271st Issue: 23rd August 2020 - 29th August 2020

TAX CONNECT

Knowledge Partner

BCC&I THE BENGAL CHAMBER

FEMA. FDI. INCOME TAX. GST. LAND. LABOUR

TAX CONNECT

Mumbai : A/1001, Cirrus Bldg, Cosmos Paradise; Pokhran Road No. 1, Thane (West), Maharashtra – 400606
Bangalore : A-414,Carlton Towers,19th Main; Road Hal Old Airport Rd, Domlur, Bengaluru, Karnataka-560008
New Delhi : C73, 2nd Floor, Sector 50, Mayfield Garden, Gurgaon 122001
Kolkata :1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
: Room No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road; Kolkata – 700055

Dubai :Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact : **+9133 4001 6761**

Website : www.taxconnect.co.in
Email : info@taxconnect.co.in

EDITORIAL

Friends,

The government has kicked off **mega overhaul of GST laws** to decriminalise various offences. The move is **set to bring cheers to the industry** which has been complaining of harassment by tax authorities. Directorate General of Goods and Services Tax (DGGST) has written to some of the industry bodies seeking their inputs on decriminalisation of certain offences. Major Highlights are:-

- Directorate General of Goods and Services Tax (DGGST) has written to industry bodies to give their **inputs on decriminalisation** of certain GST offences.
- The move is said to bring **cheers to the industry** which has been complaining of harassment by tax authorities.
- Central Board of Indirect Taxes and Customs (CBIC) has **constituted** a group of officers to complete consultation exercise at the earliest so that necessary changes in the GST law can be made.
- To **facilitate trade and business** in the country, and **reduce litigation**, the government had earlier converted over a dozen criminal offences in the Companies Act 2013 into civil wrongs.

The Centre on 27.08.2020 placed before the Goods and Services Tax Council two options for borrowing by states to meet the shortfall in GST revenues, pegged at Rs 2.3 lakh crore in the current fiscal. **First Option**, the amount can be repaid after five years (of GST implementation) ending 2022 from cess collection. The **second option** before the states is to borrow the entire Rs 2.35 lakh crore shortfall under the special window.

On 25.08.2020 Finance Minister Nirmala Sitharaman had said **two-wheelers** are neither a luxury nor a sin good and hence merit a **rate revision**. However, there has been no announcement by the GST Council of any such cut or proposed cut. One industry body leader has pointed out that Sitharaman had showed similar intentions in August 2019, resulting in customers delaying purchases, and passenger vehicle sales contracting.

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

Editor:
Vivek Jalan
FCA, LL.M (Constitutional Law), LL.B, CIDT(ICAI),B. Com (H)
Partner - Tax Connect Advisory Services LLP

Co-Editors:

Rohit Sharma
Senior Manager – Tax Connect Advisory Services LLP

Rajanikant Choudhury

Manager - Tax Connect Advisory Services LLP

SYNOPSIS

INCOME TAX

CASE LAW

TIRUNELVELI DISTRICT CENTRAL COOPERATIVE BANK LIMITED V/S THE JOINT COMMISSIONER OF INCOME TAX (TDS) AND THE INCOME TAX OFFICER, TIRUNELVELI-2020 [MADRAS HIGH COURT]

Brief: The assessees had also filed their returns and the case falls under the proviso to Section 201(1) of the Act, the writ petitioners who have failed to deduct cannot be fastened with any liability.

OUR COMMENTS: In this case, writ petitioners herein are Co-operative Banks engaged in the business of banking and that they had failed to comply with the terms of Section 194N of the Act. It was held by the Madras High Court that no fault the respondents for having issued show cause notices to the writ petitioners for not having complied with Section 194N of the Act. But then, the enquiry could have been held only after the commencement of the A.Y. and not in the P.Y. itself. Not agree with the stand of the writ petitioners' counsel that the volume of transaction that had taken place prior to 01.09.2019 should be ignored. As brought to notice computation of tax has been made only w.e.f 01.09.2019 and there has been no levy on the transaction before the cut-off date. The CBDT had issued a clarification that the provision having come into effect from 01.09.2019 any cash withdrawal prior to the said date will not be subjected to TDS. Since the threshold of One Crore Rupees is w.r.t the previous year, the cash withdrawal for triggering Section 194N of the Act shall be counted from 01.04.2019. The writ petitioners have not questioned the validity of the provision. The provision employs the expression “Previous year”. With reference to the A.Y. 2020-21, the previous year would obviously mean the period from 01.04.2019 to 31.03.2020. A taxing provision has to be understood in a plain manner. Such an application of the provision will not amount to retrospective operation. If TDS was levied even on transactions that had taken place prior to 01.09.2019, then, that would definitely be illegal, but that is not the case here. Therefore, Sustain the stand of the learned standing counsel that to calculate the threshold limit of One Crore rupees, the transactions that had taken place with effect from 01.04.2019 will have to be taken into account, but actual levy of tax will be on the cash withdrawals that had taken place with effect from 01.09.2019. Also sustain the stand of the learned Standing counsel that the department need not wait till the time limit for the assesses to file their returns for the assessment year gets over. It is open to the department to initiate action against the deductors, who have failed to act as per the requirements under Section 194N of the Act, as they are also deemed assessees. But then, when the enquiry is conducted, it is open to the noticees, who are to be treated as assessees in default to place materials before the Assessing Officer that the amounts received by the recipients do not represent income at their hands. If by then, the assessees had also filed their returns and the case falls under the proviso to Section 201(1) of the Act, the writ petitioners who have failed to deduct cannot be fastened with any liability. Since the Assessing Officers have not taken into account the entire scheme of the Act and had proceeded at breakneck speed, we are constrained to interfere with the impugned proceedings and they are accordingly quashed. The matters are remitted to the file of the respective jurisdictional Assessing Officers. Writ Petitions stand allowed.

[Decided in favour of the petitioner]

NOTIFICATION/CASE LAW

GOVERNMENT NOTIFIED SEC 100 WITH AMENDMENT IN SECTION 50 OF THE CGST ACT, 2017

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 63/2020-CGST dated 25.08.2020** has notified the provisions of section 100 of the Finance (No. 2) Act, 2019 to amend section 50 of the CGST Act, 2017 w.e.f. 01.09.2020.

[For further details please refer the notification]

ABCO TRADES (P) LTD VS THE ASSISTANT STATE TAX OFFICER-2020 [KERALA HIGH COURT]

Brief: Validity of detention of goods for the e-way bill shows consignee as an unregistered person whereas the invoice mentions consignee's GSTIN and also that the mention of the tax applicable in the delivery challan when the goods are stock transferred.

OUR COMMENTS: In the present case, it was held by the Kerala High Court that the petitioner has approached this Court aggrieved by Ext.P5(c) order of detention that was issued to it detaining a consignment of lubricant oil that was being transported at its instance. On a perusal of Ext.P5(c) detention order, it is seen that the objection of the 1st respondent is that the consignee was shown as an unregistered person in the e-way bill that accompanied the transportation of the goods. That apart, it is also pointed out that the petitioner had collected CGST and SGST in the delivery challan that was used for stock transfer of the goods thereby giving rise to a suspicion with regard to the nature of the transaction itself. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents. Learned counsel for the petitioner would submit that although the e-way bill showed the consignee as an unregistered person, the invoice that accompanied the transportation clearly referred to the GSTIN of the consignee and hence, the mere mention of the consignee as an unregistered person in the e-way bill cannot be of any significance. Secondly, it is stated that the mention of the tax applicable in the delivery challan was by mistake for it is evident that when the goods are stock transferred and not sold, there need not be a payment of tax at all. Taking note of the said submission, I find that the reasons shown in Ext.P5(c) for detaining the consignment are not sufficient to attract the provisions of Section 129 of the GST Act. The detention in the instant case cannot, therefore, be seen as justified. I therefore allow the writ petition by directing the 1st respondent to immediately release the goods and the vehicle covered by Ext.P5(c) detention notice, on the petitioner producing a copy of this judgment before the 1st respondent. The Government Pleader shall also communicate the gist of this judgment to the 1st respondent so as to enable the petitioner to effect an immediate clearance of the goods and the vehicle. The petitioner shall produce a copy of this judgment together with a copy of the writ petition before the 1st respondent for further action. However, the writ petition is allowed by directing the respondent to immediately release the goods and the vehicle covered by detention notice.

[**Decided in favour of the petitioner]**

FEMA

CASE LAW

STANDARD CHARTERED BANK VERSUS DIRECTORATE OF ENFORCEMENT- 2006 [SUPREME COURT]

Brief: Whether in a case where an offence was punishable with a mandatory sentence of imprisonment, a company incorporated under the Companies Act, can be prosecuted, as the sentence of imprisonment cannot be imposed on the company?

OUR COMMENTS: In the present case, Held that:- Merely because the expression 'punished' is used, it does not mean that it is confined to a prosecution under Section 56 of the Act, since the element that attracts the imposition of penalty and the prosecution is the same, namely, the contravention of any of the provisions of the Act. Moreover, there is nothing in the Act which, confines the expression 'punished' only to a punishment for a criminal prosecution. An imposition of a penalty can also be a punishment. The second part of the reasoning appears to be self-contradictory. If a person includes a company, there is no reason to confine Section 68 to a prosecution only, because the company as a person is liable to be proceeded against under Section 50 and Section 56 of the Act, though in a criminal prosecution the punishment by way of imprisonment can be imposed only on the officer or officers of the company referred to in Section 68 of the Act. Section 68 only indicates the manner in which a contravention by a company can be dealt with and it does not show that it is confined in its operation only to prosecutions against a company. It is a general provision relating to a contravening company, which is to be proceeded against whether it be under Section 50 or under Section 56 of the Act. The fact that a fine alone can be imposed on a company in a prosecution under Section 56 of the Act, cannot enable us to confine the operation of Section 68 to criminal prosecutions alone under the Act. We see no reason to whittle down the scope of Section 68 of the Act. It is true that the entire penalty that may be imposed on adjudication, is capable of being recovered from the company itself. But that does not mean that it cannot be recovered from the officer incharge of the company or those who connived at or were instrumental in the contravention of the provisions of the Act by the company. Once the ingredient of the offence is contravention of the provisions of the Act and the consequences flowing from the contravention is to make that person including a company liable for penalty as well as for prosecution, there does not appear to be any justification in confining the scope of the Section 68 only to prosecutions under Section 56 of the Act. We have earlier indicated that use of the expression 'offence' in the marginal heading of Section 68 is not indicative of the expression 'being confined to a criminal offence alone' because an offence in the context of the Act is really a contravention of any of the provisions of the Act referred to in Section 50 and in Section 56 of the Act. Hence, the decision of the High Court calls for modification as regards the scope and applicability of Section 68 of the Act. The appeals filed by the Union of India are liable to be allowed to that extent.

[Decided in favour of the petitioner]

CASE LAW

M/S. VANATHI EXPORTS PRIVATE LTD., VERSUS THE COMMISSIONER OF CUSTOMS (EXPORTS), CHENNAI, THE JOINT COMMISSIONER OF CUSTOMS (PREVENTIVE) , M/S. E-SHIP GLOBAL LOGISTICS-2020 [MADRAS HIGH COURT]

Brief: Whether the third respondent is justified in withholding the delivery order for the 1x40' container, by insisting for clearance of the dispute against the 2x20' containers?

OUR COMMENTS: In the present case, it was held by Madras High Court that the third respondent disputes that they are not a CCSP, but are freight forwarders and delivery agents. The Bill of lading pertaining to the 1x40' container, identifies the third respondent as an agent for the carrier. As per the definition in the aforesaid Regulations, “any person” responsible for receipt, storage, delivery, dispatch or otherwise handling of imported and exported goods would fall within the purview of the definition of a CCSP. Merely because the petitioner has not sought for an approval from the authorities to be recognized as a CCSP, it cannot be said that the provisions of Handling of Cargo and Customs Areas Regulations, 2009 will not be applicable to them, since the Regulations would be applicable to any person who fulfills the ingredients of the definition clause of a CCSP. Thus, a combined reading of the Regulation 2(b) and 5(5) along with Regulation 6(1)(l) would qualify the third respondent to be a CCSP. It was held that the cause of action for the present writ petition arose when the petitioner had paid the delivery charges for the 1x40' container and the third respondent herein had insisted for payment of the detention charges and return of 2x20' containers covered under different bills of lading. In ***A.K.Gupta & Sons Vs. Damodar Valley Corporation [1965 (9) TMI 68 - SUPREME COURT]***, the Hon’ble Apex Court had held that the expression “cause of action” does not mean every fact which is material to be proved to entitle the plaintiff to succeed, but only a new claim made on a new basis, constituted by new facts. In only a new claim made on a new basis, constituted by new facts. Thus, when the third respondent herein had not disputed the receipt of the delivery charges and when it is mutually admitted that the outstanding dues for the 1x40' container, there is no justification on the part of the third respondent to combine the cause of actions of the 2x20' containers with that of the 1x40' container and thereby refrained from issuing the delivery order for the 1x40' container. Waiver of the detention charges for the 1x40' container during the Covid19 lock down period. It was held that if the petitioner is granted liberty to settle the entire outstanding dues for the 1x40' container to the third respondent and thereby direct the third respondent to release the delivery order, the ends of justice could be secured. It is needless to point out that it is always open to the third respondent to ventilate their grievances in accordance with law, for any claim that may be due in connection with 2x20' containers. A Writ of Mandamus is hereby issued, directing the third respondent to release/handover the delivery order vide Bill of Lading for the 1x40' container on receiving a sum from the petitioner and consequently deliver the goods pertaining to this Bill of lading to the consequently deliver the goods pertaining to this Bill of lading to the petitioner. Hence, Petition allowed.

[Decided in favour of the petitioner]

NOTIFICATIONS/CASE LAW

AMENDMENT IN EXPORT POLICY OF TEXTILE RAW MATERIAL FOR MASKS AND COVERALLS

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 28/2015-2020-FTP dated 18.08.2020** has amended to the extent that only melt blown fabric of any GSM exported against the HS codes specified above is prohibited for export. All other non-woven fabrics of any GSM (including of GSM 25-70 which were earlier prohibited) are freely allowed for exports.

[For further details please refer the notification]

AMENDMENT IN EXPORT POLICY OF PERSONAL PROTECTION EQUIPMENT/MASKS

OUR COMMENTS: The Ministry of Commerce and Industry, Directorate General of Foreign Trade vide **Notification No. 29/2015-2020-FTP dated 25.08.2020** has amended to the extent that the export policy of 2/3 Ply Surgical masks, medical coveralls of all classes and categories (including medical coveralls for COVID-19) is amended from "Restricted" to "Free" category and these coveralls(including gowns and aprons of all types) are now freely exportable. Medical goggles continue to remain in restricted category with monthly quota of 20 Lakh units and Nitrile/NBR gloves continue to remain prohibited.

The export policy of N-95/FFP2 masks or its equivalent masks is revised from "Prohibited" to "Restricted" category. A monthly export quota of 50 lakh units has been fixed for N-95/FFP2 masks or its equivalent, for issuing export licenses to eligible applicants as per the criteria to be separately issued in a Trade Notice.

[For further details please refer the notification]

M/S. NEW PENSIA INDUSTRIES VERSUS UNION OF INDIA-2020 [GUJARAT HIGH COURT]

Brief: Allegation is that the Deputy Commissioner was not the competent authority for adjudication in view of the Circular dated 31.05.2011.

OUR COMMENTS: In the present case, it was held by Gujarat High Court that in the Circular the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs has revised powers of the adjudication of the officers of the Customs. Having perused the clauses (i) and (ii) of Para-5 of the Circular, it is clear that in clause (i) it would be only in case of simple demand of erroneously paid drawback and where there is a collusion, willful misstatement or suppression, it would be clause (ii) which would be applicable. A perusal of the show cause notice clearly indicates that the petitioner had knowingly classified its goods in a different category in order to avoid duty, and therefore, it would amount to willful misstatement and not a bonafide error. Accordingly, show cause notice ought to have been issued by an authority not below the rank of Additional / Joint Commissioner of Customs as per clause (ii) as the amount of drawback was way beyond ₹ 5.00 lakhs. Hence, Petition is allowed.

[Decided in favour of the petitioner]

LETS DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

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

Contact Person: Rajanikant Choudhury

Contact No: +91 7003572336

Email: rajnikant.choudhary@taxconnectdelhi.co.in

BANGALORE

A-414, Carlton Towers, 19th Main; Road Hal Old Airport Rd, Domlur, Bengaluru, Karnataka-560008

Contact Person: Manmit Sinha

Contact No: +91 8820573111

Email: manmit.sinha@taxconnectdelhi.co.in

DELHI

C73, 2nd Floor, Sector 50, Mayfield Garden, Gurgaon 122001

Contact Person: Rohit Sharma

Contact No: +91 9800224546

Email: rohit.sharma@taxconnect.co.in

KOLKATA

1, Old Court House Corner, "Tobacco House", 1st Floor, Room No. 13 (N), Kolkata-700001

Contact Person: Vivek Jalan

Contact No: +91 9831594980

Email: vivek.jalan@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road; Kolkata – 700055

Contact Person: Vivek Jalan

Contact No: +91 9831594980

Email: vivek.jalan@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Nitesh Shaw

Contact No: +91 9038211150

Email: nitesh.shaw@taxconnectdelhi.co.in