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EDITORIAL

Friends,

CLARIFICATION ON SPENDING OF CSR FUNDS FOR SETTING UP MAKESHIFT HOSPITALS AND TEMPORARY COVID CARE FACILITIES

In a significant boost to corporate India looking to undertake CSR around the Covid-19 pandemic, the government on 22nd April 2021 clarified that spending by corporates for setting up makeshift hospitals and temporary COVID-19 care facilities will be considered as CSR activities vide **General Circular No. 05/2021** issued by Ministry of Corporate Affairs, Government of India.

This would be permitted as an eligible Corporate Social Responsibility (CSR) activity under schedule VII of the companies Act regarding promotion of healthcare, including preventive healthcare and, disaster management respectively, the MCA said in a circular.

The MCA has said that companies may undertake the activities of setting up makeshift hospitals and temporary Covid care facilities in consultations with the State governments. This will be allowed so long as companies comply with the Companies (CSR Policy) rules 2014 and the circulars related to CSR issued by the ministry from time to time, it added.

As per the provision of the Companies Act, certain class of entities are required to spend at least 2 per cent of their three-year annual average net profit towards Corporate Social Responsibility (CSR).

It may be recalled that In January 2021, the MCA allowed corporate India to spend its CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on Covid-19 vaccination programmes.

In March 2020 spending of CSR funds for Covid-19 would be treated as an eligible CSR activity and that the coronavirus outbreak will be treated as a notified disaster.

Later in August 2020, the MCA went a step further to treat the R&D spend on Covid-19 vaccines, drugs and medical devices as an eligible CSR spend.

CABINET GIVES EX-POST FACTO APPROVAL FOR AMENDMENTS TO FINANCE BILL, 2021:

The Union Cabinet on 22.04.2021 gave ex-post facto approval to the official amendments to the Finance Bill, 2021, which were aimed at clarifying and rationalising tax proposals for 2021-22. The amendments were essential to clarify and rationalise the proposals further and address stakeholders' concerns arising out of the proposals enumerated in the Finance Bill. The Finance Bill became the Finance Act, 2021 on March 28, 2021 after receiving the President's nod. An official release said that the government's amendments to the Finance Bill, 2021 tried to address the concerns of the stakeholders with regard to the tax proposals for the fiscal. The amendments to the

Finance Bill, 2021 were primarily aimed at generating timely revenue for the exchequer and addressing the issues flagged by taxpayers and other stakeholders.

GST OFFICERS TO BE SOON ARMED WITH REAL-TIME DATA ON VEHICLES MOVING WITHOUT E-WAY BILLS:

The government is working on a system to soon provide report to GST officers on a real-time basis for those vehicles which are moving without e-way bills, to help intercept stuck trucks at toll plazas and check GST evasion. The tax officers would also be provided analysis reports on identifying e-way bill EWB with no movement of goods as it would help officials identifying cases of circular trading. It would also provide reports on recycling of e-way bills for tax evasion prone commodities to help officers in identifying tax evaders. Under the Goods and Services Tax (GST) regime, e-way bills have been made mandatory for inter-state transportation of goods valued over Rs 50,000 from April 2018. However, gold is exempted. In the electronic way (e-way) bill system, businesses and transporters have to produce before a GST inspector the e-way bill whenever asked.

DRI SEIZES MORE THAN 300 KG OF COCAINE VALUED AT APPROX. RS. 2,000 CRORE IN INTERNATIONAL MARKET AT TUTICORIN PORT:

Based on specific intelligence that cocaine will be concealed in a consignment imported in container reaching V O C Port, Tuticorin, the officers of Directorate of Revenue Intelligence (DRI) have intercepted the container declared to be containing wooden logs. The suspected container has originated from Panama, transited through the ports of Antwerp and Colombo.

On examination the suspected container was found to contain 9 bags concealed between the rows of wooden logs. On opening the said bags 302 white coloured compressed bricks wrapped in multiple layers of packing material were found. The contraband weighed 303 kg and it is highly suspected to be cocaine. The contraband along with cover goods i.e. wooden logs are seized under the provisions of the NDPS Act, 1985. Further investigation about the origin of the consignment and concealment of narcotic drugs is being carried out.

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
25th April 2021	ITC-04	March 2021	Due Date for furnishing Job Work Details
30th April 2021	QRMP Scheme	April-June 2021	Due Date for Opting for QRMP Scheme for Taxpayers whose turnover is below Rs. 5 Crores for Q1 for FY 2021-22
30th April 2021	ITNS-281	March 2021	Due Date for Payment of TDS
30th April 2021	Form 26QB	March 2021	Due Date of Payment for TDS on Immovable Property other than agricultural land

INCOME TAX

NOTIFICATIONS/CASE LAW

LENDERS TO REPORT TAXPAYERS' INTEREST INCOME ABOVE RS. 5000

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Direct Taxes **vide Notification No. 01/2021 and 02/2021 dated 20.04.2021** has issued detailed guidelines on how banks and companies will report information related to interest and dividend income of taxpayers. Section 285BA of the Income Tax Act, 1961, and Rule 114E require "specified reporting person" to furnish a statement of financial transaction. According to the notification issued on Tuesday, banks will have to report the details of all those taxpayers whose interest income across deposits exceeds Rs. 5,000 in a fiscal year.

[For further details please refer the notification]

THE COMMISSIONER OF INCOME TAX, CHENNAI. VERSUS M/S. TRACTOR AND FARM EQUIPMENT LTD. - 2021 [MADRAS HIGH COURT]

Brief: Reopening of assessment u/s 147.

OUR COMMENTS: In the present case, the assessee-Company is engaged in the business of manufacture and sale of Tractors engineering plastic component and two-wheeler batteries and trade in trailers, implements and accessories. The assessee – Company filed its return of income for the AY 2003-04 on 28.11.2003 declaring a total income of ₹ 32,40,89,880/-. The return was processed u/s 143(1) of the IT Act, 1961 on 30.03.2004. The assessment u/s 143(3) was completed on 14.02.2006. Subsequently, the assessment was re-opened. The assessee claimed expenditure towards commission of sale, consultancy charges and others in the return of income filed for the assessment year 2003-04. While finalizing the assessment under Section 143(3) for the assessment year 2006-07 and 2007-08, it has come to light that the consultancy charges paid by the assessee is nothing but fee for technical services and accordingly, the same has been disallowed under Section 40(a)(i). Similarly, payment of commission on sales and payments made under "others" also were liable to tax deduction under Section 195 and as the assessee failed to deduct tax, the expenditure claimed towards the above were disallowed under Section 40(a)(i). The assessee has not disclosed all the material facts fully and truly necessary for the assessment at the time of scrutiny as per the explanation 1 to Section 147. Therefore, Madras High Court held that in view of the submissions the ruling made by the Hon'ble Supreme Court of India in the judgment reported in **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd [2010 - SUPREME COURT].** In the above ruling, Supreme Court held that one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. The Assessing Officer has no power to review, he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department in the garb of re-opening the assessment, review would take place. To reopen an assessment tangible material should be there.

[In the favour of the Assessee]

CASE LAW

M/S. CHAIZUP BEVERAGES LLP VERSUS THE ASSISTANT COMMISSIONER, COIMBATORE I DIVISION, ADDITIONAL COMMISSIONER OF GST & CENTRAL EXCISE APPEALS, COIMBATORE -2021 [MADRAS HIGH COURT]

Brief: Refund of ITC - excess claim of duty draw back - Circular No.37/18-Customs dated 09.10.2018.

OUR COMMENTS: In the present case, the petitioner is an exporter of tea and had engaged in export transactions without payment of Integrated Goods and Service Tax (IGST). According to the petitioner, export of goods and services are to be treated as zero rated supplies in terms of Section 16 of the Goods and Service Tax Act, 2017 (in short 'Act'). A claim for draw back in terms of the provisions of the Customs Act, 1962 had been made. The claim was sanctioned and the petitioner has received the draw back. Despite the transactions being categorised as zero-rated supplies, the petitioner remitted IGST, Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST) on the purchase of tea and such tax was credited in its electronic credit ledger. The petitioner thereafter filed an application for refund of the amounts taking advantage of Section 54 of the Act. 90% of the claim was sanctioned on a provisional basis, but was followed by a show cause notice, since R1, the Assessing Authority, was of the view that the refund was liable to be rejected in entirety invoking the third proviso to Section 54(3) of the Act and on the basis that the petitioner had availed draw back at a higher rate than applicable. Thus, the claim was proposed to be rejected in full and the amount provisionally sanctioned was proposed to be recovered as well. Tribunal also rejected the claim. Then assessee filed a writ petition in High Court claiming refund of ITC shall be allowed wrt Board's Circular No.37/18-Customs dated 09.10.2018 on excess claim of duty drawback.

Madras High Court held that it is clear from a reading of Section 54(3) that the petitioner is entitled to one or the other of two benefits, i) duty draw back or ii) Input Tax Credit. Thus, an option has been extended to an assessee engaged in zero rated sale to either claim the benefit of duty drawback or the benefit of refund of ITC. That is why, in the present case, the petitioner, for the month of July, 2017 has opted to stick with the claim of duty draw back seeing as the amount of drawback is higher than the ITC for the months of August and September, 2017 - On a plain reading of Section 54 (3) it is found that the claim of refund to be in order. The orders of the appellate authority are set aside and the authority is directed to refund the sanctioned amounts within a period of six (6) weeks from today. In doing so, the contents of paragraph 2.5 of the Circular will not stand in the way since a circular cannot stand in the way of a benefit offered under a statutory scheme. Paragraph 2.5 of the circular, insofar as it is contrary to the statutory provisions of Section 54(3) is bad in law. Petition allowed. Hence, decided in favour of the petitioner.

[In favour of the petitioner]

CASE LAW

CHINTPURNI MEDICAL COLLEGE AND HOSPITAL & ANR. VERSUS STATE OF PUNJAB & ORS.-2018 [SUPREME COURT]

Brief: Withdrawal of the Essentiality Certificate issued to the petitioner college by Respondent No. 1 under Section 10A of the IMC Act read with the Establishment of Medical College Regulations, 1999 - whether the State Government has the power to withdraw an Essentiality Certificate once granted, and whether the power to do so is ultra-vires the Act and the Regulations framed thereunder?

OUR COMMENTS: In the present case, Supreme Court held that the concerned State Government is required to certify that it has decided to issue an Essentiality Certificate for the establishment of a Medical College with a specified number of seats in public interest, and further that such establishment is feasible. Importantly, the State Government is required to certify that if the applicant fails to create an infrastructure for the Medical College as per the MCI norms and fresh admissions are stopped by the CG, the SG shall take over the responsibility of those seats that already admitted in the College with the permission of the Central Government. An amendment to the notification also requires a declaration that the applicant owns and possesses adequate land on which non-agricultural use of the land is permitted and on which a Medical College can be established. It further requires a declaration to the effect that the Hospital and Medical College have been granted completion certificate / building use certificate. Essentiality Certificate thus certifies that it is essential having regard to specified factors that the opening of the proposed college is essential in the State, in public interest. Further, that the applicant has the necessary land and building for running it. What is significant to note is that the law requires that an applicant must possess an Essentiality Certificate from the State Government mentioning therein that it is essential to have a Medical College as proposed by him. The purpose is interalia to prevent the establishment of a college where none is required or to prevent unhealthy competition between too many Medical Colleges. The question of justified existence of a college and the irregular/illegal functioning of an existing college belong to a different order of things and cannot be mixed up. The function of the State Government in granting an Essentiality Certificate must be construed as a quasi-judicial function. The Government is required to, while issuing the certificate in Form 2, to determine the justification and feasibility of opening the proposed college in the State. Towards this purpose, it is bound to enquire and determine the existence of several factors such as the number of existing institutions, the number of doctors becoming qualified annually, the number of doctors registered with the State Medical Council and employed in Government Service, registered with employment exchange etc. The issuance of certificate must therefore be construed to be a quasi-judicial act. The upshot is that such an act is not liable to be construed as an "order" contemplated by Section 21 of the General Clauses Act. Condition No. (XI) is ultra- vires the provisions of the IMC Act and Regulations. In the result, order issued by Respondent No. 1- State of Punjab, withdrawing the Essentiality Certificate is quashed and set aside and Condition Nos. (VII) and (XI) are declared illegal. Hence, Petition is allowed.

[In favour of the petitioner]

CUSTOMS

NOTIFICATIONS/CASE LAW

EXEMPTION OF CUSTOMS DUTY ON IMPORT OF REMDESIVIR INJECTION, REMDESIVIR API AND BETA CYCLODEXTRIN (SBEBCD) USED IN THE MANUFACTURE OF REMDESIVIR

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 27/2021-Customs dated 20.04.2021** has notified that seeks to exempt customs duty on import of Remdesivir injection, Remdesivir API and Beta Cyclodextrin (SBEBCD) used in the manufacture of Remdesivir, up to 31st October, 2021. Exemption will be present upto 31.10.2021 for the import of Remdesivir.

[For further details please refer the notification]

IMPOSING ANTI-DUMPING DUTY ON IMPORTS OF NYLON FILAMENT YARN ORIGINATED IN OR EXPORTED FROM VIETNAM AND EUROPEAN UNION

OUR COMMENTS: The Ministry of Finance, Government of India, Central Board of Indirect Taxes and Customs **vide Notification No. 23/2021-Customs (ADD) dated 20.04.2021** has notified that seeks to amend *Notification No. 50/2018-Customs (ADD) dated 05.10.2018* imposing anti-dumping duty on imports of nylon filament yarn originated in or exported from Vietnam and European Union, to exclude goods of certain specification from the scope of the anti-dumping duty.

[For further details please refer the notification]

DHRUV MAHESHWARI, LAXMAN RAM VERSUS U.O.I. THRU. INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE-2021 [ALLAHABAD HIGH COURT]

Brief: Bail application - Smuggling - Gold Bars - prohibited item - involved in commission of serious offence

OUR COMMENTS: In the present case, Allahabad High Court held that even from the facts of the case, it is evident that the accused applicants are the carriers of the smuggled gold from Bangladesh. They are not the main persons who were involved in smuggling the gold. They had committed offence in greed of some money which was to be paid or might have been paid to them for transporting the smuggled gold from West Bengal to Delhi. However, they have been apprehended at Kanpur Central Railway Station on inputs of the Revenue Intelligence Department. The accused applicants are languishing in jail since 12.10.2020. The case is triable by the Magistrate. There is no criminal history of the accused applicants.

Let accused-applicants Dhruv Maheshwari and Laxman Ram be released on bail on their furnishing a personal bond of ₹ 2 lakhs each and two sureties in the like amount to the satisfaction of the Trial Court on being summoned with the conditions imposed. Hence, application is allowed.

[In favour of the petitioner]

CASE LAW

M/S. CL INTERNATIONAL VERSUS DIRECTORATE GENERAL OF FOREIGN TRADE-2021 [DELHI HIGH COURT]

Brief: Violation of principles of natural justice - material on the basis of which the show-cause notice and the impugned order were issued, has not been supplied and no reply has been received to these representations.

OUR COMMENTS: In the present case, the present petition challenges the order dated 21st December 2018 (wrongly mentioned as 21st December 2019), passed by the Deputy Director General of Foreign Trade, Ministry of Commerce, Govt. of India, by which the Petitioner was placed in the "Denied Entity List" (hereinafter, "DEL"), under the provisions of the Foreign Trade (Development & Regulation) Act, 1992.

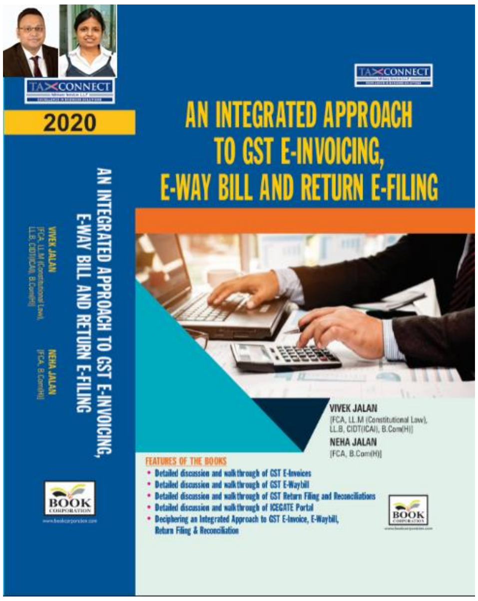
Petitioner submits that the said order dated 21st December 2018 was served upon the Petitioner along with the show-cause notice dated 22nd April 2019. He submits that immediately after having being served with the show-cause notice and the said order, the Petitioner approached the Deputy Director of Directorate General of Foreign Trade (hereinafter, "DGFT") on 2nd May 2019, seeking supply of certain documents relied upon in the show-cause notice. The Petitioner also sought for a personal hearing in the matter. This request has been reiterated from time to time. On 2nd March 2021, an interim reply has also been served upon the DGFT, again giving certain submissions on behalf of the Petitioner, as also seeking the material relied upon in the show-cause notice. The grievance of the Petitioner in this petition is that the material, on the basis of which the show-cause notice and the said impugned order were issued, has not been supplied and no reply has been received to these representations as also the interim reply to the show-cause notice given by the Petitioner.

Delhi High Court held that the order putting the Petitioner in the DEL category was a temporary order. The Petitioner was given an opportunity to file a reply to the said order and the said order was sent to the Petitioner along with a show-cause notice. In the show-cause notice also, the Petitioner has been asked as to why the Petitioner ought not to be continued to be placed in the DEL. Thus, there was no finality, and no period was mentioned, as to for how long the Petitioner was put on the DEL. Since there has been no reply whatsoever in response to the repeated communications of the Petitioner, directions are liable to be issued so that the matter reaches a conclusion. The documents relied upon by the Respondent shall be supplied to the Petitioner within a period of four weeks i.e., by 15.05.2021. Hence, Petition is disposed off.

[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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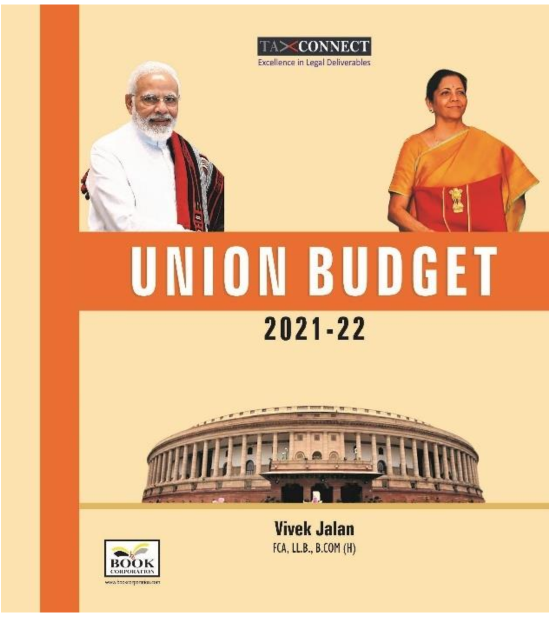
IN STANDS

UNION BUDGET 2021



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