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 : B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)
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 : **+91 8017741711; 9830661254**

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

EDITORIAL

Union Minister for Finance and Corporate Affairs, Smt. Nirmala Sitharaman presented the Economic Survey 2020-21 in the Parliament on 29th January 2021. The key highlights of Economic Survey 2020-21, which is dedicated to the COVID Warriors, are as follows:

- V-Shaped Economic Recovery Due to Mega Vaccination Drive, Robust Recovery in the Services Sector and Robust Growth in Consumption and Investment
- V-Shaped Recovery is Due to Resurgence in High Frequency Indicators Such as Power Demand, Rail Freight, E-Way Bills, GST Collection, Steel Consumption, Etc
- India to Become the Fastest Growing Economy in Next Two Years as Per IMF
- India's GDP is Estimated to Contract by 7.7 Per Cent in FY2020-21
- Agriculture to Clock 3.4 Per Cent Growth, While Industry and Services to Contract by 9.6 Per Cent and 8.8 Per Cent Respectively this Year This Year
- India to Have a Current Account Surplus of 2 Per Cent of GDP in FY21, A Historic High After 17 Years
- Net FPI Inflows Recorded an All-Time Monthly High of 9.8 Billion Dollars in November 2020
- Scores of lives saved and V-Shaped Economic Recovery bear Testimony to India's Boldness in taking Short-Term Pain for Long-Term Gain.

Further, use of fake invoices to wrongfully avail ITC credit has been gradually increasing and has become a concern for the government, especially at a time when revenue collection is depressed. More than 2,500 cases have been registered against 8,000 entities since mid-November, as a part of the government's crackdown on fake goods and services tax (GST) invoices. As many as 258 people have been arrested, including eight chartered accountants. The government has asked the Institute of Chartered Accountants of India (ICAI) to take action against the accountants. Authorities have recovered more than Rs 820 crore from the accused, a government official told the business newspaper. The last chartered accountant (CA) who was arrested was taken into custody on 23.01.2021 along with four business accomplices.

The budget for 2021-22 would be presented on 01 February 2021. The budget and the economic survey assume great importance this year on account of COVID-19's impact on the economy. On the back of an economy severely impacted by the COVID-19 pandemic, this budget assumes prominence. The First Advance estimates released by the National Statistical Office, have already indicated a contraction of the economy by 7.7% in 2020-21.

Industry body CropLife India on 21.01.2021 demanded that the government reduce GST rate on agrochemicals to 12 percent in the forthcoming Union Budget. Slashing the rate of goods and services tax (GST) will help lower the prices of agrochemicals and benefit farmers. The current GST rate on agrochemicals is 18 percent.

EDITORIAL

The government should also simplify requirements under GST by allowing companies to adjust input credit of one state against the tax payable situation in another state as GST is a central levy.

The Income Tax Department on 27.01.2021 reported that it has issued over Rs 1.81 lakh crore worth refunds to more than 1.74 crore taxpayers so far this fiscal year. Of this, personal income tax refunds of Rs 62,231 crore have been issued to over 1.71 crore taxpayers and corporate tax refunds of Rs 1.19 lakh crore have been issued in 2.12 lakh cases.

As Per Press Release dated 24.01.2021, Two foreign nationals held at IGI Airport with heroin worth around Rs 68 crore. On the basis of suspicion, two Ugandan nationals coming from Entebebe via Doha by flight QR-578 were intercepted by air customs officers at IGI Airport here today. During search of the checked in bags of the two passengers, total 51 pouches containing 9.8 kg (approx) of white powdery substance, suspected to be narcotics was recovered. When this material was subjected to diagnostic test, prima facie it appears to contain commercial quantity of heroin, valued at Rs 68 crore (approx). In view of the above, it is clear that the said passengers had violated provisions of section 8 of the NDPS act, 1985 and had committed offence punishable under section 21, section 23 and section 29 of NDPS act 1985 read along with provisions of the Customs Act, 1962. It is one of the biggest detection of heroin/narcotics at any international airport in the country. Further investigation in the matter is under process.

As Per Press Release dated 21.01.2021, DRI seizes 55.61 kg of foreign gold worth Rs 28 crore. Due to the intensive counter-smuggling efforts by DRI, the smugglers have been seen to shift their preferred modus from vehicle concealment to in-person concealment. However, in the latest operation, codenamed "Golden Triangle", which was a coordinated effort by the officers of Delhi Zonal Unit and Lucknow Zonal Unit of DRI, the modus of human concealment has also been busted where the carriers were found to have been concealing the gold bars in belts worn around their waists. Search of the persons resulted in recovery and seizure of 335 gold bars, weighing 55.61 kg. The said 8 persons have been apprehended and further investigations are underway.

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

THE PR. COMMISSIONER OF INCOME-TAX, THE ASST. COMMISSIONER OF INCOME TAX VERSUS M/S. SN BUILDERS & DEVELOPERS-2021 [KARNATAKA HIGH COURT]

Brief: Whether Tribunal erred in holding that the project completion method is a recognized method of accounting without properly examining as to whether the assessee is entitled to project completion method in the absence of assessee placing regular books of accounts?

OUR COMMENTS: In the present case, the assessee is a firm engaged in the business of real estate and construction of apartments. For the Assessment Year 2013-14, the assessee filed returns declaring the income of ₹ 9,02,72,260/- under the head business and other sources. In the said return, the assessee claimed deduction in a sum of ₹ 11,16,20,995/- as deduction under Section 801B(10) of the Income Tax Act. The assessing Officer, on examination of the eligibility criteria as is stipulated under Section 801B(10) of the Income Tax Act concluded that the respondent did not fulfill the condition 'C' laid down in the said provision and disallowed the deduction vide assessment order. Being aggrieved by the said assessment order, assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals) allowed the appeal and set aside the assessment order, inter alia, holding that derivation of profit based on percentage completion method by the assessee is correct and assessee is entitled to proportionate deduction under Section 801B(10) of the Act in respect of the flats which conform to the limits prescribed under the relevant provisions of the Act. The Revenue being aggrieved by the order passed by the Commissioner of Income Tax (Appeals) approached the Income Tax Appellate Tribunal. ITAT also favoured the assessee. Then Revenue appealed to High Court considering that:

"(i) Whether on the facts and circumstances of the case, the Tribunal was justified in directing the Assessing Officer to allow proportionate deduction under Section 801B(10) of the Act to the extent of profits attributable to the units where the built up area is below 1500 Sq. Ft. even when no such apportionment is prescribed under the scheme of Section 801B(10)(C) of the Income-Tax Act?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was justified in law holding that the assessee is entitled to claim deduction under Section 801B(10) of the Act in respect of profits derived from the sale of residential units where in built up area is below 1500 Sq. Ft without appreciating that deduction under Section 801B(10) of the Act is project based rather than unit and there is no concept of proportionate deduction under Section 801B(10)(C) of the Act?"

The Karnataka High Court held that as decided in own case [2021 (1) TMI 789 - KARNATAKA HIGH COURT] on close scrutiny of the judgment rendered by this Court in ***BRIGADE ENTERPRISES LTD.[2020 (9) TMI 1137 - KARNATAKA HIGH COURT]*** it is evident that the first substantial question of law involved in this appeal is no longer res integra. Therefore, the first substantial question of law is answered against the revenue and in favour of the assessee.

[Decided in favour of the assessee]

CASE LAW

M/S ANANDESHWAR TRADERS V/S STATE OF UP AND 2 OTHERS-2021 [ALLAHABAD HIGH COURT]

Brief: Imposition of penalty on the ground that transportation of the goods did not commence within 24 hours of generation of E-way Bill.

OUR COMMENTS: In the present case, the writ petition is filed against the order passed by the Additional Commissioner whereby the demand of tax and penalty amounting to Rs. 29,76,110/- has been confirmed. The petitioner is a trader in Pan Masala and other goods. It claims to have sold disputed goods to a dealer against its Tax Invoice. Two E-Way Bills were also prepared. At the stage of seizure i.e. when the order under Section 129(1) of the CGST Act, 2017 was passed, only one allegation was proposed to be levelled by the proper officer of reuse of the aforesaid e-way bills. However, at the stage of final order passed under Section 129(3) of the Central Goods and Service Tax Act, 2017 in which Assistant Commissioner revised the demand of tax and penalty for Rs. 29,76,110/-. The petitioner's appeal against that order came to be dismissed by order passed by the Additional Commissioner. However, it is noted that at the stage of the appeal, certain additional evidence has been entertained by the appeal authority in the shape of receipt of toll plaza indicating (according to the revenue authority) that the goods had moved itself, at 7.31 PM. Relying on that, the penalty appeal was also dismissed. Relying on Rule 138(9) of the CGST Rules, 2017, it has been reasoned by the appeal authority that since the goods were not being transported immediately upon preparation of the e-way bills, the same should have been cancelled. Since the e-way bills were not cancelled and the transportation of the goods commenced four days thereafter, it has been inferred that the said e-way bills had been reused. It was held by the Allahabad High Court that Rule 138(9) of CGST Rules does not prescribe that the dealer must necessarily cancel the e-way bill if no transportation of the goods is made within 24 hours of its generation. It certainly does not provide any consequence that may follow if such cancellation does not take place. On the contrary, the Rule permits a dealer to cancel the e-way bill only if the transportation does not take place and the dealer choses to cancel such e-way bill within 24 hours of its generation. Even if the dealer does not cancel the e-way bill within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place or not. Assertion made in the seizure order that it was clearly established that the assessee had made double use of the e-way bills is merely a conclusion drawn benefit of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record. The order passed by the appeal authority is erroneous, being contrary to the provisions of law. Hence, the writ petition is allowed.

[Decided in favour of the petitioner]

FEMA

CASE LAW

STATE OF GUJARAT VERSUS ADVANCED SYSTEK PRIVATE LIMITED-2020 [GUJARAT HIGH COURT]

Brief: Payment of tax at higher rate in the absence of C Form whose refund application was filed u/s 9(2) of the CST Act read with Section 13(3) of the VAT Act.

OUR COMMENTS: In the present case, Gujarat High Court held that when the assessee has sold the goods on the price, which is inclusive of tax, the turnover is to be calculated as per the formula provided in Section 8A of the CST. In the facts of the case the rate of CST applicable for the goods supplied by the respondent-assessee is 4%. Therefore, 4% tax is required to be applied on the turnover as calculated under Section 8A of the CST Act. As observed above, the respondent-assessee deposited the CST at the rate of 10%/12.5% by making reverse working of the turnover under Section 8A of the CST Act. The correct amount of tax payable would be therefore, much less than what the respondent-assessee has deposited. This has resulted into the excess amount of tax deposited by the respondent-assessee. Moreover, on perusal of the facts on record and as per the findings of fact given by the Tribunal, it cannot be said that that the respondent-assessee has collected the excess amount of CST from its buyer/receiver of the goods. In the facts of the present case, the respondent-assessee cannot be said to have collected the CST at the rate of 10% or 12% from its buyers/receiver of the goods in view of the contract of fixed price, there is no question of passing over the same to its buyer in view of the aforesaid decisions of the Apex Court in the case of *MAFATLAL INDUSTRIES LTD. VERSUS UNION OF INDIA [1996 (12) TMI 50 - SUPREME COURT].* Even otherwise the provisions of the CST Act do not contemplate any power to forfeiture of refund by the Revenue. Thus, as held by the decision of the Supreme Court in the case of *KHEMKA & CO. (AGENCIES) PVT. LTD. VERSUS STATE OF MAHARASHTRA & STATE OF MYSORE VERSUS GULDAS NARASAPPA THIMMAIAH OIL MILLS [1975 (2) TMI 91 - SUPREME COURT]*, the provisions of Section 31 of the VAT Act enabling the Assessing Officer to forfeit the excess amount of tax deposited by the assessee cannot be applied to the provision of the CST Act. The Appeal deserves to be dismissed and re-framed questions of law are answered in favour of the assessee and against the Revenue. Hence, appeal is dismissed.

[Decided in favour of the assessee]

CUSTOMS

NOTIFICATION/CASE LAW

BILATERAL SAFEGUARD MEASURE ON IMPORTS OF PHTHALIC ANHYDRIDE ORIGINATING IN KOREA RP AND MODIFICATION IN RATE OF DUTY OF CUSTOMS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 01/2021-Customs dated 28.01.2021** has notified that seeks to confirm the provisional Bilateral Safeguard measure on imports of Phthalic Anhydride originating in Korea RP under the India-Korea Comprehensive Economic Partnership Agreement, and to further amend notification no. 152/2009 dated 31.12.2009 to modify the rate of duty of customs on said imports, on recommendation of final findings of Directorate General of Trade Remedies under the India-Korea Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017.

[For further details please refer the notification]

GOODMATRIC EXPORT PVT. LTD. AND ANOTHER VERSUS UNION OF INDIA AND OTHERS-2021 [BOMBAY HIGH COURT]

Brief: Whether a provisional attachment of bank account can be continued beyond the period of one year?

OUR COMMENTS: In the present case, The Bombay High Court held that Section 110 of the Customs Act deals with seizure of goods, documents and things. Sub-section (5) was inserted in the said provision by Finance (No.2) Act, 2019 with effect from 01.08.2019. Section 110(5) of the Customs Act states that provisional attachment of bank account can be for a period of six months but the said period can be extended for a further period not exceeding six months for reasons to be recorded in writing and communicated to the affected person before expiry of the initial period of six months. There are no justification to continue with the provisional attachment of the bank accounts of the petitioner. The initial period of six months had expired in November, 2019. Even assuming and giving benefit of further six months to the respondents, the outer limit of one year expired in May, 2020. That apart, Finance (No.2) Act, 2019 was given prospective application with effect from 01.08.2019. The provisional attachment was made on 08.05.2019 when the said provision was not available in the statute book. The petitioner's accounts are allowed to be released/unfrozen. Hence, petition is allowed.

[Decided in favour of the petitioner]

DGFT

NOTIFICATION/CASE LAW

AMENDMENT IN IMPORT POLICY OF COAL AND INCORPORATION OF POLICY CONDITION

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 56/2015-2020 dated 28.01.2021** has notified that CIMS will be effective from 01.04.2021, i.e., Bill of Entry filed on or after 01.04.2021 for items as listed in this Notification shall be governed by CIMS. The facility of online registration will be available with effect from 15.02.2021.

[For further details please refer the notification]

M/S. NAUTILUS METAL CRAFTS PVT. LTD. VERSUS JOINT DIRECTOR GENERAL OF FOREIGN TRADE & ANR. -2020 [DELHI HIGH COURT]

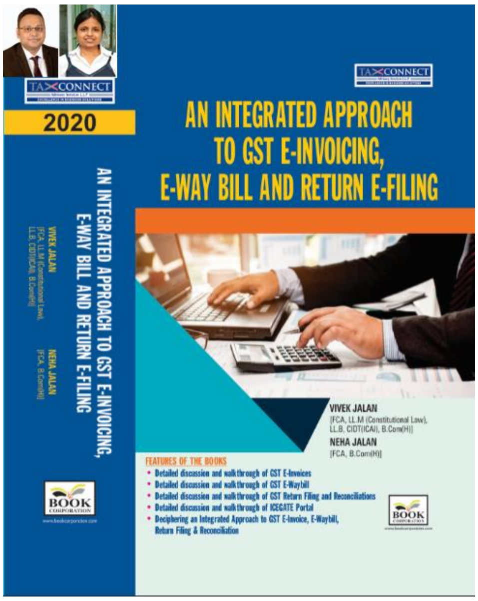
Brief: Gross Overvaluation of Goods for availment of export benefits fraudulently.

OUR COMMENTS: In the present case, Delhi High Court held that any refusal to grant, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits, can only be "by an order in writing". In fact, Section 9(4) expressly mandates that suspension or cancellation of any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits can only be "for good and sufficient reasons". The requirement of giving reasons cannot therefore, be dispensed with and is mandatory. Even otherwise, it is now firmly established that even an administrative decision having civil consequences must record reasons as a mandatory compliance with principles of Natural Justice. This is especially so where the order itself is appealable, like in the present case. Even otherwise, the necessity of giving reasons cannot be undermined. In the present case, the learned counsel for the respondents has admitted that except for the reference on the website to the Impugned Order, there is no separate order for recording reasons for placing the petitioner on DEL. Therefore, in the so-called order there is no reference to the Show Cause Notices and to the replies submitted by the petitioner and how they have been dealt with and appreciated by the Authority. In fact, it gives no reason except stating that the "Firm is under D.R.I Ludhiana Investigation". In terms of the Guidelines reproduced hereinabove, the same cannot be a sufficient reason as the respondent/Authority is to apply its independent mind to the allegations against the petitioner. The respondent admits that barring receiving a reference/request from the DRI, it has no other material to proceed against the petitioner. The reference/request itself is cryptic. The Show Cause Notice was for "availing Special MEIS benefits fraudulently by mis-declaration and forgery of documents". The petitioner in its reply had categorically submitted that it had not claimed or submitted any documents for grant of Special MEIS benefits till date. The petitioner had also requested for a copy of the communication received from DRI to understand the background for the proposed action. The Impugned Order does not show any application of mind to these submissions as the order contains no reasons. The submission of the learned counsel for the respondents that the Impugned Order is interim in nature and therefore principles of Natural Justice can be dispensed with cannot also be accepted. Impugned order 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



ABOUT THE BOOK: **This publication includes:**

1. **Detailed discussion and walkthrough of GST E-Invoices.**
2. **Detailed discussion and walkthrough of GST E-Waybill.**
3. **Detailed discussion and walkthrough of GST Return Filing and Reconciliations.**
4. **Detailed discussion and walkthrough of ICEGATE Portal.**
5. **Deciphering an Integrated Approach to GST E-Invoice, E-Waybill, Return Filing & Reconciliation**

Authors:

Vivek Jalan
[FCA, L.LM (Constitutional Law), L.LB, CIDT(ICAI), B.Com(H)]

Neha Jalan
[FCA, B.Com(H)]

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

In Association With:

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 8017741711, 9830661235
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in

IN STANDS

Section wise Compendium on GST

ABOUT THE BOOK: This publication includes:

1. **Linkage of Section, Rules, Notifications, Circulars, Orders, Advance Ruling, Court Decisions**
2. **Master Referencer of Section, Rules, Notifications, Circulars, Orders, Advance Ruling and Court Decisions**
3. **Section-wise Commentary**
4. **Practical Illustrations**

Authors:

Vivek Jalan
[FCA, L.LM (Constitutional Law), L.LB, CIDT(ICAI), B.Com(H)]

Pradip Kumar Das
[M.A. LL.B; Advocate Supreme Court & High Courts; Fr. Mem (Jud.) CESTAT]

Published by:

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com

In Association With:

TAX CONNECT ACADEMY
1, Old Court House Corner
Kolkata 700001
Phones: (033) 40016761
Cell : 8017741711, 9830661235
Order by email: info@taxconnect.co.in
Website : www.taxconnect.co.in

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

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

Contact Person: Rajanikant Choudhury

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

Email: manmit.sinha@taxconnectdelhi.co.in

DELHI

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Rohit Sharma

Email: rohit.sharma@taxconnect.co.in

KOLKATA

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

Contact Person: Sweta Agarwal

Email: sweta.agarwal@taxconnectdelhi.co.in

KOLKATA

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

Contact Person: Sweta Agarwal

Email: sweta.agarwal@taxconnectdelhi.co.in

DUBAI

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

Contact Person: Nitesh Shaw

Email: nitesh.shaw@taxconnectdelhi.co.in

Disclaimer:

This e-bulletin is for private circulation only. Views expressed herein are of the editorial team and are based on the information, explanation and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.