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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

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RSA Legal Solutions completes its 5 years in service as an Indirect taxes law firm

General Updates

- The Chief Minister of Punjab has suggested 101 GST reforms.
- Mrs. Nirmala Sitharaman has been appointed as the new finance minister.
- The Society of Indian Automobile Industry (SIAM) suggested that GST rate on all categories of vehicles be "brought down to 18 per cent from the current rate of 28 per cent".
- Finance Ministry says that there will be no change in the last date of filing the annual return.
- GST collection crossed Rs 1 trillion for a third straight month in May, posting over 6 per cent growth year-on-year.
- Home buyers will have to pay 12 per cent GST on balance amount due to the builder if the housing project has been granted completion certificate by March 31, 2019.
- DGGI directed the Tata Sons to pay GST worth Rs. 1524 crores on the amount paid towards dispute settlement.
- GST Authority has come out with draft of simplified returns (sahaj & sugam).



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 10/2019-CT (Rate) dated 10.05.2019** has amended the notification no. 11/2017-CT (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC.
- The CBIC vide **Notification No. 23/2019-CT dated 11.05.2019** has extended the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of April, 2019 for registered persons in specified districts of Odisha till 10.06.2019.
- The CBIC vide **Notification No. 24/2019-CT dated 11.05.2019** has extended the due date for furnishing FORM GSTR-3B for the month of April, 2019 for registered persons in specified districts of Odisha till 20.06.2019.
- The CBIC vide **Notification No. 14/2019-CUS (Tariff) dated 01.05.2019** has amended the notification no. 50/2017-CUS (Tariff) dated 30.06.2017 in order to postpone the implementation of increased customs duty on specified imports originating in USA from 2nd May, 2019 to 16th May, 2019.
- The CBIC vide **Notification No. 15/2019-CUS (Tariff) dated 14.05.2019** has amended the notification no. 50/2017-CUS (Tariff) dated 30.06.2017 in order to postpone the implementation of increased customs duty on specified imports originating in USA from 16th May, 2019 to 16th June, 2019.
- The CBIC vide **Circular No. 12/2019-CUS dated 24.05.2019** has issued the guidelines for launching of prosecution in relation to offences punishable under the Customs Act, 1962 - foreign currency, foreign nationals.
- The CBIC vide **Circular No. 1069/02/2019-CX dated 08.05.2019** has revised the Procedure for electronic filing of Central Excise returns and for electronic payment of Excise duty and Service tax arrears under the new portal www.cbic-gst.gov.in.
- The CBIC vide **Instruction No. 267/58/2019-CX.8 dated 08.05.2019** has extended the time limit for filing of Monthly Return for production and removal of goods and other relevant particulars and CENVAT credit specified in Form ER-1 and specified in ER-2.
- The CBIC vide **Notification No. 04/2019-UTT dated 16.05.2019** has notified the appellate authority for Advance Rulings in five Union Territories viz., Andaman & Nicobar Islands, Chandigarh, Daman & Diu, Dadra & Nagar Haveli and Lakshadweep.
- The DGFT vide **Public Notice No. 07/2015-20 dated 07.05.2019** has made amendment in the Serial No. 3 of ANF 3D as result of it, now the applicant will be able to file upto 250 shipping bills in single application for claiming MEIS benefits.
- The DGFT vide **Public Notice No. 08/2015-20 dated 14.05.2019** has notified the procedure of claiming MEIS benefits for exports realized under Para 2.52 (b) of the FTP and for exports in which E-BRC is not generated by bank.



- The DGFT vide **Circular No. 23/2015-20 dated 15.05.2019** has obviated the requirement of submission of hardcopy of application at RAs for issuance of Advance Authorization (AA) and EPCG Authorization.
- The DGFT vide **Trade Notice No. 10/2015-20 dated 09.05.2019** pertains to Low Usage of Self-Ratification Scheme under Para 4.07A of Foreign Trade Policy.
- The DGFT vide **Trade Notice No. 12/2015-20 dated 13.05.2019** has obviated the requirement for the submission of physical copy of RCMCs along with the application of incentives/entitlement under FTP w.e.f. 01.07.2019.
- The DGFT vide **Trade Notice No. 14/2015-20 dated 15.05.2019** has notified the three months time window for applying for MEIS for shipping bills with HS Codes which were harmonized and notified under MEIS Appendix 3B, Table 2 after a delay.

Case Laws

GST

- **GST** – Petitioner carrying on business of constructing malls for the purpose of letting out. For this, it had to procure huge amount of inputs and input services on payment of applicable GST. However, petitioner was restricted from claiming ITC of the tax paid on inputs and input services in terms of Section 17(5)(d) of the CGST Act. Respondent held that the provisions of CGST Act is not applicable in case of construction of immovable property for letting out for rent. **Held:** Provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed on reading of the provision by the department, is not required to be accepted, keeping in mind that the very purpose of the credit is to give benefit the assessee. The High Court did not held Section 17(5)(d) to be ultra vires the Constitution, but allowed ITC claim by the petitioner stating that in the event of letting out the units of mall, tax chain is not broken and the Petitioner cannot be said to be constructing mall for its own use: HC **[M/s Safari Retreats Private Limited v. Chief-Commissioner of Central Goods and Services Tax & others, W.P. (civil) No. 02463 of 2019]**
- **GST** - Petitioner providing Earth moving services - Excavator was being transported and upon interception by competent authority, order of detention u/s 129(1) was passed due to mismatch in e-way bill - Petitioner has challenged the seizure order passed by respondent u/s 129(3) of the CGST Act - an order was also passed quantifying the tax/penalty amount of Rs.5,18,400/- - Petitioner informs that they have preferred an appeal u/s 107 of the Act against the said order before the Appellate authority by paying 10% of the disputed penalty/tax and requested that the vehicle be released, but in vain, so the Writ Petition. **Held:** Without going into the merits or demerits of the case, Court finds it appropriate to direct the Appellate Authority to dispose of the appeal in accordance with law after hearing the parties, in an expedite manner, preferably within a period of two weeks - petitioner is at liberty to do the daily inspection



and maintenance of the excavator and conveyance detained by the respondent No.4 till the release of the same - Petition disposed of: High Court **[M/s Sri Sai Balaji Diggers Vs State Of Karnataka, 2019-TIOL-1031-HC-KAR-GST]**

- **GST** - CGST Act, 2017 and the CGST Rules, 2017 do not restrict the recipient from claiming ITC when consideration is paid through book adjustment - Rule 19(8) of the West Bengal Value Added Tax Rules, 2005 had specifically provided that credit of Input Tax would be available only if the payment was made by account payee cheque or account payee draft or through electronic banking clearance when such payment exceeded rupees twenty thousand in a day - No such restriction is apparently provided under the GST Act - credit admissible subject to the conditions and restrictions as may be prescribed in the manner specified in Sections 16 and 49 of the GST Act. Application disposed of: AAR **[M/s Senco Gold Ltd., 2019-TIOL-140-AAR-GST]**
- **GST** - The present public interest litigation was filed seeking proper implementation of the provisions of the CGST, SGST & IGST Act in respect of Duty Free Shops at the Lucknow Airport - It is alleged that the mis-interpretation of the provisions of these Acts results in huge financial loss to the State Exchequer, on account of various exemptions being enjoyed by such shops - The petitioner claimed that the operator of the Duty Free Shops is liable to pay IGST on the goods imported into India, but the same was not paid - It is also claimed that goods were sold to international passengers without charging the applicable CGST & SGST on sale of goods - Lastly, it was alleged that the authority overseeing the functioning of the shops incorrectly claimed refund of

accumulated ITC of GST paid on service of renting of immovable property by AAI & on procurement of domestic goods & services - It was also stated that sale invoice issued to international passengers was incorrectly passed off as proof of export of goods.

Held: The Duty Free Shops are located in the Custom area as per Section 2(11) of the Customs Act 1962 - Supply of imported goods to & from the duty free shops do not cross the Customs frontier & hence such supplies classify as inter-State supply u/s 7(2) of the IGST Act - Hence the same cannot attract CGST and SGST u/s 9 of either Act. The supply of warehoused goods by the duty free shops at the departure terminal is made to departing international passengers who are destined for some foreign location - Hence the goods supplied are never cleared for home consumption & the warehoused goods are exported - Hence no Customs or IGST duty is leviable - IGST is not payable on the supply either to or from the DFS located at the arrival or at departure terminal. - Export of goods - Clearly, the goods sold to passengers at the international departure terminal duty free shops are not cleared for home consumption or for removal to another warehouse or otherwise provided in the Customs Act - Hence they are cleared without payment of duty only for export u/s 69 of the Customs Act under an invoice which is deemed to be a shipping bill - Thus the sale at such shops would be export of goods under Customs - Ergo, the same classifies as export of goods under the GST Act, since both legislations have the same definition for export and export of goods - Hence the exemptions have rightly been allowed: HC **[M/s Atin Krishna Vs UoI, 2019-TIOL-1136-HC-ALL-GST]**

- **GST** - The instant petition was filed challenging the Constitutional vires of Section 140(3)(iv) of CGST Act,



2017 - The Gujarat High Court held that no just, reasonable or plausible reason is shown for making such retrospective provision taking away the vested rights - clause (iv) is unconstitutional - Bombay High Court decision in JCB India Ltd. - 2018-TIOL-23-HC-MUM-GST disagreed - at the request of counsel for the Revenue this judgement stayed up to 31.10.2018.
Held: The Revenue's counsel highlights a difference

of opinion between the High Courts. The Bombay High Court took a different view in favor of the Revenue but the same was not followed by the Gujarat High Court in its judgment. Notices be issued within six weeks. Meanwhile, operation of the Gujarat High Court's decision is stayed: HC [Union of India vs M/s Filco Trade Centre Pvt Ltd & Anr, 2019-TIOL-153-SC-GST]

CUSTOMS

- **CUS** - The appeal has been filed against impugned order wherein the assessee's application to allow re-export of goods has been denied on the ground that assessee has not paid the duty on imported goods - The assessee has already made payment of redemption fine and penalty and is requesting for re-export of the goods - Even if assessee is made to make payment of duty on such imported goods but he is eligible for drawback of 98% of duty payable on the importation of goods in terms of Section 74 of Customs Act - The facts of importation of goods due to awarding of contract by ONGC and cancellation of same which led to seizure of goods is not in dispute - It is not a deliberate/intentional case of non payment of duty on imported goods and the assessee after payment of redemption fine and penalty has option either to pay duty if he wants to keep the goods in India or to re-export the same - In case of re-export for which he is eligible, the net effect of duty payable by him would be 2% i.e. difference between the duty payable and drawback amount under Section 74 of the Customs Act - It is also clear that he is eligible for 98% duty drawback of the duty paid by them **Held:** The assessee is eligible for re-export of impugned goods on payment of 2% differential duty - Assessee is not liable for interest as the duty demand has not been confirmed against them in terms of Section 28 - The impugned order is not sustainable and the assessee is allowed to re-export the impugned imported goods on payment of 2% differential duty, which shall be adjusted against the pre-deposit of 7.5% which was made by them as mandatory pre-deposit while filing the appeal before the Tribunal: CESTAT [M/s Jagson International Ltd Vs CC, 2019-TIOL-1486-CESTAT-AHM].
- **CUS** - Whether the Revisionary Authority was justified in dismissing the Petitioner's revision petition against the order of Commissioner (A) only on the ground of short payment of requisite fee - Initially the petitioner tendered a fee of Rs.200/- along with his revision petition - Later on being told that the fee was Rs.1,000/- he made good the difference by depositing a challan of Rs.800/- and this was also accepted by the Revisionary Authority - Respondent No.1 states that she has written instructions to the effect that the records do not show that the balance fee of Rs.800/- was deposited - Nevertheless, this Court is of the view with the objection not having been pointed out at the time of hearing of the petition on merits, ought not to have led to the petition's dismissal on such technical ground - Accordingly, the



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impugned order dated 4th September 2018 passed by the Revisionary Authority is set aside: HC **[Gaurav Paul Vs UoI, 2019-TIOL-1107-HC-DEL-CUS]**

- **CUS** - The only point of dispute is eligibility of assessee for waiver of late filing fees in terms of Section 46 (3) of Customs Act, 1962 - Considering the difficulties faced by importers which had resulted in delayed presentation of Bill/s-of-Entry, the CBEC issued Instructions from time to time - One of such Instructions, Instruction 12/2017-Customs had instructed the officers to exercise power judiciously - The said instruction of the Board was clarified vide Standing Order 01/2017 wherein it was even suggested to waive off the late charges in respect of some of the cases specified therein - It is quite clear that the provisions of Section 46 ibid nowhere mandate charging of late fee for the delayed filing of Bill-of-Entry as fee is charged subject only to the 'non-satisfaction' of the proper officer and the Board's Instructions, some of which are referred to herein above, also authorize the proper officer to waive off subject to his satisfaction - The O-I-O has nowhere questioned the bona fides of importer/Customs Broker against whom the said order was passed since it is the first requirement of Section 46 read with proviso to Sub-Clause (3) that the charge of late fee was subject to non-satisfaction of the proper officer as to the sufficiency or otherwise of the cause for delay, which discernibly is not questioned - It is very difficult to accept as to how the O-I-O came to be

passed against a Customs Broker just because it made a request - Assessee is clearly not the first importer, there is request for amendment in IGM on record, allowed by Revenue after collecting requisite fees and these are clearly post-import developments - The subsequent developments were perhaps necessitated because of the goods being perishable - Clearly, no mala fide is found in the developments by Revenue and therefore, it can be safely assumed that Revenue was otherwise satisfied with 'sufficient cause' - The impugned order is not sustainable and hence, the same is set aside: CESTAT **[M/s Blueleaf Trading Company Vs CGST & CE, 2019-TIOL-1493-CESTAT-MAD]**.

- **CUS** - The appeal is directed against an order passed by Tribunal in 2018-TIOL-2015-CESTAT-DEL - The impugned order is a common order passed in aforementioned appeal as well as the appeal of co-noticees - Two of appeals filed by co-noticees in this Court being Customs Appeal by Mr. Rohit Agarwal as well as Genex Foods (P) Ltd. were allowed by this Court by a detailed order dated 15th May 2019 setting aside the impugned orders dated 5th June 2018 and 21st February 2019 of Tribunal and restoring the appeals to the file of Tribunal for a fresh consideration uninfluenced by aforementioned two orders - For the reasons already stated in aforementioned order dated 15th May 2019 the impugned orders dated 5th June 2018 and 21st February 2019 by Tribunal are hereby set aside: HC **[M/s AV Agro Products Pvt Ltd Vs CCE, 2019-TIOL-1130-HC-DEL-CUS]**

“RSA Legal Solutions has successfully completed its 5 years in service as an Indirect taxes law firm.”

We celebrate and feel pride to have connected with our very prestigious clients and associates alongwith whom we have been growing and learning.