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EDITORIAL

Friends,

Goods & Services Tax Network [GSTN] shall start migrating the assessees registered under the Central Excise Act /Service Tax Act (not registered under the respective State VAT Act) from 1 January, 2017 till 31 January, 2017.

The following documents and information shall be required:

a) Provisional ID & password received from state/ Central Authorities
b) Registered E-mail Id & Mobile Number
c) Bank Account Number & IFSC code
d) Proof of Constitution of Business
   - Partnership Deed (for Partnership firms)
   - Registration certificate (for other entities)
   [PDF, JPEG format, size upto 1MB]
e) Name, Date of Birth, Mobile Number, PAN, Residential Address & Photograph - JPEG file up to 100 KB of Directors/Partners/Proprietor
f) Name, Date of Birth, Mobile Number, PAN, Residential Address & Photograph (JPEG format up to 100 KB) and proof of appointment [PDF, JPEG format, size upto 1MB] of Authorised Signatory
g) Digital Signature Certificate of the Authorised Signatory;
h) E-mail Id, Mobile Number, Nature of possession of premises along with proof - PDF/JPEG file up to 1 MB] of Principal & Additional Places of Business
i) HSN Code for goods/SAC Code for services
j) Latest Bank Statement [PDF/JPEG file up to 1 MB].

Now coming to the present taxes,

In Customs, exemption from basic customs duty on import of technitium-99m has been withdrawn.

In Income Tax, Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax (Amendment) Rules, 2016 have been specified.

Further date of declaration of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016 has been extended to 31.01.2017.

In **WBVAT,** West Bengal Sales Tax (Settlement Of Dispute) Act, 1999 has been amended. The key amendments are as follows:

(a) cases for the assessment periods up to the year 2013-14 pending as on the 30.09.2016 brought under the settlement scheme.

(b) date of filing of application under the scheme extended till 31.01.2017

(c) amount to be paid for settlement modified as follows:-

(I) 30% of the arrear tax in dispute, relating to disallowance of any claim of Input Tax Credit

(II) 60% of the arrear tax in dispute, for other cases

Other amendments have been discussed in the relevant section of the bulletin.

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): IGST LAW - 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.

- **Deemed inter-state supply: Import of goods:** Under Old IGST Law, if the goods entered territorial waters it was deemed that import is complete and hence if any high sea sale takes place thereafter it may not be considered as inter-state supply. This would have also created anomaly with regard to tax leviable on eventual importer who clears the goods. This anomaly has now been corrected by providing that any supply (including high sea) till they cross the customs frontier (definition inserted) shall be inter-state supply so that IGST can be levied on eventual importer who clears the goods.

  As per the new law Sec 3(3): A supply of goods in the course of import into territory of India till they cross the customs frontiers of India shall be deemed as inter-state supply.

- **Payment of IGST on import of goods:-** Under Old IGST Law, IGST would have been payable as soon as goods enter territorial waters even if the same would have been sold on high seas thereafter and custom clearance is done by the buyer. Under New IGST Law, said anomaly has been corrected to provide that IGST shall be payable only when the duties of customs are payable. Hence high sea sales will continue to enjoy exemption presently available under the CST Act, 1956.

  As per the new law Sec 5: Proviso to Sec. 5 provides that IGST shall be levied and collected in accordance with the provisions of Sec. 3 of Customs Tariff Act, 1975 at the point when duties of customs are levied under section 12 of Customs Act, 1962 on a value determined under the first mentioned Act.

- **Deemed inter-state supply: Export of goods/services:** Under Old IGST Law, if all the conditions are not satisfied it was not regarded as inter-state supply. In such case, classification of such supply as inter-state or intra state was an issue. Hence such transactions would have slipped the tax. Same has been corrected by delinking export of service with supply when supplier is located in India and place of supply is outside India. Latter supply shall be treated as inter-state and shall be zero rated only if other conditions viz. recipient outside India and payment is received in foreign currency are fulfilled. Otherwise IGST shall be payable.

  As per the new law Sec 3(5): It has been provided that supply of goods/services when supplier is located in India and place of supply is outside India shall be deemed to be inter-state supply.

- **Zero rated supplies:** Anomaly related to exports as well as SEZ supplies have been corrected and two options akin to current law have been provided to claim refund.

  As per the new law Sec 16: Export of goods/services as well as supply to SEZ developer or unit shall be zero rated. Further Sec. 16(3) provides two options for claiming refund in case of zero rated supply - option 1: to export under bond and claim refund of unutilized credit; option 2: to export with payment of IGST and claim refund of the same (akin to rebate under present law).

- **Export of exempt goods/services** This is beneficial change as under present VAT laws, in many State's input tax credit is not available in case of export of exempted goods. As per New IGST Law, credit shall be available. Only exception is a banking company or a financial institution which exercises option to avail ad-hoc 50% credit under section 16(3) of CGST Law.

GOODS & SERVICE TAX (GST) contd..

As per the new law Sec 16(2): credit of input tax will be allowed even if the supply is of exempted goods/service.

- **Deemed supplier of service:** New IGST Law, provides that companies like Uber, Ola (exact categories will be stipulated) shall be treated as suppliers and not the actual cab owners and hence it shall be liability of said companies to pay the tax.

  As per the new law Sec 5(3): the Central Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax.

- **Power to grant exemption:** Old IGST Law, did not provide for any power to the Central Government to grant any exemptions.

  The new law Sec 6 provides such power. It also provides that any exemption granted by the Central Government on the recommendation of the Council, under section 11 of the CGST Act in respect of intra-State supply of goods and/or services of any specified description, shall apply mutatis mutandis to inter-State supply of goods and/or services of the said description unless specifically provided otherwise.

- **Place of supply - import/export of goods:** As per Old IGST Law,, the port or airport could have been considered as a place of supply due to ambiguous language. New IGST Law, has cured this anomaly to provide that it is the location of supplier and not the port which shall be the place of supply.

  As per the new law Sec 8: It provides for determination of place of supply in cases of imports & exports. As per said section, place of supply of goods imported into India shall be the location of the importer. The place of supply of goods exported from India shall be the location outside India.

- **Place of supply - import/export of services:** The old IGST law had general principles for determination of place of supply of services same as that for place of supply of goods. However, under the new law, location of supplier and location of service recipient have been considered.

  As per the new law Sec 10: It provides for determination of place of supply where the location of the supplier or the location of the recipient is outside India.

TAX CALENDAR

Due date	COMPLIANCES FROM 01st Jan, 2017 to 07th Jan 2017	State/Region
5th Jan, 2017	Deposit of WCT of previous month (VAT Act)	Kerala
	Service Tax deposit of previous month (Company/ Society) (Finance Act)	All India
	Service Tax deposit of 3rd quarter (Individual/ Partnership firm) (Finance Act)	All India
7th Jan, 2017	Deposit of WCT of previous month (VAT Act)	Assam Tripura Manipur
	TDS/TCS deposit of previous month (Income Tax Act)	All India

Note:For Service Tax, if an entity makes online payment, due date is 6th instead of 5th.

COURT DECISIONS

M/S SHREE ANAND VENKATESHWARA ASSOCIATES VERSUS CCE, PUNE-I [CESTAT MUMBAI]

BRIEF: If the assessee pays the Service Tax along with interest, no show-cause notice should be issued and when show-cause notice itself is not warranted, no adjudication is required and there is no question of imposition of any penalty.

OUR COMMENTS: In the above case, the assessee is providing the services of 'Construction of Residential Complex Services' for various customers since February, 2011 onwards. The said service is taxable w.e.f. 01.07.2010. He registered for the said services on 13.08.2011 did not discharged the Service Tax liability.

On enquiry the assessee worked out the Service Tax liability and paid the entire Service Tax along with interest.

However, in addition, equal amount of penalty of was imposed under Section 78 & 77(1)(a) was imposed. The adjudicating authority also gave the option to the appellant for reduction of penalty to 25% under first proviso to Section 78 of the Finance Act, 1994, if the reduced amount of penalty is paid within 30 days of the date of communication of adjudication order.

The Hon'ble CESTAT noted the following:

-the assessee is not contesting the tax liability and is only contesting the imposition of penalties made under Section 77 & 78.

-Further, on the issue of the taxability on 'Construction of Residential Complex Services' the Apex Body of the builders i.e. Maharashtra Chamber of Housing and Industry has filed writ petition before Hon'ble High Court of Bombay. Therefore the legal position of taxability in respect of 'Construction of Residential Complex Services' was not clear, accordingly, most of the builders including the assessee have not been discharging the Service Tax.

-The assessee has not hidden any fact and correct and true data regarding transaction in respect of their business were disclosed in the books of account, as the data of taxable value was obtained by the department also from the same books of account.

-On enquiry the assessee paid the entire Service Tax along with interest even before the issuance of show-cause notice.

-As per "Section 73(3) of the Finance Act, 1994 -

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

Provided that the [Central Excise Officer] may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the [Central Excise Officer] shall proceed to recover such amount in the manner specified in this section, and the period of [thirty months] referred to in sub-section (1) shall be counted from the date of receipt of such information of payment."

From the above provision it is clear, if the assessee pays the Service Tax along with interest, no show-cause notice should be issued and when show-cause notice itself is not warranted, no adjudication is required and there is no question of imposition of any penalty.

Accordingly, the assssee has made out the strong case for waiver of the penalties imposed under Section 77 & 78 invoking Section 73(3) as well as Section 80 of the Finance Act, 1994.

Ref: (i) Shapoorji Pallonji & Company Ltd. Vs. Commissioner of Service Tax [CESTAT, Bangalore Final order No. 964/2010 dated 04.06.2010]

[Decided in favour of assessee]

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE VERSUS SURINDRA ENGINEERING CO. PVT. LTD. [CESTAT MUMBAI]

BRIEF: Cost of additional testing conducted at customer's request and borne by the customer is not includible in the assessable value of the goods.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of MS pipes and supplying the same to their customers on payment of duty on the value arrived at in terms of Section 4 of the Central Excise Act, 1944.

The customers are Central/State and semi-government bodies. They arrange third party inspection of the goods at assessee's factory for which payment for inspection charges is made by the customer directly to the inspection agency.

However, in few cases assesssee is making payment to the inspection agency on behalf of the customer and subsequently getting the reimbursement of the same from their customers.

The Department contended that said inspection charges should be included in the assessable value. The demand was raised on the grounds that the goods in question cannot be sold without the inspection as required by the customers. Therefore, the goods become marketable only after inspection and as per Section 4 of the Central Excise Act, 1944, all the elements which are required to be carried out before clearance of the goods should form part and parcel of the transaction value.

Ref: Hindustan Gas & Industries Ltd v. Commissioner of Central Excise & Customs, Baroda 2001 (123) ELT 481 (Tri.-Mumbai).

The Hon'ble CESTAT noted the following:

As per Section 4, any amount which is paid or payable on behalf of the goods will form the transaction value.

In the present case, as per the contract, the respondent is not under obligation to undertake the inspection and bear the expenses thereof. Inspection is a contract between the inspection agency and the customer and the payment transactions invariably made between both of them. Therefore, in few cases, whatever payment was borne by the respondent, for the inspection, the same was collected from the customer as reimbursements which cannot form part of transaction value as the subject amount is not paid or payable on account of sale of goods.

Accordingly, it was held that the inspection charges is not includable in the assessable value.

Ref:
i. Commissioner of Central Excise, Raipur v. Bhaskar Ispat Pvt. Ltd. 2004 (167) ELT 189 (Tri.LB)

ii. Bhaskar Industrial Development. Ltd. v. Commissioner of Central Excise, Kolkata III 2003 (161) ELT 822 (Tri.-Kolkata)

iii. Commissioner of Central Excise, Belapur v. Sulzer Pumps India Ltd 2015 (326) ELT 619 (Tri.-Mumbai);

[Decided against Revenue].

CUSTOMS

NOTIFICATIONS/CIRCULARS

EXEMPTION FROM BASIC CUSTOMS DUTY ON IMPORT OF TECHNITIUM-99M WITHDRAWN

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 61/2016-Customs dated 27.12.2016** has amended **Notification No.12/2012-Customs dated 17.03.2012** and withdrawn the exemption from Basic Customs Duty on import of Technitium-99m.

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. 149/2016-Customs (N.T.) dated 30.12.2016** 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.

COURT DECISIONS

THE COMMISSIONER OF CUSTOMS VERSUS THE CUSTO MS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL AND M/S. SASS GLOBAL LOGISTICS [MADRAS HIGH COURT]

BRIEF: Suspension under Regulation 20 and Regulation 22 are different. The distinction between the two Regulations is that former is a suspension pending enquiry and the second one is a suspension by way of penalty.

OUR COMMENTS: In the above case, the assessee is operating with CHA licence. An offence report u/s 13 of the Regulations dated 16.10.2012 was received by the assessee on 18.10.2012. On these grounds the Commissioner of Customs passed an order on 30.10.2012 suspending his CHA licence with immediate effect and fixed the date for personal hearing on 8.11.2012, later, adjourned to 11.12.2012. By a further order dated 26.12.2012 passed under Regulation 20(3), the suspension was continued. The assessee then filed an appeal before the CESTAT. When the appeal was pending before the CESTAT, the Commissioner issued an order dated 27.2.2013 appointing an enquiry officer. The order of appointment of the enquiry officer was challenged by the assessee on the ground that without even issuing show cause notice, within the period of limitation, an enquiry officer had, straightway, been appointed. Also, the order of appointment was beyond the period of limitation.

The Hon'ble High Court held that objection of the order of suspension is completely different from the object of issuance of the show cause notice. Under the sub-regulation (2) of Regulation 20, a time limit of 15 days is fixed for suspending the licence from the date of receipt of a report. Under sub-regulation (3), an opportunity of hearing should be granted to the licensee within 15 days from the date of suspension. This opportunity is only in respect of suspension. The Department has taken advantage of the expressions 'suspension' appearing under Regulation 20 as well as Regulation 22. Suspension under Regulation 20 is in cases where further proceedings are sought to be initiated. and under Regulation 22 is by way of penalty after the enquiry. The distinction between two Regulations is that one is a suspension pending enquiry and the other is a suspension by way of penalty.

[Decided against Revenue]

INCOME TAXES

NOTIFICATIONS & CIRCULARS

M/S. DEVRAJ INFRASTRUCTURES LTD. NOTIFIED AS AN INDUSTRIAL PARK FOR SECTION 80-IA(4)

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **NOTIFICATION No. 121/2016 dated 26.12.2016** has notified M/s. Devraj Infrastructures Ltd. as an industrial park for the purposes of Section 80-IA (4) w.e.f 05.09.2010.

The readers may refer the notification for the terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by Devraj Infrastructures Ltd.

INCOME-TAX (36TH AMENDMENT) RULES, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 122/2016 dated 27.12.2016** has made Income-tax (36th Amendment) Rules, 2016 which shall be deemed to have come into force from the 1st April, 2016.

The readers may refer the notification for details.

BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX (AMENDMENT) RULES, 2016

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 123/2016 dated 28.12.2016 has amended the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules 2015.**

The readers may refer the notification for details.

DATE OF DECLARATION OF TAX ARREAR OR SPECIFIED TAX UNDER THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 EXTENDED TO 31.01.2017

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 124/2016 dated 29.12.2016** has extended the date of declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016 from 31.12.2016 to 31.01.2017.

ORISSA

REDUCTION OF VAT ON DAL & PULSES

OUR COMMENTS: The Finance Department, Government of Odisha vide **NOTIFICATION No 34917- dated 26.12.016** has exempted VAT on the sale of pulses and dals specified in Schedule B to the extent it exceeds 1% which shall remain in force for a period of **9 months** from the 1st day of July '2016.

TAMIl NADU

AMENDMENTS IN TAMIL NADU VALUE ADDED TAX RULES, 2007

OUR COMMENTS: The Commercial Taxes and Registration (B1) Department, Government of Tamil Nadu,

vide **NOTIFICATION G.O. (Ms) No. 130 dated 29.12.016** has amended Tamil Nadu Value Added Tax Rules, 2007.

The amendments have been made in Rules 4, 5, 7, 9, 12-A, 14, 15 and Form D . Further, Form I, Form K and Form JJ are also substituted. The readers may refer the notification for details.

vide **NOTIFICATION G.O. (Ms) No. 132 dated 29.12.016** has further amended Tamil Nadu Value Added Tax Rules, 2007.

The amendments have been made in proviso to Rule 16-A(1). The amended proviso is as follows:

the audit report for the financial year 2015-2016 in Form WW to be furnished by a registered dealer having his principal place of business or additional place of business in the revenue districts of Chennai, Kancheepuram, Thiruvallur, and Vellore, on or before 31st December 2016, may by furnished on or before the 10th January 2017.

WEST BENGAL

AMENDMENT IN WEST BENGAL SALES TAX (SETTLEMENT OF DISPUTE) ACT, 1999

OUR COMMENTS The Legislative, Law Department, Government of West Bengal, vide Notification **No. 1075-L. dated 14.12.2016** has amended West Bengal Sales Tax(Settlement Of Dispute) Act, 1999 as follows:

(a) cases for the assessment periods up to the year 2013-14, which are pending in appeal or revision as on the 30th day of September, 2016 brought under the settlement scheme.

(b) date of filing of application under the scheme extended till 31.01.2017

(c) amount to be paid for settlement modified as follows:-

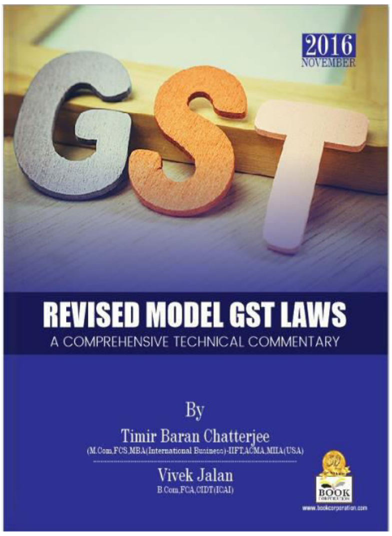
(I) 30% of the arrear tax in dispute, relating to disallowance of any claim of Input Tax Credit

(II) 60% of the arrear tax in dispute, for other cases

(d) provide for settlement covering all types of disputes related to the pending appeal or revision case and not for a part of the dispute leaving the other part pending;

(e) provide for full credit for adjustment of tax deposited under clause (b) of the second proviso to section 84(I), or clause (a) of the first proviso, or clause (a) of the second proviso, to section 87(1) of the West Bengal Value Added Tax Act, 2003, against the amounts payable for settlement.

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 RefundRules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

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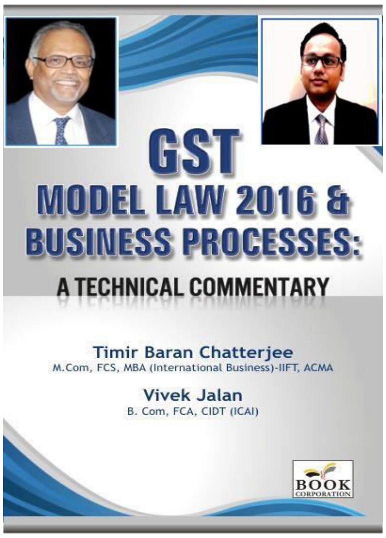
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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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