

# INDIRECT TAX NEWSLETTER

November 2019



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## NEWS CORNER

### ARTICLES BY RSA LEGAL SOLUTIONS

- ❖ **Deemed Export Supplies – All Industry Rate of Duty Drawback welcome – S.C. Jain, Managing Partner**  
<http://taxindiaonline.com/RC2/NewsDesc.php?MpoQSRPnM=Mzc1MTY=>
- ❖ **One Last opportunity to claim transitional credits – Shweta Jain, Partner**  
<http://taxongo.com/columnDesc.php?qwer43fcxzt=NDQ4MA==>
- ❖ **An alternative advance ruling opportunity for importers – Rajat Dosi, Partner**  
<http://taxongo.com/columnDesc.php?qwer43fcxzt=NDQwMA==>

For complete article, kindly click on the [hyperlink](#)

- ❖ Tax authorities have identified that the purchase without bill may be big GST leakage source.
- ❖ The CBIC has enabled the new facility to issue GSTR-3A notices in bulk to Non-Filers through Email.
- ❖ GST System is not working properly due to huge rush in return filing, says CBIC.
- ❖ GST e-invoicing must for businesses with Rs. 100 cr turnover from April 1.
- ❖ We are moving towards a harassment-free taxation regime: Nirmala Sitharaman
- ❖ Premium smartphone maker seeks cap on BCD at Rs 4,000/-.
- ❖ India's business process outsourcing industry is in a quandary as refunds of taxes paid on inputs remain stalled for want of a clear directive from the government.
- ❖ The Senior official (Ministry of Finance) has said that they will launch the "Lottery Scheme" for the consumer who would take invoice after paying GST.
- ❖ The Indian government has unveiled two new IT initiatives, ICEDASH and ATTHI, for improved monitoring and pace of customs clearance of imported goods.

## REGULATORY UPDATES

### GOODS & SERVICES TAX(GST) LAW

- ❖ The CBIC vide **Notification No. 56/2019-CT, dated 14.11.2019** has amended the CGST Rules, 2017 in order to simplify the Annual Return / Reconciliation Statement.
- ❖ The CBIC vide **Circular No. 122/2019-GST, dated 05.11.2019** has implemented the new system for electronic (digital) generation of Document Identification Number (DIN) for all communication sent by its office to taxpayers or concerned persons. The same shall be come into force w.e.f. 8<sup>th</sup> November, 2019.
- ❖ The CBIC vide **Circular No. 123/2019-GST dated 11.11.2019** has delineated the mechanism for the availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 which shall not exceed 20% of the eligible input tax credit available to the

recipient in respect of invoices or debit notes the details of which have been uploaded by the supplier.

- ❖ The CBIC vide **Removal of Difficulties (RoD) Order No. 08/2019, dated 14.11.2019** has extended the due date for furnishing the Annual return / Reconciliation Statement for the F.Y. 2017-18 in FORMs GSTR-9, GSTR-9A, and GSTR-9C from 30th November 2019 to 31st December 2019. Also, vide said order, the annual return for the F.Y. 2018-19 shall be furnished on or before 31st March 2020.
- ❖ The CBIC vide **Circular No. 124/2019-CGST, dated 18.11.2019** has provided the clarification w.r.t. to the furnishing of the annual return as stipulated under the Notification No. 47/2019-CT, dated 18.11.2019 which made the furnishing of said return for the FY 2017-18 and 2018-19 on the voluntarily basis or before the due date, only for the registered persons whose aggregate turnover in a financial year does not exceed two crore rupees. After the due date of furnishing the annual for the said period, the common portal shall not permit furnishing of

FORM GSTR-9. Therefore, in order to obviate such hardship, the taxpayer may pay tax voluntarily irrespective of the time and quantum of tax through FORM GST DRC-03 in accordance with section 73 of CGST Act, 2017 only if any tax payer during course of reconciliation of his accounts, notices any short payment of tax or ineligible availment of input tax credit.

- ❖ The CBIC vide **Circular No. 125/2019-GST, dated 18.11.2019** has clarified the fully electronic refund process through FORM GST RFD-01 and single disbursement.
- ❖ The CBIC vide **Circular No. 126/2019-GST, dated 22.11.2019** has clarified on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. It implied that the services provided by way of job work on the goods belonging to another registered person would be charged @ 12% but where the manufacturing services provided by on physical inputs (goods) owned by others (unregistered) would be charge @18%.

## CUSTOMS LAW

- ❖ The CBIC vide **Circular No. 37/2019-Cus, dated 05.11.2019** has implemented the new system for electronic (digital) generation of Document Identification Number (DIN) for all communication sent by its office to taxpayers or concerned persons. The same shall be come into force w.e.f. 8th November, 2019.
- ❖ The CBIC vide **Circular No. 38/2019-GST, dated 21.11.2019** has provided the clarification w.r.t. amendment made in Import policy of Iron & Steel and incorporation of policy

condition in Chapter 72, 73 and 86 of ITC(HS), 2017 Schedule-1 where in the importer would require to provide the information before importing the said goods into the Steel Import Monitoring System (SIMS) and obtain an advance automatic registration number by paying the prescribed registration fee .It is further clarified that while the declaration of SIMS registration number and other required details is mandatory in the Bills of Entry, the Customs officer need not insist the importer to submit any further documentary proof of the registration at the time of verification or examination.

## FOREIGN TRADE POLICY

- ❖ The DGFT vide **Notification No. 32/2015-20 dated 13.11.2019** has notified that the Steel Importing System (SIMS) will come into force w.e.f. 21.11.2019.
- ❖ The DGFT vide **Public Notice No. 41/2015-20 dated 01.11.2019** has revised the territorial jurisdiction of Regional Authorities of Directorate General of Foreign Trade (DGFT) in Appendix 1A.
- ❖ The DGFT vide **Public Notice No. 45/2015-20, dated 26.11.2019** has made amendment in Para 6.11(a) of Handbook of Procedure 2015-20 as a result now, the Software Technology Park (STP) unit will also require to report the export of services which are classified under the Annexure-V of Appendix-6E in the form “Service Exports Reporting Form” (SERF) to the designated officer in STPs.
- ❖ The DGFT vide **Circular No. 29/2015-20, dated 04.10.2019** has provided the clarification pertains to several issues pertaining to Steel Importing System (SIMS).
- ❖ The DGFT vide **Trade Notice No. 36/2015-20, dated 09.10.2019** clarifies that the late cut will not be calculated from the second submission date as calculated by the system but the date of the submission of Shipping Bill from the first/earlier application will be considered. The steps for imposition of late cuts while re-applying MEIS on the reactivated shipping bill is clarified vide this Trade notice.

## JUDICIAL UPDATES

### GST LAW

- ❖ **GST**– The petitioner has exported the goods on payment of IGST and claimed the refund of the same. Due to the variation of rates at the London Metal Exchange, the prices are revised and accordingly the differential tax is paid but they unable to claim the differential amount paid as there is no mechanism for the same. The Hon’ble High Court has considered the judgment of the *Gujarat High Court in M/s. Amit Cotton Industries Vs Principal Commissioner of Customs and Others; 2019-TIOL-1443-HC-AHM-GST* as well as the Circular No 40/2018 and issued the direction to the respondent to refund the additional IGST paid by the petitioner: **Madras High Court [M/s. Vedanta Ltd Vs CC, 2019-TIOL-2633-HC-MAD-GST]**
- ❖ **GST** – Goods belonging to the petitioner were detained on grounds that the goods are undervalued, and incorrect HSN code. Therefore, the petitioner apprehended that the grounds doesn’t justify the detention u/s. 129 & 130. Therefore, the petitioner filed the writ.No provision under the GST Act mandates that the goods should not be sold at prices below the MRP declared. Nothing exists in the detention order to show that on account of the alleged wrong classification of the goods, there was any difference in the tax rate adopted by the assessee. When the scheme of the GST Act is to facilitate free movement of goods after self-assessment by the assessee, the Revenue cannot resort to arbitrary and legally unwarranted detention of goods in the course of transit. Thus, the directions are issued to release the goods. Writ petition disposed of: **Kerala High Court [Alfa Group Vs Assistant State Tax Officer, 2019-TIOL-2701-HC-KERALA-GST]**

- ❖ **GST** – The Hon’ble High Court had held that the provision of section 17(5)(d) of the CGST Act is to be read down and the narrow restriction as imposed in reading of the provision by the Department is not required to be accepted, keeping in mind the language used in *Eicher Motors Ltd, 2002-TIOL-149-SC-CX-LB*, the very purpose of the credit is to give benefit to the assessee; that if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have ITC on the GST, which is required to pay, u/s 17(5)(d) of the CGST Act. The Department has filed SLP before the Apex Court. The Hon’ble Supreme Court held that the delay is condoned. The notice to be issued and reply is to be filed within three weeks. The matter to be listed on 02.12.2019: **Supreme Court of India [Chief Commissioner of CGST Vs Safari Retreats Pvt Ltd, 2019-TIOL-489-SC-GST]**
  - ❖ **GST** – The petitioner filed the refund application of IGST which is being sought by claiming drawback on manufactured goods exported. The Hon’ble High Court had noted that before a claim for drawback can be sustained, the shipping bills under which the goods have been exported would have to be necessarily amended/rectified; that the petitioner sought to withdraw the petition and with a liberty to approach the respondent u/s 149 of the Customs Act and which was accordingly allowed. Accordingly, the petitioner has filed the application for the rectification but no action has been taken by respondent. The Counsel for respondent, on instructions, states that they will dispose of the petitioners' application within 4 weeks after following the principles of natural justice - Court accepts the statements and disposes of the petition: **Bombay High Court [Jindal Drugs Pvt Ltd Vs UoI, 2019-TIOL-2621-HC-MUM-GST]**
  - ❖ **GST** –The applicant is engaged in the trading of medical diagnostic re-agents and diagnostic equipment. The applicant approached to Advance Ruling Authority seeks to require the clarification whether supply of re-agents along with machine rental and services in Re-agent Rental Placement Contracts(RRC)/Part Re-agent Rental Placement Contract (PRC) contract is separate supply or mixed supply or composite supply & if it is composite supply, then what is the principal supply and whether the applicant is eligible for ITC on purchase of machinery for use in RRC/PRC contracts. The Authority held that the applicant is liable to pay GST on the machines/equipments given to customers under the PRC model but is not liable to pay GST on the machines/equipment given to customers under the RRC model. The supply of re-agents along with machine rental services in both RRC and PRC contract is a separate supply of independent of machine rental services supplied. the applicant is eligible for ITC on purchase of equipment for use in RRC/PRC contracts. Thus, the application disposed of: **AAR [Randox Laboratories India Pvt Ltd, 2019-TIOL-452-AAR-GST]**
  - ❖ **GST**– The Supreme Court of India Civil Appellate Jurisdiction decided the seminal question involves in the appeals is about the power of the State to rescind notification providing for rebate in respect of tax payable under the Uttar Pradesh Trade Tax Act, 1948 and thus withdrawing the facility even in respect of industrial units, which had commenced production and had complied with the conditions for grant of such rebate in terms of Notification. The notification cannot be construed as having retrospective or retroactive effect to whittle down the accrued rights in favor of such industrial units. The amount of rebate, however, would depend on the verification of
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their refund claim pending before the concerned authorities: **Supreme Court [State of Uttar Pradesh and Anr. Vs Birla Corporation Ltd., Civil Appeal No. 1579 of 2019]**

- ❖ **GST** – The issue involved in the instant matter is that whether the tie-in-pipeline laid outside the factory premise qualify to be the “ plant and machinery” for the purpose of availing ITC of GST paid on goods as per provision laid out in

Section 17(5)(c) and 17(5)(d) of the CGST Act, 2017. The Appellate Authority of Advance Ruling held that the tie-in-pipeline laid outside the factory premise will not be construed as “plant and machinery” and hence the appellant will not be entitled to avail the ITC paid on goods and services used for the construction of tie-in-pipeline: **AAAR [Western Concessions Private Limited, Appeal No. MAH/GST-AAAR-09/2019-20]**

## CUSTOMS LAW

- ❖ **Cus** – The issue is with regard to rejection of request of assessee for conversion from Advance Authorization Scheme to duty drawback scheme. The Commissioner has applied the Board Circular No.36/2010-Cus. to hold that since the let export order is issued beyond the time limit of three months and thus the request cannot be granted. It is evident from judicial precedent of *Global Calcium Pvt. Ltd. - 2017-TIOL-1012-CESTAT-MAD* that the request for conversion of shipping bill cannot be disallowed by pressing into the application of

time limit prescribed by the Board in its circular dated 23.9.2010. The impugned order cannot sustain. The appeal is allowed by way of remand to the original authority for conversion of the shipping bills from Advance Authorization Scheme to duty drawback scheme: **CESTAT [Indian Oil Corporation Ltd Vs CC, 2019-TIOL-3426-CESTAT-HYD]**



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