# TAX CONNECT

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INCOME TAX


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## TAX CONNECT

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# EDITORIAL

**Friends,**

**Stay Home, Stay Safe, Stay Positive!!**

**Some positive news is coming from Italy**. It seems Lockdown Exit Plans has begun somewhat. New cases of Corona Positive cases are reducing rapidly. We see some ray of hope for Italy. Some factories and corporate offices have also been opened to some limited extent now. Hence, we are hoping the same for our economy as well.

**The Ministry of Commerce and Industry vide Press Release dated 15.04.2020,** has provided the following details on Foreign Trade in 2019-20 and March 2020 vis-à-vis same period last year -

- India's overall exports (Merchandise and Services combined) in April-March 2019-20 are estimated to be USD 528.45billion exhibiting a **negative growth of 1.36%** over the same period last year. The decline in exports has been mainly due to the ongoing global slowdown which got aggravated due to the current Covid-19 crisis. The latter resulted in large scale disruptions in supply chains and demand resulting in cancellation of orders. All goods except Iron Ore exports has been decreased. Cumulative value of exports for the period April-March 2019-20 was USD 314.31billion (Rs.22,26,566.71crore) as against USD 330.08billion (Rs. 23,07,726.19crore) during the period April-March 2018-19, registering a negative growth of 4.78per cent in Dollar terms.

- India's overall imports (Merchandise and Services combined) in April-March 2019-20 are estimated to be USD 598.61 billion exhibiting a negative growth of 6.33% over the same period last year. Rise in import in March 2020 was witnessed only in Transport equipment, which registered a growth of 11.94% over March 2019. Cumulative value of imports for the period April-March 2019-20 was USD467.19billion (Rs.33,07,977.05 crore), as against USD514.08billion (Rs.35,94,674.61 crore) during the period April-March 2018-19, registering a negative growth of 9.12% in Dollar terms (negative growth of 7.98% in Rupee terms). Oil prices have globally decreased by 50.34% in March 2020 as per data available from World Bank.

- **India's overall trade deficit (Merchandise and Services combined) in April-March 2019-20 are estimated to be USD 70.16 billion**. Service Export (Receipts) in February 2020 had registered a positive growth but in March 2020 it will decline by USD 0.04 billion. Service Imports (Payments) in February 2020 had registered a positive growth but in March 2020 it will decline by USD 0.10 billion.

**In pursuance to the Government's decision vide Press Note on 8 April 2020** to issue pending income tax refunds upto Rs 5 lakh in order to help taxpayers in a COVID-19 pandemic situations, the Central Board of Direct taxes (CBDT) today said that it has already issued over 10.2 lakh

# EDITORIAL

refunds totaling to around Rs. 4,250 crores as on 14 April 2020. These refunds are over and above the 2.50 crore refunds already issued in FY 19-20 till 31 March 2020 totaling Rs 1.84 lakh crore.

**As per Press Release dated 13.04.2020,** the Government of India in consultation with the Reserve Bank of India has decided to issue Sovereign Gold Bonds. The Sovereign Gold Bonds will be issued in six tranches from April 2020 to September 2020. The Bonds will be sold through Scheduled Commercial banks (except Small Finance Banks and Payment Banks), Stock Holding Corporation of India Limited (SHCIL), designated post offices, and recognised stock exchanges viz., National Stock Exchange of India Limited and Bombay Stock Exchange Limited.

**The RBI on 17.04.2020 announced** a second tranche of liquidity boost for the economy with a 25 basis point reverse repo cut taking it to 3.75 per cent from 4 per cent earlier. The move has been taken to allow banks to lend more. A TLTRO 2.0 of Rs 50,000 crore specifically targeted at NBFCs has been announced. It also announced relaxation of asset classification norms. Those accounts that have availed the moratorium facility, the period of moratorium will be excluded from the 90-day NPA .

**The Reserve Bank of India on 16.04.2020** has launched latest round of quarterly order books, inventories and capacity utilisation survey (OBICUS) of manufacturing sector. "The survey provides valuable input for monetary policy formulation," the RBI said as it launched the 49th round of survey for the reference period January-March 2020. The RBI has been conducting the OBICUS of the manufacturing sector on a quarterly basis since 2008.

**The News Broadcasters Association (NBA) on 14.04.2020** urged the government to do away with 18% GST on broadcast media advertisements or pare it down to 5 %, at par with the print media to help the sector deal with the major disruption brought on by the Coronavirus outbreak. In a letter to Finance Minister Nirmala Sitharaman, the NBA said that advertisements were critical to news broadcasters' revenues and consumer companies had either cut or deferred their ad spends creating major cashflow.

**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

CIRCULARS/CASE LAW

## CLARIFICATION REGARDING SHORT DEDUCTION OF TDS/TCS DUE TO INCREASE IN RATES OF SURCHARGE BY FINANCE (NO.2) ACT, 2019

**OUR COMMENTS:** The Department of Revenue, Ministry of Finance, Government of India **vide Circular No.08/2020 Dated 13.04.2020** has clarified in respect of option under section 115BAC of the Income Tax Act, 1961.

[For details please consider the said Circular]

## CLARIFICATION IN RESPECT OF OPTION UNDER SECTION 115BAC OF THE INCOME-TAX ACT, 1961

**OUR COMMENTS:** The Department of Revenue, Ministry of Finance, Government of India **vide Circular No. C1/2020 Dated 13.04.2020** has clarified that an employee who does not have income under the head PGBP and opting for the concessional rate under Section 115BAC of the Act shall intimate his employer of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act. Once it is exercised employee must not deviate it for the same and if he deviates then he must inform his employer in advance for such intention. The concessional rate provided under section 115BAC of the Act is subject to the condition that the total income shall be computed without specified exemption or deduction, set-off of loss and additional depreciation.

[For details please consider the said Circular]

## THE PRINCIPAL COMMISSIONER OF INCOME TAX-1 VERSUS MEDICAL TECHNOLOGIES LIMITED [GUJARAT HIGH COURT]

**Brief: Accounting entries is determinative of the nature of receipt for waiver of unsecured interest free loans taken. Addition u/s 41(1) is not allowed.**

**OUR COMMENTS:** In the present case, High Court held that in the year under consideration, the assessee was not carrying any business activity in terms of the main object of the assessee company. While assessee had borrowed monies from Matrix Logistics Private Limited, it had not claimed any deduction or allowance in respect of the same. As decided in Kedarnath Jute Manufacturing Co. Ltd. v. CIT [1971 (8) TMI 10 - SUPREME COURT] the accounting entries cannot be determinative of the nature of receipt and what can be added to income under section 41(1) of the Act is something in respect of which deduction has been allowed in the past. In CIT v. Mahindra & Mahindra Ltd [2018 (5) TMI 358 - SUPREME COURT] on a perusal of sub-section (1) of section 41 of the Act, it is evident that there is a sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. During any previous year, if the creditor remits or waives any such liability, then the assessee is liable to pay tax under section 41 of the Act. In the facts of the present case, since the assessee has not claimed any allowance or deduction in respect of the unsecured loan obtained by it from Matrix Logistics Private Limited in any previous year, the provisions of sub-section (1) of section 41 of the Act would not apply.

**[Decided in favour of the assessee]**

# GST: CGST/IGST/SGST/UTGST

CIRCULAR/CASE LAW

## CLARIFICATION IN RESPECT OF CERTAIN CHALLENGES FACED BY THE REGISTERED PERSONS IN IMPLEMENTATION OF PROVISIONS OF GST LAWS

**OUR COMMENTS:** The Department of Revenue, Ministry of Finance, Government of India **vide Circular No.136/06/2020-GST, dated 03.04.2020** had issued to clarify doubts regarding relief measures taken by the Government for facilitating taxpayers in meeting the compliance requirements under various provisions of the CGST Act, 2017. It has been brought to the notice of the Board that certain challenges are being faced by taxpayers in adhering to the compliance requirements under various other provisions of the CGST Act which also need to be clarified.

[For details please consider the said Circular]

## M/S DEENDAYAL PORT TRUST VS UNION OF INDIA-2020 [GUJARAT HIGH COURT]

**Brief: Carry forward of ITC in second revised return of Form Tran-1 is permitted.**

**OUR COMMENTS:** In the present case, the petitioner could not claim the ITC as ACES portal did not permit the petitioner to file revised return for the second time. Revenue case that once the original return is revised, there is no option in the Service Tax Rules, 1994 to permit the assessee to file second revised return. The petitioner is not entitled to or not eligible to carry forward of Cenvat Credit if there is difference in amount of ITC in the form of ST-3 and the Form GST TRAN-1 due to system limitation. The High Court held that only permits the assessee to revise the mistake or omission in the return filed under Rule 7 within a period of 90 days. If the assessee finds any mistake in the form ST-3 file under Rule 7 of the Service Tax Rules, 1994, he can revise the same in multiple documents within prescribed period. The stand taken by the respondents that once option is exercised to revise the original return then the assessee cannot file revised return again within prescribed time period under Rule 7B of the Rules, 1994 is not tenable. When the petitioner entered the correct amount of ITC in Form GST TRAN-1 while claiming the ITC under CGST, there is no mechanism whereby such claim can be verified by the system and as such there is difference in amount of ITC in the form of ST-3 in the system and the Form Tran-1. Therefore, differential amount of ITC cannot be denied to the petitioner on the ground of technical glitches not permitting the petitioner to file second revised return within the prescribed time period, as there is no prohibition as per Rule 7B to file revised return more than one time to revise filed return. The respondents are directed to consider the claim of the petitioner so as to enable the petitioner to revise the Form Tran-1. The case was declared in favour of the petitioner.

**[Decided in favour of the petitioner]**

NOTIFICATION/CASE LAW

**AMENDMENT IN FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS AND SERVICES) (AMENDMENT) REGULATIONS, 2020**

**OUR COMMENTS:** The Department of Foreign Exchange, Reserve Bank of India **vide Notification No. FEMA 23(R)/(3)/2020-RB dated 31.03.2020** has amended Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020.

[For further details please refer the notification]

**V. SEJAPPA VERSUS THE STATE BY POLICE INSPECTOR LOKAYUKTA, CHITRADURGA-2016 [SUPREME COURT]**

**Brief: Order passed by the trial court on the ground of the evidence and circumstances presented by the acquittal is favored by the Supreme Court.**

**OUR COMMENTS:** In the present case, setting aside the order of acquittal high court held the appellant that the accused guilty of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. To establish the guilt of the accused, legality of evaluation of the evidence and the findings recorded by the trial court that in order to constitute an offence under Section 7 of the Prevention of Corruption Act, 'proof of demand' is a sine quo non. In the present case, trial court recorded an order of acquittal on the evidence and circumstances:-(i) delay in lodging the complaint; (ii) even though the appellant is alleged to have made the demand at Chitradurga, absence of the appellant in Chitradurga and absence of proof of demand; (iii) doubts raised regarding the submission of the documents for processing the pension papers and settling the retiral benefits and (iv) inconsistency in the evidence of prosecution witnesses in establishing the acceptance of the amount by the appellant. Absence of proof of demand coupled with evidence that the amount was paid to the appellant towards purchase of diesel raises serious doubts about the amount being paid by PW-1 as illegal gratification. High Court neither considered the defence plea of alibi nor it held that the decision of the trial court was erroneous or perverse. In our view, evaluation of the evidence made by the trial court while recording an order of acquittal does not suffer from any infirmity or illegality or manifest error and the grounds on which the order of acquittal is based cannot be said to be unreasonable. While so, High Court was not justified in interfering with the order of acquittal and the impugned judgment cannot be sustained. In the result, appeal is allowed and the impugned judgment of the High Court is set aside and the order of trial court acquitting the appellant of the charges is restored. The appellant is on bail, his bail bonds stand discharged.

**[Decided in favour of the appellant]**

# CUSTOMS

NOTIFICATIONS/CASE LAW

## AMENDMENT IN EXCHANGE RATE OF FOREIGN CURRENCY

**OUR COMMENTS:** The Central Board of Indirect Taxes and Customs **vide Notification No. 39/2020-Customs dated 16.04.2020** has amended the rate of exchange of foreign currency relating to import and export of goods.

[For further details please refer the notification]

## EXTENSION OF ANTI DUMPING DUTY TILL 14TH OCTOBER 2020

**OUR COMMENTS:** The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Instruction No. 07/2020-Customs dated 15.04.2020** has instructed that anti-dumping duty will be levied on import of Acetone originating in or exported from Korea RP, Saudi Arabia and Chinese Taipei till 14th October, 2020.

[For further details please refer the notification]

## M/S. SAIKALA POWER PRIVATE LIMITED VERSUS THE DEPUTY CHAIRMAN, CHENNAI-2020 [MADRAS HIGH COURT]

**BREIF: Levy of demurrage charges by not giving opportunity of being heard being provided to the petitioner is violation of principle of natural justice.**

**OUR COMMENTS:** In the given case, The High Court held that from the impugned order, it is evident that it is a non-speaking order. The details of (a) declaration allegedly made by the petitioner's agent with regard to the petitioner's address, (b) when such a declaration was given by the petitioner's agent and (c) date of the alleged notice sent by the respondent to the petitioner are all not reflected in the impugned order. The case of the respondent is that the notice sent to the petitioner was returned with the endorsement “left”. Even though it is the case of the respondent that the address was given only by the petitioner's agent, the said communication of the agent disclosing the petitioner's address has not been reflected in the impugned order. By a single paragraph cryptic order, without any discussion with regard to the service of notice and with regard to the liability of the petitioner to pay penal demurrage charges, the impugned order has been passed by total non-application of mind and has also been passed without adhering to the directions issued by a learned single judge of this Court. This Court is of the considered view that arbitrarily without affording a fair hearing to the petitioner, the respondent has passed the impugned order confirming the levy of penal demurrage charges on the petitioner. The matter is remitted back to the respondent for fresh consideration and the respondent is directed to pass final orders after affording sufficient opportunity to the petitioner to place all their submissions. Petition allowed by way of remand.

**[Decided in favour of the petitioner]**

# DGFT

NOTIFICATION/CASE LAW

**AMENDMENT IN EXPORT POLICY OF FORMULATIONS MADE FROM PARACETAMOL (INCLUDING FDC'S)**

**OUR COMMENTS:** The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Notification No. 03/2015-2020-FTP dated 17.04.2020** has amended export policy of formulations made from paracetamol (including FDCs). Earlier its policy was restricted but it is revised its policy and made it free.

[For further details please refer the notification]

**M/S. WADPACK PRIVATE LIMITED VERSUS THE DIRECTOR GENERAL OF FOREIGN TRADE AND ANR-2014 [DELHI HIGH COURT]**

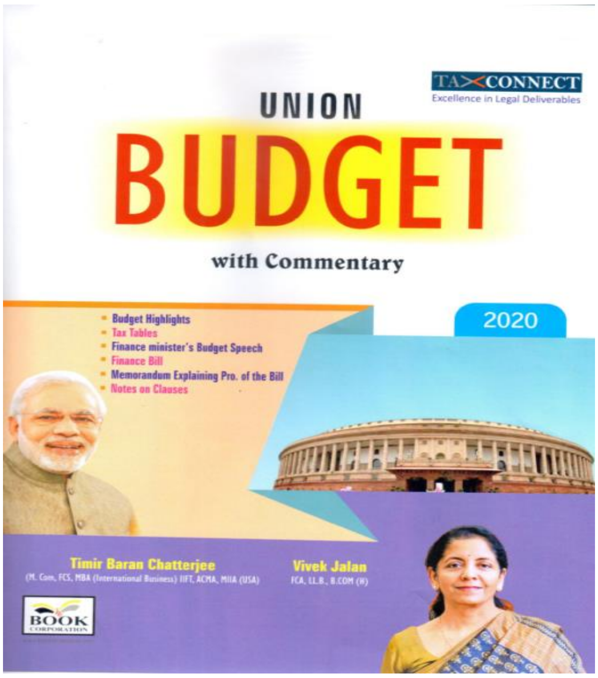
**BREIF: Condonation of procedural lapse of supplying goods to sez only under Form ARE-1 without bills of exports under advance authorization scheme which is deemed as exports. According to the petitioner, the products supplied to the sez would qualify as exports and would discharge the petitioner from its export obligations against the advance authorizations.**

**OUR COMMENTS:** In the given case, the petitioner had imported goods on the basis of Advance Authorization and had utilized the same for supplying to a unit in the SEZ. Essentially, the grievance of the petitioner is that the same are not being considered as deemed exports. According to the petitioner, the products supplied to the SEZ would qualify as exports and would discharge the petitioner from its export obligations against the Advance Authorizations. The petitioner further states that there has been a procedural lapse inasmuch as the bill of exports has not accompanied the ARE-1 form. The learned counsel for the petitioner submits that a representation has also been made to the Director General of Foreign Trade for condoning the said lapse and recognizing the supply of goods as deemed exports. In the given circumstances, the petition is disposed of with liberty to the petitioner to make a fresh representation along with all documents relied upon by the petitioner within a period of two weeks from today. It is directed that if such representation is made, the DGFT shall consider and dispose of the same within a period of eight weeks after affording the petitioner an opportunity of being heard.

**[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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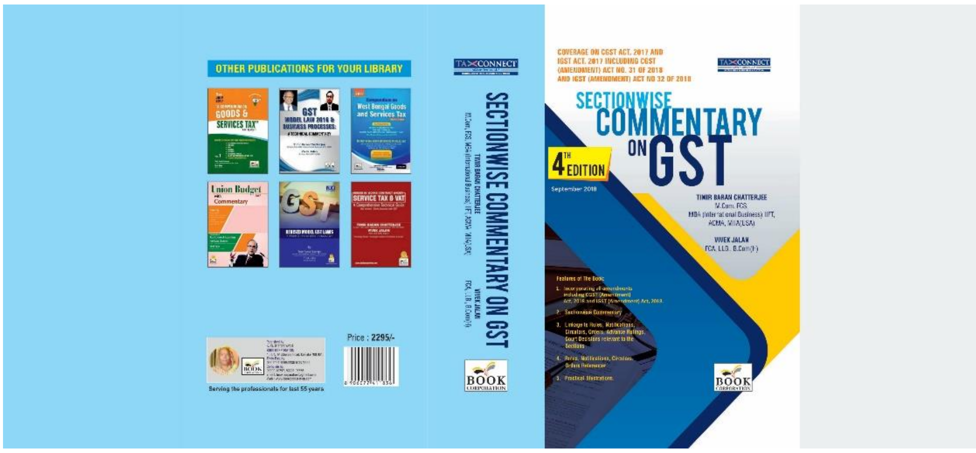
# IN STANDS

## SECTION WISE COMMENTARY ON GST UPDATED TILL DATE

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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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