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Bangalore :No 12, Ground Floor,7th Main Road, 4th Cross, 27th Main Venugopal Swamy Layout Ejipura, Vivek Nagar Post, Bangalore - 560047

New Delhi :B 42 Retreat Apartments, 20 IP Extension, Delhi 110 092

Kolkata :1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001

:17L/1A Dover Terrace; Kolkata-700069

Mumbai :Building No 9, Flat 403, Lodha Eternis, 11th Road, MIDC, Andheri (E) - 400093

Contact: **+919331042424; +919831594980; +913340016761**

Website : www.taxconnect.co.in

Email : tb.chatterjee@taxconnect.co.in; vivek.jalan@taxconnect.co.in; anindita.chatterjee@taxconnect.co.in

EDITORIAL

Friends,

The government has already come up with several plans and initiatives to **revive the economy** which are broadly in the right direction. Our aim here is to lay out how to prioritize these plans specifically keeping quicker reemployment and income generation in mind for large number of people.

- **The first step** is to rapidly reactivate areas essential for basic needs and with a massive impact on reversing the flow of migrant workers away from economic centers.
- **Second,** several daily individual jobbers and small businesses are in dire need of financial support as provided in countries like the US, the UK and Singapore. Support can be provided in the form of one-time grants, tax postponement or forgiveness, or accelerated buying from the government and public sector.
- **Third,** some troubled industries, such as restaurants, movie theaters, hotels, airlines, malls, etc. may need special financial assistance to stay alive. While often considered critical industries, they employ millions and form the backbone of the middle class. Operating at significantly lower revenue and sustaining employment for them is unsustainable.
- **Finally,** the government itself needs to move faster on relief. Pay GST refunds and export credits on time. Move quickly on policy changes. Ensure there is liquidity in the market. These steps are critical for the economy bounce back.

As per Press Release dated 17.04.2020, the Central Board of Indirect Taxes and Customs (CBIC) said that it is fully committed to help the GST taxpayers in the present COVID-19 situation. Since 30th March 2020, CBIC has processed 12,923 refund applications involving claims worth Rs 5,575 Crore, while in the last week itself, CBIC has processed 7,873 claims worth Rs 3854 Crore. The CBIC said that a trade and business friendly measure taken by CBIC vide its Circular No. 133 dated 31.03.2020 to help GST returns filers to facilitate early ITC refunds and to ensure that the wrong ITC claims are not processed in the absence of relevant information is misconstrued in certain section of social media and other media as troubling the taxpayers in COVID -19 like situation.

The income tax department will carry out additional due diligence on financial transactions that involve entities from countries or jurisdictions that are considered tax havens. The Central Board of Direct Taxes has sent out an advisory with a list of such regimes to field officials, asking them to remain extra watchful about such international transaction.

As per Press Release dated 17.04.2020, the RBI Governor said that the additional measures are aimed to:

- maintain adequate liquidity in the system and its constituents in the face of COVID-19 related dislocations

EDITORIAL

- facilitate and incentivise bank credit flows
- ease financial stress, and
- enable the normal functioning of markets

State and UTs allowed to borrow more to manage COVID-19. Reverse Repo Rate reduced from 4.0% to 3.75%. Relief provided to NBFCs and Real Estate Sector. The RBI Governor said that we will cure and endure, India is projected to turn around and grow at 7.4% in 2021-22.

As per Press Release dated 19.04.2020, CBDT revising return forms for F.Y. 2019-20 to enable taxpayers avail benefits of timeline extension due to COVID-19. CBDT explained that the necessary modifications in the return forms are being made to allow taxpayers to avail the benefits of their investments/transactions made for the Apr-to-Jun 2020 period. Once the revised forms are notified, it will further necessitate the consequential changes in the software and return filing utility. Hence, the return filing utility after incorporating necessary changes shall be made available by 31st May 2020 to avail benefits for FY 2019-20.

Vide Trade Notice No. 02/2017 dated 12th December 2017, the Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry had prescribed the procedure and timelines for initiating an Anti-dumping Sunset Review investigation (SSR) under the Customs Tariff Act 1975 and the Anti-dumping Rules. The said notice prescribed a minimum time of 270 days prior to the expiry of the anti-dumping measure in force, for filing the SSR application, which could be relaxed till 240 days with justification of delay. To redress the grievance of the industry, a **Trade Notice (No. 02/2020) has been issued by DGTR on 20th April 2020** providing a relaxation of the said time limit up to 180 days prior to the date of expiry of the measure for filing the SSR application, on account of genuine difficulty faced by the domestic industry in meeting the deadline of 270 days.

As per Press Release dated 21.04.2020, the Central Board of Direct Taxes (CBDT) responding to some observations being circulated on social media alleging that the Income Tax Department is pursuing recovery proceedings and using arm-twisting methods by adjusting outstanding demands of the start-ups, today stated that these observations are completely unfounded and are total misrepresentation of facts. The CBDT said that its email seeking clarification from all those who are entitled to get tax refund but also have outstanding tax to pay cannot be misconstrued as harassment. These computer generated emails have been sent to almost 1.72 lakh assessees which includes all classes of taxpayers – from individual to HUF to firms, big or small companies including start-ups and therefore to say that start-ups are being singled out and harassed is total misrepresentation of facts.

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, LL.M, LLB, B. Com (H)

Anindita Chatterjee
CS, BA LLB (BANGALORE), LL.M

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INCOME TAX

CIRCULAR/CASE LAW

CLARIFICATION ON PROVISIONS OF THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020.

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Circular No.09/2020, dated 22.04.2020** had issued to clarify the provisions of the Direct Tax Vivad se Vishwas Act, 2020

[For details please consider the said Circular]

S. GENGARAMAN VERSUS THE COMMISSIONER OF INCOME-TAX (APPEALS), THE INCOME TAX OFFICER, WARD I (4) COIMBATORE-2020 [MADRAS HIGH COURT]

Brief: Petitioners have paid the amounts demanded within the specified time limit under Kar Vivad Samadhan Scheme.

OUR COMMENTS: In the present case, the writ petition was file by the petitioner under Samadhan Scheme. The case of the petitioner is that he was assessed to income tax and interest amounts were also levied by the Department. The petitioner filed appeals before the appellate authorities. When these appeals were pending, the Government of India introduced a Kar Vivad Samadhan Scheme and the petitioner was entitled to avail the benefit of the said Scheme. The petitioner also filed required declarations for availing the benefit and thereafter a Certificate of Intimation under Section 90(1) of the Finance (II) Act, 1998 was issued to the petitioner determining the total amount payable. As per the instructions, the petitioner made payment of a sum within the time specified thereon with a bona fide belief that his declaration would be accepted. But another was received from the Income Tax Officer (Headquarters) (Tech) calling upon the petitioner to produce proof of having made the above payment. He also produced the proof, but he received a challan from the Department to pay a further sum. Subsequently, he also paid the said sum. After that also, he received a letter stating that his declaration filed under the Samadhan Scheme was rejected, since he had not paid the additional amount of ₹ 15,960/- within the specified time limit. The High Court held that under similar circumstances, this Court has passed an order in the case of ***Sri Balaji Finance v. Income-tax Officer [2010 (9) TMI 498 - MADRAS HIGH COURT]*** in which it is stated that payment of amount by assessee beyond 30 days but within a reasonable time as per amendment order would satisfy the requirements of Kar Vivad Samadhan Scheme, 1998. Writ petition is allowed and the impugned order is set aside. The first respondent is directed to issue necessary certificate under Section 90(2) of the Finance Act, 1998 to the petitioner within a period of two months from the date of receipt of a copy of this order.

[Decided in favour of the petitioner]

CASE LAW

MAHADEO CONSTRUCTION CO. VERSUS THE UNION OF INDIA-2020 [JHARKHAND HIGH COURT]

Brief: Recovery proceedings u/s 79 of the CGST Act cannot be initiated for recovery of interest u/s 50 of the CGST Act in the absence of the adjudication proceedings under the Act.

OUR COMMENTS: In the present case, the petitioner is a partnership firm and has submitted the GST Return for the month of Feb and March on 31st March as displayed on GST Portal. Department has issued a letter directing the petitioner to make payment of interest on the ground of delay in filing of GSTR-3B Return for the months of February and March. The respondent-Authorities further exercised powers under Section 79 of the CGST Act by initiating garnishee proceedings for recovery of aforesaid amount of interest by issuing notice to the petitioner's Banker. Thus, the petitioner has filed the writ petition under the following issues involved namely:

(i) Whether interest liability under Section 50 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') can be determined without initiating any adjudication process either u/s 73 or 74 of the CGST Act in the event of an assessee raising dispute towards liability of interest?

(ii) Whether recovery proceedings u/s 79 of the CGST Act can be initiated for recovery of interest u/s 50 of the said Act without initiation and completion of the adjudication proceedings under the Act?

It was held by the High Court that a bare reading of Section 73(1) would reveal that if tax has not been paid or has been short paid, a notice is required to be served by the Proper Officer on the assessee not only requiring him to show cause as to why tax be not recovered from it, but also specifying in the notice the interest payable under Section 50 also to be recovered along with penalty. Thus, if there is a short payment of tax or non-payment of tax then a notice is required to be issued even for recovery of interest under Section 50 of the CGST Act from the conjoint reading of provisions the Act. It would be evident that even in a case where an assessee files his return as per his own ascertainment pays the tax and even pays interest, but if the said amount paid by the assessee is falling short of the amount actually payable and that if an assessee has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest then the only recourse available to the Proper Officer would be to initiate proceedings under Section 73(1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount. It is true that liability of interest under Section 50 of the CGST Act is automatic but the said amount of interest is required to be calculated and intimated to an assessee by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act till such adjudication is completed. The amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount. Accordingly, the impugned order is quashed and set aside and garnishee notice issued under Section 79 of the CGST Act to the Banker of the petitioner for recovery of interest amount is also set aside. The writ application is allowed.

[Decided in favour of the petitioner]

FEMA

NOTIFICATION/CASE LAW

AMENDMENT IN FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) AMENDMENT RULES, 2020

OUR COMMENTS: The Department of Foreign Exchange, Reserve Bank of India **vide Notification No. S.O.1278(E)-FEMA dated 22.04.2020** has amended Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020.

[For further details please refer the notification]

R. VISWANATHAN VERSUS THE APPELLATE TRIBUNAL FOR SAFEMA, FEMA, PMLA, NDPS, PEPT, REP. BY ITS REGISTRAR, THE JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT-2019 [MADRAS HIGH COURT]

Brief: Interim order granted by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PEPT, New Delhi-3 and for pre-deposit of amount by the appellant is set aside by the High Court.

OUR COMMENTS: In the present case, this appeal has been filed challenging an interim order granted by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS, PEPT, New Delhi-3. The Tribunal directed the appellant to deposit a sum of ₹ 39 lakhs for grant of stay. The point which has been canvassed for the appellant is that the Tribunal failed to consider the income tax returns of the appellant for the year 2018-19, but only noted the income tax returns filed for the years from 1999-2000 to 2002-2003. A specific ground has been raised in the memorandum of grounds of appeal before us. The appellant submits that the financial position of the appellant is precarious and that he will not be in a position to make the pre-deposit of ₹ 39 lakhs. It is further submitted that the appellant's property worth of ₹ 3 Crores has already been under attachment at the instance of the Customs Authorities by way of first attachment and at the instance of the Authorities of the Directorate of Enforcement, by way of second attachment by exercising powers under the provisions of the Prevention of Money Laundering Act, 2002. Hence, it is also submitted that the Tribunal could have considered the undue hardship, to which the appellant is put. According to Tribunal, the income tax returns for the assessment years from 2013-14 to 2018-19 has been considered, the Tribunal would not have passed such an order directing pre-deposit of ₹ 39 lakhs. The respondent submits that the Tribunal had specifically recorded that the income tax returns for the assessment year 2018-19 were not produced and that there was no reason for the Tribunal for not looking into the documents which have been placed before it. In High court's view, without going into the controversy as to whether the appellant had produced the current income tax returns or not. They deem it appropriate that the appellant shall be given one more opportunity to place all the records before the Tribunal so that the Tribunal can take a decision as to whether the interests of the Revenue stand sufficiently safeguarded on account of the attachment over the immovable property of the appellant, which is stated to be worth of ₹ 3 Crores and as to whether the appellant's financial condition precludes from making a pre-deposit. For such a reason alone, High Court allowed this appeal and set aside the order of the Tribunal and remand the matter to the Tribunal for a fresh consideration.

[Decided in favour of the appellant]

CUSTOMS

CIRCULARS

ELECTRONIC COMMUNICATION OF PDF BASED GATEPASS AND OOC COPY OF BILL OF ENTRY TO CUSTOM BROKERS/IMPORTERS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 19/2020-Customs dated 13.04.2020** has circulated that Board has now decided to enable electronic communication of PDF based Final eOoC (electronic Out of Charge) copy of BoE and eGatepass to the importers/Customs Brokers. This electronic communication would reduce interface between the Customs authorities and the importers/Customs Brokers and also do away with the requirement of taking bulky printouts from the Service Centre or maintenance of voluminous physical dockets in the Customs Houses. The Final eOoC copy of BoE and eGatepass copy will be emailed to the concerned Customs Broker and/or importer, if registered, once the Out of Charge is granted. The eGatepass copy will be used by the Gate Officer or the Custodian to allow physical exit of the imported goods from the Customs area.

[For further details please refer the circular]

ELECTRONIC SEALING-DEPOSIT IN AND REMOVAL OF GOODS FROM CUSTOMS BONDED WAREHOUSES

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 20/2020-Customs dated 21.04.2020** has circulated that Board has decided to defer the implementation of Circular-10/2020-Customs dated 07.02.2020 till 30th June, 2020. The new date of implementation of the said Circular shall be 1st July 2020.

[For further details please refer the circular]

REVIEW OF CIRCULAR NO. 17/2020 DATED 03.04.2020 NAMELY, 'MEASURES TO FACILITATE TRADE DURING THE LOCKDOWN PERIOD- SECTION 143AA OF THE CUSTOMS ACT, 1962

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 21/2020-Customs dated 21.04.2020** has circulated that in order to facilitate further exim trade in the lockdown period, CBIC extends the relaxation for submission of Bond. Now, exporter/importer may submit an undertaking in lieu of bond till 15.05.2020

[For further details please refer the circular]

IGST REFUNDS ON EXPORTS-EXTENSION IN SB005 ALTERNATE MECHANISM

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 22/2020-Customs dated 21.04.2020** has been issued in the spirit of trade facilitation and as interim measures to help trade adapt and acclimatize to changing requirements in the GST era. However, representations have been received till today on the same subject issue. There are still numerous Shipping Bills having invoice mismatches between the GST returns data and the customs data presented along with the Shipping Bills resulting in SB005 error. This results in blocking of the IGST refund disbursal which is otherwise fully automated except for the refund scroll generation.

[For further details please refer the circular]

DGFT

CIRCULAR/CASE LAW

PROCEDURAL DETAILS ISSUED FOR EXTENSION IN IMPORT VALIDITY PERIOD AND EXPORT OBLIGATION PERIOD IN ADVANCE AUTHORIZATIONS/DFIA

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Circular No. 35/2015-2020-FTP dated 23.04.2020** has circulated the Procedural details for extension in import validity period and export obligation period in advance authorizations/DFIA.

[For further details please refer the circular]

M/S. LEO PRIME COMP PVT. LTD., VERSUS THE UNION OF INDIA THE JOINT DIRECTOR DIRECTOR GENERAL OF FOREIGN FOREIGN TRADE DEVELOPMENT OFFICER TRADE-2020 [MADRAS HIGH COURT]

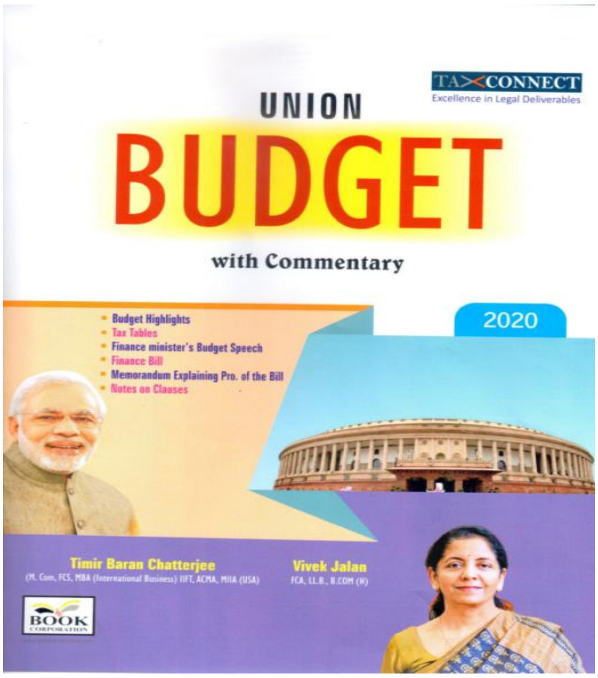
BREIF: Opportunity of being heard must be given to the petitioner even if there was a non-fulfillment of export obligation under EPCG Scheme.

OUR COMMENTS: In the given case, The petition has been filed in the nature of Certiorarified Mandamus in view of the fact that it has been passed violating the principles of natural justice and to dispose of the application of the petitioner after giving fair opportunity to the petitioner. The petitioner is a manufacturer of high precision component used in various automobiles sectors and they also manufacture and supply machined and turned ferrous and non ferrous components to automobiles, Hydraulics, Medical, Power and aerospace sectors. The company was established in the year 1984. It is stated that the importing of capital goods under the EPCG scheme introduced by the 1st respondent viz., The Union of India. The petitioner claimed that they have completed and fulfilled the export obligations as per the said licence which was granted to import capital goods (Machineries) under the EPCG Scheme. The petitioner needed machineries to increase the production. Therefore, he approached the 2nd respondent for sanction of further licences. The 2nd respondent also issued EPCG licence and allowed to import machineries after due verification.It is stated that there was some delay in repaying the loan i.e. EMI's to the bank. Hence the Bankers declared the petitioner's loan account as NPA. There was recovery action by the Banker and further owing to natural calamity, the petitioner was unable to complete the export orders and therefore was not able to fulfill the export obligations within the stipulated period of 6 years. Hence, the petitioner approached the 2nd respondent to extend the EPCG Licence period for export obligations. However, the representation had been rejected by the 3rd respondent by the impugned order. It is stated that the application was also filed after considerable period of time. It is stated that the writ petition is premature. Without going into the merits of the case, the impugned order is set aside and the respondents are directed to issue notice to the petitioner in furtherance to his representation dated 27.06.2019, grant personal hearing to the petitioner and examine the records if any produced by the petitioner and thereafter pass order on merits with reasons. Petition allowed by way of remand.

[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**

Authors:

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.M, LL.B., B.Com (Hons.)

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

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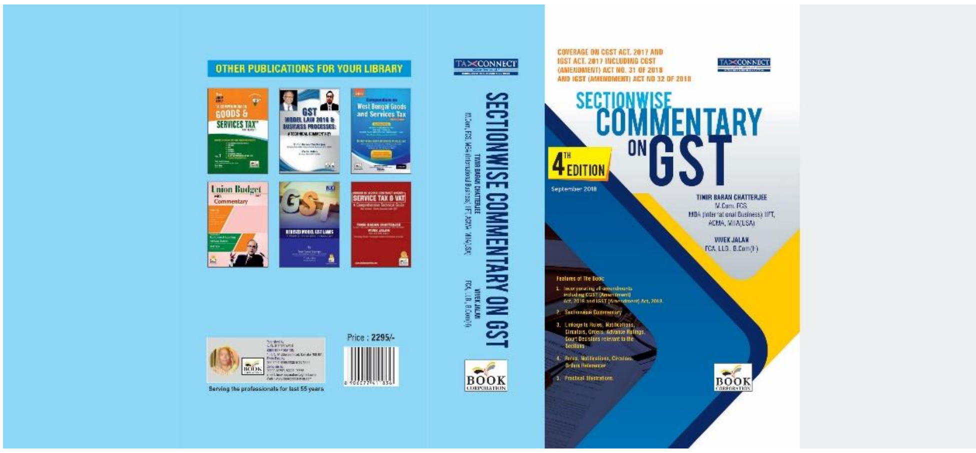
IN STANDS

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**

Authors:

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
FCA, LL.M, LL.B., B.Com (Hons.)

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
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