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The Bengal Chamber of Commerce & Industry

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BCC&i
THE BENGAL CHAMBER

11 March 2020

Dear Sir / Madam,

The Indirect Taxes Committee of The Bengal Chamber of Commerce and Industry is organizing a Half-Day Seminar on 'WB Settlement of Disputes & GST 2.0 : Integration of GST E-Invoice, E-Way Bill, Returns, Data Analytics & Artificial Intelligence' from 2:30 p.m. onwards on 25th March, 2020 (Wednesday) in the Chamber premises.

The Government of West Bengal has recently announced the amnesty scheme for settlement of old disputes with regard to VAT, Entry Tax, CST etc. The Settlement of Dispute Scheme will help tax payers to reduce their past liabilities and make them free from litigation and will also facilitate in carrying out business under GST regime. It's life period is also very limited i.e. 31st March, 2020.

Eminent Speakers will address the gathering on settlement of outstanding Sales Tax / VAT / Entry Tax cases and also about full waiver of interest, late fee and penalty related to delayed submission of returns. It would also include the latest developments on Integration GST of E-Invoice and other issues under GST.

The Seminar would cover the followings :

- WB Settlement of Dispute Scheme
  - Threadbare Discussions on Scheme
  - Cases which can move under WB-SOD & Cases which Cannot
  - How to Apply under WB-SOD
- Integration of GST E-Invoices / GST E Waybill & GST Compliances
- Practical Demo on Generation of E-Invoices
- GST Data Analytics & Artificial Intelligence

Eminent Speakers include :

- Mr. T B Chatterjee, Chairperson - Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry & Senior Partner & Mentor, Tax Connect Advisory Services LLP
- Mr. Vivek Jalan, Co-Chairperson - Indirect Taxes Committee, The Bengal Chamber of Commerce and Industry & Partner, Tax Connect Advisory Services LLP
- SGST Department

We do hope that the programme will be relevant for you. You may please also nominate suitable representatives to attend the programme. For the purposes of registration, please email the enclosed Ready Reply Form duly filled in, or get in touch with Ms. Sarbani Sett (Tel: 91-33-2230 3711 / 3733 - Extn. 215; Cell: +91-9831430781; Email: sarbani@bengalchamber.com).

To defray costs of organizing the programme, we have affixed a delegate of Rs.3,000/- + 18% GST / per delegate.

Looking forward to receiving your kind confirmation.

Yours faithfully,

Subhodip Ghosh

Subhodip Ghosh
Director General

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EDITORIAL

Friends,

The Union Cabinet on 13.03.2020 approved the **Remission of Duties or Taxes on Export Products(RoDTEP)** a scheme for exporters to reimburse taxes and duties paid by them such as value added tax, coal cess, mandi tax, electricity duties and fuel used for transportation, which are not getting exempted or refunded under any other existing mechanism.

The Central Government may consider effectively halving the tax rate on dividend income for individuals in the highest tax bracket, two people familiar with the development said, likely boosting stocks that are facing a rout globally. The government is looking to tweak the current regulations to bring down the tax on dividends to about 20% from up to 43% for Indian individual investors. The government may offer the concession by offering a flat 20% tax on dividend income. After a change in the budget, dividend income is now taxable up to 43% in the hands of the recipient from April this year.

The Union government is looking to raise a significant amount of revenue through its Vivaad Se Vishwas scheme, announced in the Budget. Union Finance Minister Nirmala Sitharaman has said the scheme will help people save time and money spent on such cases. There are over 400,000 direct tax cases with about Rs 9.3 trillion locked at different levels.

The Goods and Services Tax (GST) Council is likely to consider a proposal to increase GST on mobile phones to 18% in its next meeting to be held on March 14 to correct the inverted duty structure being faced by the industry, said officials aware of the development. At present, mobile phones attract a 12% GST rate, even as several parts that go into making mobile phones fall under the 18% GST rate bracket, creating a case where the duty on inputs is higher than that on finished goods. This is leading to an inverted duty structure.

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
15th March, 2020	Form 24G	Due date for furnishing of Form 24G by an office of the Government where TDS for the month of February 2020 has been paid without the production of a challan
15th March, 2020	Form 16B	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of January 2020
15th March, 2020	Form 16C	Due date for issue of TDS Certificate for tax deducted under Section 194-IB in the month of January 2020.
15th March, 2020	Challan 280	Fourth instalment of advance tax for the assessment year 2020-21. Due date for payment of whole amount of advance tax in respect of assessment year 2020-21 for assessee covered under presumptive scheme of section 44AD/ 44ADA.
20th March, 2020	GSTR-3B	Summary Return of outward and inward supplies for the month of February 2020.
20th March, 2020	GSTR-5	Return for Non-resident taxable person for the month of February 2020.
20th March, 2020	GSTR-5A	Details of supplies for the month of February, 2020 of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India.

INCOME TAX

NOTIFICATIONS/CASE LAW

CLAUSE INSERTED IN RULE 17C(VA) OF THE INCOME TAX RULES, 1962

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***vide Notification No. 15/2020 - Dated: 05-03-2020 - IT*** has inserted clause (va) in Rule 17C for investment made by a person authorised u/s 4 of the Payment and Settlement Systems Act, 2007 in the equity share and debentures or bonds of a company: -

a) which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the Reserve Bank of India for this purpose; and

b) in which at least fifty-one per cent of equity shares are held by National Payments Corporation of India.

[For details please consider the said notification]

CENTRAL GOVERNMENT HAS NOTIFIED SECURITIES LISTED ON A RECOGNISED STOCK EXCHANGE LOCATED IN ANY IFSC U/S 47(VIIAB)(D) OF INCOME TAX ACT, 1961

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, ***vide Notification No. 16/2020 - Dated: 05-03-2020 - IT*** has notified certain securities listed on a recognized stock exchange located in any IFSC (International Financial Service Centre) under section 47(viiab)(d) of Income Tax Act, 1961 which shall be effective from 01.04.2020.

[For details please consider the said notification]

JAI BHAGWAN OIL & FLOUR MILLS V/S UNION OF INDIA-2009 [SUPREME COURT]

Brief: Allowance of transport subsidy in case of transport of raw materials and finished goods to promote the growth of selected areas of industrial units.

OUR COMMENTS: In the present case, the assessee was manufacturing oil cake and mustard oil by crushing mustard seeds and engaged in transporting it. State Government declared the Transport Subsidy Scheme to promote the growth of selected industrial areas and Central Government issued a clarification stating that the transport subsidy under the said scheme would not be applicable in regard to oil cake as it was only a by-product. The High Court held that in the absence of material facts, it will not be possible to decide whether 'oil cake' was a 'finished goods' for the purpose of the Scheme, or merely the residuary waste generated as a by-product while producing mustard oil as the finished goods. The object of the Transport Subsidy Scheme is not augmentation of revenue, by levy and collection of tax or duty. The scheme itself specifically defines 'finished goods' as goods actually produced by an industrial unit in accordance with the manufacturing programme as approved by the Central Government and/or the Government of the State where the industrial unit is located. , the High Court denied the benefit on the ground that the appellant had failed to place relevant material to establish the process/technology of manufacture, the composition and product name, and purpose, use and marketability of the oil cake, so as to recognize it as a 'finished goods'. The true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture. We may also refer to the decision in ***Devi Das Gopal Krishnan v. State of Punjab [1967 (3) SCR 557]***, where this Court negatived the contention that when oil is extracted from oil seeds, oil was produced and not manufactured. This Court held that 'when oil is produced out of the seeds, the process certainly transforms raw material into a different article for use". What is stated about oil produced from oil seeds, will apply equally to the other product of the manufacturing process, namely oil cake. Oil cake is not a waste to be thrown away, but a valuable product with a distinct name, character, use and marketability. There can thus be no doubt that the oil cake was a finished goods eligible for transport subsidy, until it was specifically excluded by the central government. Hence, the appellant was allowed the Transport Subsidy.

[Decided in favour of the assessee]

GST: IGST/CGST/SGST

NOTICE/CASE LAW

DECLARATION OF GSTIN IN IMPORT DOCUMENTS IS MANDATORY

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notice No. 06/2020 dated 18.02.2020** has noticed in certain cases that the importer did not declare their GSTIN in the Bill of Entry despite being registered under the provisions of GST Laws. It has been decided that the declaration of GSTIN shall be mandatory in import documents for the importers who are registered as GST taxpayers.

[For details please consider the said public notice]

M/S COMMERCIAL STEEL COMPANY V/S THE ASSISTANT COMMISSIONER OF STATE TAX [TELANGANA HIGH COURT]

Brief: In the case of inter-state supply when IGST is already paid, the goods cannot be treated as having escaped tax liability and fresh tax and/or penalty cannot be imposed on mere presumption of possibility of a local sale.

OUR COMMENTS: In the present case, there was a challenge to the order of detention of the vehicle and the consignment carried thereon issued for the reason 'wrong destination'. Revenue presumed as local sale as there was no reason assigned by the transporter for taking the longer route and avoiding the normal route and collection of tax and penalty under threat of detention. The High Court held that though it is stated that tax and penalty were levied and collected because it was presumed that there was possibility of a local sale, a mere possibility cannot clothe the respondent to take the impugned action. When the vehicle is being driven from Karnataka by a local driver of Karnataka it is perfectly possible for the driver to lose his way on account of being unfamiliar with the roads in the city of Hyderabad. The fact that the vehicle was not found at the normal route does not automatically lead to any presumption that there was an intention on the part of the petitioner to sell the goods at the local market evading the CGST and SGST and in the case of inter-state supply when the IGST was already paid, the goods cannot be treated as having escaped tax and fresh tax and penalty cannot be imposed on petitioner. It is settled law that no tax shall be levied or collected except by authority of law as per Article 226 of the Constitution of India. The impugned action of the respondents in collecting an amount from the petitioner towards tax and penalty under the CGST and SGST Act, 2017 under threat of detention of the vehicle carrying the said goods for an absurd reason of 'wrong destination' when all the proper documents evidencing that it was an inter-State sale transaction is arbitrary, violative of Articles of the Constitution of India. The respondent is directed to refund the same with interest at the rate of 6% per annum. The Writ Petition is allowed with cost on respondent.

[Decided in favour of the petitioner]

NOTIFICATION/CASE LAW

AMENDMENT IN MANNER OF PAYMENT AND RECEIPT UNDER FEMA REGULATIONS,2020

OUR COMMENTS: The Reserve Bank of India **vide Notification No. 14(R)(2)/2020-RB dated 04.03.2020** has substituted the Regulation 3(1)(A), 3(1)(A)(i)(a), 5(1)(A) and 5(1)(A)(i)(a) under Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020.

[For details please consider the said notification]

MUKTAR MINERALS PVT. LTD. VERSUS SPECIAL DIRECTOR OF ENFORCEMENT, ENFORCEMENT DIRECTORATE, MUMBAI & ANR. -2019 [BOMBAY HIGH COURT]

Brief: Whether the petitioner can avail the alternate remedy under the statue?

OUR COMMENTS: In the present case, after the show cause notice was served upon the Petitioners, the Petitioners chose to file reply through their Chartered Accountant. Neither in the reply nor at any stage of the proceedings before the impugned order came to be made, the Petitioners objected to taking into consideration the statements of the buyers on the ground that the same were not tested in the cross examination. There was no request made for examination of such buyers in the presence of the Petitioners or their legal representatives and thereafter for opportunity to cross examination of such buyers. The position in the case of ***Lalit Kumar Modi (supra)*** was quite different. In the said case, repeated requests were made in the cross examination but the same were turned down. This is the distinguishing feature in the present case or rather this is the distinguishing feature in the case of Lalit Kumar Modi (supra). In any case, all the contentions including the contention with regard to the alleged breach of principles of natural justice can always be raised before the Appellate Authority. Accordingly, it uphold the preliminary objection raised and dismiss the present petition. However, it is open to the Petitioners to avail alternate remedy available under the statute. Accordingly, it is clear that none of the observations in this order should be used to foreclose any contentions which any of the parties may have, in case the Petitioners, choose to avail of an alternate remedy available under the statute. Accordingly, this petition is dismissed with liberty as aforesaid. There shall be no order as to costs. Learned Senior Advocate appearing for the Petitioners prays that the Respondents be restrained from taking any coercive steps for at least four weeks within which the Petitioners will institute the appeal. Respondents states that the objections with regard to the limitation for filing of appeal may be kept open. Respondents are directed to refrain from taking any coercive steps to execute the impugned order for a period of four weeks from today. It is clear that such order is not made on the basis of merits but only with a view to afford some reasonable opportunity to the Petitioners to institute an appeal and seek for interim order therein. Accordingly, if any application for interim order is made before the Appellate Authority, the same will be considered on its own merits and in accordance with law.

[Decided in favour of the appellant]

CUSTOMS

NOTIFICATION/CASE LAW

IMPOSITION OF PROVISIONAL ANTI-DUMPING DUTY FOR IMPORTS OF CHLORINATED POLYVINYL CHLORIDE (CPVC) RESIN TO CHINA PR AND KOREA PR

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 05/2020-Customs dated 07.03.2020** has imposed provisional anti-dumping duty on imports of chlorinated polyvinyl chloride (CPVC) resin "whether or not further processed into compound" originating in or exported from China PR and Korea PR as published in the Official Gazette.

[For further details please refer the notification]

AMENDMENT IN EXCHANGE RATE OF FOREIGN CURRENCY

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 21/2020-Customs dated 09.03.2020** has amended the rate of exchange of foreign currency relating to import and export of goods.

[For further details please refer the notification]

KOTHARI METALS LIMITED VERSUS UNION OF INDIA & ORS.-2019 [SUPREME COURT]

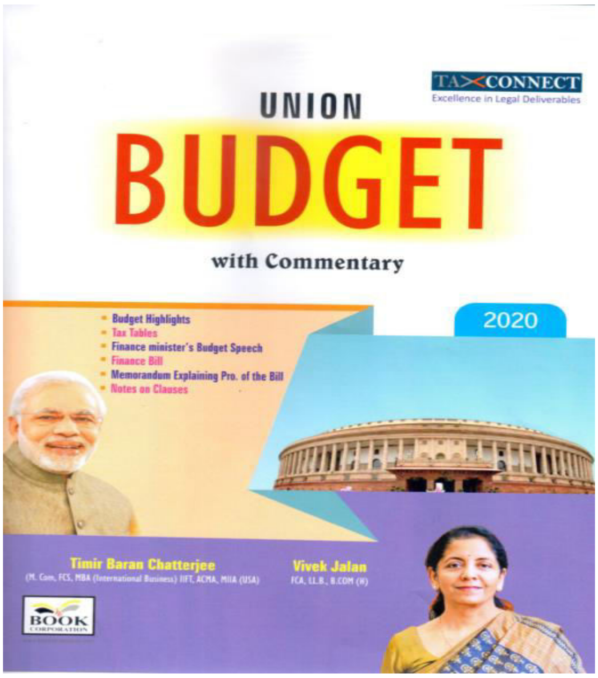
BREIF: Competence of concerned authority to proceed in the matter in the context of Article to the Treaty between the Republic of India and the Association of South East Asia Countries (ASEAN) is allowed.

OUR COMMENTS: In the given case, The appellant by way of writ petition challenged the show cause-cum-demand notices issued by the Officers of Customs under Section 28 of the Customs Act, 1962 concerning Mumbai, Delhi and other ports. As regards appeal by appellant, the notices pertain to more than one port. The show cause notice issued in respect of imports concerning Delhi port has since been dropped by the Department. However, the show cause notice regarding Mumbai and other ports against the said appellant still continue. The appellant had challenged the show cause notice not only on merits but had raised foundational issue of the competence of the concerned authority to proceed in the matter in the context of Article to the Treaty between the Republic of India and the Association of South East Asia Countries (ASEAN). The High Court took notice of that plea in paragraph 6 of the impugned judgment and yet proceeded to dispose of the writ petition on the ground that the appellant could invoke efficacious alternative remedy. The issue raised by the appellant regarding the efficacy of Article to the Treaty cannot be adjudicated by the competent authority. That issue needs to be addressed by the High Court in the Writ Petition filed by the concerned appellant. In this view of the matter, we set aside the impugned judgment and order and relegate the parties before the High Court by restoring the concerned writ petition to their original number, to be decided on their own merits in accordance with law. All questions are left open. The appeal and pending application are accordingly disposed of.

[Decided in favour of the petitioner]

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**

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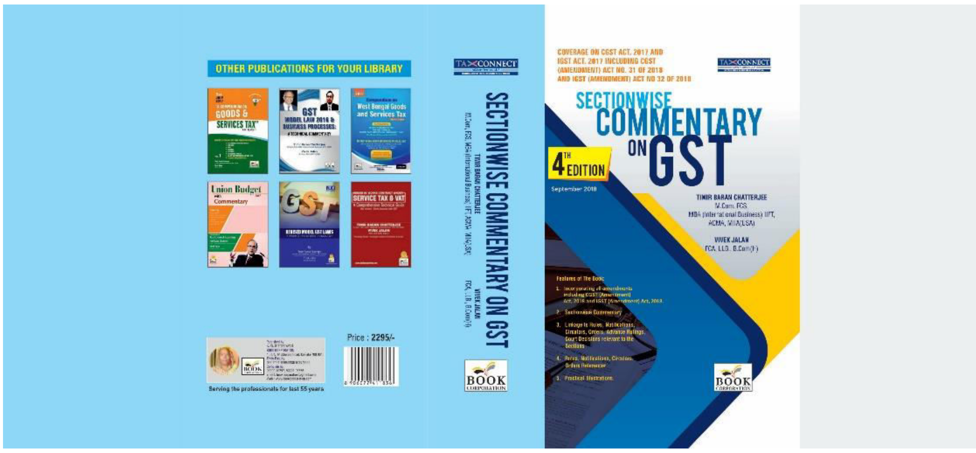
IN STANDS

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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