TAXCONNECT

248th Issue: 16th February 2020 - 22nd February 2020

TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

FEMA

TAX CONNECT

Bangalore :No 12, Ground Floor,7th Main Road, 4th Cross, 27th Main Venugopal Swamy Layout Ejipura, Vivek Nagar Post, Bangalore - 560047

New Delhi :B 42 Retreat Apartments, 20 IP Extension, Delhi 110 092

Kolkata :1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001

:17L/1A Dover Terrace; Kolkata-700069

Mumbai :Building No 9, Flat 403, LodhaEternis, 11th Road, MIDC, Andheri (E) - 400093

Contact: **+919331042424; +919831594980; +913340016761**

Website : www.taxconnect.co.in

Email : tb.chatterjee@taxconnect.co.in; vivek.jalan@taxconnect.co.in; anindita.chatterjee@taxconnect.co.in

EDITORIAL

Friends,

The Income Tax Department conducted searches on 6th February, 2020, on on more than 40 premises at Hyderabad, Vijaywada, Cuddapah, Vishakhapatnam, Delhi and Pune of 3 infrastructure groups based in Andhra Pradesh and Telengana.

Through investigations a major racket of cash generation through bogus sub-contractors, over-invoicing and bogus billing were found. Several incriminating documents and loose papers were also found and seized during the search, apart from emails, WhatsApp messages and unexplained foreign transactions unearthed during the search.

Further, search operation was also carried out on close associates including expersonal secretary of a prominent person and incriminating evidence seized.

Similarly, on 5.02.2020 a search was conducted in case of 4 major players in film industry including a Producer, a prominent Actor, his Distributor and Financier based in Tamil Nadu. The common thread among all these entities was the success of a recent film which was a box office hit collecting around Rs. 300 crore. About 38 premises of the group were covered in search and survey `actions spread over Chennai and Madurai.

Unabsorbed depreciation will not be carried forward for 8 consecutive assessment years to set off against any other sources of income except for the Income or gain from Business or Profession.

[As per case law THE JOINT COMMISSIONER OF INCOME TAX (OSD) , CIRCLE-4 (1) (1) , BANGALORE VERSUS M/S KURLON LTD.- ITAT Bangalore]

Income Tax Department said that PAN will be inoperative if not linked with Aadhar till 31st March 2020.

As per GST Council, Non-Compete agreements paid by the several Private Equity Firms, Strategic investors and others to the sellers shall be chargeable to GST @18% as Non-Compete agreements is essentially a service provided by the seller to the buyers.

For the month of January 2020 GST Revenue collected is Rs. 1,10,828 Crores of which CGST is Rs. 20944 crore, SGST Rs. 28224 crore, IGST Rs. 53013 crores and Cess Rs. 8637 crores.

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

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LLB, B. Com (H)

Anindita Chatterjee
CS, BA LLB (BANGALORE)

SYNOPSIS

S.NO.	TOPICS	PAGE NO.
1]	**TAX CALENDAR**	**4**
2]	**INCOME TAXES**	**5**
NOTIFICATION/ CASE LAW	DIGITALLY FILING OF FORM 10IC AND 10ID	
NOTIFICATION/ CASE LAW	REGISTRATION FOR FOREIGN PORTFOLIO INVESTORS THROUGH COMMON APPLICATION FORM	
NOTIFICATION/ CASE LAW	REVISION OF ITRS AFTER EXPIRY OF THE DUE DATE PRESCRIBED U/S 139(5) IN CASE OF AMALGAMATION AND ARRANGEMENT SCHEME APPROVED BY NCLT	
3]	**GST**	
a)	**GST: CGST/IGST/SGST/UTGST**	**6**
CIRCULAR/ CASE LAW	EXTENSION OF TIME LIMIT FOR SUBMITTING THE DECLARATION IN FORM TRAN-1	
CIRCULAR/ CASE LAW	ENACTMENT OF GOA GOODS AND SERVICES TAX (AMENDMENT) ACT, 2020 IN GOA	
CIRCULAR/ CASE LAW	SECOND BAIL APPLICATION FILED BY THE PETITIONER FOR EVASION OF TAX	
4]	**FEMA**	**7**
CASE LAW	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	
CASE LAW	VALIDITY OF DISMISSAL OF WRIT PETITION BY HC	
5]	**CUSTOMS**	**8**
NOTIFICATION/ CIRCULAR	EXTENSION OF ANTI-DUMPING DUTY ON IMPORT OF ACETONE	
NOTIFICATION/ CIRCULAR	IMPLEMENTATION OF PGA ESANCHIT– PAPERLESS PROCESSING UNDER SWIFT-UPLOADING OF LICENSES/PERMITS/CERTIFICATES/OTHER AUTHORIZATIONS (LPCOS) BY PGAS	
6]	**IN STANDS - UNION BUDGET WITH COMMENTARY 2020**	**9**
7]	**IN STANDS - SECTION WISE COMMENTARY ON GST UPDATED TILL 10th AUGUST 2018**	**10**

TAX CALENDAR

Due date	Form	Description
20th February, 2020	GSTR-3B	Summary Return of outward and inward supplies for the month of January , 2020.
20th February, 2020	GSTR-5	Return for Non-resident taxable person for the month of January, 2020.
20th February, 2020	GSTR-5A	Details of supplies for the month of January, 2020 of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India.
22nd February, 2020	GSTR-3B	Summary Return of outward and inward supplies for the month of January , 2020 for taxpayers having aggregate turnover upto Rs. 5 crore and having principal place of business in the state of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep

INCOME TAX

NOTIFICATIONS/CASE LAW

DIGITALLY FILING OF FORM 10IC AND 10ID

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***Notification No. 10/2020 - Dated: 12-2-2020 - IT*** Domestic Company u/s 115BAA(5)/115BAA(7) shall file Form 10IC/10ID digitally through Digital Signature or Electronic Verification Code from 01.04.2020 for A.Y.2021-22. These forms have been introduced through Income Tax (4th Amendment) Rules, 2020.

[For details please consider the said notification]

REGISTRATION FOR FOREIGN PORTFOLIO INVESTORS THROUGH COMMON APPLICATION FORM

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***Notification No. 11/2020 - Dated: 7-2-2020 - IT*** Foreign Portfolio Investors may apply for Permanent Account Number, Opening of Bank Account and Demat Account through Common Application Form.

M/S DALMIA POWER LIMITED & ANR. V/S ACIT-2019 [SUPREME COURT]

Brief: Revision of ITRs after expiry of the due date prescribed u/s 139(5) in case of amalgamation and arrangement scheme approved by NCLT.

OUR COMMENTS: In the present case, the appellant 1 Dalmia Power Limited and appellant 2 Dalmia Cement Industries Limited has filed the revised return of A.Y.2016-17 after the due date u/s 139(5) i.e., 27.11.2018. Both the appellant has proposed and filed an amalgamation scheme as on F.Y. 2017-18. The scheme was approved on 22.04.2018 and Sanctioned on 01.05.2018. The Department is of view that the revised returns have been filed late so it shall not be considered. Appellant filed a writ petition before the High Court for quashing the order of Department. High court was of the view that Clause 64 (c) of the Scheme of Arrangement and Amalgamation has enabled the appellants to file their revised Returns of Income beyond the prescribed period under the Income Tax Act. The Department could not override an approved Scheme of Arrangement and Amalgamation, which has statutory force, by rejecting the revised Returns of Income filed by the Appellants as being invalid. The Department did not object on section 230(5) of the Companies Act, 2013. Sections 139(5) and 119(2)(b) of the Income Tax Act as well as the Circular No. 9/2015 issued by the CBDT are not applicable to a case where a revised Return of Income has been filed pursuant to a Scheme of Arrangement and Amalgamation, which has been approved and sanctioned by the NCLT. The Department was not justified in rejecting the revised Return of Income on the ground that it had been filed manually, instead of being filed electronically. Rule 12(3) of the Income Tax Rules requires filing of revised Returns of Income electronically, which is not applicable where revised Returns of Income are filed by the assessee pursuant to a Scheme of Arrangement and Amalgamation approved and sanctioned by the NCLT. Accordingly, High Court directed the Department to receive the revised returns as per the Scheme of Arrangement and Amalgamation approved by NCLT. Department filed writ petition to Division Bench and the judgment was in favour of department. Appellant aggrieved with the order of Division Bench filed civil appeals to the Supreme Court. Supreme Court passed an order in favour of the appellants and is of the view that Section 170(1) makes it clear that it is incumbent upon the Department to assess the total income of the successor in respect of the previous assessment year after the date of succession. The Department is required to assess the income of the Appellants after taking into account the revised Returns filed after amalgamation of the companies. Supreme Court find that the learned Single Judge had rightly allowed the Writ Petitions and accordingly set aside the impugned Judgment and Order dated 04.07.2019 passed by the learned Division Bench, and restore the judgment dated 30.04.2019 passed by the learned Single Judge. Accordingly, the Civil Appeals are allowed. The Department is directed to receive the revised Returns of Income for A.Y. 2016-2017 filed by the Appellants, and complete the assessment for A.Y. 2016-2017 after taking into account the Schemes of Arrangement and Amalgamation as sanctioned by the NCLT.

[Decided in favour of the appellant]

CIRCULAR/ CASE LAW

EXTENSION OF TIME LIMIT FOR SUBMITTING THE DECLARATION IN FORM TRAN-1

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 01/2020 dated 07.02.2020** has extended the time limit for submitting the declaration in Form TRAN-1 till 31st March, 2020 under rule 117(1A) of the CGST Rules, 2017 for the taxpayers who could not submit the said declaration by the due date on account of facing technical difficulties on the common portal and whose case has been recommended by the Council.

ENACTMENT OF GOA GOODS AND SERVICES TAX (AMENDMENT) ACT, 2020 IN GOA

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 07/01/2020 dated 10.02.2020** has introduced Goa Goods and Services Tax (Amendment) Act, 2020.

[For details please consider the said notification]

ATUL CHOPRA VERSUS STATE OF RAJASTHAN [RAJASTHAN HIGH COURT]

Brief: Second Bail application filed by the petitioner for evasion of tax.

OUR COMMENTS: In the given case, assessee (petitioner) has imported goods worth ₹ 108 crores in the year 2018. The first import was on 24-5-2018. Goods were exempted from tax subject to the condition that the products made from the goods were to be exported within a period of eighteen months but the period of eighteen months have not expired till date. On special reasons being shown by the assessee, the period of export was extended by a period of six months and after period of six months to be extended on special conditions. No notice for assessment was even issued by the authorities. A fire took place in the factory of the petitioner on 3-9-2018 which was reported to the police and fire brigade. Petitioner was arrested on 7-6-2019. In the charge-sheet filed details of E-way bills and Outward E-way bills are given from which it is revealed that total Inward supplies were to the tune of ₹ 133 crores and the Outward supplies were to the tune of ₹ 32 crores. Department has shown two Inward supplies to E-way bills and has come to the conclusion that there is an evasion of tax of about ₹ 25 crores, whereas from the E-way bills generated, it is revealed that only Inward supply was to the tune of ₹ 133 crores out of which ₹ 108 crores goods were imported by the petitioner which was exempted and for which a bond was executed by the petitioner. The said bond as per the Foreign Trade Policy and the exemptions given, the period of export was to expire in November, 2019. It is contended that petitioner is a status holder as per Para 3.20 of the Foreign Trade Policy and he falls in the status category of One-Star Export House. At the premises of the factory, the stock was found and physical verification was only worth about ₹ 2 crores. There was thus a deficit of stock to the tune of ₹ 101 crores. In the charge-sheet itself, the report of fire made to the police and the fire brigade is also available which goes to show that fire took place in the factory premises of the petitioner. Petitioner has already furnished the bond with regard to import of ₹ 108 crores and in case the export is not made within eighteen months, he is liable to pay in accordance with bond executed by him. Petitioner has remained in custody for a period of more' than five months. No notice with regard to tax outstanding has ever been issued to the petitioner. The second bail was granted to the petitioner provided he furnishes a personal bond and directed not to leave the country without seeking prior permission of the trial court.

[Decided in favour of petitioner]

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.

Brief: Validity of dismissal of Writ petition by HC.

OUR COMMENTS: 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]

CUSTOMS

NOTIFICATION/ CIRCULAR

EXTENSION OF ANTI-DUMPING DUTY ON IMPORT OF ACETONE

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 04/2020-Customs (ADD) dated 10.02.2020** has extended the imposition of anti-dumping duty on import of acetone from Korea RP, Taiwan and Saudi Arabia upto 15th April 2020.

IMPLEMENTATION OF PGA ESANCHIT– PAPERLESS PROCESSING UNDER SWIFT-UPLOADING OF LICENSES/PERMITS/CERTIFICATES/OTHER AUTHORIZATIONS (LPCOS) BY PGAS

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 11/2020-Customs dated 10.02.2020** has issued circular on PGA e-SANCHIT. In order to resduce physical interface between Customs/regulatory agencies e-SANCHIT portal has been introduced to upload digitally signed Licenses/ Permits/ Certificates/ Other Authorisations (LPCO) by PGA's from 16.11.2018 where 47 PGA's were enabled in order to upload LPCO's on e- Sanchit.

Further, 3 more PGA's has been recently enabled and hence the beneficiaries would not be able to upload the previously issued LPCOs on eSANCHIT w.e.f 28.02.2020 and in order to facilitate beneficiaries, the PGAs are required to upload the LPCOs issued by them during the last 15 days from the stated cut-off date.

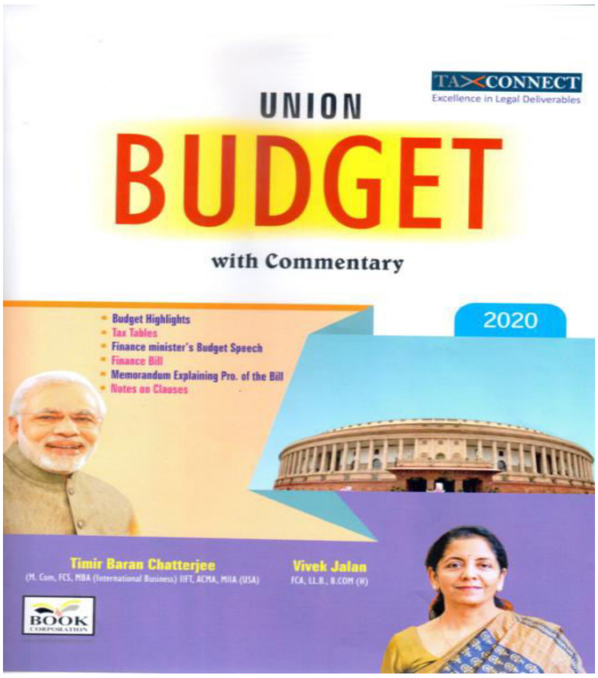
NOTIFIED POINT OF ENTRIES (POE'S) FOR SMOOTH FUNCTIONING OF TRADE AND TESTING OF IMPORTED FOOD PRODUCTS AT FSSAI NOTIFIED LABORATORIES

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Instruction No. 1/2020-Customs dated 12.02.2020** has stated that FSSAI has notified 150 Point of Entries (POE's) vide notification dated 9.10.2019 in order to facicilitate smooth tytrade and these POE's shall only be the Pont of Entry for imports to implement the same.

Further FSSAI has 183 National Accreditation Board for Testing and Calibration Laboratories (NABL's) and 18 referral laboratories for testing of food samples and it is instructed that the custom officials shall ensure that only these FSSAI notified labs are being utilised for analysis of samples of imported food items. Moreover, as far as possible, use of same lab repeatedly for analysis of imported food samples may be avoided to maintain the confidentiality of testing.

IN STANDS

UNION BUDGET WITH COMMENTARY 2020



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**

Authors:

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.B., B.Com (Hons.)

Published by:

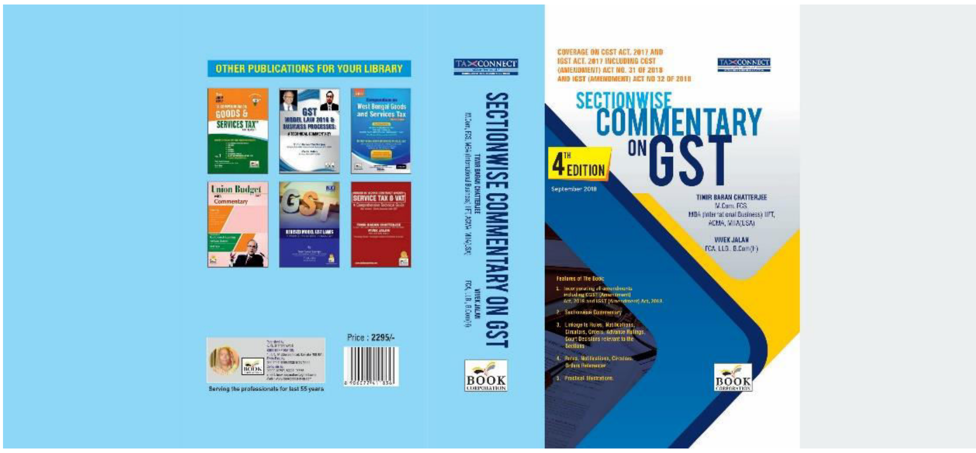
BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

In Association With

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 9831594980, 9331042424
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in

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**

Authors:

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.B., B.Com (Hons.)

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

In Association With

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 9831594980, 9331042424
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in