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INDIRECT TAX UPDATES

RSA Legal Solutions

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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

The Central Govt. may launch the system for E-invoice to curb the evasion.

General Updates

- The GST Network has issued an advisory to GST taxpayers on invoice series to be used w.e.f 1st April, 2019.
- The GST Network has made enhancements in the E-way Bill system
- The E-way Bill system will block the generation of multiple E-way bill on one invoice/document.
- The GST revenue collection is highest for the month of April, 2019 since the implementation of GST.
- The Directorate General of Anti-Profiteering (DGAP) is investigating over 50 property developers for not passing the GST benefits to end consumers.
- The Income Tax Dept. will be sharing the data of business persons with the GST officers for Tax evasion etc.
- Small B2C entities, restaurants under scanner for GST evasion.
- Non-filer of GST returns for two month to be barred from generating e-way bill w.e.f June 21.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 17/2019-CT dated 10.04.2019** had extended the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of March, 2019 from 11.04.2019 to 13.04.2019.
- The CBIC vide **Notification No. 18/2019-CT dated 10.04.2019** had extended the due date for furnishing FORM GSTR-7 for the month of March, 2019 from 10.04.2019 to 12.04.2019.
- The CBIC vide **Notification No. 19/2019-CT dated 22.04.2019** had extended the due date for furnishing of returns in FORM GSTR-3B for the month of March, 2019 for three days (i.e. from 20.04.2019 to 23.04.2019).
- The CBIC vide **Notification No. 21/2019-CT dated 23.04.2019** has notified the procedure for quarterly tax payment and annual filing of return for taxpayers availing the benefit under Notification No. 02/2019–Central Tax (Rate), dated the 7th March, 2019.
- The CBIC vide **Notification No. 22/2019-CT dated 23.04.2019** has notified the of Rule 138E of the CGST Rules w.e.f. 21st June, 2019.
- The CBIC vide **Circular No. 97/2019-GST dated 05.04.2019** has elucidated the issue with respect to exercise the option to pay tax under presumptive scheme of 6% as per the Notification No. 02/2019–Central Tax (Rate), dated the 7th March, 2019.
- The CBIC vide **Circular No. 98/2019-GST dated 23.04.2019** has elucidated the manner of utilization of input tax credit post insertion of the rule 88A of the CGST Rules.
- The CBIC vide **Circular No. 99/2019-GST dated 23.04.2019** has extended the time under sub-section (1) of Section 30 of the Act to provide a one-time opportunity to apply for revocation of cancellation of registration on or before the 22nd July, 2019 for the specified class of persons for whom cancellation order has been passed up to 31st March, 2019.
- The CBIC vide **Circular No. 100/19/2019-GST dated 30.04.2019** has clarified that GST exemption on charges for seed certification shall apply to charges incurred at all the stages of seed certification. However, supply of seed tags (used in certification) to state government shall be supply of goods and attract GST.
- The CBIC vide **Circular No. 101/20/2019-GST dated 30.04.2019** has clarified that exemption from gst on upfront amount for long term lease (thirty years or more) of industrial plots or plots for development of infrastructure for financial business is admissible even if such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.
- The CBIC vide **Removal of Difficulty Order No. 5/2019-GST dated 23.04.2019** has extended the time limit for filing an application for revocation of cancellation of registration for specified taxpayers.
- The CBIC vide **Circular No. 11/2019-Cus dated 09.04.2019** has clarified phasing out of physical copies of Merchandise Exports from India Scheme (MEIS)/Services Exports from India Scheme (SEIS) Duty Credit Scrips in order to enhance ease of doing business



- The DGFT vide **Public Notice No. 01/2015-20 dated 04.04.2019** has made amendment in the Para 2.16 of HBP of FTP 2015-20 which enhances the validity period of export authorization for restricted (Non-SCOMET) goods from 12 months to 24 months.
- The DGFT vide **Public Notice No. 02/2015-20 dated 05.04.2019** has notified the statutory fee of one thousand rupees for application for reimbursement of benefits under Transport and Marketing Assistance (TMA).
- The DGFT vide **Public Notice No. 04/2015-20 dated 12.04.2019** has made amendments in the proforma of End Use Certificates [Appendix 2S(i), 2S(ii) and 2S(iii)] for grant of permission for export of items under SCOMET Control List.
- The DGFT vide **Public Notice No. 05/2015-20 dated 26.04.2019** has facilitated with the online filing and tracking of quality complaints/trade disputes and mechanism for resolving the complaints.
- The DGFT vide **Trade Notice No. 08/2015-20 dated 26.04.2019** has upgraded the module for Online filing and tracking of quality complaints and trade disputes/trade disputes relating to International Trade for both i.e. Indian and Foreign Entities.

Case Laws

GST

- **GST - AAR** has held that in view of section 15(2)(b) of the CGST Act, 2017, the amortized cost of tools which are re-supplied back to the applicant free of cost shall be added to the value of the components while calculating the value of the components supplied - appeal filed. **Held:** There is no dispute that the appellant and their customers are not related parties - On going through the terms and conditions of the contract entered into between the appellant and Daimler India Commercial Vehicles P Ltd. (DICV) it is evident that the appellant is required to use DICV owned tools concerning the part to be manufactured with the tool - applicable GST on the supply of the tool is levied in the invoice raised by appellant - once the agreed cost of the tool developed and manufactured by the appellant under a specific purchase order has been paid by DICV, the title of the tool and all IPR created in the course of development of the tool will be transferred to DICV - since the value of the tools, in the present case, has already suffered tax and supplied Free of Cost (FOC) basis to the appellant, the same is not required to be added to the value of the components supplied by the appellant - **AAR** ruling is set aside and it is held that the cost of the tools supplied by the OEM customer on FOC basis to the appellant is not required to be added to the value of the components supplied by the appellant – appeal allowed: AAR **[M/s Nash Industries India Pvt Ltd, 2019-TIOL-07-AAAR-GST]**
- **GST -** The appellant preferred an application seeking an advance ruling to decide whether GST was applicable on sales and/or purchase of DFIA (Duty Free Import Authorisations) as serial no. 122a of the Notification No. 2/2017-Central Tax (Rate) inserted vide Notification No. 35/2017-Central Tax (Rate)



dated 13-10-2017 exempts duty credit scrip. **Held:** The DFIA also popularly known as duty paying scrips in the trade parlance is equivalent to the duty credit scrips, as far as the tax treatment thereon, are concerned and accordingly, there will be nil rate of GST on the sale or purchase of DFIA as provided in Sr. 122A of the Notification No. 02/2017-Central Tax (Rate) dated 28-6-2017 as amended by the Notification No. 35/2017-Central Tax (Rate) dated 13-10-2017: **AAAR [In Re M/s Spaceage Syntex (P.) Ltd., [2019] 104 taxmann.com 422 (AAAR-MAHARASHTRA)]**

- **GST** – Issue relates to availability of Input Tax Credit paid on transportation cost under GST regime on the goods which are transported from refinery of IOCL at Haldia to its Export Warehouse at Raxaul, Bihar - The goods are supplied to the recipient (the Bihar Unit) in India as the movement terminates at Raxaul - The IOCL, Haldia issued ARE-3 against CT-2 for stock transfer of said goods to their Raxaul Depot - It is IOCL, Raxaul Depot who prepares the ARE-1 for export of the said goods to the NOC, Nepal. **Held:** Removal of goods without paying duty (under Bond) from Haldia Refinery to the export warehouse at Raxaul, therefore, cannot be termed as “export of goods” within the meaning of section 2(5) of IGST Act and cannot be termed as zero rated supply under Section 16(l)(a) of the IGST Act - Movement from the Applicant’s factory at Haldia to the export warehouse at Raxaul is not, therefore, “inextricably linked” to ultimate export to Nepal. Hence, the final clearance of goods for export has taken place from the Raxaul unit, the export warehouse of the applicant and not from their Haldia unit - Therefore, endorsement copies of ARE-3 cannot be treated as final proof of export and ITC not sustainable – Appeal disposed off: **AAAR [In**

Re M/s INDIAN OIL CORPORATION LTD, 2019-TIOL-30-AAAR-GST]

- **GST** - Question is whether the applicant can avail the ITC of the full GST charged on the supply or proportionate reversal of the same is required in case of post purchase discount given by the supplier of the goods or services. **Held:** Section 16 of the CGST Act, 2017 - Applicant can avail ITC only to the extent of invoice value raised by the suppliers less the discounts as per C2FO software, which is paid by him to the suppliers - If the applicant has availed ITC on the full amount, he should reverse the difference amount equal to the discount to avoid adding to his output liability. Application disposed of: **AAR [M/s MRF Limited, 2019-TIOL-87-AAR-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 on 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** - The applicant company is engaged in the business of exhibition and business services, accommodation in hotels, inn, guest house, club or camp site & restaurant services - It intends to enter into a contractual agreement of renting of immovable property with the lessee for leasing of the immovable property for rent - Apart from rent, the applicant also plans to collect expenses such as electricity, water charges, property tax and cooking fuel from the lessee - Hence it approached the AAR seeking to know the tax liability on any goods or services or both. **Held:** GST would be leviable on the reimbursement of expenses from the lessee buy the lessor at actuals - Moreover, as the reimbursement of expenses constitutes composite supply, GST would be payable at the rate as applicable to the principal supply. Application disposed of: **AAR [M/s E-Square Leisure Pvt Ltd, 2019-TIOL-116-AAR-GST]**
- **GST** - The applicant is a corporation established with the objective of preserving the culture and beauty of forests and development of eco-tourism in the State of Kerala - It conducts eco-tourism activities in the State of Kerala - The applicant approached the AAR,

seeking to know the tax liability under GST for the tour packages, which are provided to guests by way of separate services such as accommodation, serving food & beverages, service of authorized guides, trekking accessories, etc., against separate invoices.

Held: The tax liability under GST for the tour packages which are provided to guests by way of separate services such as accommodation, serving food & beverages, service of authorized guides, trekking accessories, etc. against separate invoices - Where a supply involves supply of both goods & services & the value of both are shown separately, then the goods and services would attract tax rates as applicable to such goods & services separately. Application disposed of: **AAR [M/s Kerala Forest Development Corporation Ltd, 2019-TIOL-102-AAR-GST]**

- **GST** - Applicant is a transporter in few cement companies and are also to commence transportation for Shree Raipur Cement, CG State - Shree Raipur Cement has moved a proposal that while transporting their cement/clinker they will provide the required diesel for transport and the applicant need to charge them freight excluding diesel cost and that GST would be leviable on the amount excluding the diesel cost - Applicant seeks clarification as to whether such supply of diesel by recipient is to be added to the freight amount charged by them. **Held:** Sections 7(1), 15(2)(b) and 2(31) of the CGST Act, 2017 - Diesel provided by the service recipient for use in trucks/vehicles of the applicant forms an important and integral component of the business process without which the process of supply of cement can never get materialized - Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable is includible in value -



applicant is required to charge GST on the total amount including the cost of diesel. Application

disposed of: AAR **[M/s Navodit Aggarwal, 2019-TIOL-132-AAR-GST]**

CUSTOMS

- **CUS** - The petitioners sought a Mandamus for release of consignments and a further direction to the respondents to issue a 'Detention Certificate' for waiver of Demurrage and Container Detention Charges in terms of Regulation 6(1)(I) of Handling of Cargo in Customs Areas Regulations, 2009 - The identical issue has been considered in case of M/s.Royal Impex 2019-TIOL-596-HC-MAD-CUS - The said order is applicable to the present case on all fours - The petitioners will remit the entire duty component of consignments imported by them in cases where such duty is leviable along with a bank guarantee for the 10% of invoice value - In cases where the duty impact is neutral, the petitioners shall furnish a bank guarantee for the 10% of the invoice value - Upon satisfaction of aforesaid conditions, the consignments shall be released forthwith - The authorities are at liberty to initiate proceedings in respect of transactions in question and if done, petitioners shall appear, be heard and file their submissions pursuant to which orders shall be passed by authorities in accordance with law - The petitioners have also prayed for waiver of demurrage charges incurred in respect of detained consignments - In the light of Rule 6(I) of Handling of Cargo in Customs Areas Regulations, 2009, which provides that Customs Cargo Provider shall not, subject to any other law for the time being in force, charge any rent or demurrage on the goods seized or detained or confiscated by the Superintendent of Customs or Appraiser or Inspector of Customs or Preventive officer or examining officer, as the case may be, there shall be a waiver of demurrage charges: HC **[M/s Abans Commodities India Pvt Ltd Vs CC, 2019-TIOL-731-HC-MAD-CUS]**
- **CUS** - Refund of SAD (Special Additional Duty) denied on the ground that it was time barred though filed on time but wrongly before another Customs Commissionerate. **Held:** It is settled by a series of decisions that when the assessee had made the claim before the wrong authority, that authority should have guided the assessee immediately to the proper officer and if not so guided, no fault can be attributed to the assessee - therefore, the date of filing application before the Dadri Commissionerate is to be taken for the purpose of computation of refund claim of SAD - on account of inaction of the departmental authorities on the said refund application, five months were unnecessarily wasted and had it been the jurisdictional authority, the Government would have been burdened with payment of interest on late disposal of the refund claim - applicant would suffer financial loss when the fault lies at the end of the departmental authority in not acting upon promptly - appeal is allowed - applicant is entitled to get refund of Rs.12,62,790/- along with applicable interest within three months: CESTAT **[M/s Lipi Data Systems Ltd Vs CC, 2019-TIOL-1055-CESTAT-MUM]**
- **CUS** - Refund of SAD - Lower authorities rejected the refund claims on the ground that the Balance sheet for the year ending 31.03.2008 does not show the refund amount as receivables - From the certificate given by the Chartered Accountant, it is evident that the



appellant had the accounting practice of showing the SAD amount in purchase account and afterwards in next year when they received the amount of SAD, the same was credited to 'Refund received from the government account' - this practice shows that the claim is not hit by unjust enrichment. **Held:** main requirement is that the importer should not have charged their buyers the SAD amount and which aspect has not been disputed by the appellate authority - further, in the balance sheet for the year 2008-09 the said amount is appearing as 'Refund received from Government' which is also not disputed - no reason to deny refund of 4% SAD as the conditions stand complied with - impugned order set aside and appeal allowed with consequential relief: CESTAT [M/s Koradia Exports India Pvt Ltd Vs CC, 2019-TIOL-921-CESTAT-Mum].

- **CUS** - The appellant have imported and cleared citric acid monohydrate BP-80 vide Bill of Entry No.4019 dated 22/07/1992. The department raised a demand of Rs. 1,02,501/- in the year 1996. The demand was subsequently recovered by freezing the bank accounts of the appellants. Before the Tribunal, the appellants

contended that the levy and collection of interest was introduced for the first time with effect from 26/05/1995 and it was prospective only. They further contended that the department cannot freeze the accounts of the Appellants to recover the duty and interest. The department, on its defense, relied on the provisions of Section 142 of the Customs Act, 1962. **Held:** Going by the above provisions of Section 142, it is seen that the Commissioner of Customs is empowered to recover sums due to government by distraining any movable or immovable property belonging to or under the control of the defaulter. Therefore deducting the amount due from the sums payable to the defaulter or detaining / selling the goods belonging to the defaulter and lying in the custody of customs or detaining the movable or immovable property are within the ambit of powers conferred under Section 142. Therefore, I find that there if no infirmity in the said orders issued by the Commissioner in freezing the bank accounts of the Appellants. However, freezing of accounts for recovery of interest which is not payable is incorrect. CESTAT [M/s Ansar & Co. Vs Comm. Of Customs (Imp-II), Mumbai, Appeal No. C/85247/2018]
