100th Issue

TAX CONNECT

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INCOME TAX

CUSTOMS

CENTRAL EXCISE

SERVICE TAX

STATE TAXES

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EDITORIAL

Friends,

This is the Centennial Issue of our "TAX CONNECT", a weekly publication which reaches more than 70,000 professionals, first published in December 2013!

Over the years our TAX CONNECT has evolved from a monthly bulletin to a weekly bulletin covering the recent developments on all taxes, i.e. GST, Service Tax, Central Excise, Customs, State Taxes & Income Tax. As Editors this bulletin, we would like to thank our readers from whom we have always received response on our bulletin wherever we have gone in this time. We also thank our various Editorial Board members who have over the years worked relentlessly on releasing this bulletin on every Saturday without fail!

In particular we express our gratitude to CA Neha Jalan (Partner of Tax Connect) who has over the years transformed and refined this bulletin!

There were two visions for publication of this bulletin–

1. To provide professionals with COMPLETE Tax related information and updation in one place.
2. To simplify the language of the notifications, orders, rules, circulars, Case Laws, etc so as to make them user friendly.

We do hope we have been successful in this mission till now and of course we would like to improve everyday.

Further, we are also organizing a workshop on GST and Budget of 2016

On the GST Front, we see some positive development. The GST Council has finalized the primary draft of CGST Law and SGST law for compensating states. The laws comprising 197 provisions, 5 schedules have been approved.

The FM has held that a few issues remain related to dual control. The Council will meet again on January 3-4 to decide on dual control and IGST. **Mr Arun Jaitley also held that the Govt. is trying its best to implement GST from April 1** and that he'll also hold budget consultations with state finance ministers in the January 3-4 meeting.

The centre and states are thus only one hurdle away from striking a consensus on the blueprint for the roll out of the GST!

Following the clearance by the GST council, all the draft Bills are likely to be presented in the Session of Parliament. Subsequently, states will have to pass their state GST Bills in their respective assemblies.

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

Truly Yours

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SYNOPSIS

GOODS & SERVICE TAX (GST)

REVISED DRAFT MODEL GST LAW (NOVEMBER 2016): SOME NEW CONCEPTS & DEFINITIONS

The revised GST Model Law in November has brought in many changes in the existing law and has also introduced some new concepts. We hereby continue to discuss some of the key changes in this issue.

- **Turnover in a State:** Taxable portion on which tax has to be paid under reverse charge basis is not included in the aggregate turnover.

  As per the new law Sec 2(107): "turnover in a State" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and / or services made within a State by a taxable person and inter-state supplies of goods and / or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

  Explanation- Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies,

- **Works contract:-** The definition has a broader coverage which has been taken substantially from Sec(54) of The Finance Act 1994 with certain differences.

  As per the new law Sec 2(110): "works contract" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property.

- **Composition Scheme Restriction:** Restriction has been extended.

  As per the new law (Sec 9): Restriction is extended to following categories-

  i. Taxable person who is engaged in the supply of services. This restriction is not reasonable and curtailing the option of the taxable person.

  ii. Taxable person who make any supply of goods through an electronic commerce operator who is required to collect tax at source;

  iii. Taxable person who is a manufacturer of goods as may be notified;

  iv. Taxable person who makes any supply of the goods which are not leviable to tax under this Act.

- **Time of Supply of goods:** The time of supply shall be governed only by two conditions instead of four conditions earlier.

  As per the new law Sec 12: Time of supply of services is the earliest of the following two:

  (i) The date of issue of invoice by the supplier or the last date on which he is required to issue invoice; or

  (ii) The date on which the supplier receives the payment with the respect to supply.

- **Time of Supply of goods in case of reverse charge** The time of supply of goods in case of reverse charge shall be governed only by three conditions instead of four conditions earlier.

  As per the new law Sec 12: In case of reverse charge, time of supply is modified as earliest of the following dates:

  (i) The date of receipt of the goods; or

  (ii) The date on which the payment is made; or

  (iii) The date immediately following thirty days from the date of issue of invoice by the supplier

GOODS & SERVICE TAX (GST) contd..

- **Time of supply of services:** Simpler law with only 2 conditions to determine the time of supply".

  As per the new law Sec 12: Time of supply of services is the earliest of the following two, as against various options in the earlier draft:

  (i) The date of issue of invoice by the supplier or the last date on which he is required to issue invoice; or

  (ii) The date on which the supplier receives the payment with the respect to supply.

- **Time of Supply of services in case of reverse charge:** Only two conditions have been specified instead of four conditions earlier.

  As per the new law Sec 12: Time of supply of services in case of reverse charge has been modified to, to earliest of the following two:

  (i) The date on which the payment is made; or

  (ii) The date immediately following sixty days from the date of issue of invoice by the supplier

- **Pre-deposit limits in case of appeals:** In the previous draft law, the pre-deposit amount was 10% of the amount of tax, interest and penalty under dispute, however, now it is only 10% of the amount of tax in dispute.

  As per the new law Sec 98: Under the new law, a relaxation has been provided so as to deposit is only 10% of the tax amount in dispute.

- **TDS (Sec 46):** TDS liability shall arise on a contract exceeding Rs 5 lakhs instead of Rs 10 lakhs as per earlier law.

Transitional provisions

The transitional provisions in the revised draft law are comprehensive and is expected to clear several difficulties which remained ambiguous in the previous draft. Clearly, industry's concerns have been heard.

a. The transition provisions deals with situations of first and second stage dealers and dealer importers to maintain the credit chain. Benevolent provisions have been introduced with respect to dead credit due to exemptions and abatements in the earlier regime.

b. A one-month window would be allowed for claiming credit of taxes, paid under old regime, on the goods and services in transit. The status quo with respect to inputs, semi-finished goods and finished goods removed from the factory to a job worker's premise has been maintained.

c. The complication of sold goods being returned and return of goods sent on 'sale on approval basis' has also been adequately catered.

d. The CENVAT credit reversal due to non-payment of consideration to the service provider, would be allowed as credit in the GST regime once the payment is made.

e. The centrally registered service providers would be able to carry over the accumulated credit into appropriate registrations across different states.

f. Supplies spreading across the present regime and GST regime would be taxed in the present regime to the extent point of taxation has arisen pre-GST appointed date and the remainder would be taxed in the GST regime.

TAX CALENDAR

Due date	COMPLIANCES FROM 25th Dec, 2016 to 31st Dec, 2016	State/Region
25th Dec, 2016	Filing of monthly/quarterly VAT return (VAT Act)	Jharkhand
	Issuance of WCT certificate (VAT Act)	West Bengal, Mizoram
28th Dec, 2016	Deposit of VAT of previous month (VAT Act)	Arunachal Pradesh
	Filing of monthly/quarterly VAT return (VAT Act)	Arunachal Pradesh (Monthly, if turnover>Rs. 1 crore)
30th Dec, 2016	Deposit of VAT of previous month (VAT Act)	Tripura, Himachal Pradesh Punjab (if payment otherwise than by cheque) Goa (if Tax < Rs. 1 lac), Mizoram
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Himachal Pradesh , Punjab (if payment otherwise than by cheque)
	VAT Audit (VAT Act)	Gujarat, Kerala, West Bengal
	Deposit of WCT of previous month (VAT Act)	Goa (Monthly, if Tax< Rs. 1 lac)
	Filing of monthly/quarterly WCT return(VAT Act)	Rajasthan,
	Deposit of Entry tax of previous month (Entry Tax Act)	Maharashtra (For unregistered dealers), Goa
	Issuance of WCT certificate (VAT Act)	Orissa
31st Dec, 2016	Deposit of P tax of previous month (Commercial Tax Act)	Maharashtra
	Deposit of Entry tax of previous month (Entry Tax Act)	Assam
	Filing of monthly/quarterly WCT return(VAT Act)	Bihar, Chandigarh, Tamil Nadu
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Bihar, Gujarat, Jharkhand (Annual), Uttarakhand, Tripura,
	Deposit of VAT of previous month (VAT Act)	Mizoram, Jammu & Kashmir

SERVICE TAX

NOTIFICATIONS/CIRCULARS

PERSON IN NON-TAXABLE TERRITORY PROVIDING OIDAR SERVICES TO A NON-ASSESSE ONLINE RECIPIENT IN TAXABLE TERRITORY MAY ISSUE ONLINE INVOICES WITHOUT DIGITAL SIGNATURE UPTO 31ST JANUARY, 2017

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 53/2016-Service Tax dated 19.12.2016 has amended Service Tax Rules 1994** and provided that a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated using a digital signature for a period upto 31st January, 2017.

COURT DECISIONS

M/S. NATIONAL INSURANCE COMPANY LTD. VERSUS COMMISSIONER OF SERVICE TAX, KOLKATA [CESTAT KOLKATA]

BRIEF: Re-insurance services provided by the assessee as co-insurer along with lead insurer to the insured, does not attracts service tax.

OUR COMMENTS: In the above case, the assessee entered into an arrangement/agreement with the lead insurer and the other insurance company by which, General Insurance Policy has been provided to the client/insured. The premium so received was proportionately shared by the co-insurer and the lead insurer in accordance with the risk covered by each one of them.

Further, as per the agreement, the lead insurer is required to collect the entire amount of insurance premium along with service tax and then distribute it to the co-insurers. The liability of compliance of service tax is on the lead insurer.

The Revenue demanded service tax alongwith interest and penalty alleging that general insurance service provided by the assessee as co-insurer along with lead insurer to the insured, attracts service tax on the proportionate premium received by them along with lead insurer for providing taxable service under the category of General Insurance Service .

The Hon'ble CESTAT noted that there is no separate service rendered by the lead insurer to the co-insurer or otherwise relating to insurance business, except for certain administrative matters. The only service rendered is between the co-insurers and the policy holder.

Further, the co-insurance agreement is in the nature of general regulation for sharing the risk and premium involved in an insurance policy and the entire insurance premium has already suffered tax at the time of its receipt in the hands of the lead insurer.

And, service tax having been collected/paid on the entire premium amount, therefore, there cannot be any demand of service tax on the proportionate amount by the assessee. Consideration for a service cannot be taxed twice from two different persons.

Ref:

Vide Circular F. No. ST / HQ / EA-2000/GR.01/TATA/23/ 2011/ 2308 dated 10.09.2013, it has been clarified that the service of co-insurance is different from the insurance.

[Decided in favour of assessee]

CENTRAL EXCISE

COURT DECISIONS

M/S TEREX EQUIPMENTS P LTD VERSUS COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, NOIDA [CESTAT ALLAHABAD]

BRIEF: CENVAT credit of service tax paid on repair and maintenance of transformers with respect to warranty provided is allowed, as it is an activity relating to sale of goods.

OUR COMMENTS: In the above case, the assessee is a manufacturer of Excavators, Backhoe Loader & Skid Steer. He took credit of service tax on warranty provided by their dealers.

The Revenue issued a show cause notice on the grounds that the warranty provided by dealers is not input service for the manufacturer of above stated goods and therefore, Service Tax paid on warranty by providers is not admissible as input service credit under Cenvat Credit Rules, 2004.

The Hon'ble CESTAT observed that the dealers were repairing equipment and charging repair charges from the assessee.

Ref: In the case of Commissioner of Central Excise, Vodadara II Vs. Danke Products - 2009 (16) STR 576 (Tri.-Ahmd.), it has been held that repair and maintenance of transformers during warranty period is an activity of relating to sale of goods.

Accordingly, it was held that the assessee is entitled for input service credit on repair charges paid to the dealers by the assessee as the same is an activity relating to sale of goods.

The impugned order was therefore set aside.
.
[Decided in favour of the assessee]

UNION OF INDIA VERSUS ALCOBEX METALS LTD. & ANR. [SUPREME COURT]

BRIEF:"Industrial dust" arising during the course of manufacturing in the factory is not a marketable commodity, hence, not dutiable.

OUR COMMENTS: In the above case, the**Hon'ble High Courtof Rajasthan** confirmed the order of theCESTAT holding that the 'industrial dust' arising during the course of manufacturing of brass and copper articles in the factory of the respondent is not marketable and therefore, would not attract excise duty. The High Court has specifically followed two judgments of this Court viz.**, 'Union of India and others v. Indian Aluminium Co. Ltd. and Another' [1995 Supp. (2) SCC 465] and 'Collector of Central Excise, Patna v. Tata Iron & Steel Co. Ltd.' [2004 (9) SCC 1]**.

The **Hon'ble Supreme Court** held that the 'industrial dust' in the present case is identically placed as dross and skimmings which were involved in the Indian Aluminium Co. Ltd.'s case and the High Court has correctly relied on the two judgments. This appeal is, accordingly, dismissed.

[Decided against Revenue].

CUSTOMS

NOTIFICATIONS/CIRCULARS

RAIGANJ RAILWAY STATION APPOINTED AS LAND CUSTOMS STATION FOR EXPORT OF GOODS FROM INDIA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 146/2016-Customs (N.T.) dated 14.12.2016** has amended **Notification No.63/1994-Customs (N.T.), dated 21.11.1994** and appointed Raiganj Railway Station as land customs station only for the purpose of export of goods from India.

COURT DECISIONS

KAY BEE & CO. & 71 OTHERS VERSUS COMMISSIONER OF CUSTOMS (IMPORT) , MUMBAI [CESTAT MUMBAI]

BRIEF: Demand raised on the basis of comparison with the price of the different goods of different period cannot be held correct.

OUR COMMENTS: In the above case, the assessee is an importer of pistachios.

The Revenue did not accept the price declared by the assessee and enhanced the value of the pistachios imported by the assessee invoking Rule 8 of Customs Valuation Rules, 1988. The proposal of enhancement was made on the basis of contemporaneous import of the Pistachio and the demand was confirmed by invoking Rule 5 of Customs Valuation Rules, 1988.

The Hon'ble CESTAT noted the following:

- show cause notice invoked Rule 8 whereas the demand was confirmed invoking Rule 5 which is the beyond the scope of show cause notice.

- in case of agriculture produce, quality of the goods varies from one of the crop to another (particularly edible agriculture produce).

  By lapse of time the product get deteriorated and obviously the price of old stock of agriculture produce will not be equal to the fresh stock of agriculture produce. Therefore being this fact undisputed the price of the new crop of Pistachio cannot be arbitrarily applied in case of old crop of Pistachio.

- The department accepted the fact that contemporaneous imports of Pistachio is of different period.

- Further no other evidence was placed on record to show that price declared by the appellant are not correct and the same was influenced by either some extra consideration. Therefore in absence of such evidence, the comparison with the price of the different goods of different period cannot be held correct.

Accordingly, the impugned order was set aside.

[Decided in favour of the assessee]

INCOME TAX

NOTIFICATIONS & CIRCULARS

PRADHAN MANTRI GARIB KALYAN YOJANA, 2016 COMES INTO FORCE W.E.F 17 DEC 2016

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

vide **NOTIFICATION No. 115/2016 dated 16.12.2016** has appointed

- 17th December, 2016, as the date on which the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 comes into force; and

- 31st March, 2017 as the date on or before which a person may make a declaration under sub-section (1) of the said section 199C.

vide **NOTIFICATION No. 116/2016 dated 16.12.2016** has made **The Taxation And Investment Regime For Pradhan Mantri Garib Kalyan Yojana Rules, 2016.**

The readers may refer the notification for details.

JURISDICTION OF INCOME-TAX AUTHORITIES

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 117/2016 dated 16.12.2016 has**

- notified the Principal Commissioner/Commissioner u/s 120 of the Income-tax Act, 1961, as the Principal Commissioner/ Commissioner for declaration filed manually or electronically under electronic verification code u/ 199C(1) of the Finance Act, 2016.

- notified the Principal Commissioner/Commissioner u/s 120 of the Income-tax Act, 1961 or the Commissioner of Income-tax, Centralised Processing Centre, Bengaluru, as the Principal Commissioner or Commissioner, for declaration filed electronically with digital signature u/s 199C(1) of the Finance Act, 2016.

PRADHAN MANTRI GARIB KALYAN DEPOSIT SCHEME, 2016

OUR COMMENTS: The Department of Economic Affairs, Ministry of Finance, Government of India vide **Notification No. S.O.4061 (E) dated 16.12.2016** has notified Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 in consultation with the Reserve Bank of India.

It shall be effective for the period 17th December, 2016 till 31st March, 2017.

It shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

The readers may refer the notification for details.

INCOME-TAX (35TH AMENDMENT) RULES, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 120/2016 dated 21.12.2016** has made Income-tax (35th Amendment) Rules, 2016 which shall be deemed to have come into force from the 7th August, 2015.

The readers may refer the notification for details.

STATE TAXES

GUJARAT

EXEMPTION TO POS MACHINE

OUR COMMENTS: The Finance Department, Government of Gujarat vide **NOTIFICATION No. (GHN-72)VAT-2016-S.5 (2) (52)-TH: dated 19.12.016** has exempted Point of Sale (POS) Terminal Machine (swipe machine for cashless transaction) from whole of tax.

RAJASTHAN

LAST DATE OF FILING RETURNS FOR F.Y. 2015-16 EXTENDED TO 31.01.2017

OUR COMMENTS: The Commercial Taxes Department, Government of Rajasthan vide **NOTIFICATION No. F26 (315) CCT/MEA/2016/1990 dated 19.12.016** has extend the date of following return(s) to 31 January 2017:

(i) Annual return in Form VAT-10A for 2015-16- to be furnished by dealers mentioned in Rule 19(6) of the Rajasthan Value Added Tax Rules, 2006.

(ii) Revised return(s) in Form VAT-10 or in Form VAT-10A for 2015-16- to be furnished Rule 19(8).

SELECTION CRITERIA FOR AUDIT UNDER SECTION 27 OF THE RVAT ACT, 2003

OUR COMMENTS: The Commercial Taxes Department, Government of Rajasthan vide **Order No. F.26(376) BA/CCT/2016-17/199 dated 06.12.016** has specified that:

(i) For 2014-15, 4% of the total dealers in each zone having turnover more than Rs. 50 lakhs shall be selected through RajVISTA for the audit u/s 27 of the Act as provided in order No. F.26(376) BA/CCT/2016-17/78 dated 22.08.2016.

(ii) 50% of cases having the highest score shall he selected first;

(iii) Selection shall be as per serial number in the order order, i.e. dealers for risk parameters at serial No. 1 shall be selected first and so on;

(iv) Selection for each risk parameter shall be made on the basis of highest score on that risk parameter. In case of a tie, dealers which has highest total score on all remaining parameters shall be selected;

(v) The list of selected dealers shall be communicated to the Deputy Commissioner (Adm.)/Deputy Commissioner (Business Audit) through RajVISTA wherefore the cases shall be assigned to the officers (not below the rank of Commercial Taxes Officer) posted in his zone.

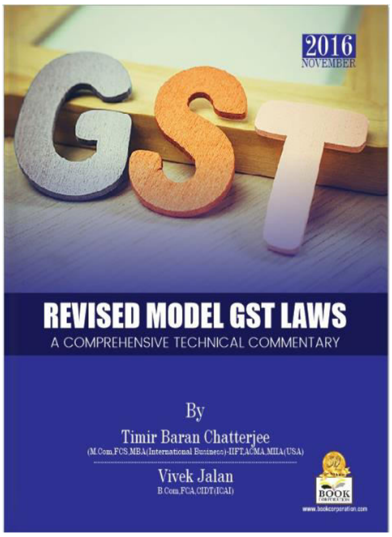
(vi) Guidelines issued vide (order No. F.16(48)Tax/CCT/2011-12/166 dated 01.05.2013) shall be followed.

TAMIL NADU

EXEMPTION TO CANCER INSTITUTE (WIA), CHENNAI

OUR COMMENTS The Commercial Taxes & Registration (B2), Government of Tamil Nadu, vide **G.O. (Ms)No. 129 dated 15.12.2016** has extended the exemption to Cancer Institute (WIA), Chennai from 31.12.2016 to 30.06.2017.

IN STANDS: REVISED MODEL GST LAWS : A COMPREHENSIVE TECHNICAL COMMENTARY



ABOUT THE BOOK: While the Government is moving at a rapid pace, yet it is still a question whether the Corporates are GST Ready or not. It is high time that the law needs to be analysed and implemented into every facet of the business including sales and marketing, Logistics, procurement, HR, IT and of course Finance and Taxation. The book contains an exhaustive coverage of the Revised Model GST in the form of a Section wise technical commentary. It provides an insight into the following:

1. Brief about the major changes between the Revised law and the earlier law.
2. Revised Model GST Law November 2016
3. Revised Model IGST Law November 2016
4. GST Compensation Law
5. GST Return Rules
6. GST Refund Rules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

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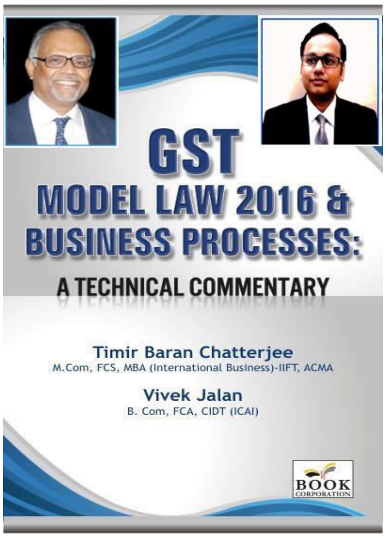
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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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