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EDITORIAL

Friends,

In claiming the deduction u/s. 37(1) for interest u/s. 201(1A), an issue arises as to whether such interest can be incurred wholly and exclusively for the purpose of business or profession. The issue is relevant for a large number of assesses.

The Supreme Court held that interest on late payment of Income Tax was not allowable. It held that the interest levied u/s. 139 and section 215 of the Income-tax Act was not deductible as a business expenditure u/s. 37(1) of the Act. The court held that the income tax was a tax on profit of the business and was therefore not allowable as a deduction. Similarly, interest also was not deductible as the same was inextricably connected with the assessee's tax liability; if the income tax was not a permissible deduction u/s. 37, any interest payable for default in payment of such income tax could not be allowed as a deduction. In arriving at the conclusion, the court followed its own decision where decisions dealt with the issue of deductibility of interest paid on moneys borrowed for payment of income tax. The Court held that –

'...When interest is paid for committing a default in respect of a statutory liability to pay advance tax, the amount paid and the expenditure incurred in that connection is in no way connected with preserving or promoting the business of the assessee. This is not expenditure which is incurred and which has to be taken into account before the profits of the business are calculated. The liability in the case of payment of income- tax and interest for delayed payment of income-tax of advance tax arises on the computation of the profits and gains of business. The tax which is payable is on the assessee's income after the income is determined. This cannot, therefore, be considered as an expenditure for the purpose of earning any income or profits…'

In another judgement, The Hon'ble Supreme Court held that interest on arrears or on outstanding balance of sales tax is compensatory in nature and would be allowable as deduction in computing profits of a business. Referring to the same decision, ITAT has held that interest expenses on account of delayed payment of service tax as well as TDS is an allowable expenditure.

Hence, it can be construed that **interest on delayed payment of a statutory liability would take its colour from the principal amount.** TDS, by itself, does not represent income tax of the assessee, but is a deduction from the payment made to a party in respect of expenses claimed by the assessee. So long as the expenses from which tax is deducted, relate to the business of the assessee, the TDS thereon would also be considered to be relating to the business of the assessee and therefore, interest on delayed payment of such TDS would be considered to be incurred wholly and exclusively for the purpose of business. Similarly, GST/Service Tax are allowable as a deduction to the assessee and hence the delayed payment of Interest also should be allowable as a deduction.

Truly Yours

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

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SYNOPSIS

TAX CALENDAR

Due Date	Form/Return /Challan	Reporting Period	Description
30th January	TCS certificate	October-December 2022	Quarterly TCS certificate in respect of quarter ending December 31, 2022
30th January	TDS challan-cum-certificate	December 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M in the month of December, 2022
31st January	TDS Statement	October-December 2022	TDS quarterly report for the quarter ending December 31, 2022
31st January	Quarterly return	October-December 2022	Quarterly return for Non-deduction at source by a banking company from interest on time deposits for the fiscal quarter ending December 31, 2022

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE PENSION FUND, NAMELY, THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

(3) **OUR COMMENTS:** The Central Board of Direct Taxes, Ministry of Finance vide Notification No. 02/2023 dated 25.01.2023 notified In exercise of powers conferred by sub-clause (iv) of clause I of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the "Act"), the Central Government hereby specifies the pension fund, namely, the California Public Employees Retirement System (PAN: AAATC6038J), (hereinafter referred to as "the assessee") as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the [3]1st day of March, 2024 (hereinafter referred to as the "the said investments") subject to the fulfilment of the following conditions, namelyi) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(ii) the assessee shall furnish along with such return a certificate in Form No. 10BBC in respect of compliance to the provisions of clause (23FE) of section 10 of the Act, during the financial year, from an accountant as defined in the Explanation below sub-section (2) of section 288 of the Act, as per the provisions of clause (vi) of rule 2DB of the Income –tax Rules, 1962;

(iii) the assessee shall intimate the details in respect of each investment made by it in India during the quarter within one month from the end of the quarter in Form No. 10BBB, as required under clause (v) of rule 2DB of the Income-tax Rules, 1962;

(iv) the assessee shall maintain a segmented account of income and expenditure in respect of such investment which qualifies for exemption under clause (23FE) of section 10 of the Act;

(v) the assessee shall continue to be regulated under the laws of the Government of the State of California, United States of America;

(vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

(vii) the earnings and assets of the assessee should be used only for meeting statutory obligations and defined contributions for participants or beneficiaries of funds or plans referred to in clause (vi) and no portion of the earnings or assets of the pension fund inures any benefit to any other private person; barring any payment made to creditors or depositors for loan or borrowing as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act, taken for the purposes other than for making investment in India;

(viii) the assessee shall not have any loans or borrowings as defined in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act, directly or indirectly, for the purposes of making investment in India;

(ix) the assessee shall not participate in the day to day operations of investee as defined in clause (i) of Explanation 2 to clause (23FE) of section 10 of the Act, but the monitoring mechanism to protect the investment with the investee including the right to appoint directors or executive director shall not be considered as participation in the day to day operations of the investee; and

(x) the said investments of the assessee shall be held for at least three years as required under sub-clause (ii) of clause (23FE) of section 10 of the Act.

2. Violation of any of the conditions stipulated in clause (23FE) of section 10 of the Act and this notification shall render the assessee ineligible for the tax exemption.

3. This notification shall come into force from the date of its publication in the Official Gazette.

[For further details please refer the notification]

GST

ADVISORY

ADVISORY ON FACILITY OF 'INITIATING DROP PROCEEDINGS' OF SUSPENDED GSTINS DUE TO NON-FILING OF RETURNS

OUR COMMENTS: Recently, a functionality "f **"Automated Drop Proceedi"gs"** of GSTINs suspended due to non-filing of returns has been implemented on the GST Portal. This functionality is available for the taxpayers who have filed their pending returns i.e. 6 monthly or 2 Quarterly returns.

1. If such taxpayers have filed all their pending returns, the system will automatically drop the proceedings and revoke suspension.
2. If the status of the GSTIN does not automatically turn 'ACTIVE', then taxpayers are advised to revoke the suspension once the due returns have been filed, by clicking on 'Initiate Drop Proceeding'.
3. In case the system does not automatically drop the proceedings or taxpayer is unable to revoke the suspension by clicking on 'Initiate Drop Proceeding', then taxpayer is advised to contact Jurisdictional Officer.

Note: This functionality is applicable to the taxpayers whose GSTINs have been suspended after 1st December 2022.

DISCUSSION

GST NOT APPLICABLE ON GOVERNMENT INCENTIVES GIVEN TO BANKS TO ENCOURAGE USE OF RUPAY DEBIT CARDS AND LOW-VALUE BHIM-UPI TRANSACTIONS

OUR COMMENTS: As recommended by the Council, it has been clarified that the Goods and Services Tax (GST) will not apply to government incentives given to banks to encourage use of RuPay debit cards and low-value BHIM-UPI transactions, as per the finance ministry. A ₹2,600-crore incentive programme for banks to promote RuPay debit cards and low-value BHIM-UPI transactions in the current year was approved by the Cabinet last week.

Given the terms of the Central GST Act of 2017, the incentive is in the nature of a subsidy that is directly related to the cost of the service and does not contribute to the taxable value of the transaction, the ministry has said.

The government provides banks with incentives as a percentage of the value of RuPay Debit Card transactions and low-value BHIM-UPI transactions up to ₹2,000 under the Incentive scheme for the promotion of RuPay Debit Cards and low-value BHIM-UPI transactions.

Banks and system providers are not permitted to collect any fees from individuals using BHIM or RuPay Debit cards for sending or receiving payments, according to the Payments and Settlements Systems Act of 2007.

UPI set a record in December alone with 782.9 billion rupees worth of digital payment transactions.

CASE LAW

MAINTAINABILITY OF WRIT PETITION BEFORE THE CHENNAI HIGH COURT IN CASE OF AVAILABILITY OF ALTERNATIVE REMEDY: MADRAS HIGH COURT

OUR COMMENTS In the instant case, on going through the materials placed before us and after carefully considering the order passed by the Special Director of Enforcement, we find that we have to necessarily deal with a lot of documents and get into disputed questions of fact. To avoid such a scenario, the enactment itself provides for further remedies under Section 19 of FEMA before the Appellate Tribunal and thereafter, under Section 35 of the Act, by way of filing a further Appeal before the High Court against the order passed by the Appellate Tribunal.

These remedies have been provided to enable an aggrieved person to contest the order passed by the adjudicating authority, both on facts and on law. These appellate remedies cannot be bypassed and the doors of the High Court cannot be knocked straight away under Article 226 of the Constitution of India.

Where the High Court has entertained a Writ Petition and it is pending for a long time, the Writ Petition should not be thrown out on the ground of alternative remedy. However, it is not an absolute rule and there are appropriate cases where the parties will have to be directed to avail an efficacious alternative remedy of appeal. That course can be adopted at any stage and even at the stage of Writ Appeal.

In the present case, there is no lack of jurisdiction for the Special Director of Enforcement to pass the impugned order, there is no violation of principles of natural justice and this Court does not find any special circumstances to disregard the alternative remedy and to decide the dispute in this Writ Petition. Apart from these reasons, we have already held that the case requires determination of disputed facts based on documents and it will be fit and proper if this exercise is done before the Appellate Tribunal.

Entire cause of action has taken place at Mumbai and the order has also been passed by the Special Director of Enforcement at Mumbai. Just because the IOB has a Treasury(Foreign) Department at Chennai, that by itself will not become a part of the cause of action. This is yet another ground on which we are not inclined to entertain the present Writ Petition.

We are not inclined to go into the merits of this case and deal with various factual issues that were raised on either side.

The petitioners are permitted to file appeal against the order passed by the Special Director of Enforcement within a period of 45 days from the date of the receipt of copy of this order.

CUSTOMS

NOTIFICATION

AMENDMENT IN NOTIFICATION REGARDING LEVY OF ANTI DUMPING DUTY ON IMPORTS OF PHTHALIC ANHYDRIDE (PAN) ORIGINATING IN OR EXPORTED FROM CHINA PR, INDONESIA, KOREA RP AND THAILAND FOR A PERIOD OF FIVE YEARS.

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide Notification No. 2/2023-Customs (ADD) dated 25.01.2023 notified Whereas, in the matter of 'Phthalic Anhydride' (hereinafter referred to as the subject goods), originating in, or exported from China PR, Indonesia, Korea RP and Thailand (hereinafter referred to as the subject countries), falling under tariff item 2917 35 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification number 6/16/2020-DGTR, dated the 19th May, 2021, had come to the conclusion that –

(i) the subject goods have been exported to India from the subject countries below its normal value, thus resulting in dumping;

(ii) the domestic industry had suffered material injury;

(iii) there is causal link between dumping of subject goods and injury to the domestic industry,

and had recommended imposition of definitive anti-dumping duty on imports of the subject goods, originating in, or exported from the subject countries and imported into India, in order to remove injury to the domestic industry;

And whereas, on the basis of the aforesaid final findings of the designated authority, the Central Government had imposed the anti-dumping duty on the subject goods, vide notification of the Government of India, Ministry of Finance (Department of Revenue), No. 43/2021-Customs (ADD), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 543(E), dated the 9th August, 2021;

And whereas, Aekyung Chemical Co., Ltd. has requested the designated authority for changing the name of cooperating producer from "Aekyung Petrochemical Co., Ltd." to "Aekyung Chemical Co., Ltd." in the duty table of the final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification number 6/16/2020-DGTR, dated the 19th May, 2021;

And whereas, the designated authority, vide notification No. 7/06/2022-DGTR, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 30th September, 2022, has come to the conclusion that the request falls within the category of name change only and there is no change in the ownership in a manner that alters the basic nature of the business and recommended that the name of the producer viz. "Aekyung Petrochemical Co., Ltd." be amended to "Aekyung Chemical Co., Ltd." in its final findings notification No. 6/16/2020-DGTR, dated the 19th May, 2021;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid notification No. 7/06/2022-DGTR of the Designated Authority, hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 43/2021-Customs (ADD), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 543(E), dated the 9th August, 2021, namely:-

In the said notification, in the Table, against serial number 6, in Column (6), for the entry, the entry "Aekyung Chemical Co., Ltd." shall be substituted.

[For further details please refer the notification]

DGFT

NOTIFICATION

AMENDMENT IN IMPORT POLICY CONDITION OF UREA [EXIM CODE 31021000] IN THE ITC (HS) 2022, SCHEDULE -1 (IMPORT POLICY)

OUR COMMENTS: The Ministry of Commerce and Industry vide Notification No. 54/2015-2020 dated 24.01.2023 notified In exercise of powers conferred by Section 3 and 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 Urea [EXIM code 31021000] of Chapter 31 of ITC (HS), 2022, Schedule -I (Import Policy), with immediate effect, as under:

Exim Code	Item Description	Policy	Existing Policy Condition	Revised Policy Condition
31021000	Urea, whether or not in aqueous solution	State Trading Enterprise	Import allowed through RCF and NFL subject to Para 2.20 of Foreign Trade Policy, 2015-2020. In addition import of Urea is also allowed through IPL for a period up to 31.3.2023. However, import of Technical Grade Urea (TGU) meant for non-agricultural purpose/ Industrial use/ NPK Manufacturing shall be Free".	Import allowed through RCF and NFL subject to Para 2.20 of Foreign Trade Policy, 2015-2020. In addition import of Urea is also allowed through IPL for a period up to 31.3.2023. **Import of Urea (for agriculture purpose) on Government Account shall be allowed either by designated STEs itself, or through any entity /entities (Fertilizer Marketing Entities) so authorized by the Department of Fertilizer from time to time, for filing BEs at Indian ports.** However, import of Technical Grade Urea (TGU) meant for non-agricultural purpose/ industrial use/ NPK Manufacturing shall be "Free".

2. **Effect of this Notification**:

Fertilizer Marketing Entities (FMEs), authorized by the Department of Fertilizers, have been allowed to file Bill of Entries at Indian ports for import of Urea (for agriculture purpose) on Government Account.

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

[For further details please refer the Notification]

DGFT

CIRCULAR

IMPLEMENTATION OF PAPER IMPORT MONITORING SYSTEM (PIMS)

OUR COMMENTS: The Ministry of Commerce and Industry vide circular no. 45/2015-20 dated 23.01.2023 circulated that Import of products under Chapter 48 (total 201 tariff lines) of Schedule-I (Import Policy) of ITC (HS), 2022 are permitted subject to compulsory registration under Paper Import Monitoring System (PIMS), vide DGFT Notification No. 11/2015-20 dated 25th May, 2022.

2. Various representations have been received in DGFT from trade & industry seeking clarification on the applicability of the said Notification dated 25th May, 2022 in certain situations. The matter has been examined in consultation with the Department of Commerce (DoC) and Department for Promotion of Industry and Internal Trade (DPIIT). Accordingly, the issues raised and responses thereto are given below:

(i) Whether imports through Air mode are exempted from Registration from PIMS?

Response: In Paper, there are no small volume/high value goods on which Air-Cargo is justified. Therefore, registration under PIMS shall be mandatory regardless to mode of transportation.

(ii) Whether import of samples of paper is exempted from Registration from PIMS?

Response: Import consignment of samples for FOB value of Rs. 10,000/- irrespective of quantity, shall be exempted from requirement of compulsory registration under PIMS.

(iii) Can returnable paper items imported on temporary import be exempted from PIMS registration and given fee waiver?

Response: Since Paper products are not small volume/high value goods, therefore, registration under PIMS shall be compulsory regardless to the purpose of imports of paper products.

(iv) Whether registration from PIMS is exempted for import under common IEC by individuals and Government agencies?

Response: Registration under PIMS shall be compulsory for imports of all notified paper products. However, exemption from PIMS can be considered for non-commercial import under common IECs by individuals and Govt. agencies on case to case basis, in terms of Para 2.58 of the Foreign Trade Policy.

(v) Will PIMS be applicable to imports through Advance Authorisation, DFIA and ICGR?

Response: PIMS shall be mandatory regardless to the purpose of the imports of paper products under any scheme (Advance Authorization/IGCR/EOU/SEZ etc.).

(vi) Whether PIMS Registration is required both at the point for import into SEZ/ FTWZ and at the time of Customs Clearance from SEZ to DTA? Whether registration is required for EOUs as well at the time of import by an EOU?

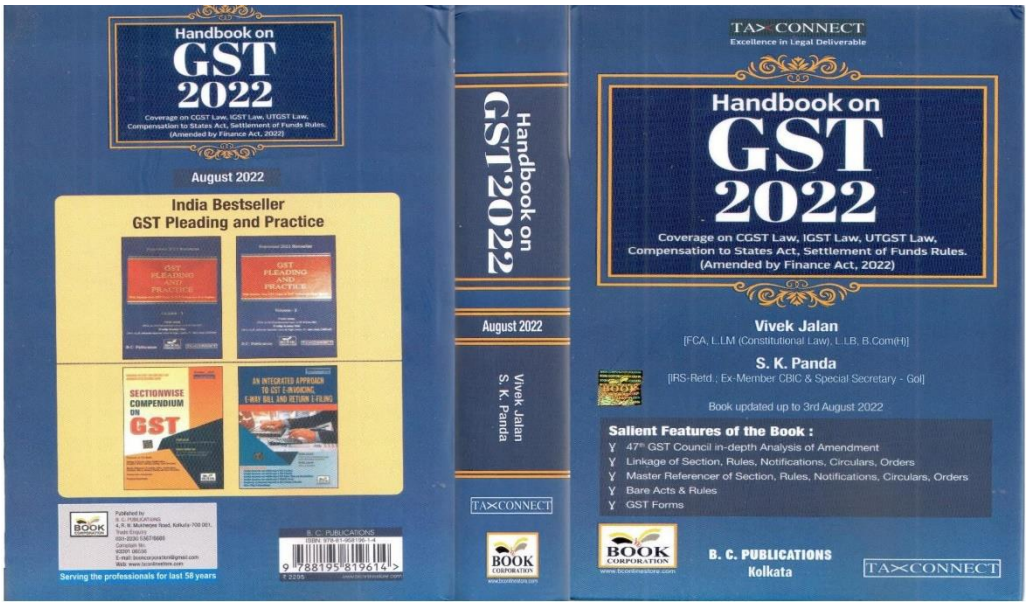
Response: PIMS Registration shall be required at the point of import by a Unit in SEZ/FTWZ or at the time of import by an EOU of the items covered under PIMS. PIMS Registration shall not be required by the DTA Unit at the time of Customs Clearance from the SEZ/FTWZ/EOU to DTA if no processing has taken place of the item of paper that has already been registered under PIMS at the time of entry into a SEZ/FTWZ/EOU. However, if processing has taken place in the SEZ/FTWZ/EOU with change in HS Code at 8-Digit level, then the importer in DTA will require to register under PIMS, if the processed item falls under any of the tariff.

This issues with the approval of competent authority.

[For further details please refer the Circular]

:IN STANDS

HANDBOOK ON GST 2022



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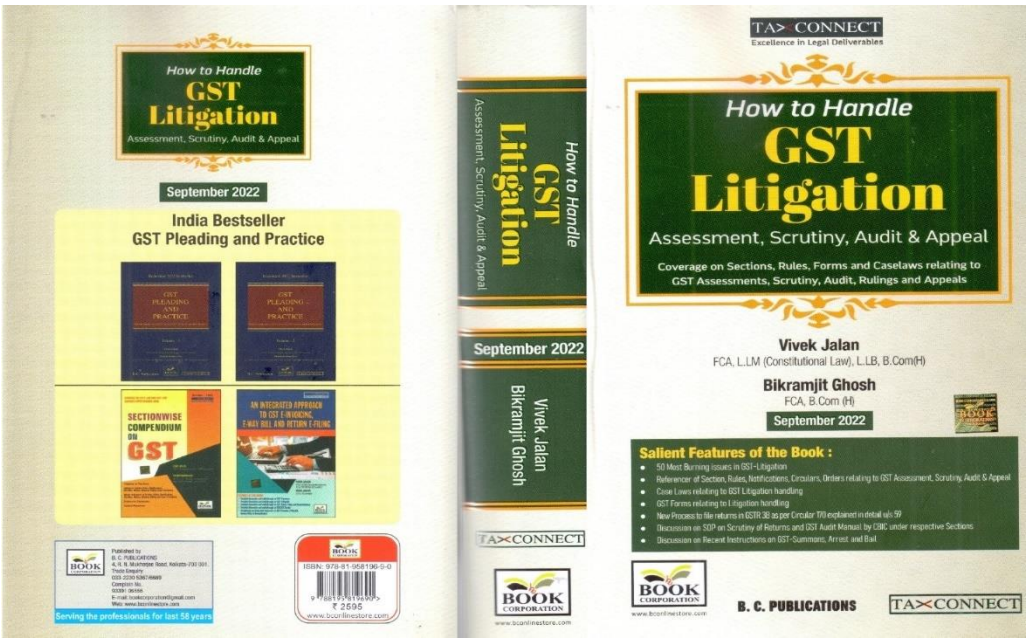
How to Handle GST LITIGATION: Assessment, Scrutiny, Audit & Appeal



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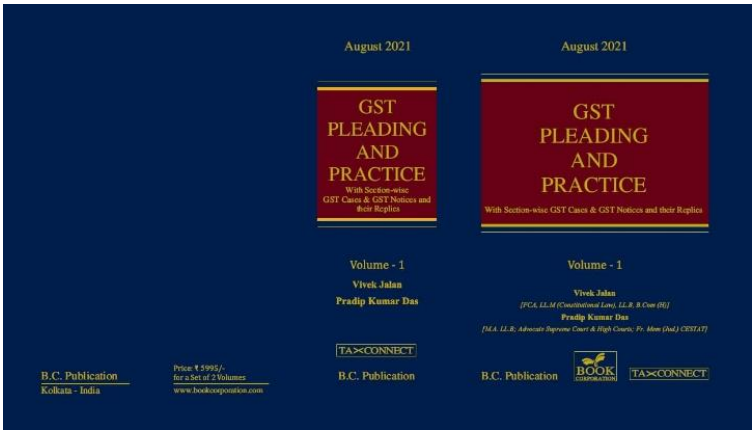

ABOUT THE BOOK: **This publication includes:**

1. **GST Notices and their Replies**
2. **Orders and Appeals under GST**
3. **Text of provisions under IGST Act 2017 & CGST Act 2017**
4. **CGST & IGST Section-wise Synopsis of Case Laws and Notification/Circulars Gist**
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