



# 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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*The GST Council to consider e-invoicing for firms with over Rs 500 Crores turnover.*

### General Updates

- GST may become two-tier tax with merger of 12% and 18% slabs: Former FM Arun Jaitley
- The GST Dept. plans to audit account of business based on their Tax Evasion history.
- GST collections fall below ₹ One trillion for first time in FY20.
- The GST authorities have recently identified nearly 75,000 defaulters in Gujarat and issued notices to them for non-payment of taxes under the GST regime.
- Budget 2019: Industry Body Calls For GST Rationalisation, Simplified Registration Process.
- Finance Ministry asks businesses to avoid last minute rush in GST return filing in order to avoid the technical glitches.
- The traders who have witnessed no transaction in the quarter, they will file their returns by just one SMS: Sushil Kumar Modi.
- Extended the tenure of the anti-profiteering authority by two years.
- Budget 2019 Education Technology sector expects GST reduction, ramping up investments.

## Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 25/2019-CT dated 21.06.2019** has extended the date from which the facility of blocking and unblocking of e-way bill as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force up to 21.08.2019.
- The CBIC vide **Notification No. 26/2019-CT dated 28.06.2019** has extended the due date for filing of return in FORM GSTR-7 for the months of October, 2018 to July, 2019 till 31st day of August, 2019.
- The CBIC vide **Notification No. 27/2019-CT dated 28.06.2019** has specified the due date for furnishing FORM GSTR-1 for registered persons having an aggregate turnover of up to 1.5 crore rupees for the months of July, 2019 to September, 2019 till 31st October, 2019.
- The CBIC vide **Notification No. 28/2019-CT dated 28.06.2019** has specified the due date for furnishing FORM GSTR-1 for registered persons having an aggregate turnover of more than 1.5 crore rupees for the months of July, 2019 to September, 2019 till 11th day of the month succeeding such month.
- The CBIC vide **Notification No. 29/2019-CT dated 28.06.2019** has specified the due date for furnishing FORM GSTR-3B for the months of July, 2019 to September, 2019 on or before the 20th day of the month succeeding such month.
- The CBIC vide **Notification No. 30/2019-CT dated 28.06.2019** has exempted the supplier of Online Information Database Access and Retrieval Services ("OIDAR services") from the furnishing of Annual Return / Reconciliation Statement.
- The CBIC vide **Notification No. 31/2019-CT dated 28.06.2019** has sought to carry out the changes in CGST Rules, 2017.
- The CBIC vide **Notification No. 32/2019-CT dated 28.06.2019** has extended the due date of furnishing details in ITC-04 for the period from July, 2017 to June, 2019 till the 31st day of August, 2019.
- The CBIC vide **Removal of Difficulty Order No. 06/2019-CT dated 28.06.2019** has extended the due date for furnishing the annual return in FORM GSTR-9 for the period from the 1st July, 2017 to the 31st March, 2018 from 30th June, 2019 to 31st August, 2019.
- The CBIC vide **Circular No. 102/2019-CGST dated 28.06.2019** has elucidated with respect to the applicability of GST on additional/penal interest on the overdue loan.
- The CBIC vide **Circular No. 103/2019-CGST dated 28.06.2019** has elucidated with respect to the determination of place of supply for various cargo handling services provided by ports and services rendered on goods temporarily imported in India.
- The CBIC vide **Circular No. 104/2019-CGST dated 28.06.2019** has delineated the procedure for the refund applications in FORM GST RFD-01A submitted by taxpayers which are wrongly mapped on the common portal.



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- The CBIC vide **Circular No. 105/2019-CGST dated 28.06.2019** has elucidated on the various issues pertaining to the treatment of secondary or post-sales discounts under GST.
- The CBIC vide **Circular No. 106/2019-CGST dated 29.06.2019** has delineated the Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange -reg.
- The CBIC vide **Notification No. 44/2019-Cus (NT) dated 19.06.2019** has superseded Manufacture and other operations in Warehouse Regulations, 1966 with Manufacture and other Operations in Warehouse Regulations, 2019 w.e.f. 19.06.2019.
- The CBIC vide **Circular No. 14/2019-CUS dated 03.06.2019** has introduced the simplified auto-registration of beneficiaries (IEC holders) on ICEGATE for e-SANCHIT and other benefits - reg.
- The CBIC vide **Circular No. 16/2019-CUS dated 17.06.2019** has provided the mechanism to verify the IGST payments for goods exported out of India in certain cases - reg.
- The CBIC vide **Circular No. 16/2019-CUS dated 19.06.2019** has elucidated with respect of applicability of Additional Customs duty on jewellery re-imported under Customs Notification No. 94/96-Customs dated 16.12.1996 exported earlier for exhibition purpose/ consignment basis - reg.
- The DGFT vide **Public Notice No. 11/2015-20 dated 14.06.2019** has waived off the requirement of destruction certificate from the excise / custom authorities for unutilized duty free imported material from unregistered sources with pre-import conditions.
- The DGFT vide **Public Notice No. 13/2015-20 dated 25.06.2019** has amended in Para 2.54 of the Handbook of Procedures, 2015-2020 by extending the deadline to install and operationalize Radiation Portal Monitors & Container scanners by 30.09.2019.
- The DGFT vide **Public Notice No. 12/2015-20 dated 25.06.2019** has laid down the amendments in the procedure for availing Transport and Marketing Assistance (TMA) for Specified Agriculture Products.
- The DGFT vide **Trade Notice No. 21/2019-20 dated 28.06.2019** has invited suggestions from all the stakeholders for framing proposed new foreign trade policy within 15 days of issue of trade notice.

## Case Laws

### GST

- **GST** – Applicant supplies cabs on rental basis and seeks a ruling as to whether credit is admissible of the Input Tax paid on purchase of motor vehicles for the supply of the above service. **Held:** Rent-a-cab is not defined in the GST Act - Applicant provides cab rental service inter alia to institutions like West Bengal Postal Service and the recipient has to pay the applicant a certain amount per month as consideration irrespective of the distance the cab travels in a particular month - nature of service the applicant provides is classifiable under SAC 9966 as renting of a motor vehicle - Credit of GST paid on purchase of motor vehicles or other inputs for the supply of the applicant's service is, therefore, not admissible in terms of s.17(5)(b)(i) of the GST Act. Application disposed of: AAR. **[Mohana Ghosh, 2019-TIOL-160-AAR-GST]**
- **GST** - The petitioner had filed the petition claiming himself to be a public spirited advocate practising in the Bombay High Court, and sought directions to initiate criminal prosecution against the respondent No.3- a Company named “Dream 11 Fantasy Pvt. Ltd.”, firstly for allegedly conducting illegal operations of gambling/betting/wagering in the guise of Online Fantasy Sports Gaming, which as per the petitioner shall attract penal provisions of Public Gambling Act, 1867, and secondly for alleged evasion of Goods & Service Tax (GST) payable by it by violating the provisions of Goods and Service Tax Act and the Rule 31A of CGST Rules, 2018. **Held:** The online fantasy sports gaming is not a game of chance. It involves skill and expertise of the users and hence cannot be called as betting and Gambling for the purpose of GST. **[M/s. Gurdeep Singh Sachar Vs Dream 11 Fantasy Pvt Ltd, Criminal Public Interest Litigation Stamp No.22 of 2019]**
- **GST** - Petitioner is aggrieved by two orders passed by respondent - first one directed the petitioner to workout the interest payable on the entire amount of ITC availed and also penalty payable u/s 122(iii) of the Act and the second order directed them to pay interest failing which recovery proceedings were to be initiated - Petitioner submits that the orders have been passed without providing an opportunity of personal hearing and the bank account has been attached. **Held:** Present writ petition is highly misplaced for Section 107 of the Act clearly provides an efficacious alternative remedy to the petitioner to approach the appellate authority - It is, indeed, a settled principle of law that generally, a writ jurisdiction cannot be invoked, in case the efficacious alternative remedy is available - petitioner has approached this Court in order to circumvent the efficacious alternative remedy - Even if the petitioner is of the opinion that the principles of natural justice have been violated, he is free to raise the said plea before the appellate authority - Court is not inclined to invoke the writ jurisdiction, therefore, Writ petition is dismissed. Petition dismissed: Telangana High Court. **[M/s. Kesoram Industries Ltd Vs Assistant Commissioner CGST & CE, 2019-TIOL-1225-HC-AP-GST]**
- **GST** - Applicant seeks to know as to whether the procedure of raising invoice from Mumbai office for imports received at Paradip Port, Odisha where they do not have any separate GST registration and charge IGST from Mumbai to their customers is correct or whether they have to take separate registration in the State of Odisha; whether, if they are not required to take separate registration, they can in the case of issuance of e-way bill mention the GSTIN of Mumbai and dispatch place as Paradip port. **Held:**

In the present case, the place of supply is the location of the importer who is situated in the State of Maharashtra and hence the applicant will be clearing the goods by paying IGST using GSTIN issued to them in Mumbai - since the applicant has no establishment or place of operation or any godown or GSTIN in the State of Odisha, Paradip Port i.e. at the port of import, Authority is of the opinion that the place of supply shall be the place from where the applicant makes a taxable supply of goods, which in this case is the Mumbai Head Office - Applicant can, therefore, clear the goods on the basis of invoices issued by Mumbai Head Office and, therefore, they need not take separate registration in the State of Odisha - resultantly, since, as an importer the place of supply for the applicant is Mumbai and the goods also will be cleared on the name of the Mumbai registered address while paying IGST at the time of Customs clearance, it would follow that they can do the further transaction mentioning the GSTIN of their Mumbai office; that they can do the transaction on Mumbai HO GSTIN and can mention the GSTIN of Mumbai HO in the E-way bill and dispatch place as Customs Warehouse, Odisha, Paradip Port. Application disposed of: AAR [M/s. Aarel Import Export Pvt Ltd, 2019-TIOL-167-AAR-GST]

- **GST** - Applicant seeks a ruling as to whether ITC is available on expenses incurred towards promotional schemes of Shubh Labh Loyalty program; whether ITC is available on expenses incurred towards promotional schemes goods given as brand reminders. **Held:** Applicant is making contradictory submissions - if the Authority accepts the contention that the promotional items are supplied as a contractual obligation with an intention to increase the sale of the company; to serve as an advertisement tool and brand reminder to promote sale, then in view of S.7 of the CGST Act, it is a supply in the nature of barter - on the contrary the applicant has accepted that the impugned supply is without consideration, therefore, the transaction is nothing but a gift - in

taxation it is not open to a person to take simultaneously different stands - Authority concludes that the applicants are not entitled to ITC of GST paid on expenses incurred towards promotional schemes of Shubh Labh Loyalty programme and goods given as brand reminders - s.17(5) of the Act blocks such credits. Application disposed of: AAR [M/s. Sanofi India Ltd, 2019-TIOL-182-AAR-GST]

- **GST** - Applicant is a SPV into development of land and construction of flats to be given out on lease as per the agreement of lease entered by them with customers - developed units will be transferred to prospective customers through an agreement wherein the allotment is given to customer referred to as lessee - the lessee agrees to take on lease from Developer (applicant) and applicant agrees to lease out to respective buyer the respective flat as mentioned specifically in the agreement - Applicant seeks to know as to whether the transaction is outside the purview of GST as a transaction in immovable property and if not what is the appropriate classification and rate of GST. **Held:** There is a taxable supply in the subject case, which is a supply of services in the form of construction of a complex, building, civil structure or part thereof, including a complex or building to their prospective lessees, a part of which i.e. flats are intended to be handed over to the buyer, for which consideration is received by the applicant in installments, on completion of work, slab wise viz. the developed units will be transferred to the prospective customers through an agreement wherein the allotment is given to customers - In the form of construction service a composite supply of works contract as defined in s. 2(119) of the Act is provided to prospective lessee in compliance of an agreement and the same is taxable under GST laws - Transaction between applicant and lessee is taxable under GST - It is not a transaction in immovable property - supply is a composite supply and classifiable under CH 9954(ii) and will attract tax @18%. Application disposed of. AAR. [M/s. Nagpur

## **Integrated Township Pvt Ltd, 2019-TIOL-194-AAR-GST]**

- **GST** - Applicant is a manufacturer of cigarettes and intends to offer extra quantity of cigarettes (quantity discount) in additional to normal quantity against same consideration, as a taxable supply to its distributors from their depot - so, as a marketing strategy instead of supplying a quantity of say 100 packs for an agreed price of say Rs.5000/- they would be supplying 110 packs of cigarettes without recovering any additional cost from distributors - applicant would, however, be paying GST and Compensation Cess on Rs.5000/- at applicable rate - they seek to know from the Authority as to whether the extra packs of cigarettes would again be leviable to GST; if yes, the taxable value which can be attributed to such extra packs of cigarettes; whether extra packs would be considered as exempt supplies or free samples and attract provisions of S.17(2) of the Act r/w Rule 42 of the Rules or clause (h) of S.17(5) of the Act. **Held:** In view of the CBIC Circular 92/11/2019-GST dated 07.03.2019, the extra packs of cigarettes would not be again leviable to GST; extra packs will not be considered as exempt supplies or free supplies and hence the provisions of S.17(2) r/w rule 42 or clause (h) of S.17(5) will not be applicable. Application disposed of: AAR [**M/s. Golden Tobacco Ltd, 2019-TIOL-192-AAR-GST**]
- **GST** - Though the location of the recipient is outside India, the services supplied are in respect of goods

which are made physically available by the recipient of services to the supplier of the services for the services to be performed - provisions of Sub-section (3)(a) of S.13 of the IGST Act is squarely applicable for the supply in question - since the 'place of supply' is in a taxable territory, it is clear that the provisions of S. 2(6) of IGST Act are not fulfilled and supply cannot, therefore, be considered as Export of services - since place of supply and service provider are in the same State, CGST and SGST are payable. Application disposed of: AAR [**M/s. Bilcare Ltd., 2019-TIOL-191-AAR-GST**]

- **GST** - Applicant intends to import crude soyabean oil on CIF basis which includes the component of Ocean freight in the price of imported goods - issue raised is on applicability of RCM on Ocean freight when IGST is paid by the importer on goods imported on CIF basis. **Held:** Applicant is liable to pay IGST on Ocean Freight paid on imported goods under reverse charge mechanism in terms of Notfn. 10/2017-IT(R) and 8/2017-IT(R) irrespective of the ocean freight component having been a part of the CIF value of the imported goods - Any notification is issued only as per recommendations of GST Council and the law laid down is binding upon the concerned - applicant questioning the levy under RCM as being without jurisdiction - AAR does not have the jurisdiction or authority to dwell into this question in terms of S. 97(2) of the Act. Application disposed of: AAR [**M/s. E-DP Marketing Pvt Ltd, 2019-TIOL-196-AAR-GST**]

## **CUSTOM**

- **Cus** - The appellant is a C&F agency - During the relevant period, proceedings were initiated against the appellant in respect of certain imports made by two individuals under the name and style of another entity, wherein the value of goods had been mis-

declared in order to evade payment of duty - The appellant's license had also been revoked as per Regulation 20 of the Customs Brokers Licensing Regulations 2013 - Thereupon, penalty u/s 112 of the Act had been imposed on a partner in the appellant-

firm, for the same involvement which had been set aside by an order passed by the Tribunal - Later the High Court remanded the matter back to the Tribunal - Hence the present appeal. **Held:** Record of proceedings reveal that 310 days lapsed between issuing notice of enquiry & submission of enquiry report - There is no justification for the delay in completion of the enquiry proceedings - No witnesses or additional documents were placed on record on the appellant's behalf - The proceedings were also found to have been repeatedly adjourned, in one case, without specifying the next date of hearing which was to be intimated in due course - Hence it is seen that the delay is attributable entirely to the enquiry - Non-availability of documents cannot be treated as mere procedure - Absence of relevant documents before initiating proceedings reflects lack of application of mind on part of the licensing authority - No justifiable reason is given for not placing these documents on record - The avoidable adjournments arose from the inability of the presenting officer & the enquiry officer to ensure that the requisite conditions for commencing proceedings had been complied with - Moreover, the very statements relied upon by the authorities concerned were found to be exculpatory - Hence the adjudication order merits being quashed: **CESTAT [M/s. Kismat Clearing Agency Vs CC, 2019-TIOL-1848-CESTAT-MUM]**

- **Cus** - The assessee-company imported split ACs during the relevant period, while filing into-bond bill of entry for purpose of CVD - While the goods were in the warehouse, the assessee re-affixed the MRP at a slightly lower figure & then cleared the goods by filing ex-bond bill of entry - The Assistant Commissioner directed provisional assessment as the MRP of the

goods could not be ascertained at the time of their clearance from the warehouse - Later, the Dy Commr. revised the MRP as it originally stood & raised demand for differential amount of duty - On appeal, the Commr.(A) quashed such findings - Hence the present appeal by the Revenue. **Held:** The Adjudicating Authority while finalising the assessment did not accept the reduced MRP on grounds that no evidence is placed in its support - It is seen that before the Commr.(A), the assessee produced certain sales invoices which the former verified & accepted - As such evidences were not examined at the original adjudication stage, it is fit case for remand to such effect: **CESTAT [CC Vs Videocon Industries Ltd, 2019-TIOL-1820-CESTAT-MUM]**

- **Cus** -The petitioner arrived at Hyderabad airport from Dubai and dutiable goods being gold/gold jewellery were seized from the petitioner - It is the case of petitioner that they approached the respondent for redemption and the respondents vide communication dated 22.04.2019 informed the petitioner that the consignment seized from petitioner has since been sold and an amount of Rs.2,48,21,820/- has been realized - Therefore, the redemption option stands foreclosed - What remains now is refund of the value realized - Fourth respondent is directed to pay to the petitioner money realized by selling the consignment seized from the writ petitioner after deducting the penalty imposed vide order dated 15.02.2019. **Held:** For the purpose of clarity, it is made clear that the amount realized by Department by selling the consignment seized from the petitioner is Rs.2,48,28,820/- and the penalty is Rs.20,00,000/- Refund in the aforesaid manner i.e. after deducting penalty shall be made - The petitioner shall make an application for refund in tune with this order of this Court within a fortnight from the date of receipt of a copy of this order in accordance with the prevailing



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applicable Rules - Fourth respondent shall make refund in accordance with this order of this Court within four weeks: HC [Umar Syed Vs CC, 2019-TIOL-1379-HC-MAD-CUS]

- **Cus** - The challenge in writ application is to Notfn dated 13th October 2017, in which, the pre-import condition has been imposed on imports made under the advanced authorization licenses - The parties have brought to notice the judgement rendered by a Division Bench of Court in Messrs Maxim Tubes Company Pvt. Ltd. 2019-TIOL-459-HC-AHM-CUS - The Notification, which is a subject matter of challenge, has been struck down as ultra vires - Nothing remains to be adjudicated in this petition, same is disposed of accordingly: High Court [M/s. Singhal Industries Pvt Ltd Vs UoI, 2019-TIOL-1344-HC-AHM-CUS]
- **Cus** - This application seeks condonation of 484 days delay in filing an appeal from the order passed by Tribunal - The impugned order of Tribunal was received on 22nd May, 2017 - There is no attempt even made to explain the delay from 13th June, 2017 when Principal Commissioner of Customs sought information of likelihood of success in appeal along

with grounds of appeal till 5th September, 2018 when the file was again put up before Principal Commissioner of Customs - This inaction shows negligence on the part of Revenue in challenging the order dated 18th April, 2017 of Tribunal in time - On being asked whether any responsibility has been fixed for the delay, court was informed that it is a separate issue - The reliance placed by Revenue upon the decision of this Court in Unison Clearing Pvt. Ltd. 2018-TIOL-1826-HC-MUM-CUS was a decision which was rendered on 19th April, 2018 while the present appeal has been filed from an order dated 18th April, 2017 - The non-taking of any action from 13th June, 2018 to 5th September, 2019 shows negligence - The application was moved to act only after the decision of this Court in Unison Clearing Pvt. Ltd. - It appears that the appeal has been filed only in view of decision of this Court in Unison Clearing Pvt. Ltd. - This cannot be the basis for condoning such long delay - It shows complete negligence on the part of the Officers of the Department to challenge the impugned order of the Tribunal dated 18th April, 2017 - Thus, no sufficient cause has been made out for condonation of delay: High Court [CC Vs M/s. Nandan Shipping Agency, 2019-TIOL-1341-HC-MUM-CUS]



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