263rd Issue: 17th May 2020 - 23rd May 2020

TAX CONNECT

Knowledge Partner:

The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

FEMA

TAX CONNECT

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,

PM Modi has finally begun giving effect to the **rescue plan** more than a month in making. On 12.05.2020, in his address to the nation, he unveiled a stimulus of the size of about ₹ 20 lakh crore (including the steps announced earlier) — or around 10% of the country's GDP.

Finance minister Nirmala Sitharaman on 13.05.2020 announced that the **TDS rates for all non-salaried payments** to residents and TCS rates will be reduced by 25% of the specified rates for the remaining period of the fiscal year 2020-21. This will provide liquidity to the tune of ₹ 50,000 crore in the hands of taxpayers.

The finance minister also announced that the due date of all **Income Tax Returns** for assessment year 2020-21 will be extended to 30.11.2020. Similarly, the **tax audit** due date will be extended to 31.10.2020. The date for making payment without additional amount under the **'Vivad Se Vishwas' scheme** will also be extended to 31.12.2020 as part of the first package under the **'Atmanirbhar Bharat Abhiyan'** aimed at providing relief to Covid-19-hit sectors. All the **assessments getting barred** on 30.09.2020 and 31.03.2021 are extended to 31.12.2020 and 30.09.2021 respectively.

As discussed in the **Press Release dated 13.05.2020**, the following measures are taken by the RBI-

- Reduction of Cash Reserve Ratio (CRR) has resulted in liquidity enhancement of ₹ 1,37,000 crores.
- Targeted Long Term Repo Operations (TLTROs) of ₹ 1,00,050 crore for fresh deployment in investment grade corporate bonds, commercial paper, and non-convertible debentures.
- TLTRO of ₹ 50,000 crore for investing them in investment grade bonds, commercial paper, and non-convertible debentures of NBFCs, and MFIs.
- Increased the banks' limit for borrowing overnight under the marginal standing facility (MSF), allowing the banking system to avail an additional ₹ 1,37,000 crore of liquidity at the reduced MSF rate.
- Announced special refinance facilities to NABARD, SIDBI and the NHB for a total amount of ₹ 50,000 crore at the policy repo rate.
- Announced the opening of a special liquidity facility (SLF) of ₹ 50,000 crore for mutual funds to alleviate intensified liquidity pressures.
- Moratorium of three months on payment of instalments and payment of Interest on Working Capital Facilities in respect of all Term Loans.
- Easing of Working Capital Financing by reducing margins.

EDITORIAL

- For loans by NBFCs to commercial real estate sector, additional time of one year has been given for extension of the date for commencement for commercial operations (DCCO).

As per Press Release dated 09.05.2020, The Ministry of Finance, CBDT has decided that the implementation of new procedure for approval/ registration/notification of certain entities shall be deferred to 01.10.2020. Accordingly, the entities approved/ registered/ notified under section 10(23C), 12AA, 35 and 80G of the Income-tax Act, 1961 (the Act) would be required to file intimation within three months from 01.10.2020 i.e, by 31.12.2020. Further, the amended procedure for approval/ registration/ notification of new entities shall also apply from 01.10.2020.

Goods and services tax collections for March 2020 stood at Rs 97,597 crore, falling way short of Rs 1.15 lakh crore target set by the government. Rs 1.05 lakh crore was collected in the month of February 2020. The total number of GSTR-3B Returns filed for the month of February up to 31.03.2020 is 7.65 million. Of the total Rs 97,597 crore revenue, the central GST stood at Rs 19,183 crore, state GST at Rs 25,601 crore and integrated GST at Rs 44,508 crore, which included Rs 18,056 crore collected on imports.

With the country still under lockdown and suppliers and dealers only partially open, manufacturing firms that were allowed to **resume operations** are finding the going tougher than expected. Auto, steel, cement, component makers and engineering companies are struggling to streamline production, with output barely touching 20% of capacity since production started with the gradual lifting of curbs imposed to combat the spread of Covid-19. Work at factories has resumed in tough conditions: Demand is yet to revive, labour availability is limited and new safety and health norms have to be enforced in the workplace. In addition, many industry hubs in red zones, which have the most restrictions, remain closed. Auto component makers said the entire supply chain has gone haywire. Given that automobile production will be limited for the next couple of months, there’s uncertainty over supply, production and demand.

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

AMENDMENT U/S 80G(2)(B) OF THE IT ACT, 1961

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Notification No.24/2020 dated 08.05.2020** had notified "SHRI RAM JANMABHOOMI TEERTH KSHETRA" (PAN: AAZTS6197B) to be place of historic importance and a place of public worship of renown for the purposes of Section 80G(2)(b) from the year F.Y. 2020-2021, relevant to the Assessment Year 2021-2022.

[For details please consider the said Notification]

CLARIFICATION IN RESPECT OF RESIDENCY UNDER SECTION 6 OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Circular No.11/2020 dated 08.05.2020** has clarified the residential status u/s 6 of the Income Tax Act, 1961. For determining residential status of an individual for A.Y. 2020-21 who has come to India on a visit before 22.03.2020 and:

(a) has been unable to leave India on or before 31.03.2020 then his period of stay in India from 22.03.2020 to 31.03.2020 shall not be taken into account; or

(b) has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 01.03.2020 and has departed on an evacuation flight on or before 31.03.2020 or has been unable to leave India on or before 31.03.2020, his period of stay from the beginning of his quarantine to his date of departure or 31.03.2020, as the case may be, shall not be taken into account; or

(c) has departed on an evacuation flight on or before 31.03.2020, his period of stay in India from 22.03.2020 to his date of departure shall not be taken into account.

[For details please consider the said circular]

THE PR. COMMISSIONER OF INCOME TAX BELAGAVI. VERSUS M/S. RYATARA SAHAKARI SAKKARE KARKHANE NIYAMITHA-2020 [KARNATAKA HIGH COURT]

Brief: Assessee Company has not added the provision for bad and doubtful advance as determining book profits u/s 115JB of the Income Tax Act, 1961.

OUR COMMENTS: In the present case, the High Court held that issue involved is squarely covered by the decision of this Court in the case of Commissioner of Income Tax Vs. Kirloskar Systems Limited [2013 (12) TMI 9 - KARNATAKA HIGH COURT] wherein this Court has held that no addition be made to the profit as per the profit and loss account by invoking clause (i) or (c) of Explanation 1 to Section 115JB of the Act in a case where there is a corresponding reduction of the sum debited to the profit and loss account on account of provision for bad and doubtful debts from the Advances shown in the Balance Sheet of the Assessee. Hence, the case is decided against revenue.

[Decided in favour of the assessee]

GST: CGST/IGST/SGST/UTGST

CASE LAWS

SUTHERLAND GLOBAL SERVICES PRIVATE LIMITED VS ASSISTANT COMMISSIONER CGST AND CENTRAL EXCISE, CHENNAI- 2019 [MADRAS HIGH COURT]

Brief: Can a taxable person avail and utilise the credit pertaining to Education Cess (EC), Secondary and Higher Education Cess (SHEC) and Krishi Kalyan Cess (KKC) into the Goods and Services Tax (GST)?

OUR COMMENTS: In the present case, The Madras High Court has allowed the Transitional Credit of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess into the Goods and Services Tax (GST). Dr. Justice Anita Sumanth observed that, "I am of the view that the claim of the petitioner is liable to be accepted. Goods and Service Tax was introduced with much fanfare in 2017 with discussions preceding the enactment nearly from 2009 onwards. The scheme of Goods and Service Tax (GST) was to provide a comprehensive indirect tax levy subsuming various indirect tax enactments that had been in force prior thereto. Empowered committees were set up to deliberate extensively on the various details of the GST model to be implemented after taking into account the views of the State and Central Governments. The first discussion paper on GST in India set out the salient features that were incorporated in the report of the Thirteenth Finance Commission issued in December 2009. Prior to enumerating the Central and the State taxes to be integrated with GST". The revenue has not made out any bar for the transitioning of EC, SHEC and KKC into the GST regime and the petitioner satisfies all conditions both under sub-section (1) and (8) of section 140. The embargo placed by Rule 3(7)(b) is long gone with the introduction of GST. Certainly, the powers-that-be are conscious of these factors in drafting the new legislation and the specific provision in question i.e., Section 140.

[Decided in favour of the petitioner]

M/S ONYX DESIGNS VS THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES- 2019 [KARNATAKA HIGH COURT]

Brief: Whether remitting of tax by registered selling dealer is a condition precedent in claiming input tax credit by the purchasing dealer against a valid invoice with the tax component paid?

OUR COMMENTS: In the present case, The Karnataka High Court has held that if the assessee purchaser proves that the seller has already discharged the tax liability, then the department cannot deny the benefit of input tax credit to such buyer. Justice S Sujatha observed that the benefit of input tax cannot be deprived to the purchaser dealer if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer.

[Decided in favour of the petitioner]

FEMA

CASE LAW

GORKHA SECURITY SERVICES VERSUS GOVT. OF NCT OF DELHI & ORS - 2014 [SUPREME COURT]

<u>Brief:</u> Form and content of show cause notice required to be served, before deciding as to whether the noticee is to be blacklisted or not?

<u>OUR COMMENTS:</u> In the present case, The Supreme Court held that when it comes to the action of blacklisting which is termed as 'Civil Death' it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT. No such case was set up by the respondents that by omitting to state the proposed action of blacklisting, the appellant in the show cause notice has not caused any prejudice to the appellant. Moreover, had the action of blacklisting being specifically proposed in the show cause notice, the appellant could have mentioned as to why such extreme penalty is not justified. It is not at all acceptable that non mentioning of proposed blacklisting in the show cause notice has not caused any prejudice to the appellant. This apart, the extreme nature of such a harsh penalty like blacklisting with severe consequences, would itself amount to causing prejudice to the appellant. We are of the view that the impugned judgment of the High Court does not decide the issue in correct prospective. The impugned order passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed. Therefore, there was no show cause notice given to this effect before taking action of blacklisting against the appellant. We, therefore, set aside and quash the impugned action of blacklisting the appellant. The appeals are allowed to this extent.

[Decided in favour of the appellant]

CUSTOMS

NOTIFICATIONS/CASE LAW

PROVISIONAL INCREASE OF 5% OF DUTY FOR A PERIOD OF 180 DAYS ON IMPORTS OF "REFINED BLEACHED DEODORIZED PALMOLEIN AND REFINED BLEACHED DEODORIZED PALM OIL"

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 22/2020-Customs dated 12.05.2020** has notified that such notification seeks to confirm the provisional increase of 5% in the rate of duty of customs levied vide notification No. 29/2019-Cus dated 04.09.2019, for a period of 180 days, on imports of "Refined Bleached Deodorized Palmolein and Refined Bleached Deodorized Palm Oil", falling under tariff item [1511 90 10] or tariff item [1511 90 20] of the First Schedule to the Customs Tariff Act, 1975, originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement.

[For further details please refer the notification]

CHAMAN KUMAR SHAH VERSUS UNION OF INDIA AND 2 OTHERS- 2020 [ALLAHABAD HIGH COURT]

Brief: Smuggling of gold bars is a bailable offence u/s 104(6) and (7) of the Customs Act, 1962, if the amount of the seized goods does not exceed one crore rupees and evasion of tax amount does not exceed fifty Lakh rupees.

OUR COMMENTS: In the present case, the applicant is caught with 4 gold bars at Pandit Deendayal Upadhyay Station for smuggling of gold bars from Bangkok. Under Section 104(6) and (7) of the Customs Act, it is covered that it is a bailable offence. Therefore, the applicant applied for bail under various authorities but the application was rejected. The High Court held that the fact is not disputed that the market price of the goods seized does not exceed one crore of rupees. Nowhere in the counter affidavit has it been stated that the gold that was seized from the applicant belongs to the category of prohibited goods duly notified by the Central Government, nor has it been stated that evasion or attempted evasion of duty exceeds fifty lakh rupees. Further, no fraud has been alleged as referred in clause (d) of sub-section (6) of Section 104 and there is a merit in the contention of the applicant that the offence is a bailable offence as provided in sub-section (7) of Section 104 of the Customs Act. It is no longer res integra that the right to claim bail as provided under Section 436 Cr.P.C. in a bailable offence is an absolute and indefeasible right and in such offences there is no question of discretion in granting bail as the words of Section 436 are imperative. Hence, the application is allowed.

[Decided in favour of the petitioner]

DGFT

NOTIFICATION/CASE LAW

AMENDMENT IN IMPORT POLICY CONDITIONS OF SILVER UNDER CHAPTER 71 OF ITC (HS), 2017, SCHEDULE – I (IMPORT POLICY)

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 05/2015-2020-FTP dated 13.05.2020** has exempted the import of Silver under Advance Authorisation and supply of silver directly by foreign buyers to exporters under Para 4.45 of FTP against export orders.

[For further details please refer the notification]

M/S. DAVINCI LEATHER PVT. LTD VERSUS THE COMMISSIONER OF CUSTOMS, THE ASSISTANT COMMISSIONER OF CUSTOMS (EDC) -2020 [MADRAS HIGH COURT]

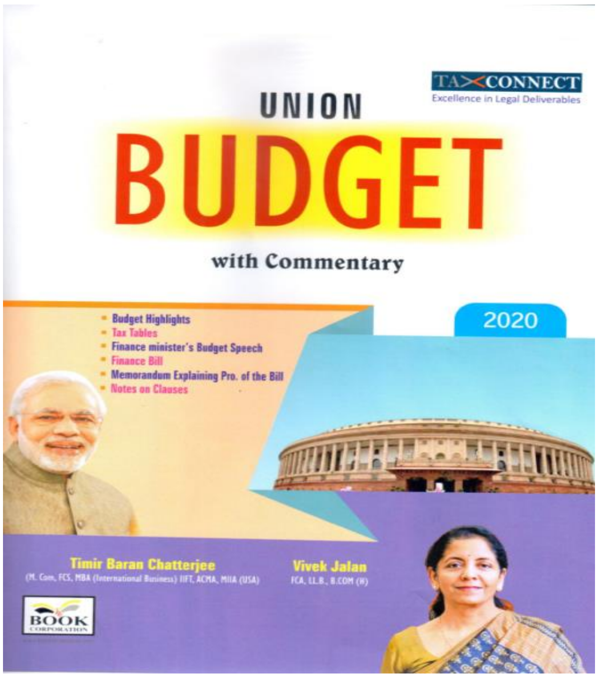
BREIF: Can petitioner be allowed for correction in shipping bills while applying for the benefit of the export transaction under MEIS notified under Foreign Trade Policy?

OUR COMMENTS: In the given case, the petitioner is engaged in the export of leather shoes who had filed a shipping bill claiming duty drawback. Petitioners is also entitled for benefit for the export transaction under the Merchandise Exports from India Scheme (MEIS) notified under the Foreign Trade Policy. However, at the time of filling of the shipping bill, the petitioner had inadvertently omitted to select 'YES' as an option for availing the MEIS benefit, on the online platform. The entitlement to MEIS or otherwise is a matter to be examined by the Director General of Foreign Trade (DGFT) on an application made in this behalf by the petitioner. The DGFT, when approached, advised the petitioner to have the shipping bills amended by the Customs Authorities. An application had thus come to be filed by the petitioner setting out the sequence of events as above and seeking amendment of the Bill containing the error. Upon consideration of the request made, the second respondent rejected the same by order dated 18.11.2019, as against which the present Writ Petition is filed. This very issue as to whether the inadvertent error of not claiming benefit under the MEIS was fatal to the claim itself has come to be considered by learned single Judges of this Court in Pasha International V. Commissioner of Customs, Tuticorin (2019 (365) ELT 669) and Global Calcium Pvt. Ltd. V. Asst. Commissioner (order dated 10.06.2019 in W.P.No.3321 of 2019) in favour of the petitioner. I am also of the view that the error in not stating 'YES' to availment of the Scheme, such error, admittedly being inadvertent and Mr.Rajinish Pathiyil fairly does not dispute this, should not stand in the way of the consideration of entitlement on merits. As far as entitlement itself is concerned, I have already observed that the benefit of the Scheme would be available to the petitioner conditional upon verification and acceptance of such claim by the DGFT. In the light of the discussion as above, the impugned order rejecting the request for amendment is quashed and a mandamus issued to the second respondent to amend the shipping as sought for, by the petitioner. The Writ 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:

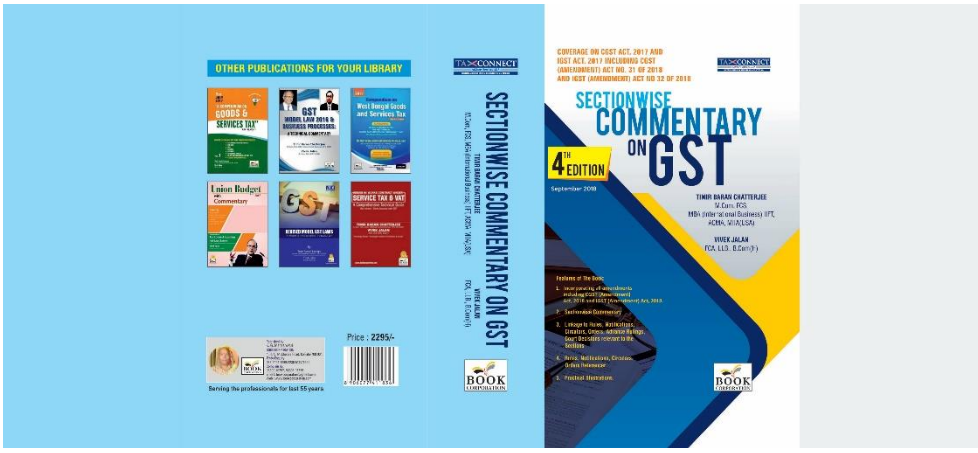
BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

In Association With

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 9831594980, 9331042424
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in

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
Website :www.bookcorporation.com

In Association With

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 9831594980, 9331042424
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in