82ND ISSUE

21AUG 2016 - 27 AUG 2016

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

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EDITORIAL

Friends,

Bihar & Jharkhand too has cleared the GST Bill unanimously…. Goa & Wes Bengal also lined up!

TAX CONNECT HAS LAUNCHED OUT GST COURSE 18 HOUR (3 DAYS) THROUGH EMINENT FACULTIES BY TAX CONNECT.

The Course would consist of the following –

1. Section Wise Analysis of GST Model Law
2. Registration under GST
3. Return under GST
4. Payment under GST
5. Refunds under GST
6. GST Impact Analysis
7. Transitional Planning in GST
8. IT Systems under GST
9. Sector-wise Impact of GST
10. Working Capital Management under GST

The course would be conducted under our Direct supervision and our Book on GST would be the study module for the course.

The circular for the course has already been sent vide a separate mail.

In Service Tax, it has been clarified that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the goods move from India to a place outside India.

Further, it has been provided that f**or service tax liability on hiring of goods,** the contract should be examined against criteria laid down by the **Supreme Court in the Bharat Sanchar Nigam Limited case.**

In Income Tax, the **Income Declaration Scheme , 2016** has been **amended and further clarifications** have been **issued** on the same.

The time for issuance of Acknowledgment in **Form-2** has been **extended from 15 days to 30 days for Declarations filed in July, 2016.**

In Customs, vide Notification No. 112/2016-Customs (N.T.) dated 18.08.2016, the Government **has revised the exchange rate** of foreign Currencies w.e.f. 19.08.2016.

Also, **All Industry Rates of drawback** for export of garments under Special Advance Authorization Scheme has been **specified.**

In Central Excise, the Government has **withdrawn excise duty exemption and cenvat credit facility on duty paid on molasses** in the sugar season 2015-16 (i.e. 01.10.2015-30.09.2016), for supply to the public sector OMCS for blending with petrol

The referred notifications/circulars/case laws have been discussed in detail further in the bulletin.

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

Truly Yours

Timir Baran Chatterjee

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Vivek Jalan

FCA, CIDT (ICAI), B. Com

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COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 21st August, 2016 to 27th August, 2016	State/Region
21st August, 2016	Deposit of VAT of previous month (VAT Act)	Assam , Delhi , Maharashtra , Odisha , Nagaland, Meghalaya, West Bengal
	Filing of VAT return (VAT Act)	Assam (Monthly), Maharashtra (Monthly), Odisha (Monthly), Meghalaya (Monthly)
	Deposit of WCT of previous month (VAT Act)	Maharashtra
	Deposit of Entry tax of previous month (Entry Tax Act)	Odisha , West Bengal
	Deposit of Ptax of previous month (Commercial Tax Act)	Odisha
	ESI deposit of previous month (ESI Act)	All India
22nd August, 2016	Deposit of VAT of previous month (VAT Act)	Gujarat
	Deposit of WCT of previous month (VAT Act)	Gujarat
	Issuance of WCT certificate (VAT Act)	Delhi (Monthly)
	Deposit of Entry tax of previous month (Entry Tax Act)	Gujarat
25th August, 2016	Filing of VAT return (VAT Act)	Jharkhand (Monthly)
	Issuance of WCT certificate (VAT Act)	West Bengal (Monthly), Mizoram (Monthly
	Deposit of Entry tax of previous month (Entry Tax Act)	Maharashtra (if registered dealer)

TAXALE PERSON UNDER GST LAW

- Taxable Person means a person who carries on any business at any place in India and who is registered or required to be registered under Schedule III of this Act.

  India includes Jammu & Kashmir and as defined under Section 2(53) of GST Model Law.

- An agriculture IST shall not be considered as a taxable person.

- A person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds (Rs 10 lacs/5lacs) [This threshold of 5lacs will apply only if a taxable person conducts his business in any of the NE States including Sikkim.]

- The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act.
  This is a stark difference with Income Tax.

- The following persons shall not be considered as taxable persons for the Purposes of this Act–

  (a)Employee to his employer as regards working conditions, remunerations and employer's liability. Thus, the service provided by a person as an employee during the employer-employee relationship will not be taxable.

  (b) Person engaged in the business of exclusively supplying goods and /or services that are not liable to tax under this Act.

  (c) Person, liable to pay tax u/s 7(3), receiving services of prescribed value in a year for personal use, other than for use in the course or furtherance of his business.

- Unless the aggregate turnover required for registration (as prescribed in Schedule III) is exceeded, the person shall not be considered as a taxable person.

- Persons not required to pay tax under this Act shall not be considered as a taxable person. Hence, if the turnover does not include any taxable turnover then no registration is required.

- Very important point to note is that under section 9(3) (c), there would be a threshold limit for assesses liable to pay tax under reverse charge also. This is a great relief as compared to the current service tax law wherein there is no threshold limit for assesses under reverse charge.

- The Central or State Government may specify the category of persons or transactions that are exempt from such taxes.

- A person is required to get himself registered when the turnover exceeds Rs. 9 lakhs. However, as per the proposed law, the assessees in the north-eastern states need to get themselves registered when their turnover exceeds Rs. 4 lakhs. Therefore, under the proposed law number of assessees shall increase. Even small assessees shall fall in the purview of the GST.

  Also, in the prevailing laws, we have the SSP and SSI exemption which is not covered in the proposed law. As a result, there will be huge number of manufacturing assessees.

- Managing the huge number of assessees shall be a challenge to the department. There will be requirement of more and more officials and accordingly such officials shall require proper training. Small assessees will have to bear the expenses for installing proper infrastructure to move parallel with the GSTN.

SERVICE TAX

NOTIFICATIONS/CIRCULARS

CLARIFICATION ON SERVICE TAX ON FREIGHT FORWARDERS ON TRANSPORTATION OF GOODS FROM INDIA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No. 197/7/2016 -Service Tax dated 12.08.2016** has clarified that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India.

As per Rule 10 of the Place of Provision of Services Rules 2012, the place of provision of the service of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods. In such services, the place of provision of the service from a place in India to a place outside India, will be a place outside the taxable territory and hence not liable to service tax.

As per Rule 9, the place of provision of intermediary services is the location of the service provider.

The freight forwarders may deal with the exporters as an agent of an airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility for the actual transportation. **In such cases the freight forwarder may be considered to be an intermediary and liable for service tax.**

Now, **the freight forwarders may also act as a principal** where he undertakes all the legal responsibility for the transportation of the goods and undertakes all the attendant risks. Here, he is providing the service of transportation of goods, from a place in India to a place outside India and bearing all the risks and liability for transportation. **In such cases, he will not be liable to pay service tax.**

SERVICE TAX ON HIRING OF GOODS WITHOUT THE TRANSFER OF THE RIGHT TO USE GOODS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No 198/08/2016-Service Tax dated 17.08.2016** has provided as follows:

As per Article 366(29A)(d) of the Constitution of India, the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration is deemed to be a sale/purchase transaction and such transactions will be liable for Sales Tax/Value Added Tax.

However as per section 66E(f) of the Finance Act, 1994, the transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods is a "declared service" and hence liable to service tax.

The Department has provided that there may be following cases:

- hiring, leasing or licensing of goods,
- financial lease or an operating lease
- in the aircraft industry there are "dry leases" and "wet leases" etc.

In all the above cases, no a priori generalisations or assumptions about service tax liability should be made and the terms of the contract should be examined carefully, against the backdrop of the criteria laid down by the **Supreme Court in the Bharat Sanchar Nigam Limited case**. The following case law may also be referred to:

-Commissioner VAT vs International Travel House Ltd - Delhi High Court judgement dated 8-9-2009 in ST Appeal 10/2009

-Rashtriya Ispat Nigam Limited vs Commercial Tax Officer reported in 1990 (77) STC 182 and State of Andhra Pradesh vs Rashtriya Ispat Nigam Limited reported in 2002 (126) STC 114

-State Bank of India vs State of Andhra Pradesh reported in 1988 (70) STC 215 A.P

-Ahuja Goods Agency vs State of Uttar Pradesh reported in 1997 (106) STC 540

-Lakshmi AV Inc vs Assistant Commercial Tax Officer reported in 2001 (124) STC 426 Karnataka

-G. S Lamba and Sons vs State of Andhra Pradesh reported in = 2015 (324) ELT 316 A.P

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

WITHDRAWAL OF EXCISE DUTY EXEMPTION ON ETHANOL PRODUCED FROM MOLASSES IN THE SUGAR SEASON 2015-16 (I.E. 01.10.2015-30.09.2016), FOR SUPPLY TO THE PUBLIC SECTOR OMCS FOR BLENDING WITH PETROL

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 30/2016-Central Excise dated 10.08.2016** has amended **Notification No.12/2012-Central Excise, dated 17.03.2012** and withdrawn excise duty exemption on ethanol produced from molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016), for supply to the public sector OMCs for blending with petrol.

WITHDRAWAL OF CENVAT CREDIT FACILITY ON DUTY PAID ON MOLASSES IN THE SUGAR SEASON 2015-16 (I.E. 01.10.2015-30.09.2016), FOR SUPPLY TO THE PUBLIC SECTOR OMCS FOR BLENDING WITH PETROL

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 41/2016-Central Excise (N.T.) dated 10.08.2016** has omitted **Rule 6 (6) (ix)** of the CENVAT Credit Rules, 2004 and withdrawn Cenvat Credit Faciloty on duty paid on molasses generated in the sugar season 2015-16 (i.e. 1st October, 2015 to 30th September 2016), for supply to the public sector OMCs for blending with petrol.

COURT DECISIONS

COMPUTER GRAPHICS LIMITED VS COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI [CESTAT CHENNAI]

BRIEF: The assessee is allowed refund of accumulated CENVAT Credit upon closure of factory under Rule 5 of Cenvat Credit Rules, 2004.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture Konica Colour Films, Colour Paper, Graphic Art Film, etc. Due to change in technology, the assessee was not able to run the business in a factory, hence, he closed the same. The final products were cleared from the factory on closure. The assessee filed a refund claim for the accumulated cenvat credit lying in the books.

The Revenue rejected the refund claim issuing a show cause notice on the grounds that refund is allowed only where accumulation is on account of clearance of major products under bond of export. Also, that refund claim does not fall under Sec 11B.

The Hon'ble CESTAT placed reliance on the **judgment of Hon'ble Karnataka High Court (upheld by the Hon'ble Supreme Court) in the case of Slovak India Trading Co. Private Limited** which allowed refund of accumulated CENVAT Credit in case of closure of unit in spite of not having any express provision in Rule 5 of Cenvat Credit Rules, 2004.

In the **judgment of Larger Bench of Delhi CESTAT in the case of Steel Strips** it was held that there is no express provision for grant of refund in case of closure of unit. However, this judgement was not was not accepted in this case on the premise that the said decision has not taken into consideration the judgment of Hon'ble Karnataka High Court in the case of Slovak India Trading Co. Private Limited.

Hence, the assessee is allowed refund of accumulated CENVAT Credit upon closure of factory under Rule 5 of Cenvat Credit Rules, 2004.

[Decided in favour of assessee]

CUSTOMS

NOTIFICATIONS/CIRCULARS

REVISION OF EXCHANGE RATE OF FOREIGN CURRENCIES INTO RUPEE & VICE VERSA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 112/2016-Customs (N.T.) dated 18.08.2016 & in supersession of Notification No. 106/2016-Customs (N.T.) dated 04.08.2016** has **revised the exchange rate of foreign currencies** specified in col.(2) of each of **Schedule I** and **Schedule II** annexed hereto, into Indian currency or vice versa, w.e.f. **19.08.2016** to 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	52.50	50.55
2.	Bahrain Dinar	183.75	171.45
3.	Canadian Dollar	52.95	51.30
4.	Danish Kroner	10.35	9.95
5.	EURO	76.90	74.30
6.	Hong Kong Dollar	8.75	8.50
7.	Kuwait Dinar	229.50	214.70
8.	New Zealand Dollar	49.65	47.90
9.	Norwegian Kroner	8.30	8.00
10.	Pound Sterling	88.75	85.90
11.	Singapore Dollar	50.75	49.10
12.	South African Rand	5.20	4.85
13.	Saudi Arabian Riyal	18.45	17.25
14.	Swedish Kroner	8.10	7.80
15.	Swiss Franc	70.75	68.45
16.	UAE Dirham	18.80	17.65
17.	US Dollar	67.75	66.05
18.	Chinese Yuan	10.25	9.95

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equv. to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	68.10	65.80
2.	Kenya Shilling	68.20	63.75

FIXATION OF TV OF EDIBLE OIL, BRASS, POPPY SEED, ARECA NUT, GOLD AND SLIVER

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 109/2016-Customs (N.T.) dated 12.08.2016 respectively** has amended **Notification No.36/2001-Customs, dated 03.08.2001** and fixed tariff value of edible oil, brass, poppy seed, areca nut, gold and silver by substituting tables, TABLE – 1, TABLE – 2 and TABLE – 3.

ALL INDUSTRY RATES OF DRAWBACK FOR EXPORT OF GARMENTS UNDER SPECIAL ADVANCE AUTHORIZATION SCHEME

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 110/2016-Customs (N.T.) dated 13.08.201** has amended **Notification No.110/2015-Customs (N.T.), dated 16.11.2015** and has specified All Industry Rates of drawback for export of garments under Special Advance Authorization Scheme under para 4.04A of FTP 2015-20.

The readers may refer the notification for the details.

INCOME TAX

NOTIFICATIONS & CIRCULARS

AMENDMENT OF DTAA BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF MAURITIUS

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **NOTIFICATION No. 68/2016 dated 10.08.2016** has notified that all the provisions of the Protocol amending the Double Taxation Avoidance Agreement between the Government of the Republic of India and the Government of Mauritius (for prevention of fiscal evasion and for encouraging mutual trade and investment) signed on 10.05.2016 and entered into force on 19.07.2016 shall be given effect to in the Union of India, in accordance with Article 9 of the said Protocol.

The readers may refer the notification for the details of the Protocol.

INCOME DECLARATION SCHEME (SECOND AMENDMENT) RULES, 2016, INCOME DECLARATION SCHEME (THIRD AMENDMENT) RULES, 2016

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India

vide **NOTIFICATION No. 70/2016 dated 12.08.2016** has issued Income Declaration Scheme, (Second Amendment) Rules, 2016 **and**

vide NOTIFICATION No. 74/2016 dated 17.08.2016 has issued Income Declaration Scheme, (Third Amendment) Rules, 2016.

The notifications are self-explanatory. The readers may refer the same.

FURTHER CLARIFICATIONS ON INCOME DECLARATION SCHEME, 2016

OUR COMMENTS: The Income Declaration Scheme, 2016 came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has earlier issued three sets of FAQs vide Circular Nos. 17, 24, 25 & 27 of 2016.

The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular No.29 of 2016 dated 18.08.2016** has issued further clarifications on Income Declaration Scheme, 2016.

The readers may refer the circular for the details.

EXTENSION FOR ISSUANCE OF ACKNOWLEDGMENT IN FORM-2 FROM 15 DAYS TO 30 DAYS FOR DECLARATIONS FILED IN JULY, 2016

OUR COMMENTS: The Rule 4(3) of the Income Declaration Scheme, Rules, 2016 provides for issuance of acknowledgment in Form-2 by the Principal Commissioner/Commissioner to the declarant within 15 days from the end of the month in which the declaration has been furnished.

The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **F.No.142/8/2016-TPL dated 12.08.2016** has extended the from 15 days to 30 days in respect of the declarations filed under the Scheme in the month of July, 2016.

ASSAM

SEVERAL NOTIFICATIONS

OUR COMMENTS The Finance (Taxation) Department, Government of Assam, has issued several notifications as follows:

Notification No.FTX.47/2013/144 dated 10.08.2016: Modification of rate of tax on Hospital Equipments and Rectified Spirit.

Notification No. FTX.25/2008/Pt/50 dated 10.08.2016: Exemption for industries manufacturing Bamboo based industries.

Notification No.FTX.100/2007/304 dated 10.08.2016: Concessional rate of tax for Canteen Stores Department (CSD).

Notification No.FTX.100/2007/305 dated 10.08.2016: Concessional rate of tax for Central Police Canteen (CPC).

Notification No.FTX.49/2014/108 dated 10.08.2016: Amendment of AVAT rules relating to filing of Annual Return/Audit Report.

Notification No. FTX.55/2005/Pt-VII/63 dated 10.08.2016: Modification of rate of tax on mekhela chadar, candle, tamarind, khandsari, e-rickshaw, citronella oil, packaged drinking water, LED bulbs, mobile phones, gold ornaments, gold bullion, bitumen emulsion, cigarettees and Fifth Schedule goods.

Notification No.FTX.29/2003/84 dated 02.08.2016: Amendment in Rule 13 & 44 regarding e-registration

The readers may refer the notification for details.

BIHAR

ENHANCEMENT IN RATE OF TAX FROM 5% TO 6% AND 14.5% TO 15% & AMENDMENT IN SECTION 14, 35, 36 & 41 ETC.

OUR COMMENTS The Government of Bihar, vide **Notification No. L.G.-01-11/2016/148/Leg dated 12.08.2016** has enhanced the tax rates from 5% to 6% and 14.5% to 15%. Also, other amendments have been made in section 14, 35, 36 & 41 and insertion of Section 2(kk) & 15-C.

The readers may refer the notification for details.

WEST BENGAL

THE WEST BENGAL FINANCE ACT, 2016 PUBLISHED

OUR COMMENTS The Law Department, Government of West Bengal vide **Notification No. 682-L. dated 28.07.2016** has published The West Bengal Finance Act, 2016 having been assented to by the Governor.

The Act is to amend the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the Indian Stamp Act, 1899, in its application to West Bengal, the West Bengal Sales Tax Act, 1994, and the West Bengal Value Added Tax Act, 2003.

The readers may refer the notification for details.

EFFECTIVE DATE OF PROVISIONS OF WEST BENGAL FINANCE ACT, 2016

OUR COMMENTS The Finance Department, Government of West Bengal vide **Notification No.1197-F.T. dated 16.08.2016** has appointed the following days as the effective date for provisions of West Bengal Finance Act 2016:

a) 01.08.2016 for section 1 of the said Act

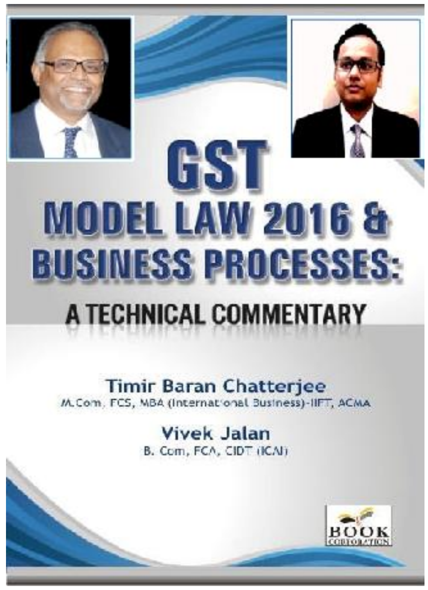
(b) 01.01.2016 for section 2(1) of the said Act

(c) 01.04.2016 for section 5(1) of the said Act

(d) 01.07.2016 for section 5(6) of the said Act

(e)01.08.2016 for the remaining provisions of section 2,3, 4 and 5 of the said Act.

IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



ABOUT THE BOOK: GST Bill is going to be passed in July 2016 and GST is expected to go live from 1st April 2017! In this backdrop, as our initiative to get GST READY, we have launched this publication. This books provides an insight into the following –

1. Procedural provisions under The Model GST Law 2016
2. Glimpse of the Model GST Law 2016
3. Model GST Law 2016
4. GST Valuation (Determination of The Value of Supply of Goods and Services) Rules, 2016
5. The Integrated Goods and Services Tax Act, 2016
6. GST Registration Process
7. GST Return Process
8. GST Payment Process
9. GST Refund Process
10. Eco system for GST and GST Suvidha Provider

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BOOK EXCLUSIVELY ON WORKS CONTRACT (SERVICE TAX AND VAT)

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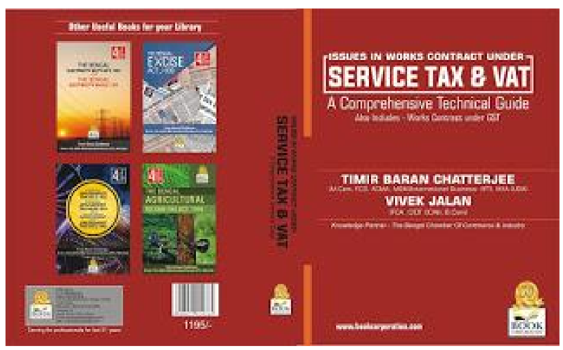
Works Contract has been one of the most complex and litigation prone areas in Indirect Taxes. However with good understanding of all the provisions under Service Tax & VAT which hit Works Contracts & proper planning, Trade & Industry can not only avoid litigation but can also save around 5% - 10% on indirect taxes which by no means is an ordinary saving in the competitive market. For Trade & Industry, the problems on the subject have been many. Over the last few years we have received queries and replied to the issues at various forums.

Vide this publication, we have made an attempt to cover in detail all issues related to **Service Tax:** Valuation, Point of Taxation, Place of Taxation, Abatement, Reverse Charge, Input Tax Credit Mechanism & **VAT**: Contractual Transfer Price, Modes of Valuation, WIP, STDS as well as **GST** . We have also focused on the issues faced by various sectors on account of Works Contract.

This book is divided into Seven Parts covering several broad areas. Each area has the provisions directly from the Statue in the beginning and detailed discussions on the provisions in the form of questions and answers thereafter. Since litigations on the subject have been manifold, we have also covered judicial pronouncements extensively.



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