282nd Issue: 24th January 2021 - 30th January 2021

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EDITORIAL

Friends,

Indian Union Budget 2021-22: Given the gravity of this whole Covid-19 pandemic situation, there has been an increased awareness of the importance of health insurance and the consumer mind set has undergone a tectonic shift from looking at health insurance as a priority to seeing it as a necessity. Whether it is the government, bureaucracy, industry, media or common man, we are all now discussing protecting lives and financing for the same in the form of health insurance. Thus, in the upcoming Union Budget 2021, we do expect finance minister Nirmala Sitharaman to announce various measures for the health insurance sector. Further, the increase in the limit of tax deduction in Section 80D of the Income Tax Act can help better penetration of health insurance. Currently, under Section 80D, an individual can claim up to Rs 25,000 deduction for self and family.

As per Press Release dated 18th January 2021, Finance Minister Smt. Nirmala Sitharaman holds Pre-Budget consultation with Finance Ministers of States/ Union Territories (with Legislature) for Budget 2021-22. The Union Finance Minister highlighted the importance of this meeting as a sign of co-operative federalism and indicated the manner in which the Union Government was strongly supportive of States/Union Territories (with Legislature) fight against the pandemic. Most participants thanked the Union Finance Minister for financially supporting their States/Union Territories during the worst months of pandemic, by enhancing borrowing limits and providing back to back loans to States.

Tax collection and the proceeds from disinvestment in state-owned entities are likely to miss the budget estimates target by Rs 7 trillion this fiscal year, two senior officials said. The Budget for FY21 estimated Rs 24.23 trillion to come from direct and indirect taxes and Rs 2.10 trillion from disinvestment, aggregating Rs 26.33 trillion. The revised estimates show the total at around Rs 19.33 trillion, or 26.58 per cent less than what had been budgeted for.

India's telecom sector which needs to expand and enhance telecom infrastructure in order to deal with an increased demand of telecom services is facing the challenge of ensuring liquidity and it is expecting pricing support from the government in the form of Goods and Service Tax (GST) exemption from regulatory payments such as license fee, spectrum usage charges, amongst others in the Union Budget 2021-22. The sector is also facing a huge blockage of capital in the form of GST input tax credits (GST ITC) which remains utilized, and with 4G auctions fast approaching along with a probable rollout of 5G later this year, telcos are also seeking a refund of working capital blocked in unutilised ITC.

The Central Goods and Services Tax (GST) department on 21.01.2021 arrested a businessman from Andheri in GST fraud to the tune of ₹314.25 crore. The accused illegally availed input tax credit (ITC) and also passed the same on to other offenders, causing revenue loss to the government. According to sources in the GST department, Mehta operated all six firms from his office premises. He and his staff had access to all the records, as well as the user IDs and passwords of the GSTINs of all six firms. The accused also fraudulently issued bogus invoices and passed on ITC to various companies, without actual supply of goods or services, thus causing wrongful passing on of ITC amounting to approximately ₹191.66 crore to the recipient companies.

As per Press Release dated 18.01.2021, one held by CGST Delhi East officials for availing fake input tax credit of Rs 82.23 crore. In the ongoing drive against availment of inadmissible ITC, officers of CGST Commissionerate, Delhi East unearthed a multi-layered network of fictitious firms being used to generate and pass on fake ITC. Through the use of extensive data analytics, officers identified and searched 21 premises between 15/01/2021 and 17/01/2021, leading to the unraveling of a network of fake firms that were operating since 2017 to pass on fake ITC. The network of fake firms was being operated by one Shri Arvind Kumar, who used to pass fake ITC for a commission of 4% to 4.5% of the invoice amount. Investigation conducted so far has revealed 46 firms to be fictitious which were being controlled by Shri Arvind Kumar and his associates. These firms had no business activity and had been created solely for the purpose of passing on fake ITC. The total fake ITC quantified so far is Rs. 82.23 crore generated out of the fake billing of Rs. 541.13 crore which is expected to increase as the investigation progresses.

As per Press Release dated 20.01.2021, launch of Regulatory Compliance Portal to minimize Regulatory Compliance Burden for Businesses and Citizens. A major initiative in this regard is the launch of Regulatory Compliance Portal by DPIIT on 1st January 2021. The objective of this portal is to act as a bridge between citizens, industries and the Government in order to minimize burdensome compliances. It will also act as a first-of-its-kind central online repository of all Central and State-level compliances.

We do hope that this bulletin adds value to your professional sphere.

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Truly Yours

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SYNOPSIS

TAX CALENDAR

Due date	Form/Return /Challan	Reporting Period	Description
24th January 2021	GSTR-3B	December 2020	Due Date for furnishing Summary of Outward and Inward Supplies of the states Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, UP, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha (Turnover upto 5 Crore)
30th January 2021	Form 27D	Oct to Nov 2020	Due Date for quarterly issuance of certificate of TCS
31st January 2021	Form 24Q/26Q/27Q	Oct to Dec 2020	Due Date for quarterly return of TDS

INCOME TAX

NOTIFICATION/CIRCULAR/CASE LAW

CG ISSUES DIRECTIONS FOR FACELESS PENALTY SCHEME, 2021

OUR COMMENTS: The Central Board of Direct Taxes **vide Notification No. 03/2021 dated 12.01.2021** has introduced till the time the faceless penalty centres, both at national and regional levels, are set up, the penalty actions will be undertaken by the faceless assessment system. All communication between units and assessees will be done either via email or through mobile app, while physical hearing will be allowed only with approval from CBDT. The government has been trying to make faceless taxation a reality, having introduced faceless assessment and faceless appeals last year.

[For further details please refer the notification]

NO APPROVAL NEEDED IF LOWER REMUNERATION PAID TO FUND MANAGER DURING FY 2019-20 AND 2020-21

OUR COMMENTS: The Central Board of Direct Taxes **vide Circular No. 01/2021 dated 15.01.2021** has granted relief with respect to complying with the provisions of Rule 10V(12) of the Income-tax Rules. It has been decided that, for the financial years 2019-20 and 2020-21, in cases remuneration paid to fund manager is at arm's length, but lower than the prescribed amount, it shall be sufficient compliance to provisions of section 9A(3)(m). However, lower remuneration payable during the Financial Year 2021-22 requires board's approval.

[For further details please refer the circular]

M/S. B FOURESS (P) LIMITED VERSUS THE DEPUTY COMMISSIONER OF INCOME-TAX-2021 [KARNATAKA HIGH COURT]

Brief: Allowance u/s 37 of commission payment.

OUR COMMENTS: In the present case, the assessee is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the manufacture and sale of Hydro Turbines. Assessee filed its return of income which was revised later. Thereafter, assessment u/s 143(3) concluded that the commission will be disallowed u/s 37. Further, When Tribunal collected all the evidence but didn't take note of material placed by the assessee. Therefore, assessee appealed in High court and Karnataka High Court held that material was produced by the assessee which has not been considered by the tribunal. It is also noteworthy that the tribunal has not considered its order passed in respect of AY 2006-07 by which it had restored the case back to the file of the AO who after appreciation of material on record had allowed the claim of the assessee for deduction. Tribunal has upheld the disallowance u/s 37 of the Act merely on the basis of order passed in respect of preceding year. The order passed by the tribunal is cryptic and suffers from the vice of non-application of mind. Substantial question of law is answered in favour of the assessee and against the revenue.

[Decided in favour of the petitioner]

GST

CIRCULAR/CASE LAW

WAIVER FROM RECORDING OF UIN ON THE INVOICES FOR THE MONTHS OF APRIL 2020 TO MARCH 2021

OUR COMMENTS: The Central Board of Indirect Taxes and Customs **vide Circular No. 144/14/2020 dated 15.01.2021** has decided to give waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from April 2020 to March 2021, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

[For further details please refer the circular]

VINODKUMAR MURLIDHAR CHECHANI PROPRIETOR OF M/S CHECHANI TRADING CO. VERSUS STATE OF GUJARAT & 1 OTHER (S)-2021 [GUJARAT HIGH COURT]

Brief: Provisional attachment of Bank Accounts of petitioner.

OUR COMMENTS: In the present case, the writ-applicant is a proprietor of a proprietary concern running in the name of M/s.Chechani Trading Company. The concern is engaged in the business of trading of ferrous and non-ferrous metal scrap. The writ-applicant holds a valid registration certificate under the provisions of the CGST Act and the GGST Act respectively. It appears from the materials on record that a spot visit was carried out by the flying squad of the department at the premises of the writ-applicant. The department is prima facie of the view that the purchases made by the writ-applicant from the JSK Metacast and Uttam Metal and Alloys respectively are not genuine. In the course of the search carried out by the department, the registers, documents and books of accounts were collected and taken into possession. Thus, it appears on plain reading of the order referred to above that as the proceedings under Section 67 of the Act came to be initiated, the Additional Commissioner thought fit to exercise his powers under Section 83 of the Act for the purpose of provisional attachment of the bank accounts. Gujarat High Court held that during the pendency of any proceedings under Sections 62, 63, 64, 67, 73 and 74, the Commissioner can provisionally attach any property including the bank account belonging to the taxable person. For this purpose, the Commissioner has to form an opinion that it is necessary to do so for protecting the interest of the Government Revenue. These steps have to be taken in such manner as prescribed. Rule 159(1) of the CGST Rules, 2017, deals with the provisional attachment of the property. The form of the order shows that it is to be addressed to the taxable person. The sections under which the proceedings are launched against such a taxable person are to be referred and then a direction is to be issued for not allowing any debit. Although the provisions of Section 281B of the Income Tax Act is pari materia to Section 83 of the State GST Act, yet one pertinent feature of Section 281B of the Income Tax Act is that it gives guidelines for making the provisional attachment. Such guidelines are missing so far as Section 83 of the State GST Act is concerned - having regard to the fact that there is hardly a balance of ₹ 22,065/- in the two bank accounts, we see no good reason to continue the provisional attachment. The impugned order of provisional attachment of the two bank accounts is hereby quashed and set-aside. Hence, application is allowed.

[Decided in favour of the petitioner]

FEMA

CASE LAW

BIMAL KUMAR KHERIA VERSUS ASSITT. DIRECTOR, DIRECTORATE OF ENFORCEMENT-2015 [CALCUTTA HIGH COURT]

Brief: Cash Balance found from the factory premises for which petitioner had strong evidence. Therefore, respondents (authorities) were directed to return the seized cash.

OUR COMMENTS: In the present case, according to the petitioners, on or about 22nd February, 2011, a search was conducted by the officers of the Enforcement Directorate of Foreign Exchange Management at the office premises of the petitioners and a sum of ₹ 10,50,000/- was seized. According to the petitioners, the full amount of ₹ 10,50,000/- was duly reflected in the cash book of the petitioners lying at their office premises. Particulars of the cash balance as per cash book on February 22, 2011 have been given in Paragraph 4 of the writ petition, cash balance appears to have been in excess of ₹ 10,00,000/-. According to the petitioners, the petitioner duly explained that between January 24, 2011 and January 25, 2011, a sum of ₹ 9,00,000/- had been withdrawn from the bank account of Maa Durga Niwas (P) Ltd., being the petitioner No. 5 for purchase of land. Nevertheless, the respondent No. 1 seized the currency under the Panchanama dated February 22, 2011. On February 22, 2011, summons was issued to the petitioner No. 1 calling upon him to personally attend the office of the Deputy Director of Enforcement Directorate to give evidence and to produce books of account and other documents specified in the Schedule to the said summons. There is not a whisper anywhere of the allegation against the petitioner for which search and seizure was carried out and the currency notes were seized. On April 28, 2011, this Court, directed the respondents to file their affidavit-in-opposition within June 10, 2011. The records reveal that the matter was called on for hearing but was adjourned for the day. After hearing Mr. Meheta appearing on behalf of the petitioners, the matter was fixed for orders. Since no one had appeared on behalf of the respondents, this Court deemed it appropriate that the respondents should be given an opportunity before passing ex parte orders. Currency notes constitute property of the petitioner within the meaning of Article 300A of the Constitution of India. No person can be deprived of his property save by authority of Law. There is no explanation at all as to the circumstances in which the property of the petitioner has been seized. The writ application is disposed of by directing the respondents-authorities to return the cash seized on February 22, 2011 along with interest that has accrued on the aforesaid sum of ₹ 10,00,000/- to the petitioner within a fortnight from the date of communication of this order.

[Decided in favour of the petitioner]

CUSTOMS

NOTIFICATION/CIRCULAR/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. 05/2021-Customs (N.T) dated 21.01.2021** has notified exchange rate of foreign currency relating to imported and export goods.

[For further details please refer the notification]

WAIVER OF BANK GUARANTEE IN CASE OF TRANSHIPMENT OF IMPORT AND EXPORT OF CARGO VIA SRILANKA AND BANGLADESH

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 01/2021-Customs dated 14.01.2021** has decided to extend the exemption from requirement of furnishing of Bank Guarantee by the carriers for carriage of EXIM cargo for transhipment through foreign territories of Sri Lanka and Bangladesh. This relaxation would apply, if the carrier fulfils the requirement of waiver of Bank Guarantee in a like manner, as provided for by *Circular No. 45/2005-Customs dated 24.11.2005*. Circular No.45/2005, dated 24.11.2005 waives the requirement of execution of bank guarantee for the purpose of transhipment in respect of Carriers of containerized cargo, who are handling more than 1000 TEUs as import containers in a financial year. This waiver would apply not only to shipping lines but also to ICDs/CFSs/other carriers and for carriage in all modes of transhipment, irrespective of their movement by road, coastal shipping or rail. Further, jurisdictional Commissioners of Customs in deserving cases have been empowered to exempt the requirement of furnishing Bank Guarantee in respect of carriers having annual transhipment volume below the limit of 1000 TEUs, but having good track record.

[For further details please refer the circular]

BALKRISHNA INDUSTRIES LTD. VERSUS THE COMMISSIONER OF CUSTOMS, MUNDRA-2021 [GUJARAT HIGH COURT]

Brief: Whether in the facts of the case and in law the Appellate Tribunal was right in remanding the proceedings to examine the issue afresh when indisputably the refund of Rubber Cess claimed by the Appellant was not paid in pursuance of any assessment order and no factual aspect was required to be reexamined by the adjudicating authority and entitled for refund of rubber cess?

OUR COMMENTS: In the present case, Appellant was not paid in pursuance of any assessment order and no factual aspect was required to be reexamined by the adjudicating authority. Gujarat High Court held that the appellate tribunal, on its own, should have looked into the matter on its own merits. For the purpose of considering the case-law referred to in the impugned order, the matter should not have been remanded. The impugned order passed by the appellate tribunal is hereby quashed and set-aside and the matter is remitted to the tribunal for being considered afresh on its own merits in accordance with law. Hence, appeal allowed in part.

[Decided in favour of the appellant]

DGFT

CASE LAW

TAMIL NADU CASHEW PROCESSORS & EXPORTERS ASSOCIATED REPRESENTED BY ITS SECRETARY VERSUS UNION OF INDIA, THE DIRECTORATE GENERAL OF FOREIGN TRADE, THE DEPUTY DIRECTOR GENERAL OF FOREIGN TRADE-2021 [MADRAS HIGH COURT]

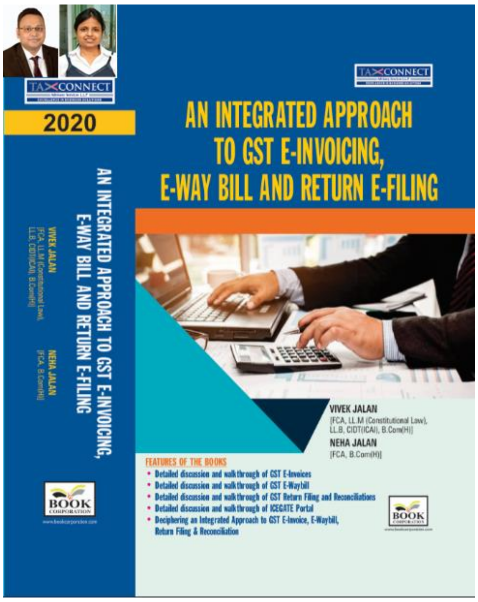
Brief: Whether a Trade Notification can be amended by a Trade Notice in terms of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992?

OUR COMMENTS: In the present case, contention of the learned counsel for the petitioner is that the Trade Notice is not issued under any particular provisions of the FTDR Act. Madras High Court held that there is no source of power for issuing a Trade Notice. As stated in the counter-affidavit, a Trade Notice is procedurally issued for clarifying certain doubts that may arise among the traders. The Notification No.8/2015-20, dated 12.06.2019 is silent about the applicability of restriction imposed on import of cashew kernels broken or whole to the units in SEZs and 100% EOUs. When such is the position, by placing reliance on the Section 3 and 5 of the FTDR Act, it is stated that the Trade Notice is issued stating that MIP on cashes is not applicable for imports by 100% EOU and units in SEZs. A reading of the proviso to Section 5 stipulates the issuance of a separate notification for the applicability of the Trade Notification or in any exemption, modifications and adaptations by a specific notification in the official Gazette. *Notification No.8/2015-20, dated 12.06.2019* which was issued in exercise of power conferred by Section 3 of the FTDR Act read with paragraph 1.02 and 2.01 of the FTP 2015-2020 is an amendment in import policy conditions of cashew kernels both broken and whole. This Court is also of the view that any further amendment or clarification of this nature should also be made only as per Section 3 and not by a mere notice, which is not in accordance with the Statute. A reading of the Notification and subsequent Trade Notice makes it clear that *Notification No.8/2015-20, dated 12.06.2019* enhancing the MIP of the broken and whole cashew kernels, wherein, the *Trade Notice No.50/2019-20, dated 14.02.2020* states that the same is not made applicable to the EOUs and SEZs, which is certainly an amendment to the Trade Notification and it is cannot be stated that it is a mere elaboration, information or clarification to the Regional Authorities of the Directorate, as claimed by the respondents. Hence, the said clarification or modification to the original Notification cannot be made in terms of a mere notice without following the statutory procedure, in the given case. The allegation of the petitioner that the cashews imported from African countries are exported to foreign countries branding them as Indian cashews, which fact is not denied by the respondents in the counter-affidavit, cannot be brushed aside lightly. It is duty of the respondents to ensure maintenance of standards for the classification, grading or marketing of Indian goods in international grade, even from EOUs and SEZs and there should not be any space for compromise for the Indian brand name for any short gain by the Traders - the impugned Trade Notice is liable to be set aside. Hence, Petition is allowed.

[Decided in favour of the petitioner]

IN STANDS

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



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5. **Deciphering an Integrated Approach to GST E-Invoice, E-Waybill, Return Filing & Reconciliation**

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IN STANDS

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