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,

According to the Budget 2020 proposals, if an individual opts for the new tax regime then his/her income will be taxed at the new lower income tax rates but he/she will have to forgo the most commonly availed deductions such as deduction u/s 80C for maximum of ₹ 1,50,000, Standard deduction of ₹ 50,000. If an individual earning is ₹15,00,000 is wondering which tax structure will be more beneficial, then he/she can figure out the same by calculating the total amount of deductions that he/she is claiming in a financial year shall be ₹2,50,000. If the total deduction claimed by you is less than ₹2,50,000 then you will be better off opting for the new tax regime. On the other hand, if the total deductions and tax exemptions claimed by you is equal to or more than ₹2,50,000 then you are better off continuing with the existing tax regime.

As per case law Cavinkare (P.) Ltd. v/s Commissioner of CST & Central Excise (Salem) where assessee was engaged in manufacture of dairy products, product flavoured milk would be classifiable under Heading No. 0404.

As per Central Board of Indirect Taxes and Customs vide ***circular no 587/CE/167/Pol/2019/11219-11269 dated 13.01.2020*** states that the all Zonal Chief Commissioner can block/unblock the credit availed under Rule 86(A)(1)(A) of the CGST Rules, 2017 i.e. against fake invoices or against invoices without receipts of goods and services or both. Each Principal Chief Commissioner should appoint an officer of the rank of Deputy Commissioner/A.C, as a nodal officer, assisted by few more officers who should undertake this activity will submit daily report as per format to Pr. DG, DGGI HQ, New Delhi.

Notification No. 14/2020- customs dated 14.02.2020 regarding exemption of duties of Customs against scrips issued under the 2% Additional ad hoc incentive for mobile phones.

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

TAX CALENDAR

Due date	Form	Description
24th 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 Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

NOTIFICATIONS/CASE LAW

MANNER OF MAKING PAN INOPERATIVE BY INCOME TAX DEPARTMENT

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***Notification No. 11/2020 - Dated: 13-2-2020 - IT*** PAN will be treated as inoperative if aadhar number is not furnished to IT Department till 31.03.2020. Manner of making PAN Inoperation has been introduced through Income Tax (5th Amendment) Rules, 2020.

[For details please consider the said notification]

MEANING OF UNAUTHORISED COLONY

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***Notification No. 12/2020 - Dated: 17-2-2020 - IT*** meaning of "Unauthorised Colony" has been substituted through Income Tax (6th Amendment) Rules, 2020.

[For details please consider the said notification]

PRINCIPAL COMMISSIONER OF INCOME TAX-2 V/S L & T LIMITED-2020 [SUPREME COURT]

Brief: Validity relating to reopening of assessment u/s 147 and serving notice u/s 148 on the ground of not disclosing material facts.

OUR COMMENTS: In the present case, Assessing Officer issued a notice in writing that:-

"(i) It was seen from the records that while computing the deduction u/s 80-IA, certain pass through components like Fuel adjustment Charges (FAC), electricity duty, wheeling charges, grid support charges etc. have not been considered for arriving at the market value of the electricity.

(ii) For the purpose of claiming deduction u/s 80-IA, excess profit from the generation of electricity has been shown as against '16% return on investment' fixed by the Ministry of Power.

(iii) Various expenses like interest, commission, brokerage and corporate overheads were not debited to the separate Profit & Loss A/c. Further, sales and administrative expenditure is not proportionate to the expenditure debited in consolidated P&L A/c to the profit of 80-IA units, which has resulted in excess deduction u/s 80-IA.

(iv) The assessee claimed deduction u/s 80-IA, 80HHB, 80HHBA, 80-HHC, 80HHE etc. However, exemption claimed u/s 80-IA was not reduced from other chapter VI-A deduction as per provisions contained in Section 80-IA.

(v) Deduction u/s 80-IA was wrongly claimed in respect of work on contract basis for various Govt. Agencies, which cannot be considered as infrastructure provider."

The notice of reopening the assessment is being served to the assessee after 4 years from the end of the relevant assessment year which was invalid. So, the Appellate Tribunal gave decision in favour of assessee. Then, Revenue Department appealed to the High Court in relation to the fact that "Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the notice issued u/s 148 was not valid on ground that AO has not demonstrated the failure of the assessee in disclosing the material fact?".

From the reasons gathered that there was no element of lack of true and full disclosure on the part of the assessee, which resulted into any income chargeable to tax escaping assessment. The reasons clearly reveal that the Assessing Officer was proceeding on the material which was already on record. In the absence of the statutory requirement of income chargeable to tax has been escaped assessment due to the failure on the part of the assessee to disclose truly and fully all material facts been satisfied, the Tribunal correctly held that the notice of reopening of assessment was invalid. No question of law arises. Hence, the appeal was dismissed.

Being not satisfied with the High Court order, assessing officer filed Special Leave Petition to Supreme Court. Supreme Court held that there was no reason to interfere in the matter. Hence, the special leave petition was dismissed.

[Decided in favour of the appellant]

CASE LAW

M/S. REFEX INDUSTRIES LIMITED, M/S. SHERISHA TECHNOLOGIES PVT. LTD. VERSUS THE ASSISTANT COMMISSIONER OF CGST & CENTRAL EXCISE, THE SUPERINTENDENT OF CENTRAL TAX, BANK MANAGAR, BANK MANAGAR, ICICI BANK -2020 [MADRAS HIGH COURT]

Brief: Whether the interest to be paid on the cash component or on the output tax liability?

OUR COMMENTS: In the given case, assessee (petitioner) has filed the return belatedly for the F.Y.2017-18 and Department issued a notice to the assessee to pay the interest on the output tax liability element. Department also issued notice to the bank seeking to recover the interest amount from the balances in the account of the petitioners. The petitioner objected that the interest shall be demanded only on the cash component payable by the assessee due to late payment of tax for the period of August, 2017 to March, 2018. Learned judges of the Supreme Court gave the judgment that proviso to section 50(1) of the IGST ACT, 2017 states that interest is to be paid on that portion of the tax that is paid by debiting the electronic cash ledger. Section 50 provides for interest on belated payment of tax, such levy is 'automatic' and is intended to compensate the revenue for the remittance of tax belatedly and beyond the time frames permitted under law. Where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprival, where the State has been deprived of the funds representing tax component till such time the return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprival cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In judge view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee. The argument that ITC is liable to be reversed if it is found to have been erroneously claimed. The availment and utilization of ITC are two separate events. Both are subject to the satisfaction of statutory conditions and it is always possible for an Officer to reverse the claim (of availment or utilization) if they are found untenable or not in line with the statutory prescription. Credit will be valid till such time it is invalidated. Learned counsels for the petitioners also draw attention to the decision of the ***Telengana High Court*** in the case of ***Megha Engineering and Infrastructures Ltd***. Therefore, judges cannot interpret Section 50 in the light of the proposed amendment. However, the amendment stands incorporated into the Statute and comes to the aid of the assessee.

[Decided in favour of petitioner]

FEMA

CIRCULAR/CASE LAW

EXIM BANK'S (GOI) HAS ENTERED INTO AN AGREEMENT WITH GOVERNMENT OF THE REPUBLIC OF SURINAME TO FINANCE THE EXPORT OF ELGIBLE GOODS AND SERVICES FROM INDIA UNDER LINE OF CREDIT OF USD 11.13 MILLION

OUR COMMENTS: The Central Board of Indirect Taxes and Customs ***vide Circular No. 21/2020 - A.P. (DIR Series) dated 20.02.2020*** has introduced Exim Bank's Government of India has entered into an agreement with the Government of the Republic of Suriname to finance the export of eligible goods and services from India. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 75% of the contract price shall be supplied by the seller from India, and the remaining 25% of goods and services may be procured by the seller for the purpose of the eligible contract from outside India. The agreement under Line of Credit is effective from January 27, 2020. Under the Line of Credit, the terminal utilization period is 60 months after the scheduled completion date of the project. Shipments of goods shall be declared in the Export Declaration Form as per instructions issued by the RBI.

[For further details refer the circular]

RATAN SINGH V/S STATE OF PUNJAB-1981 (10) TMI 174 [SUPREME COURT]

Brief: Whether the detention of detenu is allowed if the detention order is not submitted by the Jail Superintendent either to Central Government or to State Government or both?

OUR COMMENTS: In this case, the assessee is detained for which he wrote a letter to the Superintendent of Jail enclosing therewith two representations drafted on behalf of the petitioner, one of which was addressed to the Joint Secretary, Government of Punjab, and the other to the Secretary, Union Ministry of Finance. The Jail Superintendent was requested by the aforesaid letter that the representations be forwarded to the State Government and the Central Government after obtaining the signatures of the detenu thereon. The contention of the petitioner is that in spite of the long passage of time, the representation to the Central Government has not so far been considered by it, rendering his detention illegal. The representations to the State Government and the Central Government were made by the detenu simultaneously through the Jail Superintendent. The Superintendent should either have forwarded the representations separately to the Governments concerned or else he should have forwarded them to the State Government with a request for the onward transmission of the other representation to the Central Government. The detenu has been unaccountably deprived of a valuable right to defend and assert his fundamental right to personal liberty. May be that the detenu is a smuggler whose tribe deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning in our democratic set-up. The failure on the part either of the Jail Superintendent or the State Government to forward the detenu's representation to the Central Government has deprived the detenu of the valuable right to have his detention revoked by that Government. The continued detention of the detenu must therefore be held illegal and the detenu set free. In our case, the representation to the Central Government was not forwarded to it at all. Order was passed that the detenu should be released. Appeal allowed.

[Decided in favour of the appellant]

CUSTOMS

NOTIFICATION/ CIRCULAR/CASE LAW

DESIGNATED SEA PORTS / AIR PORTS IS ALREADY UNDER 24X7 OPERATION WHICH SHALL CONTINUE TO FUNCTION TILL THE END OF MAY, 2020

<u>OUR COMMENTS:</u> The Central Board of Indirect Taxes and Customs **vide Circular No. 02/2020-Customs dated 20.02.2020** has introduced 24 x 7 clearance has been provided at designated sea ports and airports across the country till the end of May, 2020 due to shutdown in china on account of Coronavirus outbreak. There is an apprehension of disruption in supply of raw materials/ inputs to our industrial units which were dependent on these raw materials.

[For further details please refer the notification]

REVISED EXCHANGE RATE CONVERSION OF FOREIGN CURRENCIES INTO INDIAN CURRENCIES AND VICE VERSA

<u>OUR COMMENTS:</u> The Central Board of Indirect Taxes and Customs **vide Notification No. 15/2020-Customs dated 20.02.2020** has been revised rate of exchange rate of conversion of foreign currencies into Indian currencies and vice versa w.e.f 21.02.2020 relating to imported and export goods.

[For further details please refer the notification]

UNION OF INDIA & ORS V/S M/S ASSOCIATED CONTAINER TERMINAL LIMITED-2020 [SUPREME COURT]

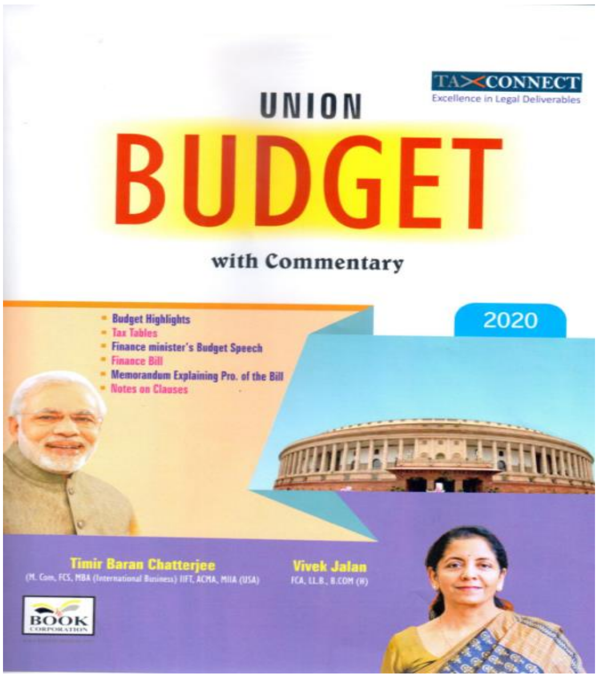
<u>BREIF:</u> Whether the calculation and recovery of the custom duty would be assessed as on the date of the deemed removal of goods from the warehouse in terms of Section 61 as interpreted by this Court in Kesoram or on the date of sale for the reason that the importer has failed to seek clearance of the goods imported?

<u>OUR COMMENTS:</u> In the given case, as per the appellants, the right to recover customs duty is superior to the right to recover warehouse charges and that sale was conducted improper removal of goods from warehouse and not by paying warehousing and rental charges. If the contention of the Revenue is to be accepted, the custom duty will be much more than the price received in tender sale. However, if the date of calculation of custom duty is treated to be the date of sale, the demand amount would be untenable. The respondent was called upon to clear the goods after the expiry of extended period failing which payment of full amount of duty will be payable together with all rent, penalties, interest and other charges. ***Kesoram rayon v/s collector of customs, Calcutta [1996 (8) TMI 109 - Supreme Court]*** is a case where the importer claimed levy of custom duty which remained in bonded warehouse beyond the permitted period claiming that the duty as is applicable on the date the goods were sought to be removed for home consumption, will be chargeable. This Court found that the goods can be kept in a warehouse in terms of the period for which the goods remained in the warehouse and, therefore, Section 68 and Section 15(1)(b) apply only when the goods were cleared from the warehouse within the permitted period or with permitted extension and not beyond the permitted period or permitted extension. In the present case is not a case of levy of custom duty on the importer. The importer has not sought the release of goods within the permitted period of warehouse. Therefore, the judgment in Kesoram will not be applicable in respect of the goods to be auctioned on account of failure to seek the release of imported goods by the importer though after the permission from the proper officer. In view of the Circular issued by the Central Board of Excise & Customs, the custom duty is to be calculated on the sale price and not on the duty as is payable on the date of deemed expiration of permitted period of warehouse. Such Circular of the Board is binding on the Revenue. Therefore, the custom duty has to be paid on the basis of sale proceeds realised from the sale of the goods kept in a warehouse and not on the basis of the custom duty payable at the time of filing the Bill of Entry or on the date of expiry of permitted period of warehouse. Therefore, the present appeal is disposed of.

[Decided in favour of the assessee]

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:

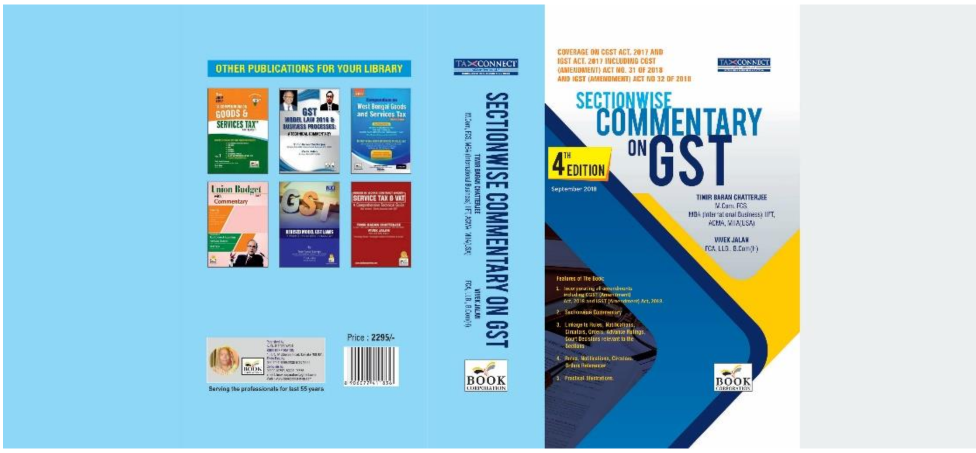
BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

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