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EDITORIAL



Friends,

As part of constant endeavor of Central Government to provide a smooth and hassle free experience to the taxpayers and simplify the process of meeting GST compliances, there are some new functionalities recently deployed which includes moving the records saved in IFF, to later months of same Quarter, by taxpayers under QRMP Scheme, Auto population of GSTR-3B liability, for taxpayers under QRMP Scheme, from their IFF and GSTR 1, Filing for refund of accumulated ITC by taxpayers making exempt/ nil-rated supplies, by selecting an option of not having an LUT number in the refund application, Facility to view ledger for 12 months and its download, Transfer of amount in cash ledger, between major/minor heads, by Temp ID holders and unregistered applicants, Inclusion of common names in the HSN Directory and its download in excel format by the taxpayers and many more.

There are some other relevant changes in GST during last week as under:

RELIEF TO RESIDENT WELFARE ASSOCIATION (RWA) MEMBERS

In a relief to Resident Welfare Association (RWA) members, the Hon'ble Madras High Court has ruled that the Goods and Services Tax (GST) is applicable to monthly maintenance amount exceeding RS. 7,500 only and not on the full amount.

The decision overturns a 2019 circular issued by the Central Board of Indirect Taxes and Customs, which said exemption shall be granted only if the charges are limited to Rs. 7,500 per month and that full amount will be taxed beyond that.

The high court also quashed an Authority of Advance Rulings (AAR) order of 2019, which said that an exemption was permissible only if the contribution was up to RS. 7,500. In case the contribution was more than RS. 7,500, then exemption would not be valid, and the full amount would have to be taxed.

GUJARAT HC ALLOWS REFUND OF IGST PAID ON OCEAN FREIGHT

Gujarat HC allows refund of IGST paid on Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India in case of Bharat Oman Refineries Ltd. Vs Union of India. The court referred the decision given in the case of Mohit Minerals Private Limited Vs. Union of India and others.

The Hon'ble court declared the Notification No. 8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry No.10 of the Notification No.10/2017-IGST (Rate) dated 28.6.2017 as ultra vires the Integrated Goods and Services Tax Act, 2017 on the ground that the same lacked legislative competency. Both the Notifications referred to above were declared to be unconstitutional.

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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EDITORIAL

Stay Safe and Healthy

SYNOPSIS

S.NO.	TOPICS	PAGE NO.
1]	TAX CALENDER	4
2]	INCOME TAX	5
NOTIFICATION	CBDT NOTIFIED THE RULES FURTHER TO AMEND THE INCOME-TAX RULES,1962 VIDE NOTIFICATION DATED 77/2021 DATED 7TH JULY 2021.	
3]	GST	6
CASELAW	M/S RADHA KRISHAN INDUSTRIES VERSUS STATE OF HIMACHAL PRADESH & ORS.	
4]	FEMA	7
NOTIFICATION	NEW DEFINITION OF MICRO, SMALL AND MEDIUM ENTERPRISES - ADDITION OF RETAIL AND WHOLESALE TRADE, NOTIFICATION RBI/2021-2022/67 DATED 7TH JULY 2021	
5]	CUSTOMS	8
NOTIFICATION	NOTIFICATION NO. 35/2021- CUSTOMS, DATED: 12TH JULY, 2021, EXEMPTION NOTIFICATION	
6]	DGFT	9
NOTIFICATION	NOTIFICATION NO. 13/2015 DATED 12TH JULY, 2021, STATES POLICY CONDITION OF CHAPTER-48 OF ITC (HS) 2017, SCHEDULE-I	
7]	IN STANDS - AN INTEGRATED APPROACH TO GST E-INVOICING, E-WAYBILL & E-RETURN FILING	10
8]	IN STANDS –SECTION WISE COMPENDIUM ON GST	11
9]	IN STANDS – UNION BUDGET 2021	12
10]	LET'S DISCUSS FURTHER	13

Due date	Form/Return /Challan	Reporting Period	Description
18 th July, 2021	CMP-08	April to June 2021	Quarterly return for registered person opting for composition levy
20 th July, 2021	GSTR - 5A	June 2021	OIDAR - Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India
20 th July, 2021	GSTR - 5	June 2021	Return by non-resident taxable person
20 th July, 2021	GSTR 3B	June 2021	Simple GSTR return for the month of June, 2021 (for Assessors having turnover exceeding 5 Cr. or opted to file Monthly return)
22 nd July 2021 & 24 th July 2021	GSTR 3B	April to June 2021	Simple GSTR return for the Quarter (April – June), 2021 (Opted for Quarterly filing as per QRMP Scheme)



NOTIFICATION

CBDT NOTIFIED THE RULES FURTHER TO AMEND THE INCOME-TAX RULES, 1962 VIDE NOTIFICATION DATED 77/2021 DATED 7TH JULY 2021.

OUR COMMENTS: In the Income-tax Rules, 1962, new Rule 8AC has been inserted as under:

“Rule 8AC: Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained.

(1) For the purposes of proviso to section 50, the written down value of the block of the asset and short term capital gains, if any, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with this rule.

(2) Where the goodwill of the business or profession was the only asset or one of the assets in the block of asset “intangible” for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, the written down value of this block of asset for the previous year relevant to the assessment year commencing on the 1st day of April, 2021 shall be determined in accordance with the provisions of item (ii) of sub-clause (c) of clause (6) of section 43.

(3) Where the reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, for the previous year relevant to the assessment year commencing on the 1st day of April, 2021, exceeds the aggregate of the following amounts, namely:-

(i) the written down value of the block of assets at the beginning of the previous year relevant to the assessment year commencing on the 1st day of April, 2021 without giving effect to reduction under sub-item (B) of item (ii) of sub-clause (c) of clause (6) of section 43; and

(ii) the actual cost of any asset falling within the block of assets “intangible”, other than goodwill, acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021,

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(4) Without prejudice to the provisions of sub-rule (3) and section 55, where the goodwill of the business or profession was the only asset in the block of asset “intangible” for which depreciation was obtained by the assessee in the assessment year beginning on the 1st day of April, 2020, and the block of asset ceases to exist on account of there being no further asset acquired during the previous year relevant to the assessment year commencing on the 1st day of April, 2021 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.

(5) The capital gains or loss on transfer of goodwill, during the previous years relevant to the assessment year 2021-22 or subsequent assessment years, shall be determined in accordance with the provisions of section 48, section 49 and clause (a) of sub-section (2) of section 55.”

[For further details please refer the notification].

CASE LAW

M/S RADHA KRISHAN INDUSTRIES VERSUS STATE OF HIMACHAL PRADESH & ORS.- HON'BLE SUPREME COURT- PROVISIONAL ATTACHMENT

BRIEF: It is evident that the expression 'adjudicating authority' does not include among other authorities, the Commissioner. In the present case, the narration of facts indicates that on 21 October 2020, the Commissioner had in exercise of his powers under Section 5(3) made a delegation inter alia to the Joint Commissioner of State Taxes and Excise in respect of the powers vested under Section 83(1). The Joint Commissioner, in other words, was exercising the powers which are vested in the Commissioner under Section 83(1) to order a provisional attachment in pursuance of the delegation exercised on 21 October 2020.

OUR COMMENTS: The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1). The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable. The High Court has erred in dismissing the writ petition on the ground that it was not maintainable. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it

is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue. The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment. The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue.

There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had discretion on whether or not to grant an opportunity of being heard. The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached. A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; and. The appellant having filed an appeal against the order under section 74(9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal.

[In favour of the petitioner].

NOTIFICATION

NEW DEFINITION OF MICRO, SMALL AND MEDIUM ENTERPRISES - ADDITION OF RETAIL AND WHOLESALE TRADE, NOTIFICATION RBI/2021-2022/67 DATED 7TH JULY 2021

OUR COMMENTS: Retail and wholesale trade were left out of the ambit of MSME. Under the revised guidelines, MSME has issued order to include retail and wholesale trade as MSME and extending to them the benefit of priority sector lending under RBI guidelines. The revised guidelines will benefit 2.5 Cr Retail and Wholesale Traders. Government announces inclusion of Retail and Wholesale trades as MSMEs

It has been decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them.

The circulars FIDD.MSME & NFS.BC.No.3/06.02.31/2020-21 dated July 2, 2020 on 'Credit flow to Micro, Small and Medium Enterprises Sector' and FIDD.MSME & NFS.BC.No.4/06.02.31/2020-21 dated August 21, 2020, on 'New Definition of Micro, Small and Medium Enterprises- clarifications'.

2. In this connection, Ministry of Micro, Small and Medium Enterprises vide Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021, has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them:

46	Wholesale trade except of motor vehicles and motorcycles
47	Retail trade except of motor vehicles and motorcycles

3. The Enterprises having Udyog Aadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

[For further details please refer the Notification]

45	Wholesale and retail trade and repair of motor vehicles and motorcycles
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NOTIFICATION

NOTIFICATION NO. 35/2021- CUSTOMS, DATED: 12ST JULY, 2021, EXEMPTION NOTIFICATION

OUR COMMENTS: the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below, falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), specified in column (2) of the said Table, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, subject to the conditions specified in the Annexure to this notification, namely:-

TABLE

S. No.	Chapter heading or sub-heading or tariff item	Description of goods
(1)	(2)	(3)
1.	2923 20 90	DMPC (1,2-Dimyristoyl-sn-glycero-3-phosphocholine).
2.	2923 20 90	DMPG (1,2-Dimyristoyl-sn-glycero-3-phospho-rac-glycerol,sodium salt).

3.	2923 20 90	HSPC (Hydrogenated phosphatidylcholine from soybean).
4.	2923 20 90	DSPG (1,2-Distearoyl-sn-glycero-3-phospho-rac-glycerol,sodium salt).
5.	2923 20 90	Egg Lecithin.
6.	2906 13 10	Cholesterol HP.
7.	Any Chapter	Raw materials for manufacturing COVID test kits.

Provided that nothing contained in this notification shall apply to –

(a) the goods specified against serial numbers 1, 2, 3, 4, 5 and 6 of the said Table after the 31st day of August, 2021;

(b) the goods specified against serial number 7 of the said Table after the 30th day of September, 2021.

ANNEXURE

Condition No.	Condition
1.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

[For further details please refer the Notification]

NOTIFICATION

NOTIFICATION NO. 13/2015-2020 DATED 12TH JULY, 2021- AMENDMENT OF POLICY CONDITIONS OF CHAPTER-48 OF ITC (HS), 2017, SCHEDULE-I (IMPORT POLICY).

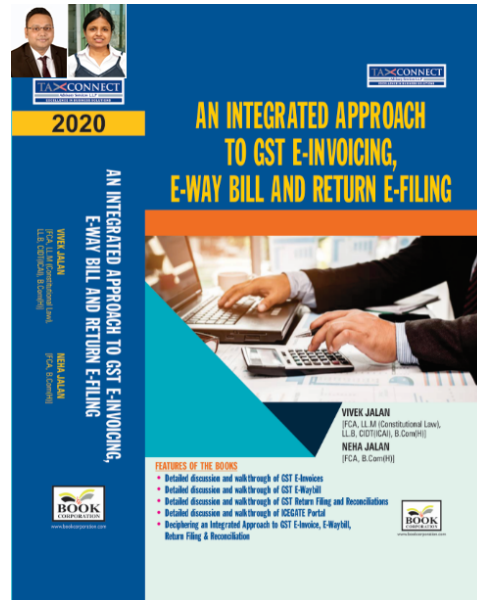
OUR COMMENTS: The Central Government hereby amends the following Policy Conditions of Chapter-48 of ITC (HS) 2017, Schedule - I (Import Policy) as under:

Existing Policy Condition	Revised Policy Condition
1(I) Import of Water-mark Bank Note Paper may be made, without an import licence, by the Note Printing Presses of the Government of India, namely, Currency Note Press, Nasik; Bank Note Press, Dewas both units of Security Printing and Minting Corporation of India Limited (SPMCIL); Bharatiya Reserve Bank Note Mudran Ltd.(BRBNMPL) units in Mysore,	Import of Water-mark Bank Note Paper may be made, without an import licence, by the Note Printing Presses of the Government of India, namely, Currency Note Press, Nasik; Bank Note Press, Dewas both units of Security Printing and Minting Corporation of India Limited (SPMCIL); Bharatiya Reserve Bank Note Mudran Private Ltd.(BRBNMPL) units in Mysore, Salboni and Bangalore, subject to submission of a certificate of import from the Head of units and with actual user condition

Salboni and Bangalore, subject to submission of a certificate of import from the Head of units and with actual user condition.	
(II) The importer shall furnish quarterly returns of the quantity and value of the imports made by him to the Ministry of Finance for the quarters ending 30th June, 30th September, 31st December and 31st March of each financial year, within 30 days of the close of the quarter concerned.	-Deleted-

Effect of the Notification: The name of BRBNMPL as appearing in Policy Condition 1(I) of Chapter 48 of ITC HS 2017, Schedule-I (Import Policy) is corrected to read as Rharatiya Reserve Bank Note Mudran Private Ltd. Policy Condition 1(II) of Chapter-48 of ITC(HS) 2017, Schedule-I (Import Policy) is deleted as a step towards reducing compliance burden.

[For further details please refer the Notification]

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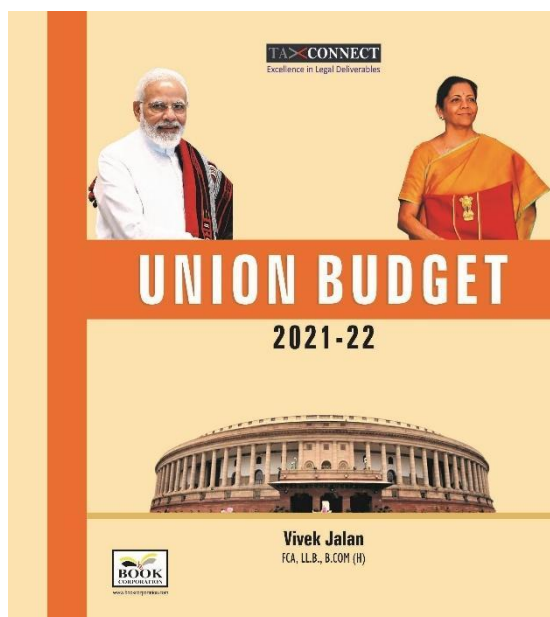
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