

380th Issue: 11th December 2022-17th December 2022

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EDITORIAL



Friends,

The government's fiscal deficit in end-October touched 45.6% of the full-year Budget Estimate (BE), according to the data released by the Controller General of Accounts (CGA) on Wednesday. In actual terms, the fiscal deficit -- the difference between expenditure and revenue -- was ₹7,58,137 crore during the April-October period of 2022-23. In the corresponding period last year, the deficit was 36.3% of the Budget Estimates of 2021-22. For 2022-23, the fiscal deficit of the government is estimated to be ₹16.61 lakh crore or 6.4% of the GDP.

As per the CGA data, the net tax revenue at ₹11.71 lakh crore was 60.5% of BE 2022-23. During the corresponding period of 2021-22, the tax revenue (net) was 68.1% of that year's BE.

Central government's total expenditure during April-October works out to be 54.3% of BE 2022-23, higher than 52.4% of BE in the year-earlier period.

While the Government of India's net tax revenues reported a healthy growth of 11%, the 14% contraction in non-tax revenues, combined with the 10% rise in revenue expenditure, and the robust 62% expansion in capex, widened the fiscal deficit to ₹7.6 lakh crore from ₹5.5 lakh crore in the first seven months of 2022-23.

As per the CGA data, the central government's total receipts, including non-tax revenue, stood at ₹13.85 lakh crore or 60.7% of the current year's BE. In the year-ago period, the total receipts had touched 64.7% of BE 2021-22.

The revenues are expected to be much more robust, and an uptick of ₹4 lakh crore is expected on the tax front. This means that the Government would get an opportunity to spend ₹2 lakh crore more during the coming four months of this fiscal for the benefit of the citizens and to spur up the growth when the global outlook looks gloomy.

The collections from Goods and Services Tax (GST) grew by 11 per cent to about Rs 1.46 lakh crore in November on increased consumer spending and better compliance. This is the ninth month in a row that the revenues have remained above the Rs 1.4 lakh crore mark. However, the collection in November was the lowest since August.

In October, GST collections had touched the second-highest level of Rs 1.52 lakh crore on festive spending.

The gross GST revenue collected in the month of November 2022 is Rs 1,45,867 crore of which Central GST is Rs 25,681 crore, State GST is Rs 32,651 crore, Integrated GST is Rs 77,103 crore (including Rs 38,635 crore collected on import of goods) and cess is Rs 10,433 crore (including Rs 817 crore collected on import of goods). The revenues for the month of November 2022 are 11 per cent higher than the GST revenues in the same month last year, which itself was Rs 1,31,526 crore.

The Budgeted GST Revenue for the Government of India for 2022-23 was Rs 7.8 lakh crores out of which Central GST was Rs 6.6 lakh crore and compensation cess was Rs 1.2 lakh crore. It means that the budgeted GST collection is Rs 14.4 lakh crore approx.

Till the month of November, Rs 11.91 lakh crore has already been done. Hence even if one takes a conservative estimate of Rs 5 lakh crore in the next 4 months, then the fiscal year would end with an uptick of Rs 2.5 lakh crore approx. which is a 17 per cent growth over budget.

Truly Yours

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

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TAX CALENDAR

Due Date	Form/Return /Challan	Reporting Period	Description
11 th December	GSTR -1	November 2022	Monthly/quarterly Statement of Outward Supplies to be furnished by Taxpayers having an aggregate turnover of more than INR 5 Crores or opted to file Monthly Return and contains details of outward supplies of goods and services
13 th December	GSTR -1 (IFF)	Optional facility provided to quarterly taxpayers who a QRMP scheme, to file their details of outward supplies i two months of the quarter, to pass on the credit to recipients.	
13 th December	GSTR -6	November 2022	Monthly return for Input Service Distributors to provide the details of their distributed input tax credit & inward supplies.
15 th December	Form 24G	November 2022	Form to be filed by a government office where TDS/TCS for the month of November 2021 was paid without the production of a challan.
15 th December	Advance Tax Installment	AY 2023-24	Third installment of Advance Tax payment for the Assessment Year 2023-24.
15 th December	TDS Certificate	October 2022	TDS Certificate for tax deducted under Section 194-IA, 194-IB, 194M, 194S must be issued.
15 th December	Form no. 3BB	November 2022	Statement for a stock exchange to provide for transactions in which client codes were modified after registering in the system for the month of November 2022.

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INCOME TAX

CIRCULAR

INCOME-TAX DEDUCTION FROM SALARIES DURING THE FINANCIAL YEAR 2022-23 UNDER SECTION 192 OF THE INCOME-TAX ACT, 1961

OUR COMMENTS: The Central Board of Direct Taxes vide Circular No. 24/2022 dated 07.12.2022 clarified and reference is invited to Circular No. 04/2022 dated 15.03.2022 whereby the rates of deduction of income-tax from the payment of income under the head "Salaries" under Section 192 of the Income-tax Act, 1961 during the financial year 2021-22, were intimated. The present Circular contains the rates of deduction of Income-tax from the payment of income chargeable under the head "Salaries" during the financial year 2022-23 and explains certain related provisions of the Act and Income-tax Rules, 1962. All the sections and rules referred in the circular are of Incometax Act. 1961 and Income-tax Rules, 1962 respectively unless otherwise specified. The relevant Acts, Rules, Forms and Notifications are available at the website of the Income Tax Department- www.incometaxindia.gov.in.

As per section 192(1) of the Act, any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under the head of Salary income for that financial year.

The section also provides that a person responsible for paying any income chargeable under the head "Salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof.

In addition to the above, the following categories has also been specified in the circular:

 Definition of "salary", "perquisite" and "profit in lieu of salary" (section 17)

- 2. Rates of Income-tax as per Finance Act, 2022
- 3. Section 192 of the Income-tax Act, 1961: Broad scheme of Tax Deduction at Source from "Salaries".
- 4. Persons Responsible For Deducting Tax And Their Duties
- 5. Computation of Income under the Head "Salaries"
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- 8. DDOs to obtain evidence/proof of claims
- 9. Calculation of income-tax to be deducted:
- 10. Miscellaneous:

[For further details please refer the Circular]

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GST



CASE LAW

PROCEEDINGS INITIATED UNDER GST FOR THE CLAIMING INADMISSIBLE CENVAT CREDIT UNDER ERSTWHILE LAW TO BE QUASHED: JHARKHAND HIGH COURT

OUR COMMENTS: The Jharkhand High Court has held that initiation of proceedings under Section 73(1) of CGST Act, 2017 for alleged contravention of the Central Excise Act and Finance Act, 1994 read with Cenvat Credit Rules 2004 for the transition of Cenvat Credit as being inadmissible would be without jurisdiction and liable to be set aside.

The proceedings were initiated against the petitioner by issuing a show cause notice in Form GST-DRC-01 proposing recovery of transitioned Cenvat Credit in terms of Section 73(1) of the CGST Act, 2017 along with interest and penalty. It filed a writ petition and raised the question of the lack of jurisdiction of the adjudicating authority to decide upon the availment of Cenvat Credit by the petitioner. It was contended that proceedings for wrongful availment of Cenvat Credit had been initiated by the revenue under Section 73 (1) of the CGST Act instead of relevant provisions of the Finance Act read with Rule 14 of Cenvat Credit Rules, 2004 and disallowed Cenvat Credit carried forward by the petitioner by filing TRAN-1.

The High Court noted that as per Section 73 of the CGST Act, 2017, the proceeding can be initiated for non-payment of any tax or short payments or erroneous refund or for wrongfully availing or utilising input tax credits which are available under CGST Act. However, Section 73 does not speak of Cenvat Credit as CGST Act has subsumed the term in expression input tax credit, both relating to the supply of goods or services. The assumption of jurisdiction to determine whether Cenvat Credit was admissible under existing law by invoking provisions of Section 73 of the CGST Act was not proper in the eyes of the law. Therefore, the Court held that the initiation of proceedings under Section 73 (1) of CGST Act, 2017 against the petitioner for the transition of Cenvat Credit inadmissible under existing law jurisdiction.

CASE LAW

PENDENCY OF PROCEEDINGS IS AN ESSENTIAL CONDITION FOR PROVISIONAL ATTACHMENT OF PROPERTY: GUJARAT HIGH COURT

OUR COMMENTS: The Gujarat High Court has held that powers under Section 83(1) to provisionally attach property, including bank accounts, could be invoked only during the pendency of proceedings.

The petitioner was engaged in the business of trading products such as garments, footwear, etc. The department contended that the petitioner was found to be a part of the syndicate that claimed and availed the GST refund fraudulently without any business transactions by transferring the amount to the bank accounts. The petitioner's bank account was provisionally attached on 06-01-2022, and he got to know about such an attachment through the bank. The department further issued summon to the petitioner on 21-02-2022 to appear before the authorities.

The petitioner filed a petition before the High Court to set aside the provisional attachment order dated 06-01-2022 as no proceeding was pending against the petitioner on the date of passing such an order.

The High Court held that the pendency of the proceedings is a sine qua non for the exercise of powers of provisional attachment. This is because the powers under Section 83 can be invoked where there is a pendency of proceedings. Since no proceedings were pending on the date of passing the order (06-01-2022), and summon was issued later, the power to provisionally attach the property could not be invoked on the said date. Given the above, the High Court set aside the above-said order. It held that the respondent authorities may continue to proceed further pursuant to the summons and would be at liberty to impose the provisional attachment under Section 83.





FEMA

DISCUSSION

ENFORCEMENT DEPARTMENT SEIZES RS 16 CR OF HYDERABAD-BASED FIRM FOR FEMA VIOLATION

OUR COMMENTS: The Enforcement Directorate (ED) on Wednesday said that they have seized Rs 16 crore belonging to Hyderabad-based company, in the form of fixed deposit under the provisions of Foreign Exchange Management Act, (FEMA).

An investigation against the company was initiated by the ED on the basis of information received that the company had transferred and parked certain funds in the United Arab Emirates in contravention to the provisions of the FEMA.

During investigation, it was revealed that the company is engaged in providing seismic survey services to various oil exploration and production companies in India and abroad. The company has been importing various equipment for seismic data acquisition from several suppliers based in France, Singapore, Netherlands, etc.

The ED came to know that equipment for seismic data acquisition were directly received from various suppliers by the company, however the payment for the same has been routed through an another entity, maintained and controlled by, a Chartered Accountant based in Dubai and a hawala operator for these imports.

The ED also learnt that by way of over invoicing import bills for these imports, the company has parked funds into the account of the another company for the personal benefit of Chairman and Managing Director of the company in contravention of provisions of FEMA Act.

"Investigation revealed that an amount of USD 25,34,628 was held outside India which was a clear violation of section 4 of FEMA. Therefore, the equivalent value of the foreign funds parked in the United Arab Emirates by the company amounting to Rs 16 crore has been seized in India under Section 37A of FEMA," said the ED.



BCC THE BENGAL CHAMBER

CUSTOMS

NOTIFICATION

AMENDMENT IN NOTIFICATION RELATING TO LAND CUSTOMS STATIONS AND ROUTES FOR IMPORT AND EXPORT OF GOODS BY LAND OR INLAND WATER WAYS

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 102/2022-Customs (N.T) dated 08.12.2022 notified in exercise of the powers conferred by clauses (b) and (c) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendments the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 63/1994-Customs (N.T.), dated the 21st November, 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (ii), vide number S.O. 830 (E), dated the 21st November, 1994, namely: -

In the said notification, in the opening paragraph, the fifth proviso and the sixth proviso, namely: -

"Provided also that Kulkuli Land Customs Station is appointed for the import of Oranges only:"

and

"Provided also that the trade through Nagarkata and Kulkuli Land Customs Stations shall be allowed between the period of 1st day of August to the 31st day of March every year:",

shall be omitted.

[For further details please refer the notification]

CASE LAW

REJECTION OF APPLICATION FOR GRANTING THE WEST BENGAL INDUSTRIAL PROMOTION ASSISTANCE TO INDUSTRIAL ENTERPRISES (SCHEME) IN RESPECT OF FOURTH QUARTER UP TO 31.10.2012 ON THE GROUND THAT THE FORM WAS FILED WELL BEYOND THE PERIOD FIXED IN THE SCHEME: CALCUTTA HIGH COURT

OUR COMMENTS: The conclusion arrived at by the learned Writ Court that the claim of the appellant was barred by latches is on account of the correct facts not

been placed before the Court. At the first instance, when we heard the matter we were also of the opinion that the claim made by the appellant was a stale claim as it pertained to the quarter ending October 2012. However, after carefully going through the facts we found that the claim made by the appellant for the remaining quarters for the year 2012 was sanctioned and paid only in the year 2016. The appellant's case is that during 2016, when he had received the payment for three quarters and did not receive the payment for the quarter ending 30.06.2012.

Once we are steer clear of this issue, the next aspect which we have to see is as to whether the application filed by the appellant in the manual format could have been accepted though filed beyond the period of four months stipulated under the scheme. In the absence of any power conferred on the authority to entertain an application beyond the period stipulated, we will be required to examine as to whether the discretion vested in this court under Article 226 could be exercised in the given facts and circumstances - Exercise of discretion by the authority concerned in such a matter should be in a manner to promote the purpose for which the scheme was introduced and not to the contrary. The purpose of the scheme as spelt out is for encouraging manufacturing activities expansion etc. which would go to generate direct and indirect employment in the state.

Thus, any interpretation which is given which will stultify the objects of the schemes has to be frowned upon. The learned Government Counsel submitted that earlier the appellant had filed the writ petition which was affirmed on 13.02.2017 but there after the appellant did not pursue the said writ petition and it is only in the year 2019, the appellant had filed the present writ petition. It is not clear as to why the petitioner or the erstwhile counsel did not pursue the matter - the bonafides of the appellant have not been doubted by the respondents, the eligibility is also not in dispute and if that be a factual position on account of a technical ground such incentive or benefit extended by the Government should not be denied.

The appeal is allowed the order passed in the writ petition is set aside - the respondent authority is directed to take into consideration the manual form submitted by the appellant on 04.11.2012 and grant the admissible incentive to the appellant as expeditiously as possible preferably within a period of three months from the date of the receipt of the server copy of this order.



BCC&i THE BENGAL CHAMBER

DGFT

NOTIFICATION

EXPORT POLICY OF RED SANDERS WOOD EXCLUSIVELY SOURCED FROM CULTIVATION ORIGIN OBTAINED FROM PRIVATE LAND (INCLUDING PATTALAND)

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 49/2015-2020 dated 09.12.2022 In exercise of powers conferred by Section 3 read with section 5 of Foreign Trade(Development & Regulation) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the policy condition of Red Sanders (Pterocarpus santulinus) under Chapter 44 of ITC (HS), 2018, Schedule – 2 (Export Policy).

2. The existing entries against SI. No. 188 in Chapter 44 of Schedule 2 of ITC (HS) Classification of Export & Import Items shall be substituted as follows: (changes made are in bold letters)

SL.	Tariff	Unit	Item	Policy	Policy Condition
No.	item HS Code		Description		
188		Kg	Red Sanders wood in any form, whether raw, processed or unprocessed, except at SI. No. 188A [of cultivation origin obtained from private land (including Pattaland)] and SI. No. 189 [specified value added products of RSW and other handicrafts made from RSW procured		Not permitted to be Exported However, in accordance with the recommendations of the BSI NDF Report, MoEF & CC, the following annual export quotas for red sanders (Pterocarpus santulinus) is allowed: a. An annual export quota (April to March) of 280 MT for Andhra Pradesh for artificially Propagated red sanders:
			from legal sources]		

below	and
	b. a zero export quota for wild specimens of red sanders:
	Subject to the following conditions:-
	i. State Govt shall develop a digital platform with Geo referenced sites and MIS giving the no of trees, their age and diameter at breast height.
	ii. The working plan Guidelines of States need to include specific management plans harvest Plans with approved rotation periods for sustainable harvest of red sanders wood
	from plantations in forest and non forest areas.

3. Effect of this Notification:

Annual export quota for red sanders (Pterocarpus santulinus) for Andhra Pradesh is notified.

[For further details please refer the Notification]

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BCC&i THE BENGAL CHAMBER

DGFT

NOTIFICATION

AMENDMENT IN IMPORT POLICY CONDITION FOR DE-NOTIFYING MMTC AS A STE FOR IMPORT OF COPRA UNDER CHAPTER 12 OF ITC (HS), 2022, SCHEDULE-I (IMPORT POLICY)

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 48/2015-2020 dated 08.12.2022 In exercise of powers conferred by Section 3 and 5 of Foreign Trade (Development & Regulation) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government, hereby amends the Policy Condition of HS Code 12030000 under Chapter 12 of ITC (HS), 2022, Schedule-I (Import Policy), as under:

Exim Code	Item Descript ion	Policy	_	Revised Policy Condition
120300 00	Copra	Trading	allowed through	,

2. Effect of this Notification:

MMTC has been de-notified as a STE. Henceforth, import of Copra under HS Code 12030000 shall be allowed through **NAFED.**

This issues with the approval of Minister of Commerce & Industry.

[For further details please refer the notification]

NOTIFICATION

INCLUSION OF ADDITIONAL EXPORT ITEMS IN APPENDIX 4R WITH EFFECT FROM 15.12.2022

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 47/2015-2020 dated 07.12.2022 notified In exercise of the powers conferred by Section

5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 1.02 of the Foreign Trade Policy 2015-20, the Central Government hereby notifies a revised Appendix 4R under Para 4.59 of Foreign Trade Policy, 2015-20 for exports made from 15.12.2022.

- 2. The revised Appendix 4R will be applicable for exports made from 15.12.2022 to 30.09.2023. To adhere to the Scheme budgetary framework, necessary changes and revisions as per Para 4.54 of FTP 2015-20 (as amended from time to time) will be made thereafter.
- 3. The revised RoDTEP Appendix 4R containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal www.dgft.gov.in under the link 'Regulatory Updates >RoDTEP'.

Effect of this Notification: Additional export sectors/items in Chapter 28, 29, 30 & 73 are being added in Appendix 4R under RoDTEP for exports made from 15.12.2022 and shall be applicable till 30.09.2023.

[For further details please refer the Notification]

PUBLIC NOTICE

ENLISTMENT OF AN AGENCY UNDER APPENDIX 2E OF FTP, 2015-2020 - AUTHORIZED TO ISSUE CERTIFICATE OF ORIGIN (NON-PREFERENTIAL)

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 42/2015-2020 dated 08.12.2022 notified In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy (FTP) 2015-2020, the Director General of Foreign Trade hereby authorizes following agency to issue Certificate of Origin (Non Preferential):

Western U.P. Chamber of Commerce & Industry

Bombay Bazar (Near Hanuman Chowk),

Meerut Cantt – 250001 (Uttar Pradesh)

Tel no.: 0121-2661177, 2661238

Fax: 0121-2661685

E-mail: wupcc@rediffmail.com, wupcci1945@gmail.com



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Website: wupcc.org

2. Accordingly, the name of Western U.P. Chamber of Commerce & Industry is added at Serial No. 10 (Uttar Pradesh/ Uttarakhand) of Appendix 2E [List of Agencies Authorized to issue Certificate of Origin (Non-Preferential)] to Appendices & Aayat Niryat Forms of FTP (2015-2020).

3. Effect of this Public Notice:

Western U.P. Chamber of Commerce & Industry, Meerut is enlisted under Appendix 2E of FTP, 2015-20 for issuing Certificate of Origin (Non Preferential).

[For further details please refer the Public Notice]

PUBLIC NOTICE

AMENDMENT IN PARA 2.61 OF HAND BOOK OF PROCEDURE (HBP) 2015-20

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 41/2015-2020 dated 08.12.2022 notified In exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy (FTP), 2015-2020, the Director General of Foreign Trade hereby amends Para 2.61 (a), (b) and (c) of the Hand Book of Procedure (HBP) 2015-20.

2. As per the revised Appendix 2J notified, vide DGFT Public Notice No. 40/2015-20 dated 08.12.2022, the revised Para 2.61 (a), (b) and (c) of the HBP 2015-20 reads as under:

"2.61 Eligible entities for allocation of quota

- (a) Milk Powder (Tariff Code No. 0402.10 or 0402.21) and White Butter, Butter oil, Anhydrous Milk Fat (0405): National Dairy Development Board (NDDB), National Cooperative Dairy Federation (NCDF) and National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED).
- (b) Maize (corn) (Tariff Code No. 1005.90): National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and State Cooperative Marketing Federations.
- (c) Crude sunflower seed or safflower oil or fractions thereof (Tariff Code No. 1512.11) and Refined rape, colza, canola or mustard oil, other (Tariff Code No. 1514.19 or 1514.99): National Dairy Development Board (NDDB), National Agricultural Cooperative

Marketing Federation of India Ltd.(NAFED) and Central Warehousing Corporation (CWC), State Cooperative Marketing Federation & State Cooperative Civil Supplies Corporation".

3. Effect of this Public Notice:

Para 2.61 of the Hand Book of Procedure (HBP) 2015-20 has been amended with respect to DGFT Public Notice No. 40/2015-20 dated 08.12.2022. Subsequent to de-notifying 4 Central Public Sector Enterprises (CPSEs) i.e., MMTC, The State Trading Corporation of India Ltd. (STC), PEC Limited and STCL Limited as STE under FTP -2015-20, the aforementioned entities are not eligible for allocation of quota.

[For further details please refer the Public Notice]

PUBLIC NOTICE

REVISION / UPDATION OF APPENDIX -2J - LIST OF STATE TRADING ENTERPRISES (STES) FOR FTP PURPOSE AND ELIGIBLE STES FOR ALLOCATION OF QUOTA FOR IMPORT UNDER THE TARIFF RATE QUOTA (TRQ)

OUR COMMENTS: The Ministry of Commerce and Industry vide public notice no. 40/2015-2020 dated 08.12.2022 notified In exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy (FTP), 2015-2020, the Director General of Foreign Trade hereby notifies revised/ updated Appendix-2J - List of State Trading Enterprises (STEs) for FTP purpose and eligible STEs for allocation of quota for import under the Tariff Rate Quota (TRQ), as **Annexed**.

2. Effect of this Public Notice:

Revised / updated Appendix — 2J - List of State Trading Enterprises (STEs) for FTP purpose and eligible STEs for allocation of quota for import under the Tariff Rate Quota (TRQ), is notified. Through this Public Notice, some of the existing entities have been de-listed as STE and some new entities have been included as STE for FTP purpose.

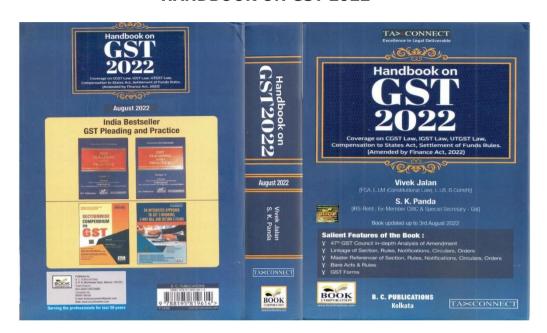
[For further details please refer the Public Notice]





:IN STANDS

HANDBOOK ON GST 2022



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- 6. Discussion on SOP on Scrutiny of Returns and GST Audit Manual by CBIC under respective Sections
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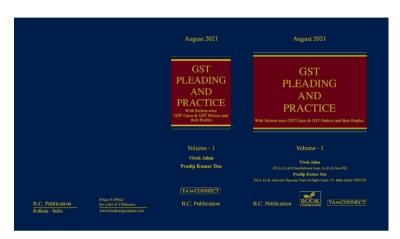
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