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INDIRECT TAX UPDATES

RSA Legal Solutions

April 07, 2017

About RSA Legal Solutions

RSA Legal Solutions is an Indian Law firm specialized in the area of Indirect taxation i.e. GST, 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.

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GST Handholding

General Updates

- Ministry of Finance releases Draft GST Rules
- CBEC to be renamed as Central Board of Indirect Taxes and Customs (CBIC) under GST regime
- Service tax rates to be 5%, 12% and 18%;18% being the standard rate: Revenue Secretary
- GST enrolment deadline extended to April 30
- Lok Sabha passes bill amending Customs and Central Excise laws, aligning with GST
- FinMin constitutes GST working groups to address trade/industry concerns

Lok Sabha and Rajya Sabha passes GST Bill, paves way for July 1 rollout.

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Key Notifications/Circulars/Public Notices

- With respect to goods imported into a customs station in India intended for transhipment to any country outside India, the destination of goods is not a place in taxable territory in India but a country other than India if the same is mentioned in the import manifest or the import report as the case may be and the goods are transhipped in accordance with the provisions of the Customs Act, 1962 and rules made there under. Hence, with respect to such goods, services by way of transportation of goods by a vessel from a place outside India to the customs station in India are not taxable in India as the destination of such goods is a country other than India. ***CIRCULAR NO: 204/2/2017-Service Tax, Dated: February 16, 2017***

- Amendment in procedure for seeking modification in IEC is notified - When an IEC holder seeks modification/ change of Head Office/ Registered Office address in its IEC and which involves a shift in its jurisdictional RA, a request to that effect will have to be made to the new RA, to whose jurisdiction the applicant is shifting its office. The new RA shall make appropriate amendments, based on documents submitted to it by the applicant. The new RA will also separately inform the RA, who had initially issued the IEC, of the changes made in the concerned IEC. Thereafter, the new RA shall allow the applicant to carry out necessary functions and also apply for eligible benefits as per FTP through its office. ***PUBLIC NOTICE NO: 59/2015-2020, Dated: February 21, 2017***

- The facility for export and re-import of cut and polished diamonds at zero duty for the purpose of certification and grading has been extended to the authorised offices/agencies in India of laboratories mentioned under paragraph 4.74 of Handbook of Procedures 2015-20. ***NOTIFICATION NO:39/2015-2020, Dated: February 22, 2017***

- In rule 5 of the Deferred Payment of Import Duty Rules, 2016, for the clauses (a) to (d), the following clauses shall be substituted, namely: - "(a) for goods corresponding to Bill of Entry returned for payment from 1st day to 15th day of any month, the duty shall be paid by the 16th day of that month; (b) for goods corresponding to Bill of Entry returned for payment from 16th day till the last day of any month other than March, the duty shall be paid by the 1st day of the following month; and (c) for goods corresponding to Bill of Entry returned for payment from 16th day till the 31st day of March, the duty shall be paid by the 31st March". ***NOTIFICATION NO: 28/2017-Customs (NT), Dated: March 31, 2017***

- Customs, Excise and Service Tax Drawback Rules, 1995 have been amended to omit sub-rule (1) of Rule 8, with effect from 15.11.2016. The said provision prohibits AIR or brand rate of drawback to exports (other than postal exports or exports under Advance Authorisation) if the amount of drawback is less than 1% of F.O.B. value of exports, except where the amount of drawback per shipment exceeded Rs.500. ***NOTIFICATION NO: 132/2016- Customs (N.T), Dated: October 31, 2016***

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Case Laws

Central Excise

- CX - Whether the amount reversed under rule 6 of CCR and recovered the same from customer can be demanded u/s 11D of CEA, 1944. Held: Amount which is paid/reversed in terms of Rule 6(3)(b) of CCR is not a payment of excise duty - Section 11D can be invoked only in case where excise duty was recovered and the same was not paid to the government exchequer - Since the amount paid u/r 6(3)(b) is not excise duty, therefore, Section 11D is not applicable – impugned order set aside and appeal allowed: CESTAT. [**ELECTROPNEUMATICS AND HYDRAULICS INDIA PVT LTD v/s CCE [2017-TIOL-365-CESTAT-MUM]**

- CX – Rule 8(3A) of CER, 2002 – Default in payment of monthly duty - It is not disputed that on the same clearances, duty was paid twice, first from cenvat credit and second time from PLA on insistence of the department - when the appellant have made request in writing for re-credit in the cenvat account, the same can be disposed of considering it as refund claim – no unjust enrichment arises as duty passed on is only one time – order set aside and appeal allowed: CESTAT. **DEW POND ENGINEERS PVT LTD v/s CCE [2017-TIOL-295-CESTAT-MUM]**

- CX – Since the imported machine was damaged in transit and parts of the same were replaced by fresh import of spares, credit proportionate to damaged parts is not available as the same were not used – appellant have neither informed that they have availed full credit on said machine after repairs/ replacement of certain parts/components, nor they have informed that they have availed credit on that part of machine which was received in damaged condition, therefore, extended period rightly invoked – impugned order upheld and appeal dismissed: CESTAT. **BAJAJ AUTO LTD v/s CCE & ST [2017-TIOL-348-CESTAT-MUM]**

- Refund/Rebate – Duty paid on exported goods from Cenvat credit – Whether such duty payable in cash or to be paid by way of re-credit – HELD: As per C.B.E. & C. Circular No. 687/3/2003-CX, dated 3-1-2003, once assesse is entitled to rebate, export duty paid through actual credit or deemed credit has to be refunded through cash only – Petitioner's claim for sanctioning of rebate amount by way of re-credit not admissible, as no discretion vested with sanctioning authority to give refund by way of credit in Cenvat credit account as per said Circular – Section 11B of Central Excise Act, 1944 and Rule 18 of Central Excise Rules, 2002. **[Commissioner of Central Excise v/s. Auro Weaving Mills. 2017 (345) E.L.T. 350 (H.P.)].**

- CX - Appellant is not liable to reverse CENVAT Credit on the inputs already used in the manufacture of final product when it was dutiable but lying in stock as on 01.03.2002 when final product became exempted as well as not required to reverse the CENVAT credit on the inputs lying is in stock as on 01.03.2002 but subsequently used in manufacturing final product which was cleared for export under bond/undertaking - Appeal allowed with consequential relief: **CESTAT. CIPLA LTD v/s CCE [2017-TIOL-902-CESTAT-MUM]**

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- CX - Appellant are manufacturers of Sponge Iron, M.S. Billet, M.S. Wire Rods, Rib Bars/TMT Bars, etc. - CENVAT credit availed in respect of items viz. Boiler Parts, Silo System, Boiler Radiation Hopper, Turbine Air Unit, EOT Crane, Hook Conveyor, Materials Handling System, Platform for kiln, coal drier, Stack Structure, cooling tower, Girth Gear, Kiln Gear Box, etc. - Department was of the view that these items are neither inputs nor capital goods as defined under Rule 2 (a) of the CCR, 2004, hence credit denied - appeal to CESTAT. Held: Appellant has explained that these items are essential for functioning of machines and its alignment; that these machines are fabricated and subsequently attached to concrete foundation with the help of nuts and bolts and to this effect appellant has filed Chartered Engineer certificate dated 07.02.2012 - issue is covered by the decision of the Tribunal in the case of Singhal Enterprises Pvt. Limited - 2016-TIOL-2451-CESAT-DEL and Lafarge India Pvt. Limited - 2016-TIOL-2875-CESTAT-DEL - Credit is, therefore, correctly taken by appellant - impugned order set aside and appeal allowed with consequential relief: CESTAT. **NALWA STEEL AND POWER LTD v/s CCE & ST [2017-TIOL-802-CESTAT-DEL]**

- CX - On finalisation of provisional assessment, it was revealed that there was some short duty paid by the assessee and there was some excess duty paid by them - appellant's plea for neutralizing the shortages with the excess and to refund the excess duty paid by them was not accepted by the lower authorities, therefore, appeal to CESTAT. Held: In view of the majority decision in Hindustan Zinc Ltd. - 2015-TIOL-2427-CESTAT-DELassessee is entitled for adjustment of excess duty paid with the short paid duty during the period of provisional assessment – impugned order set aside and appeal allowed with consequential relief: CESTAT. **TAFE MOTORS AND TRACTORS LTD v/s CCE [2017-TIOL-692-CESTAT-DEL]**

- CX - CENVAT - Common input services - Rule 2(e) of CCR, 2004 - Notfn. 3/2011-CE(NT) - Trading activity was incorporated in the definition of exempted services only from 1/4/2011, therefore, prior to that date rule 6 of CCR, 2004 is inapplicable - recovery of CENVAT credit attributed to trading activity is not sustainable : CESTAT. **FRANKE FABER INDIA LTD v/s CCE [2017-TIOL-353-CESTAT-MUM]**

- CX - Refund - Stand taken by the Revenue is peculiar - Appellant was made to pay duty, by holding that the activity is manufacture, and by allowing credit on inputs, however, after the Tribunal held in favour of appellant, the duty is required to be refunded - as appellant no longer undertakes any activity requiring payment of excise duty, no useful purpose will be served by allowing re-credit into the MODVAT credit account - there is no prohibition under CEA, 1944 or the rules made there-under for cash refund of duty paid by utilization of MODVAT/CENVAT credit - Section 11B of the CEA does not make any distinction between duty paid in cash and that by utilization of credit - in view of the fact that the appellant is not in a position to utilize the credit, the refund is to be paid in cash - impugned order set aside and appeal allowed: CESTAT. **EXECUTIVE ENGINEER WORKSHOP DIV v/s CCE [2017-TIOL-959-CESTAT-DEL]**

Customs

- Refund – Limitation – Customs duty for export of goods paid in advance, but goods were short shipped –Refund of excess paid duty cannot be barred by limitation under Section 27 of Customs Act, 1962. **[VEDANTA LIMITED V/S.**

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COMMISSIONER OF CUSTOMS (PORT). 2017 (345) E.L.T. 577 (S.C.)].

- Cus - SCN invoked both section 114A and 112 of Customs Act, 1962 for imposition of penalty - once short levy of customs duty was the result of mis-declaration and same is not contested, question of deleting penalty could not have arisen - Section 114A is attracted only when liability to pay duty or interest is determined under Section 28 - in the facts and circumstances of the present case, penalty under the section 114A ibid is simply not attracted, however, penalty u/s 112(a) should have been revived - interest is chargeable u/s 28AB only when the demand has been confirmed under provisions of section 28 ibid - order of CESTAT is set aside to the above extent and the order of Commissioner is accordingly restored - Revenue appeal allowed: High Court. **PR CC AIR CARGO CUSTOMS v/s ESCORTS HEART INSTITUTE AND RESEARCH CENTRE [2017-TIOL-400-HC-DEL-CUS]**

- CESTAT grants refund of 4% SAD on timber logs sold after paying sales tax/VAT, absent dispute that entire quantity so imported had been sold subsequently; Finds that Adjudication Authority did not disclose the basis for arriving at quantity ineligible for refund, it was simply stated that some logs did not tally with packing list without even mentioning as to whether such mismatch was with respect to variety, shape, dimension, color or any markings or numbering; Finds force in assessee's contention that all pieces of same logs may not be transported in one truck, pieces of convenient sizes of different logs may normally be transported as per space available in the truck; Moreover, states that non-issuance of show cause notice deprived assessee the opportunity to defend its case in correct perspective, therefore, its contention that logs were cut to facilitate transportation, as put forward at appellate stage, is acceptable; Relies on CESTAT ruling in Gayatri Timber Pvt. Ltd. which in turn relied upon Gujarat HC ruling in Variety Lumbers Pvt. Ltd. : CESTAT. **M/S. HANUMAN TIMBER CO. V. CC, VISAKHAPATNAM [TS-602-CESTAT-2016-CUST]**

Service Tax

- ST - Refund under Notfn 17/2009-ST - Service tax has been denied by considering the freight as payable by recipient - However, assessee has clarified that service was transportation of goods by rail service - Invoice issued by CONCOR clearly shows the payment of service tax made by them - Accordingly, payment of service tax refund on such cases is allowable to assessee - Refund claim has been disallowed in all cases where service tax refund is less than Rs. 500/- in respect of each shipping bill - This is clearly a wrong interpretation of Para 2(h) of relevant notfn - Since the total service tax refund claim is much more than Rs. 500/-, rejecting the refund in each case is not called for: CESTAT. **LUCID COLLOIDS LTD v/s CCE & ST [2017-TIOL-297-CESTAT-DEL]**

- ST - Appellant participated in Business Exhibition held outside India - For such participation they paid consideration to the organizers - Business Exhibition Service is entirely performed outside India and no part of the same is performed in India - In similar set of facts, the Tribunal in the case of Positive Packaging Industries Limited - 2013-TIOL-2150-CESTAT-MUM, after examining the 'Provisions of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, held that there is no liability for the Indian assessee when the Business Exhibition Service is entirely performed outside India - following the same, impugned order is set aside and appeal is allowed: CESTAT. **PARAMOUNT**

COMMUNICATION LTD v/s CCE & ST [2017-TIOL-182-CESTAT-DEL]

- ST - While setting aside Tribunal order and allowing Revenue appeal, High Court held that to say that notification is clarificatory, there should be something enunciated in the original or base notification itself; inasmuch as services added to refund Notification 41/2007-ST by subsequent notifications cannot be given retrospective effect - appeal to Supreme Court. Held: No merit in petition, hence dismissed: Supreme Court. **TT LTD v/s PR CST [2017-TIOL-09-SC-ST]**

- ST - GTA Service - Rule 2(1)(d) of STR, 1994 - So long as liability to pay transporter is of appellant, the physical payment through dealers for connivance or for practical reasons does not change the liability to tax: CESTAT. **NIRMAL SEEDS PVT LTD v/s CCE [2017-TIOL-910-CESTAT-MUM]**
- ST - Appellants paid Service Tax using CENVAT Credit available to them as manufacturers - Both CE and ST registration are taken by same legal entity, therefore, despite two different registrations, a single CENVAT Credit account can be maintained - there is no such requirement for a person to keep separate CENVAT Credit accounts for manufacturing and service activities - there is no such condition that the CENVAT Credit earned under Rule 3 (1) of the CCR, 2004 can be used for 'X' purposes and not for 'Y' purposes – a common pool of credit can be maintained and no different pool for manufacturing and service related activities is mandated under the CCR, 2004 – Demand set aside and appeal allowed: CESTAT. **ENTRACO POWER SYSTEMS PVT LTD v/s CCE [2017-TIOL-866-CESTAT-MUM]**

- ST - Whether, the appellant in the capacity of recipient of service is liable to pay service tax when the entire services were performed outside India. Held: It is a fact on record that the services namely, erection commissioning and installation have been provided outside India and not performed in India - Such services falling under Sec. 65(105) (zzd) find place in Rule 3(ii) of Taxation of services (Provided from outside India and received in India) Rules, 2006 wherein service tax will be payable on reverse charge basis only if such services are performed in India by a service provider from abroad - Thus, Rule 3(ii) of the Rules, 2006 will not be applicable to the services in question, which were rendered outside India - service tax demand cannot be fastened on the appellant for such services provided from the foreign country – impugned order set aside and appeal allowed: CESTAT. **SKIPPER ELECTRICALS INDIA LTD v/s CCE [2017-TIOL-725-CESTAT-DEL]**

- ST - It is the person who requested for the said service and is liable to make payment for the same, who has to be treated as recipient of service and not the person affected by the performance of the service - Promoting market for foreign entities in India will amount to export of service: CESTAT. **SUMITOMO CORPORATION INDIA PVT LTD v/s CST [2017-TIOL-452-CESTAT-DEL]**

- ST - Refund - Rule 5 of CCR, 2004 - If availment of credit of Service Tax has not been challenged, refund cannot be rejected on the ground that there is no nexus between input services and the export services - Board Circular 120/01/2010-Service Tax relied upon - impugned orders set aside and appeals allowed with consequential relief: CESTAT. **3D PLM**

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SOFTWARE SOLUTIONS LTD v/s CST [2017-TIOL-822-CESTAT-MUM]

- ST - Rule 5 of CCR, 2004 - Refund - Even if the output services which are exempted services are exported, service tax paid on input service is eligible for refund - Appeal allowed with consequential relief: CESTAT. **MINACS PVT LTD v/s CST [2017-TIOL-898-CESTAT-MUM]**

- ST - Refund - Rule 5 of CCR, 2004 - Notfn. 5/2006-CE(NT) - Revenue cannot take different approach on the same set of facts during different periods - on the same set of facts the Department sanctioned refund claims for the subsequent periods - For similar set of services, the appellant was discharging service tax when they are rendering the same in India to Indian clients and the same was accepted by Revenue, therefore, it is strange to note that when same set of services were rendered to foreign clients the lower Authorities have arrived at a decision that the services rendered by the appellant could not be categorized under any tax entry - impugned order cannot be legally sustained, therefore, the same is set aside and the matter is remanded to original authority: CESTAT. **AMERICAN EXPRESS INDIA PVT LTD v/s CST [2017-TIOL-445-CESTAT-DEL]**

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