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EDITORIAL



Friends,

Section 194R of the Income Tax Act is came into effect from 1st July, 2022, which states deduction of tax on benefit or perquisite in respect of business or profession i.e. TDS on benefit or perquisites given. The CBDT has clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R. However, there are Potential GST disputes on insertion of Section 194R.

Below is our Analysis on various impact, issues & challenges in implementation of Section 194R, for Trade & Industry –

Interplay of Sec. 194R with GST

From the point of view of GST, although certain AARs have held that GST would be applicable on benefits/perquisites in the nature of business promotion items provided to other persons, yet the same is debatable. Critical Provisions for allowance of ITC/Non-Payment of Tax on business promotion items supplied are as under–

- The transaction is not an outward supply at all as they are not transferred/disposed off.
- The transaction are not business assets. They are not purchased for generating future economic cash.
- They are not 'gifts' as there is a business purpose for the expenditure. The expenditure is incurred to promote/generate sales. They are not voluntary but incurred due to market requirement to generate demand.

- They are at best moveable property for distribution.

- They are business expenditure like any other expenditure which are for furtherance of business.

No TDS u/s 194R in following cases::

- in case of benefit/perk per person is not more than 20,000 in a FY.
- when deductor is an Individual/HUF in business/professional with turnover/receipts in business/professional below Rs.1Cr / Rs.50 Lakhs in Last F.Y
- There must exist nexus between the business of the recipient resident & benefit provided to him. B2C benefits will not come under the purview of 194R/ 28(iv)

Issues & Challenges

- **Reimbursement** – Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession – In this case TDS u/s 194R shall be applicable if the “invoice” is in the name of the service provider.
- **Dealer Conferences** – in a case where dealer/business conference is held with the prime object to educate dealers/customers – there is no applicability of 194R.

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

Truly Yours

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TAX CALENDAR

Due Date	Form/Return/ Challan	Reporting Period	Description
31 st July	CMP-08	April-June 2022	Quarterly challan-cum-statement to be furnished by composition taxpayers under GST.
31 st July	Income Tax Return	A.Y. 2022- 23	Return of income for the assessment year 2022-23 for all assessee other than person who is liable for Audit.
31 st July	TDS Return	April-June 2022	Quarterly Statement of deduction of tax at source (TDS) for the quarter ending June 30.
31 st July	TDS Challan- cum-statement	June 2022	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194 IB, 194M

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT NOTIFIES, "ODISHA ELECTRICITY REGULATORY COMMISSION" A BODY CONSTITUTED BY THE STATE GOVERNMENT OF ODISHA U/S 10(46) OF IT ACT 1961 -

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 85/2022 dated 21.07.2022 notified In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, Odisha Electricity Regulatory Commission (PAN: AAALO0073B), a body constituted by the State Government of Odisha, in respect of the following specified income arising to that Commission, namely:-

- (a) Amount received as license fee from the licensees;
- (b) Amount received as application processing fee; and
- (c) Interest earned on Government Grants and on (a) & (b) above.

2. The provisions of this notification shall be effective subject to the conditions that Odisha Electricity Regulatory Commission, -

- (a) shall not engage in any commercial activity;
- (b) activities and the nature of the specified income remain unchanged throughout the financial years; and
- (c) shall file returns of income in accordance with the provision of clause (g) of sub-section (4C) section 139 of the Income-tax Act, 1961.

3. This notification shall be deemed to be applied for the financial year 2021-2022 and shall be applicable with respect to the financial years 2022-2023, 2023-2024, 2024-2025 and 2025-2026.

[For further details please refer the Notification]

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE PENSION FUND, NAMELY, CPPIB CREDIT INVESTMENTS VI INC.

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 86/2022 dated 21.07.2022 notified In exercise of the powers conferred by sub-clause (iv) of clause (c) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act), the Central Government hereby specifies the pension fund, namely, CPPIB Credit Investments VI Inc. (PAN: AAGCC5549K), (hereinafter referred to as the assessee) as the specified person for the purposes of the said clause in respect of the eligible investment made by it in India on or after the date of publication of this notification in the Official Gazette but on or before the 31st day of March, 2024 (hereinafter referred to as the said investments) subject to the fulfilment of the following conditions, namely:-

(i) the assessee shall file return of income, for all the relevant previous years falling within the period beginning from the date in which the said investment has been made and ending on the date on which such investment is liquidated, on or before the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

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

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

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

(v) the assessee shall continue to be regulated under the law of the Government of Canada;

(vi) the assessee shall be responsible for administering or investing the assets for meeting the statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security,

INCOME TAX

employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be;

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

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

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

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

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

[For further details please refer the Notification]

NOTIFICATION

PROCEDURE OF PAN APPLICATION AND ALLOTMENT THROUGH SIMPLIFIED PROFORMA FOR INCORPORATING LIMITED LIABILITY PARTNERSHIPS (LLPS) ELECTRONICALLY (FORM: FILLIP) OF MINISTRY OF CORPORATE AFFAIRS

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 04/2022 dated 26.07.2022 notified Proviso to sub-rule (1) to rule 114 of Income Tax Rules, 1962 notified vide notification G.S.R. No. 117(E) dated 9/02/2017, states that:

"an applicant may apply for allotment of permanent account number through a common application form notified by the Central Government in the Official Gazette, and the Principal Director General of Income Tax (Systems) or Director General of Income-tax (Systems) shall specify the classes of persons, forms and format along with procedure for safe and secure transmission of such forms and formats in relation to furnishing of Permanent Account Number (PAN)".

2. A Common Application Form (CAF) in the form of Simplified Proforma for incorporating Limited Liability Partnership (LLP) (Form - FiLLiP) has been notified by the Ministry of Corporate Affairs vide notification G.S.R. 173 (E), dated 4/03/2022.

3. In exercise of the powers delegated by the Central Board of Direct Taxes vide notification G.S.R. No. 117(E) dated 9/02/2017, the Director General of Income-tax (Systems) lays down the classes of persons, forms, format and procedure for Permanent Account Number (PAN) as under:

S. No.	Particulars	
1.	Classes of persons to which FiLLiP form will apply	Newly incorporated Limited Liability Partnership (LLP)
2.	Applicable form	Simplified Proforma for incorporating Limited Liability Partnerships (Form : FiLLiP) of Ministry of Corporate Affairs (MCA) notified vide notification G.S.R. 173 (E), dated 4 th March, 2022
3.	Procedure	Application for allotment of Permanent Account Number (PAN) will be filed in FiLLiP form using Digital Signature of the applicant as specified by the Ministry of Corporate Affairs. After generation of Limited Liability Partnership Identification Number (LLPIN), MCA will forward the data in form 49A to the Income-tax Authority under its Digital signature, Class 2/Class 3 of MCA.
4.	Format	Xml

[For further details please refer the Notification]

GST

CASE LAW

SEEKING GRANT OF BAIL-WRONGFUL AVAILMENT OF INPUT TAX CREDIT-FAKE FIRMS OR NOT-COMPOUNDING OF OFFENCES (SUBODH KUMAR GARG VS UNION OF INDIA)

Our Comments It was held that the court finds that documentary evidences collected by the department has already been placed before the court. Applicant has been found to be dealing with 18 non existent firms and their details have been furnished in the complaint. Their registrations have already been cancelled. The applicant's case is that at the time of business with the aforesaid firms they were duly registered and allegation that firms were fake is yet to be proved. It has not been explained how applicant will tamper with the evidence or influence the witnesses. Merely because of seriousness and magnitude economic affect the bail cannot be denied to the accused. Applicant is not stated to have any criminal antecedents. He is not shown to be habitual offender.

Section 138 of the Act makes provision for compounding of offences under the Act, even after the institution of prosecution, on payment by the person accused of the offence, such compounding amount in such manner as may be prescribed. The compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences, on payment of compounding amount as may be determined by the commissioner, the criminal proceeding already initiated in respect of the said offence shall stand abated - the Commissioner is empowered to recover the due amount and propose for abating the proceedings and as the trial will take its own time to conclude, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

Keeping in view of evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of DATARAM SINGH VERSUS STATE OF UTTAR PRADESH AND ANR.] and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail.

Let the applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to conditions imposed - The bail application is allowed.

Let the applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

1. The applicant will surrender his passport, if any, and not to leave the country without permission of the trial court concerned. In case, he has no passport he will file affidavit to this effect before this court.
2. The applicant will furnish bank guarantee of Rs. 50 lacs in favour of the opposite party which shall be forfeited in favour of opposite party in case of violation of any of conditions imposed in this order.
3. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
4. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.
5. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
6. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail of applicant and forfeiture of the amount of Rs. 50 lacs bank guarantee whereof shall be furnished.

FEMA

CASE LAW

LEVY OF PENALTY POST COMPOUNDING ORDERS-POWER TO COMPOUND CONTRAVENTION STERLITE INDUSTRIES (INDIA) LIMITED AND OTHERS VS. UNION OF INDIA: BOMBAY HIGH COURT

Our Comments: It was held that, The compounding order is passed on 20.11.2008 and the adjudication order levying penalty is passed on 21.11.2008, i.e., one day after the passing of the compounding order. Sub-section (2) of section 15 as alluded to hereinabove clearly envisages a position that once a contravention has been compounded under sub-section (1) (which in the present case has been compounded on 20.11.2008), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing the contravention.

We cannot hold petitioners responsible for contravention once the compounding orders have been passed. We have noted that there is a gap of “one day” between the passing of the two sets of orders, i.e., compounding orders and adjudicating order. Be that as it may, petitioners cannot be faulted and held liable for contravention once the compounding orders are passed by the Compounding Authority. That is the mandate of the statute.

As also fairly conceded that respondents though aggrieved with the five compounding orders, have not challenged the said orders. If respondents were indeed aggrieved with the compounding orders, it was open for respondents to challenge the said orders. Having not done so, respondents cannot justify passing the adjudication order once the compounding orders have been passed and complied with by petitioners. Passing of the adjudication order after the offence has been compounded, is thus contrary to the statutory provisions discussed hereinabove, is not maintainable and thus without jurisdiction.

The impugned adjudication order passed by respondent No.1 is an appealable order and petitioners should be relegated to the alternate remedy of filing the statutory appeal under section 19 of the said Act before the Appellate Tribunal. This submission deserves to be rejected at the threshold. As held by us, the impugned adjudication order

has been passed without jurisdiction in view of the fact that the offence contravened by petitioners have been compounded by the statutory Compounding Authority before the passing of the impugned order. Hence, we reject this submission advanced by Mr. Patil.

Writ Petition stands allowed in terms of prayer clause “c” which reads as under:

“c) that a writ in the nature of Mandamus may be issued commanding the Respondents to act according to law and/or cancel and/or withdraw and/or rescind the impugned order dated 21st November, 2008 passed by the Respondent No.1 and the Show Cause Notice dated 11th June, 2008 issued by the Respondent No.1 and all proceedings there under and/or in pursuance thereof.”

CUSTOMS

NOTIFICATION

SEEKS TO AMMEND NOTIFICATION REGARDING REDUCTION OF AIDC ON CRUDE SOYA, SUNFLOWER, AND PALM OILS TILL 31.03.2022

OUR COMMENTS: The Ministry of Finance (department of revenue) vide notification no 44/2022-Customs dated 23.07.2022 In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 49/2021-Customs, dated the 13th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 734(E), dated the 13th October, 2021, namely :-

In the said notification, in paragraph 2, for the figures, letters and word "30th September 2022", the figures, letters and words "31st March 2023. Provided that nothing contained in this notification shall apply to the goods specified against serial numbers 1, 2 and 3 of the Table above on or after the 1st day of October 2022" shall be substituted.

[For further details please refer the Notification]

NOTIFICATION

FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, ARECA NUT, GOLD AND SILVER - 65/2022 - CUSTOMS - NON TARIFF

OUR COMMENTS: The Ministry of Finance (department of revenue) vide notification no 65/2022- CUSTOMS (N.T.) dated 29.07.2022 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 (USD Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1067
2	1511 90 10	RBD Palm Oil	1080
3	1511 90 90	Others – Palm Oil	1074
4	1511 10 00	Crude Palmolein	1082
5	1511 90 20	RBD Palmolein	1085
6	1511 90 90	Others – Palmolein	1084
7	1507 10 00	Crude Soya bean Oil	1328
8	7404 00 22	Brass Scrap (all grades)	4416

TABLE-2

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (USD)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the <u>Notification No. 50/2017-Customs dated 30.06.2017</u> is availed	565 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the <u>Notification No. 50/2017-Customs dated</u>	629 per kilogram

CUSTOMS

		30.06.2017 is availed	
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. 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.	629 per kilogram
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.	565 per 10 grams

TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (USD Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	7065 (i.e., no change)"

[For further details please refer the Notification]

PUBLIC NOTICE

AMENDMENT IN STANDARD INPUT OUTFIT NORMS (SION) OF ENGINEERING PRODUCT GROUP SUSPENSION OF SIONS C-594, C-791 TO C-796 AND C-831

OUR COMMENTS: Ministry of Commerce and Industry vide public notice no. 19/2015-2020 dated 27.07.2022 notified In exercise of the powers conferred under Paragraph 1.03 & 2.04 of the Foreign Trade Policy (FTP), 2015-2020, as amended from time to time, the Director General of Foreign Trade hereby makes the following amendments in the Standard Input Output Norms (SION):

2. The Standard Input Output Norms (SIONs) as appearing at the following serial numbers corresponding to the export item are suspended with immediate effect:

Sl. No.	Export Item
C594	Carbon/ Alloy Steel Seamless Tubes (Cold Finished)
C791	Seamless Stainless Steel Tubes (Cold Finished)
C792	Seamless Stainless Steel Tubes (Cold Finished) (Stainless steel grade-304/304L/321)
C793	Seamless Stainless Steel Tubes (Cold Finished) (Stainless steel grade-316/316L/316 TI)
C794	Seamless Stainless Steel Tubes/ Pipes (Hot Finished)
C795	Seamless Stainless Steel Tubes (Hot Finished) (Stainless steel grade -304/304L/321)
C796	Seamless Stainless Steel Tubes (Hot Finished) (Stainless steel grade -316/316L/316TI)
C831	Stainless Steel Seamless Tubes/Pipes (Cold Finish)

3. An exporter desirous of obtaining Advance Authorisation for export of above said products may apply under Para 4.07 of Handbook of Procedures 2015-20.

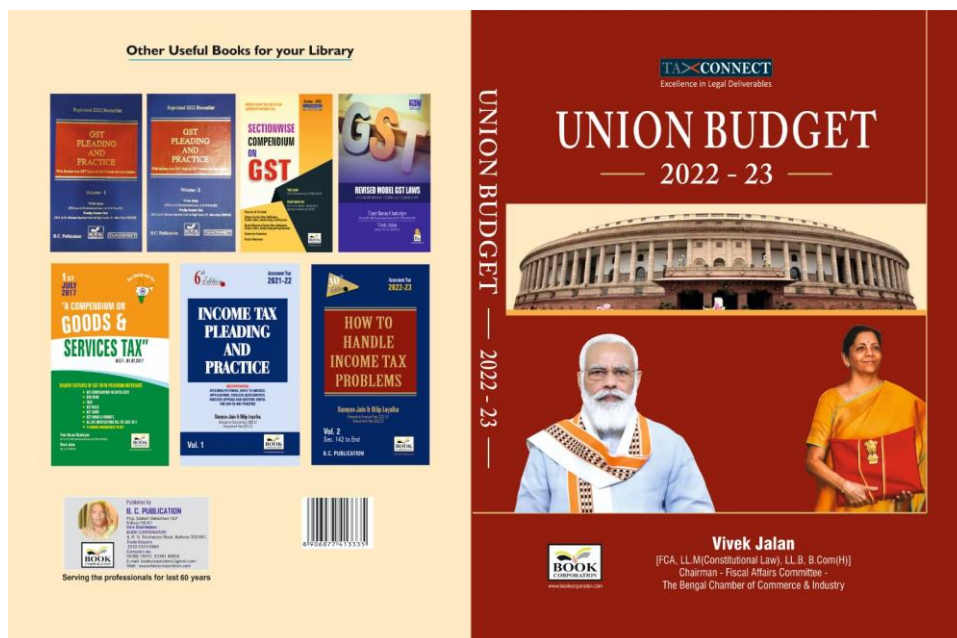
Effect of this Public Notice:

Standard Input Output Norms (SIONs) appearing under C-594, C-791 to C-796 and C-831 are suspended with immediate effect.

[For further details please refer the Notification]

:IN STANDS

UNION BUDGET 2022-23



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5. **Memorandum**
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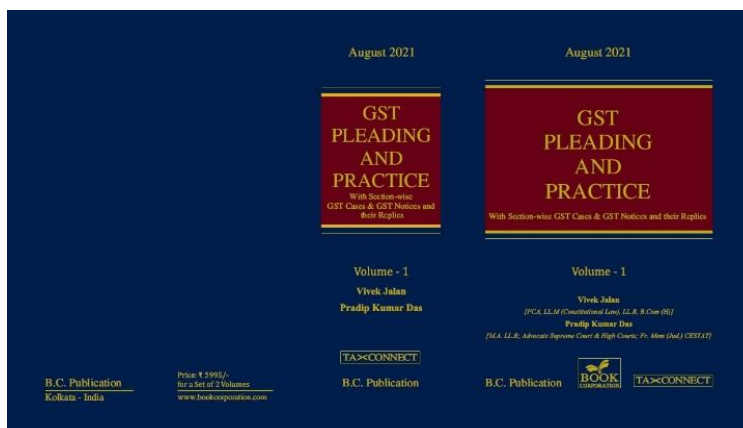
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:IN STANDS

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



ABOUT THE BOOK: This publication includes:

1. 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
5. CGST & IGST Section-wise Synopsis of "Question of Law" answered under GST
6. Completely Updated Synopsis of Case Laws under GST by Supreme Court, High Court, AAARs & AARs

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