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The Bengal Chamber of Commerce & Industry

INCOME TAX

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EDITORIAL

Friends,

Department for Promotion of Industry and Internal Trade (DPIIT), under the Ministry of Commerce and Industry has set up a control room to monitor in real time the status of transportation and delivery of goods, manufacturing, delivery of essential commodities to common man and the difficulties being faced by various stakeholders during the lockdown period from 25.3.2020 to 14.4.2020 from 8 am to 6 pm daily.

The Cabinet Committee on Economic Affairs, chaired by Prime Minister Shri Narendra Modi has given its approval for continuation of the process of recapitalization of Regional Rural Banks (RRBs) by providing minimum regulatory capital to RRBs for another year beyond 2019-20, that is, up to 2020-21 for those RRBs which are unable to maintain minimum Capital to Risk weighted Assets Ratio (CRAR) of 9%, as per the regulatory norms prescribed by the Reserve Bank of India. The CCEA also approved utilization of ₹ 670 crore as central government share for the scheme of Recapitalization of RRBs (i.e. 50% of the total recapitalization support of ₹ 1340 crore), subject to the condition that the release of Central Government's share will be contingent upon the release of the proportionate share by the sponsor banks.

As per announcement of Maharashtra Budget announced on 6th March 2020, the one per cent concession in stamp duty will start from 1st April 2020.

There is a fake news circulating in some section of media that the Financial Year has been extended. A notification issued by the Government of India on 30th March 2020 with respect to some other amendments done in the Indian Stamp Act is being misquoted. There is no extension of the Financial Year. The Finance ministry said that a notification has been issued by the Department of Revenue, Ministry of Finance on 30th March, 2020 which relates to certain amendments to the Indian Stamp Act.

In this exceptional circumstance during lockdown due to COVID-19 outbreak, lot of information is flowing from different quarters. In this period of everyday development, we will be issuing our bulletin twice a week.

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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INCOME TAX

ORDER/CASE LAW

EXTENSION OF DUE DATE OF FILING OF ITR FOR A.Y.2019-20 IN UNION TERRITORY OF JAMMU AND KASHMIR AND UNION TERRITORY OF LADAKH

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **vide Order No.225/306/2019-ITA-II Dated 23.03.2020** has extended the due date of filing of ITRs for all categories of income-tax assessee till 31st March 2020 for A.Y.2019-20 in Union Territory of Jammu And Kashmir and Union Territory of Ladakh.

[For details please consider the said order]

SHRI KEWALCHAND KOTHARI VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1 (1)-2020 (3) TMI 1175 [MADRAS HIGH COURT]

Brief: Non-payment of tax liability as demanded on the date of filing of return shall not be treated as wilful default by the petitioner and offence u/s 276 (c) (2) of the Income Tax Act, 1961 cannot be invoked.

OUR COMMENTS: In the present case, the petitioner has challenged the writ petition in the High Court as the respondent filed private compliant for the offences u/s 276C(2) of the Income Tax Act, 1961 alleging that there was willful failure on the part of the petitioner for non-payment of huge tax liability and the tax liability was not paid at the time of filing the return of income with an intention of evading payment of tax. The Madras High Court held that on perusal of the documents, it is seen that the last date for filing the returns for the financial year 2012-2013 was on or before due date. The respondent did not hand over the book of accounts seized from the petitioner till due date. Therefore, there is three months delay in payment of income tax and the petitioner filed return of income after 3 months from due date. Thereafter, it was returned in March 2018 directing the petitioner to pay a sum of ₹ 4,08,04,345/-. Thereafter, the petitioner paid tax as demanded by the respondent for which the respondent also issued a letter acknowledging the receipt of tax. Provision to punish the accused that there must be wilful attempt to evade payment of tax then he must be in possession of the book with false entries and the person should have made false entries in the book of accounts and omitting any entry in the statement of accounts. The petitioner voluntarily disclosed the undisclosed income to the respondent on the inspection conducted u/s 132 on 18.12.2012. Therefore, there is no intention from the petitioner for willful evading of payment of tax. Admittedly, the respondent on the inspection had seized the relevant book of accounts and as such the petitioner could not able to file the return of income on or before due date. Therefore, the petitioner had no wilful intention to evade tax as alleged by the respondent. Petitioner had paid the entire tax amount as demanded by the petitioner and the respondent had also acknowledged the same by the acknowledgment in March 2018. Therefore, the offence under Section 276 (c) (2) of the Income Tax Act is not at all attracted as against the petitioner herein and the entire criminal proceedings pending against the petitioner is nothing but clear abuse of process of law. As such it cannot be sustained as against the petitioner and it is liable to be quashed - criminal original petition is allowed.

[Decided in favour of the appellant]

GST: IGST/CGST/SGST

CIRCULAR/CASE LAW

CLARIFICATION ON REFUND RELATED ISSUES

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 135/05/2020-CGST dated 31.03.2020** has clarified issues in relation to refund.

[For details please consider the said circular]

THERMAX LIMITED V/S UNION OF INDIA-2020 [GUJARAT HIGH COURT]

Brief: Petitioner is entitled for refund of amount of duty paid in cash instead of credit to CENVAT account.

OUR COMMENTS: In the present case, the petitioner Company engaged in the manufacture of Boilers, Heaters, Heat Pumps and Pollution control equipment for industrial use and all these equipments are capital goods falling under Chapter 84 of the Central Excise Tariff Act, 1985. The petitioner availed credit on the inputs, capital goods and input services used in the manufacturing of finished goods which are chargeable to excise duty. It is the case of the petitioner that one of the customers had placed order on the petitioner for supply of Boiler at Saudi Arabia. Therefore, with a view to carry out complete assemble, the petitioner signed a lease agreement with Special Economic Zone and the petitioner therefore temporarily given Survey for assembling the boilers. The petitioner exported the boilers on payment of applicable excise duty. The petitioner filed a rebate claim under Rule 18 of the Central Excise Rules, 2002. Thereafter, after a period of three months a show cause notice was issued proposing to deny rebate claimed by the petitioner. The petition was rejected by the respondent and thereafter assessee filed writ petition under Article 226 of the Constitution of India and seeking direction to the Authority to pay the refund in cash instead of crediting the same in CENVAT Account which has become redundant after advent of GST Regime. The High Court held that the duty which was paid by the petitioner was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the CER, 2002. However, the duty which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the CGST Act, every claim for the refund filed by any person before on or after the appointed day for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. In view of this clear provision, the respondent-RA ought to have directed the sanctioning authority to refund the amount of the duty refundable to the petitioner in cash instead of credit in CENVAT Account. The impugned order is partly modified to the extent that instead of crediting the duty in the CENVAT account of the petitioner and the sanctioning Authority is directed to refund the amount in cash to the petitioner.

[Decided in favour of the petitioner]

FEMA

PRESS RELEASE/CASE LAW

HIGHLIGHTS OF ISSUANCE OF SEVENTH BI-MONTHLY MONETARY POLICY STATEMENT BY THE RBI ON 27.03.2020

OUR COMMENTS: The Reserve Bank of India **vide Press Release No. 2019-2020/2129 Dated 27.03.2020** has issued a Seventh Bi-monthly Monetary Policy Statement (2019-20). In the Statement Monetary Policy Committee (MPC) has decided on the basis of an assessment of the current and evolving macroeconomic situation that:

• to reduce the policy repo rate under the liquidity adjustment facility (LAF) by 75 basis points to 4.40 per cent from 5.15 per cent with immediate effect,

• accordingly, the marginal standing facility (MSF) rate and the Bank Rate stand reduced to 4.65 per cent from 5.40 per cent,

• consequent upon the widening of the LAF corridor as detailed in the accompanying Statement on Developmental and Regulatory Polices, the reverse repo rate under the LAF stands reduced by 90 basis points to 4.0 per cent,

• The MPC also decided to continue with the accommodative stance as long as it is necessary to revive growth and mitigate the impact of coronavirus (COVID-19) on the economy, while ensuring that inflation remains within the target.

These decisions are in consonance with the objective of achieving the medium-term target for consumer price index (CPI) inflation of 4 per cent within a band of +/- 2 per cent, while supporting growth.

[For further details please refer the press release]

MS. JENNIFER THERESA MARGARITA FIGUEREDO AND OTHERS. VERSUS UNION OF INDIA AND ANOTHER -2020 [BOMBAY HIGH COURT]

Brief: Petitioners had alternate remedy available under FEMA. Hence, the petition is allowed.

OUR COMMENTS: In the present case, the challenge in this Petition is made by the Assistant Director of Enforcement (Adjudicating Authority) under the provisions of the Foreign Exchange Management Act, 1999 (FEMA). The Petitioners have a remedy of instituting an appeal to the Special Director (Appeals). It was held by the High Court that it is the case of the Petitioners that the impugned order was served upon them by pasting on the premises sometime. Therefore, if any issue of limitation arises, we are sure that the Appellate Authority will give due regard to all these circumstances. However, since the Petitioners haves alternate and efficacious remedy available under the FEMA itself, we are not inclined to entertain this Writ Petition. Accordingly, this Petition is disposed of by granting liberty to the Petitioners to institute an appeal against the impugned order, in case the Petitioners so choose. All contentions of the Petitioners are expressly kept open, since we have not examined the merits of the matter.

[Decided in favour of the petitioner]

CUSTOMS

NOTIFICATIONS/CASE LAW

AMENDMENT IN FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, POPPY SEEDS, ARECA NUT, GOLD AND SILVER

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Notification No. 36/2020-Customs dated 31.03.2020** has amended fixation of tariff value of edible oils, brass scrap, poppy seeds, areca nut, gold and silver.

[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. 35/2020-Customs dated 30.03.2020** has amended the rate of exchange of foreign currency relating to import and export of goods. It is applicable from 21st March 2020.

[For further details please refer the notification]

DRY NUT ENTERPRISES. VERSUS COMMISSIONER OF CUSTOMS, IMPORT-2020 [BOMBAY HIGH COURT]

BREIF: Inaction of the Respondent authority of not releasing the imported areca nuts from SriLanka was not in favour of the Respondent. Hence, Petition was allowed.

OUR COMMENTS: In the given case, the petitioner is aggrieved by the inaction of the respondent authority of not releasing the goods which have been imported by it under four consignments. The Petitioner imported four consignments of Areca Nuts from Sri Lanka within the period from 1 March 2003 to 18 March 2003. According to the Petitioner, the goods were covered by the benefits conferred by the Indo-Sri Lanka Free Trade Agreement. An investigation was launched by the Directorate of Revenue Intelligence in respect of the said goods on an allegation that the goods though imported claiming the benefit of the Indo-Sri Lanka Treaty, they were not originating from Sri Lanka. A show-cause-notice was issued. After the Petitioner submitted its reply, the respondent dropped the proceedings issued pursuant to the show-cause-notice. The Petitioner thereafter made various representations to the Respondent to release the goods as the proceedings were dropped, since there was no response the petitioner has filed the present petition. It was held by the High Court that there is no dispute that in the normal circumstances. The petitioner's goods will be entitled to be cleared under section 47 of the Act. What is being put forth by the respondent is pendency of appeal. We have not been shown any statutory provision that pendency of appeal by itself would amount to a stay or mere pendency of appeal without even moving any application for stay would mean that the authorities need not to take any steps under section 47 of the Act. In the present case, the Respondent has not even filed an application for stay in the pending appeal. The fact that the assertion of the Petitioner that the Respondent has not filed any application for stay was noted by us in the order passed. Yet, no application for stay has been moved by the Respondent. The Petitioner is entitled to direction to the Respondent to take steps as per section 47 of the Act for clearance of the goods. The Respondent are directed to take necessary steps as envisaged under section 47 of the Act for clearance of the goods in question within a period of six weeks. Hence, petition is allowed.

[Decided in favour of the petitioner]

DGFT

PRESS RELEASE

HIGHLIGHTS OF FOREIGN TRADE POLICY EXTENSION FOR 1 YEAR

OUR COMMENTS: The Ministry of Commerce and Industry **vide Press Release dated 31.03.2020** has announced changes in the Foreign Trade Policy by the Government of India. The present Policy which came into force on 1st April 2015 is for 5 years and has validity upto 31st March 2020. In view of the unprecedented current situation arising out of the pandemic Novel COVID-19, the Govt. has decided to continue relief under various export promotion schemes by granting extension of the existing Foreign Trade Policy by another one year i.e. up to 31st March 2021. Several other relief measures have also been announced to support trade and industry. Salient points of the changes made in the FTP are as follows:

- To provide continuity in the policy regime, the current FTP, valid till 31.03.2020 has been extended till 31.03.2021. Similar extension is made in the related procedures, by extending validity of Hand Book of Procedures.

- Benefit under all the Export Promotion Schemes (except SEIS) and other schemes, available as on date, will continue to be available for another 12 months. Decision on continuation of SEIS will be taken and notified subsequently.

- Similarly, validity period of the Status Holder Certificates is also extended. This will enable the Status Holders to continue to avail the specified facilities/benefits.

- Exemption from payment of IGST and Compensation Cess on the imports made under Advance/EPCG Authorisations and by EOUs etc. has been extended up to 31.03.2021.

- Last date for applying for various duty credit scrips and other authorisations has been extended.

- The scheme for providing "Transport Marketing Assistance on the specified Agricultural Products" is further extended for one year.

- Wherever the period to make export is expiring between 01.02.2020 and 31.07.2020 under various authorizations, automatic extension in the export obligation period is allowed for another six months from the date of expiry, without payment of any composition fee.

- Timelines for imposing late cuts, on the applications which are filed after the prescribed dates, have been relaxed.

- Validity period of Letter of Permission/ Letter of Intent as granted to EOUs, units in STPs/EHTPs/BTPs is further extended up to 31.12.2020.

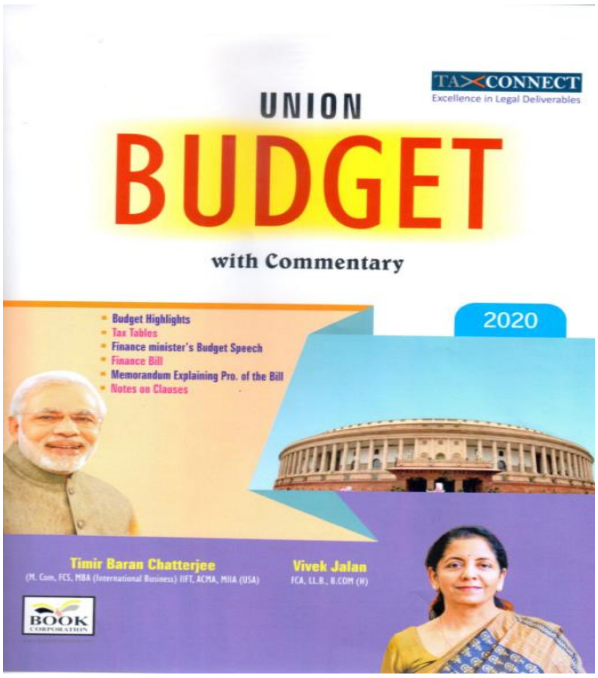
- Validity period for making imports under various duty free import authorizations (AA/DFIA/EPCG) expiring between 01.02.2020 and 31.07.2020, has been allowed automatic extension for another six months from the date of expiry, without requirement of obtaining such endorsement on these authorizations.

- Last date of filing applications for refund of TED/Drawback, Transport and Marketing Assistance has been extended.

- Extension in time has been allowed for filing various Reports/Returns etc. under various provisions of the FTP.

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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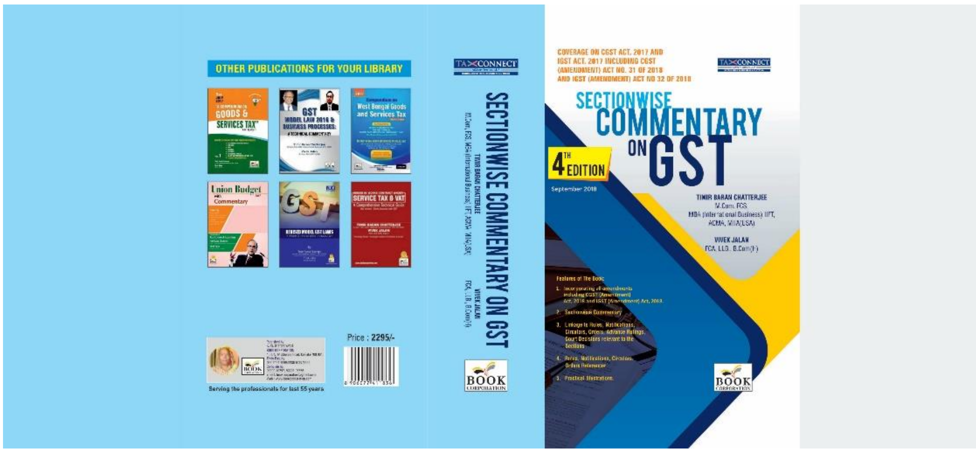
IN STANDS

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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