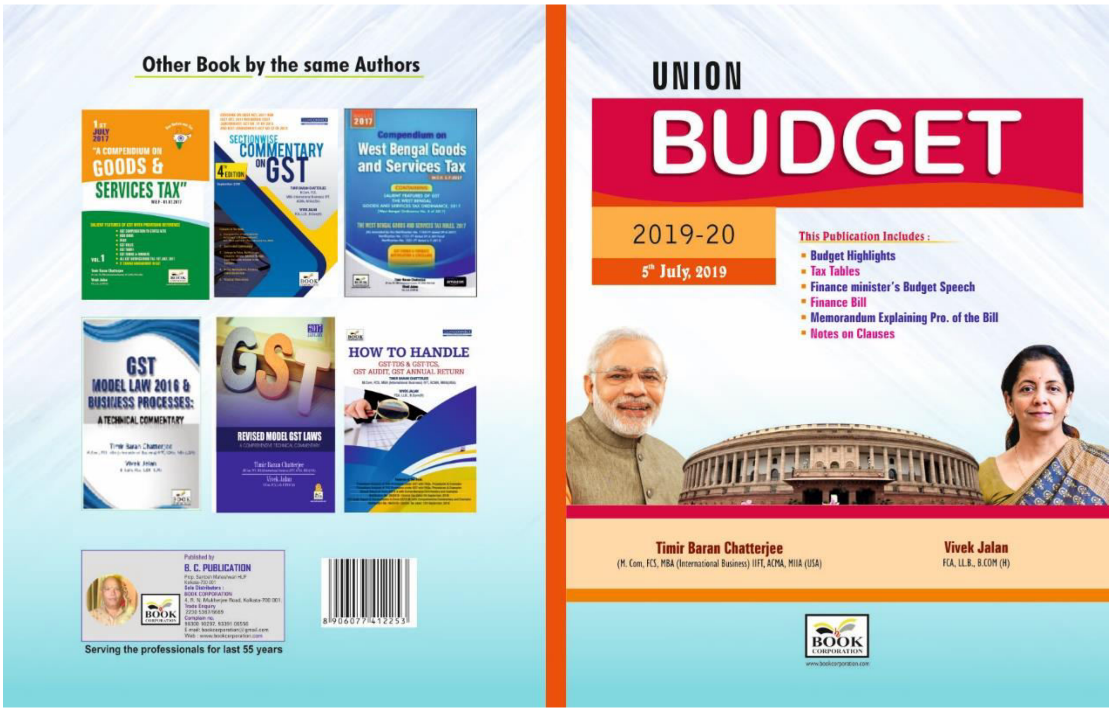
<u>OUR COMMENTS:</u> In the given case, the discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available. The pleadings in the writ petition are very bald and contain no statement that the grievances fell within any of the well-defined exceptions. The allegation for violation of principles of natural justice is rhetorical, without any details and the prejudice caused thereby. It harps only on a desire for regularisation of the loan account, even while the Respondent acknowledges its own inability to service the loan account for reasons attributable to it alone.

The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference. The appeal was allowed.

[Decided in favour of the appellant]

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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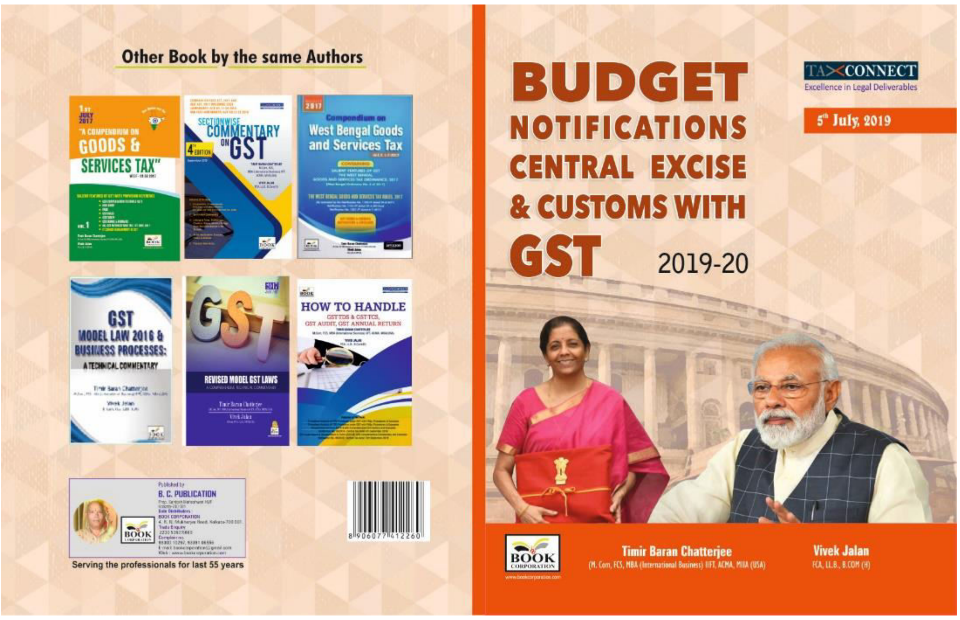
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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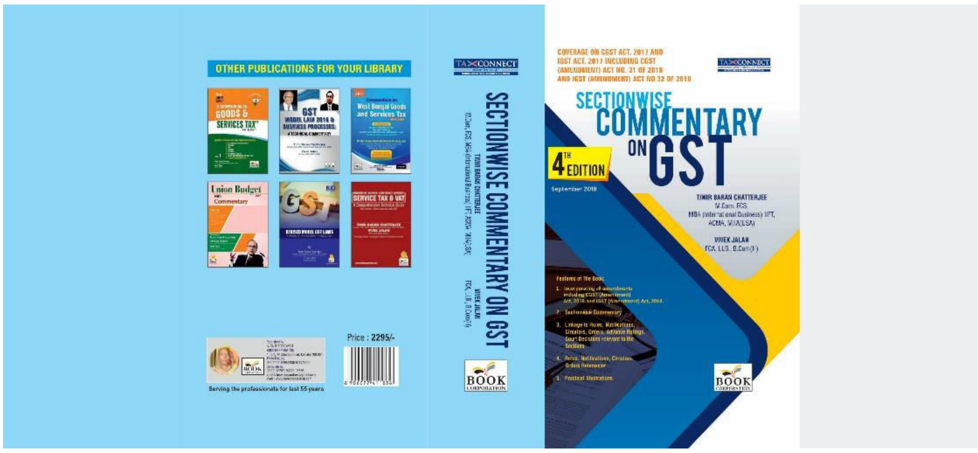
IN STANDS

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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