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EDITORIAL

Friends,

The GST-investigation Wing have issued Instructions / Guidelines regarding procedures to be followed during Search Operation. The instructions contained in the Central Excise Intelligence and Investigation Manual (2004), which hold good even in GST regime, are re-iterated in the instruction for compliance by DGGI/ filed formations. As per the instruction, all the searches be carried out in accordance with the provisions of Code of Criminal Procedure, 1973. Thus. the guidelines specified in the above-mentioned instruction must be adhered to while carrying out search proceedings.

The Goods and Services Tax (GST) Council may choose to consider the proposal to reduce the number of tax slabs to three. The impact on the consumer will depend on the Council's decision but reducing the tax rate will make the GST regime simpler for the states and, the government would hope, improve compliance. Further, GST compensation cess on vehicles and tobacco might stay till 2025-26 as per Finance Commission. Consumers of automobiles, aerated water and tobacco products may have to bear the burden of the Goods and Services Tax (GST) compensation cess on their purchases till the end of 2025-26 to help the Union government raise resources to pay states the committed compensation required to make good a shortfall in their GST collection.

Over Rs 2.06 lakh crore GST compensation to states due for April-November. Minister of State for Finance Anurag Singh Thakur, in a written reply in the Lok Sabha, said GST compensation of Rs 40,000 crore has been released to all states/Union Territories to meet partly the bi-monthly compensation for period April-May 2020 as the GST Compensation Fund was not adequate to meet the full compensation for the period. The balance GST compensation for the period April-May 2020 and for the full period June-November'20 is pending to all states/UTs due to inadequate amount in the GST Compensation Fund during the current fiscal.

The Income Tax Department carried out search and seizure operation on a major liquor manufacturer group based in Bengaluru on 09.02.2021. The searches have resulted in detecting incriminating evidences relating to concealment of income of more than Rs. 692.82 Crores on account of Joint Development Projects with a major builder based in Bengaluru. Also, the group companies have fraudulently claimed expenses amounting to Rs. 86 Crores. In respect of their liquor business, unaccounted sales amounting to Rs. 74 Crores have been detected from one of their liquor manufacturing plants based in Kerala. The group companies have also claimed bogus expenses of Rs. 17 Crores in their business entities. The Directors of the group have incurred unexplained expenditure of Rs. 9 Crores attracting the provisions of Section 69C of Income-tax Act,1961.

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
15th February 2021	ITR-1 to 7	F.Y.2019-20	Due Date for Income Tax Return whose audit is applicable
15th February 2021	NA	January, 2021	Due Date of payment for ESI/PF
20th February 2021	GSTR-3B	January, 2021	Due Date of furnishing summary of outward and inward supplies whose taxable turn over is above five crores
20th February 2021	GSTR-5	January, 2021	Due Date for furnishing GST return of Non-Resident Foreign Taxpayers
20th February 2021	GSTR-5A	January, 2021	Due Date for furnishing GST return of Non-Resident OIDAR service providers

INCOME TAX

CASE LAW

SHRI V.C. ARUNAI VADIVELAN VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX, NON-COMPANY CIRCLE - 11, CHENNAI-2021 [MADRAS HIGH COURT]

Brief: If few vouchers which are handmade and not available, 20% of the expenses was disallowed and added back to the return income in case of expenditure on account of the weighing and unloading charges.

OUR COMMENTS: In the present case, Madras High Court held that assessee had produced the books of accounts, ledgers, purchase and sales registers, stock registers, bills, vouchers for expenses claimed including purchase bills, freight bills as called for by the Assessing Officer. This is admitted by the Assessing Officer in the assessment order. Admittedly, the assessee's case was selected for scrutiny under section 143(3) of the Act. If such is the fact situation, the Assessing Officer was bound to scrutinize the documents produced and frame an assessment by granting/refusing eligible/ineligible deduction. We find that the AO has made observation that the vouchers are self-made/hand written and some vouchers are not produced. This in our opinion appears to be a vague statement. This finding has been recorded by the Assessing Officer with regard to the amount claimed by the assessee as expenses towards transport charges. Given the nature of the industry, we can take judicial notice of the fact that always computer-generated vouchers may not be issued by the transporters unless they are an organization owning a large fleet. If the Assessing Officer had any doubt with regard to the genuinity of any one of the vouchers produced he could have drawn sample vouchers and called upon the assessee to establish its genuineness. Without doing so, making an adhoc disallowance by not specifically assigning any reason to a voucher or bunch of vouchers is not legally tenable. Thus, it is not a case where there is no record available with the assessee to justify their claim and had the Assessing Officer taken a little effort to examine the correctness of the vouchers, in all probabilities the assessee might have not been before us by way of this appeal. Thus, we are convinced that the assessment requires to be re-done after a thorough verification. Hence, the case is decided in favour of assessee.

[Decided in favour of assessee]

CIRCULAR/CASE LAW

SOP ON SUSPENSION OF REGISTRATIONS U/R 21A(2A) OF CGST RULES, 2017

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Circular No. 145/01/2021-GST dated 11.02.2021** has issued Standard Operating Procedure for implementation of the provisions of suspension of registration under which it has mentioned that to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue this circular is issued. In case, there is cancellation of registration then the same shall be communicated to the assessee regarding to this and he shall be given an opportunity to prove within 30 days that why his registration shall not be cancelled. It can be done through Common Portal within the specified time limit. The taxpayers will be able to view the notice in the "View/Notice and Order" tab post login. Post issuance of FORM GST REG-31 via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under "Suo moto cancellation proceeding".

[For further details please refer the notification]

JODHPUR VIDYUT VITRAN NIGAM LTD V/S MINISTRY OF FINANCE, CBIC, ETC-2021 [RAJASTHAN HIGH COURT]

Brief: Challenge to validity of Clause 4(1) of Circular No. 34/8/2018-GST dated 01.03.2018 in so far as it carves out an exception and excludes some of the services provided by the DISCOMS when services of distribution and supply of electricity itself exempted vide Notification No.12/2017-CT(R) dated 28.06.2017.

OUR COMMENTS: The Ministry of Finance HELD - Reading of Sl.No.25 of exemption Notification No.12/2017-CT(R) dated 28.06.2017 leaves no room for ambiguity that the entire package of services of transmission or distribution of electricity has been exempted. The impugned Circular dated 01.03.2018, particularly Para No.4(1) reveals that the CGST Council has sought to bring in tax-net five services enumerated therein, regardless of the fact that complete bundle of services of transmission and distribution of electricity by an electricity transmission or distribution utility have been exempted. Attempt of chipping out some of the services, out of the complete package and treating them to be taxable is not only arbitrary and unreasonable but also violative of provisions of Section 8 of the CGST Act. A circular cannot seek to clarify provisions of statutory notification, which is otherwise unequivocal. There is no room for ambiguity for which the GST Council was required to issue the Circular. Respondents have levied tax on some of the services by carving them out that too by way of a circular under the cloak of a clarification. The para 4(1) of the impugned Circular No. 34/8/2018-GST dated 01.03.2018 is quashed - the respondents are restrained from raising any demand or taking any coercive measures to recover any tax on the basis of impugned Circular. Hence, the writ petition is allowed.

[Decided in favour of petitioner]

FEMA

CASE LAW

KK. KUDA VERSUS CHIEF ENFORCEMENT OFFICER, ENFORCEMENT DIRECTORATE & ANOTHER-2015 [SUPREME COURT]

Brief: Credit of Non-convertible Rupee Funds into the Non-Resident (External) Account of the person concerned.

OUR COMMENTS: In the present case, the crediting of Non-Convertible Rupee Funds in the Non-Resident (External) Account of Dr. P.K.Ramakrishnan happened during the period August to December, 1991. Three officials of ANZ Grindlays Bank were involved in it and Show Cause Notice was issued by Respondent No.1 on 21.1.1994 to the Bank as well as the Officials for contravention of Section 6(4), 6(5) read with Section 49 of FERA, alleging that it had taken place with the consent, connivance of and attributable to the negligence on the part of the Officials. It is true that the respondent by letter dated 10.7.2001 ordered that the charges relating to 'consent' and 'connivance' shall stand deleted from the Show Cause Notice. Though FEMA came into force on 1.6.2000, Sunset clause under Section 49 of the said Act provided for filing of complaints under the FERA, 1973 till 31.5.2002. Taking advantage of it, the Respondent No.1 issued Opportunity Notice to all the three officials on 12.5.2002 and lodged the complaint on 29.5.2002. The Additional Chief Metropolitan Magistrate, New Delhi, on the same day took cognizance of the complaint for the offence under Section 56 of FERA and issued summons.

In spite of having dropped the allegations of 'consent' and 'connivance', the respondent in their complaint levelled allegations of all the three components, namely, consent, connivance and negligence. The contention of the appellant that the cognizance was taken on irrelevant consideration, is to be countenanced. There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed.

[Decided in favour of appellants]

CUSTOMS

CASE LAW

NOTIFICATION ON CHANGE EXCHANGE RATE OF FOREIGN CURRENCY INTO INDIAN RUPEES

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 14/2021-Customs (N.T) dated 04.02.2021** has notified change of exchange rate of foreign currency into Indian rupees relating to imported and export goods.

[For further details please refer the notification]

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. 15/2021-Customs (N.T) dated 05.02.2021** has notified the tariff value of certain goods i.e., Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver.

[For further details please refer the notification]

IMPOSITION OF AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 16/2021-Customs (N.T) dated 05.02.2021** has imposed agriculture and development cess on certain goods in order to boost agriculture infrastructure. The purpose of notification was the need to improve agricultural infrastructure so that we produce more, while also conserving and processing agricultural output efficiently.

[For further details please refer the notification]

BLACK GOLD TECHNOLOGIES VERSUS UNION OF INDIA-2021 [MADRAS HIGH COURT]

Brief: Provisional release of goods - Used Rubber Tyre Cut in Two Pieces - misdeclaration of the imported goods - restricted goods or not - allegation that the importer has mis-declared the cargo in order to circumvent the import restriction imposed by the extant Foreign Trade Policy - Section 110A of the Customs Act, 1962.

OUR COMMENTS: In the present case, Madras High Court held that the respondents are directed to assess and permit the provisional release of the goods in question upon payment of applicable duties of customs subject however to the eventual adjudication. The respondents shall release the goods after assessing and collecting the customs duty and other charges provisionally within a period of three weeks from the date of receipt of a copy of this order. The adjudication proceedings can go on. The respondents will bear in mind the usual approach adopted in the case of provisional release of goods in terms of [Section] 110A of the Customs Act. It is further declared that the petitioners are entitled to waiver in view of the handling of cargo in Customs Areas Regulations, 2009. No demurrage and detention charges shall be levied on the petitioners herein. Hence, Petition is allowed.

[Decided in favour of the petitioner]

DGFT

NOTIFICATION/PUBLIC NOTICE/CASE LAW

NOTIFICATION FOR FOOD IMPORT ENTRY POINTS

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 57/2015-20 dated 10.02.2021** has notified food import entry points. To ensure the mandate of safe food imports in India, FSSAI has notified Authorised Officers to handle food import clearance at 150 food import entry points. New sub para is added in General Notes Regarding Import Policy Schedule I in ITC(HS) 2017, listing out Authorised Officers to handle food import clearances at 150 food import entry points for items listed against 1515 HS codes of ITC(HS) 2017.

[For further details please refer the Notification]

INCORPORATION/CHANGE OF DETAILS OF ELECTRONICS AND COMPUTER SOFTWARE EXPORT PROMOTION COUNCIL

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Public Notice No. 38/2015-20 dated 09.02.2021** has revised details of products for which M/s Electronics and Computer Software Export Promotion Council is authorised to issue Registration-cum-Membership Certificate (RCMC) under Appendix 2T of FTP, 2015-2020 and its address details under Appendix 2T and Appendix 2D of FTP, 2015-2020.

[For further details please refer the Public Notice]

ATC TIRES PVT LTD V/S ZONAL ADDITIONAL DGFT, DGFT, UNION OF INDIA -2020 [MADRAS HIGH COURT]

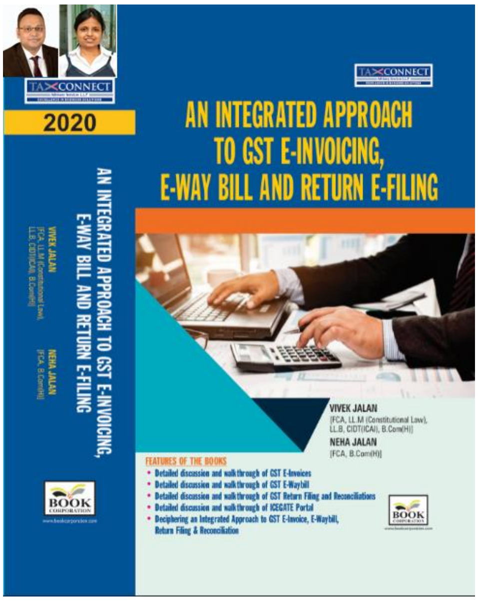
Brief: Mistake while submitting Shipping bills - the petitioner's representative instead of entering 'Y' for each line item, selected 'Y' only for the first line item and did not make any selection for remaining items - contention of respondents is that the DGFT cannot be blamed for the lapse committed by the writ petitioner.

OUR COMMENTS: In the present case, Madras High Court held that the exporter ought not to suffer for the inadvertent mistake committed by him. When the filing was done manually, Section 149 of Customs Act provides for effecting corrections. Now, there has been a shift from the manual system to EDI System. Since the petitioner had opted only for 'Yes', as far as the first line item is concerned and did not opt for the remaining items, by system default, for the remaining items the system opted 'No' automatically. As already pointed out, this was a sheer inadvertent mistake committed by the writ petitioner's representative. The petitioner had actually intended to claim the benefit under the aforesaid Scheme. The petitioner deserves to be given one more opportunity to set right things. After the shipping bills were filed, they are transferred to NSDL (National Securities Depository Limited), which is a Digital Depository. Unless, the third respondent specifically instructs NSDL, they will not be in a position to forward the petitioner's shipping bills to the second respondent. It is seen that the petitioner had been corresponding only with NSDL all these months. The petitioner is permitted to make a formal request to the third respondent. After the third respondent receives such a request from the petitioner herein, the Commissioner of Customs, Tuticorin will issue NOC to enable the petitioner to avail the benefit and also instruct NSDL to transmit all the relevant materials to the Development Commissioner, MEPZ, Tambaram, Chennai. Hence, petition is disposed off.

[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:**

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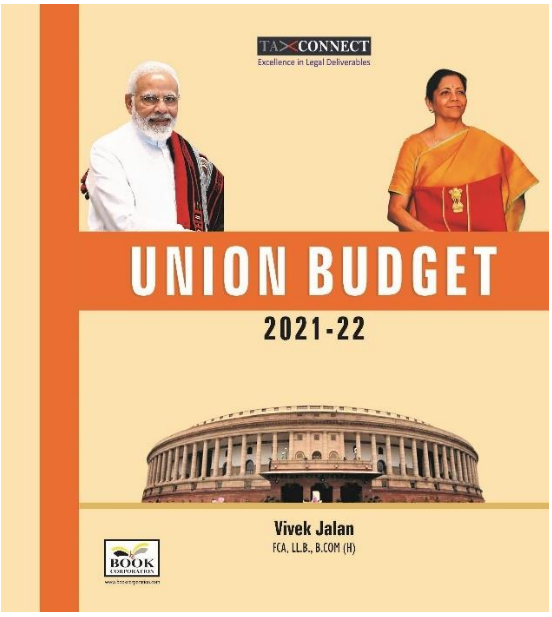
IN STANDS

UNION BUDGET 2021



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   d. **GST**
5. **Finance Bill**
6. **Notes on Clauses**

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