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EDITORIAL



Friends,

The Supreme Court of India recently delivered a landmark judgment upholding the powers of arrest vested in Goods and Services Tax (GST) and Customs officials. However, the Court imposed stringent safeguards to prevent misuse of these powers, emphasizing that arrests cannot be made solely on suspicion. The ruling, clarified that substantial evidence and a justified belief that a cognizable and non-bailable offence has been committed are prerequisites for any arrest under the GST Act. This decision addresses concerns of arbitrary arrests and strikes a balance between empowering tax authorities and protecting citizens' rights.

The judgment stemmed from a batch of petitions challenging the constitutional validity of Sections 69 and 70 of the Central Goods and Services Tax (CGST) Act, 2017. Section 69 authorizes the Commissioner to order arrests for certain offences, while Section 70 empowers officials to summon individuals for inquiry. Petitioners argued that these provisions, if misused, could lead to arbitrary arrests without adequate safeguards. The Supreme Court's ruling has now clarified the boundaries within which these powers can be exercised.

The Supreme Court underscored the necessity for the Commissioner to document clear "reasons to believe" that a non-bailable offence has been committed. This documentation must be supported by credible evidence and a detailed computation of the alleged tax fraud. If an arrest is made without such justification, it would be deemed illegal and could be challenged in court. This requirement for transparent and well-documented reasons aims to prevent misuse of arrest powers and ensure accountability.

The Court's interpretation of Section 69 also emphasizes that the power of arrest is preventive, not punitive. It is intended to prevent the accused from tampering with evidence or fleeing, rather than to punish them before a trial. This distinction is crucial to ensure that arrests do not become tools of harassment in tax investigations. The ruling mandates that every arrest order must be accompanied by proper documentation detailing the grounds for arrest. The Commissioner must explicitly outline the reasons and provide a detailed tax fraud computation to justify the arrest. If the reasons are not clearly recorded, the arrest can be challenged in court.

Furthermore, the Supreme Court upheld provisions under both the GST Act and the Customs Act that deal with the power of arrest by authorized officers. The Court's ruling mandates strict adherence to the guidelines issued by the Central Board of Indirect Taxes and Customs (CBIC), which have been framed to ensure fair and transparent arrests. Among these are the CBIC circulars dated 17 August 2022 and 13 January 2025, which outline key procedural safeguards.

The Supreme Court also highlighted the importance of judicial scrutiny in cases of arrest under the GST Act. Any individual arrested must be produced before a magistrate within 24 hours, as mandated by the Constitution. The magistrate's role in evaluating the legality of the arrest ensures a check against potential misuse of power. Moreover, the Court emphasized that the validity of the reasons recorded by the Commissioner for making an arrest can be examined by higher courts. This provision acts as a safeguard against arbitrary or motivated arrests.

Another critical aspect clarified by the Supreme Court is the interplay between the power of arrest under the GST Act and the provisions of the Code of Criminal Procedure (CrPC). The Court held that the safeguards available under the CrPC, such as the right to be informed of grounds of arrest and the right to legal counsel, must also apply to arrests made under the GST Act. This interpretation ensures that the fundamental rights of individuals are not compromised during tax investigations.

From a legal perspective, the decision reinforces the principle that arrest is a measure of last resort and must not be used indiscriminately. The Supreme Court's insistence on proper documentation and credible evidence sets a high bar for arrests under the GST Act.

The requirement for clear documentation and credible evidence, adherence to CBIC guidelines, and judicial scrutiny collectively ensure that the power of arrest is exercised judiciously. This judgment not only protects the rights of individuals but also strengthens the credibility of tax enforcement mechanisms, fostering a more balanced and fair taxation system in the country.

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

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TAX CALENDAR

Date	Form/Return/Challan	Reporting Period	Description
02 nd March	challan-cum-statement	January'2025	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB, 194-M, 194-S in the month of January, 2025.
7 th March	Deposit of Tax deducted/collected	February'2025	Due date for deposit of Tax deducted/collected for the month of February, 2025. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan.

INCOME TAX

NOTIFICATION

INCOME-TAX (FIFTH AMENDMENT) RULES, 2025 - STATEMENT OF INCOME DISTRIBUTED BY A BUSINESS TRUST AND INVESTMENT FUND - STATEMENT OF INCOME PAID OR CREDITED BY INVESTMENT FUND, SECURITISATION TRUST

OUR COMMENTS: The Central Board of Direct Taxes vide Notification No. 17/2025 dated 24.02.2025 notified that In exercise of the powers conferred by sub-section (1A) of section 115AD, sub-section (4) of section 115TCA, sub-section (4) of section 115UA and sub-section (7) of section 115UB read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) These rules may be called the Income-tax (Fifth Amendment) Rules, 2025.

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

2. In the Income-tax Rules, 1962,—

(a) for rule 12CA, the following shall be substituted, namely:

-

“12CA. Statement under sub-section (4) of section 115UA.

— (1) The statement of income distributed by a business trust to its unit holder shall be furnished by the person responsible for making payment of the income distributed on behalf of a business trust to –

(i) the Principal Commissioner or the Commissioner of Income-tax, as the case may be, within whose jurisdiction the principal office of the business trust is situated by the 15th day of June of the financial year following the previous year

during which the income is distributed electronically under digital signature, in Form No. 64A duly verified by an accountant in the manner indicated therein;

and

(ii) the unit holder by the 30th day of June of the financial year following the previous year during which the income is distributed in Form No. 64B after generating and downloading the same from the web portal specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorised by him and duly verified by the person paying the income distributed on behalf of the business trust in the manner indicated therein.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall specify, -

(i) the procedure for filing of Form No. 64A and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements of income paid so furnished under this rule; and

(ii) the procedure, formats and standards for generation and download of statement in Form No. 64B from the web portal specified by him or by the person authorised by him and he shall be responsible for the day-to-day administration in relation to the generation and download of certificates from the web portal specified by him or the person authorised by him.”;

(b) for rule 12CC, the following shall be substituted, namely:

-

INCOME TAX

"12CC. Statement under sub-section (4) of section 115TCA.

— (1) The statement of income paid or credited by a securitisation trust to its investor shall be furnished by the person responsible for crediting or making payment of the income on behalf of a securitisation trust and the securitisation trust to –

(i) the Principal Commissioner or the Commissioner of Income-tax, as the case may be, within whose jurisdiction the principal office of the securitisation trust is situated by the 15th day of June of the financial year following the previous year during which the income is paid or credited electronically under digital signature, in Form No. 64E duly verified by an accountant in the manner indicated therein; and

(ii) the investor by the 30th day of June of the financial year following the previous year during which the income is paid or credited in Form No. 64F after generating and downloading the same from the web portal specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorised by him and duly verified by the person paying or crediting the income on behalf of the securitisation trust in the manner indicated therein.

(2) The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall specify, –

(i) the procedure for filing of Form No. 64E and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the statements of income paid or credited so furnished under this rule; and

(ii) the procedure, formats and standards for generation and download of statement in Form No. 64F from the web portal specified by him or by the person authorised by him and he shall be responsible for the day-to-day administration in relation to the generation and download of certificates from the web portal specified by him or the person authorised by him.”;

(c) in Appendix-II,–

I. in Form No. 10IH,–

(i) in S.No. 8, the figures “@10%” shall be omitted;

(ii) in S.No. 9, the words and figures “and which is chargeable @10%” shall be omitted;

(iii) in S.No. 10, the figures “@15%” shall be omitted;

(iv) in Annexure 1, –

(A) in Part A1, the figures “@10%” shall be omitted;

(B) in Part A2, the words and figures “and which is chargeable @10%” shall be omitted;

(C) in Part A3, the figures “@15%” shall be omitted;

II. for Form No. 64A, Form No. 64B, Form No. 64C, Form No. 64D, Form No. 64E and Form No. 64F

[For further details please refer the Notification]

GST

CASE LAW

M/S. RAMANATTU MOTOR CORP., VERSUS STATE OF KERALA, STATE TAX OFFICER, ALAPPUZHA, STATE TAX OFFICER (ARREAR RECOVERY), ALAPPUZHA: KERALA HIGH COURT

OUR COMMENTS: In the instant case, the issue is regarding challenge to SCN and the consequential order issued u/s 73 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017. The dispute is that no proper service of SCN has been made and the petitioner was unaware of the proceedings until the intimation of the recovery proceeding was uploaded in the portal. It has been held that in the instant case, concededly, the notice that preceded the order of determination under section 73 of the GST Act was posted in the portal of the petitioner in the tab meant for 'Additional Notices and Orders'. There was yet another tab for 'Notices and Orders'. Normally, every person will access the tab meant for 'Notices and Orders' to check whether any notices have been issued. In the absence of any notices uploaded in the tab for 'Notices and Orders', a person may not check the tab for 'Additional Notices and Orders', unless there are proper instructions on the same page itself, indicating expressly, the manner in which the portal should be navigated. Of course, while accessing the portal, every taxpayer is bound to peruse every window. However, for all practical purposes, a taxpayer will not read through every user information given in all the windows to comprehend the mode in which the pages should be navigated. In the absence of specific notes or instructions given on the same page meant for 'Notices and Orders' or 'Additional Notices and Orders' it cannot be assumed that there has been an effective dissemination of information to taxpayers that the first notice regarding determination under section 73

or 74 of the GST Act will be uploaded only in the tab meant for 'Additional Notices and Orders'.

In the instant case, Ext. P3 and Ext. P4 notices were issued on 03.07.2023 and 16.11.2023, both of which are before the decisions in M/s. Sabari Infra Private Limited [2023 (9) TMI 501 - MADRAS HIGH COURT] as well as that in Anhad Impex [2024 (2) TMI 1070 - DELHI HIGH COURT]. It is therefore evident that the web portal as it now stands is different from what existed earlier. The scheme of arrangement of the portal was confusing and vague earlier, to identify where the notices for determination would be posted.

This Court is satisfied that the petitioner was unaware of the notice and was even not properly served with the notices due to the vagueness of the system. The lack of knowledge of the notice issued to the petitioner is therefore attributable to the respondents. Thus, there was neither any proper service of notice nor was sufficient opportunity granted to the petitioner to contest the matter. Therefore, it is essential that the order of determination dated 06.03.2024 be set aside and the petitioner be granted an opportunity to file response to Ext.P3 and Ext.P4 notices.

The petitioner's lack of awareness of the notices was attributable to the respondents' failure to effectively serve the notices, leading to a violation of natural justice. Therefore, the Court set aside the order of determination and granted the petitioner an opportunity to respond to the notices within 30 days.

Petition allowed.

FEMA

CASE LAW

**RAKESH JAIN, RAVINDER JAIN, SOM CHAI CHAI SRICHAWLA
VERSUS UNION OF INDIA, ENFORCEMENT DIRECTORATE:
DELHI HIGH COURT**

OUR COMMENTS: Contravention of Sections 9 (1) (b), 9 (1) (c) and 9 (1) (d) read with Section 64 (2) of the Foreign Exchange Regulations Act, 1973 - Remission of amount from abroad. It has been held that, ED itself is not clear whether the declaration made by Mr. Sri Chawla in Bangkok could be termed as a statement under Section 40 of FERA. It is not shown that the procedure envisaged under FERA was followed while recording the said declaration. In any event, Mr. Sri Chawla only talks of payment being made to two persons who met him on behalf of Mr. Rakesh Jain. The payment is purportedly made for the purchase of land. The sale deeds show that the purchaser was OEPL and the seller was ACPL. The said statement, therefore, does not help in proceeding only against Mr. Rakesh Jain, if no proceedings had been initiated against ACPL, which is the true beneficiary. While the declaration of Mr. Sri Chawla may, more or less, corroborate the statement of Mr. Rakesh Jain as regards the total amount paid, the statement of Mr. Madan does not corroborate either statement.

AT has relied on material that was not part of the record of the case. In particular, while the AO correctly notes that the Investigation Officer had not conducted any inquiry to ascertain the fair price and has also taken note of the order of the CIT and on that basis held that the SCN is not supported by proper evidence, the AT appears to have not referred to the proceedings under the Income Tax Act, 1961 at all. The conclusion of the AT that there was payment over and above the sale consideration shown in the sale deed, appears to be based on the AT taking 'judicial notice' of the price of agricultural land in the vicinity of Gurgaon on the

basis that it is an 'adjacent area'. No such plea was advanced by any of the parties before the AT. The Appellants are, therefore, justified in their criticism of the impugned order of the AT for travelling well beyond the scope of its revisional jurisdiction and adjudicating upon factual matters for which there was no basis in the record.

The Court is unable to sustain the impugned order dated 3rd June 2008 of the AT and restores the AO dated 6th January 2000. The appeals are accordingly allowed, but in the circumstances, with no order as to costs. The amounts deposited by the Appellants shall be refunded to them within a period of eight weeks in accordance with law.

Decided in favour of assessee.

CUSTOMS

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. 12/2025-Customs (N.T.) dated 28.02.2025 notified that 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)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1173
2	1511 90 10	RBD Palm Oil	1189
3	1511 90 90	Others – Palm Oil	1181
4	1511 10 00	Crude Palmolein	1200
5	1511 90 20	RBD Palmolein	1203
6	1511 90 90	Others – Palmolein	1202
7	1507 10 00	Crude Soya bean Oil	1112
8	7404 00 22	Brass Scrap (all grades)	5511

TABLE-2

Sl.No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356	927 per 10 grams

		of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	
2.	71 or 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	1025 per kilogram
3.	71	<p>(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;</p> <p>(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.</p> <p>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.</p>	1025 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturers or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>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</p>	927 per 10 grams

CUSTOMS

whole or a part of a piece of
Jewellery in place.

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	8140 (i.e., no change)"

2. This notification shall come into force with effect from the 01st day of March, 2025.

[For further details please refer the Notification]

NOTIFICATION

SEEKS TO IMPOSE COUNTERVAILING DUTY ON IMPORTS OF 'SACCHARIN IN ALL ITS FORMS' ORIGINATING IN OR EXPORTED FROM PEOPLE'S REPUBLIC OF CHINA IN PURSUANCE OF COUNTERVAILING DUTY/ANTI-SUBSIDY INVESTIGATION ISSUED BY DGTR

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Notification No. 01/2025-Customs (CVD) dated 25.02.2025 notified that whereas, in the matter of "Saccharin in all its forms" (hereinafter referred to as the subject goods) falling under tariff item 2925 11 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in or exported from China PR (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 7/34/2023-DGTR, dated the 27th November, 2024, has inter alia come to the conclusion that the cessation of countervailing duty is likely to lead to continuation or recurrence of subsidization and injury to the domestic industry and has recommended continued imposition of countervailing duty on imports of the subject goods originating in or exported from the subject country.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20, 22 and 24 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 and in supersession of the notification of the Government of India, Ministry of Finance (Department of Revenue) number 2/2019-Customs (CVD), dated the 30th August, 2019, published in the Gazette of India, Extraordinary,

Part II, Section 3, Sub-section (i) vide number G.S.R. 610(E), dated the 30th August, 2019, except as respects things done or omitted to be done before such supersession, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff items of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in or exported from the countries as specified in the corresponding entry in column (4), produced by the producers as specified in the corresponding entry in column (5), and imported into India, a countervailing duty of an amount as specified in the corresponding entry in column (6) of the said Table, namely:–

TABLE

Sl. No.	Tariff Item	Description of goods	Country of Origin/Export	Producer	Duty amount as % of CIF Value
(1)	(2)	(3)	(4)	(5)	(6)
1.	2925 11 00	Saccharin in all its forms	China PR	Any	20

2. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation. – For the purposes of this notification, –

(a) the rate of exchange applicable for the purposes of calculation of such countervailing duty shall be the rate which is specified in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), issued from time to time, in exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and the relevant date for the determination of the rate of exchange shall be the date of presentation of the bill of entry under section 46 of the said Act;

(b) "CIF value" means the assessable value as determined under section 14 of the Customs Act, 1962 (52 of 1962).

[For further details please refer the Notification]

CUSTOMS

INSTRUCTION

ADMISSIBILITY OF AIR OF DUTY DRAWBACK ON EXPORT GOODS MANUFACTURED FROM INPUTS, SOME OF WHICH ARE NON-DUTY PAID

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Instruction No. 01/2025 Customs dated 28.02.2025 instructed that it has been brought to the notice of the board that All Industry Rate of duty drawback is being denied or reduced on export goods using inputs some of which are not duty paid or are paid at concessional rate of duty.

2. In this regard, attention is invited to Board Circular No. 19/2005- Customs dated 21.03.2005 issued vide F. No. 609/13/2004-Dbk on the above subject matter wherein it was clarified that the concept of AIR of duty drawback is that the rates are determined taking into account the average duties paid on the inputs and in determining the rates, the average (weighted average) consumption of imported / indigenous inputs of a representative cross- section of exporters is taken into account and it is not open to the field formations to probe whether certain exempted inputs have been used in the manufacture of the export goods.

3. Suitable standing order may be issued to instruct the staff to follow the clarification issued under Board Circular No. 19/2005- Customs dated 21.03.2005 scrupulously.

4. The difficulties, if any, may be brought to the notice of the Board.

[For further details please refer the Instruction]

CORRIGENDUM

NOTIFICATION NO. 04/2025-CUSTOMS, DATED THE 1ST FEBRUARY, 2025 - G.S.R. 149 (E)

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Corrigendum-Notification No. 04/2025 Customs (Tariff) dated 27.02.2025 notified that In the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 04/2025-Customs, dated the 1st February, 2025, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 97 (E), dated the 1st February, 2025, at page number 7, in the table, against serial number 36, in column (3), in lines 8, 9 and 10 :-

For

“All dutiable goods imported for personal use other than those S.No. 608 of the Table appended to notification No. 50/2017-Customs, dated the 30th June, 2017”

read

“All dutiable goods imported for personal use other than those covered under S.No. 608 of the Table appended to notification No. 50/2017-Customs, dated the 30th June, 2017”.

[For further details please refer the Corrigendum]

CORRIGENDUM

NOTIFICATION NO. 26/2024-CUSTOMS (ADD), DATED THE 4TH DECEMBER, 2024 - G.S.R. 152(E)

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Notification No. 26/2024-Customs (ADD) dated 27.02.2025 notified that In the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 26/2024-CUSTOMS (ADD), dated the 4th December, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 749(E), dated the 4th December, 2024, namely :-

(i) at Page 4, in the TABLE, against S.No.1, in column (3),

for

“Textured Toughened (Tempered) Coated and Uncoated Glass”

read

“Textured Toughened (Tempered) Coated and Uncoated Glass *”;

(ii) at Page 5, after the TABLE, the following shall be added, namely: -

“*Textured Toughened (Tempered) Glass with a minimum of 90.5% transmission of thickness not exceeding 4.2 mm (including tolerance of 0.2 mm) and where at least one dimension exceeds 1500 mm, whether coated or uncoated.”

[For further details please refer the Corrigendum]

DGFT

TRADE NOTICE

DIFFICULTY IN CLOSURE OF ADVANCE AUTHORISATION DUE TO SPACE CONSTRAINTS IN THE DESCRIPTION COLUMN OF THE SHIPPING BILLS

OUR COMMENTS: The Ministry of Commerce and Industry vide Trade Notice no. 32/2024-25 dated 28.02.2025 notified that it has come to the notice of this Directorate that in the process of closure of AA through the online system, certain issues are being faced by exporters due to inability of the system to capture complete description of the export items as per the export invoice. Item description with more than 120 characters, may not completely reflected in Shipping Bills. In such cases, deficiencies are raised by RA for non-compliance of Para 4.42 (iii) of FTP 2023.

2. Therefore, it is directed that wherever such difficulties are encountered, RAs may corroborate the complete description of the export item and decide such cases on the basis of self-attested copies of GST system generated e- invoices.

3. In such cases, the aforesaid documents may be uploaded along with all the other prescribed documents for Redemption/EODC of Advance Authorisations.

4. This is issued with the approval of the DGFT.

[For further details please refer the Trade Notice]

CASE LAW

SHRI RAKESH KUMAR MANGALA AND M/S. STAR INTERNATIONAL & ANR. VERSUS THE COMMISSIONER OF CUSTOMS EXPORT & ORS: DELHI HIGH COURT

OUR COMMENTS: Delay in adjudication of SCN - After almost 12 years since issuing the impugned SCN and about 10 years after filing of the detailed reply to the same, the respective proceedings against the Petitioners were concluded - whether the delay in adjudication was justified? It has been held that the issue raised in the petition is no longer res-integra. Section 28(9) of the Act, unamended and amended, have been considered in detail by the Coordinate Benches of this Court in Swatch Group India Pvt. Ltd. [2023 (8) TMI 864 - DELHI HIGH COURT] as also M/s Vos Technologies India Pvt. Ltd. v. The Principle Additional Director General & Anr., [2024 (12) TMI 624 - DELHI HIGH COURT] where it was held that *'The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer.'*

Coming to the facts of this case, the impugned SCN dates back to 20th June, 2012. The Petitioners had made several requests for providing all the RUDs with the concerned assessing authority. The personal hearing was scheduled on several dates between July, 2012 and March, 2015. Thereafter, the Petitioners are stated to have filed their respective detailed replies to the impugned SCN. Personal hearing was conducted on 17th July, 2014 and 30th March, 2015. Despite the repeated personal hearings scheduled and conducted by the concerned adjudicating officer, the impugned SCN was not adjudicated between 2012 and 2015.

It is noted that the Mangli Impex [2016 (5) TMI 225 - DELHI HIGH COURT] decision came only on 3rd May, 2016 and the matter has been placed in the Call Book only thereafter. The impugned SCN was then taken out of the Call Book sometime in 2019 pursuant to the letter dated 15th April, 2019 issued by the Chief Commissioner, Delhi Zone.

The Customs Department has argued that the Petitioners were granted repeated opportunities for personal hearing, however, the Petitioners delayed the adjudication of the present matter by requesting for additional documents. As per the Customs Department, the delay in adjudication of the present matter is not due to any inaction on part of the assessing authority. The continued insistence of the Petitioners for additional documents coupled with the fact that the matters was put in the Call Book for long period has resulted in the delay which is beyond the control of the assessing authority - The impugned SCN, which was issued way back in 2012, due to repeated placing in the call book has not been adjudicated for so long. Repeated placing and removing from the call book is not a valid justification for non-adjudication of the impugned SCN for about 15 years. Moreover, the gaps between the said periods is also inexplicable. Hearing notices have been given to the Petitioners but there is no reason for non-adjudication of the impugned SCN for long period. Further, the Co-ordinate Bench of this Court in Vos Technologies has rejected the argument of the Customs Department that the delay in adjudication occurred solely due to the repeated request from the assessee for additional documents.

The statutory timelines for adjudication are mandatory and cannot be bypassed by administrative delays or procedural lapses. The impugned SCN dated 20th June 2012 and the Order-in-Original dated 26th March 2024 were quashed due to the delay in adjudication.

Petition allowed.

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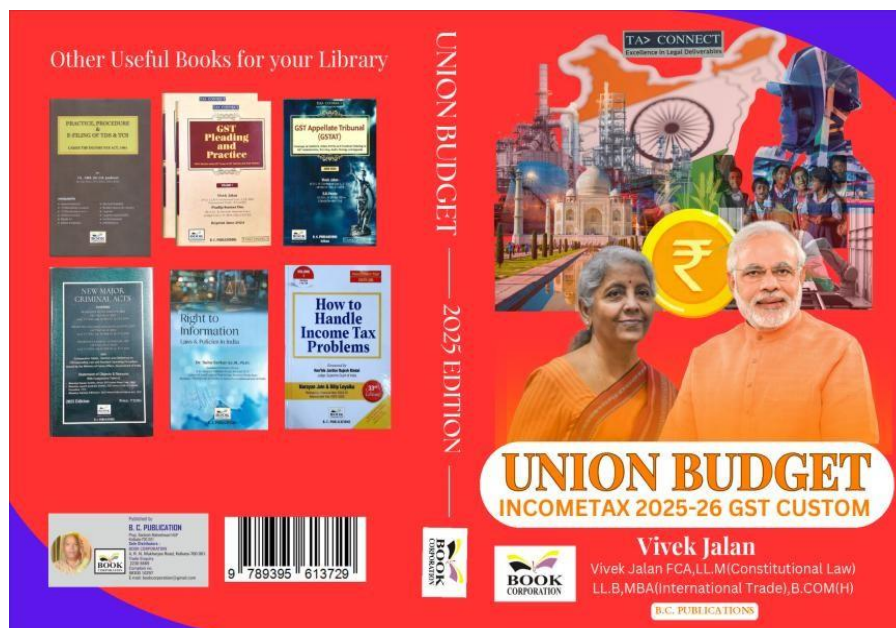
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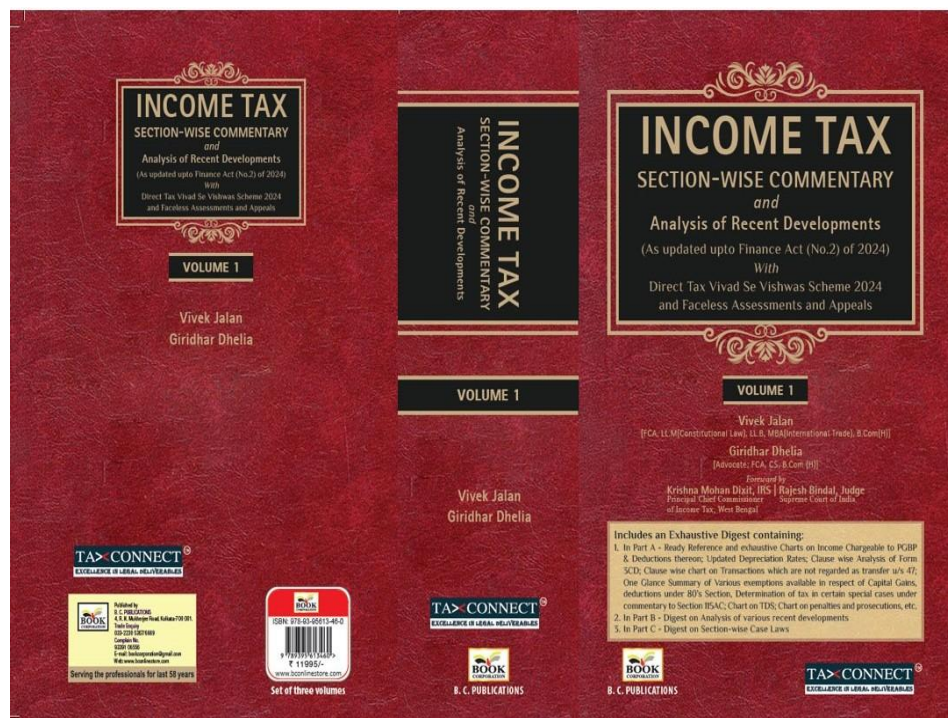
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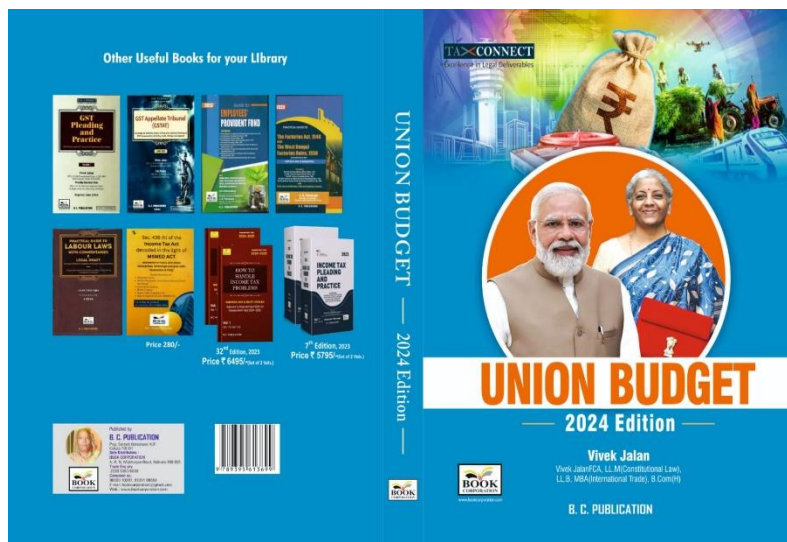
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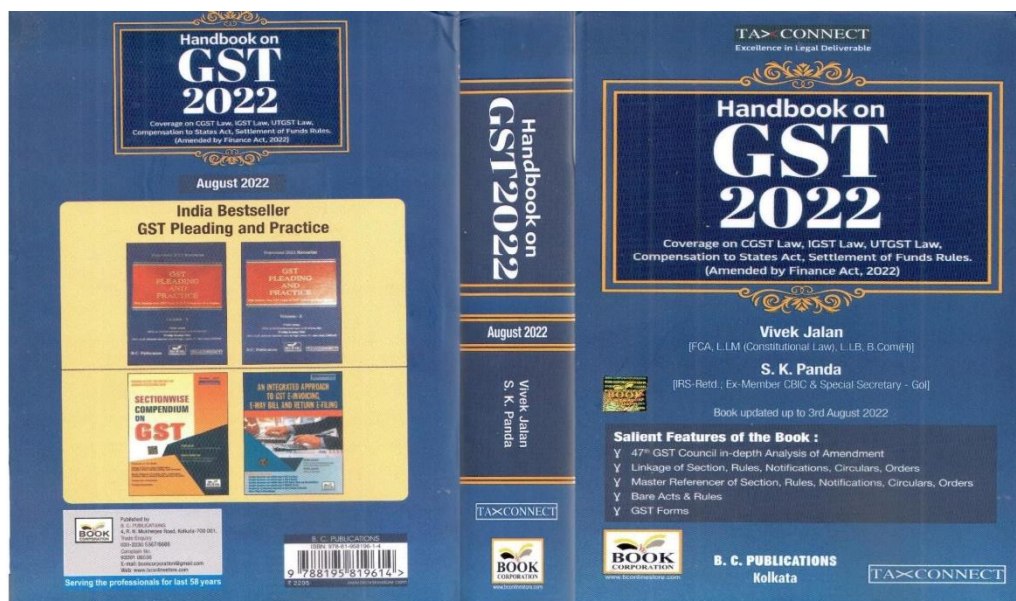
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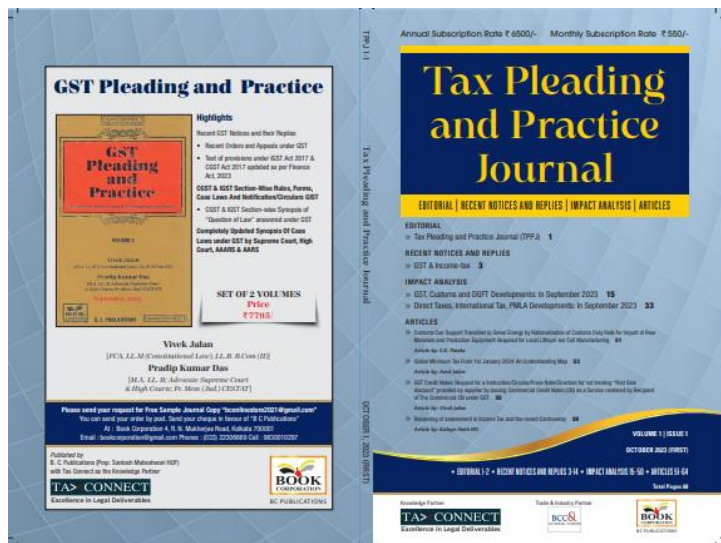
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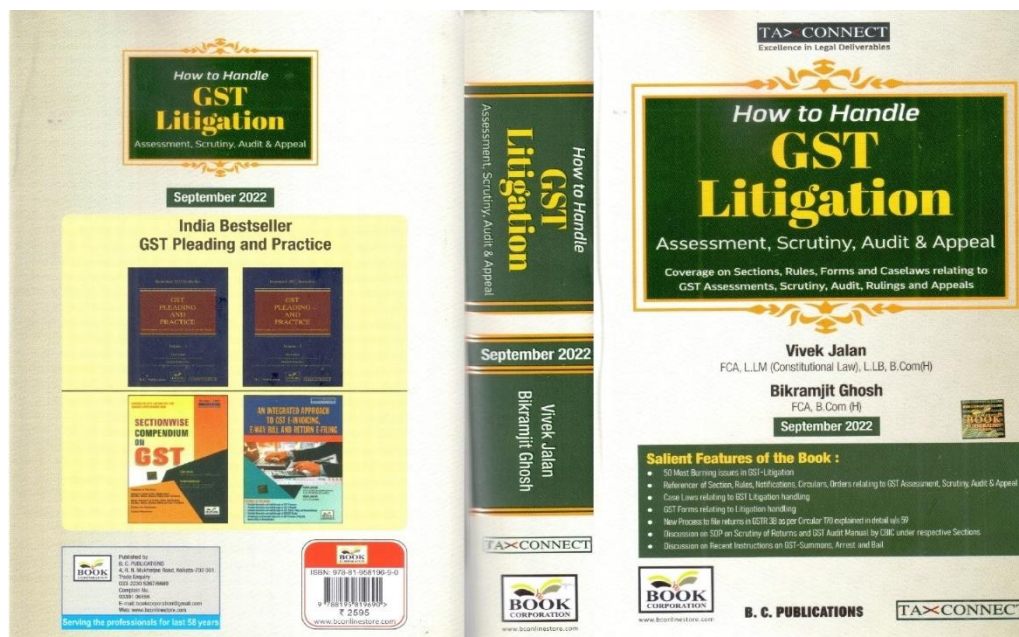
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