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EDITORIAL

Friends,

Recently the CBDT & CBIC has released two important communication and press release on refunds -

1. All refunds in Income Tax upto Rs. 5 Lakhs will be immediately sanctioned.

2. All GST & Custom refunds would be immediately disposed off.

From Tax Connect we have witnessed that a lot of work is already happening on ground across the Country on these two fronts already. Infact we have witnessed cases where the Dept has in this week released even complex refunds on inverted duty, Export without payment of duty, TCS, etc without a personal hearing and without much ado. These have helped Industry at this crucial juncture.

Further, we are all aware that filing of returns is the only way Income Tax Refunds can be generated. Hence as far as possible the lockdown period should be utilized to file the income tax returns also for the FY 19-20 so that the refunds, if any, can be hastened.

These are very encouraging trade facilitation measures taken by the Dept of Revenue. The CBIC in addition has also taken a series of measures for Trade facilitation as listed below-

- 24X7 Customs Clearance of goods are done to avoid supply chain disruptions.

- Customs formation are working for clearance of both import and export cargo. Assessment, examination and ancillary work such as bond acceptance, warehousing, port clearance, amendment to documents is happening smoothly.

- A dedicated single window Novel Corona Virus helpdesk for Exim trade stake holders on CBIC website to facilitate quick resolution of issues faced by importer/exporter.

- Importers can submit undertakings in lieu of the requisite bonds during the lockdown period which has to be replaced by proper bonds later.

- The time limit for completion of proceedings and filing of any appeal under Customs Act, 1962 has been extended till 30th June 2020 through on Ordinance.

- Based on email requisitions, computers and related accessories have been permitted by the Customs to be transferred to residence of employees of software Technologies Parks of India (STPIs), to facilitate work from home.

- Late fee charged on delayed filing Bill of Entry on import consignments from COVID 19 affected countries on account of non-receipt of documents has been waived off.

- Expeditious processing of GST and Custom Refund/drawback claims to provide immediate relief to business entities including MSMEs.

- As per MHA Guidelines, employees working for Custom Brokers (CBs) services are permitted to travel to ports or Custom Houses on passes issued by the port.
- Regular coordination with District Administration/Police authorities is being maintained by the Custom Authorities for smooth movement of Exim cargo.
- Recognizing the difficulties faced by trade in taking delivery of Imported cargo, MHA has revised the guidelines. Feedback from the owners of Customs bonded warehouse, indicate many warehouses and godowns are open and functional.
- Zonal chiefs and the board are promptly monitoring the situation through video conference meetings with the field officers and trade to resolve the emerging issues.

However, the Rajasthan AAR Decision on Director's remuneration has come in as a dampener for Industry at this point time. Our view on the same is as follows -

Points covered by the AAR as follows-

1. Consideration [u/s 2(31) of CGST Act] paid to the Director for the supply of services to the Company **Para 5.5**

2. Such Consideration is specifically covered under Notification No 13/2017- CT (R) **Para 5.7**

3. The company is recipient of service and Directors are the supplier **Para 5.1 to 5.2**

4. Applicant is already paying GST by way of reverse charge mechanism on the commission paid to directors **Para 5.3**

5. Such Services are not covered under clause (1) of the Schedule III to the CGST Act, 2017 as the Directors are not the employee of the Company. It is very clear that the services rendered by the Director to the company for which consideration is paid to them in any head is liable to pay GST under RCM **Para 5.8**

6. The case laws citied by the applicant are not relevant in the present case in as much as that the liability to pay GST under RCM in this case is required to be decided on the basis of the existing provisions of CGST law as being discussed briefly in this order.

Points not covered by the AAR as follows-

a. The AAR in Para 5.8 has held that "We further observe that consideration paid to the Directors is against the supply of services provided by them to the applicant company and are not covered under clause (1) of the Schedule III to the CGST Act, 2017 as the Directors are not the employee of the Company". The Applicant has given the following **evidences** to substantiate that the directors are employees -

1. Directors are working in the company at different level of management in the company and each one of them is holding charge of procurement of raw material, production, quality checks, dispatch, accounting etc.

2. They are being compensated by the company by way of regular salary and other allowances as per the company policy.

3. There exist employment contracts with the directors.

4. The company is deducting TDS on their salary u/s 192 of The Income Tax Act, appliable for employees.

EDITORIAL

5. PF laws are also applicable to their service.

6.The applicant also cites definition of Director, Manager, MD & Employee under various other Acts.

No evidence has been brought on record by the AAR on which such decision is based. Neither does it explain as to why the evidences produced by the applicants have not been considered while deciding to the contrary.

The Hon'ble CESTAT of Mumbai Bench vide its Order No. A/88105 of 2018 dated June 25, 2018 in the case of **M/s. Allied Blenders and Distillers (P.) Ltd.**, has quashed the demand notice on a similar ground.

b. The Applicant has already distinguished the services rendered by a Director as an Agent (on which he gets 'commission') and the services he renders as an employee (on which he gets a 'salary'). On that part where the Director is acting as an agent, the applicant pays GST.

The AAR rejects as irrelevant in the present case, the decision of Hon'ble Supreme Court in the case of Ram Pershad vs Commissioner Of Income-Tax, & Hon'ble High Court. of Karnataka in Director, E.S.I. ... vs Sarathi Lines (P) Ltd. These decisions distinguish services of directors on similar grounds.

Our Comments: Under Clause 1 of Sch III to CGST Act, Services by an employee to the employer in the course of or in relation to his employment are NOT to be considered as a supply of services at all. Hence there is no question of levy of GST on the same. The Hon'ble AAR has held that Directors are not employees without explaining the reason behind such a conclusion and even without explaining the reason of rejecting the evidences to the contrary produced by the applicants.

Such Ruling is Applicable to the applicants only as per Section 103 of The CGST Act 2017. The applicants may also go to Appeals against such decisions. For all other Taxpayers, the decision is not binding.

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

INCOME TAX

PRESS RELEASE/CASE LAW

HIGHLIGHTS OF THE PRESS RELEASE ISSUED BY MINISTRY OF FINANCE ON 08.04.2020

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **vide Press Release Dated 08.04.2020** has decided to issue all the pending income-tax refunds up to Rs. 5 lakh immediately in the context of the COVID-19 situation and with a view to provide immediate relief to the business entities and individuals. This would benefit around 14 lakh taxpayers.

[For details please consider the said Press Release]

THE COMMISSIONER OF INCOME TAX AND THE ASSTT COMMISSIONER OF INCOME TAX VERSUS M/S MPHASIS LTD-2014 [KARNATAKA HIGH COURT]

Brief: Total turnover includes export turnover so the deduction will be available to assessee u/s 10B.

OUR COMMENTS: In the present case, foreign currency was provided for the software development outside India. Such expenses need to be deducted u/s 10B while computing taxable income as per the assessee claiming deduction as per IT Act, 1971. It was held by the High Court that the consideration in respect of computer software received in or brought into India by the assessee in convertible foreign exchange is deducted from the profits of the business. The assessee is not liable to pay any income tax on consideration received from export of computer software. The proceeds on the assumption that the assessee is a company engaged in rendering technical services outside India in connection with production of software and the expenditure incurred in foreign exchange in providing technical services outside India of ₹ 62.7 lakhs was excluded in computing the export turnover and total turnover for arriving at deduction u/s 80HHE of the Act. The software Engineers deputed abroad who among other things must do testing, installation and monitoring of software supplied to the client. The expenditure cannot be excluded in computing export turnover which was decided against Revenue. In similar case the decision in ***Commissioner of Income-Tax And Another Vs. Tata Elxsi Ltd. [2011 (8) TMI 782 - KARNATAKA HIGH COURT]*** was held that if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different and there is no definition of the term 'total turnover' in Section 10-A, there is nothing in the said Section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means when the total turnover includes export turnover while interpreting the total turnover which is inclusive of the export turnover. Hence, the case is decided against Revenue.

[Decided in favour of the assessee]

PRESS RELEASE/CASE LAW

HIGHLIGHTS OF THE PRESS RELEASE ISSUED BY MINISTRY OF FINANCE ON 08.04.2020

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **vide Press Release Dated 08.04.2020** has decided to issue all pending GST and Custom refunds which would provide benefit to around 1 lakh business entities, including MSME. Thus, the total refund granted will be approximately Rs. 18,000 crores.

[For details please consider the said Press Release]

THE UNION OF INDIA VS M/S LC INFRA PROJECTS PVT LTD-2020 [KARNATAKA HIGH COURT]

Brief: Interest demand with issuance of show cause notice and violation of principle of natural justice.

OUR COMMENTS: In the present case, the assessee has filed late return and not paid the interest on demand u/s 50(1) of the CGST Act, 2017 as a consequence for such non-payment of demand the department attached the bank account of the assessee for non-payment of such interest on demand. The department has also not issued show cause notice for such interest demand which violates the principles of natural justice. Revenue authority aggrieved by quashing both the orders by the single learned counsel. It was held by the High Court that sub section (1) of Section 73 of the GST Act is applicable when any tax has not been paid or short paid. It contemplates that a show Cause Notice is to be issued to the assessee calling upon him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 of the GST Act, even if assuming that sub section (1) of Section 73 is not applicable before penalizing the assessee by making him pay interest and the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the GST Act. Consequence of demanding interest and non-payment thereof is very drastic. The learned Single Judge has laid correctly down the law that before recovery interest payable in accordance with Section 50 of the GST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. Hence, the Revenue appeal is dismissed.

[Decided in favour of the assessee]

FEMA

CASE LAW

BALAJI STEEL RE-ROLLING MILLS VERSUS COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS-2014 [SUPREME COURT]

Brief: Whether the Tribunal has the power to dismiss the appeal for want of prosecution or not?

OUR COMMENTS: In the present case, the appellant is a partnership firm engaged in the manufacture and sale of Hot Re-rolled products. The Commissioner of Central Excise and Customs re-fixed the annual capacity of production and duty liability of the appellant. Being aggrieved the appellant moved the Tribunal. The Tribunal remanded the matter Signature Not Verified back to the Commissioner of Central Excise and Customs with a direction to determine the capacity of production in accordance with law after hearing the appellant. The Commissioner of Central Excise and Customs once again affirmed the order. The appellant filed an appeal before the Tribunal against the order passed by the Commissioner of the Central Excise & Customs which was placed for hearing. On the very said date, the appellant as also his counsel were not present. The Tribunal dismissed the appeal for want of prosecution. The restoration application was also dismissed. The appellant preferred an appeal before the High Court of Bombay and the appeal was dismissed on the ground that no substantial question of law arises for consideration. It was held by the Supreme Court that act enjoins upon the Tribunal to pass order on the appeal confirming, modifying or annulling the decision or order appealed against or may remand the matter. It does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken up for hearing. As the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal. Hence, the case was decided in favour of assessee.

[Decided in favour of the assessee/appellant]

CUSTOMS

NOTIFICATION/ INSTRUCTION/CASE LAW

EXEMPTION ON CUSTOM DUTY ON VENTILATORS, PERSONAL PROTECTION EQUIPMENTS AND COVID-19 TESTING KITS AND INPUTS FOR THESE GOODS.

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 20/2020-Customs dated 09.04.2020** is seeking to exempt customs duty on ventilators, personal protection equipments, covid-19 testing kits and inputs for these goods. It shall be remain in force till 30th September 2020.

[For further details please refer the notification]

SPECIAL REFUND AND DRAWBACK DISPOSAL DRIVE - IMPLEMENTATION OF DECISION TO EXPEDITE PENDING REFUND AND DRAWBACK CLAIMS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Instruction No. 03/2020-Customs dated 09.04.2020** has instructed that starting with immediate effect there shall be a "Special Refund and Drawback Disposal Drive" with the objective of priority processing and disposal of all pending refund and drawback claims. This Special Drive shall be in place till 30.04.2020. It is expected that during this period all refund and drawback claims that are pending as on 07.04.2020 shall be disposed of.

[For further details please refer the instruction]

M/S. GEETA FIBRES PVT. LTD. V/S UNION OF INDIA-2020 [GUJARAT HIGH COURT]

BREIF: Grievance arose on the part of the petitioner that for the entire period of 17 years, the show cause notice issued in the year 2000 was not heard and surprisingly the date of hearing was given after 17 years.

OUR COMMENTS: In the given case, Petitioner is a private limited Company operating a 100% EOU for manufacturing textile goods like processed fabrics. The petitioner set up a 100% EOU for textile goods in the year 1998. The show cause notice came to be issued wherein the petitioner replied but it was not heard and after 17 years the hearing was called by the Department. It was held by the High Court that in the reply filed by the respondents, all averments have been denied and it has been stated that the petitioner had not produced any documentary evidence like income tax return or other documentary evidence showing that the petitioner had stopped the business and the factory and its office premises had been sold out. Since, these facts had not been stated with substantive and supportive documents, claims have not been genuine. There are no grounds put-forth by the department which can attribute any of the reasons to the petitioners for delay which has been caused in adjudicating the matter. The provisions of law have been made apparently clear and the ratio is emphatically focused on adhering to the time limit while adjudicating the show cause notice. Hence, petition is allowed and the case is decided in favour of the petitioner.

[Decided in favour of the petitioner]

DGFT

CASE LAW

M/S. MANALI PETROCHEMICAL LIMITED VERSUS THE ADDL. DIRECTOR GENERAL OF FOREIGN TRADE, THE ZONAL JOINT DIRECTOR GENERAL OF FOREIGN TRADE-2020 [MADRAS HIGH COURT]

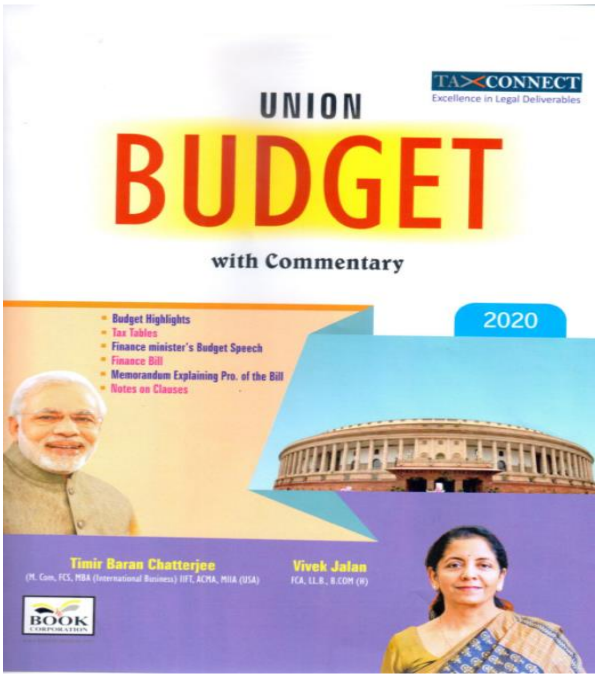
BREIF: Rejection of claim of terminal excise duty on the ground that the commodity in question is entitled for exemption from duty and thus only an exemption may be claimed and not the relief of refund.

OUR COMMENTS: In the given case, the petitioner was awarded a contract for supply of 400 Metric Tonnes of Composite Polyol-78 for onward supply to Oil and Natural Gas Commission against its purchase order. The supply was in connection with petroleum operations undertaken under petroleum exploration licenses/mining leases and were conducted on international competitive bidding, in line with the provisions of Foreign Trade Policy. The claim for refund before the Zonal Joint DGFT was dismissed on the ground that since there was an exemption from terminal excise duty, the petitioner is not entitled to the claim of refund. In appeal, this conclusion was reiterated by the appellate authority. It was held by the High Court that there are several situation were dual reliefs are extended to an assessee both of an exemption as well as of refund. In a case where both reliefs are available, the option to select the relief of its choice vests with the assessee. While maintaining petition, Revenue also argues that that the writ petition is not maintainable in the light of the fact that the impugned order is subject to a revision in terms of Regulation 16 of the Foreign Trade (Development and Regulation Act) 1992 and held that since the issue arising for consideration is squarely covered by the judgment of ***M/S. LENOVO (INDIA) PVT. LTD. VERSUS UNION OF INDIA, THE DIRECTOR GENERAL OF FOREIGN TRADE, THE JOINT DIRECTOR OF FOREIGN TRADE, THE COMMISSIONER OF CENTRAL EXCISE [2016 (11) TMI 623 - MADRAS HIGH COURT]*** where it was held that respondent is directed to process the refund claim in accordance with 2009 Policy by taking into consideration the petitioner's refund Application and pass appropriate orders within a period of three months. There are no reason to relegate the petitioner to alternate statutory remedy. Hence, Petition is allowed and decided in favour of petitioner.

[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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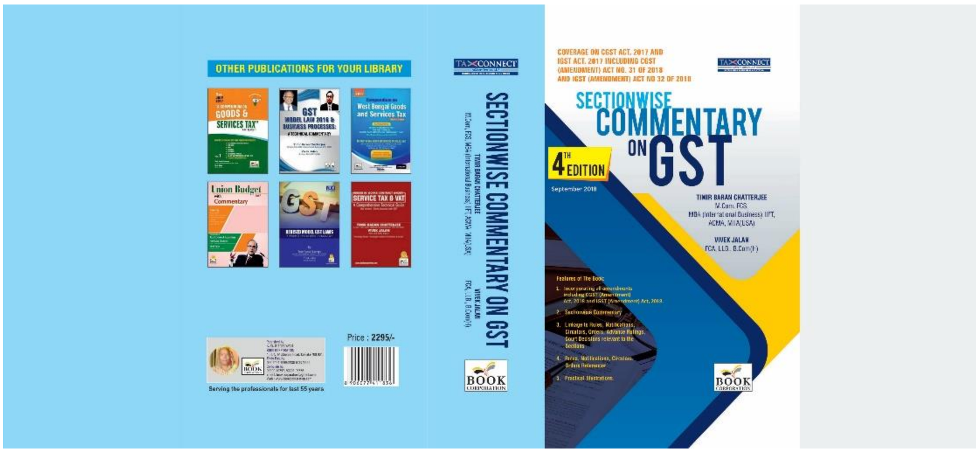
IN STANDS

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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