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EDITORIAL

Friends,

As per CBDT on 14.06.2020, **Gross direct tax collections for 2019-20** fell almost 5% at Rs 12.33 lakh crore against the previous year's Rs 12.97 lakh crore. This fall in the collection of direct taxes is on expected lines and is temporary in nature due to the historic tax reforms undertaken and much higher refunds issued during the FY 2019-20. The board attributed the fall in collections to a combination of factors, including 14% year-on increase in refunds issued, cut in the corporate tax rate to 22%, reduction in minimum alternative tax (MAT) to 15% for existing units, reduced rate of 15% for new manufacturing units, increase in standard deduction to Rs 50,000 and income tax exemption for people earning up to Rs 5 lakh a year.

The gaps in the **Foreign Direct Investment (FDI) regulation** to screen Chinese money are paving the way for 'bank shopping' as investors linked to China look for ways to stay below the radar. Banks are taking different threshold levels of investments to decide whether an FDI proposal requires the approval of the government. If the share or ownership of a Chinese investor in an overseas fund or entity (not from China or countries linked to China) is below the threshold, the FDI application can be processed under the automatic route. According to Press Note 3 issued by the government on 17.04.2020, an entity of a country "which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the government route." The key term in the regulation, which is understood to be aimed at monitoring and restricting Chinese fund inflow, is ''beneficial owner.''

India Inc's **advance tax payments for the first quarter plummeted sharply** by 79% to ₹8,500 crore, reflecting a severe economic downturn and muted corporate profits in the coming months. Economists said the reductions were in line with expectations for the full year with growth forecasts in the negative, more so due to the lockdown which almost obliterated demand, consumption and economic activity in the first quarter. Lower tax payments, they said, also indicated possible deferral of payments owing to liquidity crunch being faced by businesses.

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

INSERTION OF COST OF INDEXATION FOR F.Y.2020-21

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Notification No. 32/2020 dated 12.06.2020** has notified that such notification seeks to amend Notification No. 44/2017 Dated 05.06.2017. Indexed cost of inflation for F.Y.2020-21 has been inserted. This notification shall come into force w.e.f 01.04.2021.

[For further details please refer the notification]

COMMISSIONER OF INCOME TAX (EXEMPTION) VERSUS MANEKJI MOTA CHARITABLE TRUST -2019 [BOMBAY HIGH COURT]

Brief: Exemption u/s 11 cannot be denied due to deniel of registration u/s 12AA.

OUR COMMENTS: In the present case, this appeal under Section 260A of the Income Tax Act, 1961 has been preferred by the revenue. The Revenue has urged the following questions of law for our consideration:

(i) Whether on the facts and in circumstances of the case and in law, the Tribunal was right in overlooking the fact that in the absence of “Dissolution Clause” in the Trust Deed, the net assets of the Trust on its dissolution would be transferred to any entity / distributed among the trustees thus defeating the very purpose of registration u/s 12AA of the I.T. Act, 1961?

(ii) Whether on the facts and in circumstances of the case, the Tribunal was right in law by overlooking the facts that the assessee had incurred 29% out of its gross receipt towards religious activities which substantially higher than allowable i.e. 5% as per I.T. Act for religious purpose”

It was held by the Bombay High Court that Impugned order allowed the respondent’s appeal by placing reliance upon the decision of its coordinate bench in the case of **Geeta Lalwani Foundation Vs. Commissioner of Income Tax (Exemption) [2015 (1) TMI 1368 - ITAT MUMBAI]**. Mr. Kotangle, fairly states that the Revenue being aggrieved by the above order of the Tribunal had preferred an appeal to this Court being [2018 (7) TMI 2053 - BOMBAY HIGH COURT] wherein this Court dismissed the above Appeal on the identical question as framed herein. (b) Thus, for the reasons indicated above question no.(i) as proposed herein does not give rise to any substantial question of law. Thus, not entertained. We note that undisputedly 71% of the receipts of the Trust are being spent in accordance with its objects. Therefore, this itself would establish that the Trust is in existence. A partial expenditure which is not authorized by the Trust would not be itself lead to the Trust becoming nongenuine. The consequence would be that the benefit of Section 11 of the Act will not be available to that extent. At the stage of registration, this issue is premature. No substantial question of law. Hence, it is in favour of the assessee.

[Decided in favour of the assessee]

GST: IGST/CGST/SGST/UTGST

CIRCULARS/CASE LAW

CLARIFICATION ON REFUND RELATED ISSUES

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 139/09/2020-GST dated 10.06.2020** has clarified on the issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the FORM GSTR-2A of the applicant.

[For further details please refer the circular]

CLARIFICATION IN RESPECT OF LEVY OF GST ON DIRECTOR'S REMUNERATION

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 140/10/2020-GST dated 10.06.2020** has clarified whether the GST is leviable on Director's remuneration paid by companies to their directors.

[For further details please refer the circular]

AMBA INDUSTRIAL CORPORATION VERSUS UNION OF INDIA AND ANR - 2020 [PUNJAB AND HARYANA HIGH COURT]

Brief: Whether the permission to petitioner to electronically upload form TRAN-I or avail input tax credit in monthly return GSTR-3B will be granted w.r.t. vires of Rule 117(1A) of Central Goods and Service Tax Act, 2017?

OUR COMMENTS: In the present case, Punjab and Haryana High Court held that the Petitioner has challenged vires of Rule 117 (1A) of Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that Petitioner is entitled to carry forward VAT Credit/ITC accrued under Punjab Value Added Tax Act, 2005. The Respondents have repeatedly extended date to file TRAN-I where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-I in case of technical glitches as understood by Respondent vindicate claim of the Petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-I would amount to violation of Article 14 as well Article 300A of the Constitution of India. Reliance can be placed in the case of **ADFERT TECHNOLOGIES PVT. LTD. VERSUS UNION OF INDIA AND ORS. [2019 (11) TMI 282 - PUNJAB AND HARYANA HIGH COURT]** where it was held that Respondents are directed to permit the Petitioners to file or revise where already filed incorrect TRAN-1 either electronically or manually statutory Form(s) TRAN-1 on or before 30th November 2019. The Respondents are directed to permit Petitioner to upload TRAN-I on or before 30.06.2020 and in case Respondent fails to do so, the Petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020. Hence, petition is allowed.

[Decided in favour of the petitioner]

FEMA

CASE LAW

UNITED INDIA AIRWAYS LTD & ANR. VERSUS CHIEF ENFORCEMENT OFFICER, ENFORCEMENT DIRECTORATE-2018 [DELHI HIGH COURT]

Brief: No violation of Section 9(1)(e) of Foreign Exchange Regulations Act, 1973 in case of failure to comply with the mandatory requirement of Section 61(2) of FERA.

OUR COMMENTS: In the present case, the petitioners impugns Order-on-Charge framing charge against the petitioners for alleged violation of Section 9(1)(e) of Foreign Exchange Regulations Act, 1973 (hereinafter referred to as FERA). Learned counsel for the petitioners, inter alia, contends that the respondent has failed to comply with the mandatory requirement of proviso to Clause (ii) of sub Section (2) of Section 61 of FERA and no opportunity notice was served on the petitioner. It is contended that proviso to Section 61(2)(ii) of FERA prohibits taking of cognizance by a Court of an offence punishable under Section 56 and 57 of FERA unless an opportunity has been given to the accused of showing that he had the requisite permission. Learned counsel for the petitioners submits that no such opportunity was granted and the opportunity notice, which was addressed to the petitioners, was, admittedly, incorrectly addressed and was never served on the petitioners. She submits that since there is non-compliance of the mandatory provisions, the Trial Court could not have taken cognizance and framed charge against the petitioners and all proceedings consequent thereto are liable to be quashed. Learned counsel for the respondent though concedes that there is a requirement of giving an opportunity to the accused to show that he had requisite permission, however, she submits that there is no mandatory requirement of giving an "opportunity notice". She submits that when the accused had appeared before the Authority for recording his statement under Section 40 of FERA, he was asked as to whether he had the requisite permission; in response to which, he failed to produce the permission and, accordingly, the requirement of giving an opportunity was satisfied. It was held by Delhi High Court that the subject complaint was filed. Since petitioners were never granted an opportunity, as mandated by Section 61(2) of FERA, there is clearly a breach of the mandate of law. Since the requirements of Section 61(2) of FERA have not been complied with, reliance placed by the respondent on the statement recorded at the time when proceedings under Section 40 of FERA were being undertaken and reliance on the same in the impugned order as sufficient compliance of Section 61(2) of FERA, is clearly misplaced. Since respondents have failed to comply with the mandatory requirement of Section 61(2) of FERA, the Trial Court clearly erred in taking cognizance. The impugned order on charge cannot be sustained and is liable to be set aside. The impugned order is, accordingly, quashed. The present petition is allowed.

[Decided in favour of the petitioner]

CUSTOMS

NOTIFICATIONS/CASE LAW

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. 52/2020-Customs (N.T) dated 15.06.2020** has notified fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

[For further details please refer the notification]

NOTIFICATION ON EXCHANGE RATE OF FOREIGN CURRENCY

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 53/2020-Customs (N.T) dated 18.06.2020** has notified exchange rates of import and export of various foreign currencies.

[For details please consider the said notification]

CENTRAL BOARD OF CUSTOMS & CENTRAL EXCISE, DIRECTOR GENERAL OF INSPECTION, COMMISSIONER OF CUSTOMS (GENERAL), THE COMMISSIONER OF CUSTOMS VERSUS T. RADHAKRISHNAN- 2020 [MADRAS HIGH COURT]

Brief: Application for obtaining license under CBLR shall fulfill conditions as per clause 5(f) of CBLR.

OUR COMMENTS: In the present case, it was held by Madras High Court that the words 'or' in clause (ii) of clause 5(f) of the CBLR, makes the two parts mutually exclusive and independent. Therefore, the words 'possess a professional degree such as Masters', without any specification of the subject in the said clause, could encompass, in our opinion, the Master's Degree in Science also, which the petitioner did admittedly satisfy. The words 'such as' before the words 'Masters' cannot obliterate the words 'or' and the respondent cannot be compelled to have Master's Degree in Accounting/Finance/Management. Apparently even a partner or director of a partnership firm or a company having sufficient experience, can apply provided, he is a graduate and holds a Master's Degree in any subject or an equivalent degree in Accounting/Finance or Management, CA/MBA/LLB. etc. Before the words 'is having atleast two years' experience in transacting Customs Broker work as G-Card holder;' also, there is another "or" in clause (ii) of clause 5(f) of CBLR. Thus, obviously clause (ii) is in three parts and it permits a person holding (1) Master Degree in any subject or (2) an equivalent to Master's Degree in Accounting/Management/Finance etc., or (3) having an experience of two years as G Card holder, thus a mixture of three categories with no watertight silos in these categories, are given as criteria to apply for such Customs Broker License under CBLR - the contention of the learned counsel for the appellant/Revenue that the words 'such as' before the words 'Masters' in part of clause (ii) should be read with the subjects like Accounting/Finance or Management is not found to be a tenable contention. The respondent herein, Mr.T.Radhakrishnan, prima facie appears to be a highly qualified person or rather overly qualified to hold the Customs Broker License, and he fulfills the criteria of eligibility as given in clause 5 of CBLR itself. Hence, the appeal is dismissed.

[Decided in favour of the assessee]

DGFT

NOTIFICATIONS

AMENDMENT IN EXPORT POLICY OF HUMAN EMBRYOS

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 11/2015-2020-FTP dated 12.06.2020** has amended the export policy of human embryos. Human Embryos / Gametes/ Gonad tissues are "Free" for export subject to 'No Objection Certificate' from Indian Council of Medical Research (ICMR).

[For further details please refer the notification]

AMENDMENT IN IMPORT POLICY OF TYRES

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 12/2015-2020-FTP dated 12.06.2020** has amended the import policy of tyres. Import policy of New pneumatic tyres covered under ITC HS codes 40111010, 40111090, 401 12010, 40112090, 401 14010, 401 14020, 40114090, 401 15010 and 40115090 is amended from 'Free' to 'Restricted'.

[For further details please refer the notification]

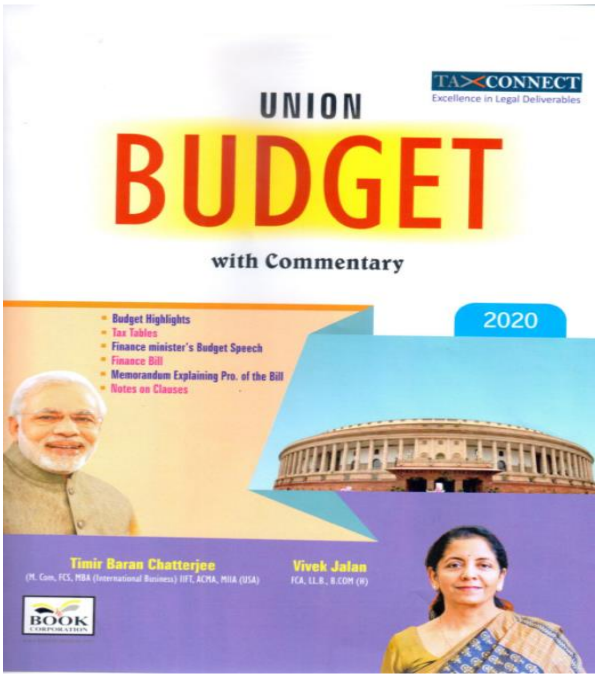
AMENDMENT IN EXPORT POLICY OF HYDROXYCHLOROQUINE API AND ITS FORMULATIONS

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 13/2015-2020-FTP dated 18.06.2020** has amended the export policy of Hydroxychloroquine API and its formulations from “Prohibited” to “Free”, with immediate effect.

[For further details please refer the notification]

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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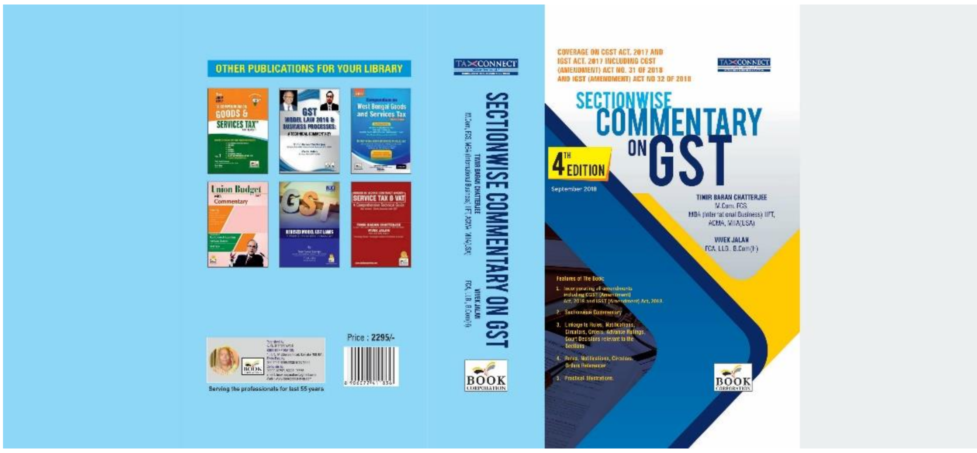
IN STANDS

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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