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EDITORIAL



Friends,

A search and seizure under PMLA Act (Prevention of Money-laundering Act, 2002) are distinct and more serious than the same operation under the Income Tax Act. Hence the ED (Directorate of Enforcement) needs to be more cautious before invoking Section 17(1) of The PMLA Act.

The officer who proceeds for a search and seize under the PMLA Act must have a **“reason to believe”** recorded **“in writing”** that a person has committed any act of money-laundering, or is in possession of any **“proceeds of crime”** involved in money laundering, or is in possession of records relating to money-laundering, or is in possession of any property related to crime. For implicating a person, there must be evidence that the person has committed **“an activity”** related to any **“property”** derived directly or indirectly by any person as a result of criminal activity related to a scheduled offence as well as any property which is used in the commission of an offence under The PMLA or any of the scheduled offences.

Besides, commission of an offence will only qualify as money laundering if the offence generates proceeds of crime and tainted property. The power to enter and search any place or to seize any record or property must be predicated by the satisfaction of all the requirements as above which should find a particularized statement in the written **“reason to believe”** component by the authorised officer under Section 17(1). **It is only on the fulfillment of the conditions stipulated that the power to search and seize is crystallized.**

Where there was an absence of **“statements of reasons”** or the basis of an apprehension for freezing the properties of the accused, it was considered that the impugned orders

fall short at all levels of the statutory requirements by The Calcutta High Court in the case of **M/s RASHMI METALIKS LIMITED & ANR. Vs ENFORCEMENT DIRECTORATE & ORS.**

Further, recently it has been held that the income tax assessment made u/s 153A would only be made on the basis of seized material even though Section 153A does not say so specifically.

A fresh assessment cannot be made u/s 153A by The AO u/s 153A and incase an assessment has already taken place earlier, it cannot be interfered with arbitrarily otherwise than on the basis of incriminating evidence. This assessment cannot be arbitrary or made without any relevance or nexus with the seized material. The assessment u/s 153A thus is very specific and AO cannot go beyond it. The Apex Court in the case of PCIT vs. Bhadani Financiers Pvt. Ltd., 2021 SCC On Line Del 4430 has held that where the assessment of the respondents had attained finality prior to the date of search and no incriminating documents or materials had been found and seized at the time of search, no addition could be made under Section 153A of the Act as the cases of the respondents were of non-abated assessment.

The same was again relied on and held in the case of PCIT Vs ALCHEMIST CAPITAL LTD [2022-VIL-202-DEL-DT]

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

Truly Yours

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TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
11 th September	GSTR -1	August 2022	Due date for filing GSTR -1 for the month of August 2022 for monthly taxpayers
13 th September	GSTR -6	August 2022	Due date for filing GSTR -6 for the month of August 2022 for input service distributors
13 th September	GSTR -1 (IFF)	August 2022	Due date for filing GSTR -1 for the month of August 2022 for taxpayers opted for QRMP scheme
14 th September	TDS certificate	July 2022	Issue of TDS Certificate for tax deducted under section 194IA ,194IB and 194M the month of July 2022
15 th September	Form 24G	August 2022	Furnishing of form by an office of the Government where TDS/TCS for the month of August 2022 has been paid without the production of a challan
15 th September	Form 3BB	August 2022	Furnishing statement by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of August 2022
15 th September	Challan No.280	July - September 2022	Second instalment of advance tax for the assessment year 2023-24 (FY 2022-23 2nd Quarter)

INCOME TAX

NOTIFICATION

CONTROL OF INCOME-TAX AUTHORITIES – U/S 118 OF IT ACT 1961

OUR COMMENTS: The Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, vide Notification No. 106/2022 dated 02.09.2022 notified In exercise of the powers conferred by section 118 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs that –

(a) Chief Commissioners of Income-tax as specified in Column (3) of the Schedule provided in the notification shall be subordinate to the Principal Chief Commissioners of Income-tax as specified in Column (2) of the said Schedule;

(b) Commissioners of Income-tax (Appeals) Unit as specified in Column (4) of the said Schedule shall be subordinate to the Chief Commissioners of Income-tax as specified in Column (3) of the said Schedule.

2. This Notification shall come into force from the date of its publication in the official Gazette.

[For further details please refer the Notification]

NOTIFICATION

U/S 10(46) OF IT ACT 1961 – CENTRAL GOVERNMENT NOTIFIED, CENTRAL REGISTRY OF SECURITISATION ASSET RECONSTRUCTION AND SECURITY INTEREST OF INDIA

OUR COMMENTS: The Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, vide Notification No. 107/2022 dated 05.09.2022 notified In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Central Registry of Securitisation Asset Reconstruction and Security Interest of India' (PAN AAEC5770G), a body set up under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (No.54 of 2002) in respect of the following specified income arising to that body, namely:-

(a) fee income from Security Interest transaction;

(b) fee income from transactions on Central KYC (CKYC) Records Registry;

(c) RTI application fee; and

(d) interest income earned on fixed deposits and on (a) to (c) above.

2. This notification shall be effective subject to the conditions that Central Registry of Securitisation Asset Reconstruction and Security Interest of India, -

(a) shall not engage in any commercial activity;

(b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to have been applied for the financial years 2018-2019, 2019-2020, 2020-2021 and 2021-2022 and shall be applicable with respect to the financial year 2022-2023.

[For further details please refer the Notification]

NOTIFICATION

U/S 10(46) OF IT ACT 1961 – CENTRAL GOVERNMENT NOTIFIED, HARYANA ELECTRICITY REGULATORY COMMISSION

OUR COMMENTS: The Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, vide Notification No. 107/2022 dated 05.09.2022 notified In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, 'Haryana Electricity Regulatory Commission' (PAN

INCOME TAX

AAAGH0072G), a Commission constituted under the Haryana Electricity Reform Act, 1997 (Haryana Act No.10 of 1998), in respect of the following specified income arising to that Commission, namely:

(a) Fees received under the Electricity Act, 2003 (36 of 2003) and

(b) Interest earned on government grants and loans and fees received under the Electricity Act, 2003 (36 of 2003).

2. This notification shall be effective subject to the conditions that Haryana Electricity Regulatory Commission: -

(a) shall not engage in any commercial activity;

(b) activities and the nature of the specified income shall remain unchanged throughout the financial years; and

(c) shall file return of income in accordance with the provision of clause (g) of sub-section (4C) of section 139 of the Income-tax Act, 1961.

3. This notification shall be applicable with respect to the financial years 2022-2023, 2023-2024, 2024-2025, 2025-2026 and 2026-2027.

[For further details please refer the Notification]

CASE LAW

DOCTRINE OF UNJUST ENRICHMENT APPLIES EVEN TO THE REVENUE AUTHORITIES; FILING OF ITR IS A 'DEEMED INTIMATION' IN CASE ITR IS NOT PROCESSED IN TIME: DELHI HIGH COURT

OUR COMMENTS: The principle of unjust enrichment applies even to the department. It is unjust to allow the department to retain a benefit at the expense of the taxpayer. After filing of the return (under Section 139 of the Act) along with due verification (under Section 140 of

the Act) and paying taxes as per return (under Section 140A of the Act), a tax-payer has to simply wait for the refund (as computed in the return) unless the same is disputed by the Tax Department through notices under Sections 142(1) or 143(2) or a defect memo under Section 139(9) of the Act. Prior to expiry of time for processing of return, the assessee has no right to expect refund.

However, upon the department's failure to process an assessee's return within time, the right to refund arises by operation of law. In case the AO fails to process the return of the petitioner filed in accordance with law within the prescribed time, then the return as declared/filed will have to be treated as 'deemed intimation' and an order under Section 143(1) of the Act. In case, then refund is not processed then as per the Supreme Court's nine Judges Bench judgment in Mafatlal Industries Ltd. vs. Union of India, (1997) 5 SCC 536, once unjust enrichment is proved, restitution is the answer i.e. the department must give back the benefit. The above was held in a landmark judgement in the case of M/s M.J. ENGINEERING CONSULTANTS P LTD Vs INCOME TAX OFFICER & ORS.

GST

CASE LAW

EFFECTIVE DATE OF CLARIFICATORY CIRCULAR - REJECTION OF REFUND OF ACCUMULATED UNUTILIZED TAX CREDIT – INVERTED TAX STRUCTURE IN TERMS OF SECTION 54 OF CGST ACT 2017: TELANGANA HIGH COURT

OUR COMMENTS: It was held in the case of MICRO SYSTEMS AND SERVICES (SOLE PROPRIETORSHIP) VERSUS THE UNION OF INDIA AND 5 OTHERS THE CHAIRMAN, THE STATE OF TELANGANA, THE CHIEF COMMISSIONER OF GST AND CUSTOMS, THE JOINT COMMISSIONER (APPEALS - II) , THE ASSISTANT COMMISSIONER OF CENTRAL TAX that Refund of accumulated input tax credit on account of inverted structure would be allowed in cases where accumulation of input tax credit is on account of rate of tax on output supply being less than the rate of tax on inputs (same goods) at the same point of time as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions.

The Circular dated 06.07.2022 is clarificatory in nature whereby paragraph 3.2 of the Circular dated 31.03.2020 has been substituted as supra. Being clarificatory, Circular dated 06.07.2022 inserting the above clarification would have the effect from the date when Circular dated 31.03.2020 came into effect - If this be the position, then the claim of the petitioner is liable to be re-considered on the basis of the Circular dated 31.03.2020 as clarified by the Circular dated 06.07.2022.

The matter is remanded back to respondent No.6 for re-consideration in terms of the Circular dated 06.07.2022 - Petition allowed by way of remand.

CASE LAW

PART-B OF THE E-WAY BILL WAS NOT FILLED ON TECHNICAL GLITCH - INTENT TO EVADE PRESENT OR NOT: ALLAHABAD HIGH COURT

OUR COMMENTS: The contention of the petitioner is that the appellate authority while deciding the appeal recorded the submission of the petitioner, however, did not take note of the circular issued by the Ministry of Finance or Clarificatory Circular issued by the department as contained in Annexure no.13 and proceeded to dismiss the appeal. He also places reliance on the circular dated 14.09.2018 issued

by the Ministry of Finance highlighting that the powers under section 129 of the CGST Act should not be invoked in case of minor errors as disclosed in paragraph 5 of the Circular which includes an error in one or two digits/characters of the vehicle number are missing. He further places reliance on the judgment of this Court dated 13.04.2018 passed in Writ Tax No.637 of 2018 (VSL Alloys India Pvt. Ltd. vs. State of U.P. and another) wherein in similar circumstances, the court had interfered and had set aside the seizure order. In the light of the said, the counsel for the petitioner argues that the order impugned imposing penalty as well as the demanding tax is bad in law and is liable to be set aside.

The Standing Counsel on the other hand defends the impugned order and places reliance on the averments made in paragraph 8 of the counter affidavit to the effect that the stand taken by the department that the Part-B of the e-way bill was not filled on technical glitch, merits rejection.

It is clear that the only allegation levelled against the petitioner leading to seizure of the goods was that Part-B of the e-way bill was not filled up. There is no allegation that the goods being transported were being transported without payment of tax. The explanation offered by the petitioner for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by the Ministry of Finance wherein the problem arising in filling the part-B of e-way bill was noticed and advisories were issued.

In the present case, prima-facie no intent to evade the duty can be ascertained, only on the allegation that Part-B of the e-way bill was not filled, more so, in view of the fact that the vehicle in which the goods were being transported on a Delhi number.

The writ petition is allowed with direction to the respondents to refund the amount collected and paid by the petitioner in pursuance to the impugned order within a period of two months from today.

FEMA

CIRCULAR

EXIM BANK'S GOVERNMENT OF INDIA SUPPORTED LINE OF CREDIT (LoC) OF USD 108.28 MILLION TO THE GOVERNMENT OF THE KINGDOM OF ESWATINI (SWAZILAND) FOR THE PURPOSE OF FINANCING CONSTRUCTION OF NEW PARLIAMENT BUILDING IN ESWATINI

OUR COMMENTS: The Reserve Bank of India vide circular number RBI/2022-2023/114 dated 08.09.2022 circulated that Export-Import Bank of India (Exim Bank) has entered into an agreement with the Government of the Kingdom of Eswatini (Swaziland), for making available to the latter, Government of India supported Line of Credit (LoC) of USD 108,280,000 (USD One Hundred Eight million and Two Hundred Eighty Thousand only) for the purpose of financing the project for construction of new Parliament Building in Eswatini. The export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their eligibility under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under the agreement, goods, works and services of the value of at least 65 per cent of the contract price shall be supplied by the seller from India, and the remaining 35 per cent of goods and services may be procured by the seller for the purpose of the eligible contract from outside India.

2. Under the LoC, the terminal utilization period is 60 months after the scheduled completion date of the Project.

3. Shipments under the LoC shall be declared in Export Declaration Form / Shipping Bill as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer (AD) Category- I banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and

advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in.

6. The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

[For further details please refer the circular]

CUSTOMS

NOTIFICATION

SEEKS TO AMEND NOTIFICATION REGARDING EXEMPTION OF GOLD AND SILVER EXPORTED UNDER SPECIFIED SCHEMES

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 47/2022-Customs dated 07.09.2022 notified In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 56/2000-Customs, dated the 5th May, 2000, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 399 (E), dated the 5th May, 2000, namely:-

In the said notification, after the second proviso, the following proviso shall be inserted, namely: -

“Provided also that the importers and the exporters, who are receiving the supply from the importers for the intended purpose, shall follow the procedure, as applicable, in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as amended from time to time, with effect from the 1st October, 2022.”.

[For further details please refer the Notification]

NOTIFICATION

SEEKS TO AMEND NOTIFICATION REGARDING EXEMPTION OF GOLD, SILVER AND PLATINUM IMPORTED UNDER SPECIFIED SCHEMES

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 48/2022-Customs dated 07.09.2022 notified - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 57/2000-Customs, dated the 8th May, 2000, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

Section (i), vide number G.S.R. 413 (E), dated the 8th May, 2000, namely:-

In the said notification, -

(i) after the fourth proviso, the following proviso shall be inserted, namely: -

“Provided also that the importers and the exporters, who are receiving the supply from the importers for the intended purpose, shall follow the procedure, as applicable, in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as amended from time to time, with effect from the 1st October, 2022.”;

(ii) in the fifth proviso, for the words, figures, brackets, letters, and symbols, “Policy Circular No.77(RE-2008)/2004-09 dated the 31st March, 2009” the words, figures, brackets, letters, and symbols, “Policy Circular No. 39 (RE-2010)/2009-14, dated the 19th August, 2011, para 4.41 of the Foreign Trade Policy (2015-20) and para 4.94 of the Hand Book of Procedures (2015-20), as applicable and” shall be substituted.

[For further details please refer the Notification]

NOTIFICATION

SEEKS TO AMEND SECOND SCHEDULE TO THE CUSTOMS TARIFF ACT TO PRESCRIBE EXPORT DUTY ON SPECIFIED RICE PRODUCTS

OUR COMMENTS: The Ministry of Finance (Department of Revenue), vide Notification No. 49/2022-CUSTOMS (N.T) dated 08.09.2022 notified in exercise of the powers conferred by sub-section (1) of section 8 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Central Government, hereby directs that the Second Schedule to the Customs Tariff Act shall be amended in the following manner, namely: -

In the Second Schedule to the Customs Tariff Act, -

CUSTOMS

(i) after Sl. No. 6 and the entries relating thereto, the following Sl. Nos. and entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)
"6A.	1006 10	Rice in the husk (paddy or rough)	20%
6B	1006 20	Husked (brown) rice	20%"

(ii) after Sl. No. 7 and the entries relating thereto, the following Sl. No. and entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)
"7A.	1006 30 90	Semi-milled or wholly-milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati rice)	20%"

2. This notification shall come into force on the 09th of September, 2022.

[For further details please refer the Notification]

INSTRUCTION

CLARIFICATION REGARDING FSSAI'S REQUIREMENT OF AGMARK CERTIFICATION IN CASE OF IMPORTED FOOD PRODUCTS - CUSTOMS

OUR COMMENTS: The Ministry of Finance (Department of Revenue), vide Instruction No. 23/2022-Customs dated 09.09.2022 issued clarification regarding FSSAI's requirement of AGMARK certification in case of imported food products.

Reference is invited to Board's Instruction No. 12/2020 - Customs dated 10.07.2020 on the above subject, enclosing the advisory of FSSAI issued vide letter no.1-1800/FSSAI/Imports/2019 dated 07.07.2020 on the above captioned subject regarding complying with

AGMARK certification and Rules and Regulations under FSS Act.

2. Now, a fresh advisory, dated 18.08.2022 issued by Director (Trade and IC), FSSAI on the above captioned subject (copy enclosed) has modified the above referred advisory of FSSAI issued vide letter no.1-1800/FSSAI/Imports/2019 dated 07.07.2020 on the above captioned subject.

3. Vide its recent advisory dated 18.08.2022, FSSAI have stated that "the representation has been received from various stakeholders seeking clarification with respect to applicability of requirement of AGMARK certification in case of import food products. The matter was taken up with the DMI and it has been informed that Foreign country/overseas certification under Agricultural Produce (Grading and Marking) Act 1937 is not being carried out by DMI. Therefore, as decided, it was agreed to keep the requirement of AGMARK certification for imported food consignments in abeyance till further orders".

4. The Instruction No. 12/2020 - Customs dated 10.07.2020 is modified accordingly.

5. Any issue faced in implementation of this instruction may be brought to the notice of the Board.

[For further details please refer the Instruction]

DGFT

NOTIFICATION

AMENDMENT IN EXPORT POLICY OF BROKEN RICE UNDER HS CODE 1006 40 00

OUR COMMENTS: Ministry of Commerce and Industry vide Notification no. 21/2015-2020 dated 08.09.2022 notified in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends the Export Policy of broken rice against ITC (HS) code 1006 40 00 of Chapter 10 of Schedule 2 of the ITC (HS) Export Policy, as under:

ITC HS Codes	Description	Export Policy	Revised Export Policy
1006 40 00	Only for broken rice	Free	Prohibited

2. The Notification will come into effect from 9th of September, 2022. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under this Notification for export of broken rice under HS code 1006 40 00. During the period from 9th September, 2022 till 15th September, 2022 the following consignments of broken rice will be allowed to be exported:

- where loading of broken rice on the ship has commenced before this Notification;
- where the shipping bill is filed and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated before this Notification; The approval of loading in such vessels will be issued only after confirmation by the concerned Port Authorities regarding anchoring/berthing of the ship for loading of broken rice prior to the Notification; and
- where broken rice consignment has been handed over to the Customs before this Notification and is registered in their system.

3. Effect of this Notification:

Export Policy of broken rice under HS code 1006 40 00 is amended from 'Free' to 'Prohibited'. The Notification will come into effect from 9th of September, 2022. The provisions as under Para 1.05 of the Foreign Trade Policy,

2015-2020 regarding transitional arrangement shall not be applicable under this Notification.

[For further details please refer the Notification]

TRADE NOTICE

UPLOADING OF E-BRC FOR SHIPPING BILLS ON WHICH ROSCTL SCRIP HAS BEEN AVAILED FROM DGFT RAS - EXTENSION UPTO 30.09.2022 - DGFT

OUR COMMENTS: The Directorate General of Foreign Trade, Ministry of Commerce and Industry vide Trade Notice No. 16/2022-23 dated 06.09.2022 reg. Uploading of e-BRC for shipping bills on which RoSCTL scrip has been availed from DGFT RAs - Extension upto 30.09.2022.

Attention of the trade and industry members is drawn to Trade Notice No. 12 dated 30.05.2022, wherein the exporting community was requested to get the relevant e-BRCs uploaded onto the DGFT server latest by 15.07.2022. It may be noted that the last date for uploading of all such e-brcs, where RoSCTL scrips have been issued for shipping bills upto 31.12.2020 has been further extended till 30.09.2022, failing which action as per para 4.96 of HBP, as notified vide PN 58 dated 29.01.2020 would be initiated by the jurisdictional RAs. After 30.09.2022, no further extension would be granted and action under FT (D&R) Act, 1992 may be taken by the Regional Authorities.

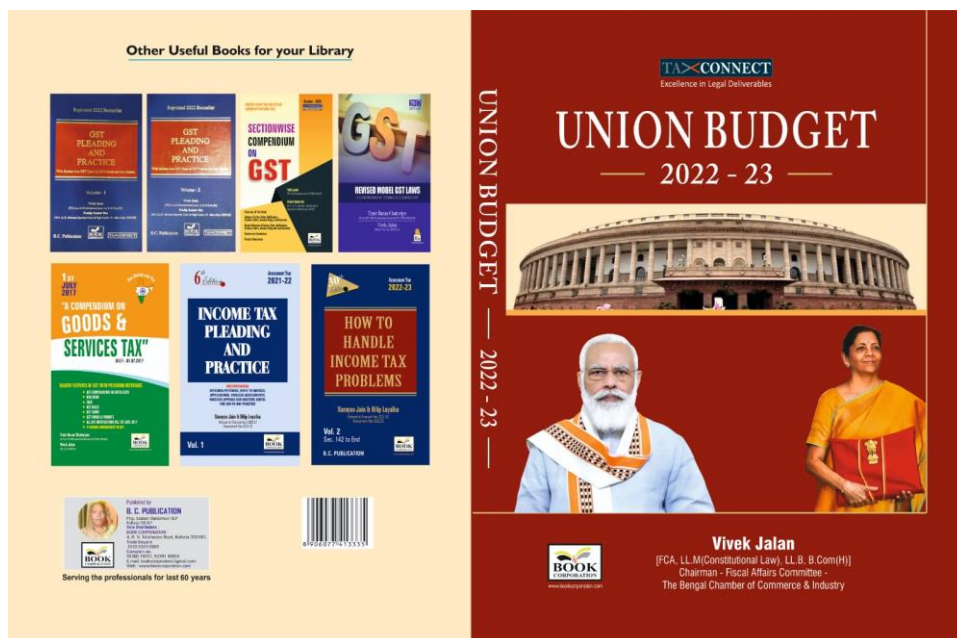
2. Export Promotion Councils / Textile associations are requested to give wide dissemination to this Trade Notice in the interest of the apparel and made-ups exporting community.

This issues with the approval of competent authority.

[For further details please refer the Trade Notice]

:IN STANDS

UNION BUDGET 2022-23



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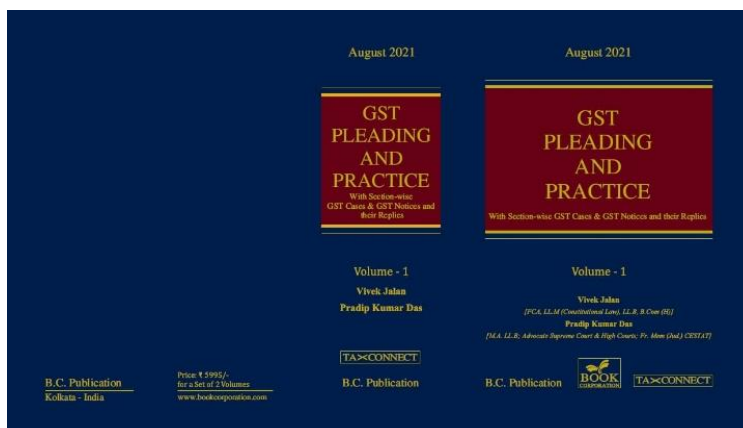
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