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EDITORIAL



Friends,

The GST-Investigation Wing of CBIC has issued a guideline reg. issuance of summons under section 70 of the CGST Act on 17th August 2022. There are 3 grievances for which this Instruction has been issued:

- i) GST Summon is issued in a routine manner;
- ii) GST Summon for calling top officials of a Company;
- iii) GST Summon for requiring documents already uploaded on the Portal;

As per Section 70 (1) of the CGST Act, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908 (5 of 1908). As per sub-section (2) of Section 70, securing such documentary and oral evidence under the said legal provision shall be deemed to be a “judicial proceedings” within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

Accordingly, CBIC issued the following guidelines must be followed in matters related to investigation under CGST:

- A. Officer to **judiciously decide** when to issue summons or notices for collection of documents.
- B. Superintendent to summon only after written/oral/telephonic **permission from AC/DC**. In case of Oral/Telephonic permission, the same to be regularized.
- C. **“Reasons for Issuance of Summons”** to be in writing.

D. **Appearance/Non-appearance** to be documented

E. **DIN** should be mandatorily affixed in all communications

F. **Summoning officer should be present** at the time of summon

G. Summon should be **“serviced”**

H. No summon for requiring **already uploaded documents**

I. Person summoned should know whether he is **accused/Co accused/witness**

J. **Senior officials** like CMD/MD/CEO/CFO/similar officers should be summoned

- i. Not in **1st Instance**
- ii. When they are involved in **‘decision making’**
- iii. When such decision making has led to a **loss in revenue**

K. **Minimum 3 summons** before invoking Sec 172/174 of IPC for person absconding/non complying to summons.

Since summons are issued for mainly gather of evidence and documents, information and things relevant for the case. We recommend our readers to ensure strict and robust compliance under GST since Non Compliance of summons would be viewed ‘seriously’ by the authorities.

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
25 th Aug	PMT-06	July 22	Challan for depositing GST by the taxpayers who have opted for quarterly filing of GSTR-3B under QRMP Scheme for Jul-Sept 2022.

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE SOVEREIGN WEALTH FUND, NAMELY, INQ HOLDING LLC

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 95/2022 dated 16.08.2022 notified In exercise of powers conferred by sub-clause (vi) of clause (b) 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 sovereign wealth fund, namely, INQ Holding LLC (PAN: AADCI5071P), (hereinafter referred to as "the assessee") as the specified person for the purposes of the said clause in respect of the 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 "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 get its books of account audited for the previous years referred to in clause (i) by an accountant specified in the Explanation below sub-section (2) of section 288 of the Act and furnish the Audit Report in the format annexed as Annexure to this notification herewith at least one month prior to the due date specified for furnishing the return of income under sub-section (1) of section 139 of the Act;

(iii) the assessee shall furnish a quarterly statement within one month from the end of each quarter electronically in Form II as annexed to Circular No 15 of 2020, dated the 22nd July, 2020 with F. No. 370142/26/2020-TPL, issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Tax Policy and Legislation Division), in respect of each investment made by it during the said quarter;

(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 owned and controlled, directly or indirectly, by the Government of Qatar, and at no point of time should any other person have any ownership or control, directly or indirectly, in the assessee;

(vi) the assessee shall continue to be regulated under the laws of the Government of Qatar;

(vii) the earnings of the assessee shall be credited either to the account of the Government of Qatar or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person, barring any payment made to creditors or depositors for loan taken or borrowing [as defined in sub-clause (a) of clause (ii) of Explanation 2 to clause (23FE) of section 10 of the Act] made for purposes other than for making investment in India;

(viii) the assessee shall not have any loan or borrowing [as defined in sub-clause (a) 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;

(ix) the asset of the assessee shall vest in the Government of Qatar upon dissolution, barring any payment made to creditors or depositors for loan taken or borrowing for purposes other than for making investment in India; and

(x) 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 any 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 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]

INCOME TAX

NOTIFICATION

RULE-17 OF INCOME-TAX RULES, 1962 SUBSTITUTED- EXERCISE OF OPTION ETC. UNDER EXPLANATION 3 TO THE THIRD PROVISO TO CLAUSE (23C) OF SECTION 10 OR SECTION 11 OF INCOME TAX ACT.

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 96/2022 dated 17.08.2022 notified In exercise of the powers conferred under clause (a) of Explanation 3 to the third proviso to clause (23C) of section 10 and clause (a) of sub-section (2) of section 11 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. Short title and commencement.

(1) These rules may be called the Income-tax (25th Amendment) Rules, 2022.

(2) They shall come into force from 1st day of April, 2023.

2. In the Income-tax Rules, 1962 (hereinafter referred to as principal rules), for rule 17, the following rule shall be substituted, namely:-

“17. Exercise of option etc. under Explanation 3 to the third proviso to clause (23C) of section 10 or section 11.—

(1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 of the Act in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under clause (a) of the Explanation 3 to the third proviso to clause (23C) of section 10 of the Act or under clause (a) of sub-section (2) of section 11 of the Act or under the said provision as applicable under clause (21) of section 10 of the Act shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

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

(i) specify the procedure for filing of Forms referred to in sub-rule (3);

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said Forms; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.”.

[For further details please refer the Notification]

NOTIFICATION

CENTRAL GOVERNMENT SPECIFIES THE PENSION FUND, NAMELY CPPIB INDIA PRIVATE HOLDINGS INC. AS THE SPECIFIED PERSON UNDER SUB-CLAUSE (IV) OF CLAUSE (C) OF THE EXPLANATION 1 TO CLAUSE (23FE) OF SECTION 10 OF THE INCOME TAX ACT 1961

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 97/2022 dated 17.08.2022 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 India Private Holdings Inc. (PAN: AAICC2378J), (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:-

INCOME TAX

(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, 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

RULE 40G OF INCOME TAX RULES 1962 INSERTED TO NOTIFY FORM NO. 29D FOR CLAIMING REFUND U/S 239A (REFUND FOR DENYING LIABILITY TO DEDUCT TAX IN CERTAIN CASES).

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Circular No. 98/2022 dated 17.08.2022 notified In exercise of the powers conferred by sub-section (1) of section 239A 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 Income-tax Rules, 1962, namely :-

1. Short title and commencement.-

(1) These rules may be called the Income-tax (26th Amendment) Rules, 2022.

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

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules),—

(I) in Part VIII, before rule 41, the following rule shall be inserted, namely:-

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“40G. Refund claim under section 239A.—(1) A claim for refund under section 239A shall be made in Form No. 29D.

(2) The claim under sub-rule (1) shall be accompanied by a copy of an agreement or other arrangement referred to in section 239A.

(3) The claim under sub-rule (1) may be presented by the claimant himself or through a duly authorised agent.”;

(II) in rule 41, in sub-rule (1), after the words and figures “under Chapter XIX” the brackets, words and figures “(other than under section 239A)” shall be inserted.

3. In the principal rules, in Appendix-II, after the Form No. 29C, the Form 29D shall be inserted.

[For further details please refer the Notification]

NOTIFICATION

PROVISIONS OF SUB-SECTION (1G) OF SECTION 206C SHALL NOT APPLY TO AN INDIVIDUAL WHO IS NOT A RESIDENT IN INDIA IN TERMS OF CLAUSE (1) AND CLAUSE (1A) OF SECTION 6 OF THE ACT AND DOES NOT HAVE PAN

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 99/2022 dated 17.08.2022 notified in exercise of the powers conferred by clause (ii) to fifth proviso to sub-section (1G) of section 206C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as “Act”) and in suppression of the notification of the Government of India, Central Board of Direct Taxes published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 1494(E), dated the 30th March 2022, except as respects things done or omitted to be done before such suppression, the Central Government hereby notifies that the provisions of sub-section (1G) of section 206C of the Act shall not apply to a person (being a buyer) who is a non-resident in terms of section 6 of the Act and who does not have a permanent establishment in India.

2. This notification shall come into force with effect from the date of publication of this notification in the Official Gazette.

[For further details please refer the Notification]

NOTIFICATION

RULE 128(9) - FOREIGN TAX CREDIT OF THE INCOME TAX RULES 1962 SUBSTITUTED.

OUR COMMENTS: The Central Board of Direct Taxes (CBDT) vide Notification No. 100/2022 dated 18.08.2022 in exercise of the powers conferred by clause (ha) of sub-section (2) and sub-section (4) of 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. Short title and commencement.-

(1) These rules may be called the Income-tax (27th Amendment) Rules, 2022.

(2) They shall be deemed to have come into force from 1st day of April, 2022.

2. In the Income-tax Rules, 1962, in rule 128, for sub-rule (9) the following sub-rule shall be substituted, namely:-

“(9) The statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) shall be furnished on or before the end of the assessment year relevant to the previous year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such assessment year has been furnished within the time specified under sub-section (1) or sub-section (4) of section 139:

Provided that where the return has been furnished under sub-section (8A) of section 139, the statement in Form No. 67 referred to in clause (i) of sub-rule (8) and the certificate or the statement referred to in clause (ii) of sub-rule (8) to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished.”.

NOTE: This amendment is effective from the 1st day of April, 2022 so that it applies to all the claims of foreign tax credit furnished during the financial year 2022-2023.

[For further details please refer the Notification]

GST

INSTRUCTION

GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017 - GST

OUR COMMENTS: The GST-Investigation Wing of CBIC has issued INSTRUCTION NO. 02/2022-23 (GST-Investigation) dated 17-08-2022 reg. GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CGST ACT, 2017.

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause in calculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

2. Board has examined the above-mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws i.e. Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.

3. Conditions precedent to arrest:

3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of sub-section (1),

or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of *mens rea* / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and

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prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.

4. Procedure for arrest

4.1 Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) read with section 69(3) of CGST Act relating to arrest and the procedure thereof, must be adhered to. It is, therefore, advised that the Pr. Commissioner/Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

4.2 The arrest memo must be in compliance with the directions of Hon'ble Supreme Court in the case of D.K Basu vs State of West Bengal reported in 1997 (1) SCC 416 (see paragraph 35). Format of arrest memo has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019. The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition,

4.2.1 The grounds of arrest must be explained to the arrested person and this fact must be noted in the arrest memo;

4.2.2 A nominated or authorized person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;

4.2.3 The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment.

4.3 A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event when there are several arrests in a single case.

4.4 Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Any lapse in this regard will be viewed seriously.

4.5 Further there are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:

4.5.1 A woman should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure, 1973.

4.5.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female, then such an examination shall be made only by or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

4.5.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

4.5.4 Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.

5. Post arrest formalities

5.1 The procedure is separately outlined for the different categories of offences, as listed in sub-section(4) and (5) of Section 132 of the CGST Act, 2017, as amended:

5.1.1.1 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017, the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be

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informed in writing to the arrested person and also on telephone to the nominated person of the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.

5.1.1.2 The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, inter-alia, on the amount of tax involved. It has to be ensured that the amount of Bail bond /Surety should not be excessive and should be commensurate with the financial status of the arrested person.

5.1.1.3 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. If necessary, the arrested person may be handed over to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.

5.1.2 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

5.2 Formats of the relevant documentation i.e. Bail Bond in the Code of Criminal Procedure, 1973 (2 of 1974) and the Challan for handing over to the police should be followed.

5.3 After arrest of the accused, efforts should be made to file prosecution complaint under Section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within a definite timeframe.

5.4 Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc. The money/ instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/ documents received as surety are kept valid till the bail is discharged.

6. Reports to be sent

6.1 Pr. Director-General (DGGI)/ Pr. Chief Commissioner(s)/ Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in Annexure-I. To maintain an all India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi in the format, hereby prescribed in Annexure-II, by the 5th of the succeeding month. The monthly reports received from the formations shall be compiled by DGGI, Hqrs. And a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 10th of every month.

6.2 Further, all such reports shall be sent only by e-mail and the practice of sending hard copies to the Board should be stopped with immediate effect.

7. The field formations are hereby directed to circulate these guidelines/instructions to all the formations under their charge for strict compliance. Difficulties, if any, in implementation of the aforesaid guidelines/instructions may be brought to the notice of the Board.

[For further details please refer the instruction]

GST

INSTRUCTION

GUIDELINES ON ISSUANCE OF SUMMONS UNDER SECTION 70 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 - REG

OUR COMMENTS: The GST-Investigation Wing of CBIC has issued INSTRUCTION NO. 03/2022-23 (GST-Investigation) dated 17-08-2022 reg. GUIDELINES ON ISSUANCE OF SUMMONS UNDER SECTION 70 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017.

It has been brought to the notice of the Board that in certain instances, summons under Section 70 of the Central Goods and Services Tax Act, 2017 (the CGST Act) have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/ documents. Besides, summons have also been issued to call for statutory records viz. GSTR-3B, GSTR-1 etc., which are available online in the GST portal.

2. As per Section 70 (1) of the CGST Act, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908 (5 of 1908). As per sub-section (2) of Section 70, securing such documentary and oral evidence under the said legal provision shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860). While issuing of summons is one of the instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., however, it needs to be ensured that exercise of such power is done judiciously and with due consideration. Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice. Previously in respect of legacy laws, the Board has sensitized the officers regarding use of power of issuance of summons diligently. However, Board finds it necessary to issue fresh guidelines under CGST.

3. Accordingly, Board desires that the following guidelines must be followed in matters related to investigation under CGST:

(i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

(ii) Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.

(iii) In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.

(iv) Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co-accused or as witness.

(v) Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.

(vi) Senior management officials such as CMD/ MD/ CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.

(vii) Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019.

GST

(viii) The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

(ix) All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption so available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.

(x) Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

4. These instructions may be brought to the notice of all the field offices/formations under your charge for strict compliance. Non-observance of the instructions will be viewed seriously. Difficulties, if any, in implementation of the aforesaid instructions may be brought to the notice of the Board.

[For further details please refer the instruction]

FEMA

CASE LAW

OFFENCE UNDER FERA-NON-REALISATION OF PAYMENT TOWARDS EXPORTED GOODS – “REASONABLE STEPS” TO BE TAKEN FOR SECURING THE SALE PROCEEDS OF EXPORTS OR NOT? - DELHI HIGH COURT

OUR COMMENTS: The Hon’ble High Court held that concerned buyer in France became bankrupt and therefore, some of the export proceeds against the said consignments could not be realized. Any person effecting an export of goods is also responsible, rather duty bound, to also effect the securing of proceeds from such export/sale. The only exception, as per the language of the provision, is permission from the RBI, which if obtained may lead to granting of the leverage of not securing the proceeds within the stipulated and prescribed period. Further, sub-section 3 makes a presumption against the person who has not been able to secure the proceeds from exports that he/she has not taken all reasonable steps so as to recover the amount to be realized from the proceeds of sale. The purpose behind these provisions becomes clearer when seen from the standpoint of the legislature and its intention and purpose of bringing into the Act into existence

It is evident from the objective, as specified in the preamble of the Act, that the need at the time of enactment of the Act was to accommodate trade deficit with the aim to also conserve foreign exchange resources in the Country. The purpose behind the Act was to ease out the foreign exchange crunch that the Country was going through. The objective, therefore, was to make such enabling provisions to facilitate due, proper and timely realization of the amount that is accrued by foreign buyer towards goods exported and to also facilitate regularized foreign exchange.

Whether the steps taken by the appellant were ‘reasonable steps’ as have been stipulated under Section 18(3) of the FERA? - There are no established principles or guidelines laid down by law to the question as to what amounts to reasonable steps under Section 18(3) of the FERA, and therefore, the same has to be established in light of the facts and circumstances of each case.

In the instant matter, the appellant upon non-realization of payment towards exported goods made attempts to communicate with the buyer in France. The following communications were made by the appellant, as have been enlisted in her reply dated 26th March, 2004, to the Show Cause Notice by the respondent no. 2/ED

As it is found that the appellant undertook the basic and primary measures of contacting and communicating with the foreign buyers and approaching the RBI after the lapse of the stipulated time period, however, these fundamental steps in themselves were not sincere, serious and sufficient attempts to effectively cause the recovery of the proceeds of sale. Another relevant factor to be considered is that the Appellate Tribunal reduced the penalty imposed upon the appellant by about 60 percent, that is from Rs. 25,00,000/- to Rs. 15,00,000/-, which in itself is a relief granted to the appellant despite having been found guilty of contravening the provisions of the FERA.

In light of the facts and circumstances, contentions raised, arguments advanced and judgments cited, it is found that there is no error in the impugned order dated 30th August, 2016 passed by the Appellate Tribunal in Appeal No. 138/2007. The Tribunal has rightly imposed the penalty upon the appellant and this Court does not find any substantial ground or cogent reason to invoke its extraordinary jurisdiction and interfere with the said order. Accordingly, the instant Criminal Appeal is dismissed.

CUSTOMS

NOTIFICATION

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

OUR COMMENTS: The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide notification no 68/2022 -CUSTOMS (N.T.) dated 12.08.2022 notified 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	1035
2	1511 90 10	RBD Palm Oil	1082
3	1511 90 90	Others – Palm Oil	1059
4	1511 10 00	Crude Palmolein	1087
5	1511 90 20	RBD Palmolein	1090
6	1511 90 90	Others – Palmolein	1089
7	1507 10 00	Crude Soya bean Oil	1593
8	7404 00 22	Brass Scrap (all grades)	4838

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 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	579 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 Notification No. 50/2017-Customs dated 30.06.2017 is availed	668 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	668 per kilogram

CUSTOMS

		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.	
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	579 per 10 grams

		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.	
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TABLE-3

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6853"

2. This notification shall come into force with effect from the 13th day of August, 2022.

[For further details please refer the Notification]

NOTIFICATION

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

OUR COMMENTS: The Ministry of Finance (Central Board of Indirect Taxes and Customs) vide Notification No. 70/2022 -Customs (N.T.) dated 18.08.2022 In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No.66/2022-Customs (N.T.), dated 4th August, 2022 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 August, 2022, be the rate mentioned against it in the

CUSTOMS

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	56.45	54.10
2.	Bahraini Dinar	217.95	204.85
3.	Canadian Dollar	62.70	60.60
4.	Chinese Yuan	11.90	11.55
5.	Danish Kroner	11.10	10.70
6.	EURO	82.55	79.55
7.	Hong Kong Dollar	10.35	10.00
8.	Kuwaiti Dinar	267.75	251.60
9.	New Zealand Dollar	51.35	49.05
10.	Norwegian Kroner	8.35	8.05
11.	Pound Sterling	97.65	94.35
12.	Qatari Riyal	22.55	20.95
13.	Saudi Arabian Riyal	21.90	20.55
14.	Singapore Dollar	58.60	56.65
15.	South African Rand	4.95	4.65
16.	Swedish Kroner	7.80	7.55

17.	Swiss Franc	85.35	82.15
18.	Turkish Lira	4.55	4.30
19.	UAE Dirham	22.35	21.00
20.	US Dollar	80.50	78.80

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	60.05	58.10
2.	Korean Won	6.25	5.8

DGFT

NOTIFICATION

AMENDMENT IN MINIMUM REGISTRATION TIME PERIOD OF NON-FERROUS METAL IMPORT MONITORING SYSTEM (NFMIMS)

OUR COMMENTS: Ministry of Commerce and Industry vide Notification no. 26/2015-2020 dated 10.08.2022 notified In exercise of powers conferred by Section 3 & 9 of FT (D&R) 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 No.03 (c) of Chapter- 74, and Policy Condition No. 01 (c) of Chapter-76 of Schedule-I (Import Policy) of ITC (HS), 2022:

Existing Policy Condition	Revised Policy Condition
The Non-ferrous metal Import Monitoring System (NFMIMS) shall require importers to submit advance information in an online system for import of items in the Annexure-I (for copper) and Annexure-II (for aluminum) and obtain an automatic Registration Number by paying a registration fee of Rs. 500/-. The importer can apply for registration not earlier than 60th day and not later than 5th day before the expected date of arrival of import consignment. The automatic number thus granted shall remain valid for a period of 75 days.	The Non-ferrous metal Import Monitoring System (NFMIMS) shall require importers to submit advance information in an online system for import of items in the Annexure-I (for copper) and Annexure-II (for aluminum) and obtain an automatic Registration Number by paying a registration fee of Rs. 500/-. The importer shall apply for registration before the arrival of import consignment. Registration can be applied not earlier than 60th day before the expected date of arrival. The automatic number thus granted shall remain valid for a period of 75 days.

2. Effect of the Notification: The requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under NFMIMS has been abolished/made zero.

This issues with the approval of Minister of Commerce & Industry.

[For further details please refer the Notification]

NOTIFICATION

AMENDMENT IN POLICY CONDITION OF SL.NO. 55 & 57, CHAPTER 10 SCHEDULE-2, ITC(HS) EXPORT POLICY, 2018

OUR COMMENTS: Ministry of Commerce and Industry vide Notification no. 27/2015-2020 dated 17.08.2022 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 of the Foreign Trade Policy, 2015-20, the Central Government hereby makes the following amendment to the Notification No. 61/2015-2020 dated 23.03.2022 by amending by amending the policy condition at Sl. No. 55 and 57, Schedule 2 of ITC (HS) Export Policy, 2018 for export of rice (Basmati and Non-Basmati).

2. The following policy conditions shall be amended/added to the existing entries of Chapter 10 at Sl. No. 55 and 57:-

S.No	ITC (HS) Code	Item Description	Export Policy	Present Policy Condition	Revised Policy Condition
55	10062000	Non-Basmati Rice	Free	• Export to EU Member States and European countries namely United Kingdom, Iceland, Liechtenstein, Norway and Switzerland permitted subject to issuance of Certificate of Inspection by Export Inspection Council/Export Inspection Agency'.	Export to EU Member States and European countries namely United Kingdom, Iceland, Liechtenstein, Norway and Switzerland permitted subject to issuance of Certificate of Inspection by Export Inspection Council/Export Inspection Agency'
	100630				
	10063010				
	10063090				
	10064000				

DGFT

				Certificate of Inspection by Export Inspection Council / Export Inspection Agency shall be mandatory for export to remaining European countries with effect from 1st July, 2022	Council/ Export Inspection Agency shall be mandatory for export to remaining European countries with effect from 1st January, 2023
57	1006	Basmati Rice (Dehusked (Brown), semi milled, milled both in either par-boiled or raw condition.	Free	• Export to EU Member States and European countries namely United Kingdom, Iceland, Liechtenstein, Norway and Switzerland permitted subject to issuance of Certificate of Inspection by Export Inspection Council /	Export to EU Member States and European countries namely United Kingdom, Iceland, Liechtenstein, Norway and Switzerland permitted subject to issuance of Certificate of Inspection by Export Inspection Council /

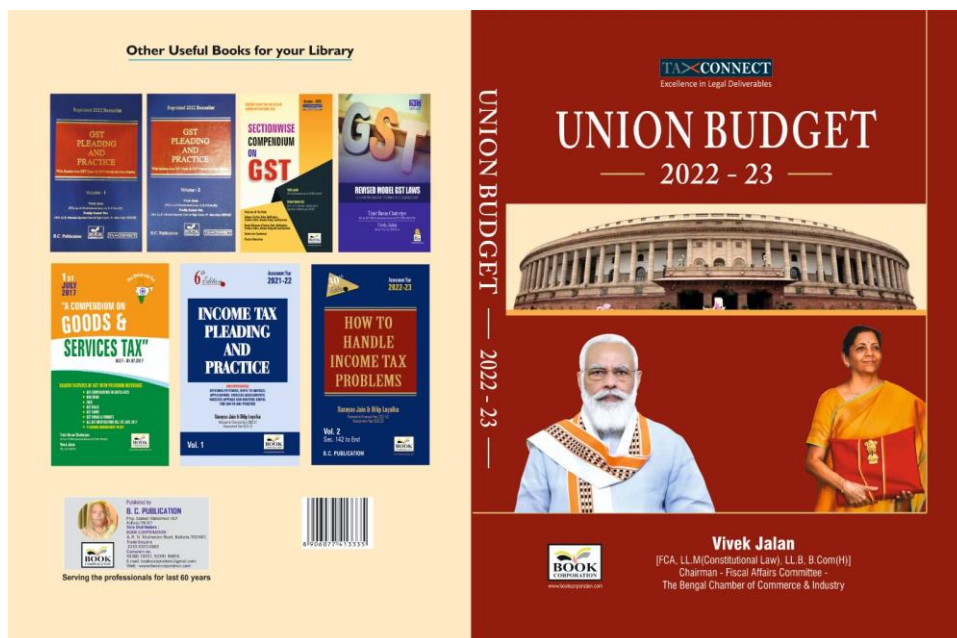
				Export Inspection Agency. Certificate of Inspection by Export Inspection Council/ Export Inspections Agency shall be mandatory for export to remaining European countries with effect from 1st July, 2022	Inspection by Export Inspection Council/ Export Inspections Agency shall be mandatory for export to remaining European countries with effect from 1st January, 2023
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3. Effect of notification: The Notification No. 61/2015-20 dated 23.03.2022 is amended to the extent that export of Rice (Basmati and Non-Basmati) to EU member states and other European Countries namely United kingdom, Iceland, Liechtenstein, Norway and Switzerland only will require Certificate of Inspection from EIA/EIC. Export to remaining European countries (except United Kingdom, Iceland, Liechtenstein, Norway and Switzerland) will require Certificate of Inspection by Export Inspection Council / Export Inspection Agency for export from 1st January, 2023.

[For further details please refer the Notification]

:IN STANDS

UNION BUDGET 2022-23



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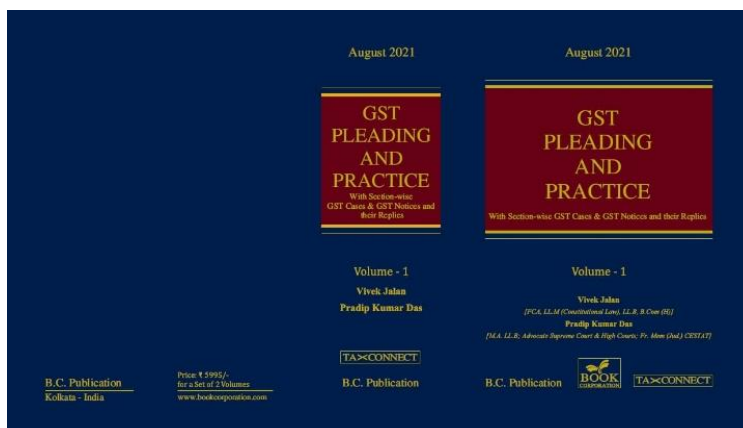
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