TAXCONNECT
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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

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EDITORIAL

Friends,

Various Issues under GST have been answered by means of Circulars or in notifications. Some of them are as below-

1. Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)

A. Section 7(5)(b)of the IGST Act is a specific provision which states that such supplies shall be treated as inter-State supplies. Hence services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply

2. Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017

A. Fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.

Certain Data regarding GST Registrations and Returns have been gathered which will show that while the IT part of GST has eased somewhat, a lot of improvement is still to be done –

Details	As on 01st June, 2018 (In Lakhs)
Total No. of taxpayers; new + migrated (1 + 3)	**112**
No. of taxpayers who have opted for composition scheme	18
No. of 3 (B) returns filed for July, 2017	64
No. of 3(B) returns filed for August, 2017	69
No. of 3(B) returns filed for September, 2017	72
No. of 3(B) returns filed for October, 2017	69
No. of 3(B) returns filed for November, 2017	69
No. of 3(B) returns filed for December, 2017	69
No. of 3(B) returns filed for January, 2018	69
No. of 3(B) returns filed for February, 2018	69
No. of 3(B) returns filed for March, 2018	67
No. of 3(B) returns filed for April, 2018	63
No. of 3(B) returns filed for May, 2018	0
No. of GSTR 1 returns filed for July, 2017	57
No. of GSTR 1 returns filed for August, 2017	23
No. of GSTR 1 returns filed for September, 2017	62
No. of GSTR 1 returns filed for October, 2017	23
No. of GSTR 1 returns filed for November, 2017	23
No. of GSTR 1 returns filed for December, 2017	60
No. of GSTR 1 returns filed for January, 2018	22
No. of GSTR 1 returns filed for February, 2018	21
No. of GSTR 1 returns filed for March, 2018	53
No. of GSTR 1 returns filed for April, 2018	15
No. of GSTR 2 returns filed for July, 2017	26
No. of GSTR 4 returns filed for quarter July-September, 2017	9
No. of GSTR 4 returns filed for quarter October-December ' 17	14
No. of GSTR 4 returns filed for quarter January-March, 2018	13

Further a judgement by **The National Anti-Profiteering Authority** in the case of M/S Abel Space Solutions Llp Versus M/S Schindler India Private Limited. In the instant case, It has been alleged that Respondent had not charged GST on the base price of the lift ordered by him from the Respondent, after excluding the pre-GST Excise Duty on the material component and thus he had been charged tax twice on the same material.

It is clear from the perusal of the record that the Applicant had paid advance for purchase of this lift and he was charged the Service Tax which was leviable at the time of issue of the invoice on 28-06-2017, which he has not disputed and which is also correct as the Applicant was liable for payment of Service Tax under the then applicable provisions of Finance Act, 1994 - However in respect of the two invoices dated 27-07-2017 as the installation of the second lift had been completed after coming in to force of the CGST Act, 2017, he was liable to be charged GST at the rate which was prevalent on 27-07-2017.

The proceedings were dropped.

In Customs, the CBIC, in supersession of the On-site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011, made the Customs Audit Regulations, 2018.which came into effect from 24th May, 2018.

Audit

Section 99A of the Customs Act (inserted vide Finance Act, 2018) provides that The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

Regulation 2(b) defines the term 'audit' as including examination or verification of declaration, record, entry, document, import or export licence, authorization, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples.

Auditee

Regulation 2(c) defines the term 'auditee' as a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

Note: Even a person selling or purchasing of imported goods or export goods or dutiable goods can be subjected to audit even though he may not be an importer or exporter

Conduct of audit

The following is the procedure for the conduct of audit under these regulations-

- The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.
- The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee.
- The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee
- The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.
- **The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.**
- **Where the proper office has asked the auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.**

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

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SYNOPSIS

TAX CALENDAR

Due date	COMPLIANCES FOR THE MONTH OF JUNE 2018	Description
07TH JUNE 2018	Income Tax	TDS tax payment for the month of May 2018
10th June 2018	GSTR 1	Details of outward supplies of goods or services for the Month of May 2018
14th June 2018	Income Tax	Due date issuing TDS Certificate for the month of April (Rent)
15th June 2018	Income Tax	Quarterly Statement of TCS deposited for the quarterly ended 31.3.18
15th June 2018	Income Tax	EPF/ESI payment for the month of May 2018
15th June 2018	Income Tax	1st Installment of Advance Tax for A.Y 2019-2020
20th June 2018	GSTR 3B	Details of Outward Supplies and inward supplies and payment of Tax - Monthly Return for the month of May 2018
25th June 2018	Income Tax	Provident Fund return filing for the month of May 2018
30th June 2018	Income tax	Linking of Aadhar with your PAN in Income tax

GST: CGST

NOTIFICATIONS/CIRCULARS

CENTRAL GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2018

OUR COMMENTS: The Department of Revenue, Ministryof Finance, Government of India, vide **Notification No. 26/2018 – Central Taxdated 13th June, 2018** hereby notifies regarding amendments made in the Central Goods and Services Tax 2018.

It is further notified that amendments are made in Rule 37(1), 83(3), 89(5), 95(3), 97(1), 133(3), 138(14) of Central Goods and Services Tax 2018 & FORM GSTR-4, FORM GST PCT-01.

For further information kindly refer the above mentioned notification.

GOODS WHICH MAY BE DISPOSED OFF BY THE PROPER OFFICER AFTER ITS SEIZURE UNDER THE CENTRAL GOODS AND SERVICES TAX ACT

OUR COMMENTS: The Department of Revenue, Ministry of Finance, Government of India, vide **Notification No. 27/2018 – Central Tax dated 13th June, 2018** hereby notifies regarding the goods or the class of goods mentioned in the Schedule below, which shall, as soon as may be after its seizure under section 67(2) of the CGST Act, be disposed of by the proper officer, having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

Schedule

- Salt and hygroscopic substances
- Raw (wet and salted) hides and skins
- Newspapers and periodicals
- Menthol, Camphor, Saffron
- Re-fills for ball-point pens
- Lighter fuel, including lighters with gas, not having arrangement for refilling
- Cells, batteries and rechargeable batteries
- Petroleum Products
- Dangerous drugs and psychotropic substances
- Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- Fireworks
- Red Sander
- Sandalwood
- All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
- All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
- Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

For further information kindly refer the above mentioned notification.

GST: IGST

NOTIFICATION/CIRCULAR

GST ON FREE SUPPLIES BY CUSTOMERS

It is common practice prevailing in many industries that certain materials are provided by the customer to the manufacturer or contractor. This is done for various business or economic reasons. For example, moulds, jigs and dies etc., are provided by the Original Equipment Manufacturers (OEM) to a component manufacturer in the automobile industry. Similarly, the client would be supplying the steel and cement to the contractor in the construction contracts.

Let us say, the contract price for the building construction is 10 crores wherein the contractor has to incur all the cost. Instead of this, it may be agreed that the cement & steel are to be supplied by the client and contractor would execute the work using the same thereby bringing down the contract price to ₹ 7 crores. In the first case, the Government would be able to levy a tax on entire ₹ 10 crores thereby earning more revenue than the second scenario wherein Government may get tax only on ₹ 7 crores. This is the main reason for the dispute wherein the tax department would say there should be the equal incidence of the tax in both the scenarios while the taxpayer would attempt to differ by paying less tax in the second scenario. In this article, an attempt is made to explain the relevant legal provisions and applicability of GST on the same.

<u>Position during Pre-GST regime:</u>

The value of the free supplies required to be included in the taxable value. This position is almost settled in all indirect taxes like Central Excise, VAT or service tax. However, the applicability may differ (either time or law) as there were several disputes, amendments and court decisions on this subject from very long time.

<u>Position under GST:</u>

GST is levied at a specified rate on the value determined under section 15 of CGST Act, 2017 (similar provisions are existed in all state SGST laws and made applicable for IGST). To determine whether free supplies are to be includible in the taxable value or not, the primary question to be answered is whether price agreed in the contract (wherein the price of free supplies is not factored) would constitute the 'consideration' at first instance and thereby to construe the same as 'sole consideration' and accordingly the provisions of section 15, ibid qua Transaction value can be adopted.

<u>Position under old laws Vs GST:</u>

In old indirect taxes (Central Excise, VAT, service tax etc.,) the taxable events are restrictive in the gamut of entire supply chain and governed by the different laws and of course by the different Governments (Centre or State). For instance, the Central Excise can be levied only at the stage of 'manufacture', VAT only at the time of 'sale'. Because of this restrictive application and in order to avoid the revenue leakage, the old laws attempted to tax the 'free supplies'.

However, as GST is levied on the common taxable event known as 'supply' across the entire supply chain and leviable at all stages and the tax charged by the supplier is anyway available as input tax credit (ITC) to the recipient (except when the ITC is specifically restricted or recipient engaged in exempted supplies or unregistered etc.,). Thus, there is very less chance for revenue leakage. Hence, the rationale of the old laws attempts to tax the free supplies would not hold water under GST and may run against the objective of GST to avoid 'cascading effect'.

The above conclusion that 'free supplies' are not liable to be includible for payment of GST is fortified from the fact that unlike old laws (Central Excise for instance) there is no specific provision that specifies for the inclusion of 'free supplies' value and also the fact that model GST law contained the specific provision for inclusion of the same but was omitted in the final law.

GST: SGST/UTGST

NOTIFICATIONS/CIRCULARS

PROCEDURE FOR INTERCEPTION OF CONVEYANCES FOR INSPECTION OF GOODS IN MOVEMENT, AND DETENTION, RELEASE AND CONFISCATION OF SUCH GOODS AND CONVEYANCES

OUR COMMENTS: The Commercial Taxes Department, Government of Haryana vide **Circular No.1761/GST-2dated 04th June, 2018** hereby notifies regarding the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

- The proper officer/officers for the purpose of discharging the functions under Section 68, 129 and 130 of the Haryana Goods and Services Tax Act, 2017 have already been designated by an order issued vide Endst. No.2832 Dated 08.12.2017.
- The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. For the purposes of verification of the e-way bill, interception and inspection of the conveyance and/or goods, the proper officer under rule 138B of the HGST Rules shall be the officer who has been assigned the functions under sub-section (3) of section 68 of the HGST Act vide Order issued vide Endst. No.2832 Dated 08.12.2017.
- Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in **FORM GST MOV01**. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty-four hours of the aforementioned issuance of **FORM GST MOV-02**, prepare a report in **Part A** of **FORM GST EWB-03** and upload the same on the common portal.
- Within a period of three working days from the date of issue of the order in **FORM GST MOV-02**, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in **FORM GST MOV-03** from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.
- On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in **FORM GST MOV-04** and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in **Part B** of **FORM GST EWB-03** within three days of such physical verification/inspection.
- Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the HGST Act, he shall issue an order of detention in **FORM GST MOV-06** and a notice in **FORM GST MOV-07** in accordance with the provisions of sub-section (3) of section129 of the HGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.

For further information kindly refer the above mentioned circular.

INCOME TAX

ANALYSIS

INCOME TAX BENEFITS AVAILABLE TO SMALL BUSINESSMEN FOR AY 2018-19

Small and medium enterprises contribute a major portion to the GDP and to the growth of the economy. As a matter of convenience for them, Income-tax Act extends certain benefits to them and provides relaxation from compliance with certain provisions, inter-alia, an option to compute income on presumptive basis, exemption from mandatory audit of books of account, exemption from TDS and so forth. This document gives a brief introduction to those provisions which provide certain benefits to small businessmen.

List of benefits available to Small Businessmen

- Computation of income from eligible business on presumptive basis under Section 44AD provided turnover or gross receipts of eligible business does not exceed Rs. 2 crore (Subject to certain conditions).
- Presumptive income from business of plying, hiring or leasing of goods carriage if assessee does not own more than 10 goods carriage.
- Rent, rates, taxes, repairs (excluding capital expenditure) and insurance for premises
- Repairs (excluding capital expenditure) and insurance of machinery, plant and furniture
- Depreciation shall be allowed in respect of following assets:
  i. Tangible Assets (buildings, machinery, plant or furniture);
  ii. Intangible Assets (know-how, patents, copyrights, trademarks, licenses, franchises, or any other business or commercial rights of similar nature).
- Investment allowance shall be allowed to a company engaged in business or manufacturing or production of any article or thing (Subject to certain conditions).
- Insurance premium covering risk of damage or destruction of stocks/stores
- Insurance premium covering life of cattle owned by a member of co-operative society engaged in supplying milk to federal milk co-operative society
- Bonus or commission paid to employees which would not have been payable as profit or dividend if it had not been paid as bonus or commission
- Medical insurance premium paid by any mode other than cash, to insure employee's health under (a) scheme framed by GIC of India and approved by Central Government; or (b) scheme framed by any other insurer and approved by IRDA
- Interest paid in respect of capital borrowed for the purposes of the business or profession.
- Employer's contributions to recognized provident fund and approved superannuation fund [subject to certain limits and conditions]
- Any sum paid by assessee-employer by way of contribution towards a pension scheme, as referred to insection80CCD, on account of an employee to the extent it does not exceed 10 per cent of the employee's salary in the previous year.
- Contributions to approved gratuity fund (Subject to certain limits and conditions)
- Employer's contribution to wards approved gratuity fund created exclusively for the benefit of employees under an irrevocable trust shall be allowed as deduction (subject to certain conditions)
- Allowance in respect of animals which have died or become permanently useless (Subject to certain conditions)

Exemption from e-filing of return of income

W.e.f. assessment year 2015-16, e-filing of return is mandatory for an individual or HUF in the following circumstances:

- If total income of taxpayer exceeds Rs. 5,00,000;
- If taxpayer is claiming income-tax refund in the return;
- If accounts are required to be audited under Section 44AB, 92E, 10A, 10AA, etc.;
- If return is being furnished in ITR 3

However, a super senior citizen can file return of income in electronic mode or in physical form even if his total income exceeds Rs. 5,00,000 or if he is claiming income-tax refund provided return is being furnished in ITR- 1 or ITR- 4

CUSTOM

NOTIFICATIONS/CIRCULARS

POWERS OF ADJUDICATION OF THE OFFICERS OF CUSTOMS

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 50/2018 - Customs (N.T.)dated 08th June, 2018** hereby notifies regarding the power, for the purposes of adjudging confiscation or penalty, on the Customs Officer as mentioned below, in terms of value limit as specified under in relation to goods which are liable to confiscation under Chapter XIV of the said Act:

Customs Officer	Value of goods liable for confiscation
Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakhs
A Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding rupees one lakh

For further information kindly refer the above mentioned notification.

SURAT AIRPORT AS CUSTOMS AIRPORT

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 51/2018 - Customs (N.T.) dated 08th June, 2018** hereby makes amendments in the Notification No. 61/94(NT)-CUSTOMS dated 21st November, 1994, regarding customs airports.

It is further notified that the Central Government hereby appoints the Surat airport to be Customs airports for the purpose of unloading of baggage and the loading of baggage.

For further information kindly refer the above mentioned notification.

EXCHANGE RATES NOTIFICATION

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 49/2018 - Customs (N.T.)dated 07th June, 2018** hereby makes amendment in the Notification No.43/2018-CUSTOMS (N.T.), dated 17th May, 2018 regarding the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa, shall, with effect from 8th June, 2018, be the rate mentioned below in the table for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Foreign Currency	**Rate of exchange of one unit of foreign currency equivalent to Indian rupees**	
	(For Imported Goods)	**(For Export Goods)**
Australian Dollar	52.60	50.25
Bahrain Dinar	183.40	171.65
Canadian Dollar	52.80	50.90
Chinese Yuan	10.65	10.30
Danish Kroner	10.80	10.40
EURO	80.55	77.55
Hong Kong Dollar	8.70	8.40
Kuwait Dinar	229.25	214.40
New Zealand Dollar	48.50	46.30
Norwegian Kroner	8.45	8.15
Pound Sterling	91.60	88.30
Qatari Riyal	19.00	17.95
Saudi Arabian Riyal	18.45	17.30
Singapore Dollar	51.10	49.55
South African Rand	5.45	5.10
Swedish Kroner	7.80	7.55
Swiss Franc	69.40	66.65
UAE Dirham	18.85	17.65
US Dollar	67.85	66.15

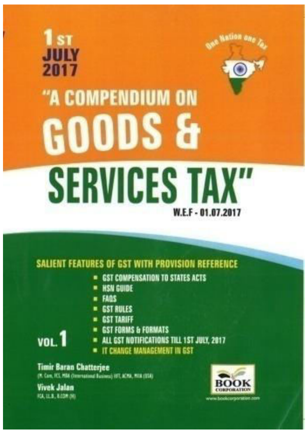
SCHEDULE-II

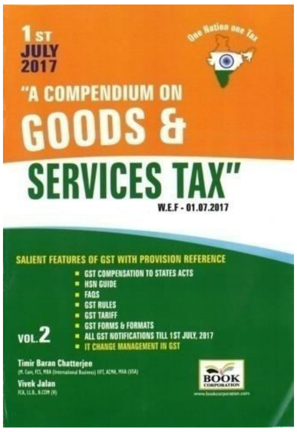
Foreign Currency	**Rate of exchange of 100 units of foreign currency equivalent to Indian rupees**	
	(For Imported Goods)	**(For Export Goods)**
Japanese Yen	62.10	59.75

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.

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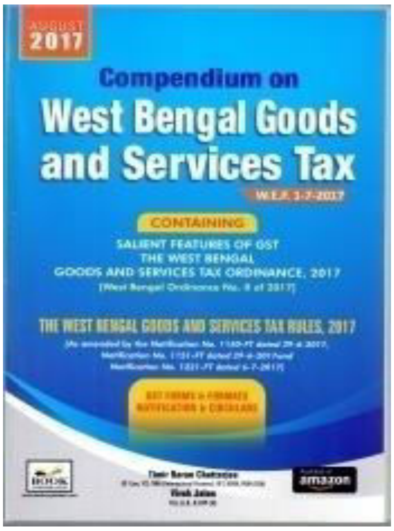
AVAILABLE IN STANDS

A COMPENDIUM ON WEST BENGAL GOODS & SERVICES TAX

(Including ALL Notifications till date)



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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.

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