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- Tobacco House, 1, Old Court House St, Radha Bazar, Corner, Kolkata, West Bengal 700001
- Dubai** : Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE
- Contact** : +91 7003384915
- Website** : www.taxconnect.co.in
- Email** : info@taxconnect.co.in

EDITORIAL



Friends,

The RBI will directly regulate all entities facilitating cross-border payment transactions for the import and export of goods and services. That the Indian digital payments ecosystem will get heavily regulated now – is a clear message that has been given by RBI, with issuance of Payment Aggregator-Cross Border (PA-CB) guidelines, to players like Amazon (Pay) India, Google India, Razorpay, Pine Labs, PayPal, Cash free, Paymate, etc. The RBI has moved away from a light touch regulatory approach towards a full licensed regime for cross-border PAs. In the future UPI service providers like PhonePe and Google Pay might get regulated directly too.

All entities that facilitate cross-border payments for import and export of goods and services in online mode, i.e. 'Payment Aggregator – Cross Border' ("PA-CB") have been brought under the direct regulation of RBI, through the circular 'Regulation of Payment Aggregator – Cross Border' ("Regulations"), issued on October 31, 2023. A PA (also known as a merchant aggregator) is a third-party service provider that allows merchants to accept payments from customers by integrating it into their websites or apps. It facilitates different types of payment transactions, including cash and cheques, online payments through multiple payment sources, or offline touchpoints. It allows merchants to accept bank transfers without setting up a bank-based merchant account. It means a merchant need not have a merchant account directly with the bank.

Payment gateways, which provide the technology infrastructure for online monetary transactions, have been facing challenges in obtaining payment aggregator licenses, with the RBI granting in principal approvals but delaying final approvals for sometime now. Payment Aggregators play a crucial role in enabling e-commerce sites and merchants to accept various payment instruments from customers and fulfil their payment obligations without needing to create their own systems. They collect payments from customers, pool them, and transfer them to the merchants, streamlining the payment process.

Non-banks providing PA-CB services as on the date of circular should have a minimum net worth of ₹15 crore at the time of application for authorisation and a minimum net worth of ₹25 crore by March

31, 2026. If the per unit goods/ services imported exceeds ₹2.5 lakh, then the PA-CB concerned must undertake due diligence of the buyer also. Customer due diligence should be undertaken by the merchant (that is, directly onboarded Indian merchants, e-commerce marketplaces, or entities providing PA services), and proceeds from the Export Collection Account (ECA) shall be settled only in the account of such merchants.

PA-CB activities are classified into the following 3 categories: (a) export only PACB; (b) import only PA-CB; and (c) export and import PA-CB. All non-bank entities that propose to undertake PA-CB services, including the entities that currently provide PA-CB services, will require an authorisation from the RBI as a payment system operator (PSO) under the Payment & Settlement Systems Act, 2007. All entities that currently undertake PA-CB services are required to apply for such authorisation by April 30, 2024. Such PA-CB's can continue these activities until RBI has made a decision on their application. However, authorised dealer category – I scheduled commercial banks ("AD Banks") do not require separate approval for undertaking PA-CB activity from the RBI.

Non-bank payment aggregators ("PAs") that are presently engaged in any PA-CB activities are required to intimate the RBI about their preference to continue with the PA-CB activities within 60 days from the date of the Regulations (i.e., October 31, 2023) prior to seeking approval for such activities from the RBI. Also, the Regulations clarify that PA-CBs authorised for a particular activity (for example, for imports transactions) will require a prior approval for undertaking an additional activity (for export transactions).

Companies that have received an in-principal nod from the regulator will also need to get explicit permission from RBI to offer cross-border payment services. While it may increase the compliance cost of payment aggregators, RBI's new guidelines on PA CB (Payment Aggregator Cross Border) are a step in the right direction from a regulatory framework standpoint, in taking the cross-border payment agenda of the country forward.

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

Editor:

Vivek Jalan

Partner - Tax Connect Advisory Services LLP

Co-Editor:

Rohit Sharma

Director – Tax Connect Advisory Services LLP

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TAX CALENDAR

Due Date	Form/Return/Challan	Reporting Period	Description
13 th November	GSTR-1 (IFF)	October 2023	Details of B2B Supply of a registered person with turnover upto INR 5 Crores during the preceding year and who has opted for quarterly filing of return under QRMP.
13 th November	GSTR-6	October 2023	Details of Input Tax Credit (ITC) received and distributed by an Input Service Distributors (ISD).
13 th November	GSTR-5	October 2023	Summary of outward taxable supplies and tax payable by a non-resident taxable person.
14 th November	TDS certificate	September 2023	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB, 194M, 194S in the month of September, 2023
15 th November	TDS certificate	July-September 2023	Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending September 30, 2023
15 th November	FORM 24G	October 2023	Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of October, 2023 has been paid without the production of a challan
15 th November	FORM 3BB	October 2023	Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of October, 2023

INCOME TAX

NOTIFICATION

EXEMPTION FROM SPECIFIED INCOME U/S 10(46) – 'PRESS COUNCIL OF INDIA' NOTIFIED

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, vide notification No. 98/2023 dated 06.11.2023 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, 'Press Council of India' (PAN AAABP0351P), a body established under Para 1 of Chapter II of the Press Council of India Act, 1978 (Central Act), in respect of the following specified income arising to that body, namely:-

- (a) Levy of fees on publishers and news papers; and
- (b) Interest earned on FDRs and Savings bank accounts of Press Council of India.

2. This notification shall be effective subject to the conditions that Press Council of India,-

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

3. This notification shall be deemed to have been applied for the assessment year 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024 relevant to financial years 2018-2019, 2019-2020, 2020-2021, 2021-2022 and 2022-2023 respectively.

[For further details please refer the notification]

NOTIFICATION

EXEMPTION FROM SPECIFIED INCOME U/S 10(46) – 'PUNJAB INFRASTRUCTURE REGULATORY AUTHORITY' NOTIFIED

OUR COMMENTS: The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, vide notification No. 97/2023 dated 06.11.2023 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, 'Punjab Infrastructure Regulatory Authority' (PAN: AAAGT0931J), an authority constituted by the Government of Punjab, in respect of the following specified income arising to that body, namely:-

- a) Grants received by or arising to the Authority from State Government.
- b) Sum received by the Authority from any sources including arbitration fees fixed by the Authority under the regulations for the proceedings before the Authority; and
- c) Interest from banks.

2. This notification shall be effective subject to the conditions that Punjab Infrastructure Regulatory Authority:-

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

3. This notification shall be deemed to have been applied for assessment years 2022-2023 & 2023-2024 relevant to the financial years 2021-2022 & 2022-2023.

[For further details please refer the notification]

GST

ADVISORY

ADVISORY FOR THE PROCEDURES AND PROVISIONS RELATED TO THE AMNESTY FOR TAXPAYERS WHO MISSED THE APPEAL FILING DEADLINE FOR THE ORDERS PASSED ON OR BEFORE MARCH 31, 2023

OUR COMMENTS: The GSTIN vide advisory dated 10-11-2023 advised that :

- 1) **Amnesty for Taxpayers:** The GST Council, in its 52nd meeting, recommended granting amnesty to taxpayers who couldn't file an appeal under section 107 of the CGST (Central Goods and Services Tax) Act, 2017, against the demand order under section 73 or 74 of the CGST Act, 2017, passed on or before March 31, 2023, or whose appeal against the said order was rejected due to not being filed within the specified time frame in sub-section (1) of section 107.
- 2) In compliance with the above GST Council's recommendation, the government has issued Notification No. 53/2023 on November 2, 2023.
- 3) Taxpayers can now file appeal in FORM GST APL-01 on the GST portal on or before January 31, 2024 for the order passed by proper officer on or before March 31, 2023. It is further advised that the taxpayers should make payments for entertaining the appeal by the Appellate officer as per the provisions of Notification No. 53/2023. The GST Portal allows taxpayers to choose the mode of payment (electronic Credit/Cash ledger), and it's the responsibility of the taxpayer to select the appropriate ledgers and make the correct payments. Further, the office of the Appellate Authority shall check the correctness of the payment before entertaining the appeal and any appeal filed without proper payment may be dealt with as per the legal provisions.
- 4) If a taxpayer has already filed an appeal and wants it to be covered by the benefit of the amnesty scheme would need to make differential payments to comply with Notification No. 53/2023. The payment should be made against the demand order using the 'Payment towards demand' facility available on the GST portal. The navigation step for making this payment is provided: Login >> Services >> Ledgers >> Payment towards Demand.
- 5) Taxpayers who have any queries or require assistance can raise a complaint on the official website at <https://selfservice.gstsystem.in>.

[for further details please refer the advisory]

CASE LAW

RELEASE OF CASH SEIZED FROM THE PETITIONER FOR MORE THAN 6 MONTHS HAVE PASSED FROM THE DATE OF SEIZURE - GUJARAT HIGH COURT

OUR COMMENTS: It was held that Reading the CGST Act and particularly the preamble thereto, would indicate that it is an act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto - When this is read in context of provisions of sub-section (2) of section 67, obviously, when the proper officer confiscates any goods, documents, books or things, he must have reason to believe that they shall be useful for or relevant to any proceedings under this Act.

Reading of affidavit primarily explains that even as per the case of respondent it was not the opinion of the proper officer that it was a seizure in relation to unexplained transaction under the Goods and Services Act, but it was an amount of consideration received on sale proceeds of silver bars. This therefore has to be read in light of observations of Division Bench of Kerala High Court in the decision of Shabu George [2023 (4) TMI 252 - KERALA HIGH COURT]. Para-3 of the aforesaid decision of Kerala High Court held that as the respondent has retained the seized cash for more than six months and is yet to issue a show cause notice to the appellants in connection with the investigation, there can be no justification for a continued retention of the said amount with the respondent. We therefore, allow this appeal by directing the first respondent to forthwith release to the appellant the cash seized from the premises, against a receipt to be obtained from him.

Once it is found that the cash did not form a part of stock in trade, it could not have been seized.

Admittedly, there is no requisition under section 132(A) of the Income Tax Act, though, it was the case of the State that intimation was sent to the Income Tax Department. Even otherwise, the petitioner has not shown the cash as stock in trade - Even otherwise on the facts of this case, what is evident is that the Seizure memo was dated 13.11.2020 and in accordance with sub-section (7) of section 67 thereof when no Notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession, they were seized. On this ground thereto, the petitioner is entitled to the prayer that the amount of cash seized i.e. Rs.69,98,400/- to be returned forthwith to the petitioner.

Petition allowed.

FEMA

CASE LAW

VALIDITY OF ORDER OF FORFEITURE OF PROPERTIES U/S 7 OF SAFEMA CONSEQUENT TO REVOCATION OF THE DETENTION ORDER PASSED UNDER CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT (COFEPOSA) : SUPREME COURT

OUR COMMENTS: It was held that Smugglers and Foreign Exchange Manipulators Act (SAFEMA) was enacted to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto as such activities were having a deleterious effect on the national economy. Section 2 provided for the application of the provisions of the Act only to the persons specified in sub-section (2) thereof. According to sub-section (2)(b) every person in respect of whom an order of detention has been made under COFEPOSA, the Act would be applicable subject to four clauses mentioned under the proviso thereto.

A perusal of the above quoted provision makes it clear that apart from the four contingencies given in clauses (i) to (iv) above, every person against whom an order of detention has been passed under COFEPOSA, the provisions of SAFEMA would apply. In the present case, it is an admitted position that an order of detention under COFEPOSA was made against the appellants.

The order of detention had not been revoked on the report of the Advisory Board or before the receipt of the report of Advisory Board or before making a reference to the Advisory Board. Further, it was an order of detention passed under Section 3 of COFEPOSA. Section 9 and Section 12 A of COFEPOSA had no application to the detention order. As such, clause (i) would not be applicable.

Clause (ii) would also not be applicable in as much as neither the detention order was made to which provisions of Section 9 of

COFEPOSA would apply nor had it been revoked before the expiry of the time on the basis of review on the report of the Advisory Board.

Further, clause (iii) would also not be applicable as Section 12A of COFEPOSA had no application to the detention order. Lastly, the detention order had not been set aside by the Court of competent jurisdiction. Therefore, clause (iv) would have no application.

To the contrary, in the present case against the detention order, the appellant had made a representation which had been rejected. Thereafter the said order was challenged before the High Court by way of a writ petition which had also been dismissed on merits by a detailed order upholding the detention order.

The revocation however had been made on a statement given on behalf of the Union of India before this Court in order to institute a complaint under the relevant statute. The said revocation is not contemplated under Section 2(2)(b) and its proviso, and, therefore, no benefit can be extended to the appellant(s) on the said count. Therefore, in our view, the impugned judgment does not suffer from any infirmity warranting interference. The appeals lack merit and are, accordingly dismissed.

Dismissal of the complaint and the withdrawal of the penalty under the Act 1962 and Act 1968 - This argument has no relevance to the applicability or non-applicability of the impugned proceedings and forfeiture under SAFEMA. They were independent proceedings under the provisions of the Act 1962 and the Act 1968.

CUSTOMS

CIRCULAR

ADVANCE ASSESSMENT OF COURIER SHIPPING BILLS IMPLEMENTED

OUR COMMENTS: The Ministry of Finance, Department of Revenue vide Circular No. 28/2023-Customs dated 08.11.2023 clarified that representations have been received in the Board to allow advance assessment of Courier Shipping Bills that would further reduce the dwell time.

2. Based on the inputs from the stakeholders and with a view to further enhancing the ease of doing business, it has been decided to provide for advance assessment of Courier Shipping Bills on the Express Cargo Clearance System (ECCS). The Directorate General of Systems has confirmed the enabling of appropriate technical changes in the ECCS export workflow for this purpose. An Advisory No. 11/SYS/WZU/2023 dated 19.10.2023 has also been issued by DG (Systems).

3. The field formations are requested to issue suitable Public Notice etc. for guidance.

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

[For further details please refer the circular]

CASE LAW

SEEKING GRANT OF RELEASE OF DETAINED GOODS - IMPORT OF LITHIUM ION CELL - IT IS ALLEGED THAT THE CONSIGNMENT IN QUESTION WAS NOT IN COMPLIANCE WITH THE REQUIREMENT OF BIS MARKING : BOMBAY HIGH COURT

OUR COMMENTS: It was held that the requirement of labelling and marking under paragraph 6 under Schedule II of the Regulation is clear to the effect that each “product” or the “package”, “as the case may be”, shall be marked with the Standard Mark, as specified in Annexure-II i.e. the sample illustrative mark. Thus, under the said regulations, it is clearly permissible to have a mark on the package, which requirement is met by the petitioner, in respect of the consignment in question of the two bills of entries.

The respondents despite the clear provisions of paragraph 6 of the Schedule II Scheme I of the 2018 Regulation have chosen not to apply the requirement as it stands, however, they are applying Public Notice No. 136 of 2018 dated 8 October 2018

issued by the Office of the Commissioner of Customs, NS-III, Mumbai Customs Zone-II.

On a plain reading of Public Notice No. 136 of 2018 dated 8 October 2018, it appears that the Commissioner of Customs providing for such requirement under paragraph 6 has actually deviated from the requirements of the 2018 Regulations, and more particularly paragraph 6 of the labelling and marking requirements as contained in Schedule II of the Scheme I, under the said Regulations, as noted by us hereinabove. In taking the position as assailed, the respondents also could not have taken recourse to the applicability of “RCR orders” (Requirement For Compulsory Registration) inasmuch as the RCR order was wholly irrelevant, in so far as the present goods are concerned. This inasmuch as the RCR order was applicable only to the “electronic and information and technology goods”, subject matter of Electronics and Information Technology Goods (Requirement For Compulsory Registration) Order 2012, which provides that the standard mark shall be placed on the product and packaging both.

There is no justification whatsoever on the part of the respondents, in not permitting to the petitioner, release of the consignments in question - there is no justification whatsoever as to how a different yardstick could be applied by the respondents to the goods in question, when similar goods under seven bills of entries were released and only two bills of entries were subjected to an illegal detention by the respondents.

The goods are illegally detained and without any powers being exercised by the customs authorities under section 110 of the Act and that too for such a long period - Petition allowed in part.

DGFT

TRADE NOTICE

PILOT LAUNCH OF THE UPGRADED ELECTRONIC BANK REALIZATION CERTIFICATE (EBRC) SYSTEM FOR SELF-CERTIFICATION BY EXPORTERS

OUR COMMENTS: The Ministry of Commerce and Industry vide trade notice no. 33/2023-24 dated 10.11.2023 notified **Self-Certification for Exporters:** Reference Para 1.07 of the Foreign Trade Policy, it is a commitment of this directorate to facilitate exports and imports, with a focus on efficient, transparent, and accountable delivery systems. To further improve trade facilitation for exporters, this directorate has implemented an enhanced electronic Bank Realisation Certificate (eBRC) system. This more streamlined process is based on electronic Inward Remittance Messages (IRMs) to be transmitted directly by banks to DGFT. Based on the IRMs received, the exporters shall self-certify their eBRCs.

2. Streamlined Work flow: The enhanced eBRC system shall enable exporters to reduce transaction time and costs. It would also ease the burden on bankers by simplifying the reconciliation of IRMs with shipping bills, SOFTEX, invoices, etc. and promote ease of doing business in general. A summary of the revamped eBRC system workflow is as follows –

i. Banks receiving Export Remittances will push the IRM message to the DGFT IT system electronically.

ii. Banks shall push the IRMs pertaining to the Trade Account only and not the IRMs pertain to Capital Account etc. i.e., remittances pertaining to Goods or Services Exports.

iii. IRM details will be accessible to the relevant IEC holder upon logging onto the DGFT Website (<https://dgft.gov.in>). Since IECs are linked to PAN, only the concerned IEC holder will have visibility to their IRM.

iv. Exporter will create eBRCs by matching IRM with relevant shipping bills, SOFTEX, or invoice details. Multiple IRMs may be grouped under one eBRC, or one IRM can be split amongst several eBRCs.

v. eBRCs can be generated for Goods Exports, Services Exports, Deemed Exports.

vi. The RBI Purpose Code and other fields mentioned in the IRM shall be used to validate the eBRC fields being certified by the Exporter.

vii. Banks will have access to all eBRCs created from the IRMs they input. Banks would have the option to flag any eBRC for

further examination or request input from the exporter concerned.

3. Pilot Launch: A soft launch of the revamped eBRC system is proposed with effect from 15th November 2023. Starting from given date, each bank will set its cut-off date based on their readiness after completing User Acceptance Testing (UAT). IRMs dated on or after this bank-specific cut-off date will be sent to DGFT for exporters' self-certification. For IRMs generated before this date, banks will generate eBRCs and submit them to DGFT, as per the legacy eBRC process. Both the upgraded and legacy eBRC systems will operate simultaneously until all banks transition to the upgraded eBRC system. The DGFT Website will host the list of banks with their respective IRM cut-off dates for reference of all stakeholders.

4. Mandatory API Integration: For prompt data exchange, all banks must integrate using Application Programming Interface (API). Exceptions, if any, would require a detailed justification. Banks are accordingly required to transition to API integration with the upgraded eBRC systems latest by **31st January 2024**.

5. Outreach & Awareness: The revamped eBRC system's user guide and Frequently Asked Questions (FAQs) will be available on the DGFT Website under the Learn Section. Additionally, DGFT will organize Exporter Outreach Programs to demonstrate and raise awareness about the revamped eBRC facility.

6. Feedback: Concordance of the purpose codes to the eBRC fields may be perused by navigating to the DGFT website --> Services --> eBRC. The validation rules used for eBRC generation are also available there for your reference. Stakeholder feedback (if any) on the concordance or the rulesets may be submitted to ebrc-dgft@gov.in

7. Support Channels: Exporters and other stakeholders may contact the DGFT Helpdesk for eBRC-related issues, suggestions, or feedback through the following channels -

i. Call the Toll-Free Helpdesk Support Number.

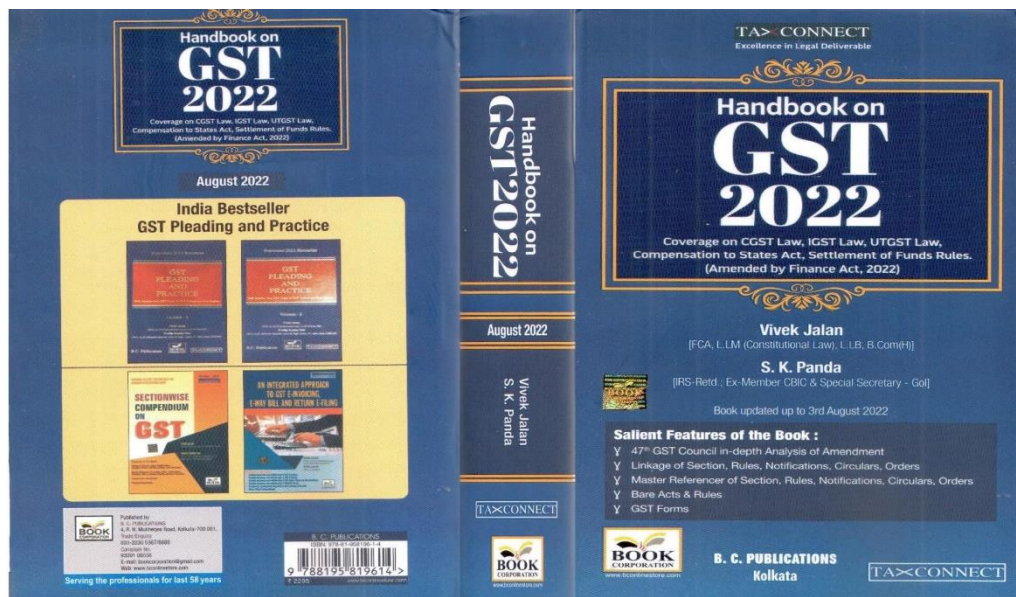
ii. Raise a Helpdesk ticket by navigating to DGFT website --> Services --> DGFT Helpdesk Service. Users may also track their earlier helpdesk ticket status or search previously filed helpdesk tickets.

This is issued with the approval of competent authority.

[For further details please refer the trade notice]

:IN STANDS

HANDBOOK ON GST 2022



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Author:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL.B, B.Com(H)]

S.K. Panda

[IRS-Retd.; Ex-Member CBIC & Special Secretary – GoI]

Published by:

BOOK CORPORATION

4, R. N. Mukherjee Road
Kolkata 700001

Phones: (033) 64547999

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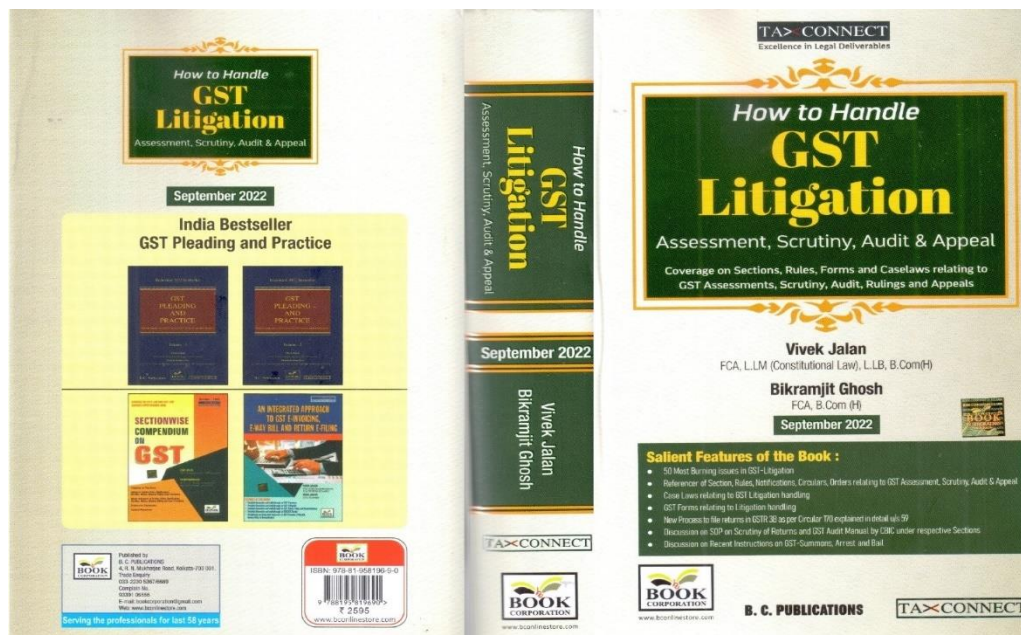
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:IN STANDS

How to Handle GST LITIGATION: Assessment, Scrutiny, Audit & Appeal



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Authors:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL. B, B. Com(H)]

Bikramjit Ghosh

[FCA, B. Com(H)]

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4, R. N. Mukherjee Road
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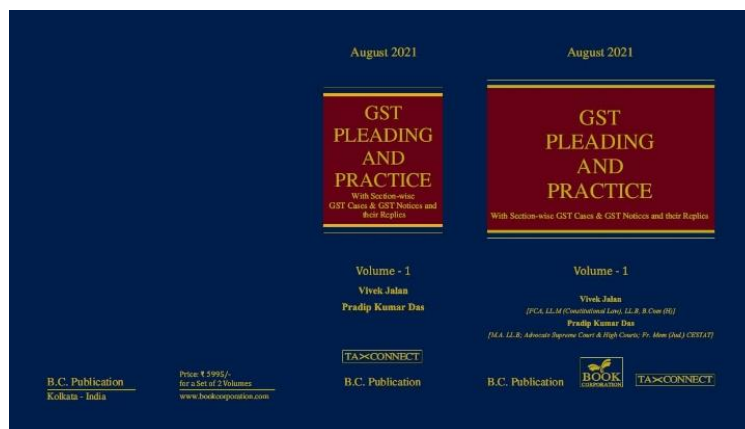
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:IN STANDS

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

Authors:

Vivek Jalan

[FCA, LL.M (Constitutional Law), LL. B, B. Com(H)]

Pradip Kumar Das

[M.A. LL. B; Advocate Supreme Court & High Courts; Fr. Mem (Jud.) CESTAT]

Published by:

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Kolkata 700001

Phones: (033) 64547999

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Order by email: info@taxconnect.co.in

Website : www.taxconnect.co.in

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person: Priyanka Vishwakarma

Email: priyanka.vishwakarma@taxconnect.co.in

BENGALURU

951, 24th Main Road, J P Nagar, Bengaluru, Karnataka – 560078.

Contact Person: Anil Pal

Email: anil.pal@taxconnectdelhi.co.in

DELHI (NCR)

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person: Poonam Khemka

Email: poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata - 700001

Contact Person: Tithly Roy

Email: tithly.roy@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh

Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person: Rohit Sharma

Email: rohit.sharma@taxconnect.co.in

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