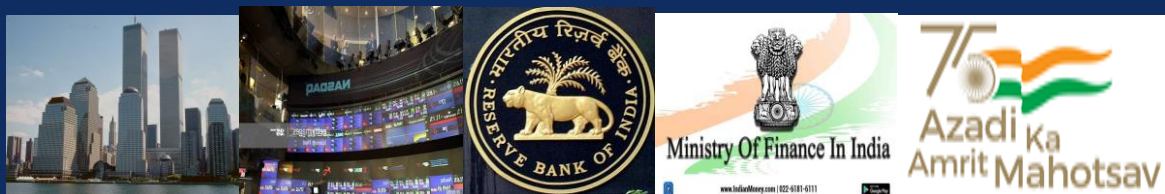


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EDITORIAL



Friends,

Section 68 of the Finance Act 2012 provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person.

Vide Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, courts have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor. This was considered to have led to the provision becoming ineffective in handling evasion when routed through a layered credit claim. Therefore, the provisions of section 68 of the Act had been amended by FA 2012 so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a Venture Capital Fund, Venture Capital Company registered with SEBI.

However even before this amendment, to escape from rigors of Section 68 of the Act, onus was always on shoulders of assessee to explain source of share application money received by it from investor companies. Where Assessee did not furnish details and particulars showing identity of investor companies, their capacity and credit worthiness and genuineness of transaction and main contention of assessee was only that assessee is a conduit company which received amount from 40 investors and further invested same to its main group company and impugned amount has already been taxed in hands of the main group company, the same was rejected.

In a relevant case it was held that for establishing a factum of conduit company, the assessee is duty bound to establish that source companies are also group companies and assessee after receiving the amount further invested same by making investments in group company. Investor companies, who invested amount in assessee company as share application money, are not part of main group company. Assessee had also onus to prove that it is a conduit company and also establish identity, capacity and credit worthiness of investor companies and genuineness of transaction.

Hence, now after amendment of Section 68, the onus is on the assessee to establish the following –

1. The source of funds is also explained in the hands of the creditor.
2. Identity, capacity and credit worthiness of the creditor

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
30 th March	Challan-cum-statement	February 2023	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M, 194-IA & 194-IB in the month of February, 2023
31 st March	Form 3CEAD	2021-22	Country-By-Country Report in Form No. 3CEAD for the previous year 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group
31 st March	Form 67	2021-22	Uploading of statement of foreign income offered to tax and tax deducted or paid on such income in previous year 2021-22, to claim foreign tax credit [if return of income has been furnished within the time specified under section 139(1) or section 139(4)]

INCOME TAX

NOTIFICATION

MODIFICATION OF NOTIFICATION REGARDING THE INCOME-TAX AUTHORITIES TO EXERCISE THE POWERS AND PERFORM FUNCTIONS, IN ORDER TO FACILITATE THE CONDUCT OF E-APPEAL PROCEEDINGS

OUR COMMENTS: The Central Board of Direct Taxes vide Notification No. 14/2023 dated 21.03.2023 notified in exercise of the powers conferred by sub-section (1) and (2) of section 120 of the Income-tax Act, 1961 (43 of 1961) and in partial modification of notification number S.O. 5449(E) dated the 29th December, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), the Central Board of Direct Taxes hereby authorises the Principal Chief Commissioners of Income-tax specified in column (2) of the Schedule below, having their Headquarters at the places specified in the corresponding entries in column (3) of the said Schedule, to issue orders in writing for the exercise of powers and performance of functions by the Income-tax authorities specified in the corresponding entries in column (4) of the said Schedule who are subordinate to them in respect of such territorial areas or of such persons or classes of persons or of such incomes of classes of income or of such cases or classes of cases as may be specified in such order.

2. Provided that no such orders, shall be issued so as to interfere with the discretion of the Commissioner of Income Tax (Appeals) in the exercise of appellate functions.

SCHEDULE

Sl. No.	Designation	Headquarters	Income-tax Authorities
(1)	(2)	(3)	(4)
1.	Principal Chief Commissioner of Income Tax,	Bengaluru	Commissioner of Income-tax (Appeals),

	Karnataka and Goa		Bengaluru-15
2.	Principal Chief Commissioner of Income Tax, Tamil Nadu and Puducherry	Chennai	Commissioner of Income-tax (Appeals), Chennai-20
3.	Principal Chief Commissioner of Income Tax, Rajasthan	Jaipur	Commissioner of Income-tax (Appeals), Jaipur-5
4.	Principal Chief Commissioner of Income Tax, West Bengal and Sikkim	Kolkata	Commissioner of Income-tax (Appeals), Kolkata-26
5.	Principal Chief Commissioner of Income Tax, West Bengal and Sikkim	Kolkata	Commissioner of Income-tax (Appeals), Kolkata-27
6.	Principal Chief Commissioner of Income Tax, Uttar Pradesh (West)	Noida	Commissioner of Income-tax (Appeals), Noida-3
7.	Principal Chief Commissioner of Income Tax, Madhya Pradesh and Chhattisgarh	Raipur	Commissioner of Income-tax (Appeals), Raipur-3

3. This Notification shall come into force from the 1st day of April, 2023.

[For further details please refer the notification]

GST

ADVISORY

ADVISORY FOR THE TAXPAYER WISHING TO REGISTER AS
“ONE PERSON COMPANY” IN GST

OUR COMMENTS: As per provision of section 2(62) of The Companies Act, 2013 “One Person Company” is defined as a company which has only one person as member.

Some issues have been raised by the persons registering as ‘One Person Company’ while they take GST registration. Upon analysis, it has been noticed that the option of choosing One Person Company is not there in form notified by CGST/SGST Acts and hence not available on the GSTN portal also.

As a work around, it is advised that in the ‘Part B’ of GST Registration Form ‘REG-01’, applicant may select (Constitution of Business under ‘Business Details’ tab using dropdown list) option “Others”, if the taxpayer wants to register for GST as “One Person Company”. After selecting option as “Others”, the applicant shall also mention “One Person Company” in the text field and follow the steps for a normal registration application to complete the process.

In case of any further issues, it is advised to raise ticket at self-help portal.

[For further details please refer the Advisory]

ADVISORY

HSN CODE REPORTING IN E-INVOICE ON IRPS PORTAL

OUR COMMENTS: As per Notification No. 78/2020 – Central Tax dated 15th October 2020, it is now mandatory for taxpayers to report a minimum of six-digit valid HSN

code for their outward supplies having AATO of more than 5 crores in any previous financial year.

It is hereby to inform that this requirement has already been implemented in the GST system, and team GSTIN is in the process of implementing the same at IRPs portal in collaboration with IRP partners including NIC. It is further suggested that in case wherever valid six digit HSN code is not available, a corresponding valid eight digit HSN code be reported instead of artificially creating six digit HSN code.

It is understandable that this requirement may require changes to our accounting systems as well. Team GSTIN would like to assure that they intend to provide sufficient time for taxpayers and IRP partners to make the necessary changes to comply with this requirement.

The exact date of implementation will be implemented shortly.

[For further details please refer the Advisory]

FEMA

CASE LAW

FORFEITURE OF ILLEGALLY ACQUIRED PROPERTIES OF SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS: HON'BLE SUPREME COURT

OUR COMMENTS: Order passed by the competent authority under Section 7 read with 19(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act - partners of the first appellant, namely, N.A. Yusuf, was ordered to be detained by Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter being referred to as "COFEPOSA").

It has been held by the Hon'ble Court that from the evidence which came on record, it could be gathered that out of the investment made by the partners (Appellant nos. 2 to 5) to the tune of Rs.10.20 lakhs, N.A. Yusuf contributed Rs.5 lakhs and Appellant no.2 and her children have contributed to the tune of Rs.5.2 lakhs each but neither N.A. Yusuf has justified any source from where his capital contribution was made nor the explanation was tendered by Appellant nos. 2 to 5 regarding their source of income and it was disbelieved at all stages and a finding was returned that major part of the investment has been treated as income from undisclosed sources. That apart, no evidence was placed by Appellant no. 2 on record to justify that the land in question was purchased from the resources available at her command in the year 1969, through the sale deed dated 16th April, 1969. In the given circumstances, the appellants are not entitled to seek protection of Section 9 of the Act 1976.

That apart, as regards the submissions made by the counsel for the appellants to impose fine in lieu of forfeiture, as contemplated under Section 9 of the Act 1976, after noticing the argument advanced by the appellants before the High Court, a categorical finding has been recorded as to why the appellants are not entitled to seek protection of Section 9 of the Act 1976, as held that major investment remain unexplained and also disbelieved the version of the 2nd petitioner on the ground that the proof of gift from her marriage has not been produced. Thus, according to the Competent

Authority as well as the Appellate Tribunal, even if the value of the land is taken only at Rs.33,000/, the total value of the land and building will work out at Rs.25,20,000/and as such, it was of the view that major part of the investment remained unexplained.

No error being committed in the finding returned by the High Court which may call for our interference.

Even before this Court, there is no material that has been placed by Appellant no.2 in rebuttal which may even prima facie justify the sources of fund available at her command for acquisition of the land in question to the tune of Rs.33,000/in the year 1969. In the absence of proper explanation as to the source of acquisition and as majority of investment remains unexplained, the authority disbelieved the version of Appellant no. 2 as no proof was placed on record of gifts from her marriage.

Even the accounts were not maintained in respect of the cost of construction of the building, in absence whereof, the authority has not committed any manifest error in forfeiting the property in exercise of power under Section 7 of Act 1976. Appeal is without substance and accordingly dismissed.

CUSTOMS

CASE LAW

CONFISCATION OF IMPORTED GOODS - LEVY OF REDEMPTION FINE AND PENALTY: CALCUTTA HIGH COURT

OUR COMMENTS: Admittedly on the date when the orders were placed by the appellant for purchase of the products i.e. on 12th and 14th March, 1986 legal position was clearly in favour of the appellant. Added to that the clarifications issued by the Joint Chief Controller of Imports dated 17.03.1986, the minutes of the meeting of the Central Board of Excise and Customs and Principal Collector of Customs dated 03.04.1986, the circular issued by the Under Secretary to the Government of India to port authorities dated 23.04.1986 and the letter addressed by the Principal Collector of Customs to the Federation of Indian Export Organization dated 14th/15th May, 1986 all clarified position that the appellant would be entitled to import canalized items under the additional licenses which were issued to them.

It cannot be disputed that the contract having been entered into and processed, it is virtually next to impossible to stop, the consignment mid sea which the Customs Department would be well aware and there are several procedures intervening such matters if at all it is feasible of being performed. Therefore, the Collector of Customs has faulted the appellant not performing of an act (stoppage of the shipment in the mid sea) which was next to impossible. In any event, the conduct of the appellant should be examined on the date when they placed the order i.e. on 12th and 14th March, 1986 and as stated earlier the law on the subject was clearly in favour of the appellant and the concerned department were also of the clear view that canalized items can be imported on additional license. Therefore, failure to examine bonafides of the appellant on the above facts has led to an erroneous approach by the department.

In Hindustan Steel Limited Versus State of Orissa [1969 (8) TMI 31 - SUPREME COURT], it was held that the discretion to impose penalty must be exercised judicially, penalty will ordinarily be imposed in cases where party acts deliberately in defiance of law or is guilty of contemptuous or dishonest conduct or acts in conscious disregard of its obligation but not in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Thus,

bearing in mind the above legal principles and taking note of the facts which were set out above, the case on hand is a case where no penalty could have been imposed.

Whether the imposition of redemption fine of Rs. 80,00,000/- was justified? - HELD THAT:- Admittedly on the date when the goods arrived in the Calcutta Port and when the appellant sought for clearance of the said goods the decision in UNION OF INDIA VERSUS GODREJ SOAPS PVT. LTD. AND ANOTHER [1986 (9) TMI 203 - SUPREME COURT] held the field and consequently import was unauthorized as the goods imported were canalized items and could not be imported under additional licenses. If that be the case, the appellant can have no other option except to accept the fact that the import is unauthorized, but however we have considered the conduct of the appellant and we were satisfied with the bona of the appellant. Nevertheless, on the date when the goods were sought to be cleared from the Kolkata Port there was a clear bar for importing such goods under the additional licenses and this being a bar created under the policy which binds the appellant as additional licenses were issued under the policy, the appellant cannot escape from the rigour of imposition of redemption of fine - In the case on hand the total quantity of both the products imported by the appellant more or less is 3700 metric tons and if the same yardstick as applied by the department in the case of Shashi Kant is applied to the case on hand the redemption fine could at best be imposed to the tune of around Rs. 50 to 53 lakhs and definitely not Rs. 80,00,000/-. Therefore, the redemption fine imposed on the appellant was excessive and disproportionate and inconsistent with the stand taken by the department in other contemporaries imports of same product in the same factual background. Therefore, we are inclined to interfere with the quantum of redemption fine which was imposed.

The orders passed by the authority imposing a redemption fine of Rs. 80,00,000/- is set aside and the fine stands reduced to Rs. 50,00,000/- and the penalty imposed on the appellants is set aside in its entirety.

Appeal allowed in part.

DGFT

NOTIFICATION

AMENDMENTS IN EXPORT POLICY OF BIO-FUELS UNDER CHAPTER 27 OF SCHEDULE 2 (EXPORT POLICY) ITC (HS) CLASSIFICATION OF EXPORT AND IMPORT.

OUR COMMENTS: The Ministry of Commerce and Industry, Department of Commerce vide Notification No. 62/2015-2020 dated 22.03.2023 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, the Central Government hereby amends Notification No. 29/2015-20 dated 28.08.2018

2. The revised policy conditions of Bio-Fuels under Sl. No. 115A, 115B and 115C under Chapter 27 of Schedule 2 of ITC (HS) Classification of Export Import Items will be as follows:

S.No	Tarif f Item HS Code	Unit	Item Description	Present Policy	Present Policy Conditio n	Revised Policy Condition
115A	2207 20 00	Kg/ u	Ethyl alcohol and other spirits, denatured, of any strength.	Restrict	Export is permitted under license only for non-fuel purposes.	Export is permitted under license only for non-fuel purposes. However, Export of Biofuel from Special Economic Zones (SEZ)/ Export Oriented Units (EoUs), are

						allowed for Fuel as well as Non-Fuel purposes without any restriction when produced using only imported feed stock.
115B	2710 20 00	Kg/ u	Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel,	Restrict	Export is permitted under license only for non-fuel purposes.	Export is permitted under license only for non-fuel purposes. However, Export of Biofuel from Special Economic Zones (SEZ)/ Export Oriented Units (EoUs), are allowed for Fuel as well as Non-Fuel purposes without any restriction s when produced using only

DGFT

			other than waste oils.			imported feed stock.
115C	3826	Kg/	Biodiesel and mixtures thereof, not containing or containing less than 70% by weight of petroleum oils and oils obtained from bituminous minerals.	Restricted	Export is permitted under license only for non-fuel purposes	Export is permitted under license only for non-fuel purposes. However, Export of Biofuel from Special Economic Zones (SEZ)/ Export Oriented Units (EoUs), are allowed for Fuel as well as Non-Fuel purposes without any restriction when produced using only imported feed stock.

[For further details please refer the notification]

NOTIFICATION

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

OUR COMMENTS: The Ministry of Commerce and Industry, Department of Commerce vide Notification No. 61/2015-2020 dated 22.03.2023 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 (changes made are given in bold letters):

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. Import of Urea (for agriculture purpose) on Government	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 31.03.2024 . Import of Urea (for agriculture purpose) on

3. Effect of this Notification:

The Notification no. 29/2015-20 dated 28.08.2018 is amended to the extent that Export of Biofuel from Special Economic Zones (SEZ)/ Export Oriented Units (EoUs), are allowed for Fuel as well as Non-Fuel purposes without any restriction when produced using only imported feed stock.

DGFT

			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 industrial use/ NPK Manufacturin g shall be "Free".	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 industrial use/ NPK Manufacturin g shall be "Free".
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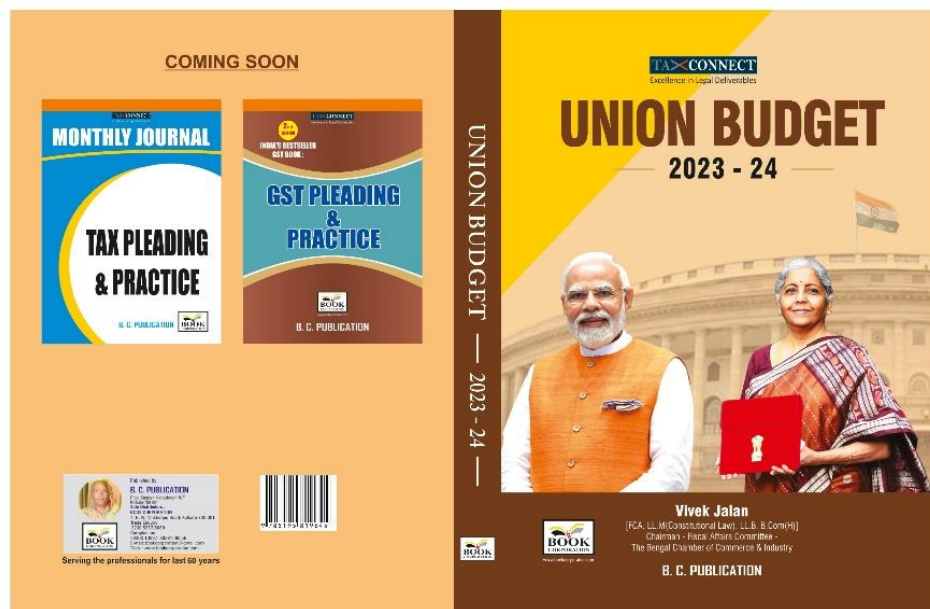
2. Effect of this Notification:

Import of Urea (Agricultural grade) on Government account is allowed through Indian Potash Limited (IPL) subject to Para 2.20 of Foreign Trade Policy, 2015-2020, till **31.03.2024**.

[For further details please refer the notification]

:IN STANDS

UNION BUDGET 2023: ANALYSIS BY TAX CONNECT



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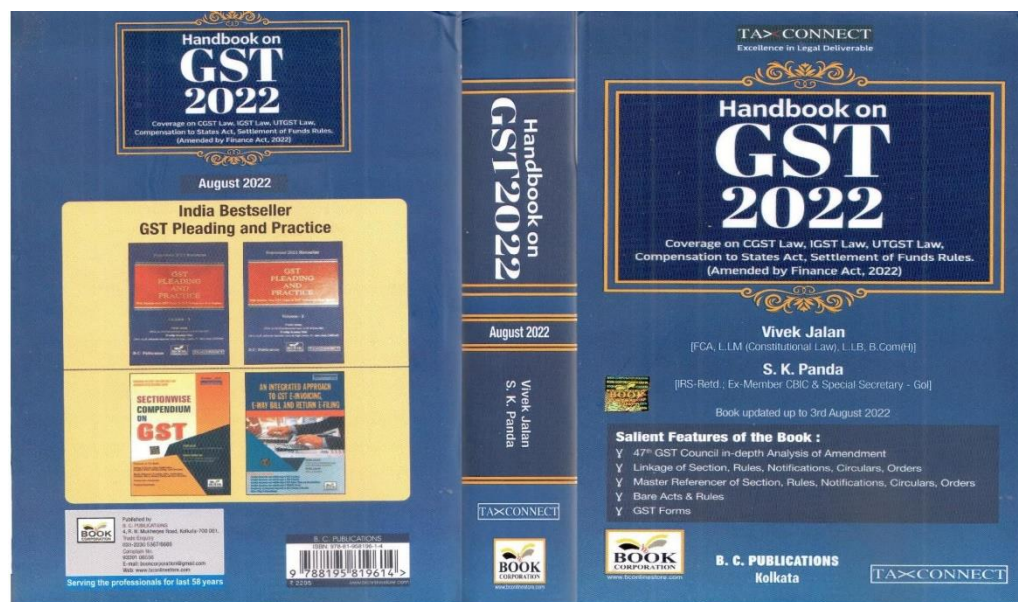
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7. Discussion on Recent Instruction on GST-Summons, Arrest and Bail

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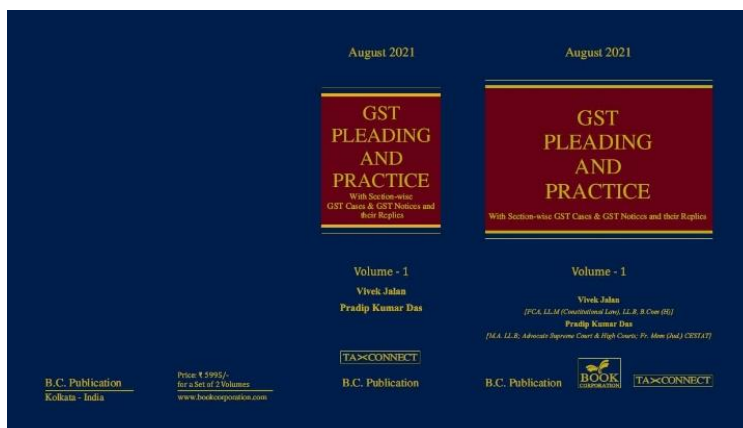
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