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

Advisory

Litigation

Compliances

Audit

GST Handholding

GST system vulnerable to fraudulent input tax credit claims, says CAG

General Updates

- The GST Network releases offline tool of new GST return for trial run.
- The GST compliance regime not yet simple, says CAG.
- The Govt. did not try out GST system before rollout says CAG.
- The GST Council has brought down the GST rate on electric vehicles (EVs) to 5% from 12%.
- Government has proposed levy of interest only on the net cash liability of unpaid GST in the Financial Bill, 2019
- Petroleum products should be brought under GST, suggests Assocham.
- JW Marriot Hotel slapped with Rs. 25000 Fine for illegal GST Collection from Actor Rahul Bose.
- CGST Commissionerate, Gurugram arrests Three persons for committing Offences under CGST Act.
- Coaching centres have demanded lower GST rate on their services.
- The GST collection grows 5.8% in July to ₹1.02 trillion.
- Kerala flood cess will be used for funding the post-flood re-building projects.

Address: RSA Legal Solutions, 937A, JMD Mega Polis, Sector-48, Sohna Road, Gurgaon- 122001, Haryana
Ph.: 0124- 4366975 Email: scjain@rsalegalsolutions.com Website: www.rsalegalsolutions.com

INDIRECT TAX UPDATES

Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 33/2019-CT dated 18.07.2019** seeks to carry out amendments (fifth amendment) in CGST Rules, 2017. In these amendment, some procedural difficulties has been removed with regard to registration under TDS provisions, Relaxation of tax invoice rules for exhibition of cinematographic film, Surrender of enrolment of GST practitioner, blocking and unblocking of EWB generation, Refund on account of deemed exports to include credit or debit note etc.
- The CBIC vide **Notification No. 34/2019-CT dated 18.07.2019** has extended the due date for furnishing details of payment of self-assessed tax in Form GST CMP-08 (for composition dealers) for the quarter April-June, 2019 upto 31st Jul, 2019.
- The CBIC vide **Notification No. 35/2019-CT dated 29.07.2019** has extended the last date for furnishing FORM GST CMP-08 for the quarter April -June 2019 till 31.08.2019.
- The CBIC vide **Circular No. 107/26/2019-GST dated 18.07.2019** has clarified on various doubts related to supply of Information Technology enabled services (ITeS) and intermediary services with some illustrations.
- The CBIC vide **Circular No. 108/27/2019-GST dated 18.07.2019** has clarified on issues regarding procedure to be followed in respect of goods sent/taken out of India for exhibition or consignment basis for export promotion.
- The CBIC vide **Circular No. 109/2019-GST dated 22.07.2019** has clarified on issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.
- The CBIC vide **Circular No. 21/2019-Cus dated 24.07.2019** has clarified regarding applicability of Notification No. 45/2017-Cus dated 30.06.2017 on goods which were exported earlier for exhibition purpose/consignment basis.
- The CBIC vide **Circular No. 22/2019-Cus dated 24.07.2019** has clarified regarding Refunds of IGST paid on import in case of risky exporters.
- The CBIC vide **Press Release dated 03.07.2019** has provided the clarification w.r.t. Annual Returns And Reconciliation Statement.
- The DGFT vide **Circular No. 25/2015-20 dated 01.07.2019** has clarified w.r.t. jurisdictional RA/RA concerned for SEIS-Para 3.06 (c) of Handbook of Procedures.
- The DGFT vide **Public Notice No. 17/2015-20 dated 04.07.2019** has asserted that Advance Authorizations shall not be issued, where the import items is 'Pulses' and/or 'Peas' of any kind, which is cover under the restricted/prohibited/State Trading Enterprises (STEs) lists.
- The DGFT vide **Public Notice No. 20/2015-20 dated 24.07.2019** has delineated the procedure for the Global Authorization for Intra-Company Transfer (GAICT) of SCOMET items/software/technology with the inclusion of para 2.79F of Handbook of Procedures.

Address: RSA Legal Solutions, 937A, JMD Mega Polis, Sector-48, Sohna Road, Gurgaon- 122001, Haryana
Ph.: 0124- 4366975 Email: scjain@rsalegalsolutions.com Website: www.rsalegalsolutions.com

Case Laws

GST

- **GST –** Refund - IGST - Circular 37/2018-Customs dated 9th October 2018 cannot run contrary to the statutory rules, namely rule 96 of the CGST Rules, 2017 - Circular cannot be said to have any legal force - Bench is not impressed by the stance of the respondents that although the writ-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the writ-applicant is not entitled to the refund of the IGST - circular explains the provisions of the drawback and it has nothing to do with the IGST refund - Rule 96 of the Rules is very clear - shipping bill that the exporter may file is deemed to be an application for refund of the integrated tax paid on the goods exported out of India and the claim for refund can be withheld only in the following contingencies as enumerated in sub-clauses (a) and (b) respectively of clause (4) of Rule 96 of the Rules, 2017 - Writ-application is allowed - respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund: High Court **[M/s. Amit Cotton Industries Vs PR CC, 2019-TIOL-1443-HC-AHM-GST]**

- **GST –** Press Release dated 18th October 2018 clarifying that the last date for availing ITC, in relation to invoices or debit notes relating to such invoices and issued by the corresponding supplier(s) during the period from July, 2017 to March, 2018, is the last date for the filing of GSTR-3B return for the month of September, 2018 i.e. 20th October, 2018 is contrary to Section 16(4) of the CGST Act/GGST Act read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the CGST Rules/GGST Rules; paragraph 3 of the Press Release is illegal to the extent of its clarification. Thus, writ application disposed of: HC **[M/s Aap And Company Vs Uol, 2019-TIOL-1422-HC-AHM-GST]**

- **GST –** The applicant is supplying service of transportation of passengers or renting of motor vehicles with or without chauffeurs and also engaged in leasing of vehicles - The applicant also operates the renting and leasing business and separate divisions - The motor vehicles procured for renting business are used exclusively in such business & are not interchanged with those used in the leasing business - The motor vehicles have also been capitalized in the books of accounts - The applicant approached the AAR, seeking to know if it could claim ITC of the Compensation Cess paid on the purchase of such motor vehicles which were used to provide service of transportation of passengers or in the rental business & then disposed of after about 3-4 years of use. **Held:** Considering the provisions of Rule 43 of the GST Rules, the applicant is eligible to avail ITC of the entire amount of Compensation Cess paid on the purchase of vehicles used in the rental business. Such ITC claimed is to be reversed every month equally apportioned over the prescribed period of 60 months to the extent of usage of exempted supply of services - Also, as per Rule 43(c) of the GST Rules applicant is eligible to claim ITC of Compensation Cess paid at the time of purchase of Motor vehicles and need to reverse a proportionate amount of ITC every month

based on the turnover of rental service business and utilize the balance ITC for discharging liability for compensation cess arising at the time of sale of such vehicles. Application disposed of: AAR **[M/s Orlx Auto Infrastructure Services Ltd, 2019-TIOL-108-AAR-GST]**

- **GST –** Applicant entered into an agreement with Goa State Infrastructure Development Corporation Ltd. (GSIDC) for execution of additional Air-conditioning work for the new building of Director of Education at Porvorim, Goa - Applicant seeks to know whether the transaction would be classifiable as "Works Contract" or the transaction is a Composite Supply. **Held:** There is no Works contract involved in the subject case and the supply is nothing but a Composite supply with supply of goods being the principal supply - Therefore, GST will have to be paid on the goods at the appropriate rate after classification under appropriate heading - since final deliverable is nothing but ready to operate Air-conditioning system and Air conditioner units falling under Chapter 8415 are taxable @28%, Schedule IV, Sr. no. 119 of 1/2017-CTR and parallel IGST/State/UT etc. notification - applicant is liable to pay GST on the whole contract @28% - there is no 'Mixed supply' because no individual supplies are made in the instant case. Thus, application disposed of: AAR **[M/s. Nikhil Comforts, 2019-TIOL-208-AAR-GST]**

- **GST –** GST - Applicant is employed in Star Health and Allied Insurance Co. Ltd. as Chairman & Managing Director - he seeks a ruling as to whether the profit-sharing agreement between the applicant as an employee and the shareholders attract GST in his hand. **Held:** Profit sharing agreement between applicant and various shareholders is an actionable claim and is neither a supply of goods nor supply of services covered under Schedule III of the Act - not taxable under GST. Thus, the application disposed of: AAR **[Venkatasamy Jagannathan, 2019-TIOL-222-AAR-GST]**

- **GST –** Applicants to conduct a conference and organise an exhibition in Jaipur in December 2019 and they seek a ruling on various issues related to classification and tax rate. **Held:** Services provided by applicant to delegates and exhibitors is a composite supply and classifiable under SAC 998596 - service of brand promotion packages offered by the applicant is a composite supply under SAC 998397 and they are liable to pay GST in this regard since not covered under reverse charge mechanism - ITC is available on services of hotel including accommodation, food and beverages (including that supplied by outside caterers), services provided by event managers like pick-up and drop, exhibition stall set-up, tenting etc. Thus, application disposed of:AAR **[M/s. All Rajasthan Corrugated Board And Box Manufacturers Association, 2019-TIOL-211-AAR-GST]**

- **GST –** Applicant is an authorised dealer for Maruti Suzuki India Ltd. for sale of motor vehicles and spares and for servicing - Applicant seeks a ruling as to whether ITC on the motor vehicle purchased for demonstration purpose can be availed as credit on Capital goods and set off against Output tax payable under GST. **Held:** Applicant has purchased the demo vehicles against tax invoices from the supplier after paying taxes - demo vehicle is an indispensable tool for promotion of sale by providing trial runs to the customer - applicant also capitalises the purchase of such vehicles in the books of accounts - such capital

goods which are used in the course or furtherance of business is entitled for Input Tax credit and can be set off against Output tax payable under GST. Thus, the application disposed of: AAR **[M/s Chowgule Industries Pvt Ltd, 2019-TIOL-225-AAR-GST]**

- **GST –** Appellant supplies Indigo Press printing ink (Electro Ink) bundled along with supply of ancillaries comprising of oil, binary ink developer, bip, blanket, print imaging plate and other machine products - They had sought a ruling on the classification of ink supplied along with consumables and determination of the time and value of supply of printing ink with consumables under the Indigo Press contract - AAR has held that supply of ElectroInk with consumables is a mixed supply - appeal to AAAR. **Held:** In a composite supply, the two or more taxable supplies have to be naturally bundled and one of the indicators of 'naturally bundled' supply is that it should be an industry practice - appellant has given no evidence that the program given is an industry practice - the fact that the appellant offers his customers the option of a tier programme does not make the same an industry practice - also, what is more important is that the products are to be used on a HP printing machine and, therefore, for the best printing, only HP products have to be used - such requirement does not at all make it a composite supply as it has an element of compulsion in it whereas there is no place for compulsion in a composite supply - no reason to interfere with the order of AAR - Appeal is dismissed: AAR **[M/s. HP India Sales Pvt. Ltd., 2019-TIOL-57-AAAR-GST]**

CUSTOMS

- **CUS –** The assessee-company is a 100% EoU – It imported Die Casting machine after availing benefit of Customs duty exemption under Notfn No 53/97-Cus - This machine was installed in the assessee's factory & was used to manufacture electric wiring accessories - Upon becoming obsolete, the assessee sold it off to a DTA buyer - Written permission was sought from the Deputy Commissioner of Central Excise & Customs & copy of letter seeking permission was forwarded to the Development Commissioner, SEEPZ - The machine was cleared to one entity against EPCG license issued to it, on payment of 5% ad velum duty - Upon audit, objection was raised that the assessee was refused permission by the Development Commissioner for DTA clearance & so was required to pay duty on the depreciated value and not on the transaction value - Hence it was held that merit rate of duty and not EPCG rate was applicable - SCN was issued proposing demand for differential duty - The Die Machine was confiscated u/s 111(d) & 111(o) of the Act, with interest u/s 28B and penalty u/s 112(b) and Section 114A - On adjudication, such proposals were confirmed and subsequently upheld by the Commr.(A) - Hence the present appeal by the assessee. **Held:** From a perusal of the communication issued by the Development Commissioner, it is clear that the Development Commissioner is authorized to permit conversion of EoU under EPCG as one time option for which the request to sell one machine could not be considered at their end but appellant may sell the same in the DTA after payment of applicable duties subject to compliance of Customs procedure - Hence the O-i-A erroneously held that the Development Commissioner refused permission for clearance of goods to DTA - Moreover, the jurisdictional

Superintendent debited the transaction value as declared by the assessee before allowing clearance of the machine, according to which the commercial invoice was raised - The assessee's contention that re-assessment cannot be done without review of the assessment order, is correct, considering mandate of Section 129D of the Act - Hence no mis-declaration or suppression of fact can be attributed to the assessee to warrant invoking extended limitation - Hence the O-i-A merits being quashed: CESTAT **[M/s Semco Electric Pvt Ltd Vs CC & CE, 2019-TIOL-1988-CESTAT-MUM]**

- **CUS –** The assessee have imported second hand machinery with accessories under EPCG scheme - The said machineries were carried in containers - After import of consignment, assessee removed the machineries from containers and installed and used the same - The case of department is that since the containers were not returned back and retained by assessee, its value should have been declared to Customs in bills of entry but the same was suppressed and accordingly the said containers are liable for confiscation - The containers were ordered to be confiscated on the ground that the assessee have not declared the container in bill of entry in which the goods imported were packed. **Held:** On perusal of import documents, it is found that shipping bill and invoice clearly bear the description of goods duly packed in the container - From the certificate given by supplier also, it is clear that the supply of Hi Reversing Plate Mill complete in all respect are duly packed in the containers and the value of the machine is inclusive of cost of containers - There is no basis to allege that either the assessee has not declared or mis-declared the description of goods or suppressed the value of the containers - In case of Jain Shudh Vanaspati, it was held that Edible Oil imported in stainless steel containers, separate duty not leviable on such containers and such containers are not liable to confiscation - No substance found in the charge of Revenue that import of container was not declared by assessee - Therefore, the entire deal between the supplier and the assessee was to import the machine under EPCG scheme duly packed in the container - Therefore, it is not a case of mis-declaration or suppression of any value - Accordingly, the impugned order is set-aside: CESTAT **[M/s Namco Industries Pvt Ltd Vs CC, 2019-TIOL-1910-CESTAT-AHM]**

- **CUS** - The assessee-company imported Aluminium Foil Scrap as per ISRI specifications & declared the assessable value on the strength of bill of entry - On adjudication, the assessable value was enhanced and duty demand was raised accordingly - On appeal, the Commr.(A) dismissed the assessee's appeal for failure to make pre-deposit - Later, the Tribunal remanded the matter to the Commr.(A), who proceeded to confirm the enhancement of value in the O-i-O - Hence the present appeal. **Held** - The original assessment in the case of Bill of Entry was done at USD 1500 PMT, but after issuance of SCN, the same was revised to USD 1780 PMT - Both orders were passed by the Deputy Commissioner of Customs - Such actions are not permissible - Hence the value in one bills of entry is fixed at USD 1500 PMT as was done in the original assessment - Besides, the Revenue produced contemporaneous import data & chose to rely on the value of contemporaneous import when fixing the assessable value at USD 1780 PMT in respect of the other bil of entry - Hence the revision of value in this case is upheld: CESTAT **[M/s Chintan Aluminium Pvt. Ltd. Vs CC, 2019-TIOL-2100-CESTAT-AHM]**

INDIRECT TAX UPDATES

- **CUS –**The assessee-company imported trailer parts such as wheel rims, axle & suspension - Provisional ssessment was done as the proper officer intended to compute the levy of additional duties of Customs by adopting the maximum retail price - The order of the assessing officer was quashed by the Commr.(A), with the latter holding that the Packaged Commodity Rules 1977 were inapplicable to goods which were not pre-packaged - Hence the Revenue's appeal. **Held** - Section 3 of Customs Tariff Act clarifies that no provision exists for ascertaining Retail Sale Price in same manner as provided for u/s 4A of the CEA 1944 - Section 4A has a clearly articulated purpose since its incorporation into the statute - Section 3 of the Customs Tariff Act 1975 was intended to ensure that valuation adopted for Customs purposes would conform to the price at which the goods are intended to be sold in packages that are statutorily required to carry such prices on them - Hence a declaration for Retail Sale Price would suffice for acceptance as value for computing additions duties of Customs - Therefore, there is no provisions for determining retail sale price in the event of disagreement by the proper officer of Customs with the declaration - Hence the adoption of another price by the proper officer of Customs does not constitute appropriate assessment - Thus, the Revenue's appeal lacks merit: CESTAT **[CC Vs .King Kaveri Trading Company, 2019-TIOL-2087-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

****