TAXCONNECT
240th Issue: 22nd December 2019 - 28th December 2019

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EDITORIAL

Friends,

As per Press Release dated 18th December 2019, the following are the recommendations made by the GST council in its 38th GST Council meeting:-

Law and Procedure Related Changes

- To constitute Grievance Redressal Committees (GRC) at state level with CGST and SGST offices both in order to address grievances of taxpayers.

- To extend the due date of annual return form GSTR-9 and reconciliation statement form GSTR-9C for F.Y 2017-18 up to 31st January 2020.

- In order to improve filling of form GSTR-1:-
  - Late fee in respect of pending form GSTR-1 from July'17 to November'19 has been waived if filed on or before 10th January 2020.
  - E-Waybill for taxpayers not filling form GSTR-1 for 2 tax periods shall be blocked.

- To restrict the Input Tax Credit in respect of invoices not reflected in form GSTR-2A up to 10% of the eligible credit in respect of invoices reflected in form GSTR-2A.

- To extend the due date of filling GST returns for the month of November 2019 for few North-Eastern States.

- Various law amendments approved to be introduced in Budget 2020.

Rate Changes

- To exempt upfront amount payable for long term lease of industrial/ financial infrastructure plots by an entity having 20% or more ownership of Central or State Government entity having 50% or more ownership of Central or State Government to be effective from 1st January, 2020.

- To levy a single rate of GST @ 28% on both State run and State authorized lottery to be effective from 1st March, 2020.

- The Council also considered the rate of GST on Woven and Non-Woven Bags and sacks of polyethylene or polypropylene strips, whether or not laminated, of a kind used for packing of goods (HS code 3923/6305) in view of the requests received post the changes recommended on such goods in last meeting and recommended to raise the GST to a uniform rate of 18% from 12% on all such bags falling under HS 3923/6305 including Flexible Intermediate Bulk Containers (FIBC) which shall become effective from 1st January, 2020.

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

NO RELEVANT DUE DATES IN THE UPCOMING WEEK

CASE LAW

THE PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, CHENNAI VERSUS M/S. RAM KRISHNAN KULWANT RAI HOLDINGS PVT. LTD. [MADRAS HIGH COURT]

<u>Brief:</u> Violation of the conditions stipulated u/s 47(xiii) - transfer by way of distribution of assets - partners of the erstwhile firm derived benefit other than allotment of shares by way of loan credits in their favour on conversion of the partnership firm into a private limited company.

<u>OUR COMMENTS:</u> In the given case, the legal position having been well settled that when vesting takes place, it vests in the company as they exist. Therefore, unless and until the first condition of transfer by way of distribution of assets is satisfied, Section 45(4) will not be attracted. Therefore, in the facts and circumstances of the case, it was found that there is no transfer by way of distribution of assets.

The Hon'ble High Court found that the CIT(A) did not take into consideration the legal issue involved i.e. when a firm is succeeded by a company with no change either in the number of members or in the value of assets with no dissolution of the firm and no distribution of assets with change in legal status alone, whether there is a 'transfer' as contemplated u/s 2(47) and 45(4). This issue was rightly decided by the Tribunal by taking into consideration the decision of a Division Bench of this Court in the case of CADD Centre Vs. ACIT, in which, the decision of a Division Bench of the Bombay High Court in the case of CIT Vs. Texspin Engineering and Manufacturing Works, was taken into consideration.

The vital difference is that shares worth of ₹ 10 lakhs alone were allotted and that the remaining was given as credit of loan to the partners of the erstwhile firm in the same proportion as their share capital of the firm. What is required to be considered is the effect of vesting as held in the case of Texspin Engineering and Manufacturing Works, which followed the decision of the Hon'ble Supreme Court in the case of Malabar Fisheries Co. Vs. CIT and there can be no distribution of assets when a partnership firm vests in a company under Part IX of the Companies Act, 1956. Thus, we are of the view that the Tribunal rightly followed the decision in the case of CADD Centre.

[Decided in favour of assessee]

NOTIFICATION/ CASE LAW

NOTIFICATION OF THE CLASS OF REGISTERED PERSON REQUIRED TO ISSUE INVOICE HAVING QR CODE

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 72/2019-Central Tax dated 13.12.2019** has notified that a registered person having aggregate turnover of more than Rs. 500 crore making supply to an unregistered person shall issue a B2C invoice containing Quick Response (QR) code w.e.f 1.04.2020. However, where digital payment is made though QR code then it shall be assumed that the supplier has complied with the rule.

NOTIFICATION OF THE CLASS OF REGISTERED PERSON REQUIRED TO ISSUE E-INVOICE

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 70/2019-Central Tax dated 13.12.2019** has notified that a registered person having aggregate turnover of more than Rs. 100 crore shall prepare invoice in form GST INV-01 as per amended rule 46 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal w.e.f 1.04.2020.

LEO DISTRIBUTORS VERSUS THE COMMISSIONER OF STATE GST, GOODS AND SERVICES TAX NETWORK PVT. LTD., GOODS AND SERVICE TAX COUNCIL, THE NODAL OFFICER, STATE GST DEPARTMENT, THE ASST. COMMISSIONER/NODAL OFFICER, CENTRAL GST AND CENTRAL EXCISE, THRISSUR DIVISION, THE DEPUTY COMMISSIONER (TECH) [KERALA HIGH COURT]

Brief: Transfer of accrued credit - transition/migration to GST regime.

OUR COMMENTS: Since it is not in dispute that the petitioners herein did attempt to upload the necessary details in the system maintained by the respondents, and it cannot be disputed, based on a perusal of the system log, that the petitioners did attempt to log into the system, the mere fact that the petitioners cannot establish that the inability to upload the required details was on account of a system error that was occasioned by the respondents, cannot be a reason for denying them the substantive benefit of carrying forward the credit earned by them under the erstwhile regime.

Writ petitions were allowed and a direction was issued to the respondents to permit the petitioners therein to file the TRAN -1 Form, either electronically or manually on or before 31.12.2019 without prejudice to the right of the respondent statutory authorities to verify the genuineness of the claim of the petitioners - petition allowed.

[Decided in favour of assessee]

FEMA

CIRCULAR

EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 19.5 MILLION TO THE REPUBLIC OF ZIMBABWE

OUR COMMENTS: The EXIM Bank of India entered into an agreement with the Government of Zimbabwe dated 4th April, 2019 which shall be effective from 26th November, 2019 and for which the terminal utilization period is 60 months from the date of signing of the agreement.

As per the agreement the financing of export of eligible goods and services from India, would be allowed they are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank.

The supplier should supply at least 75% of the contract price from India and the balance 25% may be supplied by the seller from outside India.

Further, no commission is payable to the agency under the agreement. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange and Authorized Dealer Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission. The terms of the agreement are as under: -

- Purpose of the agreement- For financing upgradation of Phase II of Deka Pumping Station and River Intake System in the Republic of Zimbabwe.
- Amount of LoC (USD)- Supported Line of Credit (LoC) of USD 19.5 million.

EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT OF USD 23 MILLION TO THE REPUBLIC OF ZIMBABWE

OUR COMMENTS: The EXIM Bank of India entered into an agreement with the Government of Zimbabwe dated 4th April, 2019 which shall be effective from 26th November, 2019 and for which the terminal utilization period is 60 months from the date of signing of the agreement.

As per the agreement the financing of export of eligible goods and services from India, would be allowed they are eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank.

The supplier should supply at least 75% of the contract price from India and the balance 25% may be supplied by the seller from outside India.

Further, no commission is payable to the agency under the agreement. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange and Authorized Dealer Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission. The terms of the agreement are as under: -

- Purpose of the agreement- For financing renovation/upgradation of Bulawayo Thermal Power Plant at the revalidated/escalated project cost in the Republic of Zimbabwe.
- Amount of LoC (USD)- Supported Line of Credit (LoC) of USD 19.5 million.

CUSTOMS

CASE LAW

COMMISSIONER OF CUSTOMS, CUSTOM COMMISSIONERATE, LUDHIANA VERSUS M/S KRISHNA CARGO MOVERS PVT. LTD. [PUNJAB & HARYANA HIGH COURT]

Brief: Whether the appellant can be held responsible for non-payment of cost recovery charges when no calculation was made by the Revenue?

OUR COMMENTS: In the given case, the appellant started working as CFS with effect from 1-3-2008 and as per instruction dated 14-12-1995 read with Circular No. 52/97-Cus., dated 17-10-1997, a CFS is required to deposit in advance the cost recovery charges. It is fact on record that cost recovery charges are to be calculated by the Revenue, the appellant cannot pay cost recovery charges without calculation of demand of cost recovery charges payable by the appellant. Therefore, in the absence of any calculation of the demand made by the Revenue, the appellant cannot be responsible for non-payment of cost recovery charges.

As per C.B.E. & C. circular dated 12-9-2005, if CFS achieved bench mark performance during the previous years, it is entitled for waiver of charges. Admittedly, in this case the appellant has achieved the bench mark performance within the initial two years. As the appellant has achieved the bench mark performance, in that circumstance, the Revenue is duty bound to examine the issue and disposed of the claim of waiver failing which the Revenue cannot continue to demand of cost recovery charges from the appellant.

On perusal of the said provision, the CFS is required to pay the cost recovery charges at rate and manner specified by the Ministry. As, no manner or rate has been prescribed under the regulation or any other way subsequent to the regulation, in that circumstance, we are of the view that cost recovery charges cannot be demanded from the appellant.

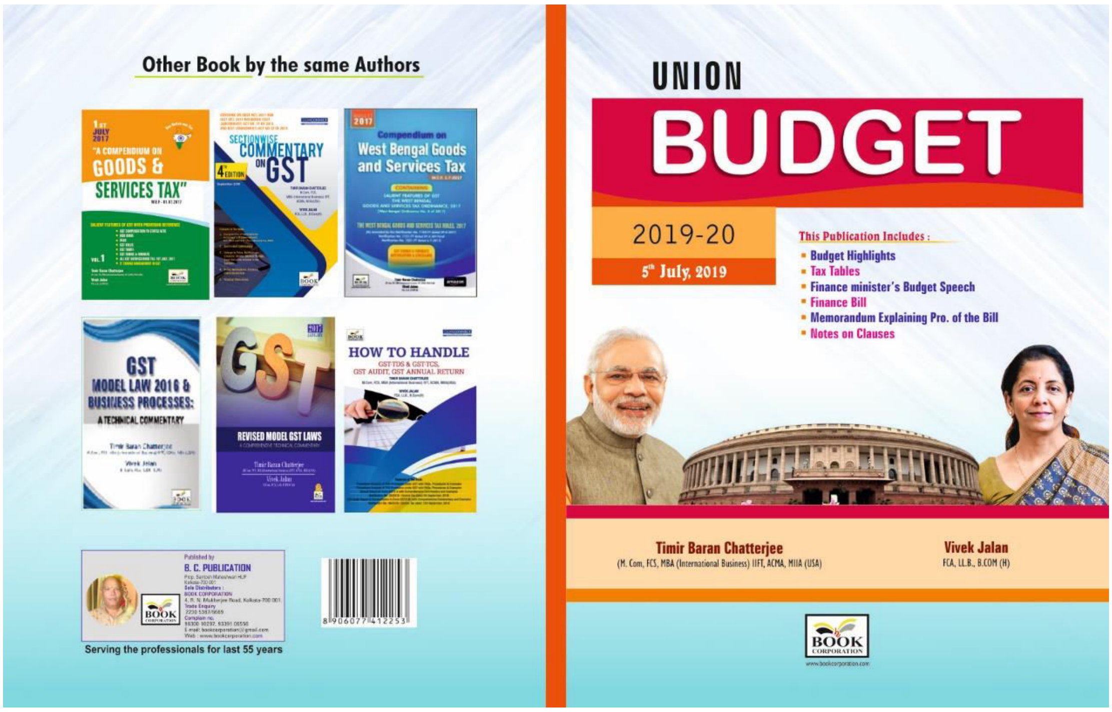
Respondent during 2008-2010 achieved benchmark performance and instructions of 2005 as well 2009 nowhere require filing of application by CFS seeking waiver of cost recovery charges. As per instructions no dues should be pending on 31.8.2005 and it is not case of Appellant that anything was pending against Respondent on 31.8.2005. Even otherwise, the Respondent cleared dues of 2008-10 prior to notice dated 04.06.2012(Annexure A-1) issued by Appellant. Prior to 2009 only instructions were holding the field and Respondent-CFS cannot be asked to pay cost recovery charges when it had already achieved benchmark performance which is the paramount requirement. The Respondent has not claimed exemption for the period 2008-2010, thus there seems no reason to charge cost of officers when benchmark performance stood achieved.

There are substances in the findings recorded by Tribunal that no demand of cost of officers can be made in the absence of specified rates and manner. Hence, appeal dismissed.

[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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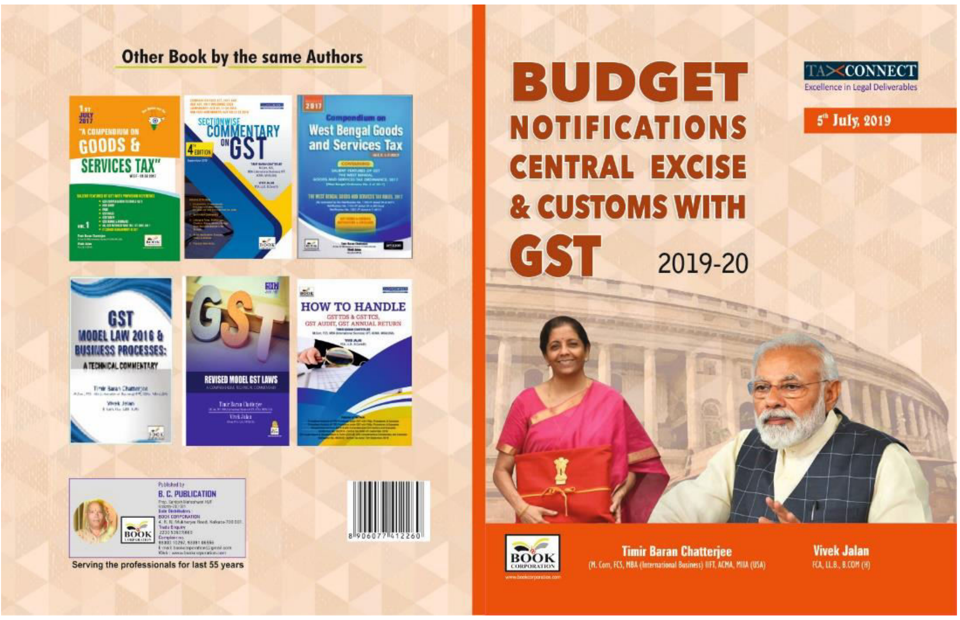
BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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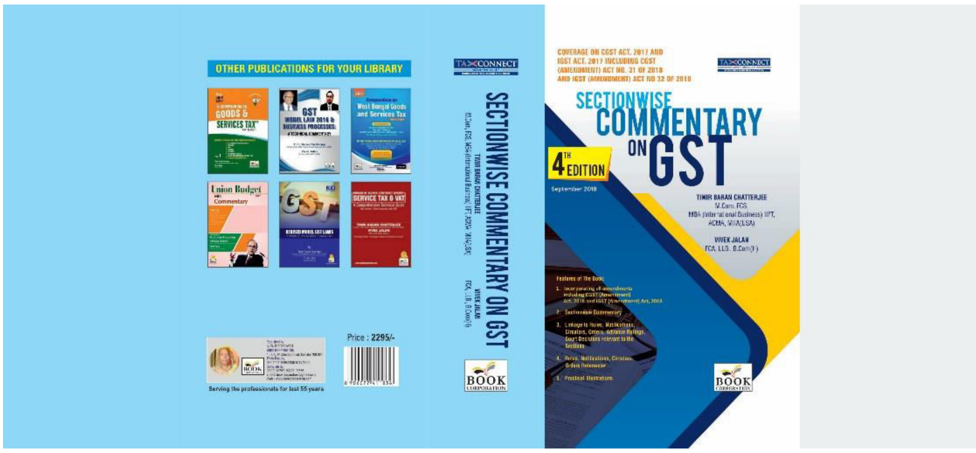
SECTION WISE COMMENTARY ON GST UPDATED TILL DATE



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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