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EDITORIAL

Friends,

The ease of doing business is an important indicator of the investment friendly business climate in the country. Improvements in the **ease of doing business** will enable faster future growth of the state economy. Therefore, the government of India had in May 2020, decided to link grant of additional borrowing permissions to States who undertake the reforms to facilitate ease of doing business. The reforms stipulated in this category are:

(i) Completion of first assessment of 'District Level Business Reform Action Plan'.

(ii) Elimination of the requirements of renewal of registration certificates/approvals/licences obtained by businesses under various Acts.

(iii) Implementation of computerized central random inspection system under the Acts wherein allocation of inspectors is done centrally, the same inspector is not assigned to the same unit in subsequent years, prior inspection notice is provided to the business owner, and inspection report is uploaded within 48 hours of inspection.

As per Press Release dated 13.01.2021, Kerala has become the 8th State in the country to successfully undertake "Ease of Doing Business" reform stipulated by the Department of Expenditure, Ministry of Finance. Thus, the State has become eligible to mobilise additional financial resources of Rs.2,261 crore through Open Market Borrowings. Permission for the same was issued by the Department of Expenditure on 12th January, 2021. Kerala has now joined the seven other States namely, Andhra Pradesh, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Tamil Nadu and Telangana, who have completed this reform. On completion of reforms facilitating ease of doing business, these eight States have been granted additional borrowing permission of Rs.23,149 crore.

Taking another step towards e-governance and encouraging participation of citizen as stakeholders in curbing tax evasion, the Central Board of Direct Taxes has launched an automated dedicated e-portal on the e-filing website of the Department to receive and process complaints of tax evasion, foreign undisclosed assets as well as complaints regarding benami properties. The same has been communicated by CBDT through Press Release dated 12.01.2021. Upon successful filing of the complaint, the Department will allot a unique number to each complaint and the complainant would be able to view the status of the complaint on the Department's website.

As per Press Release dated 12.01.2021, The Income Tax Department carried out search and survey action on 08/01/2021 in the cases of renowned Doctors/Medical professionals of Assam. The main allegations against the groups were that they had grossly understated their medical receipts both in their individual capacities and the turnovers in their hospitals/nursing homes, diagnostic centres and pharmaceutical business. During the course of the search & seizure operation, it has been established that the groups engage in out-of-books transactions. Many documents and cash receipt slips were found which highlight the hugely suppressed turnover in the case of medical professionals and their hospitals/clinics. The quantum of suppressed turnover detected in few cases alone appears to be upward of Rs. 50-60 crore. Further, the net profit shown in the medical/pharma business is also extremely low. The cash seized was found to be unexplained in the hands of various hospitals and medical professionals. During the course of the search action, it was found that huge amount of Kachha Cash receipts and transaction were made outside the regular books of accounts. Hence, it is apparent that in the case of this particular assessee, suppression for each year should be around Rs.10-15 crore. In all, unexplained investment/receipts/expenses exceeding Rs. 100 crore has been unearthed due to the search & seizure action.

On 11.01.2021, CBIC has started auto population of e-invoice details into GSTR-1 from IRP Portal into GST Portal. It is observed that, while pulling the e-invoice data for the month of December, 2020 into GSTR-1, details of some invoices were not populated into GSTR-1. This inadvertent gap is being rectified on priority and details of those invoices will be pushed to GSTR-1 shortly. However, taxpayers should not wait for the same and advised to proceed with preparation and filing of GSTR-1 for the month of December, 2020 (before the due date), based on actual data as per their records. An additional facility of consolidated excel download of all documents auto-populated from e-invoices is available in GSTR-1 dashboard. This file includes details of cancelled documents also.

On 07.01.2021, CBIC has introduced Aadhar authentication/e-KYC for existing taxpayers on GST Portal. All taxpayers registered as Regular Taxpayers (including Casual Taxable person, SEZ Units/Developers), ISD and Composition taxpayers can do their Aadhaar Authentication or e-KYC on GST Portal. This is not applicable for Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies.

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

TAX CALENDAR

Due date	Form/Return /Challan	Reporting Period	Description
7th January 2021	ITNS-281	December 2020	Due Date for TDS/TCS Payments
10th January 2021	GSTR-7	December 2020	Due Date for furnishing GST-TDS Return
10th January 2021	GSTR-8	December 2020	Due Date for furnishing GST-TCS Return for taxpayers who are E-Commerce Agencies
10th January 2021	ITR 1 to 7	F.Y.2018-19	Due Date of furnishing Income Tax Return whose audit is not applicable
11th January 2021	GSTR-1	December 2020	Due Date for furnishing details of outward supply for taxpayers whose turnover is more than 1.5 Crores
13th January 2021	GSTR-6	December 2020	Due Date for furnishing ISD Return
13th January 2021	GSTR-1	Oct to Dec 2020	Due Date for furnishing details of outward supply for taxpayers whose turnover is upto 1.5 Crores
15th January 2021	N.A.	December 2020	Due Date for Payment of Employee's State Insurance and Provident Fund
15th January 2021	Form 3CA-3CD Form 3CB-3CD	F.Y.2019-20	Due Date to Furnish Tax Audit Report
15th January 2021	Form 27EQ	Oct to Dec 2020	Due Date for furnishing quarterly statement of collection of tax at source (TCS)
16th January 2021	N.A.	December 2020	Due Date for ESI Payment
18th January 2021	GSTR-4	Oct to Dec 2020	Due Date for furnishing quarterly return for taxpayers who falls under Composition Levy
20th January 2021	GSTR-5 & 5A	December 2020	Due Date for furnishing summary of outward and inward supplies for taxpayers who are Non-Resident Foreign Taxpayers and Non-Resident OIDAR Service Providers
20th January 2021	GSTR-3B	December 2020	Due Date for furnishing summary of outward and inward supplies for taxpayers who have turnover more than 5 Crores
21st January 2021	NA	December 2020	Due Date for payment of Professional Tax
22nd January 2021	GSTR-3B	December 2020	Due Date for furnishing Summary of Outward and Inward Supplies of the states Chhattisgarh, MP, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, TN, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh (Turnover upto 5 Crore)

INCOME TAX

NOTIFICATION/CASE LAW

INTRODUCTION OF FACELESS PENALTY SCHEME, 2021

OUR COMMENTS: The Central Board of Direct Taxes **vide Notification No. 02/2021 dated 12.01.2021** has introduced new Faceless Penalty Scheme, 2021 in which scope of the Scheme, setting up of penalty centres and units, procedure in penalty, rectification proceedings, appellate proceedings, etc. has been provided.

[For further details please consider the said notification]

TATA COMMUNICATIONS LIMITED VERSUS UNION OF INDIA AND ORS-2021 [BOMBAY HIGH COURT]

Brief: Petitioner seeks a direction to the respondents, to process the return of income of the petitioner for the A.Y. 2019-20 under section 143(1) and grant of refund due to the petitioner alongwith interest u/s 244A.

OUR COMMENTS: In the present case, petition is filed under Article 226 of the Constitution of India in which petitioner seeks a direction to the respondents to process the return of income of the petitioner for the assessment year 2019-20 u/s 143(1) of the Income Tax Act, 1961 and to grant the refund due to the petitioner along with interest under section 244A of the Act. Petitioner is a public limited company and is an assessee under the Act assessed to tax within the jurisdiction of respondent. It is engaged in the business of offering international and national voice and data transmission services, selling and leasing of bandwidth on undersea cable systems, internet connectivity services etc. For the A.Y. 2019-20, petitioner filed its return of income online on 30.11.2019 declaring total income of ₹ 638,05,85,060.00 and the total amount of tax payable at ₹ 220,62,55,842.00. As against the total tax liability as above, petitioner claimed credit of ₹ 425,84,02,174.00 as tax paid in the form of “Taxes Deducted at Source” (TDS) and “Taxes Collected at Source” (TCS). The Bombay High Court held that as grievance of the petitioner is now within a narrow compass matter is with respondent which will intimate the petitioner regarding processing and release of refund since processing of the income tax return for the assessment year 2019-20 has been completed. It is also seen that the said respondents have admitted that certain amount of refund is due to the petitioner processing of which at the level of respondent is complete after resolution of all technical issues. Having heard learned counsel for the parties and having considered the provisions of section 143(1) of the Act, we direct respondent to complete the processing of the refund claim of the petitioner and thereafter, release the due refund amount to the petitioner along with applicable interest in accordance with law within a period of two weeks from the date of receipt of a copy of this order. Writ petition is accordingly allowed to the above extent. Hence, petition is allowed in favour of the petitioner.

[Decided in favour of the assessee]

GST

CASE LAWS

PROEX FASHION PRIVATE LIMITED VS GOVERNMENT OF INDIA-2021 [DELHI HIGH COURT]

<u>Brief:</u> Validity of attachment of bank account in the absence of proceedings under any of the provisions mentioned in Section 83 of the CGST Act.

<u>OUR COMMENTS:</u> In the present case, proceedings were initiated against the petitioner pursuant to a communication from the Directorate General of Analytics and Risk Management (DGARM). The petitioner was declared as a "risky exporter‟, and an attempt was made to elicit certain information and documents from the petitioner. However, according to respondent, several communications addressed to the petitioner at its registered office were returned undelivered. Proceedings under Section 71 of the Act were therefore initiated against the petitioner, and the attachment of the bank account under Section 83 of the Act is pursuant to those proceedings. It was held by the Bombay High Court that in terms of Section 83, action thereunder is predicated upon pendency of proceedings under Sections 62, 63, 64, 67, 73 or 74 of the CGST Act. The attachment of bank account entails serious consequences to the assessee, particularly in the case of a running concern. The power to attach the bank account must therefore be exercised only in strict compliance with the statutory power, and cannot be extended to cover situations which are not expressly contemplated by the section. Absent the statutory precondition for exercise of the power of attachment, any order under Section 83 is wholly illegal and unsustainable. Since no proceedings under any of the provisions mentioned in Section 83 of the Act were in fact initiated against the petitioner, the impugned order is ultra vires the statutory powers of the respondent and quashed. The writ petition is allowed.

[Decided in favour of the petitioner]

M/S LAKSHAY LOGISTICS VS STATE OF GUJARAT-2021 [GUJARAT HIGH COURT]

<u>Brief:</u> The petitioner's arguments that the petitioner was never served with any notice before the order of confiscation in case of detention/confiscation of goods.

<u>OUR COMMENTS:</u> In the present case, Writ petitioner is goods transporter. The petitioner's vehicle was detained and upon certain discrepancies and deficiencies being noticed, the proceedings were initiated for detention and confiscation under the GST Act. There is a requirement of service of detention notice/confiscation notice to transporter or the owner of the vehicle. There is a violation of principles of natural justice. It was held by Gujarat High Court that Section 130(4) of the CGST Act specifically provides that no order for confiscation of goods or conveyance or for imposition of penalty would be issued without giving the person an opportunity of being heard. The person in the said context would be the person interested in the goods as also the conveyance. Therefore, opportunity of being heard is to be given to both the owner of the goods as also the owner of the conveyance. In the absence of notice affording opportunity of hearing to the owner of the conveyance, the impugned order of confiscation would be in violation of Section 130(4) of the GST Act. The impugned order as such cannot be sustained as the same has serious civil and financial consequences. The order of confiscation is quashed. Hence, the writ petition is allowed.

[Decided in favour of the petitioner]

FEMA

CASE LAW

THE DEPUTY COMMISSIONER, CENTRAL EXCISE AND ORS. VERSUS SUSHIL & COMPANY-2016 [SUPREME COURT]

Brief: Services provided by the respondent-assessee did not amount to Cargo Handling Services and no such service tax was leviable is upheld.

OUR COMMENTS: In the present case, Department took a prima facie view that the contract was for the purpose of packing, loading and unloading etc. of the goods, for which labour was supplied by the respondent to M/s Birla Corporation Ltd. It was held by the Supreme Court that The High Court has simply gone by the contract in question, which was entered into between the respondent and M/s Birla Corporation Ltd. and taking into consideration all the averments, which were made in the show cause notice, on the basis of admitted facts, it has come to a conclusion that even when the allegations in the show cause notice are accepted, the said contract does not amount to providing any 'Cargo Handling Service' as defined under Entry 23 of Section 65 of the Act. Therefore, we are of the opinion that the High Court did not commit any mistake or illegality in entertaining the writ petition when no disputed questions of fact were involved and the legal issue was to be decided on the basis of the facts, as admitted by the parties, which were so specifically recorded by the High Court itself. The High Court, on the interpretation of the aforesaid Entry, has observed that two conditions for considering any service to be 'Cargo Handling Service' need to be satisfied, namely; (1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying the same from one destination to another. It is only after the commodity becomes a cargo, its loading and unloading at the freight terminal for being transported by any mode becomes a cargo handling service, if it is provided by an independent agency and; (2) the service provider must independently be involved in loading-unloading or packing-unpacking of the cargo - in the instant case, as per the contract entered into between the respondent and the customer, namely, M/s Birla Corporation Ltd., the respondent was to supply manpower for working at the packing plant as per the customer's requirement. The contractor-respondent was to ensure that manpower deployed on the work given by customer's officers is executed properly, diligently, uninterruptedly and to the satisfaction of the customer in the factory premises of its works. It is significant to note that no part of loading or unloading was assigned to the workers of the respondent-assessee upto transportation of the cement bags out of the factory. This work was, in fact, been performed by the automatic machines. It is through these automatic machines, the cement bags were loaded, unloaded, packed or unpacked and this included Cargo Handling Services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods. The High Court has rightly concluded that the aforesaid services would not fall within the definition of 'Cargo Handing Services'. The conclusion of the High Court that services provided by the respondent-assessee did not amount to Cargo Handling Services and, therefore, no such service tax was leviable is upheld. Hence, the appeal is dismissed.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATIONS/CASE LAW

NOTIFICATION FOR EXCHANGE RATE OF FOREIGN CURRENCY

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 03/2021-Customs (N.T) dated 07.01.2021** has notified exchange rate of foreign currency relating to imported and export goods.

[For further details please refer the notification]

LEVY OF ANTI DUMPING DUTY ON MELAMINE ORIGINATING IN OR EXPORTED FROM CHINA PR

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 01/2020-Customs (ADD) dated 06.01.2021** has notified that seeks to further amend *Notification No. 02/2016-Customs (ADD) dated 28.01.2016* to extend the levy of Anti-Dumping duty on Melamine originating in or exported from China PR upto and inclusive of 28.02.2021.

[For further details please refer the notification]

RESCINDMENT OF CUSTOMS (ADVANCE RULINGS) RULES, 2002

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 02/2021- Customs (N.T.) dated 04.01.2021** has rescinded or omitted Customs (Advance Rulings) Rules, 2002.

[For further details please refer the notification]

IRA EDUTECH PVT. LTD. VERSUS UNION OF INDIA AND OTHERS -2021 [BOMBAY HIGH COURT]

Brief: Once order of assessment has been passed, the same being an appealable one, petitioner can avail his remedy by filing appeal before the Commissioner of Customs (Appeals).

OUR COMMENTS: In the present case, Petitioner has imported consignment of electric motorcycle in complete knock down condition vide bill of lading and petitioner claimed benefit of notification No.50/2017 - Customs dated 30.06.2017 as amended. Respondents examined the imported goods to the extent of 10% and found that pre-assembled and dis-assembled battery packs and electric compressions were missing from the consignment. This was explained to by the petitioner by stating that those being hazardous components, foreign seller would dispatch the said goods by air shipment. Subsequently, respondents subjected the imported goods to 100% examination. Because of the aforesaid situation, the imported goods have not been released despite request by the petitioner for provisional release of the goods. It was held by the Supreme Court that it is directed that the goods imported by the petitioner vide bill of entry No.6874524 dated 13.02.2020 be released for home consumption on payment of 25% of the basic customs duty and on furnishing bank guarantee of a nationalized bank for the remaining amount before respondent No.3 as per assessment made. On complying with the aforesaid requirements, respondents shall release the goods of the petitioner forthwith. Hence, it is decided in favour of petitioner.

[Decided in favour of the petitioner]

DGFT

NOTIFICATIONS/CASE LAW

AMENDMENT IN IMPORT POLICY AND CONDITION OF ITEMS CLASSIFIED UNDER CHAPTER 41 & 43 OF ITC (HS), 2017, SCHEDULE - L (IMPORT POLICY)

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 55/2015-2020 dated 07.01.2021** has amended import policy of some items classified under Chapter 41 and 43 of ITC (HS), 2017, Schedule - I (Import Policy) from "prohibited" to "free" and new policy conditions added to Chapter 41 and 43.

[For further details please refer the notification]

COMMISSIONER OF CUSTOMS, COCHIN V/S BEDY ASSOCIATES, SUPREME ENTERPRISES, MOKSHA BUSINESS MACHINES, DATA ENTERPRISES, SRI. VENKATESWARA REPRO GRAPHICS, SKYLARK OFFICE MACHINES, UNISTAR ENTERPRISES, BEST MEGA INTERNATIONAL, PYPYE TECHSERVE PVT. LTD.-2020 [KERALA HIGH COURT]

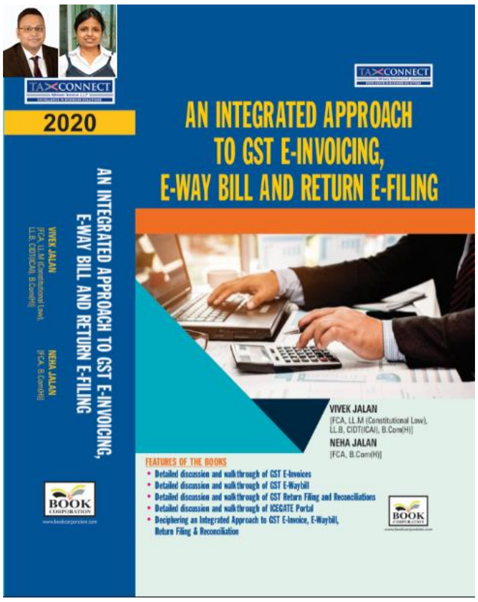
Brief: Import of Multi-Function Devices (MFDs) for use within the country. Hence, contention of the department was that there is contravention of the various provisions of the Foreign Trade Policy by the petitioner.

OUR COMMENTS: In the present case, Kerala High Court held that the goods were released based on Annexure-3. However, in Annexure-3, there was a specific direction to intimate the DGFT about the import not being supported by an import license from the DGFT, which could lead to confiscation proceedings being initiated under the Foreign Trade Act. It was also directed that a surety bond be executed for the market value of the goods, minus that imposed on the importer as redemption fee by the Commissioner of Customs and modified by the Tribunal. We direct the respondents who have already cleared the goods on the basis of the interim orders to execute such surety bonds within a period of two months from the date of receipt of a certified copy of this judgment failing which the Customs authorities could initiate proceedings for return of goods, the location of which should be in the knowledge of the respondent/importer as per the Extended Producer Responsibility Authorization. Petition disposed off.

[Decided in favour of the petitioner]

IN STANDS

AN INTEGRATED APPROACH TO GST E-INVOICING, E-WAYBILL & E-RETURN FILING



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IN STANDS

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