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EDITORIAL



Friends,

Through the recent notification under the Prevention of Money Laundering Act, 2002 (PMLA), The Ministry of Finance has notified an amendment to Section 2(1)(sa) of the Prevention of Money Laundering Act, 2002 (PMLA). The following activities, when carried out on behalf of or for another person in the course of business, will be regarded as 'activities' for the purpose of designated business or profession'. The said activities and their impact are analysed as under –

(a) Acting as a formation agent of companies and LLPs:

All individuals involved in the process of incorporating and forming a company or LLP will now be subject to the provisions of PMLA. Hence professionals who are helping in formation of companies should be careful and do their due diligence as regards for what purpose and for which people they are getting the company/LLP formed. However, where mere 'filing' is done by CA/CMA/Advocate/ CS, then it would not be covered.

(b) Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and LLPs:

Hence persons so designated or those who have arranged for others to be so designated should be conscious of their obligations for maintaining records of financial transactions, identifying and verifying the books, etc.

(c) Providing a registered office, business address or accommodation, correspondence or administrative address for a company or an LLP or a trust:

Many a times the office of professionals like CA/CMA/CS/Advocate is used as registered office. Also these professionals are designated

Authorised representatives of the organisation. These persons would now be responsible in case of any covered

activities carried out by the registered entity. However, any activity carried out as part of an agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and where the consideration is subject to deduction of income tax u/s 194I would be exempt from the purview of PMLA. Hence mere renting of office space would not be covered in this respect.

(d) Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust:

Trustees would thus be liable for the activities of their trusts.

(e) Acting as (or arranging for another person to act as) a nominee shareholder for another person:

Companies must identify the person who actually owns or controls the shares, even if they are not listed as registered shareholders.

(f) Employee carrying out an activity on behalf of his employer in the course of or in relation to his employment would not be covered.

These amendments in PMLA very clearly indicate "fasten your seat belts" for turbulence ahead.

It is important to note that the PMLA is very wide in range in its scope. It provides for rigorous interrogation and empowers the designated officers to summon any person, considered necessary, to produce any records or to hand over evidence.

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

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TAX CALENDAR

Due Date	Form/Return /Challan	Reporting Period	Description
25 th May	PMT 06	April 2023	Monthly tax payment for Apr 2023 under QRMP Scheme

INCOME TAX

NOTIFICATION

CENTRAL GOVERNMENT NOTIFIED THE SCHEME NAMELY THE MAHILA SAMMAN SAVINGS CERTIFICATE, 2023

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Notification No. 27/2023 dated 16.05.2023 notified In exercise of the powers conferred by sub-clause (c) of clause (i) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that the Scheme namely the Mahila Samman Savings Certificate, 2023, made in exercise of the powers conferred by section 3A of the Government Savings Promotion Act, 1873 (5 of 1873) and notified vide notification number G.S. 237(E) dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), shall be a Scheme framed for the purposes of said sub-clause.

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

[For further details please refer the notification]

CASE LAW

DENIAL OF EXEMPTION U/S 10(3C)(i) - CIT(E) OBSERVED THE HUGE SURPLUS WHICH INDICATES THAT THE ACTIVITIES ARE CONDUCTED WITH THE MOTIVE OF PROFIT : ITAT MUMBAI

OUR COMMENTS: Appellant does not exist solely for educational purpose and is involved in commercial activities within the meaning of section 10(3C) (i).

It has been held that, if the objects of the assessee, as claimed, have remained the same since the preceding years, the assessee has modified the way of its functioning and thus cannot be said to be existing “solely” for the

purpose of education. It is pertinent to note that in section 10(3C)(vi) of the Act, before the term “solely for educational purposes and not for purposes of profit”, the word “existing” is used.

Therefore, even if for any year the taxpayer is found to be existing solely for educational purposes and not for purposes of profit, the assessee still has to continuously satisfy this pivotal condition each and every year. Section 10(3C)(vi) of the Act is not worded in the same manner as other provisions pertaining to deduction such as sections 10A, 10B, 80IB, etc., which provides for the satisfaction of formation conditions as well as continuing conditions, and the fulfilment of formation conditions are to be tested only in the initial year. We find that other decisions relied upon by the learned AR rendered in assessee’s own case pertains to either exemption u/s 11 or registration u/s 12A, wherein the provisions are not as stringent as section 10(3C)(vi) of the Act.

Since the assessee has been found to be not ‘existing’ solely for the purposes of education, denial of exemption under section 10(3C)(vi) of the Act is upheld. As a result, the appeal filed by the assessee is dismissed.

GST

CASE LAW

CANCELLATION OF GST REGISTRATION WITHOUT AN OPPORTUNITY OF HEARING WAS GIVEN TO THE - VIOLATION OF PRINCIPLES OF NATURAL JUSTICE (AUDI ALTEREM PARTEM): HON'BLE ALLAHABAD HIGH COURT

OUR COMMENTS: The petitioner was a proprietorship firm. The petitioner claimed to have filed its returns on time and also deposited due taxes. A survey was conducted at the business place of the petitioner on 27.09.2019 and in the said survey, the business place of the firm was not found as disclosed in the registration certificate. Thereafter, the registration of the petitioner was cancelled vide order dated 01.12.2020. Thereafter, the petitioner moved a revocation application on 28.01.2021, which was rejected vide order dated 19.03.2021. Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed vide order dated 14.10.2022. Hence, this writ petition have been filed by the petitioner.

The petitioner submits that the impugned orders have been passed in contravention of the provisions of the Act & Rules as opportunity of hearing was not given to the petitioner. He further submits that on filing the revocation application on 28.01.2021, the order was passed on 19.03.2021 and surprisingly, a notice in Form GST REG – 23 dated 26.04.2021 was received. He further submits that once an order has already been passed in the month of March without providing any opportunity of hearing to the petitioner, the notice issued on 26.04.2021 to show cause as to why rejection of application for revocation of cancellation of registration be not passed, could not be issued. He further submits that the cancellation of registration also suffers from illegality as none of the conditions mentioned in section 29(2) of the UP GST Act are complied with.

The Hon'ble High Court has held that, admittedly, the registration of the petitioner was cancelled on the basis of the survey dated 27.09.2019 with the report that the disclosed business place of the firm was not found and therefore, the firm is bogus. On the said basis, the registration was cancelled on 01.12.2020. The petitioner moved application for revocation of cancellation of the registration on 28.01.2021, but the same was rejected. Thereafter, on 26.04.2021, a show cause notice was issued to the petitioner to show cause as to why the revocation of cancellation of registration may not be rejected.

This Court in APPARENT MARKETING PRIVATE LIMITED. VERSUS STATE OF U.P. AND 3 OTHERS has held Though the notice for cancellation of registration may not be placed on a high pedestal of a jurisdictional notice, at the same time, unless the essential ingredients necessary for issuance of such notice had been specified therein at the initial stage itself, the authorities cannot be permitted to have margin or option to specify and/or improve the charge later.

Impugned order cannot be sustained - petition allowed.

FEMA

NOTIFICATION

AMENDMENT TO THE FOREIGN EXCHANGE MANAGEMENT (CURRENT ACCOUNT TRANSACTIONS) (AMENDMENT) RULES, 2023

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Notification No. 369 (E) dated 16.05.2023 notified In exercise of the powers conferred by section 5 and sub-section (1), clause (a) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in consultation with the Reserve Bank of India, the Central Government having considered it necessary in the public interest, makes the following amendment to the Foreign Exchange Management (Current Account Transactions) Rules, 2000, namely:—

1. (1) These rules may be called the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023.

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

2. In the Foreign Exchange Management (Current Account Transactions) Rules, 2000, rule 7 shall be omitted.

[For further details please refer the notification]

CASE LAW

FCRA REGISTRATION - DELAY OF OPENING OF AN "FCRA BANK ACCOUNT" WITH THE STATE BANK OF INDIA: DELHI HIGH COURT

OUR COMMENTS: Petitioner faced difficulties in uploading the FCRA annual return under Form FC-4 under Rule 17 of the Foreign Contribution (Regulation) Rules, 2011 for F.Y 2019-2020, due to the fact that the bank account details

were being sought as of 31st March, 2020 - HELD THAT:- Admittedly, in the present case, the FCRA account in the SBI was opened by the Petitioner only on 4th October, 2021, which was much beyond the deadline fixed initially i.e. 31st March 2021, and even after the expiry of the extended period till 30th June 2021 vide notification dated 18th May 2021.

Petitioner has now opened the said FCRA bank account in SBI Sansad Marg Branch, Parliament Street-New Delhi, and has deposited the penalty and also uploaded the annual return for the F.Y 2019-2020, the relief sought for in this petition has become infructuous.

Moreover, none of the cases which have been decided by this Court including WNS Cares Foundation v. Union of India [2023 (1) TMI 944 - DELHI HIGH COURT] and Shree Swaminaryan Mandir v. Union of India [2023 (4) TMI 974 - DELHI HIGH COURT] would be applicable in the facts of the present case.

In the facts of the present case, there was a delay in the opening of the said FCRA bank account and the delay has not been convincingly explained by the Petitioner. Further, the penalty amount has been deposited with Respondent No. 1-MHA, therefore the prayer for refund is not tenable and is accordingly rejected. FCRA FC-4 annual return for the F.Y 2019-2020 which has been uploaded, shall be taken as valid without any payment of further penalties by the Petitioner.

CUSTOMS

NOTIFICATION

NOTIFICATION IN RELATION TO THE RAIL LINK ROUTE CONNECTING BATHNAHA-INDIAN CUSTOMS YARD, JOGBANI IN INDIA, AND NEPAL CUSTOMS YARD, BIRATNAGAR IN NEPAL BY AMENDMENT OF PRINCIPAL NOTIFICATION NO. 63/1994-CUSTOMS (N.T.) DATED 21ST NOVEMBER, 1994

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification No. 37/2023-Customs(N.T) dated 18.05.2023 notified In exercise of the powers conferred by clauses (b) and (c) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 63/1994-Customs (N.T.) dated the 21st November, 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 830 (E), dated the 21st November, 1994, namely: -

In the said notification, in the Table, against serial number 6 relating to Nepal, against item (12), in column (4), for the entry, the following entries shall be substituted, namely: -

(1)	(2)	(3)	(4)
			“(a) Road connecting Kolkata, Dunlop Bridge, Barrackpore, Krishna Nagar, Malda, Raiganj, Dalkola, Purnia, Araria, Forbesganj and Jogbani in India, and Biratnagar in Nepal;
			(b) The rail link route connecting Bathnaha - Indian Customs Yard, Jogbani in India, and Nepal Customs Yard, Biratnagar in Nepal.”.

[For further details please refer the notification]

NOTIFICATION

RATE OF EXCHANGE OF ONE UNIT OF FOREIGN CURRENCY EQUIVALENT TO INDIAN RUPEES - SUPERSESION OF THE NOTIFICATION NO. 33/2023-CUSTOMS(N.T.), DATED 4TH MAY, 2023

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification No. 36/2023-Customs(N.T) dated 18.05.2023 notified In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 33/2023-

Customs(N.T.), dated 4th May, 2023 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 May, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	56.10	53.70
2.	Bahraini Dinar	225.45	212.00
3.	Canadian Dollar	62.30	60.20
4.	Chinese Yuan	11.95	11.60
5.	Danish Kroner	12.20	11.80
6.	EURO	90.95	87.80
7.	Hong Kong Dollar	10.70	10.35
8.	Kuwaiti Dinar	276.85	260.30
9.	New Zealand Dollar	53.00	50.60
10.	Norwegian Kroner	7.75	7.50
11.	Pound Sterling	104.65	101.20
12.	Qatari Riyal	23.35	21.90
13.	Saudi Arabian Riyal	22.55	21.30
14.	Singapore Dollar	62.45	60.40
15.	South African Rand	4.40	4.15
16.	Swedish Kroner	8.00	7.75
17.	Swiss Franc	93.55	90.00

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18.	Turkish Lira	4.30	4.05
19.	UAE Dirham	23.15	21.75
20.	US Dollar	83.30	81.55

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	60.90	58.95
2.	Korean Won	6.40	6.00

[For further details please refer the notification]

NOTIFICATION	
NOTIFICATION IN RELATION TO LAND CUSTOMS STATIONS AND ROUTES A) ANANDPARA (INDIA) - RAMGARH (BANGLADESH) VIA RIVER FENI (B) THE ROAD FROM NH-8 IN ANANDPARA (INDIA) THROUGH MAITRI SETU TO RAMGARH (BANGLADESH) BY AMENDMENT OF PRINCIPAL NOTIFICATION NO. 63/1994-CUSTOMS (N.T.) DATED 21ST NOVEMBER 1994	

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification No. 35/2023-Customs(N.T) dated 17.05.2023 notified In exercise of the powers conferred by clauses (b) and (c) of sub-section (1) of section 7 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 63/1994-Customs (N.T.) dated the 21st November, 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 830 (E), dated the 21st November, 1994, namely: -

In the said notification, in the Table, against serial number 2 relating to Bangladesh, against item (53), in column (4), for the entry, the following entries shall be substituted, namely: -

(1)	(2)	(3)	(4)
			"(a) Anandpara (India) - Ramgarh (Bangladesh) via

		River Feni;
		(b) The road from NH-8 in Anandpara (India) through Maitri Setu to Ramgarh (Bangladesh).".

[For further details please refer the notification]

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

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide notification No. 34/2023-Customs(N.T) dated 15.05.2023 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	988
2	1511 90 10	RBD Palm Oil	1020
3	1511 90 90	Others - Palm Oil	1004
4	1511 10 00	Crude Palmolein	1030
5	1511 90 20	RBD Palmolein	1033
6	1511 90 90	Others Palmolein	-1032
7	1507 10 00	Crude Soya bean Oil	983
8	7404 00 22	Brass Scrap (all grades)	5105

CUSTOMS

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	650 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	773 per kilogram
3	71	(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semimanufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semimanufactured 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.	773 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	650 per 10 grams

	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.	
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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	10379 (i.e., no change)"

2. This notification shall come into force with effect from the 16th day of May, 2023.

[For further details please refer the notification]

CIRCULAR

AMNESTY SCHEME FOR ONE TIME SETTLEMENT OF DEFAULT IN EXPORT OBLIGATION BY ADVANCE AND EPCG AUTHORIZATION HOLDERS

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide circular No. 605/06/2023 dated 17.05.2023 circulated that The Ministry has issued Notification No. 32/2023-Customs dated 26.04.2023 to amend 13 Customs notifications pertaining to Advance Authorization (AA) and Export Promotion Capital Goods (EPCG) Schemes. This is to implement the Public Notice No. 02 dated 01.04.2023 notified by DGFT that has provided a procedure, under category of regularization of bona fide defaults, in which all pending cases of the default in meeting export obligation

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(EO) may be regularized by the authorization holder on payment of applicable Customs duty, corresponding to the shortfall in EO. Interest payable is capped at maximum of 100% of such duties exempted on which interest is payable as specified in the said Public Notice dated the 01.04.2023. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty. The authorization holder choosing to avail this procedure must complete the process of payment on or before 30.09.2023.

2. The amendments made by the Notification No. 32/2023- Customs provide that in a case of default in export obligation, when the duty on the goods is paid to regularize the default in term of Public Notice No. 02/2023 dated 01.04.2023 notified by DGFT, the amount of interest to be paid by the importer shall be payable as specified in the said Public Notice dated 01.04.2023. No other change is involved.

3. It may be noted that the cases under any investigation or adjudicated for involving fraud, mis-declaration or un-authorized diversion of material and/or capital goods are not covered in the scheme. Authorization holder shall not claim CENVAT Credit or Refund, under any provision of law, of any amount on duties paid under this scheme. However, there may be cases of calculation mistakes which are to be dealt on merits. Also, the DGFT PN No. 02/2023 dated 01.04.2023 specifies the necessary procedures which would be required to be followed.

4. The Principal Commissioners / Commissioners are to ensure that the exporters approaching for paying the duty, etc. are registered with the DGFT in terms of the Public Notice dated 02.04.2023 *ibid*. These cases under the

scheme be monitored and tracked so that there is efficient handling and expeditious closure of these old cases of bona fide EC default in a seamless manner. Suitable mechanism for this should be put in place and closely supervised by the Principal Commissioners / Commissioners.

5. This Circular may be brought to the notice of all concerned by way of issuance of standing order/instruction/ trade notice. Difficulties faced, if any, may please immediately be brought to the notice of the Board.

[For further details please refer the circular]

DGFT

CASE LAW

MEIS BENEFIT CANNOT BE DENIED FOR MERE NON-MARKING OF 'Y' AGAINST REWARD COLUMN: HON'BLE DELHI HIGH COURT

OUR COMMENTS: The controversy, in the present petition, relates to denial of the benefits under the MEIS as framed under Chapter 3 of Foreign Trade Policy. The petitioner states that it had, during the period June, 2016 to September, 2016 exported aluminium hydroxide under 97 different separate Shipping Bills. The Shipping Bills were accompanied by a declaration to the effect that the petitioner intended to claim rewards under MEIS, however, in the electronic filing, the petitioner had not tick/marked 'Y' in the reward column for claiming such benefits, in respect of the said shipping bills. Consequently, the details of the Shipping Bills in question (97 in number) were not transmitted electronically from respondent no.4 to respondent no.2. Resultantly, the petitioner has been denied MEIS scrips of a value of ₹34,15,924/-.

The learned counsel appearing for the respondents, states that a committee of officers, which was constituted pursuant to orders passed in another matter – Jubilant Biosys Limited v Directrate General of Foreign Trade and Others: W.P.(C) 14 754/2022 – has taken a lenient view. In the said case, the petitioner (Jubilant Biosys Limited) had been denied the benefit of MEIS scheme for somewhat similar reason. Pursuant to the order passed by the Court in that petition, a meeting of the concerned officers was held and the said officers had decided to extend the benefit of the MEIS scheme to the petitioner in question. It is relevant to note that the concerned officers had decided that Customs will transmit the shipping bills to DGFT through a manual intervention at ICEGATE. The DGFT, based on the said electronic transmission, and keeping in view the manual amendments made, would process the case for further grant of MEIS benefits as an exceptional matter.

This Court is of the view that the similar benefits ought to be extended to the petitioner in this case as well. The petitioner's case stands on a better footing as it had clearly indicated that it intended to take the benefit of the MEIS

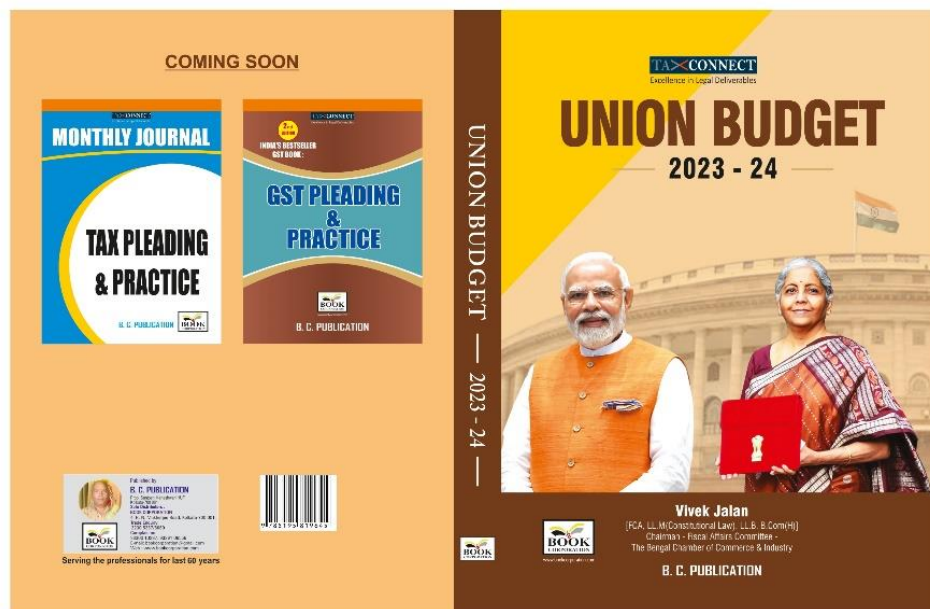
scheme. Thus, the error of not marking 'Y' against the reward column is clearly an inadvertent error.

In view of the above, respondent no.4 shall transmit the corrected bills through manual intervention at ICEGATE within a period of two weeks from today. The DGFT (respondent no.2) shall process the petitioner's claim for benefits under the MEIS scheme within a period of six weeks thereafter.

[Decided in favour of the assessee]

:IN STANDS

UNION BUDGET 2023: ANALYSIS BY TAX CONNECT



We put before you our detailed Analysis of Direct and Indirect Proposals of Union Budget 2023.

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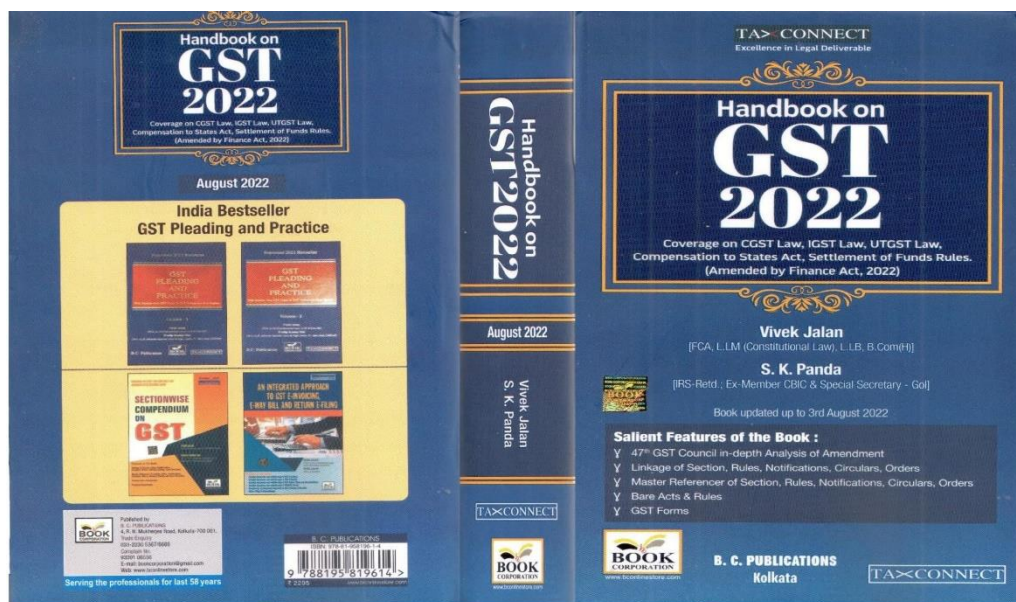
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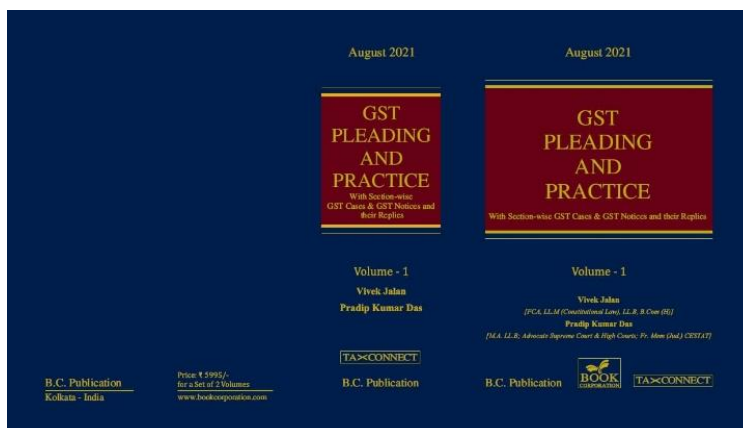
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