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EDITORIAL



Friends,

The continuing economic impact of the pandemic, governments, globally, are looking to mobilize revenues and debating on the best way for immediate collection. Should it be taxes directly collected from individual taxpayers such as increased personal income, wealth and property tax; or increased taxes on luxury goods consumption; or taxes collected via the digital economy. Taxation will play a pivotal role in shaping the future macroeconomic stimulus. In the pandemic-ridden world, the need for expanded taxation of income and wealth has been galvanized by expanded fiscal needs.

Further, we would like to discuss the following imports topics of the week hereunder:

GST COUNCIL MEET TODAY:

The GST Council may consider the recommendations of a group of ministers set up to look into demands for tax relief on medical supplies to treat Covid-19.

The GST Council meeting, to be chaired by Hon'ble FM Nirmala Sitharaman, will be held today to decide on GST rate cut on medical supplies for Covid management and black fungus medicine.

DGFT'S DFIA SCRIPS:

In process of IT Revamp Policy of DGFT, it has issued a new module for recording of transfer of DFIA Scrrips, it was

introduced to enable electronic, paperless transactions and facilitate trade. About New Module The given transfer of DFIA scrrips, shall be recorded under the relevant module on the DGFT website (<https://dgft.gov.in>) Issuance of paper copies of DFIA scrrips (for EDI Ports) has been discontinued with effect from 07.06.2021.

HIGHER RATE OF TDS / TCS IF THE TRANSACTIONS ARE DONE WITH THE NON-FILERS OF INCOME TAX RETURN (ITR) FROM 1ST JULY'21:

For specified persons who have not filed ITRs for last two years, a higher rate of TDS/TCS has to be deducted/charged by the deductor/collector. It is expected that for deductor to check whether the deductee has filed its last two ITRs or not, the new tax portal is going to have a new facility.

IF TDS U/S 194Q IS APPLICABLE, THEN TCS U/S 206C(1H) WILL NOT BE APPLICABLE.

With effect from 1st October 2020, Government had introduced Section 206C(1H) i.e. a seller having turnover of more than Rs. 10 Crores in the preceding financial year is required to collect TCS from the buyers from whom receipts exceeds Rs. 50 Lacs for sale of goods during the financial year.

A new Section 194Q has been introduced under which a buyer having turnover of more than Rs. 10 Crores in the preceding financial year is required to deduct TDS of the sellers from whom invoices or payments exceeds Rs. 50 Lacs for purchase of goods during the financial year w.e.f. 01st July 2021. Rate of TDS would be 0.1%. TDS is to be collected in case of Payment or credit in books whichever is earlier i.e. like other normal TDS provisions.

Section 194Q is applicable only if in previous financial year, the total sales / gross receipts / turnover from the business excess Rs. 10 Crores.

Section 194Q will not be applicable even if turnover in the previous financial year has crossed Rs. 10 Cr.

EDITORIAL

- With respect to the individual buyer with whom the purchase of goods doesn't exceeds Rs. 50 Lacs in the current financial year.
- TDS is deductible under any other provisions of the Act. it means TDS will be deducted under that respective provision and not under this provision.
- Tax is collectible under Section 206C except Section 206C(1H).

It has been specified under sub section 5(b) that if TDS u/s 194Q is applicable then TCS u/s 206C(1H) will not be applicable.

You may take a declaration from your buyers that they will deduct TDS u/s 194Q and comply the same, else you need to charge TCS if buyers are not eligible or no such declaration is received or no such treatment is given by your buyers.

Compliances and Payment of taxes to be made:

- TDS is to be deposited up to 7th of the Next month.
- TDS return is to be filed within one month succeeding the quarter. i.e. for April to June – 31th July and so on.

EVASION OF TAX CANNOT BE CONCLUDED MERELY ON ACCOUNT OF LAPSING OF TIME MENTIONED IN THE E-WAY BILL:

Hon'ble High court of Telangana held in the matter Release of goods detained on account of expiry of E-way bill for Inter-state purchases evasion of tax cannot be concluded merely on account of lapsing of time mentioned in the e-way bill. It was the duty of the officer to consider the explanation offered by taxpayer as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four (04) hours before the expiry or four (04) hours after the expiry, which is untenable. There was no material before the officer to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill.

TURF CLUBS ARE LIABLE TO PAY GST ONLY ON THE COMMISSION ON NOT ON THE ENTIRE FACE VALUE OF THE BET AMOUNT:

In a major tax relief to turf clubs, the Hon'ble High Court of Karnataka has declared that the clubs are liable to pay GST only on the commission that they receive for the service that they render through the totalisator.

"Making the entire bet amount that is received by the totalisator liable for payment of GST would take away the principle that a tax can be only on the basis of consideration even under the CGST," The court held.

"The consideration that the turf clubs receive is by way of commission for planting a totalisator. This can be nothing different from that of a stock broker or a travel agent - both of whom are liable to pay GST only on the commission that they earn and not on all the monies that pass through them," The court held.

We urge you all to take good care of yourself and your families during these challenging times.

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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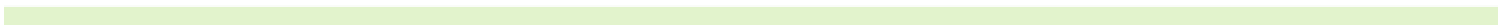
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Stay Safe and Healthy

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Due date	Form/Return /Challan	Reporting Period	Description
13 th June 2021	GSTR-6	May 2021	Due Date for furnishing summary of Outward and Inward Supplies for Taxpayers registered as Input Service Distributor
14 th June 2021	Form 16B	April 2021	Due date for issue of TDS Certificate for tax deducted under section 194-IA, Section 194-IB and Section 194M
15 th June 2021	Form 24G	May 2021	Due date for furnishing by an office of the Government where TDS/TCS has been paid without the production of a challan
15 th June 2021	Form 24G	May 2021	Due Date for furnishing of Form 24G has been extended from June 15, 2021 to June 30, 2021 vide Circular no. 9/2021, dated 20-05-2021
15 th June 2021	Form 16	Jan-Mar 2021	Due Date for Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2021
15 th June 2021	ITNS-280	FY 2021-22	Due Date for First instalment of advance tax for all assessee
15 th June 2021	Form 16	F.Y.2020-21	Certificate of tax deducted at source to employees in respect of salary paid and tax deducted. The due date for issue of certificate of TDS in respect tax deducted from the salary paid during the Financial Year 2020-21 has been extended from June 15, 2021 to July 15, 2021 vide Circular no. 9/2021, dated 20-05-2021
15 th June 2021	64D	FY 2020-21	Furnishing of statement (in Form No. 64D) of income paid or credited by an investment fund to its unit holder. The due date for furnishing of statement in Form no. 64D has been extended from June 15, 2021 to June 30, 2021 vide Circular no. 9/2021, dated 20-05-2021
15 th June 2021	ESI/ECR PF Challan	May 2021	Due Date for Payment of ESI/PF



CASE LAW

**SANJAY AGGARWAL V/S NATIONAL FACELESS
ASSESSMENT CENTRE DELHI-2021 [DELHI HIGH COURT]**

**Brief: Return was processed under Section 143(1) -
Infraction of the statutory scheme encapsulated in
Section 144B**

OUR COMMENTS: In the present case, Delhi High Court held that a careful perusal of clause (vii) of Section 144B (7) would show that liberty has been given to the assessee, if his/her income is varied, to seek a personal hearing in the matter. Therefore, the usage of the word 'may', to our minds, cannot absolve the respondent/revenue from the obligation cast upon it, to consider the request made for grant of personal hearing. Besides this, under sub-clause (h) of Section 144B (7)(xii) read with Section 144B (7) (viii), the respondent/revenue has been given the power to frame standards, procedures and processes for approving the request made for according personal hearing to an assessee who makes a request qua the same.

In several matters, It has been asked the counsels for the revenue as to, whether any standards, procedures and processes have been framed for dealing with such requests. The response, which we have got from the standing counsels including Mr. Chandra, is that, to the best of their knowledge, no such standards, procedures as also processes have been framed, as yet.

Conclusion - As incumbent upon the respondent/revenue to accord a personal hearing to the petitioner. As noted above, several requests had been made for personal

hearing by the petitioner, none of which were dealt with by the respondent/revenue. The net impact of this infraction would be that, the impugned orders will have to be set aside. It is ordered accordingly.

This brings us to Mr. Chandra's submission that; the respondent/ revenue should be allowed to proceed afresh in the matter, in accordance with the law. To our minds, if the law permits the respondent/revenue to take further steps in the matter, the Court, at this stage, need not make any observations in that regard. If and when such steps are taken, and there is a grievance, the petitioner can take recourse to the relevant provisions of the Act. Hence, the case is decided in favour of the petitioner.

[In favour of the petitioner]

CASE LAW

**BANGALORE TURF CLUB LIMITED AND MYSORE RACE CLUB LIMITED VERSUS THE STATE OF KARNATAKA-2021
[KARNATAKA HIGH COURT]**

Brief: Levy of GST on gross amount - constitutional validity of Rule 31A(3) - carrying on the business of a race club, which includes lay-out and preparing any land for running of horse races, steeplechases of races of any other kind - entire bet amount received by the totalisator - Validity of amendments dated 25-01-2018 which inserted Rule 31A(3) to the CGST Rules.

OUR COMMENTS: In the present case, Karnataka High Court has quashed the Union government's rules to tax the whole of the betting amount in Bangalore Turf Club and Mysore Race Club Ltd.

A bench headed by Justice M Nagaprasanna gave the direction after hearing a petition by the two clubs, challenging the rules to bring the entire betting amount into the ambit of the Goods and Services Tax (GST) regime. The amendments inserting Rule.

The Hon'ble high court stated that betting is neither in the course of business nor in furtherance of business of the Petitioner for the purposes of the CGST Act as the Petitioner hold the amount received in the totalisator for a brief period in its fiduciary capacity for which it receives consideration in form of commission and once the race is over the money is distributed to the winners of the stake. Thus, the entire money held by totalisator cannot be construed as consideration in terms of Section 2(31) of the CGST Act. Noted that, Rule 31A(3) of the CGST Rules/ KGST Rules make the Petitioner a 'supplier' of bets but

the Petitioner is not the supplier of bets and therefore, cannot be held liable to pay tax under the CGST Act. The service or supply that the Petitioner do is only of totalisator component. The Petitioner dose not supply bets to the punters.

Held that GST cannot be levied on the entire bet amount received in the as it would take away the principle that tax can only be levied on consideration received under the CGST Act. The Court compared it to stock broker or a travel agent; both of whom are liable to pay GST only on the income i.e., the commission that they earn and not on all the monies that pass through them.

The totalisator is brought under a taxable event without it being so defined under the Act nor power being conferred in terms of the charging section which renders the Rule being made beyond the provisions of the Act. The same follows to the impugned KSGST Rules which are identical to the impugned CGST Rules. Therefore, Rule 31A(3) which does not conform to the provisions of the Act will have to be held *ultravires* the enabling Act and consequently opens itself for being struck down.

Finally, the court held that, the Petitioner is liable for payment of GST on the commission received for the services rendered through the totalisator and not on the total amount collected in the totalisator.

[In favour of the petitioner]

CASE LAW

J.P. MORGAN INDIA PRIVATE LIMITED VERSUS SPECIAL DIRECTOR, DIRECTORATE OF ENFORCEMENT AND ANR.-2021 [DELHI HIGH COURT]

Brief: Offence under FEMA - Distinction between the two stages of the adjudication process - eligible reasons by the respondent no. 1 for the formation of opinion to proceed with the inquiry against the petitioner.

OUR COMMENTS: The Adjudicating Authority, under the Scheme of the FEMA, performs a quasi-judicial function as opposed to a purely administrative function. The requirement of giving reasons therefore cannot be undermined and must be insisted upon from the Adjudicating Authority.

These petitions have been filed by the petitioner challenging the Show Cause Notice(s) dated 29.01.2020 and the consequent Order(s) dated 05.06.2020 and the Communication(s) dated 03.09.2020 of the respondent no. 1, proceeding with the inquiry against the petitioner under the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (hereinafter referred to as the 'Adjudication Rules') on the alleged violation of Section 6(6) of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the 'FEMA') read with Regulation 3 of the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2000 (hereinafter referred to as the 'Place of Business Regulations'). As the Show Cause Notice(s) and the Impugned Order(s)/Communication(s) are based on the same grounds for proceeding against the petitioner and the challenge thereto is common in both the petitions, the petitions are being adjudicated by way of this common judgment and order. The petitioner herein is a private limited company incorporated under the Indian Companies Act, 1956. It is a subsidiary of JP Morgan India Securities Holding Limited, Mauritius ('JPMISHL'). The genesis of the inquiry launched by the respondents originates from the judgment and order dated 23.07.2019 passed by the Supreme Court in W.P.(C) No. 940 of 2017, titled Bikram Chatterji & Ors. v. Union of

India & Ors., finding various fraudulent transactions of Amrapali Group of Companies.

Therefore, in the peculiar facts of the present case, even though the Impugned Opinion of the Adjudicating Authority does not record any reasons for the same, the same is sustained. This shall, however, not be considered as an affirmation of this Court to the manner in which such opinion is to be recorded. It is also made clear that this Court has not expressed any opinion on the merit of the allegations made against the petitioner in the Show Cause Notice or the inquiry.

[In favor of the Department]

CASE LAW

M/S. DIAMOND NUTS, VERSUS THE PLANT PROTECTION OFFICER (E) DEPUTY COMMISSIONER OF CUSTOMS (GROUP I) TUTICORIN, CENTRAL WAREHOUSING CORPORATION-2021 [MADRAS HIGH COURT]

Brief: Import of raw cashew nuts - objections on the phytosanitary certificate - Permission for re-export of goods - name of the plant product was spelt correctly as cashew dry nuts the botanical name was wrongly written as “zingiber officinale” instead of “anacardium occidentale” - Article 3(1) of the Plant Quarantine (Regulations of Import into India) Order, 2003.

OUR COMMENTS: The petitioner is engaged in import, processing and export of cashew from African Countries. The petitioner had imported 133.158 MTs of raw cashew nuts, vide bill of entry No.7899664 dated 13.06.2020 through Tuticorin customs. The first respondent, namely, the Plant Protection Officer, Plant Quarantine Station, Tuticorin, raised certain objections on the phytosanitary certificate issued on consignment.

The petitioner is said to have informed the same to the overseas supplier and accordingly, a revised phytosanitary certificate dated 15.06.2020 was furnished and even in that certificate, vessel name was not corrected. The petitioner once again produced another certificate dated 24.06.2020. However, the first respondent, vide order dated 08.07.2020, rejected the certificate that it appears to be fake and ordered for deportation/destruction, as per the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003, that the consignment has been imported without phytosanitary certificate. Article 14 of the Plant

Quarantine (Regulations of Import into India) Order, 2003, enables one time relaxation, in certain cases, in the absence of phytosanitary certificate. Therefore, the petitioner has also offered for fumigation of the goods through an accredited treatment provider. When Article 14 of the Plant Quarantine (Regulations of Import into India) Order, 2003, provides for relaxation and a similar relaxation has already been granted and defect, as already pointed out by the first respondent, was also rectified through an accredited treatment provider, the first respondent is not justified in rejecting the request of this petitioner that it would become a bad precedent. The goods imported are perishable in nature. Moreover, the petitioner is processing the goods and reexport the same. Though the consignment has reached, the same has not been cleared so far. Even if it is deported, it will not be useful to anyone. Instead, the first respondent ought to have permitted the petitioner for fumigation through an accredited treatment provider in India by providing one time relaxation to the petitioner under Article 14 of the Plant Quarantine (Regulations of Import into India) Order, 2003.

Accordingly, this writ petition is allowed, by setting aside the impugned order dated 30.03.2021 passed by the first respondent. The matter is remitted back to the first respondent to fumigate the goods through an accredited treatment provider, by providing one time relaxation to the petitioner under Article 14 of the Plant Quarantine (Regulations of Import into India) Order, 2003, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[In favour of the petitioner]

CASE LAW

M/S. ACCOLADEE V/S THE COMMISSIONER OF CUSTOMS, TUTICORIN THE ASSISTANT COMMISSIONER OF CUSTOMS, TUTICORIN-2021 [MADRAS HIGH COURT]

Brief: Conversion of the shipping bill from 'drawback shipping bills to drawback-cum-advance authorization' shipping bills. It is revealed that the advance authorization licence taken by the petitioner is not disputed.

OUR COMMENTS: In the present case, petitioner is a manufacturer and exporter of garments. In the course of their business, the petitioner had obtained Advance Authorization No.3210077033 dated 08.07.2014 from the Joint Director General of Foreign Trade (JDGFT), Coimbatore for import of “100 % polyester knitted fabric, micro polar fleece print both side brushed and one side anti-pill” and the petitioner had an export obligation to export ladies pyjama set consisting of two garments, namely (i) 100% cotton knitted ladies top (procured indigenously) and (ii) 100% polyester knitted fabric, micro polar fleece print both side brushed and one side anti-pill fab plant (imported under the above-mentioned advance authorization) for a value of USD 223,822 within a period of 180 months from the date of issue of authorization.

The petitioner had exported garments under the Shipping Bill under DBK Scheme and the said shipping bills were cleared for export under RMS, without any examination and LEO granted on 09.09.2014. The contention of the learned Special Government Pleader that the request for conversion of 'drawback shipping bill' to 'drawback-Cum-advance authorization shipping bill'

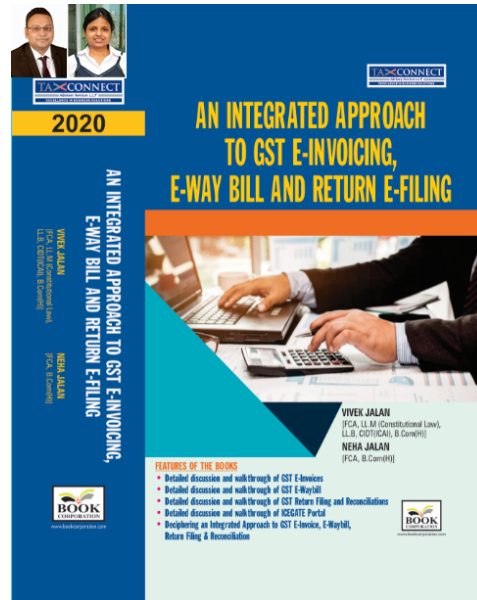
said to have been filed by the petitioner on 08.12.2014 before the Custom House, Tuticorin could not be traced after lapse of five years and six months cannot be accepted by this Court. It is to be noted that since there was no response from the 1st respondent, the petitioner submitted a grievance in Centralized Public Grievance Redressal System and the same was also disposed of by rejecting the request of the petitioner for conversion of the shipping bills. Moreover, the request for conversion was given as early as on 08.12.2014, within three months from the date of export. It is unfortunate on the part of the respondent that without considering the petitioner's request in a true spirit and without giving any opportunity to the petitioner, the impugned order came to be passed.

In view of the same, the impugned order in CBOEC/E/2020/03758 dated 09.09.2020 passed by the first respondent is set aside and the matter is remanded back to the first respondent for fresh consideration after giving reasonable opportunity including the personal hearing and appropriate orders shall be passed on merits and in accordance with law. Such exercise shall be completed by the first respondent, within a period of six weeks from the date of receipt of a copy of this order. 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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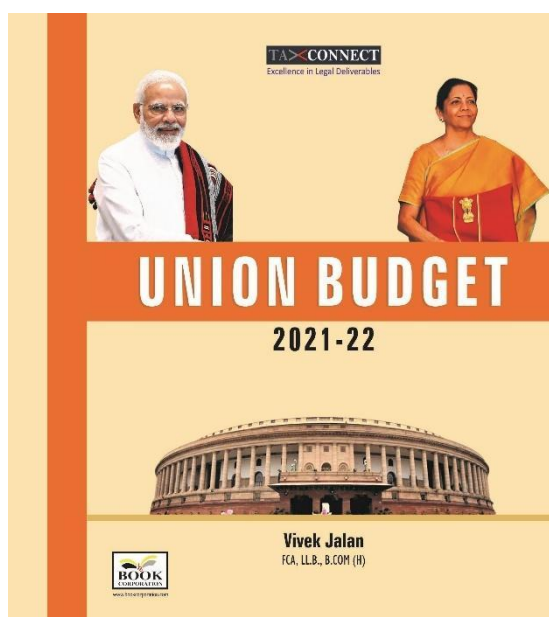
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3. Budget at a Glance
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 - a. Direct Tax
 - b. Customs
 - c. Excise
 - d. GST
5. Finance Bill
6. Notes on Clauses

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