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EDITORIAL

Friends,

The indirect tax department had arrested several promoters in cases where it suspected their companies to be supplying goods without an invoice or indulging in "circular trading" to avoid paying GST or even avail input tax credits. the Bombay High Court granted bail to some of the promoters who were arrested, and also criticized the department for some of its actions. The promoters have filed a joint writ petition in the high court, challenging the validity of the GST statutory provisions related to arrest and freezing of bank accounts. The court also admitted the petition for further hearing.

Further, the department approached the Supreme Court, claiming that it could take such measures under law. While the matter is still before the top court, the department continued to arrest promoters where it suspected companies to have resorted to illegal means.

Indian stock brokers have sought the reintroduction of rebates on the payment of securities transaction tax (STT), withdrawal of dividend distribution tax, and restoration of the exemption on long-term capital gains tax in listed shares.

The Association of National Exchanges Members of India (ANMI) has also sought reduction in the rate of STT, and listed these four demands in a letter addressed to the Central Board of Direct Taxes (CBDT); these will be included in the budget recommendations to the finance ministry.

The government may redefine 'intermediary' service providers to provide tax certainty. GST, BPO, export, Services, to IT/IT enabled services, and stop levying goods and services tax (GST) on back office work they do for foreign clients, an official said.

The issue could figure at the next GST Council meeting and amendments to the law be taken up in the budget, the person said.

Lack of clarity in the definition has led to tax authorities treating ITeS firms' back office work for foreign clients as a domestic service and not exports. The government clarified through a circular in July, but it only created more turmoil as tax authorities continued to issue notices. The controversial circular was withdrawn last week.

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
15th December 2019	Form 24G	Due date for furnishing of Form 24G by an office of the Government where TDS for the month of November, 2019 has been paid without the production of a challan.
15th December 2019	Challan 280	Due Date for 3rd instalment of advance tax for the assessment year 2020-21.
15th December 2019	Form 16B	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of October, 2019
15th December 2019	Form 16C	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of October, 2019
15th December 2019	Form 3BB	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of November, 2019
20th December, 2019	GSTR-3B	Summary Return of outward and inward supplies for the month of November, 2019.
20th December, 2019	GSTR-5	Return for Non-resident taxable person for the month of November, 2019.
20th December, 2019	GSTR-5A	Details of supplies for the month of November, 2019 of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India.

CASE LAW

SELVEL TRANSIT ADVERTISING PVT. LTD. VERSUS COMMISSIONER OF INCOME TAX-IV, KOLKATA & ORS. [CALCUTTA HIGH COURT]

Brief: Whether they are good reasons, as based on tangible material having live link with formation of the belief?

OUR COMMENTS: In the given case, there was no dispute that for the relevant assessment year, a return under section 139 was filed by assessee. The notice issued under section 143(2) is pursuant to a notice issued under section 142(1). In such circumstances, scrutiny assessment under section 143(3) was made on the Assessing Officer having required disclosure of further particulars and information, to thereupon allow the exemption. Nothing has been disclosed by Revenue to give credence to the statement in the reasons to believe that in spite of repeatedly asking for copies of bills and vouchers towards construction of the bridges, assessee never produced any evidence, in the face of contents of said two notices issued under sections 142(1) and 143 (2). Court has once again looked at notice dated 24th October/19th November, 2007 issued under section 143(2) and earlier notice dated 9th April, 2007 under section 142(1).

The assertion in the affidavit-in-opposition that the AO for the first time came to know that assessee was not in the business of infrastructural facility but in the business of outdoor advertisement, thereby not fulfilling criteria for deduction under section 80IA, is not based on any tangible material that has been placed before Court, either by the reasons or by subsequent disclosure. There is no disclosure in the affidavit-in-opposition. Letter of Executive Engineer, PWD (Roads) Department received on 14th January, 2011 in response to notice dated 27th October, 2010 issued under section 133(6), are correspondence post assessment order dated 14th July, 2008, in scrutiny assessment made under section 143(3). The notice dated 27th October, 2010 issued under clause (6) in section 133, according to the Assessing Officer, drew belated response from Executive Engineer PWD (Roads) Department and not relied upon in the reasons, for being of doubtful genuineness. Absence of reliable answer from, such as appears to be given by a government functionary, being noticee under clause (6) in section 133, can be cause for further enquiry but not tangible material having live link with formation of the belief. The letter obviously does not support contention of Revenue. As such no material has been disclosed by Revenue. All this leads to inevitable conclusion that there has been change of opinion. Writ petition succeeds and impugned notice is set aside

[Decided in favour of assessee]

CASE LAW

MUDASSIRUN NISAN M/S M.N. AGENCIES SHAHZADPUR THRU. PROP. MU VERSUS ADDL. COMMISSIONER GRADE II APPEAL-I TRADE TAX PRAYAGRAJ & ANR [ALLAHABAD HIGH COURT]

Brief: **Seizure of goods alongwith vehicle - arecanut - inter-state transfer as driver was found in possession of bilty etc. pertaining to the goods, but not the E-way bill - Rule 138 of the C.G.S.T. Rules 2017 - authority of State Government to issue E-way bill - Rule 138 of the C.G.S.T. Rules 2017.**

OUR COMMENTS: Rule 138 of the CGST Rules 2017, refers to an E-way bill System which is to be developed by the GST Council and it provides for an interim arrangement by the Government till an E-way Bill System is so developed and approved. The words "Government" used therein is defined in section 2(53) of CGST Act 2017 to mean the "Central Government" - It is not in dispute that on the date of interception of the vehicle in question E-way Bill System had not been developed, therefore, the documents which were required to be carried during movement of any consignment of goods were those which may have been notified by the Central Government under Rule 138 of the CGST Rules 2017, as, by virtue of section 20(xv) thereof, it is this rule which is applicable to matters pertaining to IGST Act 2017. Neither the State of U.P. nor the Government of India has brought on record any such notification which may have been issued prescribing the relevant documents to be carried in the course of such movement as is referred in section 68 of the CGST Act 2017 and Rule 138 of the C.G.S.T. Rules 2017.

E-way bill system has been prescribed only recently by a notification of the Government of India dated 7th March 2018 whereby Rule 138 of the CGST Rules 2017 has been amended and other Rules have been incorporated in this regard. These amendments are to come into force from a date to be specified by the Central Government.

The fact of the matter is that on the date of incident i.e. 17.12.2017 neither there was any E-way Bill System nor any notification by the Central Government under Rule 138 of the CGST Rules 2017 requiring the carrying of a T.D.F. Form or any other such document in the course of inter-State supply/movement of goods, as such, the very basis for passing the impugned orders and taking action against the petitioner as impugned herein is apparently erroneous and illegal. In view of the above it cannot be said that there was any intent to evade tax - On the relevant date i.e. 17.12.2017 there was no requirement of carrying T.D.F. Form-1 in the case of an inter-State supply of goods. In fact on the relevant date there was no prescription of the documents to be carried in this regard under Rule 138 of the CGST Act 2017, accordingly, the seizure and penalty imposed upon the petitioners based on the notification dated 21.7.2017 issued under Rule 138 of the U.P.G.S.T. Act 2017, which was not applicable, is clearly illegal.

As regards the provisions of section 129 UPGST Act 2017 under which the impugned action has been taken, the same is not applicable to an inter-State trade or commerce. By virtue of section 20 of the IGST Act 2017 it is section 129 of CGST Act 2017 that would apply, but this is not the ground on which we are invalidating the impugned action, as, if it is traceable to the aforesaid provision of CGST Act 2017 which is pari materia to the State Act, then mere wrong mentioning of a provision would be too technical a ground for interference. Petition allowed.

[Decided in favour of assessee]

CASE LAW

STANDARD CHARTERED BANK VERSUS DIRECTORATE OF ENFORCEMENT [THE SUPREME COURT]

Brief: Whether in a case where an offence was punishable with a mandatory sentence of imprisonment, a company incorporated under the Companies Act, can be prosecuted, as the sentence of imprisonment cannot be imposed on the company?

OUR COMMENTS: In the given case, merely because the expression 'punished' is used, it does not mean that it is confined to a prosecution under Section 56 of the Act, since the element that attracts the imposition of penalty and the prosecution is the same, namely, the contravention of any of the provisions of the Act. Moreover, there is nothing in the Act which, confines the expression 'punished' only to a punishment for a criminal prosecution. An imposition of a penalty can also be a punishment. The second part of the reasoning appears to be self-contradictory. If a person includes a company, there is no reason to confine Section 68 to a prosecution only, because the company as a person is liable to be proceeded against under Section 50 and Section 56 of the Act, though in a criminal prosecution the punishment by way of imprisonment can be imposed only on the officer or officers of the company referred to in Section 68 of the Act. Section 68 only indicates the manner in which a contravention by a company can be dealt with and it does not show that it is confined in its operation only to prosecutions against a company. It is a general provision relating to a contravening company, which is to be proceeded against whether it be under Section 50 or under Section 56 of the Act. The fact that a fine alone can be imposed on a company in a prosecution under Section 56 of the Act, cannot enable us to confine the operation of Section 68 to criminal prosecutions alone under the Act. We see no reason to whittle down the scope of Section 68 of the Act.

It is true that the entire penalty that may be imposed on adjudication is capable of being recovered from the company itself. But that does not mean that it cannot be recovered from the officer in charge of the company or those who connived at or were instrumental in the contravention of the provisions of the Act by the company. Once the ingredient of the offence is contravention of the provisions of the Act and the consequences flowing from the contravention is to make that person including a company liable for penalty as well as for prosecution, there does not appear to be any justification in confining the scope of the Section 68 only to prosecutions under Section 56 of the Act. We have earlier indicated that use of the expression 'offence' in the marginal heading of Section 68 is not indicative of the expression 'being confined to a criminal offence alone' because an offence in the context of the Act is really a contravention of any of the provisions of the Act referred to in Section 50 and in Section 56 of the Act.

Hence, the decision of the High Court calls for modification as regards the scope and applicability of Section 68 of the Act. The appeals filed by the Union of India are liable to be allowed to that extent.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATION/ CIRCULAR

M/S. SKYLINE EXPORTS, REPRESENTED BY ITS PROPRIETOR SHRI. B. JAGAN MOHAN VERSUS DEPUTY COMMISSIONER OF CUSTOMS, GOVERNMENT OF INDIA [MADRAS HIGH COURT]

Brief: Drawback of central excise duty.

OUR COMMENTS: In the given case, the defect memo has been published and this would not satisfy the specific requirement of Rule 13(3), which states that a defect memo should be served on the assessee/exporter calling for rectification of the defects.

Admittedly, no defect memo has been issued to the petitioner pointing out to it the defects that ostensibly arise in its drawback claims - Had this Rule been complied with, the petitioner might well have rectified the defects, thus paving the way for a timely disposal of its drawback claims. The flaw has occasioned at the door of the Department by the violation of principles of natural justice, specifically Rule 13(3) of the Rules.

The rejection of representation dated 05.11.2004 on the ground that all drawback claims were brought to nil is flawed - the petitioner should not be denied the benefit of drawback based merely on a Public Notice, particularly when the petitioner has satisfied all other requirements under the relevant Notification/Scheme, thus frustrating the object of the scheme itself.

The claim of rebate in relation to the twelve transactions denied under the impugned order shall be sanctioned and paid over to the petitioner within a period of six weeks from date of receipt of copy of this order - Petition allowed.

[Decided in favour of the assessee]

M/S. J&J ELECTRONICS, VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , MUMBAI

Brief: The petitioner had raised an issue of jurisdiction before the Commissioner of Customs (Import), Mumbai, who issued notice and thereafter, adjudicated on this matter.

OUR COMMENTS: In the given case, the decisions of the Tribunal, namely COSMO FERRITES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH [2014 (12) TMI 116 - CESTAT NEW DELHI] and SAMTEL COLOR LTD. VERSUS COLLECTOR OF CENTRAL EXCISE, MEERUT [2000 (4) TMI 112 - CEGAT, COURT NO. II, NEW DELHI], on the issue of jurisdiction, were clearly cited before the Commissioner of Customs (Import), Mumbai. In fact, there is reference to such decisions in the impugned order in original. However, without considering such decisions or the import of such decisions, the objection relating to the jurisdiction, has been disposed off, merely by observing that this is a case of mis-declaration and therefore, the authorities will have jurisdiction over the matter.

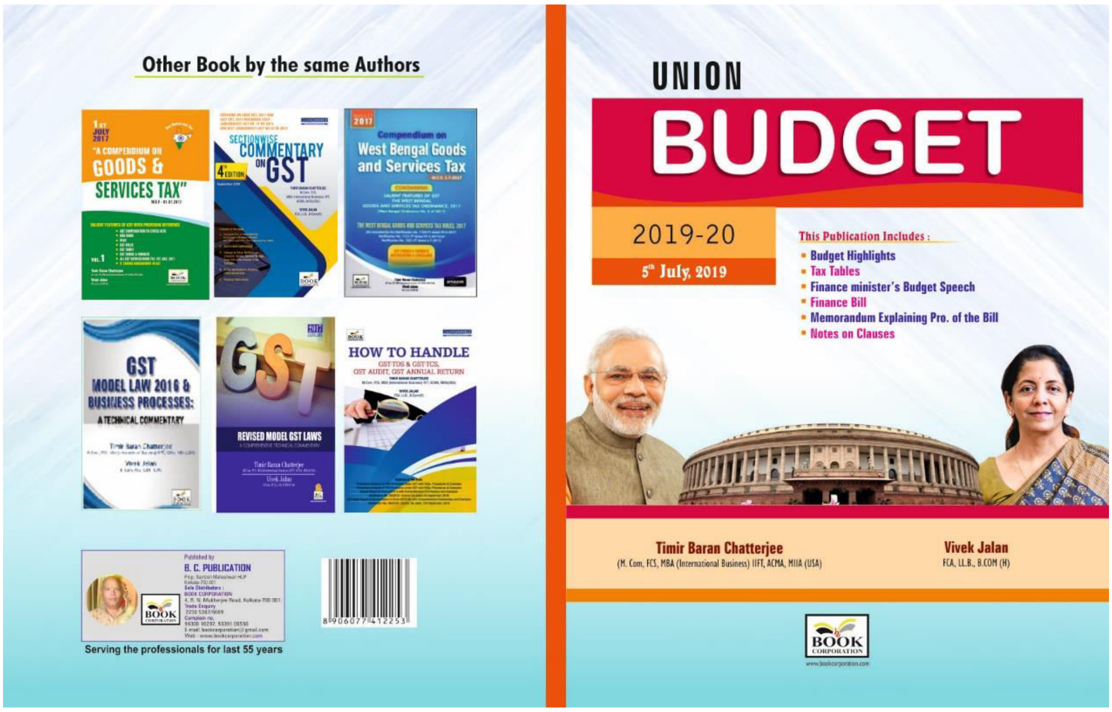
Since, this is an issue, which goes to the root of the jurisdiction, it will not be appropriate to relegate the petitioner to alternate remedy. Besides, we find that there is virtually no consideration as such, of the objection as to the jurisdiction, in the present case.

Matter remanded to the Commissioner of Customs (Import), Mumbai to re-consider the objection as to the jurisdiction, as raised by the petitioner - petition allowed by way of remand.

[Decided in favour of the assessee]

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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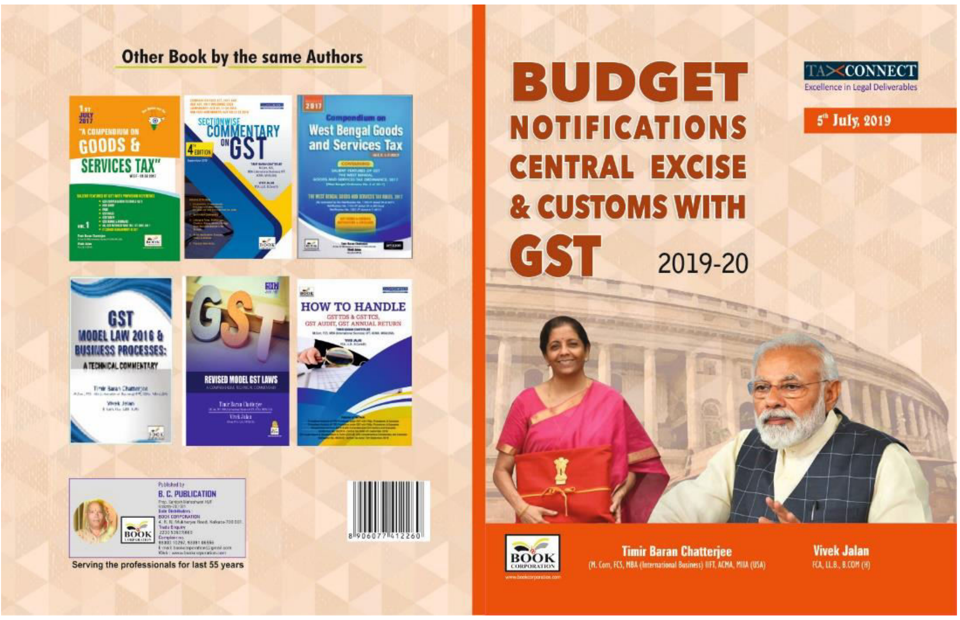
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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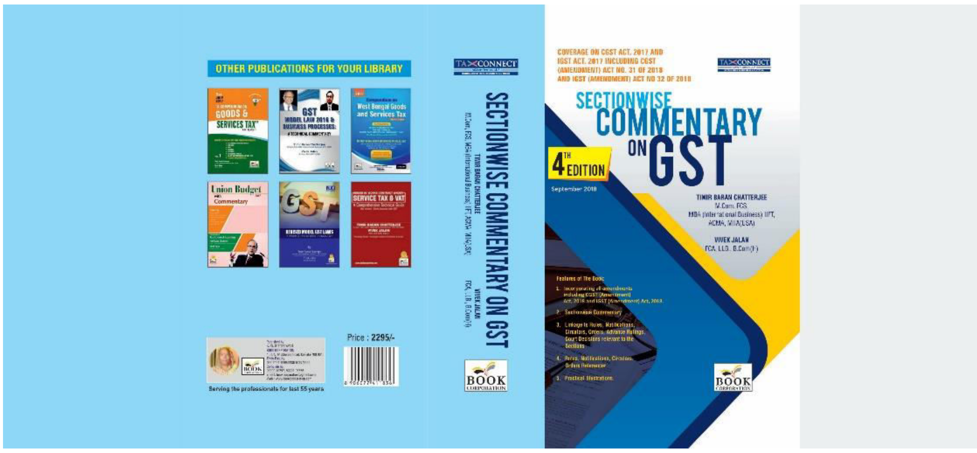
IN STANDS

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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