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EDITORIAL



Friends,

Recently The Hon'ble Supreme Court of India dismissed Bharti Airtel's Plea for GST refund of Rs.923 Crore on the ground that GST - 'Rectification of errors permissible only at initial stages.

The Supreme Court set aside the Delhi High Court judgment that had allowed Bharti Airtel's plea for rectification and refund of excess GST worth Rupee 923 Crores paid by it during the period between July-September 2017. The Delhi High Court had allowed Airtel's plea to rectify Form GSTR-3B for the period in which error had occurred, i.e., from July to September 2017. Airtel had contended that, due to non-operability of Form GSTR-2A at the relevant time (July to September 2017), it had been denied of access to the information about its electronic credit ledger account and consequently, availing of ITC for the relevant period and instead to discharge the output tax liability in cash.

The Supreme court said that assessee cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, as this would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records. The court also upheld the Circular No. 26/26/2017-GST dated 29.12.2017 issued by the Commissioner (GST) which had restricted the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

In appeal, the Apex court took a view that Non-performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self assessment in Form GSTR-3B manually on electronic platform.

The court observed that "The factum of non-operability of Form GSTR-2A, therefore, is flimsy plea taken by the writ

petitioner/respondent No. 1. Indeed, if the stated form was operational, the same would have come handy to the writ petitioner for doing self-assessment regarding eligibility of ITC and availing thereof. But it is a feeble excuse given by the writ petitioner/respondent No. 1 to assail the condition specified in impugned Circular dated 29.12.2017 regarding the rectification of the return submitted manually in Form GSTR-3B for the relevant period (July to September 2017)".

On the issue of reading down of the circular, the court said: The express provision in the form of Section 39(9) clearly posits that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed. This very position has been restated in the impugned Circular. It is, therefore, not contrary to the statutory dispensation specified in Section 39(9) of the Act.

Allowing the appeal, the bench observed- "As noted earlier, the matching and correction process happens on its own as per the mechanism specified in Sections 37 and 38, after which Form GSTR-3 is generated for the purposes of submission of returns; and once it is submitted, any changes thereto may have cascading effect. Therefore, the law permits rectification of errors and omissions only at the initial stages of Forms GSTR-1 and GSTR-3, but in the specified manner. It is a different dispensation provided than the one in pre-GST period, which did not have the provision of auto-populated records and entries."

Just to reiterate that we remain available over telecom or e-mail.

Truly Yours

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SYNOPSIS

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TAX CALENDAR

Due date	Form/Return/ Challan	Reporting Period	Description
31stOctober 2021	Form 24Q	July- September 2021	Quarterly Statement of deduction of tax at source (TDS) on salary u/s 192 for the quarter ending September 2021.
31stOctober 2021	Form 27Q	July- September 2021	Quarterly Statement of deduction of tax at source (TDS) in respect of the deductees who is a non-resident not being a company or a foreign company or resident but not ordinarily resident for the quarter ending September 2021.
31stOctober 2021	Form 26Q	July- September 2021	Quarterly Statement of deduction of tax at source (TDS) in respect of all other deductees for the quarter ending September 2021.
31stOctober 2021	Form 26QAA	July- September 2021	Quarterly return of non -deduction at source by a banking company from interest on deposit in respect of the quarter ending September 2021.

INCOME TAX

CIRCULAR

GUIDELINES UNDER CLAUSE (23FE) OF SECTION 10 OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: Finance Act, 2020, *inter-alia*, inserted clause (23FE) of section 10 of the Income-tax Act, 1961 to provide for exemption to sovereign wealth funds and pension funds (hereinafter referred to as "specified fund") on their income in the nature of dividend, interest and long-term capital gains arising from investment in infrastructure in India made between 01.04.2020 and 31.03.2024 subject to fulfilment of certain conditions.

2. The Finance Act, 2021, *inter alia*, inserted seventh proviso to clause (23 FE) of section 10 of the Act to provide that in case the specified fund has loans or borrowings, directly or indirectly, for the purposes of making investment in India, such fund shall be deemed to be not eligible for exemption under this clause.

3. In this regard, concerns have been raised in regard to the term 'indirectly' used in the said proviso of the clause (23 FE) of section 10 of the Act that it is not defined and no clarity has been provided thereon under the extant provisions. Further, concerns have been raised that if the specified fund or its holding entity or any other entity in the chain of holding or any associate thereof (hereinafter referred to as "group concern") has any loans or borrowings, the specified fund may be ineligible to get the exemption under the said clause.

4. First proviso to clause (23FE) of section 10 of the Act provides that if any difficulty arises regarding interpretation or implementation of the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing

the difficulty. In exercise of the powers under this proviso, Board, with the approval of the Central Government, hereby issues the following guidelines:

Guidelines

5. In order to remove the above difficulties mentioned in para 3 of these guidelines, it is hereby clarified that eligibility of exemption under clause (23FE) of section 10 of the Act shall be as follows: -

(a) if the loans and borrowings have been taken by the specified fund or any of its group concern, specifically for the purposes of making investment by the specified fund in India, such fund shall not be eligible for exemption under clause (23FE) of section 10 of the Act; and

(b) if the loans and borrowings have been taken by the specified fund or any of its group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under clause 23(FE) of section 10 of the Act, subject to the fulfilment of all other conditions under the said clause, provided that the source of the investment in India is not from such loans and borrowings.

[For further details please refer the notification]

GST

NOTIFICATION

ENTRY NO. 243 AND 452P OF NOTIFICATION NO 1/2017-CENTRAL TAX (RATE) DATED 28.06.2017 AMENDED

OUR COMMENTS: The Central Goods and Services Tax Act, 2017 (12 of 2017), vide notification number 13/2021- Central Tax (Rate), dated 27.10.2021, the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

- (a) in Schedule II – 6%, S. No. 243 and the entries relating thereto shall be omitted;
- (b) in Schedule III – 9%, against S. No. 452P, in column (3), the words “in respect of Information Technology software” shall be omitted.

Through the above notification the words “in respect of Information Technology software” has been omitted from the rate schedule of 6% and 9% under the CGST Act.

[For further details please refer to the Notification]

NOTIFICATION

ENTRY NO. 243 AND 452P OF NOTIFICATION NO 1/2017-INTEGRATED TAX (RATE) DATED 28.06.2017 AMENDED

OUR COMMENTS: The Central Government, on the recommendations of the Council, vide notification number 13/2021- -Integrated Tax (Rate), dated 27.10.2021, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, namely:-

In the said notification, -

- (a) in Schedule II – 12%, S. No. 243 and the entries relating thereto shall be omitted;
- (b) in Schedule III – 18%, against S. No. 452P, in column (3), the words “in respect of Information Technology software” shall be omitted.

Through the above notification the words “in respect of Information Technology software” has been omitted from the rate schedule of 12% and 18% under the CGST Act.

Before amendment the entries were read as under:

Entry No. 243 – “Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software”

Entry No. 452P- “Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software”

[For further details please refer to the Notification]

FEMA

DISCUSSION

FOREIGN CURRENCY NON-RESIDENT (FCNR) ACCOUNT, A GOOD INVESTMENT OPTION FOR NRI/NRO

OUR COMMENTS: As an NRI, the thought of investing in your homeland can be overwhelming, given the wide range of options available. Hence, the best way to choose an investment instrument is to be clear about your investment objectives and aspirations. One viable option that allows you to save your funds in foreign currency is the FCNR fixed deposit account. Read on to find out if an FCNR deposit for NRIs is suitable for you.

Concept of FCNR

FCNR stands for Foreign Currency Non-Resident account and is a fixed deposit account that caters to NRE/NRO account holders. The interest rate offered on an FCNR account depends upon the bank and the type of currency you have deposited. For instance, IndusInd Bank's FCNR account accepts the following currencies:

- US Dollars
- Japanese Yen
- Euro
- Pound Sterling
- Canadian Dollars
- Australian Dollars.

Benefits of FCNR Account

Wondering if FCNR is a feasible investment option for you? Here are some benefits of FCNR deposit for NRIs to invest funds in India.

Tax Exemption

The interest you earn on the FCNR fixed deposit account is free from tax liabilities in India. Plus, the principal and interest amount are fully transferable to the country of residence without any restrictions.

Flexible Tenure

If you are unsure whether you want a short-term or a long-term investment instrument, an FCNR account can be the solution. This is because most banks allow you to opt for a flexible tenure. For example, with IndusInd Bank, you can open a deposit for a minimum of 1 year and maximum 5 years.

Fixed Interest Rate

Since banks determine the interest rate on the FCNR account within the ceiling provided by the RBI, it remains fixed throughout the tenure. Also, the interest amount is payable at the end of 1 year and is compounded on a half-yearly basis.

Simple Process

You can easily open an FCNR deposit for NRIs by submitting minimal documents, such as a copy of visa and passport, proof of residency status, overseas address proof, bank account documents, etc. It also allows you to transfer funds from your Non-Resident External (NRE) Account.

CUSTOMS

NOTIFICATION

**SEEKS TO AMEND NOTIFICATION NO. 25/2021 -
CUSTOMS DATED 31.03.2021**

OUR COMMENTS: The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2021-Customs, dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 241 (E), dated the 31st March, 2021, namely vide notification number 51/2021 dated 22.10.2021 :-

In the said notification, for Table 4, the following Table shall be substituted, namely: -

"TABLE 4

S.N o.	HS digit	Descripti on	Tariff Rate Quota Quantit y	In- quota Tar iff rate	In- quota AIDC rate	Condi tion
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	06031900	All goods	15 tons	30%	-	1
2.	08043000	All goods	1000 tons	10%	-	1
3.	08109060	All goods	250 tons	10%	-	1
4.	09051000	All goods	15 tons	10%	-	1

5.	09052000	All goods	1 ton	10%	-	1
6.	16041410, 16041490, 16042000	All goods	7000 tons combin ed for all goods	0%	-	1
7.	17011490	Specialty Sugar	15000 tons	10%	-	1
8.	22030000	All goods	2,000,000 litres	25%	-	1
9.	22060000	Fruit Wine	5000 litres	0%	50%	1
10.	22084011, 22084012, 22084091, 22084092	All goods	1.50 million litres combin ed for all goods	0%	50%	1";

[For further details please refer the Notifications]

DGFT

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF DIAGNOSTIC KITS

OUR COMMENTS: The Foreign Trade Policy, 2015-20, the Central Government hereby makes following amendment in Notification No. 09/2015-20 dated 10.06.2020 and Notification No. 18/2015-20 dated 16.08.2021 vide Notification number 39/2015-2020 dated 14.10.2021 vide notification number 39/2015-2020 dated 14th October 2021:

S.No	ITC Codes	HS Description	Existing Policy	Revised Policy
207 G	Ex3822	- VTM Kits and Reagents - RNA Extraction Kits and reagents - RT-PCR Kits and reagents	Restricted	Free
207 H	Ex39269099 EX701790 Ex84199090 Ex90189099 Ex3822	15ml falcon tube or cryovials	Restricted	Free
207 I	EX300590 Ex3822	Swabs sterile synthetic fibre swabs (Nylon, Polyester, Rayon, or Dacron)	Restricted	Free
207 J	Ex90279090 Ex3822	Silicon columns	Restricted	Free
207 K	Ex38220090 Ex38220019	Poly adenylic Acid or Carrier RNA	Restricted	Free
207 L	Ex38220090 Ex38220019	Proteinase K	Restricted	Free

207 M	Ex9027 Ex3822	Magnetic stand	Restricted	Free
207 N	Ex38220090 Ex38220019	Beads	Restricted	Free
207 O	Ex38220090 Ex38220019	Probes (specific for COVID-19 testing)	Restricted	Free
207 P	Ex38220090 Ex38220019	Primers (specific for COVID-19 testing)	Restricted	Free
207 Q	Ex3507 Ex3822	Taq Polymerase enzyme	Restricted	Free
207 R	Ex3507 Ex3822	Reverse transcriptase enzyme	Restricted	Free
207 S	Ex2934 Ex3822	Deoxy nucleotide triphosphates	Restricted	Free
207 AC	Ex3822 Ex3002	COVID-19 Rapid Antigen testing Kits	Restricted	Free

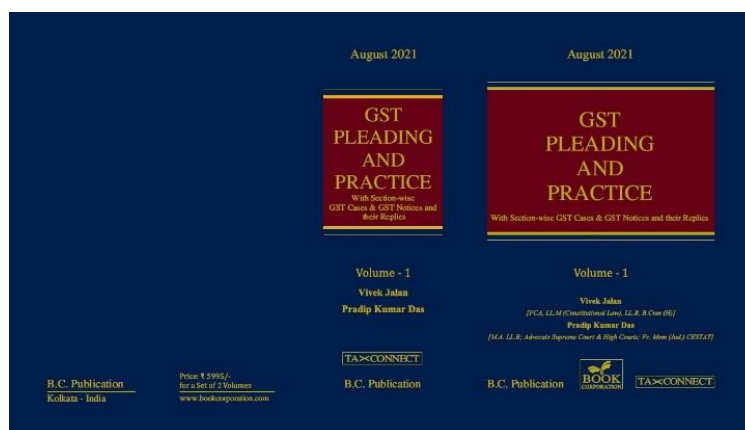
2. Effect of this Notification:

The export policy of all diagnostic kits and reagents (including instruments/apparatus), made 'Restricted' vide Notification No. 09/2015-20 dated 10.06.2020 and Notification No. 18/2015-20 dated 16.08.2021 is being made 'Free' with immediate effect.

[For further details please refer the Notification]

:IN STANDS

GST PLEADING AND PRACTICE: With Section-wise GST Cases & GST Notices and their Replies



ABOUT THE BOOK: This publication includes:

1. GST Notices and their Replies
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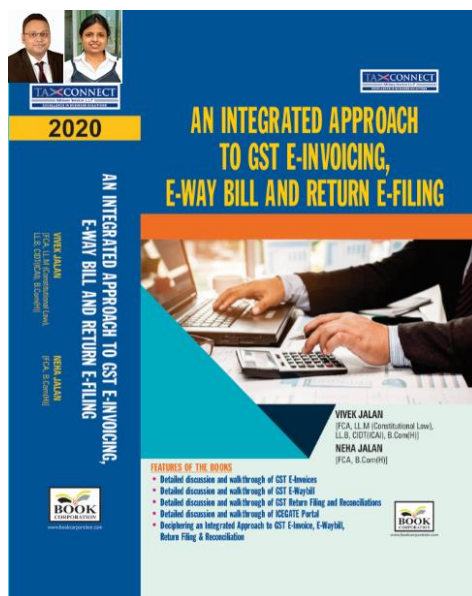
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3. Section-wise Commentary
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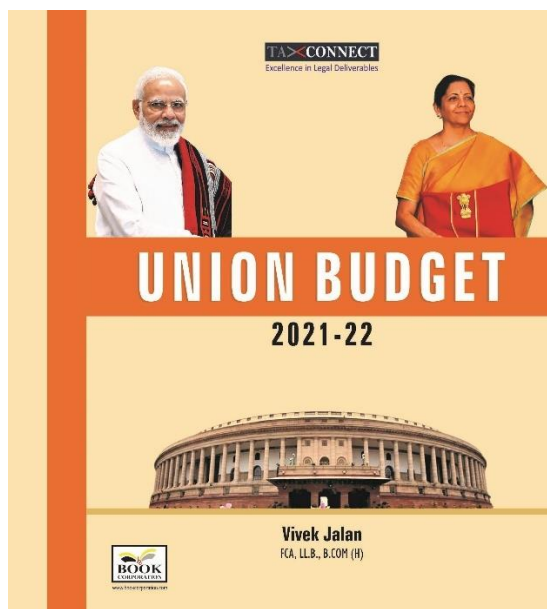
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5. Finance Bill
6. Notes on Clauses

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