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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. 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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## General Updates

- Service tax on senior advocates stayed by Gujarat high court
- CBEC removes 1% Excise duty on branded gold coins
- Audit Commissionerate has jurisdiction to issue show cause notice
- GST Registration – PAN card must for excise, service taxpayers to migrate to new tax regime
- Ban on imports of plastic items from china
- Duty drawback benefit extended for home textile
- Cash refund can be given only in situation where either assessee has paid amount in cash or refund is against export of goods. - CESTAT
- Downloading of software via Internet amounts to import of goods – S.C
- CBEC - excise and service tax assesses to migrate to GST portal latest by January 31.
- GST roll out by April' 17 unlikely



## Key Notifications/Circulars/Public Notices

- Online transmission of SEIS scrips from DGFT to Customs through Electronic Message Exchange System- Clarification - Subsequent to integration of online transmission of Service export from India scheme (SEIS) scrips from DGFT to Customs through 'Electronic Message Exchange System' w.e.f. 10-10-2016, The Commissioner of Customs (Export), Sahar, Mumbai has directed that the SEIS scrips will be transmitted online and integrated automatically in the database, and the Exports/Customs Brokers would be only required to get it verified once at the port of registration before its use to make it available for all India use. – **Commissioner of Customs (Export), License Section, ACC, Sahar, Mumbai STANDING ORDER NO. 18/2016-17, dated 10-11-2016**
- Procedure for claiming Duty credit scrips under chapter 3 of FTP 2009-14 for shipments where LEO date is upto 31.03.2015 but date of export is on or after 01.04.2015 - In view of the Provision in Para 9.12 of HBP 2009-14 as stated above, it is clarified that the shipments, where the LEO date is on or prior to 31.03.2015, but the Date of Export is on or after 01.04.2015 shall be incentivized with the Chapter 3 benefits as was available in the FTP 2009-14. It is also clarified that in all such cases, the LEO date shall be treated as date of export. Applications for availing benefit under this Public Notice are to be filed with RAs concerned by 31 March, 2017 and in all such cases Late Fee under Para 9.3 of HBP (2009-15) will not be applicable. However, applications received after 31 March, 2017 will be subject to Late Fee as applicable under Para 9.3 of HBP (2009-14). **PUBLIC NOTICE NO. 48/2015-2020, Dated: December 29, 2016**
- Services provided by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service – Exemption from Service Tax – Central government has amended Notification No. 25/2012 – S.T., dated 20-6-2012 to exempt Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card services. – **NOTIFICATION NO. 52/2016 – S.T. dated 08.12.2016.**
- Gold coins of purity 99.5% and above bearing a brand name – Conditions for availing exemption from Excise duty prescribed. – Central government has amended Notification No. 12/2012-CE, dated 17-3-2012 to provide that exemption from Central Excise Duty to gold coins of purity 99.5% and above, bearing a brand name when manufactured from gold coins on which appropriate duty of Customs or Excise has been paid would be available subject to fulfilment of the condition that the goods are manufactured from inputs or capital goods or by utilising input services on which appropriate duty of Excise or Additional Duty of Customs or Service tax has been paid and no credit of such Excise duty or Additional duty of customs on inputs or capital goods or Service Tax on input services has been taken by the manufacturer of such goods (and not the buyer of such goods), under Rule 3 or Rule 13 of the Cenvat Credit Rules, 2004 – **NOTIFICATION NO. 36/2016 – C.E. dated 01.12.2016.**



- Courier – Outsourcing by an authorised Courier – Clarification. – On the representation from Express Industry Council of India that it is experiencing difficulty in obtaining permission in terms of Regulation 13(j) of Courier Imports and Exports (Clearance) Regulations, 1998, each time if they want to outsource any of the components in the door to door supply chain, the C.B.E. & C. has decided that for functions

namely pick-up or local delivery of export/imported courier packages/shipments, transportation for official and housekeeping activities permission will not be required. Prior intimation would suffice. Needless to add, the authorised courier will ensure that due diligence is exercised and necessary checks carried out before outsourcing these activities. – **CIRCULAR NO. 59/2016-Cus, dated 02.12.2016.**

### Case Laws

#### Central Excise

- Penalty – Wrongful availed Cenvat credit reversed with interest before issuance of show cause notice – HELD: Under self-assessment procedure greater thrust and responsibility on assessee to follow central excise procedures and discharge duty – Irregularity in taking Cenvat credit detected only during audit undertaken by department - Imposition of equivalent penalty correct – Option to pay reduced penalty not given earlier to be extended to assessee- Rule 15 of Cenvat Credit rules, 2004 read with Section 11C of Central Excise Act, 1944. **KHALSA ENGINEERING PVT. LTD. V/S. COMMISSIONER OF C. EX., KOLKATA-IV. [2016 (342) E.L.T. 245 (TRI. – KOLKATA)].**
- Cenvat credit – Denial of – Capital goods used in the generation of electricity which in turn used captively in manufacture of dutiable goods and also sold partly outside factory - Credit not to be denied in respect of such capital goods – Rules 3 and 6(4) of Cenvat Credit Rules, 2004. **PHILIPS CARBON BLACK LTD. V/S. COMMISSIONER OF C. EX., BHARUCH. [2016 (342) E.L.T. 116 (TRI.-AHMD.)]**
- Cenvat credit – claim on export of inputs – By public sector undertaking – To prove export, except for copy of ARE-1, exporter produced all supporting documents like shipping bill with endorsement of customs, package list, Air way bill, export invoice, etc. – Department not making case either of fraud/mischief of exporter or that goods were not actually exported – HELD: Non-submission of application in ARE-1 format was procedural lapse which can be condoned - Hence, exporter found entitled to credit – Rule 3 of Cenvat Credit Rules, 2004. **BRAHMOS AEROSPACE PVT. LTD. V/S. COMM. OF CUS., C. EX. & S. T., HYDERABAD. [2016 (342) E.L.T. 127 (TRI. – HYD.)]**
- SSI Exemption – Cenvat/Modvat – Goods manufactured under own brand name and on job work bearing brand name of other person – exemption benefit under Notification No. 8/2003-C.E. availed on goods manufactured on own account and job worked goods cleared on payment of duty after utilizing benefit of Cenvat credit – Revenue alleging non-eligibility o to exemption benefit for simultaneous availment of benefits or two options – HELD: Goods cleared



for home consumption and Cenvat credit not availed – Facts similar to Nebulae Health Care Ltd. [2015 (325) E.L.T. 431 (S.C.)] – Assessee entitled to benefit of impugned exemption notification - Impugned order set aside – Section 11A of Central Excise Act, 1994. **LEAGUE LABORATORIES LIMITED V/S. COMMISSIONER OF C. EX., ROHTAK. [2016 (342) E.L.T. 131 (TRI. – CHAN.)].**

- Remission of duty – Cenvat/Modvat, non-reversal of – Breakage of glass bottles during handling in factory premises – Impugned order granting remission also imposing condition for reversal of credit taken on glass bottles, contested – Assessee arguing period involved prior to introduction of provision for reversal of credit HELD: Provision for reversal introduced from 7-9-2007 through insertion of sub-rule (5C) into Rule 3 in Cenvat Credit Rules, 2004 – No retrospective effect provided to said Rule – In absence of any specific provisions at material time, reversal of credit not required – Impugned view supported in M. Kumar Udhog Pvt. Ltd.. [2204 (306) E.L.T. 19 (All.)] - Impugned Order unsustainable and same set aside – Rule 21 of Central Excise Rules, 2002. **BRINDAVAN BOTTLERS LIMITED V/S. COMMR. OF C.EX., LUCKNOW. [2016 (342) E.L.T. 134 (TRI. – DEL.)]**
- Demands not sustainable when goods got manufactured on job work basis – SSI Exemption – Benefit denied holding goods manufactured bearing other's brand name - Assessee submitting that goods got manufactured on job work basis and they only undertaken checking and packing of same for delivery to customer – Since assessee produced

evidences such as job worker's affidavit, detail of raw materials and quantity of goods manufactured, ledger account of job charges, copies of bills/invoices issued to job workers, TDS Certificates, etc., to show goods got manufactured on job work basis - In absence of any evidence by Department to show that goods manufactured by them, demand not sustainable – Section 11A of Central Excise Act, 1944. **COMMISSIONER OF CENTRAL EXCISE, DELHI V/S. OSAI INTERNATIONAL. [2016 (342) E.L.T. 407 (TRI. – DEL.)].**

- Commercial production – In absence of manufacture and removal of goods from factory, taking of credit to be treated merely a book entry and has no Revenue implication – Since there being no loss to Revenue and interest being compensatory in nature, taking of credit would not attract levy of interest when such credit not utilized in payment of duty on final product – Section 11AB of Central Excise Act, 1944. **SHIV OM PAPER MILLS PVT. LTD. V/S. COMMISSIONER OF C. EX., ROHTAK. [2016 (342) E.L.T. (TRI. DEL.)].**
- Manufacturer – Demand Liability to pay duty – Assessee supplying raw materials to job worker and receiving finished goods manufactured as per its design from job worker – No declaration by assessee as required under Notification No. 214/86-C.E. – job worker converting raw materials to finished goods is manufacturer and not assessee – Assessee not liable to pay duty on such goods - Sections 2(f) and 11A of Central Excise Act, 1944. **EAGLE FLASK INDUSTRIES LTD. V/S. COMMISSIONER OF CENTRAL EXCISE, PUNE. [2016 (342) E.L.T. 445 (TRI – MUMBAI)].**

### Customs

- Refund – Special Additional Duty (SAD) paid ordered to be refunded as all condition under Notification No.102/2007-Cus. Fulfilled - On

appeal by Department contending that certificate of regular Chartered Accountant of assessee not produced – HELD: The relevant para of C.B.E.&



- C. Circular No. 16/2008-Cus, dated 13-10-2008, does not use words 'Regular Chartered Accountant', but only clarifies that certificate given by any other independent Chartered Accountant not be acceptable for purpose of 4% SAD refunds – New Chartered Accountant appointed as by assessee cannot be considered as a one-time independent Chartered Accountant giving certificate – Refund rightly sanctioned - Section 27 of Customs Act, 1962. **COMMISSIONER OF CUSTOMS PATNA V/S. M.S. METALS. [2016 (342) E.L.T. 241 (TRI. – KOLKATA)].**
- **EXIM** – Duty Entitlement Passbook Scheme (DEPB) – Cancellation or suspension of licence – As per Para 7.15 of Export Import Policy, DEPB to be valid for period of 12 months from date of issue – DEPB issued on 25-8-2000 valid till 24-8-2001 only – For DEPB to be cancelled or suspended it should be existing or subsisting - No provision in Section 9(4) of Foreign Trade (Development and Regulation) Act, 1992 to cancel licence with retrospective effect – Order dated 30-11-2004 cancelling DEPB ab initio and imposing penalty quashed - Section 9(4) of Foreign Trade (Development and Regulation) Act, 1992. Foreign Trade (Development and Regulation) Act, 1992- Section 9(4) Scope of does not confers powers to cancel or suspend license retrospectively. Retrospectively – No action taken under a statute can have retrospective effect in absence of specific provision in it conferring such power. **SUPREME CASTINGS LTD. V/S. JT. DIR. GENERAL OF FOREIGN TRADE, LUDHIANA. [2016 (342) E.L.T. 176 (P & H)].**
  - Export Oriented Unit, 100% EOU –Net Foreign Exchange (NFE) Earning - Computation of NFE would be final year-wise and which would be beginning of financial year following the year under which manufacturing activity commences – Such period, under no circumstances, would be period anterior with date of manufacturing activity – Clause 6.5 of Foreign Trade Policy 2004-09 read with guidelines for monitoring performance of EOU/SEZ, etc., units in Appendix 14-I-G. **PADMAVATI IMPEX PVT. LTD. V/S. UNION OF INDIA. [2016 (342) E.L.T. 316 (GUJ.)]**
  - **EXIM-** Deemed export -Refund - Terminal Excise Duty (TED) – Review of refund granted – Order by Joint Director General of Foreign Trade, seeking to recover refund of TED, pursuant to recommendation of Policy Interpretation Committee directing recovery of refund- On a writ petition HELD: There can be no review of earlier refund except in accordance with Section 16 of Foreign Trade (Development & Regulation) Act, 1992, which only permits Director General Of Foreign Trade or Central Government to exercise power of review – Order of Joint Director General of Foreign Trade exceeding authority granted by law and liable to be quashed Section 16 of Foreign Trade Policy, 2004-09. **SIMPLEX INFRASTRUCTURE LIMITED V/S. UNION OF INDIA. [2016 (342) E.L.T. 59 (DEL.)].**
  - **Refund-** Limitation – Goods imported for home consumption under Notification No. 102/2007-Cus. Seized by Customs anti-smuggling unit before clearance through assessed Customs duty paid thereon – Relevant date for computing limitation - Whether it is date of import or date of release by Customs – HELD: Appellant not being in position to sell goods because of its seizure, sold same within reasonable period of one year from the date of release and as such complied with condition of notification ibid, limitation to be computed from the date when goods released in view of Section 14 of Limitation Act, 1963, which provides exclusion of time taken in bona fide litigious activities – Refund not barred by time – section 27 of Customs Act, 1962. **OM UDYOG V/S. COMMISSIONER OF CUSTOMS, CHANDIGARH. [2016 (342) E.L.T. 409 (TRI. – DEL.)].**



## Service Tax

- Show Cause Notice by Principal Commissioner (Audit) – Jurisdiction for issuance - Audit Commissionerate – Undisputedly Commissioner of Central Excise Audit, is an officer of Central Excise – Simply because he has been assigned function of audit, does not take away his primary duty as Central Excise Officer -Show cause notice, not lacking jurisdiction – Section 73 of Finance Act, 1994 – Article 226 of Constitution of India. **RATEGAIN TRAVEL TECHNOLOGIES PVT. LTD. V/S. UNION OF INDIA. [2016 (45) S.T.R. 493 (DEL.)].**
- Refund of Service Tax – Double payment of tax by mistake - Assessee's accountant assuming that first request for payment not registered as acknowledgement not received, making second request and paying same amount – Rejection of refund claim of excess payment - HELD: Circumstances under which accountant made double payment erroneously not to be doubled – Assessee not be put to unending harassment and difficulty for human error – Failure by service tax authorities to guide assessee to treat excess payment as advance payment towards the liability of the subsequent month/quarter – Much time elapsed and this option not now available – Only option is to refund excess amount lying with department. Matter remanded to Adjudicating Authority to order refund of excess payment – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 86 of Finance Act, 1944. **DEYS MEDICAL STORE PVT. LTD. V/S. COMMISSIONER OF S.T., KOLKATA. [2016 (45) S.T.R. 517 (TRI. – KOLKATA)].**
- Cenvat credit of Service Tax – Denial of Service charges paid for loading and delivery of goods from assessee's godowns in States of Karnataka and Cochin to Customer's place – Services rendered beyond 'place of removal away from manufacturing premises – HELD: wrongly interpreted in impugned order that reference in 'Input service' definition in Rule 2(l) of Cenvat Credit Rules, 2004 related to transportation of goods 'beyond place of removal'- Wrong finding based on taking into account inclusive portion alone of said definition whereas main portion of said definition allows credit for services related to clearance of final product 'up to place of removal' Section 4(3)(c) of Central Excise Act, 1944 defines 'place of removal' as place from where excisable goods removed, including from factory or any other places of manufacture of goods, or a warehouse or any other place where goods deposited before or after clearance from factory – This definition incorporated in Cenvat Credit Rules, 2004 with effect from 1<sup>st</sup> July, 2014 –As per above definition godowns of assessee in Karnataka state and Cochin would be 'place of removal' for impugned goods - Cenvat credit available on loading and delivery charges – Impugned order set aside - Rules 2(1) and 3 of Cenvat Credit Rules, 2004. **RAMCO CEMENTS LIMITED V/S. COMMISSIONER OF CENTRAL EXCISE, CHENNAI-IV. [2016 (45) S.T.R. 521 (TRI. – CHENNAI)].**
- Service Tax liability – 'Export of Services' – Commission agents services provided to foreign company for marketing goods in India claimed to be 'Export of Services' not liable to service tax – Claim rejected as services provided to customers in India - HELD: Services provided from India and used outside India to be treated as 'Export of Services' as per C.B.E. & C. Circular No. 111/5/2009-ST, dated 24-2-2009 – relevant factor for service to be categorized as 'Export of Services' is the location of service receiver and not place of performance, as per said Circular – Benefit of services accrue outside India to foreign manufacturer even when all marketing activity takes place in India – Commission paid by foreign recipient company in convertible foreign exchange under



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agreement for marketing services provided to them – conditions under Rule 3 of Export of Services Rules, 2005 satisfied – Service tax not liable – Impugned order set aside – Sections 65, 73, 76, 77, and 78 of Finance Act, 1994. **BARCO ELECTRONICS SYSTEMS PVT. LTD. V/S. C.C., C.EX., & S.T., NOIDA. [2016 (45) S.T.R. 532 (TRI. – ALL.)].**

- Interest on demand – delayed payment of service tax – Appellant initially paid from the Cenvat account for payment of Service Tax attributable to GTA service for movement of both inward and outward transportation of goods – However, since Department insisted for making payment of Service Tax in cash, the appellant deposited the Service Tax attributable to GTA service through their PLA account - Since the service tax attributable to GTA services has been paid through the Cenvat account within stipulated time frame prescribed under the Service Tax Rules, 1994, Section 75 of Finance Act, 1994 cannot be invoked justifying imposition of interest on appellant in view of the fact that there was no delay in payment of Service Tax. As an abundant precaution, appellant decided in reversing the Cenvat credit and to pay Service Tax through PLA – Payment of service tax through PLA is not the determining factor for computation of period of delay, as because, the payment of Service Tax has been made within the stipulated time frame by debiting the Cenvat account – Interest liability set aside – Section 68(2) of Finance Act, 1994. **UFLEX LIMITED V/S. COMMISSIONER OF C. EX. & S.T., NOIDA. [2016 (45) S.T.R. 546 (TRI. – DEL.)]**
- Cenvat credit of service tax – Input service – Customs House Agents service and outward freight paid on export clearances - HELD: Impugned services allowed in course of export of goods “Up to place of Removal” in Rule 2(1)

of Cenvat Credit Rules, 2004, means port from where goods exported, for which assessee eligible to input service credit CHA service availed till place of removal – Premier Conveyors Pvt. Ltd. [2015 (38) S.T.R. 171 (Tribunal)], Plus Paper Foodpack Ltd. {2013 (30) S.T.R. 529 (Tribunal)} and JSW Steel Ltd. [2014 (36) S.T.R. 801 (Tribunal)] favouring assessee – Assessee entitled to input service credit - Rule 2(1) of Cenvat Credit Rules, 2004. **SAVE INDUSTRY V/S. COMM. OF C. EX. & S.T., COIMBATORE. [2016 (45) S.T.R. 551 (TRI. – CHENNAI)].**

- Cenvat credit - Input services – Effect of amendment in definition - Exclusion of specified services - Services such as Airport Operator’s service, Import Terminal charges, convention services, Interior decorator services, Pandal and Shamiana services, Video Tape Recording services, etc., availed in relation to business activity hence covered under input service – Even consequent to amendment in definition of input service, excluding certain services from its scope, such exclusion applicable only if these consumed for personal consumption of employees – Accordingly, Club or Association service, Health and Fitness service and Outdoor Catering service, etc., having been used in relation to business activity, not excluded from input service – Credit on all services under dispute available in view of catena of decisions - - Rule 2(1) of Cenvat Credit Rules, 2004. **RELIANCE INDUSTRIES LTD V/S. COMMISSIONER OF C. EX., & S.T., LTU, MUMBAI. [2016 (45) S.T.R. 383 (TRI. – MUMBAI)].**
- Refund – Taxable services used in export of goods – Notification No. 17/2009-S.T. – Computerized invoices down-loaded from internet – Since said invoices contain all details



like container number, S/B number, B/L number, etc., nexus of services availed with export goods established – Refund not deniable for non-submissions of original invoices – Matter remanded for reconsideration and grant of refund after verification of documents – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **SUNCITY ART EXPORTERS V/S. COMMISSIONER OF C.EX. & S.T., JAIPUR-II. [2016 (45) S.T.R. 411 (TRI. – DEL)].**

- Cenvat credit of Service Tax – Utilization of - Payment of service Tax on Renting of Immovable Property – Revenue denying utilization of Cenvat credit available as on January, 2011 for payment of Service Tax on aforesaid services provided during 2007-08 to 2008-09 under Rule 3(4) of Cenvat Credit rules, 2004 – HELD: Service Tax on said service under dispute and became payable only after retrospective amendment in relevant provision by Finance Act, 2010 – Thus what was paid by utilizing credit, was arrear of Service Tax demandable under Section 73 of Finance Act, 1994 – Audit objection and show cause notice also referred to impugned provision only while making demand, it not being a case of regular default of Service Tax - C.B.E. & C. Circular No. 962/5/2012-CX.8, dated 28-3-2012 clarifying about inapplicability of Rule 3(4) ibid when payment is made in respect of demand issued under Section 11A of Central Excise Act, 1944, which is pari material to Section 73 ibid – Credit correctly utilized - Rule 3(4) of Cenvat Credit Rules, 2004. **BOMBAY WELL PRINT INKS PVT. LTD. V/S. COMM. OF C. EX. & S.T., NAGPUR. [2016 (45) S.T.R. 418 (TRI. – MUMBAI)].**

- Cenvat credit of Service Tax – Document for availing credit – Availment by another unit of assessee – Common registration – Invoice of Service provider carrying address of Kolkata Unit of assessee whereas credit availed by Raipur unit of same assessee – In respect of Service Tax credit, statutory provision providing that credit is eligible to assessee on receipt of services irrespective of place of receipt - it is only in case of inputs and capital goods that credit has taken by factory/unit receiving same – Further, registration certificate carries address of both units – Credit not deniable – Rule 3(4) of Cenvat Credit rules, 2004. **BENGAL LOGISTICS V/S. COMMISSIONER OF CENTRAL EXCISE & S.T., RAIPUR. [2016 (45) S.T.R. 429 (TRI.-DEL)].**
- Refund – Limitation – Double payment – Unjust Enrichment – Service Tax on retention and withheld money under Works Contract wrongly paid twice, once when bill raised and second time when payment received – Since tax was due only when second payment was made, first payment made not that of service tax as there was no statutory liability to pay – In view of law settled in catena of decisions, refund not barred by limitation in such cases – Further, there being no unjust enrichment in twice paid tax, refund grantable – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **KALPATARU POWER TRANSMISSION LTD. V/S. C.C.E. & S.T., AHMEDABAD. [2016 (45) S.T.R. 454 (TRI. – AHMEDABAD)].**

**!!RSA LEGAL SOLUTIONS WISHES YOU A VERY HAPPY NEW YEAR, 2017!!**

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