



S.C. Jain
Managing Partner
☎: 9891086862



INDIRECT TAX UPDATES

RSA Legal Solutions

10th July' 2017

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

*"RSA Legal Solutions is organising a
Seminar on 25th July, 2017"*

GST: A 360° Analysis

General Updates

- July 1 to be observed as GST Day: CBEC
- Exporters, importers must quote GSTIN from July 1
- 22 States Remove Border Check Posts After GST Rollout
- Jammu And Kashmir Adopts GST Resolution Amid Protests By Opposition
- GST brings festive cheer; retailers offer discounts to clear stock
- GST Council finalises tax rates on goods, services
- Rebate of State Levies to undergo changes in GST regime
- Industry get 90 days to claim credit for GST transition stock
- Govt. to stop exemptions gradually under GST
- FTP review: Commerce Ministry likely to extend incentives for exporters



Key Notifications/Circulars/Public Notice

- To ensure smooth and successful rollout of GST w.e.f. 1st July 2017, the likely date of implementation of GST, it is decided to constitute a 'GST Facilitation Cell' in DGFT Headquarter and all Regional offices of DGFT to serve as the first point of contact for addressing any issues regarding GST in respect of Foreign Trade Policy. **Jt. DGFT Trade Notice No. 9/2018, Dated: June 8, 2017**
- As per discussion in the GST Council Meeting held on 18th/19th May 2017, the C.B.E. & C. has published IGST Exemptions/ Concessions granted under GST, in respect of – I. Multilateral/Bilateral Commitments – Imports by Privileges Persons, Organizations, Authorities and Foreigners; II. Exemption for goods in transit to and from Nepal, Bhutan [land locked countries] Notification No. 38/96-Cus.; III. Miscellaneous exemptions- Notification No. 12/2012- Cus. ; IV. Exemption from IGST on imports by a SEZ unit or SEZ developer for authorized operations and V. Exemptions from IGST from bonafide passenger baggage and transfer of residence
- Reiterating that purpose of the DPD/RMS facilitation centre is to facilitate the import of goods in the manner so as to achieve 'Ease of doing Business' and to reduce dwell time in clearance, has prescribed procedure to be followed, in cases, involving objections having revenue implications. **Commissioner of Customs (NS-I, III & V), JNCH, Nhava Sheva, Standing Order No. 12/2017, Dated: May 16, 2017**
- In continuation of Circular No. 5/2017-Cus, dated 28-2-2017, and as a measure of further facilitation, it has been decided to extend the exemption from the requirements of drawing of samples for the purpose of grant of drawback to Authorized Economic Operator (AEO) holding Tire-I certificate, except in case of any specific information or intelligence. **M.F. (D.R.) CIRCULAR NO. 18/2017-Customs, Dated: May 29, 2017**
- Reiterating that manual bill of entry shall be allowed to be filed in EDI locations only in exceptional and genuine cases where permitted by the Principal Commissioner/ Commissioner of Customs strictly in accordance with the legal provisions, the Department of Revenue, for bringing in better accountability, efficiency and transparency as recommended by PAC, has devised a detail procedure, to be implemented from 15-6-2017 for all EDI formations, for streamlining processing of manual Bills of Entries making necessary changes in ICES 1.5 which will enable capturing of data as a move towards full digitalization and to keep track of all manually filed Bill of Entry. Furthermore, the registered manual Bill of Entry will be linked with a system generated challan for enabling electronic payment of Customs duty in the e-payment portal ICEGATE. **M.F. (D.R.) INSTRUCTION NO. 6/2017- Cus. (F.No. 401/81/2011-Cus. II), Dated: June 2, 2017**
- **CGST (RULE) NOTIFICATIONS, Dated: June 19, 2017:**
 - 1/2017:** Brought certain sections of the CGST Act, 2017 into force w.e.f. 22.06.2017
 - 03/2017:** Notified the CGST Rules, 2017 on registration and composition levy
 - 04/2017:** Notified www.gst.gov.in as the Common Goods and Services Tax Electronic Portal



05/2017: Exempted persons only engaged in making taxable supplies, total tax on which is liable to be paid on reverse charge basis

08/2017: Notified the turnover limit for Composition Levy for CGST

10/2017: Amended CGST Rules notification no 3/2017-Central Tax

12/2017: Notified the number of HSN digits required on tax invoice

13/2017: Prescribed rate of interest under CGST Act, 2017

• **CGST (RATE) NOTIFICATIONS, Dated: 28 June, 2017:**

01/2017: CGST Rate Schedule notified under section 9 (1)

02/2017: CGST exempt goods notified under section 11 (1)

03/2017: 2.5% concessional CGST rate for supplies to Exploration and Production notified under section 11 (1)

04/2017: Reverse charge on certain specified supplies of goods under section 9 (3)

05/2017: Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3)

07/2017: Exempted from CGST supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers notified under section 11 (1) and section 55 CSD

08/2017: CGST exemption from reverse charge upto Rs.5000 per day under section 11 (1)

11/2017: Notified the rates for supply of services under CGST Act

12/2017: Notified the exemptions on supply of services under CGST Act

13/2017: Notified the categories of services on which tax will be payable under reverse charge mechanism under CGST Act

14/2017: Notified the supplies which shall be treated neither as a supply of goods nor a supply of service under the CGST Act

15/2017: Notified the supplies not eligible for refund of unutilized ITC under CGST Act

• **CGST (RATE) NOTIFICATIONS, Dated: 30 June, 2017:**

18/2017: Rates of Central Tax, Union Territory Tax, on fertilisers from 6% to 2.5% and Integrated Tax rate on fertilisers from 12% to 5%

• **IGST (RULE) NOTIFICATIONS, Dated: 19 June 2017:**

02/2017: Empowered the Principal Commissioner of Central Tax, Bengaluru West to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient

• **IGST (RULE) NOTIFICATIONS, Dated: 28 June 2017:**

04/2017: Notified IGST Rules, 2017

05/2017: Notified the number of HSN digits required on tax invoice

• **IGST (RATE) NOTIFICATIONS, Dated: 28 June, 2017:**

01/2017, 02/2017, 03/2017: Notified the rate of the integrated tax

04/2017: Reverse charge on certain specified supplies of goods under section 5 (3)

05/2017: Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed

06/2017: Notification prescribing refund of 50% of IGST on supplies to CSD under section 20

08/2017: Notified the rates for supply of services under IGST Act

09/2017: Notified the exemptions on supply of services under IGST Act



10/2017: Notified the categories of services on which integrated tax will be payable under reverse charge mechanism under IGST Act

11/2017: Notified the supplies which shall be treated neither as a supply of goods nor a supply of service under the IGST Act

12/2017: Notified the supplies not eligible for refund of unutilized ITC under IGST Act

13/2017: Notified specialised agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them under IGST Act

14/2017: Notified the categories of services the tax on inter-State supplies of which shall be paid by the electronic commerce operator

- **IGST (RATE) NOTIFICATIONS, Dated: 30 June, 2017:**

16/2017: Reduced the rate of Central Tax, Union Territory Tax, on fertilisers from 6% to 2.5% and Integrated Tax rate on fertilisers from 12% to 5%

- **UTGST (RULE) NOTIFICATIONS, Dated: 27 June, 2017**

02/2017: Notified the turnover limit for Composition Levy for UTGST

- **UTGST (RATE) NOTIFICATIONS, Dated: 28 June, 2017:**

01/2017: UTGST Rate Schedule notified under section 7 (1)

02/2017: UTGST exempt goods notified under section 8 (1)

05/2017: Specified the supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3) of CGST Act

06/2017: Prescribed the refund of 50% of UTGST on supplies to CSD under section 55 of CGST Act

08/2017: UTGST exemption from reverse charge upto Rs.5000 per day under section 8 (1) rates for supply of services under UTGST Act

12/2017: Notified the exemptions on supply of services under UTGST Act

13/2017: Notified the categories of services on which union territory tax will be payable under reverse charge mechanism under UTGST Act

15/2017: Notified the supplies not eligible for refund of unutilised ITC under UTGST Act

- **COMPENSATION CESS (RULE) NOTIFICATIONS, Dated: 28 June, 2017**

01/2017: Appointed the 1st day of July, 2017, as the date on which all the provisions of Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall come into force

- **COMPENSATION CESS (RATE) NOTIFICATIONS, Dated: 28 June, 2017:**

01/2017: Notified the rates of compensation cess on supply of specified services

02/2017: Notified the Rates of goods and services tax compensation cess under Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017)

- Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder were assigned. **GST CIRCULAR NO. 1/2017, Dated: 19 June, 2017**



Case Laws

Central Excise

- Penalty on partner and partnership firm simultaneously – Order-in-Original imposing penalties passed after giving opportunity to parties – before Appellate Authority and CESTAT, only quantum of penalty was challenged and it was reduced – HELD: On facts of case, simultaneous penalty on partner and partnership firm was sustainable – Rule 25 of Central Excise Rules, 2002 – Section 11AC of Central Excise Act, 1944. **[N. Chittaranjan V/s. CESTAT, Chennai. 2017 (350) E.L.T. 78 (Mad.)]**
- Cenvat credit - Reversal of – Cenvat credit denied on inputs on the ground that activity not amounting to manufacture - Final Product treated as dutiable and duty paid by assessee – Once duty is paid by assessee treating activity as manufacturing activity, Cenvat credit available – No question of reversion of credit – Rule 3 of Cenvat Credit Rules, 2004. **[C.C.E., Bangalore-V V/s. Vishal Precision Steel Tubes & Strips Pvt. Ltd. 2017 (349) E.L.T. 686 (kar.)]**
- Area based exemption under Notification Nos.32/99-C.E. and 20/2007-C.E. granted to industries set up in North-East region by way of refund of full Excise duty not to be restricted to a certain percentage by amending Notification Nos.20/2008-C.E. and 38/2008-C.E. – Such industries would continue to enjoy full exemption Notification Nos. 32/99-C.E. and 20/2007-C.E. **[Mandhanja Ply Pvt. Ltd. V/s. Union of India. 2017 (350) E.L.T. 248 (Gau.)]**
- Demand and Penalty – Valuation (Central Excise) – Job work – Body building activity on motor vehicle chassis supplied free of cost by manufacturer – Tribunal's precedent decision in respect of same party in 2010 (249) E.L.T. 124 (Tri. – Del.) while setting aside penalty, confirmed demand by holding that valuation of said goods required to be done under Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 – Following aforesaid decision demand upheld – Penalty set aside as per aforesaid decision more so when after adjudication of first SCN, appellant started paying duty – Sections 11A and 11AC of Central Excise Act, 1944. **[Audi Automobiles V/s. Commissioner of Central Excise, Indore. 2017 (350) E.L.T. 278 (Tri. – Del.)]**
- Cenvat credit – Recovery of – Capital goods sent for job work – non-receipt within stipulated period – Admittedly goods sent to nearby factory of same group for carrying out the job work not been returned back in a period of 180 days – Assessee required to reverse credit taken on said goods – Impugned order set aside – Rule 4(5) (a) of Cenvat Credit Rules, 2004. Demand - Limitation – Extended period – Invocation of – Prima facie, show cause notice barred by limitation having been issued after a period of one year from date of knowledge regarding sending of capital goods to job worker – Since this aspect not considered in adjudication, matter remanded to adjudicating authority for deciding limitation aspect – Section 11A of Central Excise Act, 1944. **[Commr. of C. Ex. & S.T., Meerut-II V/s. Merino Industries Ltd. 2017 (350) E.L.T. 309 (Tri. – Del.)]**
- Area based exemption under Notification No. 50/2003-C.E. granted for 10 years to new industries set up in Uttarakhand/Himachal Pradesh and engaged in manufacture as well as



in peripheral activities of packing, re-packing, labelling, re-labelling, etc. – Withdrawal of Promissory estoppel – Assessee having already made investment pursuant to Notification ibid and incentive granted by Memorandum No. 1(10)/2001-NER, dated 7-1-2003, withdrawal of benefit before expiry of stipulated period by issuing Notification No. 1/2008-C.E., dated 18-1-2008 was unfair, arbitrary and unreasonable – Notification No.50/2003-C.E.

Area based exemption under Notification No.50/2003-C.E granted for 10 years to new

industries set up in Uttarakhand/Himachal Pradesh and engaged in manufacture as well as in peripheral activities of packing, re-packing, labelling, re-labelling, etc. – Withdrawal of Notification No. 1/2008-C.E., dated 18-1-2008 amending Notification No.50/2003-C.E.would not be applicable with retrospective effect.

Promissory estoppel - Doctrine of promissory estoppel also applies against State. **[Bajaj Auto Ltd. Vs. Union of India. 2017 (350) E.L.T. 230 (Uttarakhand)]**

Customs

- EPCG Scheme – Export Obligation Discharge Certificate (EODC) – Issuance of - Rejection of request for its issuance without affording opportunity for hearing not justified - Show cause notice having been issued by DRI in the investigation conducted by it and issuance of EODC being depended on outcome of such SCN, issuance of EODC directed to be taken after decision in DRI SCN. **[Welspun Corp. Ltd. Vs. Union of India. 2017 (350) E.L.T. 186 (Bom.)]**
- Cus - Section 129E of the Customs Act, 1962 did not defeat or render the vested right of appeal illusory and that the condition of pre-deposit is a reasonable condition - mandatory pre-deposit is a condition precedent for an appeal to be entertained by the appellate authority – Section 129E of the Act cannot be held to be unconstitutional - Petitions dismissed: High Court. **[HARESH NAGINDAS VORA Vs. UoI. 2017-TIOL-1205-HC-MUM-CUS]**
- Cus - Assessee sought to avail exemption benefit under Notfn. No. 85/04, which was denied by revenue - Further, assessee was directed to pay some differential duty with interest along with penalty - Assessee deposited 7.5% of the duty amount, although the duty demand was confirmed by the Commr.(A) - Assessee then deposited another 2.5% of the demand amount - However,

assessee was delayed in filing appeal before the Tribunal on account of delay caused by assessee's counsel - However, the Tribunal dismissed the application for condonation of delay - Such order is now challenged by assessee - Held - Appeal was beyond the limitation period of three months - However, assessee had reposed faith in its counsel to timely file the appeal, and thereby, could not be put to prejudice for the lack of professionalism in the counsel engaged by it - Therefore, delay in appeal condoned and Tribunal to hear the matter afresh: High Court. **[WAVOO JEWELERS PVT LTD Vs. ACC.2017-TIOL-1147-HC-MAD-CUS]**

- Petitioner contending that substantive benefit not deniable for not fulfilling said condition – HELD: Plain reading of proviso (a) to Section 127B of Customs Act, 1962 mandating that an applicant has to necessarily file, inter alia, Bill of Entry in respect of import of goods which are subject matter of application and with regard to which a show cause notice has been issued –While petitioner's concern as an individual approaching Commission for settlement is understandable, express provision of statute and intention of Parliament cannot be ignored – Settlement mechanism is for certain class of applicants subject to fulfilment of prescribed conditions - Petitioner having not fulfilled such conditions,



rightly denied settlement benefits – Section 127B of Customs Act, 1962 – Article 226 of Constitution

of India. **[Rohit Sakuja V/s. Union of India. 2017 (350) E.L.T. 2190 (Del.)]**

Service Tax

- ST- Respondent/assessee was allowed avilment of Cenvat credit on input services, by the Tribunal, even though the respondent/assessee was allegedly not registered with the service tax department - Subsequent application for rectification filed by revenue was dismissed. Held - Issue at hand not res integra and was already decided in previous decisions of this court in M/s. Reed Elsevier Private Limited and another and Commissioner of Service Tax-III Vs. Customs, Excise & Service Tax Appellate Tribunal and another, wherein the issue was settled in favor of assessee: High Court. **[CST Vs. VERIZON DATA SERVICES INDIA PVT LTD. 2017-TIOL-1241-HC-MAD-ST]**
- ST – Appellant deducts service charges of 2% on exports, bank charges and trade margin etc. – As the appellant does not, at any stage, become the owner of the goods, there can be no doubt that the said income is not trading profit but is consideration for some specific services rendered by the appellant – section 73 is the sole statutory authority for initiating recovery proceedings - impugned order confirming service tax liability upheld and appeal dismissed: CESTAT. **[STATE TRADING CORPORATION OF INDIA LTD Vs. CST. 2017-TIOL-2283-CESTAT-MUM]**
- ST - Assessee sought to avail Cenvat credit of 'rent a cab services, air travel agent's service & tour operator service, provided to staff/employees of factory - Such avilment was challenged on grounds that such services were not valid input services u/s 2(l) of the CCR 2004, as they had no nexus with the production or clearance of any final product - Held - Issue no longer res integra and has been settled in the Apex Court judgment in Ramala Sahkari Chini Mills Limited, U.P. 2010-TIOL-102-SC-CX - Following such precedent, assessee can avail credit on the aforementioned services: High Court. **[CCE Vs. COMSTAR AUTOMOTIVE TECHNOLOGIES PVT LTD. 2017-TIOL-1141-HC-MAD-ST]**
- ST - Terms of lease make it clear that the building was let out to M/s Plasser (India) Pvt. Ltd. for residential use by one of its employees - Even if the employee did attend to some personal office work from the said premises, the same will not make it use of premises other than the residence in furtherance of business or commerce - tax demand under 'Renting of Immovable property' does not sustain - tax liability on his particular tax entry has been a subject matter of substantial litigation and which resulted in statutory amendments including retrospective legislation w.r.t tax liability, therefore, demand hit by limitation - Impugned order set aside and appeal allowed: CESTAT. **[JUMERA PROMOTORS AND DEVELOPERS PVT LTD Vs. CCE. 2017-TIOL-2310-CESTAT-DEL]**

NOTE: For Seminar related query please write to anushka@rsalegalsolutions.com