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EDITORIAL

Friends,

The government has reset the target for goods and service tax (GST) collections for the second time in two months – to Rs 1.15 lakh crore for February and Rs 1.25 lakh crore for March. The decision to raise the target -- from Rs 1.1 lakh crore in December to at least Rs 1.15 lakh crore for the next two months -- was taken at a high-level meeting of senior officials of the Central Board of Indirect Taxes and Customs (CBIC) and Central Board of Direct Taxes (CBDT).

Expectations from Budget 2020:-

- **Relief in case of tax from House Property: Increase in Standard Deduction-** As per the provisions of the Income-tax Act, 1961, in the case of a rented house property, from the net annual value, a standard deduction of 30 per cent is allowed towards repairs and maintenance costs of the house (irrespective of actual spend), along with a deduction for interest paid on housing loan, while determining the taxable income from the house property which has not seen any increase since 2002. The government could increase the deduction to at least 50 per cent in view of inflation in the cost of repairs, utilities, and maintenance of homes.

  Further, interest on housing loan can be claimed as a deduction while computing the taxable income upto Rs. 2 lakh for self-occupied house property, subject to underlying conditions, whereas there is no upper limit on the amount of interest that can be claimed as deduction for let-out house property.

- Reduction in the **Dividend Distribution Tax (DDT)** rate, or bring about a change in the manner of dividend taxation in order to make it a shareholder-level tax.

- The **MAT regime** to be revisited in terms of the manner in which the MAT is computed, with a view to do away with the complications involved around it.

- The tax rate applicable to foreign companies and LLPs could be revisited in light of the recent tax cuts for domestic companies.

- To boost the demand for domestic manufactured products, from budget 2020 one can expect changes in the customs duty rates specifically for import of finished products.

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
20th January, 2020	GSTR-3B	Summary Return of outward and inward supplies for the month of December, 2019.
20th January, 2020	GSTR-5	Return for Non-resident taxable person for the month of December, 2019.
20th January, 2020	GSTR-5A	Details of supplies for the month of December, 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

DY. COMMISSIONER OF INCOME TAX, CIRCLE-2 (1) AND ACIT, CIRCLE-1 (1) , VIJAYAWADA VERSUS M/S MADHAVA HI-TECH COLD STORAGE PVT. LTD. [ITAT VISAKHAPATNAM]

Brief: Loans were sanctioned under tie up arrangement of both the farmer and the assessee - interest payment made to the bank.

OUR COMMENTS: Since, the loans were sanctioned under tie up arrangement of both the farmer and the assessee and the entire agricultural loans were disbursed directly to the assessee, it has shown as loan funds in the assessee's balance sheet. It is also not disputed that the assessee has made the direct payment to the bank and there was no payment made to the individual farmers. Farmers also did not dispute the payment made to the banks and thus there was an implied agreement of the farmers for payment of interest and loan directly to the bank. It is a fact that the loan was not utilized by the farmer and the entire loan was utilized by the assessee for cold storage plant and given securities to the bank. Therefore, there is an obligation on the part of the assessee to repay the loan to the bank. Accordingly the assessee made the payment to the bank and has discharged its liability / obligation. Since the payment was directly made to the bank on behalf of the farmers it should be construed as the payment made to the bank, but not to the individual farmers, the interest payment made to the bank does not attract the TDS as per section 194A. Accordingly, we uphold the order of the CIT(A) and hold that no disallowance is called for u/s 40(a)(ia) and dismiss the appeal of the revenue.

Brief: Addition made towards sundry creditors

OUR COMMENTS: The advance money, in the present case before us, is adjusted the sale price of the motor cycle and sale is disclosed in the return of income i.e. the trading account of the assessee. Accordingly, we find no ambiguity in the system followed by the assessee.

From the details filed before **the hon'ble ITAT**, DR could not point out the discrepancy in the same because these advances were adjusted against sales. When this was pointed out to Ld. Sr. DR, he stated that the assessee is unable to produce the PANs, names and addresses of the parties. He was specifically shown a tax/retail invoice wherein complete details were given except the PAN/Voter I. Card. As per the view point of **the hon'ble ITAT**, PAN/Voter Identity Card is a KYC norm, which does not apply to the sale of goods under the Sale of Goods Act. **The hon'ble ITAT** is of the view that the AO and CIT(A) both have erred in making and confirming this addition and accordingly, **the hon'ble ITAT** deleted the same

[Decided in favour of assessee]

GST: CGST/IGST/SGST/UTGST

CASE LAW

BINDAL SMELTING PVT. LTD. THROUGH ITS DIRECTOR. VERSUS ADDITIONAL DIRECTOR GENERAL, DIRECTORATE GENERAL OF GST INTELLIGENCE [PUNJAB & HARYANA HIGH COURT]

Brief: Provisional attachment of bank account of petitioner - restraint on respondent from taking coercive steps against the Petitioner and its Directors/employees

OUR COMMENTS: In the given case, the Respondent has power to attach property and bank account of any taxable person to protect interest of revenue. Person aggrieved may make representation against attachment of property or bank account and Commissioner after affording opportunity of hearing is bound to decide representation in one or another way.

On perusal of Section 83 of CGST Act and Rule 159 of CGST Rules, it is found that during the pendency of any proceedings under Section 62 (assessment of non-filers of returns) or Section 63 (assessment of unregistered persons) or Section 64 (summary assessment) or Section 67 (inspection, search and seizure) or Section 73 (determination of tax not paid otherwise than fraud) or Section 74 (determination of tax not paid on account of fraud), the Commissioner may provisionally attach any property including bank account. The power of attachment is not absolute.

In the present case attached account is Over Cash Credit account and Petitioner had debit balance of ₹ 6.42 Crore, thus question arises that whether continuation of attachment would protect interest of revenue or not. The Petitioner is running unit and more than 100 families are dependent upon Petitioner. Till date no proceedings under Section 74 of CGST Act are pending which would start as soon as show cause notice is issued. The Respondent has seized record of the Petitioner who has further supplied various documents as well put personal appearance through Directors and employees - The mandate of Section 83 is to attach amount lying in an account in the form of FDR or saving and it cannot be intention or purport of Section 83 to attach an account having debit balance. No purpose leaving aside securing interest of revenue is going to be achieved except closure of business which cannot be permitted unless and until running of business itself is prohibited by law - The contention of Respondent that they have power to attach bank account irrespective of nature of account cannot be countenanced.

Respondent can attach an account only if there is some balance in the form of FDR or savings. The power of attachment of bank account cannot be exercised as per whims and caprices of the Authority. The Commissioner is bound to ensure that by attachment of property or bank account, interest of revenue is going to be protected - attachment of current account having debit balance does not protect interest of revenue, instead merely ruins the business of a dealer. Such an action of attachment of "over cash credit" account for the sake of recovery of confirmed demand, may in some peculiar case, may be still permitted but not at the stage of pending investigation- petition allowed.

[Decided in favour of petitioner]

FEMA

CASE LAW

POOJA RAVINDER DEVIDASANI VERSUS STATE OF MAHARASHTRA & ANOTHER [THE SUPREME COURT]

Brief: **Whether the appellant is liable for prosecution u/s 138 r.w. Section 141 of the N.I. Act for the offence of dishonor of cheques committed by the default Company?**

OUR COMMENTS: In the present case, the appellant was wife of the Managing Director, and appointed as a Director of the Company— M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005 - The cheques were issued during April, 2008 to September, 2008 - So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant - the appellant was not the Managing Director but only a non-executive Director of the Company - Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity - To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business - Simply because a person is a Director of a Company, does not make him liable under the N.I. Act - Every person connected with the Company will not fall into the ambit of the provision - only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action - a Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the N.I. Act – the same has been held in National Small Industries Corpn. Ltd. Versus Harmeet Singh Paintal [2010 (2) TMI 590 - SUPREME COURT OF INDIA] – Continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold.

Validity of dismissal of Writ petition by HC - Held that:- The High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant - But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence - to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability – the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence - There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged – thus, the criminal complaint is set aside.

So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2—complainant can always pursue the remedy before the appropriate Court - So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.

[Decided in favour of the appellant]

CASE LAW

STATE OF RAJASTHAN VERSUS PARMANAND & ANOTHER [THE SUPREME COURT]

Brief: Issuance of Joint Notice or Individual show cause notice - Offences under Section 8 read with Section 18 and under Section 8 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 - whether Section 50 of the NDPS Act was complied with or not.

OUR COMMENTS: In the given case, the conviction is solely based on recovery of opium from the bag of respondent No.1 - Parmanand. No opium was found on his person.

If merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, section 50 of the NDPS Act will have application.

A joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed.

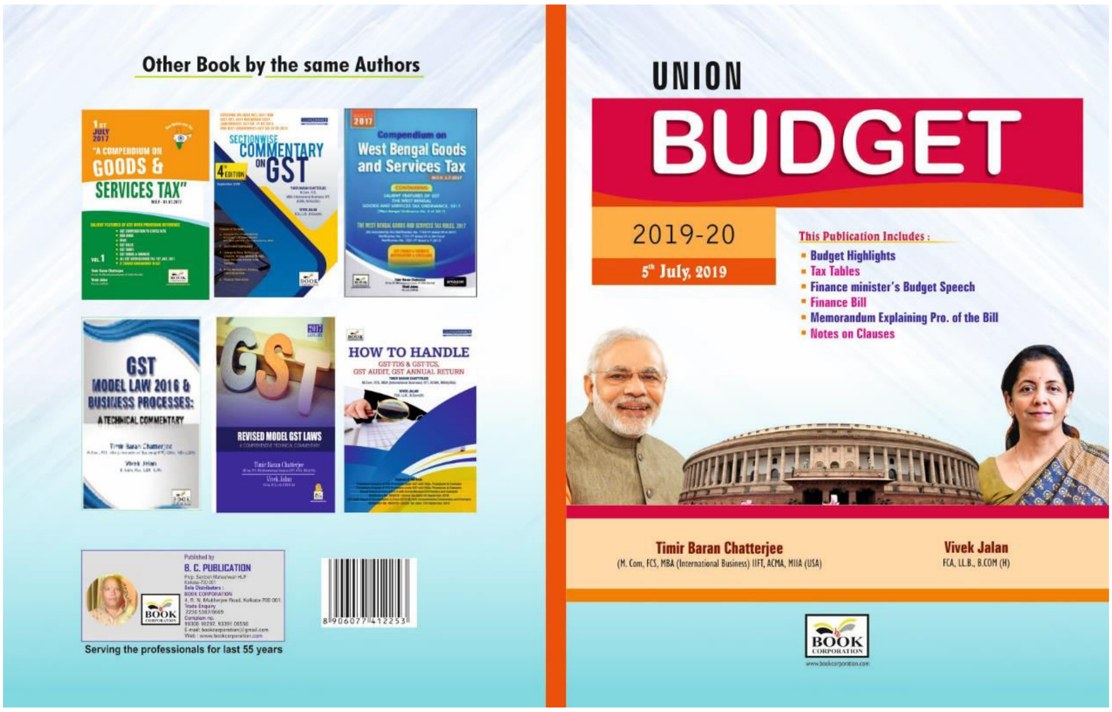
The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer.

The search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal.

[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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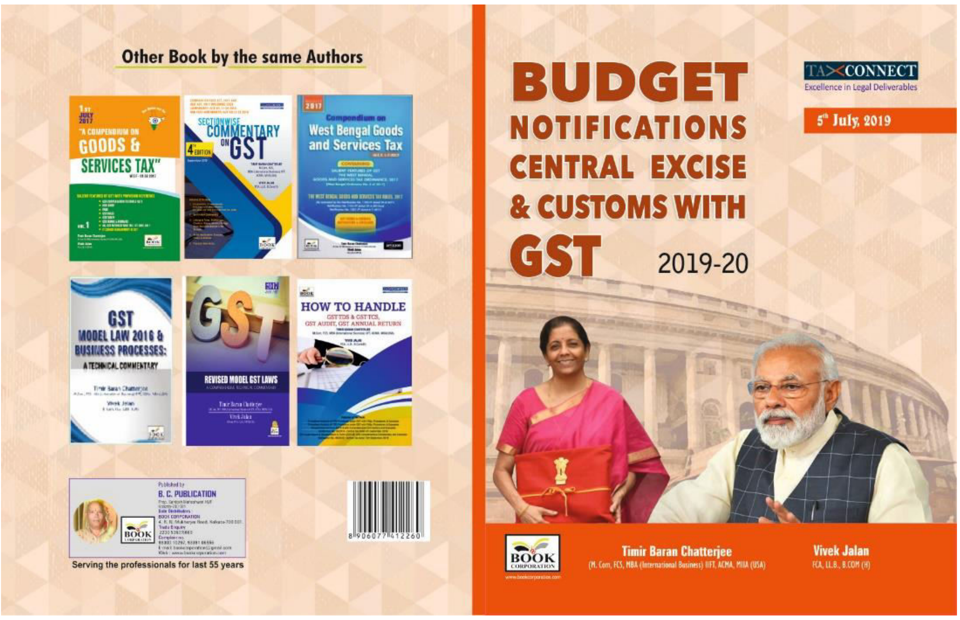
IN STANDS

BUDGET NOTIFICATIONS CENTRAL EXCISE & CUSTOMS WITH GST 2019-20



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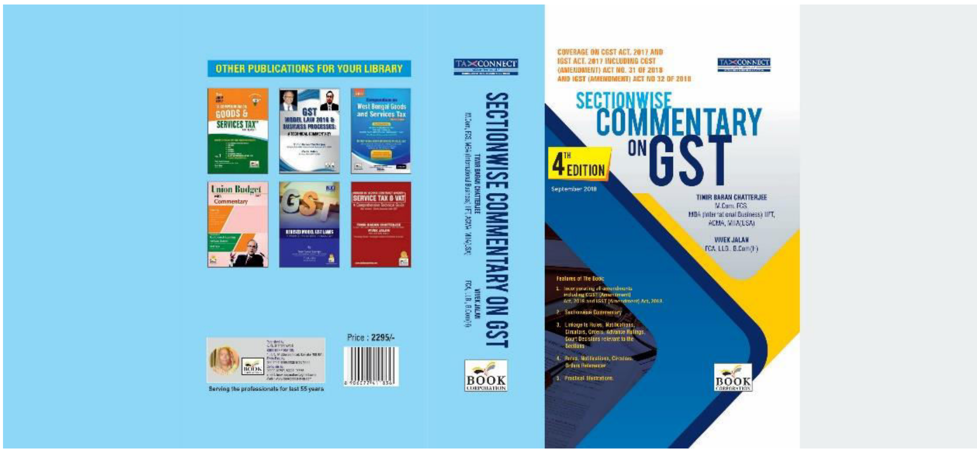
IN STANDS

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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