TAX CONNECT

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TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

FEMA

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EDITORIAL

Friends,

The Central Board of Indirect Taxes and Customs (CBIC) vide Notification no. 04/2020- Central Tax dated 10.01.2020 has extended the due date of filling form GSTR-1 for the period of July'17 to November'19 from 10th January 2020 to 17th January 2020.

Keeping in view the response of the taxpayers to the scheme the Central Government has extended the 'Sabka Vishwas Scheme', a dispute resolution-cum-amnesty scheme for settling pending disputes of service tax and central excise, by 15 days till 15th January 2020. This is one time and final extension in view of the taxpayers' response.

The Central Board of Direct Taxes (CBDT) has notified the Income-tax Return (ITR) Forms ITR-1 (Sahaj) and ITR-4 (Sugam) for the A.Y 2020-21 in order to ensure that e-filing utility for filing of return for assessment year (A.Y) 2020-21 is available as on 1st April, 2020.

In the notified returns, the eligibility conditions for filing of ITR-1 & ITR-4 Forms were modified with intent to keep these forms short and simple with bare minimum number of Schedules. Therefore, a person who owns a property in joint ownership was not made eligible to file the ITR-1 or ITR-4 Forms. For the same reason, a person who is otherwise not required to file return but is required to file return due to fulfillment of one or more conditions in the seventh proviso to section 139(1) of the Income-tax Act, 1961 (the Act), was also not made eligible to file ITR-1 Form.

Levy of cesses on firms exempted from customs duty even as the revenue department scrambles to boost tax collections has led small and medium enterprises to drag the government to court.

These SMEs have filed a writ petition in the Gujarat High Court, challenging applicability of cesses — including education cess, higher secondary education cess and social welfare surcharge— on exporters exempted from paying any customs duty on their imports under Merchandise Exports from India Scheme (MEIS).

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 January 2020	GSTR-6	Return for the month of December, 2019 applicable for input service distributors (ISD)
14th February 2020	Form 16B	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of December, 2019.
14th February 2020	Form 16C	Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of December, 2019.
15th February 2020	Form 24G	Due date for furnishing of Form 24G by an office of the Government Where TDS for the month of January 2020 has been paid without the production of a challan.
15th February 2020	Form 16A	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) For the quarter ending December 31, 2019.
18th January, 2019	CMP-08	Summary Return of outward and inward supplies by Composition Scheme Dealer for the 3rd quarter, 2019.

INCOME TAX

NOTIFICATION/ CASE LAW

INCOME-TAX (2ND AMENDMENT) RULES, 2020

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India **vide Notification No. 03/2020 dated 6.01.2020** has introduced the Income Tax (2nd Amendment) Rules 2020 thereby introducing amendments to section 92D, Rule 10DA and Rule 10DB.

[For details please refer to the said notification]

GUJARAT RAJYA KAMDAR SABHA UNION MACHIWADI VERSUS THE INCOME TAX OFFICER [GUJARAT HIGH COURT]

Brief: assessee is a registered trade union who passed an unanimous resolution that as a result of compromise arrived and amount is received from the Company.

OUR COMMENTS: Once the factum of settlement is not disputed couple with the factum of receipt of a particular amount from the Company, and as observed by the Assessing Officer in the assessment order that the amount has been distributed amongst the employees, the case would squarely stand covered under Section 10(24) of the Act. Though the contribution from the employer is received as per the settlement agreement, it is only incidental to the activities of the services of the assessee in resolving the dispute between the member workers and the employer with the intention of advancement of welfare of the members. We take notice of the decision of the Tribunal referred to and relied upon on behalf of the assessee before the Appellate Tribunal in the present case. We are referring to the decision in the case of Mumbai Mazdoor Sabha vs. Assistant Commissioner of Income Tax.

We are in complete agreement with the aforesaid observations of the Tribunal. - The only reason for the Tribunal in not following the dictum of the said order of the Tribunal is that the amount credited into the Bank Account of the State Bank of India, Chikhli Branch was not shown in the audited books of account and balance-sheet as on 31st March, 2009. According to the Appellate Tribunal, as the assessee failed to show the receipts in its audited books of account, the dictum of law as laid in Mumbai Mazdoor Sabha would not be applicable.

We are afraid, we are not in agreement with such finding recorded by the Appellate Tribunal. In fact, in the entire impugned order passed by the Appellate Tribunal, there is no worthy discussion of Section 10(24) of the Act.

In the overall view of the matter, we are convinced that the Appellate Tribunal committed an error in dismissing the appeal preferred by the assessee.

[Decided in favour of assessee]

CASE LAW

ABBOTT HEALTHCARE PRIVATE LIMITED VERSUS THE COMMISSIONER OF STATE TAX KERALA, THE COMMISSIONER, CGST, KERALA, UNION OF INDIA, STATE OF KERALA, THE KERALA AUTHORITY FOR ADVANCE RULING, THE KERALA APPELLATE AUTHORITY FOR ADVANCE RULING

Brief: specified medical instruments by the Applicant to unrelated parties like hospital(s), Lab (s), for uses without any consideration - whether constitutes a “supply” or whether it constitutes “movement of goods otherwise than by way of supply” as per provisions of the CGST/SGST Act, 2017?

OUR COMMENTS: In the given case, here was no occasion for the AAR to go into the issue of whether the supply effected was a composite supply or not. **The hon’ble High Court** also found that its findings on the said issue are at any rate legally untenable. The concept of enhancement of utility of the instrument through the supply of reagents/calibrators/disposables, while relevant for the purposes of valuation of the supply of instruments, cannot be imported into the concept of composite supply under the GST Act. A distinction has to be drawn between the nature of a supply and the valuation thereof. While clubbing of two independent supplies may be resorted to for the purposes of valuation of each of those supplies, there is no scope of clubbing of two independent supplies so as to notionally alter the very nature of each of those supplies as they existed in fact, at the relevant point in time.

Natural bundling of services - The two supplies do not answer to the description of being “naturally bundled and supplied in conjunction with each other in the ordinary course of business”. While they were not bundled together as a matter of fact, in the instant case, there is also no material to suggest that they are so bundled and supplied in conjunction with each other in “the ordinary course of business”. In fact, the business model followed by the petitioner appears to have held the field for a considerable period of time and would show that in the ordinary course of business, the supplies are not bundled.

As regards composite supply must take into account supplies as effected at a given point in time on “as is where is” basis. In particular instances where the same taxable person effects a continuous supply of services coupled with periodic supplies of goods/services to be used in conjunction therewith, one could possibly view the periodic supply of goods/services as composite supplies along with the service that is continuously supplied over a period of time. These, however, are matters that will have to be decided based on the facts in a given case and not in the abstract as was done by the AAR.

Matter remanded back to the AAR for a fresh decision on the query raised before it by the petitioner company - petition allowed by way of remand.

[Decided in favour of assessee]

CASE LAW

FFR SOFTWARE PVT. LTD. VERSUS UNION OF INDIA [GUJARAT HIGH COURT]

Brief: Compounding of contravention of [Regulation 7] of FEMA - Procedure for compounding.

OUR COMMENTS: In the present case, when the information is brought to the notice of the RBI, before remitting the case to the appropriate adjudicating authority under the amended proviso, exercise of taking decision under sub-rule (2), does not get diluted in any manner. It is open for the compounding authority, after considering the objections received from the Enforcement Directorate and affording an opportunity of hearing, to take a decision to remit the case to the appropriate adjudicating authority so that requirement of sub-rule (2) of Rule 8 is complied with fully.

In the instant case, merely coming into existence of the proviso will not render requirement of sub-rule (2) of Rule 8 nugatory. The proviso is in addition to sub-rule (2) and has to be read through sub-rule (2) and not otherwise as canvassed by Learned Advocate for the respondents, that is to say what is provided under sub-rule (2), cannot be read through the amended proviso to sub-rule (2) under the subsequent notification dated 20-2-2017.

The Court has perused the communications of the Enforcement Directorate which are addressed to the Special Director, Directorate of Enforcement, Western Region, Mumbai, which refer to the proceedings of justification to the export obligation by the petitioner regarding cut and polished diamond under three separate purchase contracts.

As the Court is not entering into the merits of the impugned decision, no further reference is made to such communication, leaving it upon respondent No. 2, in exercise of powers under sub-rules (1) and (2) to take a decision after affording an opportunity of hearing to the petitioner to contend that the so called proceedings of the Enforcement Directorate are not pertaining to the transaction in question. After hearing the petitioner, it is open for respondent No. 3 to take a decision in accordance with law.

The impugned communication dated 24-5-2017 is set aside accordingly. Respondent No. 3 is directed to take a fresh decision in accordance with law, particularly follow requirement of sub-rule (2) of Rule 8 of the Rules. The petition stands allowed to the aforesaid extent. Rule is made absolute.

[Decided in favour of assessee]

CUSTOMS

CASE LAW

M/S. RAJKAMAL INDUSTRIAL PRIVATE LTD. VERSUS COMMR. OF CUSTOMS, KANDLA [CESTAT AHMEDABAD]

Brief: Provisional release of goods - mis-declaration of goods - appellant has declared as base oil whereas the department's contention is that it is a HSD.

OUR COMMENTS: In the given case, the submission of the Ld. Counsel regarding the fact that as per IS specifications 1460:2005 in respect of HSD, it provides 21 specifications whereas the testing was done only in respect of 14 out of 21 specifications. This appears to be very vital discrepancy in conducting the test. However, at this stage, we do not incline to make any observation as regard the merit of the case.

As regard the quantum of condition for release of the goods for re-export, we find that once the goods is re-exported the custom duty, if any, stand neutralized, therefore, to secure the interest of Revenue particularly in this case where the goods have to be re-exported, the quantum of bank guarantee decided by the Commissioner is exorbitant.

As the SCN was issued, the quantum of duty as per revenue was worked out to ₹ 5,15,61,820/- hence the appellant is required to furnish Bank guarantee of ₹ 1,29,00,000/- i.e. 25% of duty. The appellant needs to execute the bond for 100% of the value of the goods. - appeal allowed.

[Decided in favour of assessee]

KADRI ENTERPRISE A PROPRIETOR CONCERN OF GULAM RASUL GULAM MUSTUFA SHAIKH VERSUS UNION OF INDIA & 2 [GUJARAT HIGH COURT]

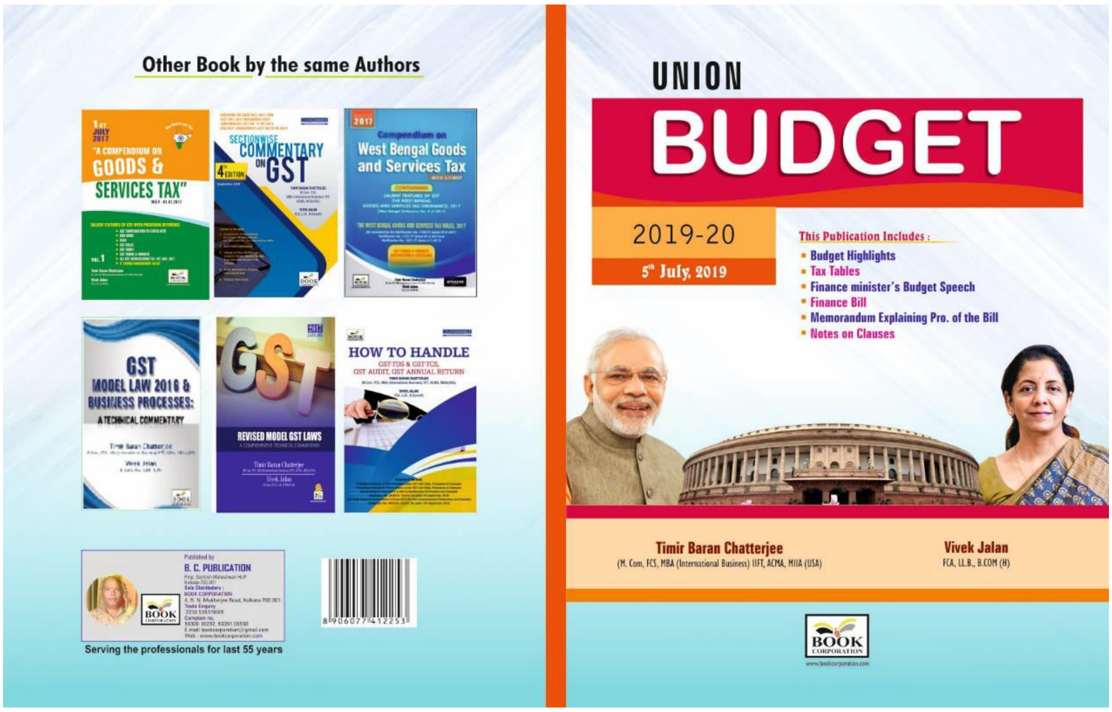
Brief: Import of old and used tyres - prohibited goods or restricted goods - Permission for provisional clearance of import of old and used tyres.

OUR COMMENTS: In the given case, Goods that are covered thereunder are waste pneumatic tyres and not used pneumatic tyres. The operations mentioned in the entry are to be done to the tyres which are waste and not second hand tyres which are to be reused. At this juncture reference may be made to the Chapter 40 of the CTI (HS) Classification of Export and Import Items, which clearly shows that there exists a category of Used Pneumatic tyres which fall under Exim Code 4012 20. Insofar as waste pneumatic tyres are concerned, they, prima facie, would be covered under heading 4004 - In the absence of any power conferred upon the Ministry of Environment and Forests, to specify any additional category of hazardous wastes being traceable to any provisions of the Act or the rules, the impugned memorandum, as rightly submitted by the learned counsel for the applicant, is merely in the nature of administrative instructions and has no enforceability in law. Under the circumstances, the prohibition contained in the impugned office memorandum not being backed by any statutory provisions, prima facie, cannot be relied upon for the purpose of refusing to process the bills of entry submitted by the applicant. - applicant has made out a prima facie case for grant of interim relief. The balance of convenience also lies in favour of the applicant, inasmuch as, the import in question, prima facie, does not appear to be governed by the rules.

[Decided in favour of 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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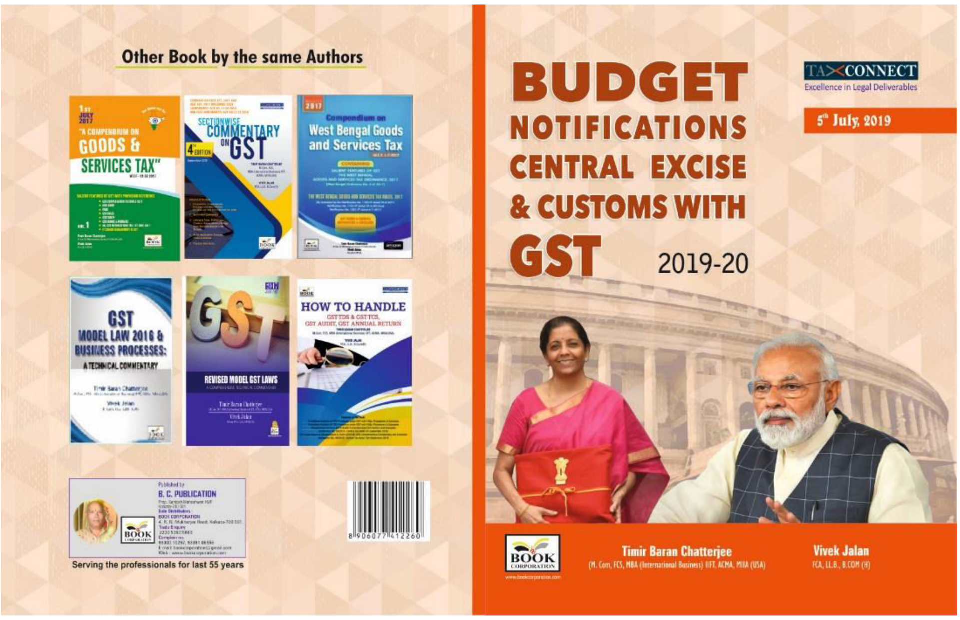
BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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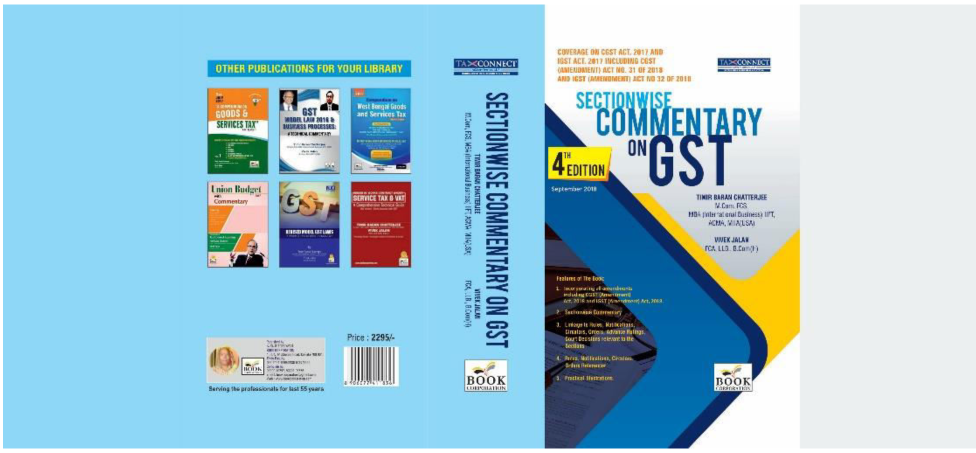
SECTION WISE COMMENTARY ON GST UPDATED TILL DATE



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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