S.C. Jain
Managing Partner
☎: 9891086862

INDIRECT TAX UPDATES

RSA Legal Solutions **06th June' 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.

Tax Services

Advisory

Litigation

Compliances

Audit

GST Handholding

General Updates

- 24 states pass GST Act, 7 states yet to pass
- CBEC releases Rates Schedule for 26 chapters, amendments to earlier rates & IGST exemptions
- Telecom and Insurance services to attract 18% GST; four tax slabs for services finalised
- Next Budget likely in January
- GST rollout: Govt. to modify parts of Foreign Trade Policy
- CBEC releases final Returns rules & formats along-with GST practitioners formats
- Valid GSTN in Customs papers required for availing IGST credit
- Telecom to avail credit of IGST and imported goods: Govt.
- GST to hike imported goods prices
- Govt. to give Customs, Excise Duty benefits to boost solar rooftop sector to hike imported goods prices.

July 1st 2017: The GST Date, FM Jaitley wants no delay.

Address: RSA Legal Solutions, 937A, JMD Mega Polis,sector-48, Sohna Road, Gurgaon- 122001, Haryana
Ph.: 0124- 4366975 Email: scjain@rsalegalsolutions.com Website: www.rsalegalsolutions.com

S.C. Jain
Managing Partner
☎: 9891086862

Key Notifications/Circulars/Public Notice

- In all Advance Authorization and EPCG notifications, the Deputy/ Assistant Commissioners of Customs have power to extend the period to submit proof of fulfillment of EO without any limit. Thus there is inherent provision in Revenue notifications to keep action of Customs pending till EODC is issued by DGFT. Moreover, the process of issuance of EODC by DGFT itself is linked to submission of BRC by the licence holder. The BRC itself can be submitted as per the period allowed by RBI in terms of the Foreign Exchange Management Act, 1999. The licence/authorization is also subject to extension, if any, by DGFT. Hence, alignment of the time period given in Customs notifications with that given in FTP/HBP may not be required. **CIRCULAR NO. 16/2017-Customs, Dated: May 02, 2017**

- In terms of Larger Bench Order No. 39/2017, dated 20-04-2017, the CESTAT has directed that applellants preferring appeal against the Commissioner's (Appeals) order, are required to deposit separately 10% of the amount deposited before the Commissioner (Appeals). **CESTAT CIRCULAR F. NO. 01(05)/Circular/CESTAT/ 2017, Dated April 27, 2017**

- Para 2(d) of Circular No.5/2010-Cus, dated 16-3-2010 and para 7(iii) of Instruction dated 18th January, 2011 wherein directions were issued to initiate action to safeguard revenue in case of non-submission of Export Obligation Discharge Certificate within the time period stipulated in the relevant Customs notifications, the Department of Revenue has further clarified that the field formations may issue simple notice to the licence/authorization holders for submission of proof of discharge of export obligation. Furthermore, in case where the licence/ authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. However, in cases where the licence/authorization holder fails to submit proof of their application for EODC/ Redemption Certificate, extension/clubbing, etc., action for recovery may be initiated by enforcement of Bond/Bank Guarantee. Moreover, in cases of fraud, outright evasion, etc., field formations should continue to take necessary action in terms of the relevant provisions. **M.F. (D.R.) CIRCULAR NO. 16/2017-Customs, Dated: May 02, 2017**

- Para. 3.18(a) of FTP 2015-20 has been amended to provide the Duty Credit Scrip can be utilised/debited for payment of Custom Duties in t case of EO defaults for Authorization issued under Chapter 4 and 5 of previous FTPs as well and to bring more clarity on the utilization of Duty Credit Scrips for payment of Customs Duties in case of EO defaults. – **M.C. & I. (D.C.) NOTIFICATION NO. 4/2015-20, Dated: April 21, 2017**

- D.G.F.T has extended the earlier notified period of services export rendered between 1-4-2015 to 31-3-2016, as per the list comprising rates and conditions for rewards under the Service Exports from India Scheme (SEIS) notified vide Public Notice No. 3/2015-20, dated 1-4-2015 as amended vide Public Notice No. 42/2015-20, dated 26-10-2015, upto 31-3-2017. **D.G.F.T PUBLC NOTICE NO. 3/2015-20, Dated: April 21, 2017**

S.C. Jain
Managing Partner
☎: 9891086862

Case Laws

Central Excise

- Cenvat credit – Capital goods – Manufacturer of dutiable and exempted goods denied credit of duty paid on capital goods on ground that it was used exclusively for manufacture of exempted goods – HELD: Show cause notice vague inasmuch as it does not refer to details of erroneous credit and relevant documents before demanding credit - Authorities below proceeded on wrong premise that capital goods had been received in April, 2008 – Assessee engaged in manufacture of both dutiable as well as exempted products during relevant period – No reason to deny assessee balance 50% credit availed in April, 2008, when capital goods was received in year 2007 and Department had not disputed admissibility of credit on said invoices in allowing first instalment of 50% credit in financial year 2007-08 – Rule 6 of Cenvat Credit Rules, 2004. **[Indian Farmers Fertilizer Co-op. Ltd. Vs. C.C.E. & S.T., Ahmedabad-III. 2017 (349) E.L.T.156 (Tri. – Ahmd.)]**

- Cenvat credit – Inputs – Common inputs used in dutiable and exempted goods – Reversal of proportionate credit – In view of retrospective amendment to Rule 6 of Cenvat Credit Rules, 2002 by Finance Act, 2010, even if assessee had failed to maintain a separate account was entitled to reverse proportionate Cenvat credit – Option of paying an amount equal to 10% sale value of exempted goods, therefore, could not have been enforced on assessee. **[Commissioner of Central Excise, Mumbai Vs. IVP Ltd. 2017 (349) E.L.T. 18 (Bom.)]**

- Refund claim – Limitation – Requirement of 'date relevant' and that application be filed by placing relevant documents along with it – Hence, as refund claim cannot be without relevant documents, it could not be rejected as time barred where delay in obtaining them is attributable to Department – Section 11B of Central Excise Act, 1944.
  Export rebate – Claim of – Limitation – Shipping bill delivered to claimant after lapse of one year and claim thereafter filed at earliest- HELD: Rebate claim could not have been filed in absence of shipping bill – Such claim cannot be rejected as time barred – Rule 18 of Central Excise Rules, 2002.
  Interpretation of statutes – Procedure prescribed by subsidiary legislation – It has to be in aid of justice and procedural requirements – it cannot be read so as to defeat cause of justice. **[Banswara Syntx Ltd. Vs. Union of India. 2017 (349) E.L.T. 90 (Raj.)]**

- Pan masala – Exemption granted by Notification No. 32/99-C.E. – Withdrawal by Notification No. 21/2007-C.E. w.e.f. 31-3-2017 – It was hit by doctrine of promissory estoppel and unsustainable in law – Assessee had made investments based on promise of benefits/incentives and Government had not discharged its burden of showing public interest to discontinue benefits/incentives – Guwahati High Court Division Bench judgment in Dharampal Satyapal Ltd. case. **[Dharampal Satyapal Ltd. Vs. Union of India, 2017 (349) E.L.T.106 (Gau.)]**

- Right to Information – Penalty proceedings against Assistant Registrar (Excise), CESTAT, New Delhi, for obstructing and delaying information – No response given by AR (Excise) despite three reminders from the CPIO and repeated reminders from complainant and FAA

order for providing information in three weeks – Part information though ready on 10-11-2015 provided on 2-5-2016 with delay of 252 days after complaint was filed to CIC – Further information provided on 7-11-2016 for the RTI Application dated 24-7-2015 – AR (Excise) claiming pre-occupation with office work and establishment of Additional Benches and typing error in his letter – CIC expressed displeasure on the casual and callous approach adopted by the AR (Excise) for not responding to the RTI Application within the prescribed timelines – Section 7, 18 and 20 of Right to Information Act, 2005. **[R.K. Jain Vs. CPIO & Accounts Officer, CESTAT, New Delhi. 2017 (349) E.L.T.279 (CIC)]**

- Valuation (Central Excise) - Assessable – Brought out items cleared with manufactured goods – Brought out L.C.T. and Network Manager installed separately to monitor system of STM manufactured and supplied by assessee – N.M.S. and L.C.T. softwares loaded on computers do not interfere with normal telephone traffic and transmission equipments such as STM-1, STM-4 and STM-16 on whose assessable value duty was paid – Value of brought out items not includible in assessable value – Section 4 of Central Excise Act, 1944. **[Commissioner of Central Excise, Allahabad Vs. ITI Ltd. 2017 (349) E.L.T.149 (Tri. - All.)]**

- Pre-deposit 2nd appeal to CESTAT subject to 10% mandatory pre-deposit over and above the mandatory pre-deposit of 7.5% of duty liabilities and penalties made for 1st Appeal to Commissioner (Appeals) under Section 35F of Central Excise Act, 1944 and Section 129E of Customs Act, 1962 as the pre-deposit before the First Appellate Authority and Second Appellate Authority are independent because the 1st Appeal before the Commissioner (Appeals) and the 2nd Appeal before the Tribunal are to be treated as independent – HELD: Appellant is required to make separate pre-deposit of 10% of amount of duty confirmed/penalty imposed for preferring a 2nd Appeal to Tribunal against the order of the Commissioner (Appeals). **[In RE: Quantum of Mandatory Deposit. 2017 (349) E.L.T.477 (Tri. – LB.)]**

- Appeal – Dismissal of appeal by appellate Tribunal for default – Non-compliance of order directing assessee to pre-deposit Rs.25 lakhs under Section 35F of Central Excise Act, 1944 – HELD: In view of deposit of pre-deposit amount by assessee, impugned order set aside – Impugned order remanded back to Tribunal for consideration afresh – appellate Tribunal to dispose of appeal in accordance with law and on merits within period of three months from date of receipt of copy of order – section 35C of Central Excise Act, 1944. **[Kanishk Steel Industries Ltd. Vs. CESTAT, Chennai. 2017 (349) E.L.T. 573 (Mad.)]**

- 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]**

Customs

- Writ jurisdiction not to be invoked to act contrary to law – Appeal against judgment of Single Judge disposed of by making stray observation relating to letter which was not on record before Division Bench - Neither merits of case gone into nor adjudication done on views of Single Judge – Also, liberty granted to writ-petitioner to prefer appeal and if within time as indicated, to be heard on merits – HELD: In respect of statutory provisions governing limitation, even while acting under

Article 226 of Constitution of India High Court has to enforce rule of law, and ensure that authorities/organs of States act in accordance with law – Writ jurisdiction cannot be invoked for directing authorities to act contrary to law – Matter remanded to Division Bench for re-hearing appeal on merits. **[Union of India Vs. Concord Fortune Minerals (I) P. Ltd. 2017 (349) E.L.T.3 (S.C.)]**

- Exim – Amendment of licence – Denial of amendment/modification of import licence as advance payment was in Indian currency – HELD: If Indian Rupee was agreed currency of exports, and exports were made accordingly then DGFT cannot override or rewrite terms of agreement and impose another currency of trade on parties – EXIM Policy makes ample provision for discharge of export obligation in non-convertible Indian Rupees apropos exports 'from India against liquidation of Rupee balance to credit of erstwhile RPA countries' – Reserve Bank of India (RBI) had permitted release of advance payment in assessee's account for agreed exports – Assessee had effected exports of relevant amount - No mis-representation or mis-declaration of any information for grant of Advance Licence – RBI had clarified that 'transaction in question pertains to exports from India against liquidation of rupee balance of erstwhile USSR'- Therefore, contention that EXIM Policy did not permit discharge of export obligation in Indian Rupees not tenable – Assessee entitled to relief of amendment to advance licence showing export obligation to be in Indian Rupees instead of USD – Rules 7 & 8 of Foreign Trade (development & Regulation) Rules, 1993. **[Bishwanath Industries Ltd. Vs. Director General of Foreign Trade. 2017 (349) E.L.T.587 (Del.])**

- Demand – Import of duty free materials for use in manufacture of goods to be exported – Diversion of such materials in domestic market against cash – Stricture against adjudicating authority for non-application of mind while dropping proceedings against importer despite buyer of imported materials having been identified and diversion corroborated by statements under Section 108 of Customs Act, 1962 – Such crucial evidence in form of statement cannot be disregarded – Matter remanded for fresh adjudication as per evidence – Section 25 of Customs Act, 1962. **[Commr. of Cus. (Seaport – Export), Chennai Vs. Everest Organics Ltd. 2017 (349) E.L.T.651 (Tri. - Chennai)]**

- Drawback claim – Manner of claiming - Limitation – Claim in respect of re-export of imported goods – In terms of Rule 5(1) of Re-export of imported Goods (Drawback of Customs Duties) Rules, 1995 assessee required to file duty drawback claim in Form at Annexure-II of within three months from date of order permitting clearance and loading of goods for exportation – Claim to be accompanied with documents specified in Rule 5(2) ibid –Bill of entry does not quantify rupee equivalent of claim – Claim for drawback was made in the bill of shipping itself not in prescribed Form of Annexure-II of said Rules- Necessary documents as specified in Rule 5(2) ibid not filed. No representation to Central Government for relaxation of any of Rules - Shipping bill itself cannot be construed to be an application for drawback within the meaning of Rule 5(1) ibid – No case that application under Rule 7A ibid to Central Government and Central Government had refused to relax the applicability of Rules to assessee – Non-finality of assessment order did not prevent assessee from applying under Rule 5 ibid within time prescribed therein – Application filed beyond limitation – Order of Government on revision rejecting claim, proper. **[Indian Potash Ltd. Vs. Jt. Secty., M.F. (D.R.). 2017 (349) E.L.T.273 (Cal.)]**

- Demand - Process loss – Valve steel and steel round bars sent for job work and 16% of material received short claimed as processing loss – Demand on ground that 16% was abnormal loss – HELD: No evidence produced show diversion of input or generation of physical waste and scrap

which was cleared clandestinely either by assessee or by job worker – Chartered Engineer certificate produced by assesee certifying process loss in job work to be between 16% and 27% - Not case of Department that it was physical scrap or removal of inputs as such – No contrary evidence produced to discard assessee's claim – Demand based on assumption and presumption cannot be sustained – Section 11A of Central Excise Act, 1944. **[Commissioner of Customs (EP), Mumbai Vs. P. B. Enterprises. 2017 (349) E.L.T.301 (Tri. - Mumbai)**

Service Tax

- ST- Assessee engaged in providing Information Technology Software Services - Revenue alleged that assessee wrongly availed CENVAT credit of ST on input services for that period in which assessee was not registered with the ST - SCN was issued to assessee demanding reversal of ST -Held- By considering the judgment of Karnataka High Court given in the case of M/s. mPortal Wireless Solutions Pvt. Ltd that registration of the business premises with ST authority was not a pre-requisite for the assessee to claim input service credit - The assessee gets entitled to the refund of the unutilized credit only if proof provided that ST had been paid on the input services - Appeal Dismissed: CESTAT. **CST Vs Maxim India Integrated Circuit Designs Pvt Ltd [2017-TIOL-1801-CESTAT-BANG]**

- ST - Whether the appellant who is a manufacturer of excisable goods, is eligible to avail CENVAT credit of service tax paid by various service providers - It is a case of Revenue that services received by appellant are not used by them for providing output services for which they are registered i.e. transport of goods by road services and input service distributor services - Definition of input services has been amended from 01.04.2011 and specifically excludes the service tax paid on various vehicles and insurance thereof under clause B(A) - Accordingly, CENVAT credit availed on insurance for vehicles after 01.04.2011 is also to be held as ineligible CENVAT credit and appellant is directed to reverse the same along with interest - Since the issue is of interpretation of provisions of Rule 2 (l) of CENVAT Credit Rules as to the availment of CENVAT credit on various input services received by them, such availment found warranted Appeal disposed of: CESTAT. **Vinayak Steels Ltd Vs CCE, C & ST [2017-TIOL-1768-CESTAT-HYD]**

- ST - Appellant paying ST on royalty paid to company which was later merged pursuant to an amalgamation order of the High Court from an appointed date - later development that too in a different proceeding under the provisions of company law cannot make the credit availed during the material time as improper - eligibility of credit has not been disputed - tax paid invoice cannot be considered to be "infructuous" - tax paid on input service has been correctly utilised by the appellant in terms of Cenvat Credit Rules, 2004 - Impugned order set aside and Appeal allowed: CESTAT. **RSPL LTD Vs CCE [2017-TIOL-1752-CESTAT-DEL]**

- ST - In cases involving fiscal nature, availing of statutory appellate remedy has to be first exhausted and the party cannot come directly to the court by filing Writ Petition - Petition dismissed- Petition dismissed: High Court. **Softech Infinium Solutions Ltd Vs Pr. CST [2017-TIOL-984-HC-MAD-ST]**

- ST - Considerations received for allowing the allottee to use the plot have direct nexus to the service of renting of immovable property and are taxable: CESTAT. **RIICO Ltd Vs CCE [2017-TIOL-1725-CESTAT-DEL]**

****