



INDIRECT TAX UPDATES

RSA Legal Solutions

08th September 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

Last date for filing GSTR-1, GSTR-2 and GSTR-3 for the month of July and August, 2017 has been extended.

General Updates

- The government is considering to re-open the composition scheme window that allows small taxpayers to pay levies at a lower rate by foregoing the benefit of input tax credit under the GST
- E-way bill rules notified by C.B.E. & C. on 30 August, 2017
- Airtel GST Advantage, solution for small and medium business for GST filing launched by Airtel Business
- Government sets up panel to probe profiteering complaints post GST
- PM Modi has urged tax officers to design a GST registration system for traders with less than Rs20 lakh of sales a year who might want to avail of the benefits of the new indirect tax system, although it is not a statutory requirement for them
- GST council may consider the idea of collapsing the standard rates of 12% and 18% into one in due course: FM Jaitley
- GST Returns Offline Tool Version V1.2.1 released to resolve issues related to multiple rates and Error in Json structure validation



Key Notifications/Circulars/Public Notice

- Central government has amended Central Goods and Services Tax Rules, 2017 to the effect that, in Rule 3(4), the period of sixty days has been increased to ninety days for furnishing details by the person opting to pay tax under composition scheme; to amend Rule 61(5) to empower Commissioner to specify manner and conditions for furnishing details in Form GSTR-3B in cases where time-limit for furnishing details in Form GSTR-1 under Section 37 and Form GSTR-2 under Section 38 has been extended. **NOTIFICATION NO. 22/2017-Central Tax, Dated: August 17, 2017**
- Conditions have been specified for furnishing the return in Form GSTR-3B where the time limit for furnishing details in Form GSTR-1 under Section 37 and Form GSTR-2 under Section 38 has been extended. Every person furnishing the return in Form GSTR-3B shall discharge his liability towards tax, etc., by debiting the electronic cash ledger. **NOTIFICATION NO. 23/2017- Central Tax, Dated- August 17, 2017**
- C.B.E. & C. has clarified that taxpayers who do not want to claim transactional input tax credit for payment of tax for the month of July, 2017 should necessarily pay the tax and file return in Form-3B before 20-08-2017, however, the taxpayer who want to avail the tax credit should also make full settlement of tax liability after adjusting transitional input tax credit before 20-08-2017. **PRESS RELEASE NO. 90/2017, Dated August 17, 2017**
- C.B.E. & C. has extended date of filing GSTR 1, GSTR 2 and GSTR 3 for the month of July to 10th, 25th and 30th September 2017, respectively and with regard to August, the date for filing GSTR-1, GSTR-2 and GSTR-3 has been extended to 5 October, 10 October and 15 October 2017. **NOTIFICATION NO. 29/2017, Dated September 5, 2017.**
- C.B.E. & C. has brought out an e-flier on the circumstances and reasons for issue of credit and debit note by the supplier of goods & services or both. **DIRECTOR GENERAL OF TAXPAYER SERVICES, Dated August 18, 2017.**
- Time limit for furnishing the return by an Input Service Distributor for the month of July and August 2017 has been extended to 8 September and 23 September 2017. **NOTIFICATION NO. 26 /2017 – Central Tax, Dated August 28, 2017**
- C.B.E. & C. waived the late fee payable under section 47 of the CGST Act, for all registered persons who have failed to furnish the return in FORM GSTR-3B for the month of July, 2017 by the due date. **NOTIFICATION NO. 28 /2017 – Central Tax, Dated September 1, 2017**
- C.B.E. & C. has amended the Central Goods and Services Tax Rules, 2017 by substituting rule 138 stating the information to be furnished prior to commencement of movement of goods and generation of e-way bill. **NOTIFICATION NO. 27 /2017 – Central Tax, Dated August 30, 2017**
- Notification No. 13/2017- Central Tax (Rate), dated the 28th June, 2017 has been amended by C.B.E & C. **NOTIFICATION NO. 22/2017, Dated August 22, 2017**



Case Laws

Central Excise

- Cenvat credit – Reversal of - Inputs shown in books of assessee as scrap and lesser value – Demand on ground that under Rule 3(5B) of Cenvat Credit Rules, 2004 – Cenvat credit taken on inputs written off or provision made for writing off, was to be reversed – HELD: That though input was shown in books as scrap and of lesser value, value of input was not written off – Therefore, Rule 3(5B) ibid had no application - So long input was lying in factory credit could not be asked to be reversed – As and when input was cleared from factory it would be liable for duty in terms of Rule 3(5B) of Cenvat Credit Rules, 2004 – Demand set aside. **Autoline Vs. Commissioner of Central Excise, Kohlapur. [2017 (352) E.L.T.258 (Tri. – Mumbai)]**
- Cenvat credit – Reversal of - Inputs used for exempted goods – Credit availed when subject goods dutiable but became exempt from duty as per Notification No. 12/2004-C.E., dated 04-02-2004 – HELD: credit taken validly on inputs used in manufacture of finished goods and goods under work-in-process, but credit reversible with interest on inputs lying in stock on said date of exemption – Penalty set aside as major amount of credit availed admissible – Impugned order modified to such extent – Rule 6(1) of Cenvat Credit Rules, 2004. **Ecoboard Industries Vs. Commissioner of Central Excise, Pune-III. [2017 (352) E.L.T.56 (Tri. – Mumbai)]**
- Rebate – Recovery of rebate sanctioned erroneously on the ground that goods under export were exempted goods and hence not eligible for rebate of duties paid – Rebate under Rule 18 of Central Excise Rules, 2002 allowable as long as goods are excisable or duty has been paid on materials used in processing of such goods – No distinction made in Rule 5 and Rule 18 ibid between exempted goods and dutiable goods, they refer to final products and to excisable goods respectively – Assessee has, according to its knowledge, experience and wisdom, chosen one classification over the other - With the consequent discharge of duty liability on clearance to a domestic consumer, it is not open to Revenue to insist that tax payable on exempt goods manufactured using inputs that are separately not identifiable with such exempt goods, and on which credit has been availed, is required to be discharged or that the benefits and privileges that may arise therefrom, in the form of rebate or refund, can be denied – Appellant cannot be faulted for contending that a finding or duty not being leviable carries with it the concomitant responsibility to reverse the debit in the Cenvat credit account which would then render the assessee eligible to refund of input credit – Rebate not to be denied. **Hindustan Platinum Vs. Commissioner of C. Ex., Mumbai –IV. [2017 (352) E.L.T. 105 (Tri. – Mumbai)]**
- Cenvat credit – Denial of – Credit of duty paid on spares/components/accessories of capital goods denied on ground that details of usage subject goods and purpose as to which capital goods/machinery each item used, not furnished – HELD: Subject goods fell within definition of capital goods – Assessee had been allowed credit in respect of them for earlier periods – Demand not sustainable - Rule 14 of Cenvat Credit Rules, 2004 – Section 11B of Central Excise Act, 1944. **Facor Alloys Ltd. Vs. Commissioner of Cus. & C.Ex., Guntur. [2017 (352) E.L.T. 91 (Tri. – Hyderabad)]**



Customs

- Export rebate – Goods exported on payment of duty – Notification No.10/2004-C.E. (N.T.) dated 3rd June, 2004 held bad in law by this court, it being not in consonance with principal provisions, namely, Rules 18 and 19 of Central Excise Rules, 2002 and, even otherwise, being revenue neutral – therefore, entire notification set aside and not merely the retrospective applicability thereof – Adjudicating authority not to place reliance upon the same for purpose of denying benefit of rebate to petitioners – Rebate claims allowed.
Precedent – Principles of Judicial Discipline – Adjudicating authority not to take a view different from that taken by jurisdictional High Court – Order passed by adjudicating authority contrary to principles laid down by jurisdictional High Court bad in law. **Centurion Laboratories Pvt. Ltd. Vs. Union of India. [2017 (352) E.L.T.328 (Guj.)]**
- Refund – Additional Duty of Customs (SAD) – Denied on the ground of mismatch in description of goods in Bill of Entry and one mentioned in sales invoices – HELD: That unless an acceptable match between description of imported goods as given in Bill of Entry and corresponding sale invoices was there, identity of goods would not be established by refund sanctioning authority – Though minor defects and discrepancies in invoicing can be overlooked, discrepancy in description of goods not in nature of curable defect – Refund rightly denied – Section 27 of Customs Act, 1962. **Commissioner of Customs, Chennai-IV Vs. P. P. Products Ltd. [2017 (352) E.L.T. 369 (Tri, - Chennai)]**
- Appeal Dismissed- Rectification of Mistakes- Application Dismissed- Petitioner imported 8 consignments of capital goods, on which the adjudicating authority imposed duty demand with penalty, after some rounds of litigation - Petitioner's appeal before Tribunal was dismissed, and whose order was received very late by the petitioner - Subsequent application for Rectification of Mistakes was dismissed for exceeding prescribed limitation period. HELD - Considering Sec. 129B of the Customs Act, 1962, an applicant may file application for rectification of mistake, which necessitated the receipt & verification of such order - Thereby, in present circumstances, where application was filed within 6 months of the order, the rejection of such application was unacceptable - Although any delay in filing such application was not condonable, considering that the order was received late by the petitioner, strict interpretation of this rule was unnecessary - Any such application before the Tribunal could be filed within six months from the receipt of the copy of the order **Allied Fibres Ltd. Vs CC [2017-TIOL-1322-HC-MUM-CUS]**
- Refund – Special Additional Duty (SAD) – Refund claimed in terms of Notification No. 102/2007-Cus. Rejected on the ground that actual used condition had been violated as imported goods had been sold on payment of VAT – HELD: No legal provision shown to effect that if goods are ultimately sold on payment of VAT/CST refund of SAD paid by importer at time of import would not be admissible – Conditions of notification fulfilled and satisfied by importer and it was entitled to refund – Notification debars sale of imported goods, if imported under actual user condition and if such condition violated by assessee, Department within its rights to initiate action against assessee – Refund correctly allowed – Section 27 of Customs Act, 1962. **Commissioner of C. Ex., Delhi Vs. Micromax Information Ltd. [2017 (352) E.L.T. 241 (Tri. – Del)]**
- Valuation (Customs) – Enhancement of declared value – Natural justice - Before enhancement of declared value, it is necessary that assessing officer should give opportunity to assessee and also cite proper reasons or not accepting declared value and state the basis for enhancement of



value and quantum of enhancement – No such efforts made by assessing officer – No reason given for enhancement of value even in show cause notice - Enhancement of value made directly in bill of entry at time of assessment in gross violation of principle of natural justice –

Order not sustainable and matter remanded to original authority for passing a speaking order – Section 14 of Customs Act, 1962. **Polyglass Acrylic Mfg. Co. Pvt. Ltd. Vs. Commissioner of Cus., Mumbai. [2017 (352) E.L.T.249 (Tri. – Mum)]**

Service Tax

- Refund - Exemption – Benefit of Notification No.17/2009-S.T. – Non-fulfilment of condition – Failure to mention relevant details of shipping bills, etc. in respective invoices of service provider, Lorry Receipts (LR) in case of transportation of export goods and details of invoices of export goods – Requirement of fulfilment of condition cannot be waived as mere procedural – Condition of notification not been fulfilled – Rejection of refund sustained – Section 11B of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1944. **Laxmi Solvex Vs. Commissioner of Central Excise, Indore. [2017(3) G.S.T.L. 435 (Tri. – Del.)]**
- Cenvat credit – Transfer of accumulated credit on input service -,Manufacturer as well as service provider - Transfer of credit by service provider to manufacturer of final products for utilization in their factory – HELD: Availment of accumulated cenvat credit on input service in relation to 'Banking and Other Financial Services' not directly or indirectly related to manufacturing of final products – No provision for transfer of Cenvat credit by provider of output service to manufacturer of final products – Impugned transfer beyond scope of Rule 10 of Cenvat Credit Rules, 2004 – Cenvat credit rightly denied by lower authorities. **Transafe Services Ltd. Vs. Commissioner of Central Excise, Haldia. [2017(3) G.S.T.L 445 (Tri. – Kolkata)]**
- Refund – Export of services – Accumulated Cenvat credit – Computation thereof – Revenue pleading that with abolition of Export of Services Rules, 2005, earlier decision of Tribunal in case of same assessee, reported at 2016(42)S.T.R.570 (Tri. – Mumbai) not applicable and that value of onsite services now includible in total turnover but not in export turnover – HELD: Even in amended provisions of Finance Act, 1994 after 1-7-2012, services provided from outside taxable territory to a person located outside taxable territory are not services for purpose of Service Tax law – Thus value of these services cannot be considered as part of export turnover or part of total turnover in formula for computing refund of accumulated credit – Impugned order upheld - Rule 5 of Cenvat Credit Rules, 2004. **Commissioner of C. Ex. & S. T., Pune Vs. Zensar Technologies Ltd. [2017(3) G.S.T.L. 468 (Tri. – Mumbai)]**
- Cenvat credit – Denial of – Notification No.30/2012-S.T. providing for payment of tax in ratio of 75:25 by service recipient and service provider respectively – 100% tax liability suffered by service recipient – No dispute that Service Tax leviable had been fully paid – Requirement of Rule 3 of Cenvat Credit Rules, 2004 satisfied – Tax liability passed on to service recipient and it had also made payment thereof to service provider – Denial of credit on ground that liability to pay 75% was not discharged by service recipient, not proper- Rule 3 if Cenvat Credit Rules, 2004. **Superfil Products Pvt. Ltd. Vs. Principal Commr. of C. Ex., Chennai-I. [2017(3) G.S.T.L. 354 (tri. – Chennai)]**



GST

- Goods and Services Tax – Legal services – Reverse charge mechanism- Notifications No. 13/2017-Central Tax (Rate) and No. 13/2017-State Tax (rate) – There was no clarity whether all legal services (not restricted to representational services) provided by legal practitioners and firms were governed by reverse charge mechanism; if they were, there was no purpose in legal practitioners and law firms compulsorily getting registered under Central Goods and Services Tax Act, 2017(CGST Act), Integrated Goods and Services Tax Act, 2017 (IGST Act) and/or Delhi Goods and Services tax Act, 2017(DGST Act) – Those seeking voluntary registration would anyway avail of facility under Section 25(3) of Central Goods and Services Tax Act, 2017 and corresponding provisions of other two statutes – In view of genuine doubt about requirement of registration, Central Government and Govt. of NCT of Delhi directed to issue clarification, and till then, no coercive action be taken against lawyer or law firms for non-compliance with CGST Act, IGST Act or DGST Act. **J. K. Mittal & Company Vs. Union of India. [2017(3) G.S.T.L.321 (Del.)]**
- GST on Legal Services provided by individual advocates including senior advocates and firm of advocates – Department seeking time to address important legal and constitutional issues – In that view, Department directed not to take any coercive action for non-compliance with legal requirement of CGST, IGST and DGST – Till further orders, all legal services provided by advocates, law firms of advocates, or LLPs of advocates directed to be continued to be governed by reverse charge mechanism under Finance Act, 1944 except for those who wants to take advantage of input tax credit and continue with voluntary registration. **J K Mittal & Company Vs. Union of India. [2017(3) G.S.T.L. 433 (Del.)]**
