TAX CONNECT
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TAX CONNECT

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The Bengal Chamber of Commerce & Industry

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INCOME TAX

CUSTOMS

TAX CONNECT

Kolkata : 1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
Delhi : B 42 Retreat Apartments, 20 IP Extension, Delhi 110 092
Gujarat : Quarter no. 3/174, Gujarat Refinery Township, Jawaharnagar, Vadodara-391320

Contact : +919331042424; +919831594980; +919830791914; +913322625203
Website : www.taxconnect.co.in
Email : tb.chatterjee@taxconnect.co.in;vivek.jalan@taxconnect.co.in; anindita.chatterjee@taxconnect.co.in

EDITORIAL

Friends,

Income Tax Revenues are growing and GST revenues are also projected to grow going forward.

Net collections of Income Tax until Jan'18 are at **Rs.7 Lakh crore** approx which is **19%** higher than LY. Now considering that this is approx 70% of the total estimated Income Tax Collection for the year, the Income Tax Collection for the year is pegged at almost around **Rs. 10 Lakh** Crore. GST Collections in Dec'17 have already shown an increase over last few months.

Now that the Citizens have done their bit, the Country is looking forward to our Government for a Corruption free utilization of these funds which has come.

Going forward, the **RBI has provided Relief for MSME Borrowers** registered under GST vide Circular No. RBI/2017-18/129 dated February 07, 2018 as follows -

Presently, banks and NBFCs in India generally classify a loan account as Non-Performing Asset (NPA) based on 90 day and 120 day delinquency norms, respectively. Since GST had adversely impacted the cash flows of the smaller entities during the transition phase with consequent difficulties in meeting their repayment obligations to banks and NBFCs, as a measure of support to these entities in their transition to GST, it has been decided that the exposure of banks and NBFCs to a borrower classified as micro, small and medium enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, shall continue to be classified as a standard asset in the books of banks and NBFCs subject to the following conditions:

i. The borrower is registered under the GST regime as on January 31, 2018.

ii. The aggregate exposure, including non-fund based facilities, of banks and NBFCs, to the borrower does not exceed ₹ 250 million as on January 31, 2018.

iii. The borrower's account was standard as on August 31, 2017.

iv. The amount from the borrower overdue as on September 1, 2017 and payments from the borrower due between September 1, 2017 and January 31, 2018 are paid not later than 180 days from their respective original due dates.

v. A provision of 5% shall be made by the banks/NBFCs against the exposures not classified as NPA in terms of this circular. The provision in respect of the account may be reversed as and when no amount is overdue beyond the 90/1201 day norm, as the case may be.

vi. The additional time is being provided for the purpose of asset classification only and not for income recognition, i.e., if the interest from the borrower is overdue for more than 90/1202 days, the same shall not be recognised on accrual basis.

Now something on **ROAD AND INFRASTRUCTURE CESS** proposed through the Finance Bill 2018 replacing the road cess. This cess will be collected on imported goods and on excisable goods.

Cess on imported goods

Clause 109 of the Bill provides that the government will levy an additional duty of customs to be called the Road and Infrastructure cess on the goods specified in the Sixth Schedule being the goods imported into India at the rate specified in the said schedule for the purpose of financing infrastructure projects.

Schedule VI specified motor spirit commonly known as petrol and high speed diesel oil. The rate of cess to be levied ₹ 8/- per liter.

EDITORIAL

The road and infrastructure cess shall be in addition to any other duties of customs chargeable on the scheduled goods under the Customs Act or any other law for the time being in force. The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to assessment, non levy, short levy, refund, exemptions, appeals, offences and penalties shall, as far as may be, supply in relation to the levy and collection of the additional duty of customs leviable under clause 109 in respect of scheduled goods and they shall apply in relation to the levy and collection of the duties of customs on scheduled goods under the said Act or the rules and regulations, as the case may be.

Cess on excisable goods

Clause 110 of the Bill provides that the government will levy an additional duty of excise to be called the Road and Infrastructure Cess on the goods mentioned in Schedule VI (motor spirit and high speed diesel oil) being the goods manufactured or produced at ₹ 8 per liter for the purpose of financing infrastructure projects. The cess leviable shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 or any other law for the time being in force. The provisions of the Central Excise Act, 1944 and the rules made there under, including those relating to assessment, non levy, short levy, refunds, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of the cess leviable and they shall apply in relation to the levy and collection of the duties of excise on scheduled goods under the said Act or the rules.

Amendment to Central Road Fund Act, 2000

For the purpose of levy of road and infrastructure cess, the Financial Bill, 2018 brought amendments to the Central Road Fund Act, 2000.

The amended object of the Act provides that this Act will provide the Central and Road and Infrastructure Fund for development and maintenance of National High ways, railway projects, improvement of safety in railways, State and rural roads and other infrastructure, and for these purposes to levy and collect by way of cess, a duty of excise and a duty of customs on motor spirit commonly known as petrol and high speed diesel oil.

The Central Road Fund was changed to the 'Central and Road Infrastructure Fund'. The additional duty of customs and the additional duty of excise on motor spirit commonly known as petrol and on high speed diesel oil levied under clause 109 and clause 110 of the Finance Bill shall be deemed to be the cess for the purpose of this Act from the date of its levy and the proceeds thereof shall be credited to the Consolidated Fund of India.

Further in Customs, **Notification No. 25 /2018 – Customs dated 6th February, 2018 has been issued to** increase BCD tariff rate on Chana (Chickpeas), [Tariff item 0713 20 0] from 30% to 40% by invoking section 8A (1) of the Customs Tariff Act, 1975 and accordingly, the effective rate of BCD on Chana (Chickpeas), will also be 40%.

We do hope that this bulletin adds value to your professional sphere.

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

Truly Yours

TimirBaranChatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

VivekJalan
FCA, LL.B, B. Com (H)

AninditaChatterjee
CS, BA L.LB(BANGALORE)

SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FROM 11th FEBRUARY, 2018 to 17th FEBRUARY, 2018	Description
15th Feb 2018	PF ESI	Monthly - Payment of Provident Fund Contribution for the previous month (plus grace period of 5 days)
15th Feb 2018	PF ESI	Monthly - EPF - Return of Employees qualifying for membership to the EPF for the first time during previous month.
15th Feb 2018	PF ESI	Monthly - EPF - Return of member leaving service during the previous month
15th Feb 2018	PF ESI	Exempted establishment - EPS/ EDLIS - Monthly Return of members joining service during the previous month.
15th Feb 2018	PF ESI	Exempted extablishment - EPS/EDLIS - Monthly Return of Members Leaving Service During the previous Month
16th Feb 2018	PF ESI	Monthly - Payment of ESI Contribution for the previous month (plus grace period of 5 days)

GST: CGST

NOTIFICATIONS/CIRCULARS

POSTPONEMENT OF COMING INTO FORCE OF THE E-WAY BILL RULES

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 11/2018 – Central Tax dated 2nd February, 2018** hereby makes amendment in the **Notification No. 74/2017 – Central Tax dated 29th December, 2017** regarding to postponement of the e-way bill rules.

PAYMENT OF TAX BY REGISTERED PERSON SUPPLYING SERVICE BY WAY OF CONSTRUCTION AGAINST TRANSFER OF DEVELOPMENT RIGHT

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 4/2018-Central Tax (Rate) dated 25th January, 2018** hereby notifies the following classes of registered persons :-

- registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service shall arise at the time when the said developer, builder, construction company or any other registered persontransfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument.

For further details reader may refer the above mentioned notification.

EXEMPTING CENTRAL GOVERNMENT'S SHARE OF PROFIT ON PETROLEUM FROM CENTRAL TAX

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 5/2018- Central Tax (Rate) dated 25th January, 2018** hereby exempts the intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the central tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.

CGST RATE SCHEDULE

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 7/2018- Central Tax (Rate) dated 25th January, 2018** herebymakes amendments in the Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017, regarding rates of CGST @ 2.5%, 6%, 9%, 14%, 1.5% and 0.125% on supply of goods.

For further details reader may refer the above mentioned notification.

EXEMPTION TO CERTAIN GOODS UNDER CGST

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 7/2018- Central Tax (Rate) dated 25th January, 2018** herebymakes amendments in the Notification No.2/2017-Central Tax (Rate), dated 28th June, 2017, regarding exempting certain goods under CGST Act.

For further details reader may refer the above mentioned notification.

GST: IGST

NOTIFICATIONS/CIRCULARS

EXEMPTION OF PROFIT TO CENTRAL GOVERNMENT ON PETROLEUM FROM INTEGRATED TAX

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 5/2018- Integrated Tax (Rate) dated 25th January, 2018**hereby exempts the inter-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the integrated tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.

EXEMPTION OF ROYALTY AND LICENSE FEE FROM INTEGRATED TAX

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 6/2018- Integrated Tax (Rate) dated 25th January, 2018**hereby exempts the integrated tax leviable on the supply of services, imported into the territory of India, to the extent of the aggregate of the duties of Customs leviable under section 3(7) of the Customs Tariff Act, 1975 on the consideration declared under section 14(1) of the Customs Act, 1962 towards royalties and license fees included in the transaction value on which the appropriate duties of Customs have been paid.

For further details reader may refer the above mentioned notification.

IGST RATE SCHEDULE

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 7/2018- Integrated Tax (Rate) dated 25th January, 2018**hereby makes amendments in the **Notification No. 1/2017- Integrated Tax (Rate), dated 28th June, 2017,**regarding notifying rates of IGST @ 5%, 12%, 18%, 28%, 3% and 0.25% on supply of goods.

For further details reader may refer the above mentioned notification.

ABSOLUTE EXEMPTION FROM IGST ON INTER-STATE SUPPLIES OF GOODS

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 8/2018- Integrated Tax (Rate) dated 25th January, 2018**hereby makes amendments in the **Notification No. 2/2017- Integrated Tax (Rate), dated 28th June, 2017,**regarding absolute exemption from IGST on inter-State supplies of goods.

For further details reader may refer the above mentioned notification.

CONCESSIONAL RATE OF GST ON OLD AND USED VEHICLES

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 9/2018- Integrated Tax (Rate) dated 25th January, 2018**hereby exempts the central tax on inter-state supplies of goods, from so much tax as specified in Schedule IV of Notification No. 1/2017 - Integrated Tax (Rate), as is in excess of the amount calculated on the value that represent margin of the supplier, on supply of such goods. The table below explains the case :-

Description of Goods	Rate
Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more.	18%
Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	18%
Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles.	18%
All Old and used Vehicles other than those mentioned from S. No. 1 to S. No.3	12%

For further details reader may refer the above mentioned notification.

ANALYSIS

TIME OF SUPPLY

Time of Supply under GST

Section 13 of the CGST Act, 2017 deals with the provisions relating to the determination of time of supply of services. The time of supply shall be

- Date of issue of invoice or the date of receipt of payment whichever is earlier
- In cases where the invoice is not issued within 30 days of completion of service, it shall be the date of completion of service or the date of receipt of payment whichever is earlier.
- In cases where the time of supply cannot be determined as per the above two clauses, then it shall be the date on which the recipient shows the receipt of services in his books of accounts.

Further it is also relevant to refer to the following definition of "continuous supply of service" under Section 2 (33) of the Act and Section 31 (5) dealing with issue of invoices.

Continuous supply of services means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

31(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services, -

- where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event

It may be observed that the builder would not be raising any invoice and would not claim any payment from the landowner. The service being provided by the builder is a continuous supply of service. It may be observed that clauses (a) and (b) of sub section (2) of section 13 are not applicable in this case, as neither any invoice is raised by the builder on landowner, nor any payment received. As per clause (c) the time at which the landowner shows the receipt of service in his books of accounts would be the time of supply. If the landowner is retaining such units for his own use, he would recognise the same as his capital assets and if the landowner is going to again sell such units, he would recognise the same as his stock in trade. So it can be taken that the builder would be liable to pay GST at the time, when the landowner recognises the receipt of units from the builder. However from builder's point of view it would be very difficult to conclude when the landowner recognises receipt of service. Thus the determination of time of supply was no less than a mystery.

These confusions have been resolved by Notification No. 4/2018-Central Tax (Rate) dated 25th January, 2018. The clarification brought out in this notification is similar to what existed in the Pre GST Era. As per the notification, the time of supply in case of issue of development rights and construction services in its consideration shall rise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

Conclusion

The clarification provided by the notification is welcomed by the industry however the valuation aspects also need to be considered by the GST Council as the projects generally run over 2 to 3 years and it may be possible that the open market value of the construction may vary significantly over the construction, allotment and handover period.

INCOME TAX

ANALYSIS

BUDGET 2018 - DIRECT TAX

- No change in Tax Rate. All persons including individuals, HUF, Firms and Companies to pay same tax . Education cess is being increased from 3 to 4 % to be known as Education and Health cess.
- For Domestic Companies having total turnover or gross receipts not exceeding ₹ 250 crores in Financial year 2016-17 shall be liable to pay tax at 25% as against present ceiling of ₹ 50 crore in Financial year 2015-16.
- Long term Capital gain exemption under section 10(38) in respect of listed STT paid shares being withdrawn.
- Capital gain up to 31.1.2018 shall not be taxed as cost of acquisition will be taken as Fair Market Value as on 31.1.2018.
- Tax on STT paid long term capital Gain will be 10% under Section 112A. Further such tax will be liable for TDS.
- Standard Deduction of ₹ 40,000 for salaried employees.Benefit of transport allowance of ₹ 19,200 and Medical Reimbursement of ₹ 15,000 under Section 17(2) are being withdrawn. Thus net benefit to salaries class only ₹ 5,800
- Provision of Section 43CA, 50C and 56(2)(x) being amended to allow 5% of sale consideration in variation vis a vis stamp duty value. On account of location, disadvantage etc.
- Provision of section 40(ia) and 40A(3) and 40A(3A)are being made applicable to Charitable Trust . Hence expenditure incurred without deduction of tax and in cash will not be eligible as application of income under section 10(23C) and section 11(1)(a).
- Agriculture Commodity Derivates income /loss also not to be considered as speculative under section 43(5).
- Income Computation and Disclosure Standards(ICDS) being given statutory backing in view of decision of Delhi High Court decision.
- Marked to market loss computed as per ICDS to be allowed under section 36.
- Gain or loss in Foreign Exchange as per ICDS to be allowed under new section 43AA.
- Construction Contract income to be computed on percentage completion method as per ICDS.
- Valuation of Inventorty including Securities to be as per ICDS.
- Interest on compensation, enhanced compensation. Claim or enhancement claim and subsidy, incentives to be taxed in the year of receipt only as per new Section 145B.
- Conversion of stock in trade to capital asset to be charged as business income in the year of conversion on Fair Market value on the date of conversion.
- 54EC benefit of investment in Bonds to be restricted to Capital gain on land and building only. Period of holding being increased from 3 years to 5 years.
- PAN to be obtained by all entities including HUF other than individuals in case aggregate of financial transaction in a year is ₹ 2,50,000 or more. All directors, partners, members of such entities also to obtain PAN.
- All companies irrespective of income to file return and in case it is not filed, such companies will be liable for prosecution irrespective of the fact weather it has tax liability of ₹ 3,000 or not.
- Assessments to be E assessment under new section 143(3A)
- No adjustment under section 143(1) while processing on account of mismatch with 26AS and 16A.
- Deemed dividend to be taxed in the hands of the company itself as Dividend Distribution of tax @ 30%.
- Penalty for non filing financial return as required under section 285BA being increased to ₹ 500 per day

CUSTOM

NOTIFICATIONS/CIRCULARS

EXEMPTION OF SPECIFIED GOODS FROM THE WHOLE OF LEVY OF SOCIAL WELFARE SURCHARGE.

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 11/2018-Customsdated 02nd February, 2018** hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 from the whole of the Social Welfare Surcharge leviable thereon under the Finance Bill.

For further details reader may refer the above mentioned notification.

EXEMPTION TO SPECIFIED GOODS FROM THE OF LEVY OF SOCIAL WELFARE SURCHARGE IN EXCESS OF 3%

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 12/2018-Customsdated 02nd February, 2018** hereby exempts goods falling within the First Schedule of the Customs Tariff Act, 1975 from so much of the Social Welfare Surcharge leviable thereon under the the Finance Billas is in excess of the amount calculated at the specified rate as mentioned in the table below :-

Description of goods	Rate
Motor spirit commonly known as petrol	3%
High speed diesel (HSD)	3%
Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	3%
Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	3%

For further details reader may refer the above mentioned notification.

EXEMPTING INTEGRATED TAX AND GOODS AND SERVICES TAX COMPENSATION CESS ON IMPORTED GOODS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 13/2018-Customsdated 02nd February, 2018** hereby exempts the goods specified in the First Schedule to the Customs Tariff Act, 1975 when imported into India, from the whole of the Social Welfare Surcharge leviable on Integrated tax and Goods and Services Tax compensation cess under section 3(7) and section 3(9) respectively of the Customs Tariff Act of the Finance Bill.

For further details reader may refer the above mentioned notification.

INCREMENT OF THE EFFECTIVE RATE OF BCD ON SILK FABRICS

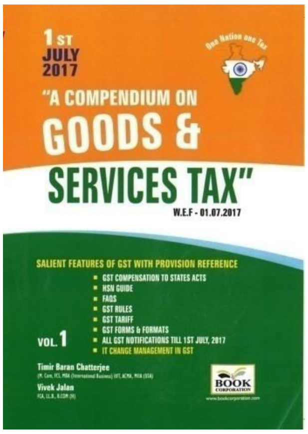
OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 14/2018-Customsdated 02nd February, 2018** hereby makes amendments in the **Notification No. 82/2017-Customs, dated 27th October, 2017** regarding increment of the effective rate of BCD on silk fabrics from 10% to 20%.

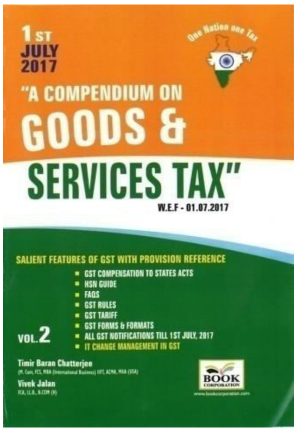
EXEMPTION TO MOTOR SPIRIT FROM LEVY OF ADDITIONAL DUTY OF CUSTOMS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 15/2018-Customsdated 02nd February, 2018** hereby makes amendments in the **Notification No. 6/2015–Customs, dated 1st March, 2015** regarding exemption to motor spirit commonly known as petrol from levy of additional duty of customs in excess of ₹ 6 per litreexcept as respects things done or omitted to be done before such rescission.

AVAILABLE IN STANDS

A COMPENDIUM ON GOODS & SERVICES TAX
(Including ALL Notifications till 09th July, 2017)





ABOUT THE BOOK: PART A of the Book provides a Chapter wise and Topic wise Analysis of the Law. Along with this it provides Section and Rules where in the reader may find the Legal Provisions. It will help the reader to first understand the provision and then to exactly locate the provision. It provides an insight into the following:

1. Section-wise Compilation of IT Changes under GST
2. The GST Rates as finalised by The GST Council along with the HSN Code Referencer.
3. FAQs on GST
4. CGST, IGST, UTGST and The GST Compensation to States Acts
5. The Rules related to GST available in public Domain as on 17th June 2017.
6. The Forms and formats related to GST available in public Domain as on 17th June 2017.

Authors:
TimirBaranChatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

VivekJalan
FCA, LL.B., B.Com (Hons.)

Published by:
BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
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AVAILABLE IN STANDS

A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX

(Including ALL Notifications till date)

ABOUT THE BOOK: PART A of the Book provides a Chapter wise and Topic wise Analysis of the Law. Along with this it provides Section and Rules where in the reader may find the Legal Provisions. It will help the reader to first understand the provision and then to exactly locate the provision. It provides an insight into the following:

1. The Rules related to WBGST available in public Domain till date.
2. The Notifications, Circulars and Orders issued by The SGST Authority till date.
3. The Forms and formats related to GST available in public Domain till date.

Authors:

TimirBaranChatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

VivekJalan
FCA, LL.B., B.Com (Hons.)

Published by:
BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
Order by email:bookcorporation@gmail.com
Website :www.bookcorporation.com