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EDITORIAL

Friends,

According to the **budget documents**, the government's total expenditure is anticipated to grow at the rate 13.4 per cent, whereas the total non-debt receipts are projected to grow by 14.3 per cent.

The government intends to gradually bring down fiscal deficit towards the target of 3 per cent of the GDP by March 31, 2021.

The fiscal deficit was 3.5 per cent of GDP during 2017-18 and 2016-17, down from 3.9 per cent in the previous fiscal.

The Central Board of Direct Taxes (CBDT) has extended the deadline for filing of all kinds of income tax returns to November 30 in the Union Territories of Jammu and Kashmir, and Ladakh.

In GST, the commerce ministry is working on a proposal to allow domestic companies to make payments in the rupee currency for services obtained from special economic zone units. At present, domestic firms are required to pay in foreign exchange for services rendered by a SEZ unit. However, this norm is not applicable for sale of goods, for which payments could be made in the rupee.

The proposal is aimed at promoting the growth of IT units in special economic zones (SEZs).

As per the government data, the Goods and Services Tax (GST) collections came in at Rs 95,380 crore in October 2019 down by 5.29 percent from Rs 100,710 crore as compared to the same month in the last year.

High export growth rate is crucial for India's goal of becoming a $5 trillion economy by 2025. To achieve this objective, the economy will have to grow at an average rate of 8% during the next four years. India's exports will have to grow at an even higher rate. The current slowdown has made the objective more challenging, with India's exports having shrunk 6.57% in September.

The Reserve Bank of India (RBI), has asked banks to secure their customer card data after a website reported that nearly 1.3 million debit and credit card data of Indian banks are on sale on the dark web potentially causing losses of millions of dollars.

In an alert dated October 29, The Cyber Security & Information Technology Examination (CSITE) cell which is a part of the Department of Banking Supervision, the central bank asked banks to perform a preliminary analysis of the disclosed card information to verify it.

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
7th November 2019	Income Tax Form: ITNS – 281	Due date for deposit of Tax deducted/collected for the month of October, 2019

INCOME TAX

NOTIFICATION/ CASE LAW

AMENDMENT TO THE AGREEMENT BETWEEN THE GOVERNMENTS OF INDIA AND MOROCCO

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 84/2019 dated 22.10.2019** has introduced a protocol amending the Convention signed between the Government of India and the Government of the Morocco for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

COMMISSIONER OF INCOME TAX VERSUS M/S EXCEL INDUSTRIES LTD. AND MAFATLAL INDUSTRIES P. LTD. (SUPREME COURT)

Brief: Whether the benefit of an entitlement to make duty free imports of raw materials obtained by the assessee through advance licences and duty entitlement pass book issued against export obligations is income in the year in which the exports are made or in the year in which the duty free imports are made.

OUR COMMENTS: It can be said that, income accrue in the year in which the imports are made and not in year of export.

Even though the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.

There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. **The Hon'ble Supreme Court** noted that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

[Decided in favour of assessee]

CASE LAW

M/S. SAFARI RETREATS PRIVATE LIMITED AND ANOTHER VERSUS CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICE TAX & OTHERS (ORISSA HIGH COURT)

Brief: Input tax credit from construction against output GST on rental income.

OUR COMMENTS: The objectives of the GST Act is to make the uniform provision for levy and collection of tax, intra state supply of goods or services or both, central or State and to prevent multi taxation.

Therefore, the contention which has been raised by the learned counsel for the petitioners keeping in mind the provisions of Section 16 (1)(2) where restriction has been put forward by the legislation for claiming eligibility for input credit has been described in Section 16(1) and the benefit of apportionment is subject to Section 17(1) and (2). While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put-forwarded by the Department as per which the petitioner has to pay huge amount without any basis.

Further, the petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate, he would not be required to pay GST. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable.

As per the opinion of **the Hon'ble High Court** the Input Tax Credit shall be allowed on the material used for the construction of shopping malls but the assessee is liable to pay the output GST as well.

Hence the assessee is entitled to claim Input Tax Credit. On the other hand he is liable to pay GST on rental income.

[Decided partly in favour of assessee]

FEMA

CASE LAW

MAARS SOFTWARE INTERNATIONAL LTD. & ANR. VERSUS UNION OF INDIA & ORS. (SUPREME COURT)

Brief: **Whether the High Court was justified in allowing the appeals filed by the Union of India?**

OUR COMMENTS: High Court did not examine the case of the parties in the context of material placed by the appellants, though the Tribunal considered the said material.

High Court should have taken into consideration the said material with a view to decide as to whether it was relevant or suficient, and whether it could justify the appellants' case as contemplated under Section 8 of FEMA.

High Court seemed to have proceeded on wrong assumption that since the appellants did not file any material, a case was made out against them. As per **the Hon'ble Supreme Court** this observation of the High Court, was contrary to the record of the case and hence, interference in the impugned order was called for.

The proper course in such a case would be to remand the case to the High Court and request the High Court to decide the appeal afresh on merits in accordance with law.

Appeals succeed and are accordingly allowed. The impugned order is set aside. The case is remanded to the High Court for deciding the appeals afresh on merits in accordance with law keeping in view the observations made above.

[Decided in favour of assessee]

M/S. GUNASHEELA & ASSOCIATES VERSUS THE ASSISTANT DIRECTOR OF ENFORCEMENT, DIRECTORATE OF ENFORCEMENT BENGALURU (KARNATAKA HIGH COURT)

Brief: **Availability of alternative and efficacious remedy of appeal.**

OUR COMMENTS: In the given case, the proceedings were initiated by the Adjudicating Authority under Section 7(3) of the FEMA and the impugned order passed by the Adjudicating Authority on 31.8.2017 exercising the powers under Section 13(1) of the FEMA. Therefore, the petitioners have got an alternative and efficacious remedy of appeal before the Appellate Authority under Section 17 of the FEMA - Section 17(4) clearly depicts that on receipt of an appeal under section 17(1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.

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. The Appellate Authority has got every right to confirm, modify or set aside the order appealed against.

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

[Decided in favour of revenue]

CUSTOMS

NOTIFICATION/ CIRCULAR

AMENDMENT TO THE NOTIFICATION NO. 28/2018-CUSTOMS (ADD) DATED 25TH MAY, 2018

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.41/2019-Customs-(ADD) dated 25.10.2019** has amended the notification no. 28/2018-Customs (ADD) dated 25.05.2018 and further imposed definitive anti-dumping duty on the imports of ll types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10 at specified rates.

WITHDRAWL OF NOTIFICATION NO. 13/2019-CUSTOMS (ADD) DATED 14.03.2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.42/2019-Customs-(ADD) dated 25.10.2019** has rescinded the notification no. 13./2019-Customs (ADD) dated 14.03.2019.

INTRODUCTION OF THE SEA CARGO MANIFEST AND TRANSHIPMENT (SECOND AMENDMENT) REGULATIONS 2019

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.78/2019-Customs-(N.T.) dated 31.10.2019** has introduced the Sea Cargo Manifest and Transhipment (Second Amendment) Regulations, 2019 thereby amending the principal regulations.

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

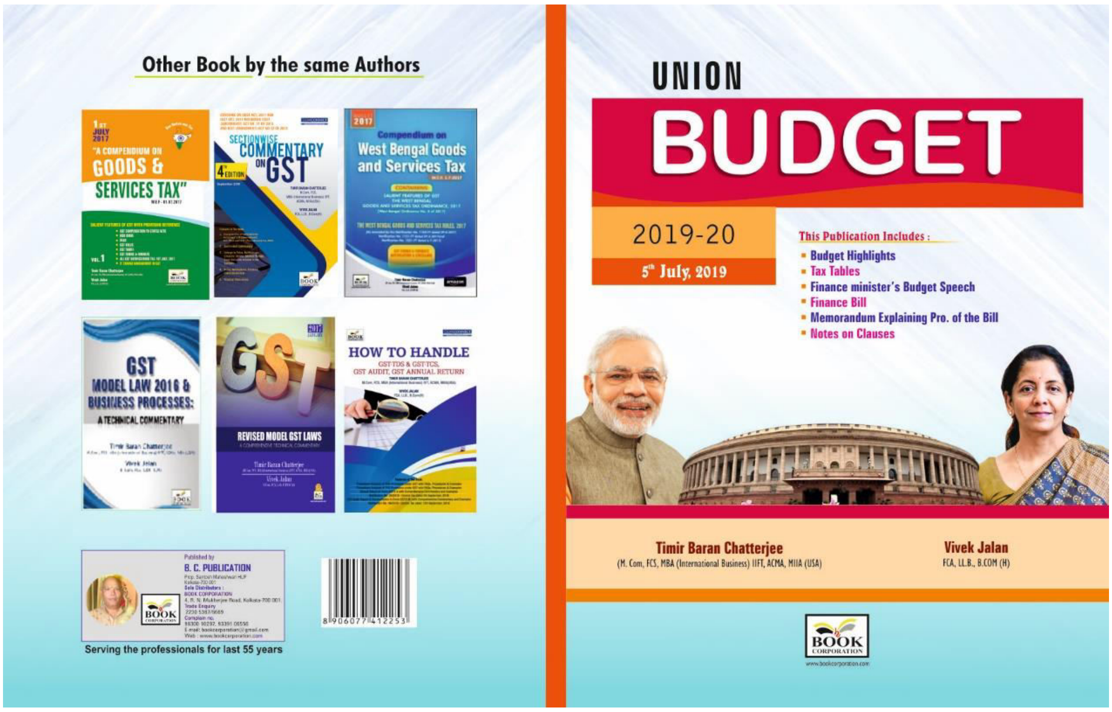
OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No.79/2019-Customs-(N.T.) dated 31.10.2019** has amended the principal notification no. 36/2001-Customs (N.T.) dated 3rd August 2001 and fixed the tariff value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

CLARIFICATIONS REGARDING IMPORT, TRADING & RE-EXPORT OF ROUGH DIAMONDS BY NOTIFIED ENTITIES IN GUJARAT HIRA BOURSE, ICHHAPORE SURAT

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No.36/2019-Customs dated 31.10.2019** has issued clarifications regarding the representation received from the Gems and Jewellery Export Promotion Council for setting up a Special Notified Zone at Surat in lines with the Special Notified Zone at Bharat Diamond Bourse, Mumbai. It was submitted that Surat is the hub for diamond cutting and polishing industry dealing mostly in small gem stones. However, the availability of raw material at competitive prices to SMEs of this sector has remained a cause of major concern and thus the present request is with a view to give direct access of the SMEs of the sector to the mining companies.

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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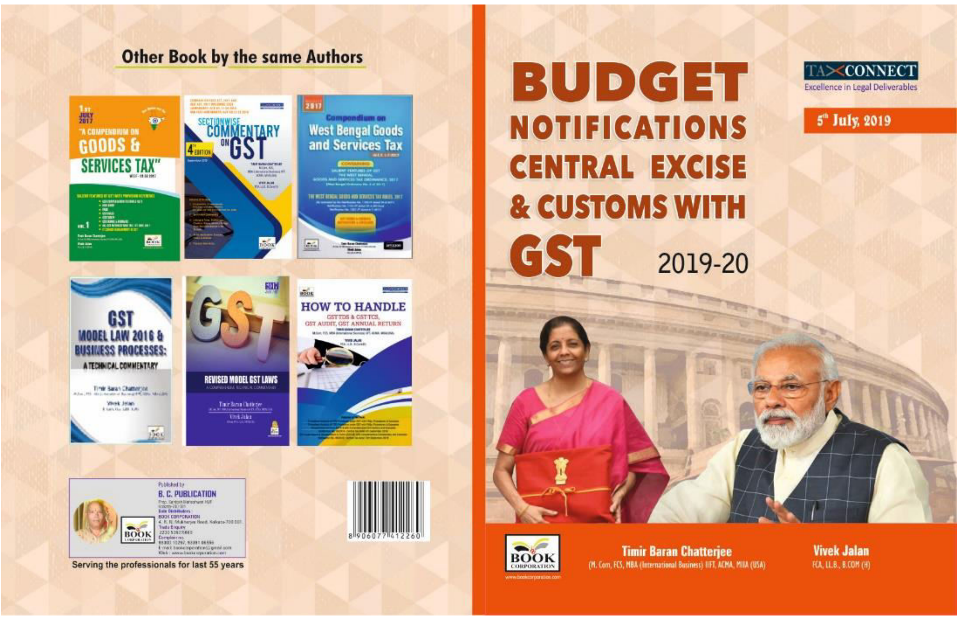
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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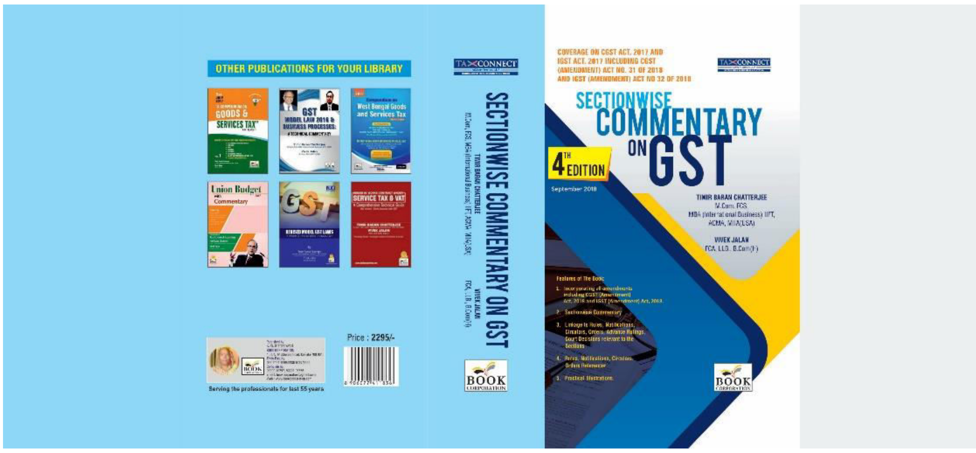
IN STANDS

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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