



INDIRECT TAX UPDATES

About RSA Legal Solutions



RSA Legal Solutions is an Indian Law firm specialized in the area of Indirect taxation i.e. Goods and Services Tax, Customs, Central Excise, Service Tax, Foreign Trade Policy (FTP), Special Economic Zone ('SEZ'), Value Added Tax (VAT)/ Central Sales Tax (CST), Foreign Exchange Management Act etc. With experience, constant training and updation of knowledge, the firm has developed unique expertise in the entire spectrum of indirect taxes. We provide litigation, advisory and compliance services to our clients.

Tax Services

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Litigation
Compliances
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GST Handholding

The Govt gives businesses four months to settle indirect tax legacy disputes.

General Updates

- The Centre Government looks to cut GST rates on cars amid sharp decline in sales.
- Customs Department seizes more than 23% illegal consignments of gold in 1st Quarter.
- The DRI has asked the customs wing to look carefully at the origin certificates issued for such consignments by Bangladesh trade bodies.
- SEZ Board puts off decision on GAIL's exit from Kerala project; wants dues recovered.
- The Real Estate Industry, which has been in the doldrums for almost four years now, has been demanding regulatory and tax changes to shore up the demand and liquidity.
- Maruti Suzuki slashes production by 34 per cent in the month of August, SIAM seeks GST relief.
- The Finance Minister has said that a decision on reducing GST on automobiles was not entirely in her hands as matters of indirect taxation were now entrusted to GST Council.
- India's gross GST collections slipped below Rs 1 trillion to Rs 98,202 crore in the month of August.
- SEZ rules may be tweaked to let excess land be used for factories.
- The Railways and Commerce Minister Mr. Piyush Goyal urges the bankers to ease export credit flow.

Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 36/2019-CT dated 20.08.2019** has extended the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019.
- The CBIC vide **Notification No. 37/2019-CT dated 21.08.2019** has extended extend the due date for furnishing FORM GSTR-3B for the month of July, 2019.
- The CBIC vide **Notification No. 38/2019-CT dated 31.08.2019** has waived filing of FORM ITC-04 for F.Y. 2017-18 & 2018-19.
- The CBIC vide **Notification No. 39/2019-CT dated 31.08.2019** has brought Section 103 of the Finance (No. 2) Act, 2019 in to force.
- The CBIC vide **Notification No. 40/2019-CT dated 31.08.2019** has extended the last date in certain cases for furnishing GSTR-7 for the month of July, 2019.
- The CBIC vide **Notification No. 41/2019-CT dated 31.08.2019** has waived the late fees in certain cases for the month of July, 2019 for FORM GSTR-1 and GSTR-6 provided the said returns are furnished by 20.09.2019.
- The CBIC vide **Removal of Difficulty Order (RoD) No. 07/2019-CT dated 26.08.2019** has removed difficulties regarding filing of Annual returns by extending the due date for filing of Annual return / Reconciliation Statement for the Financial year 2017-18 in FORMs GSTR-9, GSTR-9A and GSTR-9C to 30th November, 2019.
- The CBIC vide **Circular No. 23/2019-CUS dated 01.08.2019** has provided the clarifications regarding Refunds of IGST paid on import in case of specialized agencies - reg.
- The CBIC vide **Circular No. 24/2019-CUS dated 08.08.2019** has provided clarification regarding applicability of All Industry Rates of duty drawback while fixing Brand Rate of duty drawback in post GST era.
- The CBIC vide **Circular No. 25/2019-CUS dated 27.08.2019** has provided the mechanism to verify the IGST payments for goods exported out of India in certain cases.
- The CBIC vide **Circular No. 26/2019-CUS dated 27.08.2019** has provided the extension in SB005 alternate mechanism pertains to IGST refund and revised processing in certain cases including disbursement of Compensation cess.
- The CBIC vide **Instruction No. 03/2019-CUS dated 13.08.2019** has instructed on the recovery of export benefits given under Incentive and Reward Schemes under Chapter 3 of FTP on re-import of exported goods.
- The CBIC vide **Notification No. 04/2019-CE (NT) dated 21.08.2019** has notified the 1st of September, 2019 as the date on which the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 shall come into force.
- The CBIC vide **Notification No. 05/2019-CE (NT) dated 21.08.2019** has notified rules under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.

- The CBIC vide **Circular No. 4/2019-CE dated 27.08.2019** has delineated the mechanism for the filing Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.
- The DGFT vide **Public Notice No. 23/2015-20 dated 05.08.2019** has provided the provision for claiming additional benefits under MEIS for HS Codes for which rates were enhanced with a retrospective effect.
- The DGFT vide **Public Notice No. 25/2015-20 dated 14.08.2019** has made modification of Para 4.12(vi) of HBP and addition of Appendix 4P to Hand Book of Procedures 2015-20 – reg.
- The DGFT vide **Public Notice No. 27/2015-20 dated 26.08.2019** has made an amendment in Para 6.34(14) of Chapter 6 of Handbook of Procedure 2015-20 – reg.
- The DGFT vide **Trade Notice No. 28/2019-20 dated 05.08.2019** has provided the mechanism to apply for additional claims under MEIS for certain HS codes for which enhanced rates were notified with retrospective effect.
- The DGFT vide **Trade Notice No. 29/2019-20 dated 08.08.2019** has facilitated the online filling of applications for claiming assistance under Transport and Marketing Assistance (TMA) for Specified Agriculture Products Scheme.

Case Laws

GST

- **GST** – Traditional office culture is being overshadowed by the shared office space culture - co-working is a business services provision model that involves individuals working independently or collaboratively in shared office space - a virtual office is an access to the basic services that are generally provided in a traditional office such as permanent office address, meeting rooms or video conferencing rooms, a mail forwarding facility with minimum charge etc. without a room for real-life people and these offices are of greater benefits to the travelling freelancers, small businesses, start-ups and even to businesses that are operated from remote areas - There is no prohibition under GST law for obtaining GST registration to a shared office space or virtual office, if the landlord permits such sub-leasing as per agreement - each co-working space is demarcated with different suite number or desk number - as GST registration is based on PAN, identification of a taxpayer is not a difficult thing - Separate GST registration can be allowed to multiple companies functioning in a “co-working space” and which provide services alone - such companies shall upload rental agreement with the landlord and lessee - if there is any sub-lease, then rental agreement between lessee and sub-lessee should also be uploaded as proof of address of principal place of business of respective suite or desk number assigned to them - they can also upload a copy of ‘monthly utility bill’ in connection with payment towards electricity charges, water charges or other common services availed by respective suite or desk number: AAR – Application disposed of: AAR [Spacelane Office Solutions Private Limited, 2019-TIOL-255-AAR-GST]
- **GST** – Applicant imports as well as locally procures Lenses, Frames, Sun Glasses, Contact Lenses as well as Reading Glasses, Complete spectacles and are engaged in re-selling them - They have their office in Tamil Nadu at Chennai and also have branches outside the state of Tamil Nadu. The goods imported

and re-sold by the applicant are also transferred to their branches located outside the State for subsequent supply to ultimate customers - as the branches are distinct persons, they are required to discharge the CGST/SGST/IGST as applicable while supplying the goods to their branches outside the State - Applicant seeks a ruling as to the value to be adopted in respect of such transfer to branches located outside the State. **Held:** Under GST, branches which are situated outside the state are treated as distinct person - In the case at hand, the applicant has branches outside the state of Tamil Nadu, hence, both are said to be related as per the explanation to Section 15 - The supply is also to distinct person and, therefore, the value to be adopted is governed by rules prescribed as per Section 15(4) of CGST Act - As per Rule 28(a), it is clear that for supply between distinct persons, the value shall be the 'open market value' of such supply - Once Rule 28(a) is applicable, Rule 28(b) or (c) cannot be used by the applicant for determining the value of the supply of goods between distinct persons - In the instant case, the applicant has the option to adopt a value which is 90% of supplies made by the branch outside Tamil Nadu to an unrelated customer which are made under similar circumstances in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods supplied to the branch recipient by the applicant - If the applicant does not use this option for supplies to the recipient who further supplies to their customers as such, he has to supply at 'open market value' which is available as per Rule 28(a) - applicant contends that he can skip Rule (a) and also not exercise the option at the proviso to Rule 28 and go directly to the further proviso - if a taxpayer can skip all the provisions under Rule 28(a) to (c), in spite of them being specifically mentioned as the value which "shall" be adopted, then in no scenario will any taxpayer ever use Rule 28(a) to (c) - Both provisos are to be read together and not independently, i.e. the applicant cannot choose whichever proviso is

favorable to them Thus, the application disposed of. **[M/s. Specsmaekers Opticians Pvt Ltd, 2019-TIOL-245-AAR-GST]**

- **GST** - Petitioner points out that on account of the glitches in the system, the Petitioner ended up paying in excess of its tax liabilities leading to an excessive cash outflow of a huge amount which works out to nearly Rs.923 crores - further, this was the reason why the Court asked the Respondents to consider whether there could be any mechanism devised under which the Petitioner could claim the refund of the said amount - Court directs the Respondents to file an affidavit specific to the above issue not later two weeks with an advance copy to the petitioner, who may file a response thereto – Matter to be listed on 7th November 2019: High Court [para 4 to 6]- Matter listed: Delhi High Court **[M/s. Bharti Airtel Ltd Vs UoI, 2019-TIOL-1662-HC-DEL-GST]**
- **GST** - The petitioner company manufactures Polyester Texturized Yarn as well as Polyester Woven Fabrics and Polyester Knitted Fabrics - The other petitioner is a society whose members are mostly MMF fabric weavers - The petitioners challenge the validity of Notfn No 20/2018-CT(R), which mandates that the accumulated ITC lying unutilized in balance in respect of certain specified goods, after payment of tax for and upto July 31, 2018 on inward supplies received upto such date, would lapse - The petitioners claim that impact of such Notfn resulted in huge losses for them - They also claimed that registered persons were entitled u/s 16 of the CGST Act to claim ITC and that the CGST Act did not enable issuing of Notfns which provided for lapse of ITC - They further claimed that powers u/s 54(3)(ii) of the CGST Act were limited to notifying the supplies not entitled to refund of ITC accumulated on account of the inverted rate structure & that the Notfns exceeded the provisions of Section 54(3)(ii). **Held:** The CGST Act itself provides for lapse of ITC u/s 17(4) & 18(4) of the Act - Where the legislature

wanted ITC to lapse, it would have been expressly provided - No such express provision is made u/s 54(3) - This section does not inherently empower the Govt to provide for the lapsing of the unutilized ITC accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies - It is trite law that delegated legislation must be in conformity with provisions of parent statute - By prescribing for lapse of ITC, the Notfn No 05/2017-CT(R) dated 28.06.2017 as amended by Notfn No 20/2018-CT(R) dated 26.07.2018, exceeded the power delegated u/s 54(3)(ii) of the CGST Act - Therefore, proviso (ii) of the opening paragraph of the Notfn No.05/2017-C.T. (Rate) inserted vide Notfn No.20/2018- C.T. (Rate) is ex-facie invalid and liable to be struck down. Thus, the writ petitions allowed: Gujarat High Court. **[M/s. Shabnam Petrofils Pvt Ltd Vs Uol, 2019-TIOL-1656-HC-AHM-GST]**

- **GST** The present writ petition challenges the summons issued by the Revenue under the CGST Act - The petitioner contends that the Revenue cannot commence investigation without following the procedure u/s 154 or 155 of the Code of Criminal Procedure - It is claimed that if the offence is cognizable, the Revenue authority concerned must first register an FIR and then investigate, whereas in case of a non-cognizable offence, the Revenue authority must first seek permission from the Magistrate. **Held:** The affidavit filed by the Revenue reveals the involvement of the assessee - The Apex Court in Union of India Vs Sapna Jain refused to entertain the SLP and showed disinclination to

interfere, observing that High Courts while entertaining request of pre-arrest bail would keep in mind such order of the Apex Court - It had also dismissed a judgment of the Telangana High Court, which had taken a view contrary to that taken by the Apex Court - Hence the this court is not inclined to grant any protection from arrest to the petitioner herein, in light of such decision of the Apex Court. Thus, the writ petition dismissed/In favor of Revenue: Bombay High Court **[M/s. Ashish Jain Vs Uol, 2019-TIOL-1712-HC-MUM-GST]**

- **GST** - Applicant is engaged in the business of Transport and claims to be the owner of a Truck which came to be seized by the respondent authorities along with the goods while in transit - applicant prays for release of truck along with goods pending the final disposal of the petition. **Held:** Writ application has something to do with Sections 129 and 130 respectively of the GST Act, 2017 and the Court is examining the larger issues involved insofar as the applicability of the two sections referred to above is concerned - since the amount of Rs.2,29,520/- has been deposited by the writ applicant towards the tax and penalty, respondents are directed to immediately release the truck as well as the goods seized by them under the provisions of the GST Act. Thus, the interim relief has been granted: Gujarat High Court. **[M/s. Dangar Vashrambhai Arjanbhai Vs State of Gujarat, 2019-TIOL-1761-HC-AHM-GST]**

CUSTOM

- **Cus** - M/s. SPL Technologies Private Limited was in the business of importing and trading of parts and components of Laser Land Leveller - The importer

filed Bill of Entry through their CHA to seek clearance of goods declared as AG 401 Laser Level Transmitter with battery pack and charger at a total declared

assessable value - The goods were classified under CTH 84328090 and the benefit of Notfn 12/2012-Customs was availed - A SCN was served upon assessee proposing recovery of customs duty - Being the concession/exemption wrongly availed and thus being a short paid duty for a period w.e.f. 01.11.2011 to 31.03.2016 - Admittedly, the assessee is importing different parts in a kit form/disassembled condition for which mere cable connection is required for said kit to constitute one single machine called as laser levelling machines - Those parts need simple cabling at the site, to be levelled, to function as a complete machine of laser land leveller - The said activity of cabling is already held to not to be called as manufacture - Those observations take the impugned imported products out of the ambit of serial No. 399(B) of Notfn 12/2012 - The allegation that these parts are not always in the term of kit are also not opined to be sustainable as is apparent from the invoices - The extra parts imported are for previously so imported machines, in addition to complete kit - There seems no reason to repeat the contention of assessee that along with the kit the extra parts were imported for the other machines which were already in use - Department has wrongly held the articles imported to be the articles falling under either Chapter 9015 instead of Chapter 8432 and under Serial No. 399(B) of Notfn 12/2012 by forming a rigid opinion about the products imported to merely be the parts and components of the impugned agricultural machines - The findings are therefore set aside, also for the reason that the Department has failed to discharge its onus to prove the activity of assessee as manufacture while putting the imported parts/components into the agricultural machine called laser land leveller - It is very much apparent from the

statement of Director recorded on 10.07.2015 that since they were using the parts and components hence were under bonafide impression to classify them under Chapter 90153 but after the Notification and exemption thereof came to their notice, and that they are not registered with Central Excise for manufacture, that they rightly classified their product under CTH 8432 - There is no fault in the classification arrived at by the importer - Thus, the bonafide as pleaded is hereby accepted - Otherwise also, there is no positive evidence by the Department to prove any malafide intent of the assessee while claiming the impugned concession that the same has been done with an intent to evade the duty: CESTAT [M/s. SPL Technologies Pvt Ltd Vs PR CC, 2019-TIOL-2406-CESTAT-DEL]

- Cus** - The impugned order was passed by Principle Commissioner, whereby the CB license of assessee was suspended in a Custom case where the export goods were found to be overvalued and in that custom case, the SCN was issued on 07.09.2017 and the same was adjudicated vide order dated 26.02.2019 - Thereafter, vide the impugned order dated 30.04.2010 the suspension order was passed - There is no dispute that the goods with reference to which the suspension order was passed was seized on 10.03.2017 and the SCN was issued on 07.09.2017 - If at all the revenue is of view, customs broker should be prohibited from carrying out the work of customs broker, the license should have been suspended immediately after detection of the case by the customs authority whereas in the present case admittedly, the order for suspension was passed almost after 2 years from the date of seizure - The judgment of this Tribunal in P. Sawasji & Co was

passed taking reliance of Bombay High Court judgment in case of National Shipping, being an identical issue involved, following the said order, Tribunal do not agree with the Commissioner in passing suspension order - Accordingly, the impugned order is set aside: **CESTAT [M/s. B N Thakkar And Company Vs CC, 2019-TIOL-2464-CESTAT-AHM]**

- **Cus** - The assessee-company is a 100% EoU which exports final products as per Notfn No 52/2003-Cus - It is entitled to import duty-free raw material required to be further used in the manufacture of exported articles - Such Notfn permits clearance of part manufactured goods to DTA with the permission of the Development Commissioner - As per the conditions in the notfn, the importer must obtain authorization from the Development Commissioner to establish unit for export purposes - The assessee imported Polyester webbings fabric buckles for manufacturing ratchet lashing system - The latter goods were exported and part of the same were cleared to DTA unit with due permission of the Development Commissioner - The Revenue sought to deny benefit of Notfn on grounds that as per the LOP, the permission was granted only to parts used in motor vehicles - As the lashing system cannot be considered part of motor vehicle, the condition of Notfn regarding authorization by Development Commissioner was unsatisfied - SCN was issued proposing duty demand & the same was confirmed upon adjudication. **Held:** Considering the letter issued by the Development Commissioner, it is seen that it is not a fresh LOP issued by the Development Commissioner & it is to the effect that the item lashing belts system stands included in the earlier LOP which

is modified to such extent - Since it is a modification of earlier LOP, the same must be treated as a clarificatory amendment by the Development Commissioner - This would effectively over-rule the Revenue's objections - Moreover, the issue at hand involves bona fide interpretation of provisions of Notfn - Without there being any evidence of mala fide intent on part of the assessee, extended limitation is not invokable - Hence the OIA merits being quashed: **CESTAT [M/s. GT Cargo Fitting India Pvt Ltd Vs CCE, 2019-TIOL-2417-CESTAT-ALL]**

- **Cus** - The issue is with regard to interest on delayed refund - As per Section 27 of Customs Act, 1962, the assessee is eligible for interest in case refund is not sanctioned within three months from the date of application - On perusal of facts presented, it is seen that the department has filed stay application before the Tribunal - The stay application was dismissed on 30.4.2013 - The refund ought to have been sanctioned to the assessee on dismissal of the stay application - Thus, there is indeed delay in sanctioning the refund - The assessee is therefore eligible for interest on the delayed refund - Assessee is eligible for interest from three months after the dismissal of stay application - The impugned order rejecting the interest on delayed refund is unjustified and same is set aside - The appeal is allowed with a direction to the lower authority to quantify and pay the interest payable on the delayed refund amount with immediate effect: **CESTAT [M/s. Steel Authority of India Ltd Vs CC, 2019-TIOL-2477-CESTAT-MAD]**
- **Cus** - During the relevant period, the Revenue received intelligence that the goods imported by one M/s DD Trading Co., a 100% EoU, had been diverted to the local market instead of being used for the



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stated purpose - Pursuant to investigations, SCNs were issued making such allegations and proposing duty demand with interest & penalty, apart from confiscation of the goods with option of redemption fine being given - On adjudication, such proposals in the SCN were confirmed - Hence the present appeal. **Held :** The issue involved pertains to the validity of penalty imposed u/s 112(a) of the Customs Act 1962 - There is no merit in the assessee's argument that the goods were received at Mathura - The only

conclusion is that the imported goods were diverted to Surat and the assessee was aware of the fact - This is because none of the statements were neither challenged in cross examination nor were retracted - Penalty imposed on the appellant who is an employee of the CHA is apparently harsh - The ends of justice would be met if its quantum is reduced: CESTAT [M/s. Mukesh Omprakash Gupta Vs CC, 2019-TIOL-2452-CESTAT-MUM]



Shweta Jain Gupta
Partner
Mob: 9891122735

Email: Shweta@
rsalegalsolutions.com



Rajat Dosi
Partner
Mob: 8800560580

Email: rajat@
rsalegalsolutions.com



SC Jain
Managing Partner
Mob: 9891086862
8588007302
Email: scjain@
rsalegalsolutions.com



Anshul Mittal Jain
Partner
Mob: 8800813451

Email: Anshul@
rsalegalsolutions.com



Abhishek Jain
Partner
Mob: 9873859616

Email: Abhishek@
rsalegalsolutions.com
