



S.C. Jain
Managing Partner
☎: 9891086862



INDIRECT TAX UPDATES

RSA Legal Solutions

2nd May, 2018

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

27th GST Council Meet: Simplified system to top agenda on May 4

General Updates

- The Group of Ministers led by Mr. Sushil Modi have finalized a new simplified model termed as "fusion" model for GST return under the GST. As per the new model, credit could be given on a provisional basis once the supplier uploads the sales invoice.
- GST Revenue Collections: Rs. 7.19 lakh crore collected under GST in the period between August 2017 and March 2018 and it exceeds Rs 1 lakh crore in April, FM hopes it to rise further
- Govt to keep petrol, diesel out of GST net
- According to a recent survey by Wydr, India's largest wholesale mobile-based wholesale market place, 57% of the manufacturers, wholesalers and retailers don't fully understand how the GST law works and nearly one in five can't make heads or tails of it
- GST to be imposed on foreign online retailers
- Government made 376 changes related to GST in just ten months: Export promotion council for SEZs



Key Notifications/Circulars/Public Notice

- The CBIC vide **Circular No. 39/2018- GST dated 03.04.2018** has announced the setting up of an IT Grievance Redressal Mechanism to address the grievances of taxpayers due to technical glitches on GST Portal.
- The CBIC vide **Circular No. 40/2018- GST dated 06.04.2018** has provided clarification on various issues regarding Bond and Letter of Undertaking issued for exports.
- The CBIC vide **Circular No. 41/2018- GST dated 13.04.2018** has clarified the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.
- The CBIC vide **Order No. 42/2018- GST dated 13.04.2018** has clarified the procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit.
- The CBIC vide **Order No. 43/2018- GST dated 13.04.2018** has provided clarifications on the issues arising in refund to UIN (Unique Identification Number).
- The CBIC vide **Notification No. 21/2018- Central Tax dated 18.04.2018** has amended the CGST Rules, 2017 whereby computation of refund on account of inverted duty structure has been amended to include services in the formulae of calculating the maximum refund amount, FORM-ITC-03 has been amended, FORM-GSTR 10 has been introduced.
- The CBIC vide **Press release dated 18.04.2018** the E-way Bill system for intra-state movement of goods would be implemented from 20.04.2018 in Bihar, Jharkhand, Haryana, Himachal Pradesh, Tripura and Uttarakhand.
- The CBIC vide **Press release dated 23.04.2018** E-way Bill system for intra-state movement of goods would be implemented from 25.04.2018 in Arunachal Pradesh, Madhya Pradesh, Meghalaya, Sikkim and Puducherry.
- The GST Council had come out with a **Press release dated 23.04.2018** which elucidated the generation of E-way Bill in 'Bill to Ship to' model of supply.



Case Laws

GST

- Bombay HC extends time limit to complete process of filing of TRAN 1 stuck due to IT glitches **Abicor And Binzer Technoweld Pvt. Ltd. V/S The Union Of India And Ors. (Bombay High Court)**. Bombay HC has extended time limit to complete the process of filing of TRAN 1 stuck due to IT glitches from 30.4.2018 to 10.5.2018. Time limit of 30.4.2018 was provided by CBEC **Circular No. 39/13/2018-GST Dated: 3rd April, 2018**. Circular further provides that the process of completing filing of GSTR 3B which could not be filed for such TRAN 1 shall be completed by 31st May 2018. Taxpayer has to prove his bona fide attempt and that he could not file due to IT glitch to take benefit of circular. All IT related glitches relating to Tran 1 will be taken up by IT redressal committee and not just digital signature related glitches. Anyone who fails to get relief from IT redressal committee is free to approach the Court. All legal contentions including vires of 180 days time limit of form TRAN 1 and whether the filing of form is substantive or procedural condition are kept open. Petitions relating to GST Tran 1 disposed off in above terms.
- Integrated Goods and Services Tax (IGST) – Import of raw material under Advance Authorization – Levy – Despite being informed of Court’s earlier interim orders dated 11-09-2017 by petitioner, IGST still being levied on aforesaid imports – Petitioner directed to furnish a complete list of Advance Authorizations to departmental counsel so that same may be circulated to all Customs Commissionerates along with aforesaid interim order for necessary compliance – Section 5 of Integrated Goods and Services Tax Act, 2017 – Article 226 of Constitution of India. Order of High Court – Compliance thereof – Impleading of C.B.E & C. – Since interim order dated 11-9-2017 not being complied with by Commissionerates, CBEC impleaded as respondent – Said interim order on issue of levy of IGST on import of raw material under Advance Authorization, be sent to CBEC for circulation amongst all Customs Commissionerates for compliance - Article 226 of Constitution of India. **[Narendra Plastic Pvt. Ltd. V/s. Union Of India. 2018 (11) G.S.T.L. 27 (Del.)]**
- Seizure under GST – Inter-state movement of goods – Transit seizure – Provisional release of goods and vehicle - Petitioner contending that his IGST paid goods originating from Orissa and meant for Punjab, wrongly seized under UPGST Act – Notice issued to Department - Meanwhile, goods and vehicle be released subject to deposit of security other than cash or bank guarantee or in alternative indemnity bond, equal to the value of tax and penalty – Sections 67 and 68 of Uttar Pradesh Goods and Services Tax Act, 2017- Article 226 of Constitution of India. **[Manoj Kumar V/s. State of U.P. 2018 (11) G.S.T.L. 32 (All.)]**
- Goods and Services Tax – Goods and Services Tax (GST) – Grievance of Goods and Services Practitioners Association of Maharashtra in respect of operation of systems strictly in terms of Act and Rules – Department reporting part compliance – Remaining grievances of petitioners also would be redressed – Direction to Competent Authority in Ministry particularly at State and Central level to coordinate and resolve issues on or before 24th April, 2018 to which date case adjourned. GST Returns – Not-filing of returns within stipulated time – Late fee – System not fully operational – Submission by Department that assesses may file GSTR-3B returns with late fees first and on production proof of such payment, amount to be auto credited or refunded in cash ledger by CSTN within one week from date the payment – Statement of Department accepted as undertaking to Court – Section 29 of Central Goods and Services Tax Act, 2017.



[Padmavati Enterprise V/s. union of India. 2018 (11) G.S.T.L. 124 (Bom.).]

- Detained Goods and Services Tax – Seizure of goods and conveyances in transit – Absence of “Transit Declaration For” sole ground for seizure – No other allegation in respect of illegal import of goods into State of U.P. – Direction that subject to petitioner furnishing security of amount demanded in shape of indemnity bond seized goods and truck be released to petitioner – Clarification that indemnity bond so furnished shall abide by final order to be passed in penalty proceedings – Penalty proceedings still pending before Proper Officer – Validity of penalty proceeding cannot be entered into at this stage – Sections 129(1) and 129(3) of Uttar Pradesh Goods and Services tax Act, 2017 – Article 226 of Constitution of India. **[Samrat Carriers V/s. State of U.P. 2018 (11) G.S.T.L. 167 (All.)]**
- GST Strictures against Commissioner – Non-examination of allegations contained in show cause notice – Elementary jurisprudence not followed – Matter taken back from re-hearing and re-adjudicating issue considering the pleadings and evidence of Assessee to reach to reasoned decision following guidelines given by Supreme Court in 2010 (253) E.L.T. 705 (S.C.) – Writing several pages with reproduction of E.L.T. headlines is irrelevant in justice administration. The outcome of evidence led, tested by law shall demonstrate exercise of examination of material facts that justice has been delivered. Approach should be made to bring out the matter in controversy in clear terms to examine the pleadings of both sides as well as evaluate evidence for appreciation and application of law. This is the object of the process of delivery of justice. Quasi-judicial order – Guidelines for writing orders and judgments given by Supreme Court of in 2010 (253) E.L.T. 705 (S.C.) – To be followed by while passing order to make order free from ambiguity, infirmity and incongruity. **[Commissioner of S.T., Mumbai –I. V/s. Zee Entertainment Enterprises Limited. 2018 (11) G.S.T.L. 27 (Del.)]**
- Finance Act, 1994- Section 67(1) – Meaning of expression ‘such’ before and after amendment to this section on May 1, 2006 – To determine value of taxable services for charging Service Tax, gross amount charged for providing ‘such’ taxable services has to be found – hence, any other amount, which is calculated not for providing such taxable service, cannot be part of the value – Value of tax service cannot be anything more or less than consideration paid as quid pro quo for rendering such service – Service tax is to be paid only on services actually provided by service provider – This meaning did not change after amendment. Service Tax (Determination of Value) Rules, 20006 – Rule 5 – Reimbursable expenses – Inclusion of reimbursable expenses in valuation of services - Under Section 67 of Finance Act, 1994, amount which is not calculated for providing taxable service cannot part of valuation of service – hence, Rule 5 ibid was ultra vires Section 67 ibid – it was more so as amendment to Section 67 ibid by Finance Act, 2015 to include reimbursable expenditure or cost in consideration of services, indicated realisation of legislature that these were not includible before amendment – This amendment was prospective as it was substantive and not merely declaratory. Valuation (Service Tax) – Material supplied free by service recipient – Its value cannot be treated as ‘gross amount charged’ as it is not consideration for rendering services – Hence, value of diesel and explosives supplied free by recipient of service of ‘Site Formation and Clearance, Excavation and Earth – moving and Demolition service’ was not includible in value for assessment to Service Tax –Section 67 of Finance Act, 1944. **[Union of India V/s. Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (10) G.S.T.L. 401 (S.C.)]**
- Goods and Services Tax (GST) – Glitches in GSTN – Tran-1 intimation – Delay in filing – Petitioner unable to file GST Tran-1 till last date of filing (27-12-2017) due to failure of electronic system and thus unable to avail due credit – Petitioner also filed application for transitional credit manually on 10-01-2018 – Department informing that a committee is being formed to take care of individuals cases



like this – Taking note of this, Department directed to reopen GSTN Portal within two weeks and ensure that petitioner is able to pay taxes online and avail credit – Failing this petitioner’s application would be entertained manually and suitable orders passed – Rule 117 of Central Goods and Services Tax Rules, 2017 - Article 226 of Constitution of India. **[Continental India Pvt. Ltd. V/s Union of India. 2018 (10) G.S.T.L. 423 (All.)]**

- Goods and Services Tax (GST) –Ocean Freight – Vires of Notification No.8/2017-I.T. (Rate) and Entry 10 of the Notification No.10/2017-I.T. (Rae) – Petitioner, an importer of non-cooking coal challenging vires of aforesaid notifications on the ground that once having paid IGST on full value of imported goods inclusive of freight element , charging of GST again on ocean freight not permissible – Further, both service provider and recipient being located abroad in case of CIF contracts, levy under RCM not permissible and that in case of High Sea Sales, importer not being recipient service cannot be charged with GST – Notice including for interim relief issued - Article 226 of Constitution of India. **[Mohit Mineral Pvt. Ltd. V/s. Union of India. 2018 (10) G.S.T.L. 424 (Guj.)]**
- Stay / Dispensation of pre-deposit – Payment of pre-deposit from Cenvat Account – Section 35F (i) of Central Excise Act, 1944 does not require that it should be paid only in cash – In case of duty demand, Cenvat credit account can be debited if it is permissible for payment of tax – In case of dispute about admissibility of Cenvat credit, if it is found inadmissible, it will be reversed, and there is no need to make pre-deposit in cash – Section 35F of Central Excise Act, 1944. **[United Chloro Paraffins Pvt. Ltd. V/s. Commissioner of S.T.-II, Kolkata. 2018 (10) G.S.T.L. 501 (Tri. - Kolkata)].**
- **IGST** – Petitioners have challenged the **Circular 46/2017-Cus** dated 24th November 2017 which clarifies that Integrated Goods and Services Tax would be leviable at the time of transaction of sale of warehoused goods between

the importer and any other person, even before clearance of the goods – Petitioner contends that IGST on the imported goods can be levied only at the time of clearance of goods and the Government of India has no authority to levy such tax at the time of sale of warehoused goods before the customs clearance. **Held:** Notice issued – Returnable on 10th May 2018: High Court. **[Liberty Chemtrade Pvt Ltd, 2018-TIOL-25-HC-AHM-GST]**

- **GST - Twin test method - Medicaments** are not defined under the GST Act or in the First Schedule of the Customs Tariff Act, 1975 with which the GST Act has been aligned for the purpose of classification - The methods settled by the apex court for determining whether a product is to be classified as medicaments for fixing the tariff should be followed as the only lawful course - The Apex Court has settled for a twin test method - It means how the product is understood in common parlance and whether the product has been manufactured using ingredients and formula provided in the authoritative textbooks of Ayurveda are the two parameters for such classification - Skin Care preparations viz. Rupam (Pimple Pack) and Pailab (Anti-Crack Cream) are offered for treatment or prevention of specific skin disorders and are, therefore, classifiable as Medicament under heading 3004 of the CTA, 1975 - Preparations listed as Swarnajyoti, Sunayana and Tarumitra-60 have not yet come into existence, and, therefore, no rulings are pronounced on their classification - The remaining products mentioned in the list submitted by the applicant are not offered primarily as medicaments and, therefore, not to be included under heading 3004: **AAR [West Bengal AAR, Applicant- Akansha Hair & Skin Care Herbal Unit Pvt. Ltd, 2018-TIOL-04-AAR-GST]**
- **GST - Goods** cannot be called to be exported, merely on crossing the Customs Frontiers of India - supply of goods to the International passengers going abroad by the applicant from their retail outlet situated in the Security Hold Area of the Terminal-3 of IGI Airport may be taking place beyond Customs Frontiers of India as defined under



Section 2(4) of the IGST Act, 2017 - However, the said outlet is not outside India, as claimed by the applicant but the same is within the territory of India as defined under Section 2(56) of the CGST Act, 2017 and Section 2(27) of the Customs Act, 1962 and hence the applicant is not taking goods out of India and hence their supply cannot be called “export” under Section 2(5) of the IGST Act, 2017 or “zero rated supply” under Section 2(23) and Section 16(1) of the IGST Act, 2017 - applicant is required to pay GST at the applicable rates: AAR. **[Delhi AAR, Applicant- Rod Retail Pvt Ltd, 2018-TIOL-08-AAR-GST]**

- CGST - Applicant, a non-profit organisation is engaged exclusively in supplying goods and services that are wholly exempt from tax, and, therefore, not liable to be registered under the GST Act if he is not otherwise liable to pay tax under reverse charge under section 9(3) of the GST Act. Main source of the Applicant's income is the interest consideration received by way of interest on services like extending deposits, loans or advances - This service, also, is wholly exempt under Serial no. 27 of the Exemption Notifications for Services (Tariff head: 9971): AAR. **[West Bengal AAR, Applicant- Joint Plant Committee 2018-TIOL-07-AAR-GST]**
- IGST – Applicant promoting courses of foreign universities among prospective students and receiving consideration in the form of Commission, based on performance in recruiting students, in convertible foreign exchange - Applicant, therefore, represents the University in the territory of India and acts as its recruitment agent - Whatever services the applicant provisions are provided only as a representative of the University and not as an independent service provider - Being an intermediary service provider, the place of the Applicant's supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act - The place of supply under the above legal framework is the territory of India - As the condition under section 2(6)(iii) of the IGST Act is not satisfied, the Applicant's service to the foreign

universities does not qualify as “ Export of Services”, and is, therefore, taxable under the GST Act: AAR. **[West Bengal AAR, Applicant- Global Reach Education Services Pvt Ltd,2018-TIOL-06-AAR-GST]**

- GST - Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery - More specifically, they want a ruling on whether such supplies can be treated as Composite Supply within the meaning of Section 2(30) of the CGST Act, 2017. Held: A standalone UPS and a battery can be separately supplied in retail set up - A person can purchase a standalone UPS and a battery from different vendors - applicant himself admits that he supplies the battery and UPS as separate machines as well as UPS with battery - It is obvious that the UPS and the battery have separate commercial values as goods and should be taxed under the respective tariff heads when supplied separately - If a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price: AAR. **[West Bengal AAR, Applicant- Switching Avo Electro Power Ltd, 2018-TIOL-05-AAR-GST]**
- GST - Applicant is engaged in the purchase and cutting and removal of rubber trees from the plantations of certain PSUs owned by the Government of Kerala and also from private individuals in Kerala - State Farming Corporation is demanding 18% on live rubber trees – Applicant before AAR seeking clarification on classification and rate of tax. Held: As per the definition of goods in Section 2(52) of CGST Act, 2017 , "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply



S.C. Jain
Managing Partner
☎: 9891086862



- Rubber trees are agreed to be severed before supply and hence, comes under the definition of 'goods' – since standing rubber trees no longer remain as such, they are to be treated as 'wood in rough form' – There is no differentiation between Soft wood and hardwood in GST - Rate of tax on rubber wood in the aforesaid transaction is 18% under the HSN 4403: AAR. **[Kerala AAR, Applicant- N.C. Varghese, 2018-TIOL-03-AAR-GST]**
- Demand GST - Goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India. Integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e. on the date determined as per provisions of Section 15 of the Customs Act, 1962. Applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point: AAR. **[Kerala AAR, Applicant- Synthite industries Ltd, 2018-TIOL-02-AAR-GST]**
- GST - Recovery of food expenses from the employees for the canteen services provided by company is an 'outward supply', hence taxable. Canteen service to employees - There is no similar exemption (notification 25/2012-ST) as existing under the Finance Act, 1994 prevailing under the GST laws. Upon a plain reading of the definition of "business" given in Section 2(17), clauses (a) and (b) of the CGST Act, it could be safely concluded that the supply of food by the applicant to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business. Even though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" as provided in Section 7(1)(a) of the GST Act, 2017. The applicant would definitely come under the definition of "Supplier" as provided in sub-section (105) of Section 2 of the GST Act, 2017. Since the applicant recovers the cost of food from its employees, there is consideration as defined in Section 2(31) of the GST Act, 2017. Ruling: Recovery of food expenses from the employees for the canteen services provided by company would come under the definition of 'outward supply' as defined in Section 2(83) of the Act, 2017, and therefore, taxable as a supply of service under GST. **[Kerala AAR, Applicant- Caltech Polymers Pvt. Ltd., 2018-TIOL-01-AAR-GST]**
