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EDITORIAL

Friends,

The Madras High Court has allowed assessees to claim input tax credit for tax deducted at source (TDS) pending from the value-added tax (VAT) regime under the current goods and services tax (GST) system. The ruling is likely to provide relief to works contractors having large amount of unadjusted TDS balance under VAT laws.

The order, passed by Justice Anita Sumant, stated that any deduction made towards an anticipated tax liability assumes the character of tax. Thus, TDS would stand included for transition into the GST law.

The court passed the order after hearing 23 petitions filed by assessees under the Tamil Nadu Goods and Service Tax Act, 2017 (TNGST Act), challenging the notices issued by the commercial tax department proposing denial of such claims.

The petitioners' counsel submitted that TDS is nothing but tax and the TNVAT Act makes this position clear. TDS, being a VAT for the purposes of Section 140(1) of the TNGST Act, is entitled to be carried forward for set off. Also, deduction of tax at source is only a mechanism to ensure advance payment and collection of tax without leakage. Thus, TDS is a tax, the counsel argued.

Applying the ratio, taxpayers in other states may also defend their position of carry forward of VAT TDS as credit under GST.

One major change has been viewed by the E-Commerce Firms is Equalisation Levy. It is creating hue and cry in the market as in this scope of tax will be wide and would adversely impact in **Ease of Doing Business in India**. Therefore, many representations have been given to the CBDT for not making amendments in budget for FY 2022. The amendment would create significant challenges for all businesses operating in India, further exacerbating the detrimental impact of a measure at odds with India's ongoing commitment to the multilateral negotiations at the OECD/ G20 Inclusive Framework to address tax challenges arising from the digitalisation of the global economy.

Further, the amendment to Finance Bill 2021 clarifies that offshore e-commerce platforms don't have to pay 2% equalisation levy if they have permanent establishment or they pay any income tax here.

However, foreign companies who are not paying any tax will have to pay.

The digital tax introduced in April 2020 applies only to non-resident companies with annual revenues in excess of

Rs. 2 crores and covers online sales of goods and services to Indians.

EDITORIAL

The government has raised the threshold limit of tax-exempt contributions to the Provident Fund (PF) to Rs 5 lakh (from Rs 2.5 lakh announced in Budget 2021), subject to certain conditions. This increased tax-exempt limit is applicable to only those PF contributions where there is no employer contribution. This announcement was part of the amendments made to the Finance Bill, 2021 at the time of passing of the Bill in the Lok Sabha on March 23.

The enhanced limit of Rs 5 lakh shall have an impact on government employees contributing towards the General Provident Fund. However, the limit for private-sector employees shall continue to be Rs 2.5 lakh as the employer needs to contribute towards Employee Provident Fund.

Finance Minister has plugged the loophole on sale of an undertaking by one entity or person to another, which may have repercussions for business transfers as well as mergers and acquisitions. At present, consideration of slump sale is the amount agreed between seller and buyer, which often leads to leakage of tax. Slump sale refers to sale of an entire undertaking instead of individual assets. Amendments to the finance Bill, 2021, say that fair market value (FMV) will be taken as consideration of the sale. Current provisions sometimes result in a situation where valuable assets were transferred at lower prices, resulting in tax leakage.

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
31st March 2021	FORM ITR 1-7	FY 2019-20	Due Date of filing return in respect of previous year in case of assessees who have failed to file return on due dates (Belated Return)
31st March 2021	GSTR-9 & 9C	FY 2019-20	Due Date for filing Annual Return and Reconciliation Statement
31st March 2021	Composition Scheme	FY 2021-22	Due Date for Opting for Composition Scheme
31st March 2021	QRMP Scheme	FY 2021-22	Due Date for Opting for QRMP Scheme for Taxpayers whose turnover is below Rs. 5 Crores for Q1 for FY 2021-22
31st March 2021	LUT	FY 2021-22	Due Date for Furnishing Letter of Undertaking
31st March 2021	Form 26QB	February 2021	Due Date of Payment for TDS on Immovable Property
31st March 2021	N.A.	FY 2020-21	Due Date for Investment under 80C
01st April 2021	N.A.	FY 2021-22	As per Rule 46(b) of the CGST Rules, new/unique series of invoices to be raised for FY 2021-22
01st April 2021	N.A.	FY 2021-22	Implementation of E-Invoicing for Taxpayers whose turnover is above Rs. 50 crores but less than Rs. 100 Crores
01st April 2021	N.A.	FY 2021-22	Implementation of QR Code in B2C Invoices for the Taxpayers whose turnover is above Rs. 500 crores
01st April 2021	N.A.	FY 2021-22	As per notified by CBIC, HSN Code is mandatory to be mentioned on every tax invoice and to be furnished in Table No. 12 of GSTR-1

CIRCULAR/CASE LAW

REPORTING UNDER CLAUSE 44 AND 30C OF TAX AUDIT IS NOT REQUIRED

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Circular No. 05/2021 dated 25.03.2021** has decided that the reporting under clause 30C and clause 44 of the Tax Audit Report shall be kept in abeyance till 31st March, 2022. Due to COVID-19 pandemic, such reporting is kept in abeyance as per Order u/s 119 of the Income Tax Act, 1961.

[For further details please refer the circular]

THE PR. COMMISSIONER OF INCOME TAX-4, BENGALURU. AND THE ADDITIONAL COMMISSIONER OF INCOME TAX, RANGE 12, BANGALORE. VERSUS M/S. MPHASIS LTD -2021 [KARNATAKA HIGH COURT]

Brief: Disallowance of depreciation @ 60% on switches and routers and Disallowance of foreign exchange loss on forward contracts is being challenged.

OUR COMMENTS: In the present case, Karnataka High Court held that the judgment delivered in the case of CIT vs. BSES YAMUNA POWERS LTD [2010-DELHI HIGH COURT] has concluded the controversy as held that the computer accessories and peripherals such as printers, scanners and server etc., form an integral part of the computer system. Thus, it can be safely held that the switches and routers as they cannot be used without computer, they form part of peripherals of the computer and entitled to depreciation at 60%. The revenue has not been able to controvert the said finding of the Tribunal and therefore, in light of the judgment delivered by the Delhi High Court, the first substantial question of law is answered in favour of the assessee and against the revenue. The issue stands covered by the judgment delivered by the Bombay High Court in the case of CIT vs. D.CHETAN & CO. [2016 (10) TMI 629 - BOMBAY HIGH COURT]. As carefully gone through the entire record and the case of the assessee is that the loss is on account of the restatement of debtors and creditors, book liability etc., which was incurred on account of the forward contracts which includes both realized and unrealized losses. The details of gain and loss on account of the fluctuations of foreign exchange were filed before the assessing officer. However, the assessing officer merely relying upon Instruction No.3/2010 issued by the Central Board of Direct Taxes concluded that it is a notional loss and has to be treated as a speculative loss in terms of Sec 43(5) of the Act. Assessing officer did not dispute the fact that the loss incurred by the assessee is in the ordinary course of its business and therefore, would fall within the exceptions provided in the proviso to Sec 43(5) of the Act. Therefore, the judgment delivered in the case of D.Chethan and Co., (supra) squarely covers the present case. As held that the assessing officer has not given a finding that the transaction entered into by the assessee was a speculative in nature and the revenue at no point challenged the assertion of the assessee that the activity of entering into the forward contract was in the regular course of its business. Therefore, when the assessing officer has neither disputed the fact that the loss was in the regular course of business nor rendered any finding that the transaction was speculative in nature except making a bald statement, the Tribunal was justified in relying upon case of D.Chetan and Co., (supra). - In WOODWARD GOVERNOR INDIA P. LTD. held that the loss on account of foreign exchange fluctuation is allowable as a deduction u/s 37(1).

[In the favour of the assessee]

CASE LAW

M/S JAI MAA JWALAMUKHI IRON SCRAP SUPPLIER V/S STATE OF U.P. AND 3 OTHERS -2021 [ALLAHABAD HIGH COURT]

Brief: Proceedings under Section 130(2) of the CGST Act - demand of tax and levy of penalty on ground of concealed turnover - discrepancy in GSTR-3B and GSTR-2A - validity of impugned order when appellate authority has not denied the issuance of the invoice and the e-way bills uploaded against subject transactions.

OUR COMMENTS: In the present case, Allahabad High Court held that When the respondents have not denied the issuance of the invoice and the e-way bills uploaded against subject transactions it has to be assumed that the invoice and the e-way bills had been issued. Once the respondent admits that the invoice and the e-way bills had been issued in regular course, it is difficult to imagine how the appeal authority could have reached a conclusion that the goods sold or purchased against those invoices were unaccounted for. The invoice is primary evidence of the transaction. Unless the revenue authority disputes its genuineness, it cannot be lightly overlooked. The alleged discrepancy in GSTR-3B and GSTR-2A referred to by the assessing authority did not even find favour with the appeal authority, inasmuch as, it did not refer to the same in the impugned order. Even otherwise, mere existence of some discrepancies may not led the revenue authority to the conclusion that tax had been evaded or the transaction had not been disclosed. To hold that there was discrepancy in the account is different and lighter charge than to hold that the assessee had not disclosed or concealed part of its turnover. Once the revenue authority accepted that the transaction was covered by regular invoices and those details had been uploaded on the web portal by issuing e-way bills, merely because there may have been existed certain discrepancies, the transaction cannot be said to be one falling under the category of undisclosed turnover. The impugned order is set aside and the petition is allowed.

[In favour of the petitioner]

FEMA

PRESS NOTE/CIRCULAR

REVIEW OF THE FDI POLICY ON DOWNSTREAM INVESTMENTS MADE BY NON-RESIDENT INDIANS

OUR COMMENTS: The Ministry of Commerce and Industry, Government of India, Department for Promotion of Industry and Internal Trade **vide Press Note No. 01/2021 dated 19.03.2021** has reviewed the extant FDI policy in relation to investments made by an Indian company owned and controlled by Non-Resident Indians (NRIs) on a non-repatriation basis and in order to provide clarity on downstream investments made following addition in the consolidated FDI Policy Circular of 2020 (FDI Policy) effective from 15.10.2020 and as amended from time to time.

In Para 1.2(ii)(c) in Annexure 4 of FDI Policy has been inserted that Investments by NRI(s) on a non-repatriation basis as stipulated under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules 2019 are deemed to be domestic investments at par with the investments made by residents. Accordingly, an investment made by an Indian entity which is owned and controlled by NRI(s) on a non-repatriation basis shall not be considered for calculation of indirect foreign investment.

[For further details please refer the Press Note]

MONTHLY REPORTING BY THE BANKS UNDER FETERS-CARDS

OUR COMMENTS: The Ministry of Commerce and Industry, Government of India, Reserve Bank of India **vide Circular No. RBI/2020-21/113 dated 25.03.2021** has added to report more details in case of international transaction using Credit Cards/ Debit Card/ Unified Payment Interface (UPI) as well as in the specified format under FETERS (Foreign Exchange Transactions Electronic Reporting System).

Nodal offices of Authorised Dealers (ADs) may submit FETERS-Cards details on the web-portal in the following manner:

A. For transactions through credit card / debit card / UPI:

i. Sale of forex by AD towards international transaction made by Indian resident (to be reported by the card issuing / transaction originating AD); and

ii. Purchase of forex by AD under transaction by foreign resident with Indian resident (to be reported by merchant acquirer AD).

B. The information shall be submitted in the following fixed format (details given in Annex):

a. For transactions using credit/debit card:

MCC X Country X Currency X Amount (Payment/Refund) X Card Status (Present /Not present)

b. For transactions through UPI:

MCC X Country X Currency X Amount (Payment/Refund) X QR Code Scan (Yes/No)

ADs shall submit the FETERS-Cards data on the web-portal (https://bop.rbi.org.in) by using the RBI-provided login-name and password, within seven working days from the last date of the month for which data are being reported. FETERS-Card's reporting will be implemented for the transactions taking place from April 1, 2021. Hence, details of the transactions in April 2021 may be reported in the first week of May 2021.

[For further details please refer the Circular]

CUSTOMS

NOTIFICATION/CASE LAW

NOTIFICATION ON EXCHANGE RATE OF FOREIGN CURRENCY

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 32/2021-Customs (N.T.) dated 24.03.2021** has notified exchange rate of conversion of each of the foreign currencies relating to imported and export goods.

[For further details please refer the notification]

SYSKA LED LIGHTS PVT. LTD. VERSUS UNION OF INDIA & ORS. – 2021 [BOMBAY HIGH COURT]

Brief: Violation of principles of natural justice - Release of imported goods of the petitioner - service of notice.

OUR COMMENTS: In the present case, Bombay High Court held that it is quite evident that mandate of section 124 is that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose the penalty and further the owner of the goods or such person must be given an opportunity of making a representation in writing within such reasonable time as may be stated in the notice against the grounds of confiscation or imposition of penalty and finally the owner of the goods or such person is given a reasonable opportunity of being heard in the matter. Thus, three conditions are required to be fulfilled before an order of confiscation is passed or penalty is imposed. Admittedly in this case, no notice in writing under section 124(a) of the Customs Act was given to the petitioner before passing the impugned order in original which not only confiscated the goods but also imposed penalty on the petitioner. All that the impugned order in original says is that a personal hearing was given to the authorized representative of the petitioner on 18.09.2020 through video conferencing. There is nothing on record to show or indicate that a request was made on behalf of the petitioner for oral notice or oral representation. From a reading of the impugned order in original, it does not appear that the procedure laid down for rejection of declared value and redetermination of value was followed. It is quite evident that the impugned order in original stands vitiated due to statutory infraction leading to violation of the principles of natural justice thereby vitiating the impugned order-in-original. Hence the petition is allowed.

[In favour of the petitioner]

DGFT

PUBLIC NOTICE/TRADE NOTICE

CG NOTIFIES THE ANNUAL QUOTA FOR THE FISCAL YEAR 2021–22 ITEMS OF CHAPTER 7 OF THE INDIAN TRADE CLASSIFICATION (HS), 2017

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. S.O.1266(E) dated 19.03.2021** has notified the annual quota for the fiscal year 2021-22 for Tur/Pigeon Peas and Moong is restricted to 4 Lakh MT and 1.5 Lakh MT respectively. Import shall be allowed to the Millers/Refiners/Traders and will be allocated equally to pre-determined numbers of applicant through an algorithm-based lottery system, as per procedure to be notified by DGFT.

This notification shall come into force from 17.03.2021.

[For further details please refer the Notification]

M/S. AKR IMPEX PRIVATE LIMITED VERSUS THE ZONAL DIRECTOR GENERAL OF FOREIGN TRADE, THE ADDITIONAL DIRECTOR GENERAL OF FOREIGN TRADE-2021 [MADRAS HIGH COURT]

Brief: Violation of principles of natural justice - petitioner has been put under the "Denied Entity List" (DEL) - despite sending a detailed objection to the show cause notice issued by the respondents, the same has not been considered and without affording a fair hearing, the impugned order has been passed.

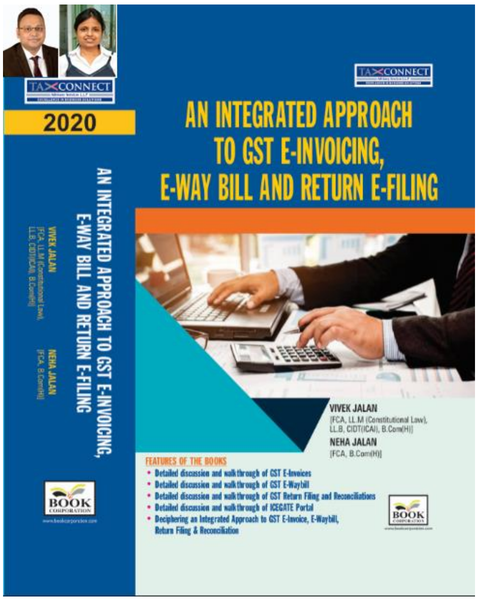
OUR COMMENTS: In the present case, Madras High Court held that the petitioner has been put under the "Denied Entity List" (DEL) by the respondents by exercising the power under Rule 7 of Foreign Trade (Regulation) Rules, 1993. However, as seen from the impugned order, no reasons have been given for putting the petitioner under the "Denied Entity List" (DEL). The petitioner has admittedly given a reply to the show cause notice, issued by the respondents. The same has been admitted by the respondents. In the reply to the show cause notice, the petitioner has contended that they have not violated the provisions of Foreign Trade (Regulations) Rules, 1993 in view of the fact that the imports were made by them, pursuant to interim stay order granted by this Court in respect of the notifications issued by the respondents. As seen from the reply dated 20.07.2020, the petitioner has raised several contentions. Under the impugned Communication, none of the objections raised by the petitioner has been considered by the 1st respondent. The impugned communication is a non-speaking order.

Rule 7 of the Foreign Trade (Regulation) Rules, 1993 makes it clear that reasons will have to be given for putting the petitioner under the "Denied Entity List" (DEL) - Since, no reasons have been given, this Court is of the considered view that principles of natural justice have been violated by the respondents. The petitioner ought to have been afforded a fair hearing before such an order could have been passed. The matter remanded back to the respondents for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner. Hence, Petition is allowed by way of remand.

[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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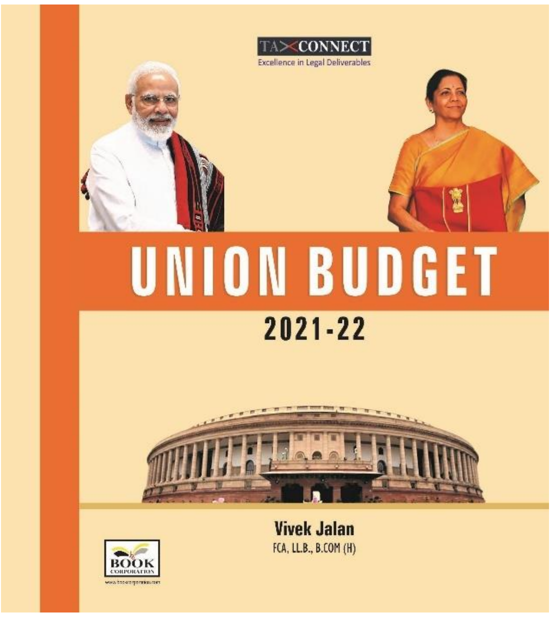
IN STANDS

UNION BUDGET 2021



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   a. **Direct Tax**
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   d. **GST**
5. **Finance Bill**
6. **Notes on Clauses**

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