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EDITORIAL

Friends,

Income tax cannot be imposed on hypothetical income: **Court of Arbitration.** Even under the mercantile system, in order to put an income to tax, the same must become actually due no matter when it is received and that income cannot be said to have accrued to an assessee-company if it is based on a mere claim not backed by any legal or contractual right to receive the amount at a subsequent date. Tax can be imposed only if there is real income and income tax cannot be imposed on hypothetical income. The notional interest awarded by the Court of Arbitration, which has attained finality is a hypothetical income which cannot be subjected to tax. Merely because the said amount has been awarded by way of an order, does not mean that the assessee has received such income. Under mercantile system of accounting, there cannot be a situation of hypothetical income being taxed was held in the case of THE SPECIAL RANGE-6 NEW DELHI Vs NATIONAL FERTILIZERS LTD [2023-VIL-111-ITAT-DEL].

'Real Income Theory' was also applied where a claim was made by an electricity company at the increased rates. It was held by The Hon'ble Apex Court in the case of Godhra Electricity Co. Ltd. v. CIT, (1997) 225 ITR 746 (SC), that the impugned amounts as brought to tax by the income tax officer did not represent the income which had really accrued to the assessee-company during the relevant previous years.

Again, Hon'ble Supreme Court in various rulings including in the case of E. D. Sassoon and Company Ltd [1954] (26 ITR 27) has held that for an income to be taxed, there should be right to receive the income and liability on the payer to make payment of such income.

Even in Transfer Pricing Cases, The Apex Court's judgments and the "real income theory" principles squarely apply. For example it applies incases of determining ALP for notional interest on outstanding receivables from Associated Enterprises. In the case of Evonik Degussa India Pvt. Ltd., in ITA No. 7653/Mum/2011 Honorable Mumbai Tribunal observed that T.P. adjustment cannot be made on hypothetical and notional basis until and unless there is some material on record that there has been under charging of real income.

In cases where the whole transaction is not verifiable due to various reasons, the only taxable is the taxable income component (gross profit) and not the entire transaction. The Bombay High Court in the case of CIT vs. Hariram Bhambani opined that under Income Tax Act only real income can be taxed by the Revenue.

This theory is important and can be used in various other matters.

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
13th February	GSTR 1 (IFF)	January 2023	GST return for the taxpayers who opted for QRMP scheme (Optional)
13th February	GSTR 5	January 2023	Return form that has to be filed by a non-resident foreign taxpayer who is registered under GST for the period during which they carry out businesses transactions in India.
13th February	GSTR 6	January 2023	GSTR 6 is a monthly return for Input Service Distributors to provide the details of their distributed input tax credit & inward supplies.
14th February	TDS Certificate	December 2022	Due date for issue of TDS Certificate for tax deducted under section 194-IB, 194-IA, 194M in the month of December, 2022
15th February	Form 24G	January 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2023 has been paid without the production of a challan
15th February	TDS Certificate	October-December 2022	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2022

INCOME TAX

NOTIFICATION

CENTRALISED PROCESSING OF EQUALISATION LEVY STATEMENT SCHEME, 2023

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance vide Notification No. 03/2023 dated 07.02.2023 notified In exercise of the powers conferred by sub-section (2) of section 168 of Finance Act, 2016 (28 of 2016), the Central Board of Direct Taxes hereby makes the following scheme for processing of statement furnished under section 167 of the Act, namely:-

1. Short title and commencement.–

(1) This Scheme may be called the Centralised Processing of Equalisation Levy Statement Scheme, 2023.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions. - In this scheme, unless the context otherwise requires,

(a) "Act" means the Finance Act, 2016 (28 of 2016);

(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Income-tax Act,1961 (43 of 1961);

(c) "Centre" means the Centralised Processing Centre as referred in clause (c) of paragraph 2 of the Centralised Processing of Returns Scheme, 2011;

(d) "Commissioner" means the Commissioner of Income-tax, Centralised Processing Centre as referred in clause (d) of paragraph 2 of the Centralised Processing of Returns Scheme, 2011;

(e) "designated portal" means the web portal designated as such by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be;

(f) "Director General" means the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be;

(g) " rules" means Equalisation levy Rules, 2016;

(h) "e-mail" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(i) "Equalisation Levy Statement" means the statement furnished under section 167 of the Act;

(j) "registered electronic account" of the assessee or e-commerce operator means the electronic filing account registered by the assessee or e-commerce operator in designated portal;

(k) words and expressions used herein but not defined and defined under Chapter VIII of the Act shall have the meaning respectively assigned to them under that Chapter .

3. Scope of the Scheme.- This Scheme shall be applicable in respect of processing of the Equalisation Levy Statements.

4. Furnishing of Equalisation Levy Statement.- (1) Every assessee or e-commerce operator shall furnish the Equalisation Levy Statement under sub-section (1) of section 167 of the Act within the time stipulated under sub-rule (2) of rule 5 of the rules.

(2) An assessee or e-commerce operator may furnish an Equalisation Levy Statement or a revised Equalisation Levy Statement, as the case may be, under sub-section (2) of section 167 of the Act at any time before the expiry of two years from the end of the financial year in which the specified services was provided or e-commerce supply or services was made or provided or facilitated.

(3) An assessee or e-commerce operator may furnish a Equalisation Levy Statement in response to notice sent by the Assessing Officer under sub-section (3) of section 167 of the Act in accordance with rule 6 of the rules.

5. Invalid Equalisation Levy Statement.- The Commissioner may declare an Equalisation Levy Statement, invalid,-

(i) for non-compliance of procedure for using any software not validated and approved by the Director General; or

(ii) on account of incomplete information in the Equalisation Levy Statement.

6. Processing of Equalisation Levy Statement.- (1) The Centre shall process a valid Equalisation Levy Statement in the following manner, namely:-

(a) the equalisation levy shall be computed after making the adjustment for any arithmetical error in the Equalisation Levy Statement ;

(b) the interest, if any shall be computed on the basis of sum deductible or payable, as the case may be, as computed in the Equalisation Levy Statement;

(c) the sum payable by, or the amount of refund due to, the assessee or e-commerce operator shall be determined after adjustment of the amount computed under clause (b) against any amount paid under sub-section (2) of section 166 or section 166A or section 170 of the Act and any amount paid otherwise by way of tax or interest;

(d) no intimation shall be prepared or generated and sent, after the expiry of one year from the end of the financial year in which the Equalisation Levy Statement or revised Equalisation Levy Statement is furnished , to the assessee or e-commerce operator specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) the amount of refund due to the assessee or e-commerce operator in pursuance of the determination under clause (c) shall be granted to him.

(2) Where a revised Equalisation Levy Statement is furnished, the Centre shall process only the revised Equalisation Levy Statement and no further action shall be taken on the original Equalisation Levy Statement if it has not already been processed.

(3) The Commissioner may, –

(a) adopt appropriate procedure for processing of Equalisation Levy Statements; or

(b) decide the order of priority for processing of Equalisation Levy Statements based on administrative requirements.

(4) The assessee or e-commerce operator may make an application to the Assessing Officer for amending any intimation issued under section 168 of the Act, within one year from the end of the financial year in which the intimation sought to be amended was issued.

(5) Wherever an Equalisation Levy Statement cannot be processed in the Centre for any reasons, the Commissioner shall arrange to transmit such return to the Assessing Officer having jurisdiction in respect of the assessee or e-commerce operator for the purposes of Chapter VIII of the Act.

(6) In case of error in processing of the Equalisation Levy Statement due to an error in data entry or a software error or otherwise, resulting in excess refund being computed or reduction in demand of tax, the same will be corrected on its own by the Centre by passing a rectification order and the excess amount shall be recovered as per the provisions of sections 220 to 227, 229 and 232 of the Income-tax Act, 1961.

(7) In a case where there is any sum payable by the assessee or e-ecommerce operator under Chapter VIII of the Act, the refund, if any, arising from processing of the Equalisation Levy Statement, shall be set of against such sum payable.

7. No personal appearance in the Centre. (1) No assessee or e-commerce operator shall be required to appear personally or through authorised representative before the Centre in connection with any proceedings.

(2) Written or electronic communication from such person or authorised representative in the format specified by the Centre in this respect shall be sufficient compliance of the query or clarification received from the Centre.

(3) The Centre may call for such clarification, evidence or document as may be required for the purpose of facilitating the processing of Equalisation Levy Statements and all such clarification, evidence or document shall be furnished electronically.

8. Service of notice or communication.- For the purposes of this Scheme, -

(a) every intimation, notice or any other communication under this Scheme from the Centre to the assessee or ecommerce operator or its authorised representative shall be made by,–

(i) delivering or transmitting its copy thereof, electronically to the person sent by the Centre's e-mail;

(ii) placing its copy in the registered electronic account of the person on the designated portal ; or

(iii) any of the modes mentioned in sub-section (1) of section 282 of the Income-tax Act,1961.

(b) The intimation, orders and notices shall be computer generated and need not carry physical signature of the person signing it.

9. Power to specify procedure and processes. - The Director General shall, with the approval of the Board, shall specify procedures and processes from time to time for effective implementation and functioning of this Scheme, in an automated and mechanised environment, including specifying the procedure and processes in respect of the following :-

(i) processing of Equalisation Levy Statement;

(ii) validating any software used for e-filing the statement;

(iii) call centers to answer queries and provide taxpayer services which may include outbound calls to assessee or e-commerce operators requesting for clarification to assist in the processing of their statements; and

(iv) managing equalisation levy administration functions such as receipt, scanning, data entry, processing, issue of refunds, storage and retrieval of statements and documents in a centralised manner.

[For further details please refer the notification]

CIRCULAR

CORRIGENDUM TO CIRCULAR NO. 23 OF 2022 DATED 03.11.2022 EXPLANATORY NOTES TO FINANCE ACT 2022

OUR COMMENTS: The Central Board of Direct Taxes, Ministry of Finance vide Circular No. 02/2023 dated 06.02.2023 clarified that in The Finance Act, 2022 as passed by the Parliament, received the assent of the President on 30th March, 2022 and has been enacted as Act No. 6 of 2022. The Explanatory notes to the Finance Act, 2022, explaining the amendments made in direct tax laws vide the Finance Act, 2022 were issued vide Circular no. 23 of 2022 dated 03.11.2022. In the said circular, in sub-point (iii) of the point (I) of sub-paragraph (A) of paragraph 28.5, the words "two assessment years preceding such assessment year" shall be read as "any assessment year preceding such assessment year".

[For further details please refer the circular]

CASE LAW

PARALLEL PROCEEDINGS BY CENTRAL AND STATE AUTHORITIES AGAINST THE PETITIONER SIMULTANEOUSLY WITH REGARD TO THE SAME SUBJECT MATTER IS NOT VALID: MADRAS HIGH COURT

OUR COMMENTS: The petitioner has challenged the impugned Summons on the ground that both the Central and State Authorities do not have powers to initiate proceedings against the petitioner simultaneously under the respective GST Acts with regard to the same subject matter. The petitioner contends that he is already facing proceedings initiated by the Central Authority and therefore, the question of the State Authority viz., the fifth respondent, initiating proceedings against the petitioner will not arise as per Section 6(2)(b) of the GST Act, 2017

Admittedly, the petitioner has not participated in the personal hearing and instead he has chosen to file this Writ Petition, challenging the impugned Summons. Necessarily, to substantiate his defence that he cannot be once again prosecuted by the State Authority under the TNGST Act, 2017, he has to participate in the enquiry to be conducted by the fifth respondent and only then it can be ascertained whether the proceedings initiated by the Central and State Authority are one and the same involving the same subject matter. Truth will come out only when the petitioner appears before the respondent pursuant to the Summons received by him and not otherwise - If it is the same subject matter, the State Authority cannot prosecute the petitioner once again as the Central Authority has already initiated action against the petitioner in respect of the very same subject matter.

Necessarily, the petitioner will have to participate in the personal hearing and state all his objections with regard to the action launched by the State Authority under the TNGST Act, 2017. Unless and until the petitioner participates in the impugned proceedings viz., the impugned Summons dated 18.10.2022, truth cannot be unearthed with regard to the petitioner's contentions - Since the petitioner did not participate in the personal hearing afforded to him as per the impugned Summons, this Court deems it fit to grant one more opportunity for the petitioner to participate in the personal hearing.

This Writ Petition is disposed of by directing the petitioner to appear before the fifth respondent on 16.02.2023 at 10:30 a.m. without fail and state all his objections in line with his reply dated 27.10.2022 sent to the impugned Summons and the fifth respondent shall consider the petitioner's objections on merits and in accordance with law and thereafter, decide as to whether the petitioner can be prosecuted once again under the TNGST Act, 2017 when the Central Authority has already prosecuted him under the CGST Act, 2017.

[For further details please refer the case law]

FEMA

CASE LAW

FEMA: APPELLATE REMEDIES CANNOT BE BYPASSED AND THE DOORS OF THE HIGH COURT CANNOT BE KNOCKED STRAIGHT AWAY : 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.

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.

We are inclined to relegate the petitioners to the Appellate Tribunal to work out their remedy in accordance with law and it will be left open to the petitioners to raise all the grounds before the Appellate Tribunal.

The petitioners are permitted to file appeal against the order passed by the Special Director of Enforcement in proceedings within a period of 45 days from the date of the receipt of copy of this order. When these Writ Petitions were entertained, interim orders were passed and thereby, the operation of the order of the Special Director of Enforcement dated 12.03.2009 was stayed. Consequently, the penalty amount was not recovered from the petitioners during the pendency of the Writ Petitions. We are inclined to extend this interim protection till the appeal is filed before the Appellate Tribunal.

[For further details please refer the case law]

CUSTOMS

CIRCULAR

AMENDMENT IN CIRCULAR NO. 29/2020-CUSTOMS DATED 22.06.2020 FOR ALLOWING TRANSHIPMENT OF BANGLADESH EXPORT CARGO TO THIRD COUNTRIES THROUGH DELHI AIR CARGO

OUR COMMENTS: The Ministry of Finance (Department of Revenue) vide circular No. 03/2023-Customs dated 07.02.2023 clarified that representations have been received from stakeholders for permitting transhipment of Bangladesh export cargo to third countries through Delhi Air Cargo by amending Circular 29/2020-Customs dated 22.06.2020.

1.1 The aforesaid Circular allows inter alia transhipment of Bangladesh export cargo through Kolkata Air Cargo. The goods loaded on containers/ closed bodied trucks enter India from LCS Petrapole, move by road to Kolkata Air Cargo, from where they are airlifted and transported to third countries. It has been represented to allow this movement through Delhi Air Cargo also, for better cargo evacuation and improved logistics efficiency.

2. In view of above and considering recommendations of concerned Ministries of the Government of India, it has been decided to amend Circular No. 29/2020-Customs by inserting a new paragraph, i.e. Para 3A, after sub-paragraph 3.2 of the said Circular:

"3A. Transhipment of goods by road from LCS Petrapole to Air Cargo Complex, Delhi is also allowed with effect from 15.02.2023 following the procedure prescribed in the aforesaid Circular, until further direction from the Board."

3. Hindi version follows.

[For further details please refer the circular]

CASE LAW

REJECTION OF PETITIONER'S REQUEST FOR CLAIMING DUTY DRAWBACK ON THE GROUND THAT THE PETITIONER HAS NOT SATISFACTORILY ESTABLISHED THE REASONS FOR DELAY IN FILING THE DUTY DRAWBACK CLAIM : MADRAS HIGH COURT

OUR COMMENTS: It was held that Learned Standing Counsel for the respondents cannot rely upon the documents filed along with these writ petitions, that too, when the first respondent has not considered the same on merits in the impugned orders, which is a cryptic and a non-speaking order. Any improvement of the impugned order cannot be made by the learned Standing Counsel for the respondents. Therefore, the contentions of the learned Standing Counsel for the respondents before this Court is rejected.

It is also not in dispute that the petitioner has satisfied all the statutory requirements for claiming duty drawback as per the provisions under Section 74 of the Customs Act, 1962. When the petitioner has given detailed reasons as to why they were unable to file the duty drawback claim within the prescribed time, the first respondent ought to have considered the said reasons objectively, but as seen from the impugned orders, no reasons have been given for rejecting the petitioner's reasons for non filing of the duty drawback claim on time - Being a cryptic and a non-speaking order, the impugned orders will have to be necessarily quashed and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law.

The matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law. The first respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this order after giving due consideration to the contentions of the petitioner in his written submissions dated 03.11.2022 and after affording one personal hearing to the petitioner.

Petition disposed off.

DGFT

NOTIFICATION

ADDITION OF GEMOLOGICAL SCIENCE INTERNATIONAL (GSI) PVT. LTD., MUMBAI, MAHARASHTRA, INDIA IN PARA 4.42 OF FOREIGN TRADE POLICY (2015-20)

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 56/2015-2020 dated 07.02.2023 notified In exercise of powers conferred by Section 5 of Foreign Trade (Development and Regulation) Act, 1992, read with Paragraph 1.02 of the Foreign Trade Policy, 2015-20, as amended from time to time, the Central Government hereby notifies the following amendment in paragraph 4.42 of Foreign Trade Policy, 2015-20:

The following entry is inserted at serial no. (6) in para 4.42 of Foreign Trade Policy, 2015-20:

"(6) Gemological Science International (GSI) Pvt. Ltd., Mumbai, Maharashtra, India."

Effect of this Notification:

Gemological Science International (GSI) Pvt. Ltd., Mumbai, Maharashtra, India is added as an agency permitted to import diamonds for certification / grading & re-export.

[For further details please refer the Notification]

NOTIFICATION

ALIGNMENT OF RODTEP SCHEDULE FOR CHAPTER 28, 29, 30 & 73 WITH FIRST SCHEDULE OF THE CUSTOMS TARIFF ACT, 1975

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 55/2015-2020 dated 07.02.2023 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, on the recommendation of the RoDTEP Committee, notifies alignment of RoDTEP Schedule under Appendix 4R for chapter 28, 29, 30 & 73 with First Schedule of the Customs Tariff Act, 1975. This revised Appendix 4R shall be effective from 15.02.2023.

2. The revised Appendix 4R will be applicable for exports made from 15.02.2023 to 30.09.2023. However, to adhere to the Scheme budgetary framework, necessary changes and revisions as per Para 4.54 of FTP 2015-20 may be made whenever required.

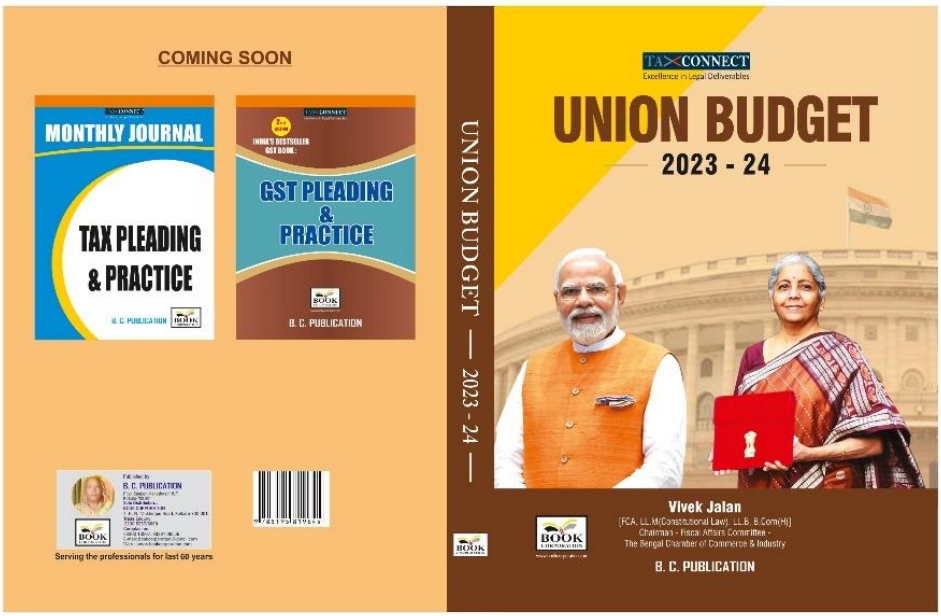
3. The revised RoDTEP Appendix 4R containing the eligible RoDTEP export items, rates and per unit value caps, is available at the DGFT portal www.dgft.gov.in under the link 'Regulatory Updates >RoDTEP'.

Effect of this Notification: Consequent to inclusion of export items from Chapter 28, 29, 30 & 73 vide Notification No. 47 dated 07.12.2022 under RoDTEP, Appendix 4R is aligned with First Schedule of the Customs Tariff Act, 1975 for implementation with effect from 15.02.2023.

[For further details please refer the Notification]

:IN STANDS

UNION BUDGET 2023: ANALYSIS BY TAX CONNECT



We put before you our detailed Analysis of Direct and Indirect Proposals of Union Budget 2023.

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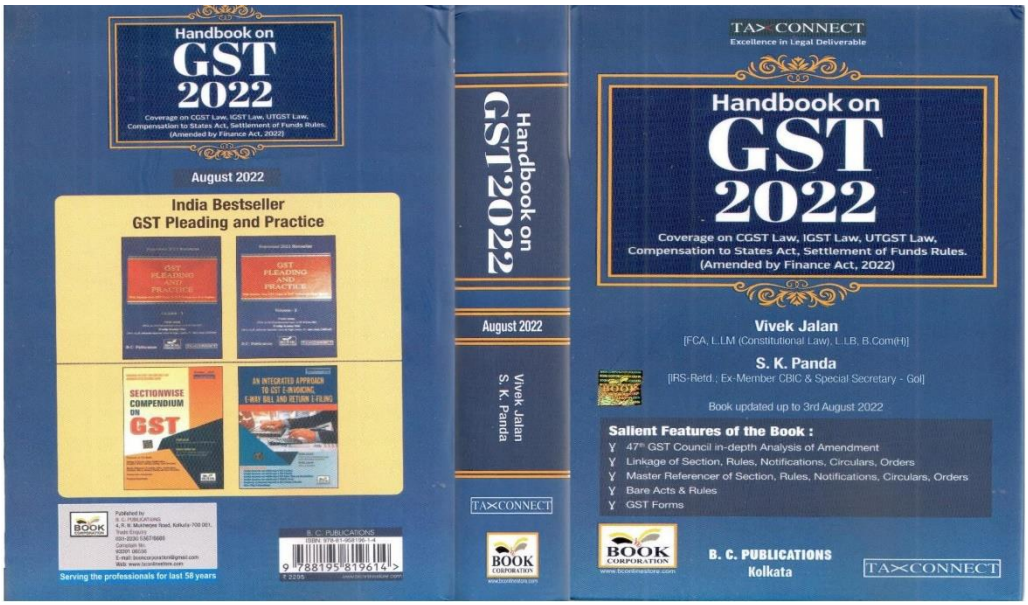
HANDBOOK ON GST 2022



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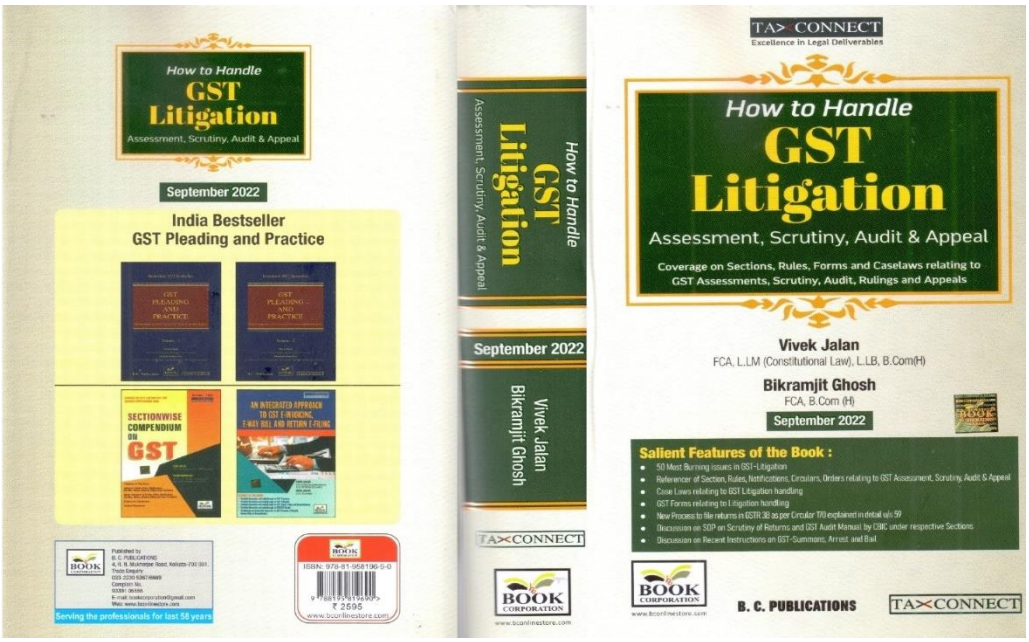
How to Handle GST LITIGATION: Assessment, Scrutiny, Audit & Appeal



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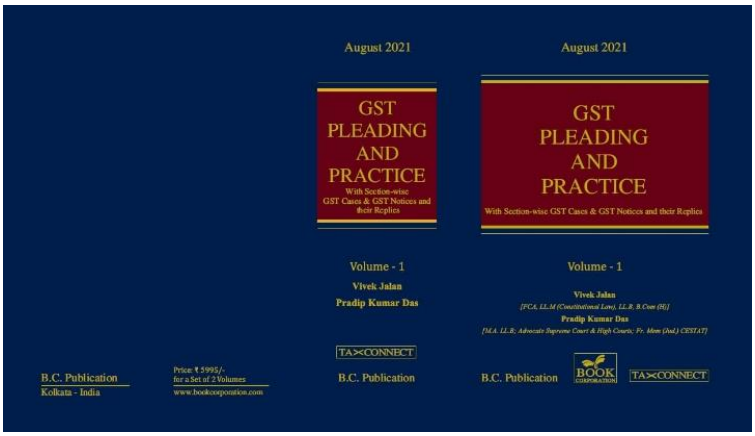

ABOUT THE BOOK: **This publication includes:**

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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