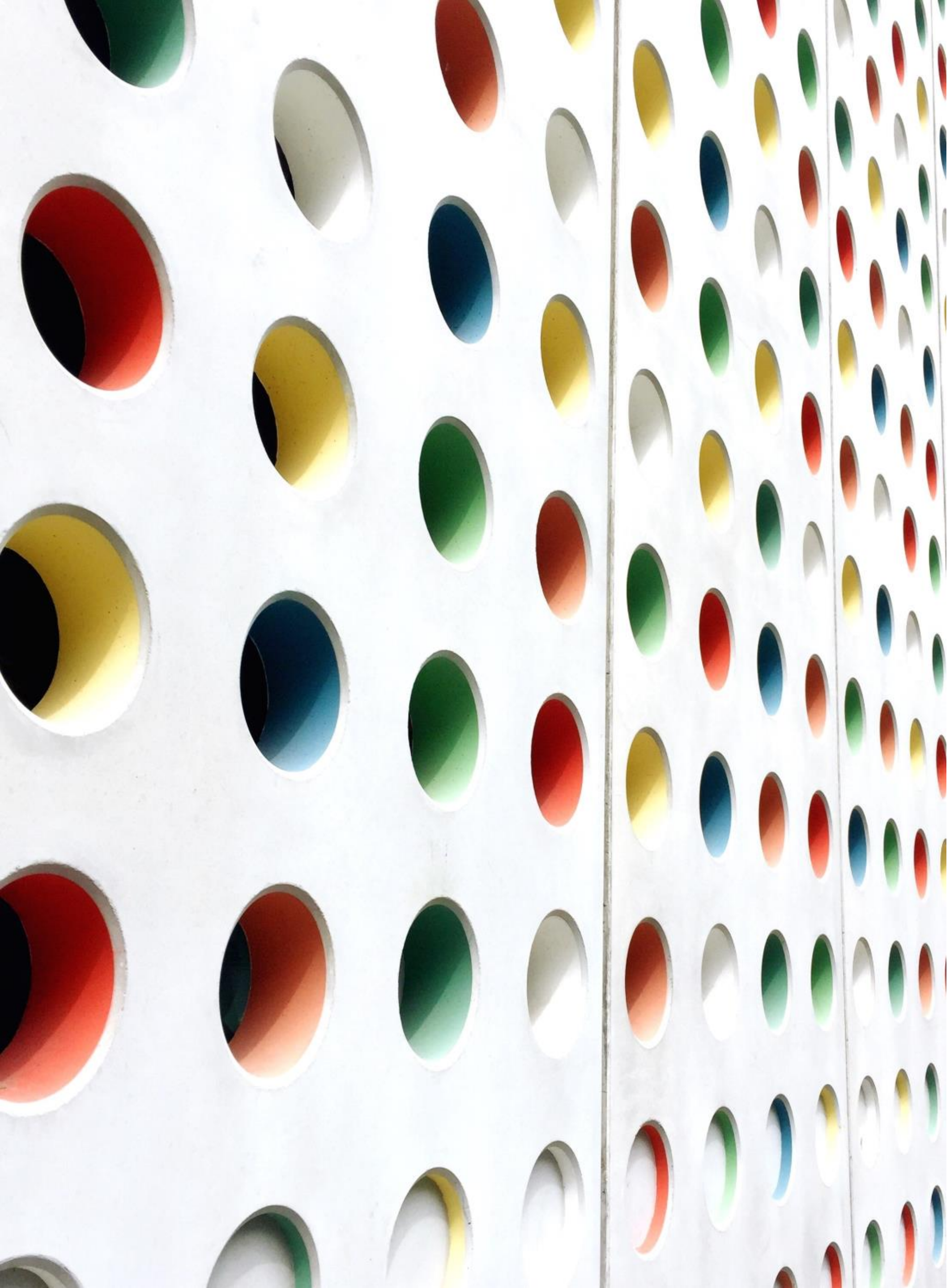
GST on Real Estate Sector
Deserves immediate attention

[3rd April 2020]

CA Pritam Mahure and Associates



1. Why RE sector deserves immediate attention?

1.1 Why RE sector deserves immediate attention?

RE sector and Indian economy

- Real-estate sector is **2nd highest employment generator** in India after agriculture sector (refer employmentnews.gov.in)
- RE sector is expected to contribute **13% of the country's GDP** by 2025 (refer ibef.org)

1.2 Why RE Sectors issues need immediate attention?

Due to Corona, numerous sectors are reeling under severe financial pressure!

Fear of job loss (in India as well as outside) is already looming and is expected to bring demand for RE to new low!

Further, even existing RE bookings may see huge cancellation!

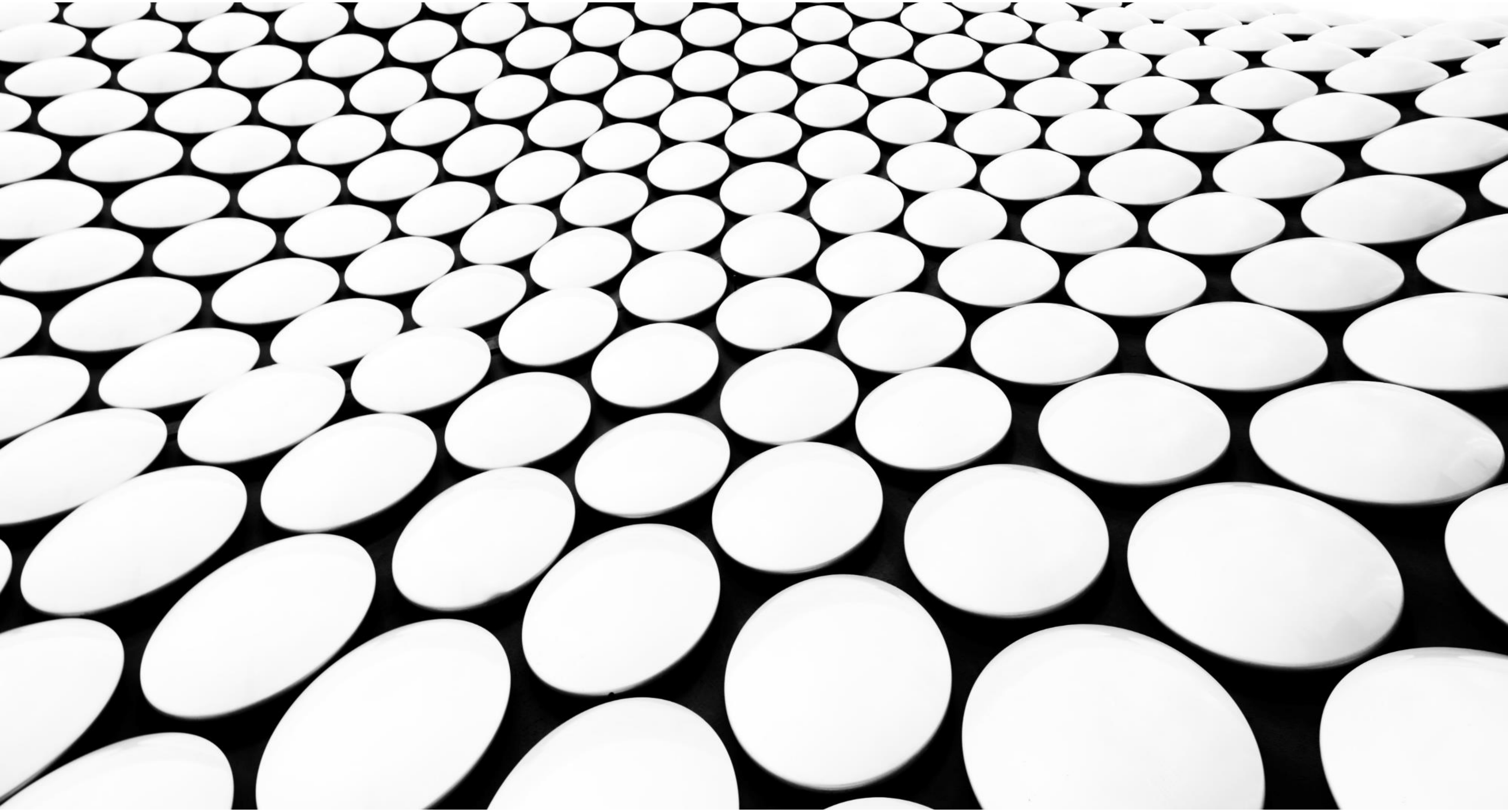
Additionally, due to Corona, last couple of weeks have seen exodus of construction workers!

1.3 Why RE Sectors issues need immediate attention?

This reverse migration of workers will stall the ongoing constructions for few quarters!

For RE sector, Corona is a fourth major blow after demonetization, RERA and GST!

2. Will GST tweaks help RE sector?



2.1 Will GST tweaks help RE sector?

In the last decade, from indirect tax policy perspective,

RE sector has seen enough policy flip-flops.

Out of nowhere, in year 2010, Service Tax was

introduced on sale of under-construction properties.

Later, in 2012, to remove cascading, input tax credit

(ITC) on input services and capital goods was granted.

In 2017, with introduction of GST in India, GST @ 12%

was levied with full ITC.

2.2 Will GST tweaks help RE sector?

Suddenly, in April 2019, RE sector is detached from the ITC chain with proposed new effective rates of 1% on affordable houses, 5% for residential properties

Aforesaid multiple changes itself seem to undermine the fact that RE sector is second largest employment generator after agriculture.

Meanwhile, after Corona, like every other sector, RE is eagerly awaiting positive policy changes

2.3 Measures

Impact of Corona on RE sector can’t be avoided

However, with appropriate GST measures, it can be lessened

3. GST rates for RE should be revisited!

3.1 Why RE buyers are made to pay taxes in the range of 16% to 18%?

RE sector is the only sector in India which is taxed thrice i.e.

'input taxed supply' (i.e. denial of credit of 6% to 7%) and

'output taxed supply' (GST @ 1% or 5%) and Stamp duty

(@~7%)

Thus, an Indian home buyer is effectively made to pay approx.

16% to 18% in taxes!

These kind of taxes are made applicable in spite of the fact that

GST is levied on consumption whereas RE is an investment

avenue and already stamp duty is levied thereon

3.2 Why RE buyers are made to pay taxes in the range of 16% to 18%?

One more example of investment is a investment in gold on which GST is levied just @ 3% and input tax credit is also available to supplier!

However, although RE sector, is an investment avenue (wherein the home buyer invest his life-time savings) still GST is levied @ 5% (other than affordable) and even ITC is denied!

3.3 Why RE buyers are made to pay taxes in the range of 16% to 18%?

Even in case of affordable houses, the home buyer effectively pays GST @ 15% i.e. ‘input taxed supply’ (i.e. denial of credit of 6% to 7%) and ‘output taxed supply’ (GST @ 1%) and Stamp duty (@~7%)

This kind of tax treatment has led to crippling of this sector

3.4 Why RE buyers are made to pay taxes in the range of 16% to 18%?

Rarely, RE sector is taxed so heavily across the world. Rather, in UAE, residential properties are ‘zero rated’ (at par with export) to make them affordable

Given the aforesaid rational, reasonable GST rates say similar to GST on gold i.e. 3% and **with ITC** could help revival of the sector!

4. Extend time limit to issue credit note!

4.1 Extend Time limit to issue credit note!

Legal provision

- A taxpayer can adjust his tax liability if he declares the details of credit note in the return, not later than September following the end of the Financial Year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier (Section 34 of CGST Act)

Issue

- Cancellation of flats booked in say March 2018 (i.e. in GST regime) and cancelled in March 2020, leads to a practical challenge that credit note with GST cannot be issued.

4.2 Extend Time limit to issue credit note!

Resolution of the issue

- It may be noted that construction service is a ‘continuous supply of service’ requiring 3 to 5 years for completion
- However, section 34 only permits credit note till filing of September return of subsequent year
- Due to this time limit of September, Developers gets only six months to issue credit note.
- Given the aforesaid, the cost of GST paid on flat cancelled after 2-3 years is either required to be born by developer or to the buyer.

4.3 Extend Time limit to issue credit note!

Resolution of the issue

- This is turning out to be an area of dispute between developers and property buyers.
- Given the aforesaid, the GST Council should immediately look into the concern and address the same.

5. Credit of ST paid on flats canceled now!

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5.1 Credit of ST paid on flats canceled now!

Legal provision

- In certain cases the units booked say in FY 2016-17 (i.e. pre-GST regime), got cancelled in FY 2018-19 (i.e. after GST regime)
- This scenario is leading to practical challenges as the customers are requesting for refund of the Service Tax paid
- However, it may be noted that section 142 (2) (b) states that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note

5.2 Credit of ST paid on flats canceled now!

Issue

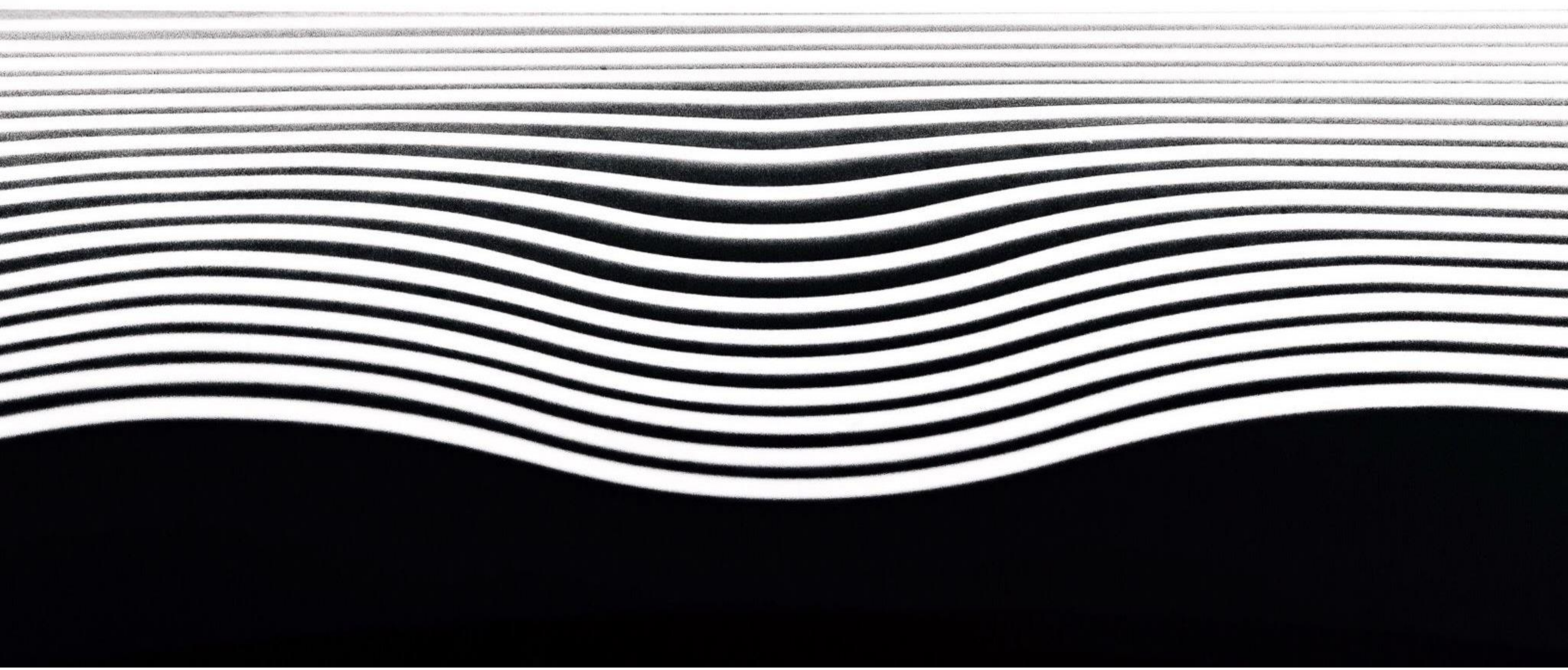
- Situation like revision of price upward or downward is addressed via subclause (a) and subclause (b) of Section 142 (2) of the CGST Act wherein the taxpayer can raise debit note or credit note for said revision of price with GST.

5.3 Credit of ST paid on flats canceled now!

Resolution of the issue

- However, whether the ‘cancellation’ of flat can be equated with the revision of contract price is a matter of interpretation.
- Even further, if it is construed that, the scenario of cancellation is get covered under the section 142(2), methodology to avail the said credit is missing at present
- Also, it’s challenging to disclose of credit note in GST return raised at lower rate than applicable rate under GST Regime.
- Given the aforesaid, the GST Council should immediately look into the concern.

6. Valuation of barter should be re-visited!



6.1 Valuation of barter should be re-visited!

Legal Provision

- In case of joint development agreements or re-development of society, the value of construction services should typically be equated with the cost of construction incurred by the Developer
- However, Not. No. 3/2019-GST proposes to consider the value as '*value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for **similar apartments** in the project from the independent buyers…*'

6.2 Valuation of barter should be re-visited!

Issue

- Can value be more than the cost incurred by the Developer for construction of flats?

Resolution of issue

- Lets take an example - a doctor charges a patient Rs 100,000 for an operation. The actual value for service receiver (patient) may be much more than the amount charged by doctor, however, the consideration should be restricted to Rs 100,000 i.e. the amount received by the doctor.

6.3 Valuation of barter should be re-visited!

Resolution of issue

- Thus, the value of service of construction provided by Developer should be value of land or the construction cost incurred.
- Further, the value for retail purposes can never be compared with the wholesale prices (as third party customer may buy just one flat whereas land owner/ society gets flat in bulk)
- In cases of JDA/ re-development the role of Developer is no different than a works contractor and thus, GST, if leviable cannot be more than the cost of construction

7. RE isn’t sinner than alcohol!

7.1 RE sector isn't sinner than alcohol?

It may be noted that as per Entry No. 49 of List II of Seventh Schedule of Constitution of India 'Taxes on Land and Buildings' is a subject matter of State

However, in-spite of this, GST is said to be leviable on TDR although subject to certain complicated exemption for residential real estate projects

In case of 'sin' goods like alcohol, an exemption was provided to GST payable on the license fees

7.2 Is RE sector more sinner than alcohol?

Additionally, retrospective exemption was also provided for service tax (Circular no. 121/ 40/ 2019-GST dated 11th October 2019)

However, in contrast the transfer of development rights (TDR) which arises from immovable received a different treatment under GST till 1st April 2019 and subsequently

Given the aforesaid, TDR which are related to immovable property, deserves a holistic exemption rather than dragging Developers to web of litigation

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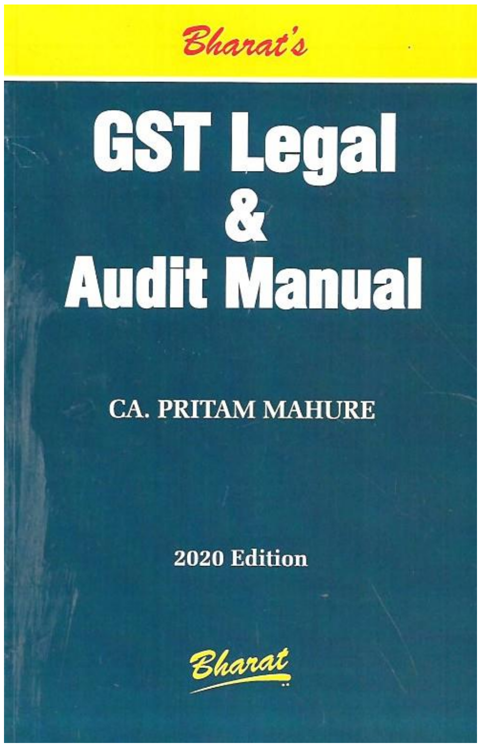
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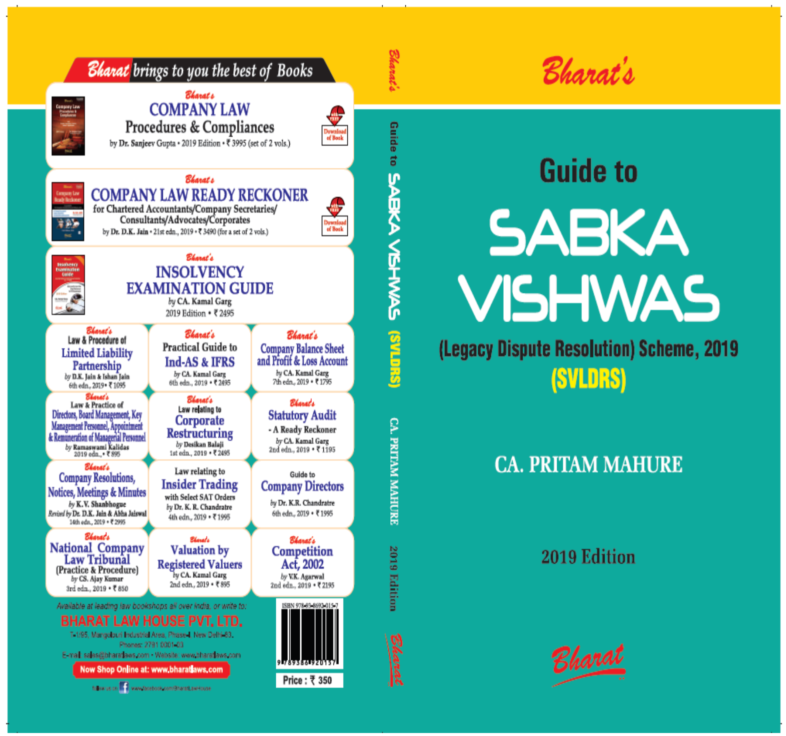
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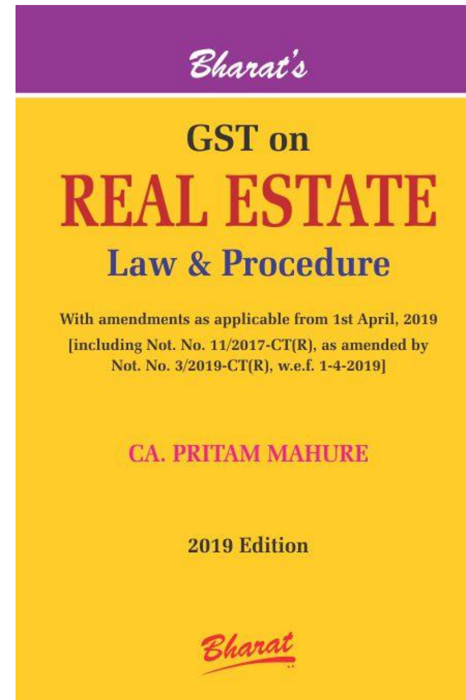
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