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EDITORIAL

Friends,

The government is open to suggestions from stakeholders for better implementation of the direct tax 'Vivad Se Vishwas' scheme, Central Board of Direct Taxes Chairman P C Modi said on 6th April 2020. The government has launched the Vivad Se Vishwas scheme for resolution of pending litigation by paying only the disputed tax amount. As many as 4.83 lakh direct tax cases involving Rs 9.32 lakh crore in disputed taxes are locked in various appellate forums. The amount is equivalent to 82 per cent.

As per Press Release on 06.04.2020, at a time when the entire world, including India, is traversing in the uncharted territory of the pandemic of Coronavirus COVID-19 and is virtually in a complete lockdown of 21 days effective 24th March, 2020 announced by the Government of India, the Income Tax Appellate Tribunal (ITAT), held an All India Video Conferencing of its Members on the topic 'The Direct Tax Vivad Se Vishwas Act, 2020' here on 6th April 2020.

The Officers & staff of Ministry of Finance including the officials of financial institutions and Public Sector Banks/Enterprises under the Ministry have come forward to donate a day's salary including under Corporate Social Responsibility (CSR) with an amount of Rs 430.13 crore to PM-CARES Fund for providing assistance to those impacted by the COVID-19 pandemic.

The Goods and Service Tax Network (GSTN) enables tax-officers keep moving despite the lockdown:-

-Provided secured access to over 1700 tax officers from 18 States/UTs to work remotely,

-Shares data of applications processed during the first 10 days of lockdown,

-Over 20,000 registration and about 8000 refund cases processed until 03rd April 2020.

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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SYNOPSIS

INCOME TAX

PRESS RELEASE

HIGHLIGHTS OF THE PRESS RELEASE ISSUED BY MINISTRY OF FINANCE ON 04.04.2020

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India **vide Press Release Dated 04.04.2020** has passed an order u/s 119 of the IT Act, 1961 to mitigate the hardships of taxpayers arising out of compliance of TDS/TCS Provisions due to outbreak of the Covid-19 pandemic.

All the assesses who have filed application for lower or nil deduction of TDS/TCS for F.Y. 2020-21 and whose applications are pending for disposal as on date and they have been issued such certificates for F.Y. 2019-20, then such certificates would be applicable till 30.06.2020 of F.Y. 2020-21 or disposal of their applications by the Assessing Officers, whichever is earlier, in respect of the transaction and the deductor or collector if any, for whom the certificate was issued for F.Y. 2019-20. In cases where the assesses could not apply for issue of lower or nil deduction of TDS/TCS in the Traces Portal for the F.Y. 2020-21, but were having the certificates for F.Y. 2019-20, such certificates will be applicable till 30.06.2020 of F.Y. 2020-21. However, they need to apply at the earliest giving details of the transactions and the Deductor/Collector to the TDS/TCS Assessing Officer as per procedure prescribed. Further, on payments to Non-residents (including foreign companies) having Permanent Establishment in India, where the above applications are pending, tax on payments made will be deducted at the subsidised rate of 10% including Surcharge and Cess on such payments till 30.06.2020 of F.Y. 2020-21, or disposal of their applications, whichever is earlier (Order passed on 31.03.2020).

In case of pending applications for lower/nil rate of TDS/TCS for F.Y. 2019-20, the Assessing Officers have been directed to dispose off the applications through a liberal procedure by 27.04.2020, so that the taxpayers may not have to pay extra tax which may cause liquidity issues to them (Order passed on 03.04.2020).

To mitigate the hardships of small taxpayers, it has been decided that if a person had submitted valid Forms 15G and 15H to the Banks or other institutions for F.Y. 2019-20, then these Forms would be valid up to 30.06.2020. This will safeguard the small taxpayers against TDS where there is no tax liability (Order passed on 03.04.2020).

[For details please consider the said Press Release]

CASE LAW

VISHNU AROMA POUCHING PVT LTD VS UNION OF INDIA-2020 [GUJARAT HIGH COURT]

Brief: Interest cannot be charged by the department in case of any technical glitches on the GST Portal.

OUR COMMENTS: In the present case, the petitioner had uploaded the return for August 2017 within the period provided therefore and paid the entire tax liability. However, the same was not entered in the petitioner's electronic liability register as provided under rule 88(2) of the CGST Rules on account of technical glitches and crashing of GST portal. The petitioner was permitted to file FORM GSTR-3B for September 2019 with taxes payable for August 2017 and the same has been accepted by the system. Department raised a liability on the petitioner to pay interest for eighteen months from 21.9.2017 to October 2019 even though the petitioner had discharged the tax liability in time. It was held by the High Court that the petitioner was treated as a defaulter because all the figures in GSTR- 3B for August 2017 are zeros owing to system failure. The petitioner had approached the authorities at the earliest point of time but the respondent authority maintained silence for a considerable period of time and did not provide remedial measures till directed by this court. The errors in uploading the return were not on account of any fault on the part of the petitioner but on account of error in the system. In these circumstances, it would be unreasonable and inequitable on the part of the respondents to saddle the petitioner with interest on the amount of tax payable for August 2017 even though that the petitioner had discharged its tax liability for such period well within time. In the petitioner's case, CINs have been generated and such CINs have been recorded on the challans also. Thus, it is evident that the amount in question had been deposited by the petitioner for the purpose of payment of tax and was received in the bank designated by the respondents. Thus, the petitioner had duly discharged the tax liability of August, 2017 within the period prescribed and therefore it was only on account of technical glitches in the System that the amount of tax paid by the petitioner for August 2017 had not been credited to the Government account. Hence, the declaration submitted by the petitioner in October 2019 along with the return of September 2019 be treated as discharge of the petitioner's tax liability of August 2017 within the period stipulated under the GST laws. Consequently, the petitioner would not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October 2019. The petition succeeds and allowed.

[Decided in favour of the petitioner]

FEMA

CASE LAW

FFR SOFTWARE PVT. LTD. VERSUS UNION OF INDIA-2020 [GUJARAT HIGH COURT]

Brief: Compounding of contravention of Regulation 7 of FEMA by following the procedure for compounding.

OUR COMMENTS: In the present case, the petition was made under Article 226 of Constitution of India by challenging the order of RBI. Separate contract was entered with the overseas buyer to export polished and cut diamonds. The petitioner had to comply with Regulation 16 of FEMA and sought permission from RBI to send export document directly to overseas buyer and fulfill his export obligations. Such request was denied by RBI on the ground that investigation is undertaken by the Directorate of Enforcement, Ahmedabad. It was directed that Rule 8(2) was not complied with by the petitioner. Proviso under Rule 8(2) states that with respect to any proceeding initiated under Rule 4, if the Enforcement Directorate is of the view that the said proceeding relates to a serious contravention suspected of Money-laundering, terror financing or affecting sovereignty and integrity of the nation, the compounding authority shall not proceed with the matter and shall remit the case to the appropriate Adjudicating Authority for adjudicating contravention under Section 13. High Court held that when the information is brought to the notice of the RBI before remitting the case to the appropriate adjudicating authority under the amended proviso exercise of taking decision under sub-rule (2) does not get diluted in any manner. It is open for the compounding authority after considering the objections received from the Enforcement Directorate and affording an opportunity of hearing to take a decision to remit the case to the appropriate adjudicating authority so that requirement of sub-rule (2) of Rule 8 is complied with fully. In the instant case, merely coming into existence of the proviso will not render requirement of sub-rule (2) of Rule 8 nugatory. The proviso is in addition to sub-rule (2) and has to be read through sub-rule (2) and not otherwise as canvassed by Learned Advocate for the respondents, that is to say what is provided under sub-rule (2), cannot be read through the amended proviso to sub-rule (2) under the subsequent notification dated 20-2-2017. The Court has perused the communications of the Enforcement Directorate which are addressed to the Special Director, Directorate of Enforcement, Western Region, Mumbai, which refer to the proceedings of justification to the export obligation by the petitioner regarding cut and polished diamond under three separate purchase contracts. As the Court is not entering into the merits of the impugned decision, no further reference is made to such communication leaving it upon respondent No. 2, in exercise of powers to take a decision after affording an opportunity of hearing to the petitioner to contend that the so called proceedings of the Enforcement Directorate are not pertaining to the transaction in question. After hearing the petitioner, it is open for RBI to take a decision in accordance with law. The impugned communication is set aside accordingly. RBI is directed to take a fresh decision in accordance with law particularly follow requirement of sub-rule (2) of Rule 8 of the Rules. The petition stands allowed to the aforesaid extent. Rule is made absolute.

[Decided in favour of the petitioner]

CUSTOMS

CASE LAW

OM DRISHIAN INTERNATIONAL LTD. VERSUS UNION OF INDIA AND OTHERS-2020 [BOMBAY HIGH COURT]

BREIF: Refund applications should be processed by the Department. Hence, petition was allowed.

OUR COMMENTS: In the given case, High Court has passed the following order:

- Petitioner states that the respondents have been served and undertakes to file affidavit of service.
- This petition challenges inaction on the part of the respondent nos. 2 and 3 in failing to implement the four orders all passed by the Commissioner of Customs (Appeals) under the Customs Act, 1962 (Act).
- As a consequence of the above four orders all passed by the Commissioner of Customs (Appeals), the petitioners are entitled to a refund of excess duty paid under the Act.
- The petitioners are directed to once again serve the respondents. Parties are put to notice that it is likely that the petition itself may be disposed of finally at the stage of admission. The petitioners are also directed to serve a copy of this order upon the respondents.

The petitioner states that the Respondents have been personally served along with copy of the above order informing them that the petition is now posted for hearing. In support of this, an affidavit of service is tendered by the Petitioner. The Petitioner seeks implementation of four orders in appeal passed by the Commissioner of Customs (Appeals). It is the case of the Petitioner that the implementation of above four orders would result in Petitioner being entitled to the claim of refund. Despite Petitioner's repeated requests, the process of implementing these four orders has not even been commenced. The Respondent Nos.2 and 3 have not taken any steps to process the refund applications though the Petitioner has filed those applications. In the above view of the matter, Respondent Nos.2 and 3 are directed to process the refund applications of the Petitioner within a period of four weeks from today including reassessing of the bills of entry, if required under the law. Petition is disposed off.

[Decided in favour of the petitioner]

DGFT

NOTIFICATION/PUBLIC NOTICE/ CASE LAW

AMENDMENT IN EXPORT POLICY OF API'S AND FORMULATIONS MADE FROM THESE API'S

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Notification No. 02/2015-2020-FTP dated 06.04.2020** has amended export policy of APIs and formulations made from these APIs. It is applicable from immediate effect.

[For further details please refer the notification]

PRINT OUT OF FINAL BILL OF ENTRY & UPLOADING OF DOCUMENTS IN E-SANCHIT- A FACILITATION MEASURE DURING BREAKOUT OF COVID-19-REGARDING

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Public Notice No. 23/2020-FTP dated 03.04.2020** has circulated that the importers or custom brokers have to queue up before the XEAM Service Centre located at Import shed to collect the printout of the out of charged Bill of Entry. Further, importers and customs brokers also have to approach XEAM Service Centre located at NCH for getting the documents uploaded in E-Sanchit to be linked with Bill of Entry.

[For further details please refer the public notice]

ITS MY NAME PVT. LTD. V/S DIRECTORATE GENERAL OF FOREIGN TRADE-2020 [DELHI HIGH COURT]

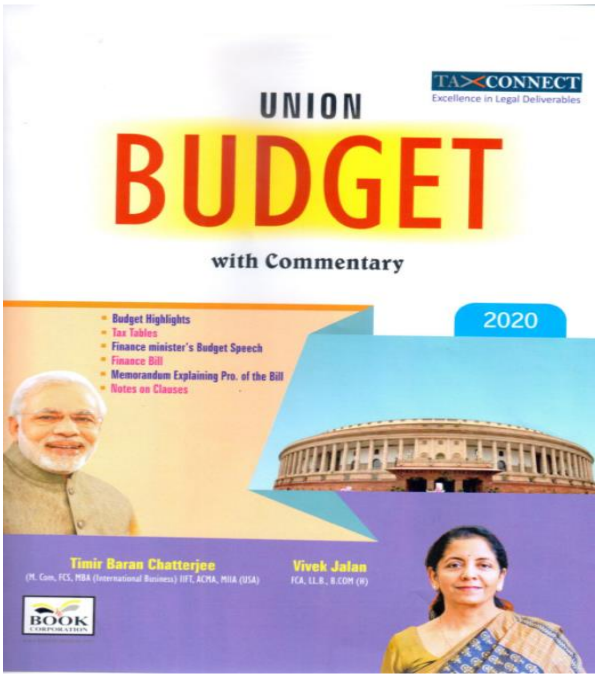
BREIF: Petitioner was never supplied with the copy of the order placing the petitioner company in the Denied Entities List (DEL) and opportunity of being heard was not provided. Hence, no violation of principle of natural justice.

OUR COMMENTS: In the given case, the petitioner was never supplied with the copy of the order placing the petitioner company in the Denied Entities List (DEL). The learned counsel for the petitioner further submits that in any case, the said order having been passed without issuing any Show Cause Notice to the petitioner or granting an opportunity of hearing to the petitioner, is in violation of principle of natural justice. It was held by the High Court that the Show Cause Notice merely states that DRI has informed that the petitioner Firm is "suspected to be misusing the Advance Authorisation". Details of the allegations against the petitioner have not been given in the Show Cause Notice. As far as the order placing the petitioner on DEL is concerned, the same is stated to have been passed that is even prior to the issuance of the Show Cause Notice. In terms of Rule 9(2) of the Rules, the same was clearly premature and not permissible as on that date proceedings of cancellation of the license of the petitioner had not been initiated in accordance with Rule 10 of the Rules. Proviso to Section 9(4) of The Foreign Trade (Development and Regulations) Act, 1992 mandates grant of reasonable opportunity to the licensee of being heard before suspending the license - The learned counsel for the respondent has also produced before me the office file containing the purported order placing the petitioner on DEL. A perusal of the same shows that it records no reasons for placing the petitioner on DEL. It is merely a note on the letter received from DRI. The Impugned Order placing the petitioner on DEL, is therefore, clearly in breach of not only the Act, the Rules but also the Guidelines - Petition allowed.

[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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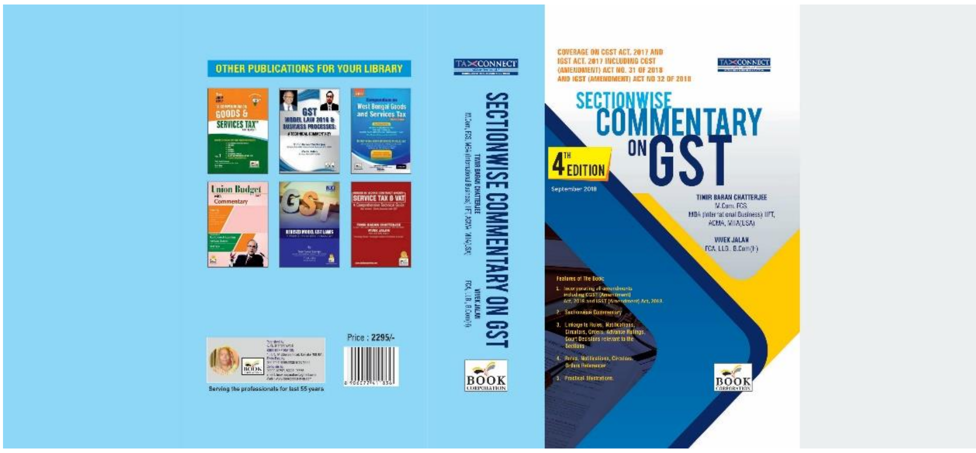
IN STANDS

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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