266th Issue: 7th June 2020 - 13th June 2020

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EDITORIAL

Friends,

India will provide relief to overseas companies with global income that may be subject to tax here because the presence of their key management personnel stuck in the country during the lockdown created a **'permanent establishment' or place of effective management** in the country. The respite will be granted on a case-by-case basis. The govt has exempted individuals by excluding their lockdown stay from residency calculation and it was widely expected that a similar concession would be given to companies.

The GST Council in its next meeting will discuss **waiver of late fee for non-filing of GST returns** for the period of August 2017 to January 2020. The Central Board of Indirect Taxes and Customs (CBIC) said, "Issue of GST late fee for the past period (August 2017 to January 2020) to be discussed in the next GST Council meeting." The next meeting of the GST Council is likely to be held on 14.06.2020.

The Reserve Bank of India on 05.06.2020 has announced that it has setup a Rs.500 crore **Payment Infrastructure Development Fund (PIFD)** to support and improve the development of digital payments ecosystem in the rural and north east districts of the country. The central bank has made an initial seed contribution of Rs.250 crore to the PIFD with the other half of the fund expected to be contributed by all card issuing banks and network operators.

The government is exploring **changes to the equalisation levy** and may stop charging the tax on digital transactions either partially or in its entirety for a year as it works on the options, people with direct knowledge of the matter said. The government is doing a cost-benefit analysis and has reached out to stakeholders to figure out if it needs to suspend or shelve the 2% equalisation levy imposed this fiscal year on any purchase by an Indian or India-based entity through an overseas ecommerce platform. Many Indian startups and stakeholders are also pushing to shelve or reduce the 6% equalisation levy, the so-called Google tax, charged on the advertising revenue that overseas companies such as Netflix generate from India.

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

NOTIFICATION/ CASE LAW

INTRODUCTION OF INCOME-TAX (12TH AMENDMENT) RULES, 2020

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance, Government of India **vide Notification No.31/2020 dated 29.05.2020** had notified Income-tax (12th Amendment) Rules, 2020.

[For details please consider the said Notification]

RAJAN ARJUNAN VERSUS M/S. KLM AXIVA FINVEST LTD. AND STATE OF KERALA-2020 [KERALA HIGH COURT]

Brief: Applicability of Section 143A of the Negotiable Instruments Act, 1881.

OUR COMMENTS: In the present case, the complaint is filed against the petitioner by the first respondent for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complaint against the petitioner was filed on the allegation that the cheques issued by him in favour of the first respondent returned unpaid for the reason that there was no sufficient amount in the account and inspite of the statutory notice issued to the petitioner demanding payment of the amount of the cheques, he did not pay the amount. Learned Magistrate took cognizance of the offence and issued process to the petitioner. The petitioner pleaded not guilty to the offence. Then, the learned Magistrate ordered that the petitioner shall deposit 20% of the amount of the cheques within a period of sixty days. The aforesaid order is challenged by the petitioner/accused in this original petition filed under Article 227 of the Constitution of India. It is held by the Kerela High Court that Section 143A was inserted in the Act with effect from 01.09.2018 by Amendment Act 20 of 2018. Section 143A(1) of the Act provides that, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant –

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint and

(b) in any other case, upon framing of charge.

Section 143A(2) of the Act states that the interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque. In the instant case, the offence under Section 138 of the Act was allegedly committed by the petitioner and the complaint against him was filed by the first respondent much before the date 01.09.2018. Therefore, the learned Magistrate could not have invoked the provisions under Section 143A of the Act in the instant case and directed the petitioner to deposit 20% of the amount of the cheques. The impugned order cannot be sustained in law. Hence, petition is allowed and decided in favor of petitioner.

[Decided in favour of the assessee]

GST: IGST/CGST/SGST/UTGST

CASE LAWS

MOHIT VIJAY S/O JEEVAN LAL VIJAY, KAPIL VIJAY@KAPIL VIJAYAVARGIYA S/O SHRI RAM KALYAN VIJAY VERSUS UNION OF INDIA- 2020 [RAJASTHAN HIGH COURT]

Brief: Whether the bail will be granted for offence under 132(1)(b)(c)(f)(j) and (l) of the CGST Act, 2017?

OUR COMMENTS: In the present case, applicant has issued fake invoices giving benefit to companies who availed benefit of ITC. Hence, department held this as an offence under Section 132(1)(b)(c)(f)(j) and (I) of the Central Goods and Service Tax Act, 2017. It is held by the Rajasthan High Court that This Court notices that the complaint has already been filed with complete details before the Chief Metropolitan Magistrate (Economic Offences), Jaipur, who is ceased with the matter and the trial has commenced. The witnesses are in a huge number and the trial is likely to take time. No further documents are required to be produced apart from any other document, which may be required subsequently. The petitioners cannot be said to be required for any further investigation and no recovery is required to be effected against them and their account has also been seized - The recovery, which is required to be made as against the accused petitioners, is under the provisions of GST Act, which are not part of the criminal case. This Court also notices that the offence alleged against the accused petitioners is compoundable. However, no process for compounding the offence has been undertaken by either of the party. However, learned counsel submits that as the petitioners are behind bars, no proceeding for compounding the offence could be taken. Keeping in view that the petitioners are already in jail for 450 days and no further investigation or recovery is to be made for the purpose of the case, the petitioner is allowed to be released on bail subject to submitting a bail bond in the sum of ₹ 1,00,000/- along with one surety of the like amount along with certain conditions imposed. Hence, bail application is allowed.

[Decided in favour of the applicant]

SOHAN LAL COMMODITY MANAGEMENT PVT LTD AND ANOTHER VS STATE OF UP- 2020 [ALLAHABAD HIGH COURT]

Brief: Petition seeking direction of respondent to release of 'Mentha Oil' seized during search and seizure operation by claiming it be perishable in nature.

OUR COMMENTS: In the present case, it is held by the Allahabad High Court that CGST Act, 2017 provides a complete procedure for release of such goods, as contained in Section 67 of the Act read with Rule 141 of the relevant Rules. Further, the Revenue has stated that "Mentha Oil" is not perishable in nature and it has not been included in the schedule contained in the Notification dated 13.06.2018 issued by Government of India. Without expressing any opinion on the merits of the case, this writ petition is finally disposed of with a direction to the petitioners to make an appropriate application/representation before the concerned authority under the relevant provision of the Act, 2017 ventilating their grievances.

[Decided in favour of the petitioner]

FEMA

CASE LAW

S. SIVAKUMAR VERSUS INTELLIGENCE OFFICER DEPARTMENT OF COMMERCIAL TAXES, KOLLAM- 2020 [KERALA HIGH COURT]

Brief: Whether the petitioner will be given order as per principle of natural justice for non-production of books of accounts?

OUR COMMENTS: In the present case the petitioner is doing business in two and three-wheeler spare parts under the name and style 'Star Auto Spares', and is an assessee to sales tax under the VAT Act, 2003. An inspection was conducted at the petitioner's business premises on 18.07.2001 and documents recovered under eight different heads. Based on the inspection report, penalty was imposed on the petitioner under Section 67 of the KVAT Act. Exts.P1 to P1(c) are the penalty orders pertaining to the assessment years 2008-09 to 2011-12. Petitioner challenged the penalty orders in separate appeals, which the appellate authority disposed of under Ext.P4 common order. As regards Recovery No.8, which was projected as proof of major tax evasion, the appellate authority observed that the Intelligence Officer had failed to conduct specific and detailed enquiry with respect to the finding of the alleged unaccounted purchase of spare parts and directed the Intelligence Officer to verify the books of accounts and to take evidence from the persons named in Recovery No.8, as to the exact nature of the transactions and to modify the penalty accordingly. Likewise, with respect to Recovery No.3, the Intelligence Officer was directed to verify the returns and the purchase list for the relevant years and also the statements produced and to then reduce the penalty corresponding to the purchases accounted for. The Intelligence Officer was also directed to verify Recovery No.5 and delete the penalty relating to the purchase of cycle parts affected by the petitioner's brother for his business. The maximum penalty imposed under Exts.P1 to P1(C) orders was reduced to 150% of the tax evaded, which was to be ascertained in accordance with the earlier directions. The petitioner was directed to produce all the books of accounts and other evidence and statements relating to the recoveries and the affidavit of the persons named in Recovery No.8 before the Intelligence Officer within one month from the date of receipt of a copy of the order. It is pertinent to note that, neither in the impugned orders nor in the counter affidavit, there is no allegation of the petitioner having failed to produce the books of account on 8.10.2014. On the other hand, what is stated is that, "the dealer had not produced any books of accounts for any of the years 2008-09, 2009-10, 2010-11, 2011-12 for verification now, in spite of the directions by the appellate authority and of the issuance of this office notice". The above statement lends credence to the submission of the petitioner that, though the books of accounts were produced on 8.10.2014, he was directed to produce them at a later stage but was not served with any notice thereafter. The impugned orders has been passed without reference to the books of accounts and by discarding the statements of the witnesses, examined behind the petitioner's back, cannot be sustained. The first respondent is directed to reconsider the penalty orders in terms of the directions contained in Ext.P4 appellate order, providing effective opportunity to the petitioner to participate in the enquiry proceedings, including examination of witnesses. Hence, petition is allowed by way of remand.

[Decided in favour of the petitioner]

CUSTOMS

NOTIFICATIONS

REDUCTION IN IMPORT DUTY ON LENTILS (MOSUR) TILL 31ST AUGUST 2020

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 26/2020-Customs dated 02.06.2020** has notified that such notification seeks to further amend Notification No. 50/2017-Cus dated 30.06.2017 so as to temporarily reduce the import duty on Lentils (Mosur) till 31st Aug 2020.

[For further details please refer the notification]

EXTENSION OF ANTI DUMPING DUTY ON STAINLESS STEEL ORIGINATING IN OR EXPORTED FROM CHINA, MALAYSIA AND KOREA

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 11/2020-Customs (ADD) dated 03.06.2020** has notified that such notification seeks to amend Notification No.28/2015-Customs (ADD) dated 05.06.2015 so as to extend anti-dumping duty on 'Hot Rolled Flat Products of Stainless Steel of ASTM Grade 304 with all its variants as per the detailed description hereunder' originating in or exported from People's Republic of China, Malaysia and the Republic of Korea.

[For details please consider the said notification]

IMPOSITION OF ANTI DUMPING DUTY ON ELECTRONIC CALCULATOR ORIGINATING IN OR EXPORTED FROM MALAYSIA

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 12/2020-Customs (ADD) dated 03.06.2020** has notified that such notification Seeks to impose anti-dumping duty on "Electronic Calculators of all types [excluding calculators with attached printers, commonly referred to as printing calculators, calculators with ability to plot charts and graphs, commonly referred to as graphing calculators and programmable calculators originating in, or exported from Malaysia".

[For details please consider the said notification]

EXCHANGE RATE NOTIFICATION ON FOREIGN CUREENCY

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 49/2020-Customs (N.T) dated 04.06.2020** has notified exchange rate of foreign currency on import or export of goods.

[For details please consider the said notification]

EMPOWER CUSTOM OFFICERS TO CONDUCT FACELESS ASSESSMENT OF BILLS OF ENTRY U/S 46 OF THE CUSTOMS ACT, 1962

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 50/2020-Customs (N.T) dated 05.06.2020** has notified that seeks to empower Customs officers as 'proper officers' to conduct faceless or remote assessment of Bills of Entry filed under Section 46 of the Customs Act, 1962 for import in another Customs station.

[For details please consider the said notification]

DGFT

NOTIFICATION/CASE LAW

AMENDMENT IN EXPORT POLICY OF ALCOHOL BASED HAND SANITIZERS

<u>OUR COMMENTS:</u> The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 08/2015-2020-FTP dated 01.06.2020** has allowed the export policy of alcohol based hand sanitizers.

[For further details please refer the notification]

M.D. OVERSEAS LIMITED VERSUS UNION OF INDIA AND ORS.-2020 [DELHI HIGH COURT]

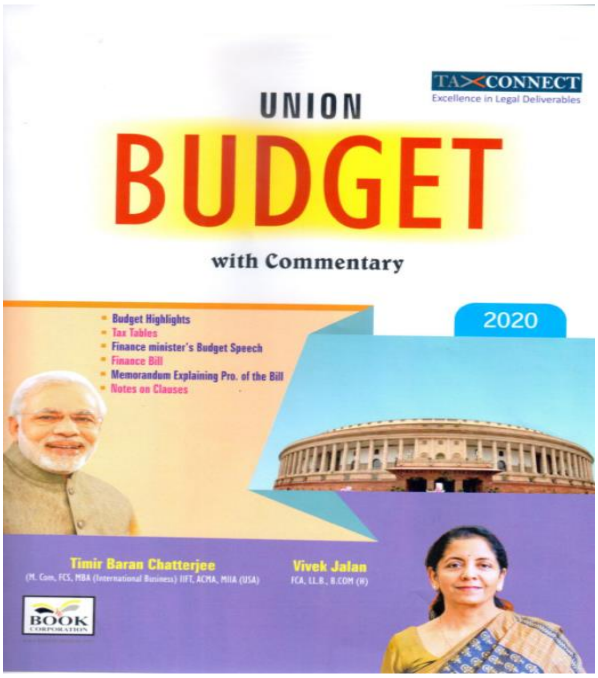
<u>BREIF:</u> **Export of items namely "Gold Medallions and Coins" or "Any Jewellery manufactured by fully mechanized process" under Advance Authorization Scheme is allowed.**

<u>OUR COMMENTS:</u> In the given case, petitioner is an incorporated Company engaged in diverse businesses including the manufacture and export of Gold Jewellery and Gold Medallions, for which, the Petitioner regularly imports Gold bars. The Petitioner vide its application had sought for Advance Authorization under Para 4.37 of the Foreign Trade Policy (2015-2020) (hereinafter referred to as, "FTP") seeking for import of Gold Bars and export of Gold Medallions & Coins. Deficiency letter was issued by DGFT directing the Petitioner to clarify if the Petitioner had achieved the prescribed value addition in response to which the Petitioner sent a clarificatory letter. It is held by the Delhi High Court that it appears that by impugned public notice No.35/2015-2020 dated 26th September, 2019 (Annexure P-1 to the memo of writ petition) issued by respondent No.1 whereby the Director General of Foreign Trade (DGFT), in exercise of the powers under paragraph 1.03 of the Foreign Trade Policy 2015-2020, disallowed issuance of Advance Authorisations where item of export is "Gold Medallions and Coins" or any jewellery/articles manufactured by fully mechanized process, has in effect amended the Foreign Trade Policy, in excess of power and jurisdiction of the DGFT. The powers exercised by DGFT while issuing the aforesaid public notice dated 26th September, 2019 which puts restrictions upon issuance of the advance authorisation for the Gold Medallions and Coins is beyond the power, jurisdiction and authority of DGFT. The categorisation or re-categorization cannot be done by the policy circulars such exercise has to be undertaken by specific amendment to the Foreign Trade Policy under Section 5 of the Act. Hence also, the public notice No.35/2015-2020 dated 26th September, 2019 (Annexure P-1) is beyond the power, jurisdiction and authority of DGFT - the power exercised by DGFT under paragraph 1.03 of the Foreign Trade Policy 2015-2020 is illegal and the same deserves to be quashed and set aside. The public notice dated 26th September, 2019 issued by respondent No.1 and consequential letters are set aside which are Annexure P-2 and Annexure P-3 respectively to the memo of writ petition are directed to be decided by respondent No.1 as early as possible and practicable. Hence, 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**

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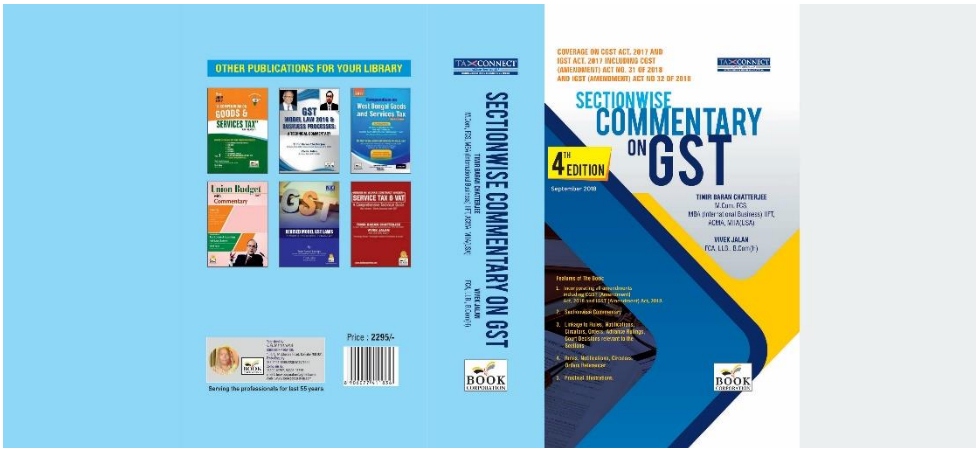
IN STANDS

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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