



Preface to Third Edition

“Interpretation of law is an interesting and adventurous journey, wherein the destination should be backed by principles established under earlier regime.”

- CA Sandesh Mundra

With this thought, it gives us immense pleasure to come out with the Third Edition of this book addressing the concerns of the Construction and Real Estate Sector in a simple FAQ mode. GST as a law has greatly evolved since 1st July, 2017. The law that came originally needed a bunch load of Notifications, Circulars, Press Releases, GST council meeting minutes, Advance Rulings, Court judgments, to clarify a lot of things. This bunch is now a matter of great concern as understanding of law cannot be concluded by mere reading of the provisions of the Act and Rules.

Hence, it becomes utmost important to keep buying the latest books on different issues to get the relevant material together in an updated manner.

As far as Construction and Real Estate Sector is concerned, the law has not evolved much but the GST rate structure has immensely changed since the implementation of GST. So this sector, which was the most ignored sector at the stage of implementation, really gained importance as the time passed with the representations pouring in from various parts of the Country. The reason was evident – high tax rates having more than expected impact on the industry.

Although the intentions may have been correct, but the manner of implementation has left us on a path full of mines

and potholes. Contractors today face immense issues in identifying whether their projects are really eligible for the 12% concessional rate benefit. Absorbing a risk as high as 6% in case of lack of clarity only leads to bad business decision making. Government needs to seriously review the grim situation and simplify the decision making process. High tax rates can only trouble things at the initial stages but one is able to absorb the impact in the long run by passing the tax burden to the customers. However, low tax rates in an uncertain tax environment can only affect the businesses negatively in the long run by segregating the taxpayers into two categories – those who are willing to take risks on tax positions and those who are not.

Real Estate Sector too has its own fair share of controversies with the issues like valuation of land, taxability of development rights, long term leases, affordable housing concessions, tenancy rights, transitional credit denials etc., some of which have also motivated the taxpayers to file writ in the Courts. Multiplicity of taxes by continuance of Stamp Duty Regulations on this sector has only made the matters worse. Government has purposely raised some of the issues as if it is all a game expecting the Courts to declare the winners, an approach which has not amused many.

However, the Government has realized that taxing Real Estate Sector with a single rate is not easy as it seems and a single composition scheme of 5% is proposed for this sector. The scheme is expected to block the input tax credit. As good as the intention of Government sounds, blockage of input tax credits with a rate as high as 5% is not going to benefit the sector in scenarios wherein development rights are proposed to be taxed at full rates and some of the key raw material is taxed at 28%.

The Government has also realized issues faced by this sector and formed a Group of Ministers to discuss issues such as taxability of transfer of development rights, joint development arrangements etc. The relevant changes as per the recommendations of the Group of ministers are notified

through various notifications issued by Government on 29th March, 2019. Those notifications are made effective from 1st April, 2019.

In the Third Edition, we have taken into consideration all the tax amendments, clarifications affecting this sector and hope to present a complete view looking to the issues faced by the industry and at the same time give a fair view on some of the controversial issues free from any prejudices. Our focus as professionals, in situations of uncertainties should not always be to take a taxpayer-friendly view but to take a logical view keeping in mind the principles of taxation enshrined in the Constitution. Readers can mail their queries at suman.mundra@smaca.in.

Happy Reading

CA SANDESH MUNDRA
NAIMISH PADHIAR
CA POOJA JAJWANI