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EDITORIAL



Friends,

Any businessman or entrepreneur, visualises the business based on certain future projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon'ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66 (SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Similarly, the Income Tax Department cannot allege malfeasance where the projected revenues could not be achieved.

When it comes to valuation of shares, many questions are raised in many cases of Section 56(2)(viib) of The Income Tax Act read with Rule 11UA(2)(b) of Income Tax Rules. In the DCF Method of valuation, the data is furnished by the management of the company itself. It is based on the future projections and maybe highly deviated from the present picture of the financials of the company. There may be a difference between the values adopted and the actual values reached at by the company. Does this make the valuation exercise irrational and without any basis? The allegation of the AOs in the case of ITO WARD-3(1)(3) BANGALORE Vs IRUNWAY INDIA PVT LTD [2024-VIL-367-ITAT-BLR] was that the valuation exercise is conducted with ulterior motive to justify the share premium received by hiking the fair market value by DCF method. Plethora of cases are available in this regard and the grounds of defence can be as follows –

a. The provision cannot be invoked on a normal business transaction of issuance of shares unless it" has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money.

b. Being a deeming fiction, the section and rule has to be strictly interpreted.

c. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar and Sons that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted

d. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U.

e. The Rules provide for various valuation methodologies. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Taking into consideration the suggestions received in this regard and detailed interactions held with stakeholders, Rule 11UA for valuation of shares for the purposes of section 56(2)(viib) of the Act has been modified vide notification no. 81/2023 dated 25th September, 2023. Now, more methods of valuation have been notified.

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
22 nd April	GSTR 3B (Quarterly)	Jan-Mar'24	Summary return for taxpayers who have opted for the QRMP scheme and registered in category X states or UTs#
24 th April	GSTR-3B (Quarterly)	Jan-Mar'24	Summary return for taxpayers who have opted for the QRMP scheme and registered in category Y states or UTs##

INCOME TAX

CASE LAW

RECTIFICATION OF MISTAKE - PERIOD OF LIMITATION - TO GIVE APPEAL EFFECT OF ORDERS PASSED BY THE ITAT AND ISSUE A REFUND : DELHI HIGH COURT

OUR COMMENTS: It was held that the legal landscape in the present lis relates to sub-Section 3 to Section 153 of the Act which stipulates that an order for fresh assessment pursuant to an order u/s 254 or Section 263 or Section 264 of the Act may be made at any time before the expiry of a period of nine months. The said provision further encapsulates that the aforesaid period has to be calculated from the end of the financial year in which the order u/s 254 is received by the authorities mentioned in the said Section.

Evidently, from the extract of the relevant portion of the judgment in Odeon Buildwell (supra) in the preceding paragraph, it is seen that the contextual interpretation of the phrase “received” postulates the time when are the parties notified about the pronouncement and are represented at that instant in the open court. As held that the solitary reason of non-receiving of the order by the concerned authority cannot consequently make the period of limitation cease to run.

Court further noted that once a responsible authority including the Department’s Representative is aware of the order, the communication of the order is purely an administrative arrangement which has to be carried out internally within the Department.

Recently, in the case of Lakhpatri Agarwal [2023 (2) TMI 533 - BOMBAY HIGH COURT] has held that the legislative intent behind the enactment of Section 254(3) of the Act does not prescribe shifting of the onus of proving the receipt of the order under the said provision on the assessee.

As safely concluded that the expression “received” employed in Section 153(3) of the Act would not strictly mean that a certified copy of the order of the ITAT, in the given facts and circumstances, ought to have been necessarily supplied to the concerned authority through an appropriate mechanism devised by the respondents.

Further, sub-Section 3 to Section 254 of the Act casts a duty upon the ITAT to send the copy of the orders passed under Section 254 of the Act to the assessee as well as to the Principal Commissioner or Commissioner. A conspectus of Section 254 read with Section 153(3) of the Act would reveal that the said provisions cannot be made applicable to the detriment of the petitioner in the case at hand.

There is no force in the argument put forth by the respondents that the order was not received by the concerned authority through appropriate channel. In any case, as decided in Odeon Buildwell (supra), the ground raised by the respondents is only an internal arrangement of the Department and the same cannot be stretched to mean that it is a valid ground for the extension of the limitation period. The underlying rationale of the Legislature behind the enactment of Section 153(3) and setting the limitation therein, cannot be envisaged to expand the time limit for passing of a fresh assessment. Rather, the said provision entails a strict adherence to the time period within which the remand order in the present case should have been complied with by the respondents.

Taking into consideration the ITAT’s response that the concerned order was sent on 24 October, 2018, the Department ought to have passed the order to give the appeal effect within twelve months from then. However, the same has not been done by the Department till date.

Since the respondents have failed to comply with the order of the ITAT in passing a fresh assessment order within the stipulated time, the instant writ petition is allowed.

CASE LAW

AMOUNT RECEIVED BY THE APPELLANT UPON RETIREMENT FROM THE PARTNERSHIP - TAXABILITY AS CAPITAL GAINS UNDER THE INCOME TAX OR NOT? : TELANGANA HIGH COURT

OUR COMMENTS: It was held that coming to the impugned order passed by the Tribunal in SMT. GIRIJA REDDY, P HYDERABAD [2012 (7) TMI 652 - ITAT HYDERABAD] would give a clear indication that the principles laid down by the Division Bench of this High Court in Chalasani Venkateswara Rao [2012 (9) TMI 12 - ANDHRA PRADESH HIGH COURT] has been accepted by the Tribunal while making the aforesaid observations. However, while concluding, the Tribunal took a different view altogether which, therefore, would not be in the opinion of this Bench, proper, legal and justified.

Therefore, the respondent-Department cannot tax the amount received by the appellant upon retirement from the partnership as capital gains as there is no specific transfer of a capital asset affected when the appellant had retired from the partnership firm. So also, the finding of the Tribunal holding that the receipt of share in value of goodwill by the appellant is taxable as capital gains is not proper. Therefore, the impugned order passed by the Tribunal is unsustainable and the same deserves to be and is accordingly dismissed. Assessee appeal stands allowed.

GST

CASE LAW

WRONG DESCRIPTION OF THE VEHICLE IS ENTERED BY THE DEALER IN THE E-WAY BILL - GOODS SHIFTED THROUGH TRUCK, ACCOMPANYING DELIVERY CHALLAN, E-WAY BILL AND BILTY - INTERCEPTED THE GOODS AND DETAINED THE VEHICLE : ALLAHABAD HIGH COURT

OUR COMMENTS: It was held that It is not in dispute that goods were being transported by the dealer through stock transfer from its unit at Saharanpur to its sale depot at Ghaziabad. From perusal of the e-way bill which has been brought on record, it is clear that the vehicle number has been mentioned as UP-14BT/3276.

As there is no dispute to the fact that it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty u/s 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained. Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of part of registration number of the vehicle in the e-way bill. The number of vehicle through which the goods were transported was manually corrected by the transporter while only there is a minor discrepancy in Part-B of the e-way bill where the description of the vehicle is entered by the dealer.

Thus, the orders dated May 21, 2018 and August 5, 2019 are unsustainable in the eyes of law and both the orders are hereby set aside. Writ petition succeeds and is hereby allowed.

CASE LAW

SUBSTANTIATIVE RIGHT OF THE PETITIONER TO REDRESS HIS GRIEVANCE BY WAY OF APPEAL CANNOT BE CURTAILED APPEAL FILED BY THE PETITIONER BEYOND 24 DAYS OF THE CONDONABLE PERIOD OF LIMITATION UNDER SECTION 107(4) OF THE TNGST ACT : MADRAS HIGH COURT

OUR COMMENTS: It was held that this Court is of the view that substantive right of the petitioner to redress his grievance by way of appeal cannot be curtailed particularly, when the amount due towards tax liability has been recovered from the petitioner on 01.12.2022. Over and above, the petitioner has also paid a sum of Rs. 1,15,372/- on 27.12.2022 along with the appeal filed beyond the condonable period of limitation under Section 107 (4) of the TNGST Act.

Be that as it may, since the appeal has been filed along with the pre-deposit on 27.12.2022 and considering the fact that a sum of Rs. 11,53,720/- has already been recovered from the petitioner on 01.12.2022, this Court is of the view that it is a fit case, for a direction to the second respondent to consider the appeal and dispose of the same. Therefore, the second respondent is directed to consider the appeal and dispose of the same on merits without reference to the period of limitation.

Petition allowed.

FEMA

NOTIFICATION

FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) (THIRD AMENDMENT) RULES, 2024.

OUR COMMENTS: The Ministry of Finance, Department of Economic Affairs vide notification no. S.O. 1722 (E) dated 16.04.2024 notified In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

1. (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2024.

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

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in Schedule I, in the Table, for serial number 12 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
'12.	Space Sector		
12.1	(a) Satellites-Manufacturing and Operation (b) Satellite Data Products (c) Ground Segment and User Segment	100%	Automatic up to 74%. Government route beyond 74%
12.2	(a) Launch Vehicles and associated systems or sub-systems (b) Creation of Spaceports for launching and receiving Spacecraft	100%	Automatic up to 49%. Government route beyond 49%
12.3	Manufacturing of components and systems or sub-systems for satellites, Ground Segment and User Segment	100%	Automatic
12.4	The investee entity shall be subject to sectoral guidelines as issued by the Department of Space from time to time.		

12.5

Definitions:

(a) "Satellites – Manufacturing and Operation": End-to-end manufacturing and supply of satellite or payload, establishing the satellite systems including control of in-orbit operations of the satellite and payloads;

(b) "Satellite Data Products": Reception, generation or dissemination of earth observation or remote sensing satellite data and data products including Application Interfaces (API);

(c) "Ground Segment" and "User Segment":

(i) "Ground Segment": Supply of satellite transmit or receive earth stations including earth observation data receive station, gateway, teleports, satellite Telemetry, Tracking and Command (TTC) station, and Satellite Control Centre (SCC) etc.;

(ii) "User Segment": Supply of user ground terminals for communicating with the satellite, which are not covered under the ground segment;

(d) "Launch Vehicles and Associated Systems or Sub-systems": A vehicle and its stages or components that is designed to operate in or place spacecraft with payloads or persons, in a sub-orbital trajectory, or earth orbit or outer space;

(e) "Creation of Spaceports for launching and receiving Spacecraft": - A spaceport (also referred as launch site) may be regarded as the base from which spacecraft are launched, and consists of facilities involving devices for transportation to, from and via outer space;

(f) "Manufacturing of components and systems or sub-systems for satellites Ground Segment and User Segment": Comprises the manufacturing and supply of the electrical, electronic and mechanical components systems or sub-systems for satellites, Ground Segment and User Segment.'.

[For further details please refer the notification]

CUSTOMS

NOTIFICATION

RATE OF EXCHANGE OF ONE UNIT OF FOREIGN CURRENCY EQUIVALENT TO INDIAN RUPEES

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 30/2024-Customs(N.T) dated 18.04.2024 In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 27/2024-Customs(N.T.), dated 4th April, 2024 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 19th April, 2024, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	55.10	52.70
2.	Bahraini Dinar	230.30	213.50
3.	Canadian Dollar	61.70	59.80
4.	Chinese Yuan	11.75	11.35
5.	Danish Kroner	12.10	11.80
6.	EURO	90.75	87.65
7.	Hong Kong Dollar	10.80	10.55
8.	Kuwaiti Dinar	280.05	262.65
9.	New Zealand Dollar	50.65	48.35
10.	Norwegian Kroner	7.70	7.50
11.	Pound Sterling	105.90	102.45
12.	Qatari Riyal	23.70	22.25
13.	Saudi Arabian Riyal	23.00	21.70

14.	Singapore Dollar	62.50	60.50
15.	South African Rand	4.55	4.25
16.	Swedish Kroner	7.75	7.55
17.	Swiss Franc	93.55	90.10
18.	Turkish Lira	2.65	2.50
19.	UAE Dirham	23.45	22.05
20.	US Dollar	84.40	82.70

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	55.00	53.35
2.	Korean Won	6.30	5.9

[For further details please refer the notification]

NOTIFICATION

FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, ARECA NUT, GOLD AND SILVER

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification no 29/2024-Customs(N.T) dated 15.04.2024 In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

"TABLE-1

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US\$Per Metric Tonne)
---------	---	----------------------	-------------------------------------

CUSTOMS

(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	952
2	1511 90 10	RBD Palm Oil	955
3	1511 90 90	Others – Palm Oil	954
4	1511 10 00	Crude Palmolein	959
5	1511 90 20	RBD Palmolein	962
6	1511 90 90	Others – Palmolein	961
7	1507 10 00	Crude Soya bean Oil	950
8	7404 00 22	Brass Scrap (all grades)	5104

TABLE- 2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	773 per 10 grams
2.	71or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	939 per kilogram
3.	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.	939 per kilogram

		Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.	
4.	71	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.	773 per 10 grams

TABLE- 3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US\$Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6033"

2. This notification shall come into force with effect from the 16th day of April, 2024.

[For further details please refer the notification]

DGFT

NOTIFICATION

IMPOSITION OF PORT RESTRICTIONS ON SUPPLY OF PROHIBITED/RESTRICTED ESSENTIAL COMMODITIES TO THE REPUBLIC OF MALDIVES DURING 2024-25

OUR COMMENTS: The Directorate General of Foreign Trade, Department of Commerce, Ministry of Commerce, Government of India vide notification no. 06/2023 dated 15-04-2024 notified In exercise of the 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 paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023, the Central Government hereby incorporates following conditions in Notification No. 03/2023 dated 05.04.2024 for exporting of essential commodities to Maldives under bilateral trade agreement between Government of India and Government of Maldives: -

Export of essential commodities under Prohibited/restricted category to the Republic of Maldives during 2024-25 shall be permitted only through the following 4 Customs Stations: -

- i. Mundra Sea Port
- ii. Tuticorin Sea Port
- iii. Nhava Sheva Sea Port (JNPT)
- iv. ICD Tughlakabad

2. Effect of this notification:

Imposition of Port restrictions for exporting of essential commodities under Prohibited/restricted category to the Republic of Maldives during 2024-25, as per the quota notified under DGFT Notification No. 03/2023 dt. 05.04.2023, has been notified.

[For further details please refer the notification]

NOTIFICATION

EXPORT OF ONIONS (UNDER HS CODE 07031019) TO SRI LANKA AND UAE

OUR COMMENTS: The Ministry of Commerce and Industry vide notification no. 07/2023 dated 15.04.2024 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, 2023 and in accordance with the provision contained in Para 2 of Notification No. 81/2023 dt. 22.03.2024, the Central Government permits the export of the following quantity of onion (under HS code 0703 10 19) to Sri Lanka and UAE through National Cooperative Exports Limited (NCEL):-

Sl.No.	Country Name	Quantity
1.	Sri Lanka	10,000 MT
2.	UAE	Additional 10,000 MT quantity of Onions over and above 24,400 MT quantity already notified vide DGFT Notification No. 65/2023 dt. 01.03.2024 and 02/2023 dt.03.04.2024 .

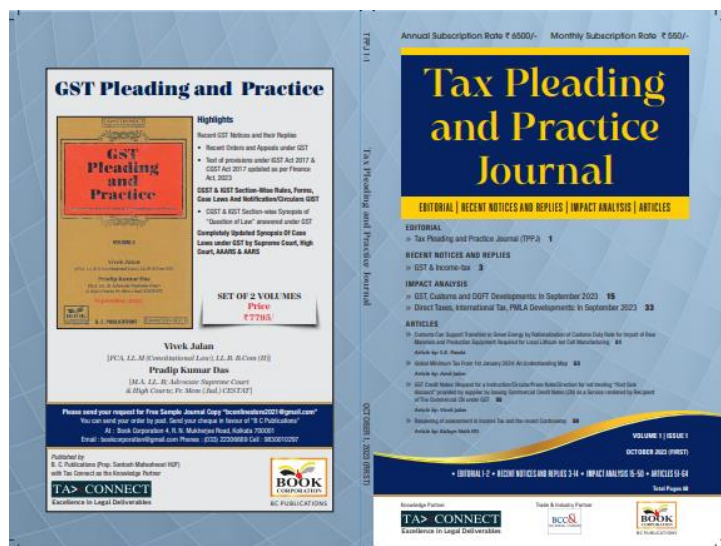
2. Effect of the Notification:

Export of 10,000 MT of onions (under HS code 0703 10 19) to Sri Lanka through National Cooperative Exports Limited (NCEL) has been allowed. Further, export of additional 10,000 MT quantity of Onions(under HS code 0703 10 19) through NCEL to UAE, over and above the quota of 24,400 MT already notified vide DGFT Notification No. 65/2023 dt. 01.03.2024 and 02/2023 dt.03.04.2024, has been allowed.

[For further details please refer the notification]

:IN STANDS

TAX PLEADING AND PRACTICE JOURNAL



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:IN STANDS

GST PLEADING AND PRACTICE: With Section-wise GST Cases & GST Notices and their Replies



ABOUT THE BOOK: This publication includes:

1. Recent GST Notices and their Replies
 - Recent Orders and Appeals under GST
 - Text of provisions under IGST Act 2017 & CGST Act 2017 updated as per Finance Act, 2023
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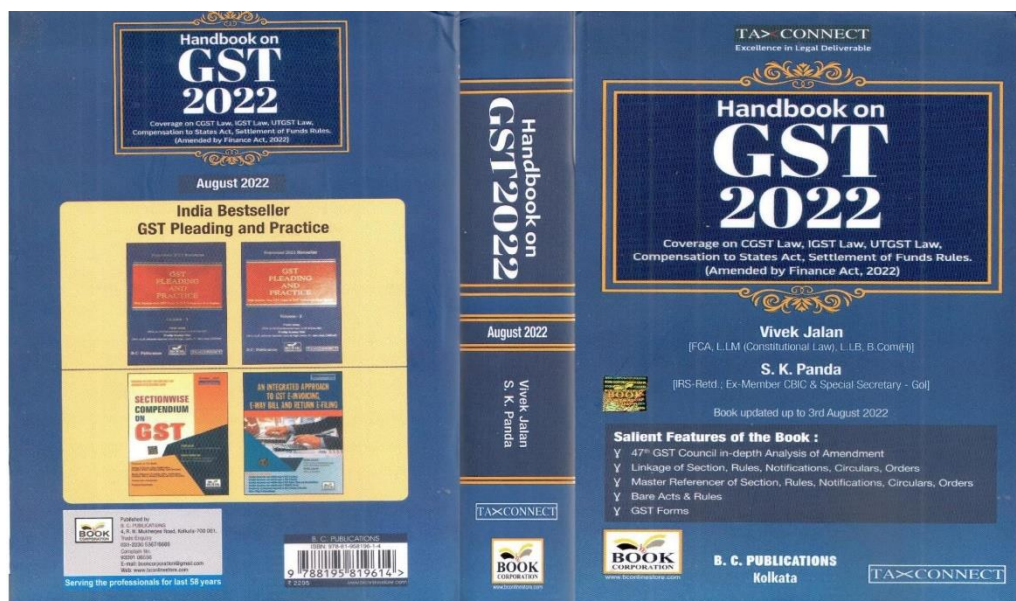
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HANDBOOK ON GST 2022



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4. Bare Acts & Rules
5. GST Forms

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