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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

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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 is considering that after the pandemic gets over FDI will be coming to India. It will welcome woo companies that intend to start greenfield projects and dig deep in the Indian manufacturing hub through single window clearance. India will have an opportunity to become a global manufacturing pivot and will grasp it as soon as possible.

Foreign direct investments from Taiwan are not covered under the latest policy changes that make prior government clearance mandatory for fund inflows from countries (including China) that share a land border with India. Investments from Taiwan will be treated as they were previously and are excluded from the latest changes, The FDI policy was amended on 18.04.2020 requiring all investments from countries sharing a land border with India to get prior government approval, irrespective of the sectoral cap. The prior approval is needed even when FDI from these countries is routed via entities located in other places.

India can be the **destination of choice for global manufacturing** in the post-COVID 19 world if it gets its acts together with the right policies as a lot of things are going for the country. While discussing opportunities for the country once the coronavirus-inflicted situation returns to normalcy, areas like drones and robotics would see major investment and research going forward in India which would move faster into the digital age.

CBIC has allowed video conferencing for personal hearings under Customs Act, besides allowing submission of documents through emails, adopting a digital way of working amid the COVID-19 outbreak. The Board's judicial cell issued an instruction on 27.04.2020 which laid out guidelines to be used by parties and officials for conducting the virtual hearings including requirement of secure computer network and applications like VIDYO, exchanging e-mail records of personal hearings and admitting submissions of scanned self-attested documents.

The Income Tax Department on 25.04.2020 deferred for the third time the requirement for companies to include in their **IT audit report** the details of the Goods and Services Tax (GST) and GAAR. The reporting requirement of these details in income tax audit form has been kept in abeyance till March 31, 2021. It means that all income tax audit reports need not include details on the GST and the General Anti-Avoidance Rules (GAAR) till March 2021. Business entities having a turnover of more than Rs 1 crore (or Rs 2 crore if they have opted for presumptive taxation) and professionals with gross receipts of more than Rs 50 lakh have to comply with the tax audit requirements.

A report of 50 IRS officers of the Income Tax department on **revenue mobilisation and economic impetus** to fight COVID-19 pandemic is ill-conceived and an act of indiscipline as well as violation of service conduct rules. These officers from the Indian Revenue Service (IRS) Association in a report titled 'FORCE (Fiscal Options &

EDITORIAL

Response to the COVID-19 Epidemic') suggested raising tax rate to 40 per cent for those with income above Rs 1 crore from 30 per cent at present and levy of wealth tax for those with over Rs 5 crore annual income. They also suggested levy of a COVID Relief Cess of 4 per cent on those with taxable income of more than Rs 10 lakh to help mobilise revenue for funding the relief work.

The Reserve Bank on 29.04.2020 has extended restrictions imposed on city-based The Needs of Life Co-op Bank Ltd for another six months till 31.10.2020. The Reserve Bank in October 2018 had barred the bank from granting or renewing any loan for six months and later extended the curbs twice. The bank was allowed to continue to undertake banking business with restrictions till "its financial position improves". The RBI had also put restrictions on withdrawals from the bank. The restrictions were to end on 29.04.2020.

Finance minister Nirmala Sitharaman has said the outstanding debt was written off as per RBI rules of a four-year provisioning cycle for non-performing assets (NPAs), responding to questions about RBI's reply to a right to information (RTI) query about the top 50 wilful defaulters in the banking system. On 25.04.2020, the RBI's reply to the RTI query showed that these defaulters owe Rs 68,607 crore up to 30.09.2019 which was written off by the banks. However, the RBI said overseas borrowers were exempt from disclosure. As per the RBI rules, such write-offs are technical or prudential and it does not mean the entire loan has been written off, as some loans have been taken against security, which can be or has already been recovered.

India is considering a goods and services tax (GST) relief package to counter the impact of Covid-19 and help prop up the economy, said people with knowledge of the matter. The package being considered could include **a six-month suspension of GST payments** for the worst-hit sectors such as restaurants, aviation and hospitality as well as a lower rate for the real estate sector. Other proposals include a switch to a cash-based principle of levying tax from the current invoice-based system and providing GST relief on sales for which payment is not received due to the lockdown by treating those as bad debts. These measures are expected to ease the liquidity pressure on businesses that are strapped for cash, said the people cited above. A final decision on the proposals will be taken by the GST Council, which is the apex decision-making body for the tax.

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

SYNOPSIS

INCOME TAX

NOTIFICATION/CIRCULAR/CASE LAW

AGREEMENT BETWEEN INDIA AND AUSTRIA TO AVOID DOUBLE TAXATION AND PREVENT FISCAL EVASION

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Notification No.22/2020 dated 24.04.2020** had entered into an agreement between the Government of the Republic of India and the Government of the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes.

[For details please consider the said Notification]

AMENDMENT IN THE CLAUSES OF FORM 3CD

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Circular No.10/2020 dated 24.04.2020** had circulated that order u/s 119 of the Income Tax Act, 1961 regarding reporting requirement under clause 30C and clause 44 of the Form 3CD of the Income-tax Rules, 1962 has been amended.

[For details please consider the said Circular]

BASIR AHMED SISODIYA VERSUS THE INCOME TAX OFFICER-2020 [SUPREME COURT]

Brief: Addition of income u/s 68 due to unexplained credit and bogus purchase cannot be done as assessee have explained in penalty proceedings by affidavits.

OUR COMMENTS: In the present case, the appellant/assessee was served with a notice under Section 143(2) of the Income Tax Act, 1961 by the Assessing Officer which involves limited challenge to certain addition made under the heads “Trading Account” and “Credits” in the assessment order. The Officer relying on the Balance Sheet and the books of account took note of the credits. The Officer treated that amount as “Cash credits” under Section 68 of the 1961 Act and added the same in declared income (second addition) of the assessee. The Officer then proceeded to compute the income of the assessee for the concerned assessment year. Notice be issued separately for imposition of penalty under Section 272(1)(c). Aggrieved, the appellant/assessee preferred an appeal before the CIT (A). However, the Trading Account and Credits in question, the CIT(A) upheld the assessment order. The appellant/assessee then preferred further appeal to the ITAT. ITAT partly allowed the appeal in the order. The order relating to the second addition (under consideration in the present civil appeal) regarding credits came to be upheld. At the time of assessment, the appellant/assessee had failed to produce any explanation or evidence in support of the entries regarding purchases made from unregistered dealers. In the penalty proceedings, however, the appellant/assessee produced affidavits of 13 unregistered dealers out of whom 12 were examined by the Officer. It was held by the Supreme Court that the appellate authority had not only accepted the explanation offered by the appellant/assessee but also recorded a clear finding of fact that there was no concealment of income or furnishing of any inaccurate particulars of income by the appellant/assessee. That now being the indisputable position, it must necessarily follow that the additions cannot be justified. Addition under Section 68 towards cash credit amount shown against the names of concerned unregistered dealers is hereby set aside. Therefore, it is decided in favour of assessee.

[Decided in favour of the assessee]

NOTIFICATION/CASE LAW

EFFECT ON THE PROVISIONS OF RULE 87 (13) AND FORM GST PMT-09 OF THE CGST RULES, 2017

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Notification No.37/2020-CGST dated 28.04.2020** had notified that such notification shall seek to give effect to the provisions of rule 87 (13) and FORM GST PMT-09 of the CGST Rules, 2017.

[For details please consider the said Notification]

MAHENDRA KUMAR INDERMAL VS DEPUTY ASSISTANT COMMISSIONER (ST)-2020 [ANDHRA PRADESH HIGH COURT]

Brief: Petitioner urged that the authority competent to pass the order should not be below the rank of Joint Commissioner. Therefore, the order of prohibition so passed confiscating the goods is unsustainable in law.

OUR COMMENTS: In the present case, petitioner challenged the order of Prohibition issued in Form GST INS 03. The said Form was issued in terms of Rule 139(4) of the Central Goods and Services Tax Rules, 2017 to carry out the purpose of the Act specified under Section 67(2) of the Act an how it can be proceeded with. At present, the provisions of the Act i.e., 67(1) and (2) of the Act are relevant. It was held by the High Court that as per the provisions of Section 67(1) of the Act, power of inspection is specified to an officer not below the rank of joint commissioner. The said officer for the purpose of search as specified in Section 67(1) (a) and (b) may authorize in writing any other officer of Central Tax for inspection of any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown. For the purpose of seizure where the authority is having a reason to believe that proceedings of the confiscation are required in the matter to which inspection has been carried out after recording the said reason, he may exercise such power for seizure by authorising in writing any of the officers of the Central Tax Department. In this view of the matter and looking to the order of prohibition so passed, the said order passed by Deputy Assistant Commissioner (ST) is without reference to the order of authorisation in writing which is illegal and without jurisdiction. The impugned order is set aside on the ground of competency of the authority and having found that the power so exercised by Deputy Assistant Commissioner (ST) is not in conformity with the provisions of the Act. Hence, the Writ Petition is allowed.

[Decided in favour of the petitioner]

FEMA

NOTIFICATION/CASE LAW

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

OUR COMMENTS: The Department of Foreign Exchange, Reserve Bank of India **vide Notification No. S.O.1374(E)-FEMA dated 27.04.2020** has amended Foreign Exchange Management (Non-Debt Instruments) Second Amendment Rules, 2020.

[For further details please refer the notification]

POOJA RAVINDER DEVIDASANI VERSUS STATE OF MAHARASHTRA & ANOTHER-2014 [SUPREME COURT]

Brief: The appellant is liable for prosecution u/s 138 r.w. Section 141 of the N.I. Act for the offence of dishonor of cheques committed by the default Company.

OUR COMMENTS: In the present case, Supreme Court held that the appellant was wife of the Managing Director and appointed as a Director of the Company. The cheques dishonored were not signed by the appellant. The appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person at the material time that person shall have been at the helm of affairs of the Company one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. A Director who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time will not be liable for an offence under Section 141 of the N.I. Act. The same has been held in National Small Industries Corpn. Ltd. Versus Harmeet Singh Paintal [SUPREME COURT] – Continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law. Validity of dismissal of Writ petition by HC - Held that the HC did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. To attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability – the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged. Thus, the criminal complaint is set aside. The Letter of Guarantee gives a way for a civil liability which the complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 r.w. Section 141 of the N.I. Act, cannot also be accepted in these proceedings. Hence, it is decided in favour of appellant.

[Decided in favour of the appellant]

CUSTOMS

NOTIFICATION/PUBLIC NOTICES

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

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 40/2020-Customs dated 30.04.2020** has issued a Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

[For further details please refer the notification]

WAIVER OF DEMURRAGE CHARGES LEVIED BY TERMINAL OPERATORS / PORTS/ CFSS/ ICDS DURING LOCKDOWN

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Public Notice No. 09/2020-Customs dated 24.04.2020** has issued that demurrage charges levied by terminal operators/ports/CFSs/ICD during lockdown has been waived by Ministry of Shipping through Order No. PD-14033/4/2020-PD dated 21.04.2020.

[For further details please refer the public notice]

PROCEDURE FOR ASSESSMENT IN CASE OF NON-SUBMISSION OF ORIGINAL COUNTRY OF ORIGIN CERTIFICATES

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Public Notice No. 61/2020-Customs dated 27.04.2020** has issued the procedure of assessment in case of non-submission of original country of origin certificates. Due to extension of lockdown the dates as specified in the Public Notice No. 61/2020 dated 09.04.2020 has also been extended.

[For further details please refer the public notice]

RELAXATION IN PROCEDURE FOR IN-BONDING OF CARGO IMPORTED UNDER WAREHOUSE BILL OF ENTRY

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Public Notice No. 72/2020-Customs dated 27.04.2020** has been issued relaxation in procedure for in-bonding of cargo imported under warehouse bill of entry. Due to extension of lockdown the dates as specified in the Public Notice No. 62/2020 dated 11.04.2020 has also been extended.

[For further details please refer the public notice]

GUIDELINES FOR CONDUCT OF PERSONAL HEARINGS IN VIRTUAL MODE UNDER CUSTOMS ACT, 1962

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Public Notice No. 76/2020-Customs dated 29.04.2020** has issued guidelines for conduct of personal hearings in virtual mode under Customs Act, 1962 during lockdown period.

[For further details please refer the public notice]

DGFT

PUBLIC NOTICE/CASE LAW

RELAXATION OF TIME FOR SUBMISSION OF PHYSICAL COPY OF APPLICATION

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Public Notice No. 02/2015-2020-FTP dated 13.04.2020** has added a paragraph at the end of sub clause (c) of para 7(A).01 of Handbook of Procedures 2015-20 which states the relaxation of time for submission of physical copy of application with concerned RA for availing Transport and Marketing Assistance (TMA) on Specified Agriculture Products.

[For further details please refer the public notice]

ALLOCATION OF ADDITIONAL QUANTITY OF 745 MTRV FOR EXPORT OF SUGAR TO USA UNDER TARIFF RATE QUOTA

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Public Notice No. 03/2015-2020-FTP dated 17.04.2020** has added the allocation quantity of 745 MTRV for export of sugar to USA under Tariff Rate Quota upto 30.09.2020. Certificate of Origin for export of preferential sugar to USA shall be issued by Additional DGFT, Mumbai.

[For further details please refer the public notice]

ALLOCATION OF QUOTA FOR IMPORT OF CALCINED PET COKE AND RAW PET COKE

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade **vide Public Notice No. 04/2015-2020-FTP dated 17.04.2020** has issued the procedure for allocation of quota for import of Calcined Pet Coke for use as Calcined Pet coke (CPC) in Aluminium Industry and Raw Pet Coke for CPC manufacturing industry for the year 2020-2021.

[For further details please refer the public notice]

M/S. MULTITEX FILTRATION ENGINEERS LIMITED VERSUS UNION OF INDIA & ORS.-2020 [DELHI HIGH COURT]

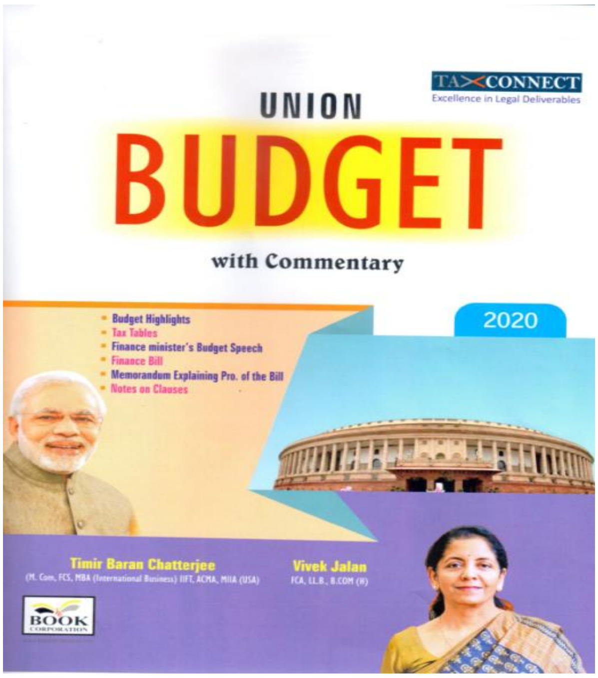
BREIF: Refund of Terminal Excise Duty(TED) contending that as supplies against ICB are conditionally exempt for payment of excise duty, the same are eligible for refund.

OUR COMMENTS: In the given case, the High Court held that by virtue of the Notification No. 4 dated 18.04.2013 a condition was incorporated that categories of supplies which are exempt ab initio would not be eligible to receive refund of TED. In the present case, the supplies were made during the period from 15th December, 2009 to 10th February, 2011 and thus during the relevant period, there was no such condition in the FTP. It may also be noted that the aforenoted notification is substantive and not clarificatory and therefore cannot be applied retrospectively. Thus, the petitioner is entitled to refund of TED under para 8.3 (c) of the FTP as the exemption was not availed by the petitioner and it opted to pay the excise duty. It appears that DGFT in view of policy circular No. 11/2015-20 dated 23.07.2018 has now identified the issue viz-a-viz the non-refund of excise duty paid by the suppliers. This circular now recognizes the provisions of the FTP in the right perspective that exemption from TED was not available for certain supplies even though the same were under ICB. There is thus no impediment in granting the refund to the Petitioner. In view of the above discussion, the impugned circular has no application to the case of the petitioner and it is lawfully entitled to refund of TED in terms of para specified in FTP. The impugned orders/letters denying refund of TED are hereby quashed. The respondents are directed to process petitioner's claim for TED refund in respect of the applications enumerated in paragraph 3 of this order and release the amounts which they are entitled to in respect of the supplies made within a period of eight weeks. Hence, the petition is 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**

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
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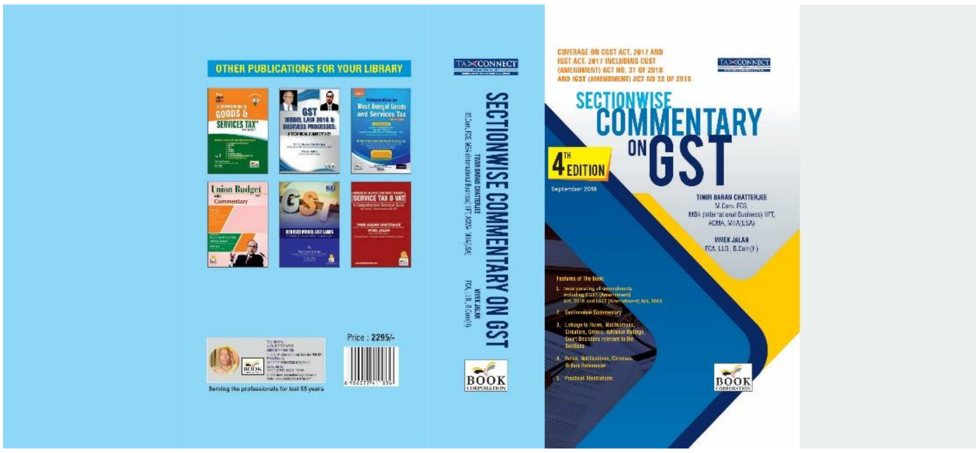
IN STANDS

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
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Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
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