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INDIRECT TAX UPDATES

RSA Legal Solutions

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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

E Way Bill system to be implemented from 1st February 2018

General Updates

- Consumer Affairs Minister Vilas Paswan said that the Government has allowed companies time till March, 2018 to paste price on unsold packaged products to reflect new MRP post GST.
- To promote electric vehicles in India, auto-industry body SIAM has suggested reduction of GST on such automobiles to 5%, besides one-time income tax deduction of 30% of vehicle price for non-financial buyers.
- The Centre may try to bring up inclusion of natural gas at the 25th meeting of GST Council to be convened on 18th January 2018 (Thursday) at Vigyan Bhawan, New Delhi.
- GST collection: With 24% share in cess, Maharashtra and UP top the list
- Face with increasing number of complaints under the anti-profiteering rules, the Finance Ministry will soon come out with a standard operating procedure (SOP) for handling grievances relating to over-charging after GST roll-out.
- The Lok Sabha on 27.12.2017 approved a bill to hike cess on luxury vehicles from 15% to 25% with a view to enhance funds to compensate states for revenue loss following the rollout of GST.



Key Notifications/Circulars/Public Notice

- The CBEC vide **Notification No. 67/2017-Central Tax dated 21.12.2017** has extended the time limit for filing FORM GST ITC-01 for July, 2017-December, 2017 to 31st January, 2018. FORM GST ITC-01 is a declaration for claiming input tax credit of the inputs held in stock and semi-finished or finished goods held in stock on the day immediately preceding the date of registration.
- The CBEC vide **Notification No. 69/2017-Central Tax dated 21.12.2017** has extended the time limit for filing of FORM GSTR-5A for July 2017- December 2017 to 31st January 2018. FORM GSTR-5A is a return to be filed by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.
- The CBEC vide **Notification No. 68/2017-Central Tax dated 21.12.2017** has extended the time limit for filing of FORM GSTR-5 for July, 2017-December, 2017 to 31st January, 2018. FORM GSTR-5 is a return to be filed by a Non-residential foreign taxable person in has been extended
- The CBEC vide **Notification No. 70/2017-Central Tax dated 21.12.2017** has notified CGST (Thirteenth Amendment) Rules, 2017. This amendment has substituted Table 6 of FORM GSTR- 1 with a new format and certain changes have been notified in FORM GST RFD-01.
- The CBEC vide **Notification No. 71/2017-Central Tax, dated 29.12.2017** has extended the due dates for quarterly furnishing of FORM GSTR-1 for taxpayers with aggregate turnover of upto Rs. 1.5 crore.
- The CBEC vide **Circular No. 22/2017- GST dated 21.12.2017** has provided clarification on the issues regarding treatment of supply by an artist in various states and supply of goods by artists from galleries.
- The CBEC vide **Circular No. 24/2017-GST dated 21.12.2017** has provided clarifications regarding manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger.
- The CBEC vide **Circular No. 25/2017-GST dated 21.12.2017** has provided clarification regarding manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling has been provided by the Board vide
- The CBEC vide **Order No. 11/2017-GST dated 21.12.2017** has extended the time limit of filing FORM GST CMP-03 till 31st January, 2018. FORM GST CMP-03 is an intimation of details of stock held on the date preceding the date from which the option to pay tax under composition scheme u/s 10 of the CGST Act, 2017.
- The CBEC vide **Circular No. 51/2017- Customs dated 21.12.2017** has clarified that e-sealing procedures shall become mandatory for exports from the 15 notified Ports/ICDs from 1st March,



2018 for the exporters and Authorised Economic Operators who have been permitted self-sealing under the erstwhile regime or availing supervised stuffing at their premises. While, the e-sealing procedures shall become mandatory from 1st April, 2018 for exports from the un-notified Ports/ICDs. The Board has also clarified that all the exporters who have acquired RFID seals and are stuffing containers at their approved premises for exports through the Ports/ICDs, where facilities of readers are available shall be free to adopt the e-sealing procedures till 1st March, 2018.

- The CBEC vide **Circular 52/2017- Customs dated 22.12.2017** has explained the Customs procedure for export of cargo in containers and closed bodied trucks from ICDs/CFSS through Land Customs Stations (LCSs).
- The CBEC vide **Notification No. 72/2017-Central Tax, dated 29.12.2017** has extended the due dates for monthly furnishing of FORM GSTR- 1 for taxpayers with aggregate turnover of more than Rs. 1.5 Crores.
- The CBEC vide **Notification No. 73/2017-Central Tax, dated 29.12.2017** has waived the late fee payable for failure to furnish the return in FORM GSTR-4.
- The CBEC vide **Notification No. 74/2017-Central Tax, dated 29.12.2017** has notified E-way Bill Rules shall come into force from 1st February, 2018.
- The CBEC vide **Notification No. 75/2017-Central Tax, dated 29.12.2017** has notified certain amendments to the Central Goods and Services Tax Rules, 2017.
- The CBEC vide **Circular No. 26/2017- GST dated 29.12.2017** has explained various issues regarding returns under GST and amendment to GSTR-3B.
- The CBEC vide **Notification No. 1/2018- Central Tax dated 01.01.2018** has prescribed effective rate of tax (0.50% each under CGST & SGST) under composition scheme for manufacturers and other suppliers.

Case Laws

GST

- CGST - an entity purchased mineral sold by the State in an e-auction - The minerals were then leased to another entity - When the revenue sought to impose GST duty on the sale value of the mineral purchased in the e-auction, the issue arose as to who between the purchaser of the minerals and the lessee would pay the tax Held - the buyer of the minerals liable to pay GST directly to the lessee - The lessee would further be responsible for ensuring all compliances - Monitoring Committee to enable the lessee to claim and obtain input tax credit under the CGST Act, 2017 and also prepare appropriate proforma and also take steps for carrying proper Tax Identification Number of the respective lessees on the invoices: Supreme Court [**Samaj Parivartana Samudaya v. State of Karnataka, 2017 TIOL 02 SC GST**]
- GST - Clean Energy Cess under the FA, 2010 – For the purpose of providing compensation to States for loss of revenue arising out of the implementation of the GST regime, Section 8 contemplates the cess being collected in such a manner as may be prescribed and in terms of the Goods and Services Tax Compensation Cess



Rules, 2017 and by Notification No.1/2017 - Compensation Cess (Rate), dated 28th June 2017 issued by the Ministry of Finance, Department of Revenue, the cess @ Rs.400 per tonne of coal has been re-introduced – Petitioner had challenged the constitutional validity of Goods and Services Tax (Compensation to States) Act, 2017 - Delhi High Court had held that it sees prima facie merit in the contention of the Petitioner's submission that Section 18 of the COI 101st Amendment Act does not enable the Parliament to levy any Cess which stood abolished in terms of the Third Schedule of the Taxation Laws (Amendment) Act, 2017 and had granted partial ad interim relief subject to conditions; that as far as the additional levy on the stocks of coal on which petitioner had already paid the Clean Energy Cess in terms of FA Act, 2010, the Petitioner should not be required to make any further payment, however, on stocks of coal on which no Clean Energy Cess under the FA, 2010 was paid, any payment made in terms of the impugned Act would be subject to the result of the petition - Revenue in appeal before Supreme Court. Held: Impugned order stayed: Supreme Court [**Union of India v. Mohit Mineral Pvt. Ltd, 2017 TIOL 01 SC GST**]

- IGST – GST on supply of goods lying in bonded warehouse - Petitioner submits that there would be double payment of IGST - As per the illustration, IGST @ 12% amounting to Rs.13.2 would be payable @ 12% on the import value of the goods of Rs.100 plus basic customs duty - This amount would be payable when the goods are released by "C" from the warehouse – Further, the petitioner, i.e., C would be liable to pay IGST on the entire sale consideration between the seller (B) and the purchaser (C) on Rs.300/- - As per the

petitioner, this Rs.300/- would include value of the goods of Rs.100/-, basic customs duty of Rs.10/- and duty deferred, i.e., IGST of Rs.23.20. Held: Respondents to obtain instructions on the said aspect and clarify the position in the counter affidavit – To be relisted on March 8, 2018 – Stay application disposed of: High Court [**Devashish Polymers Pvt. Ltd. v. Union of India, 2018 TIOL 03 HC DEL GST**]

- GST - Section 129 of the CGST Act & Kerala State GST - Petitioner seeks release of detained goods. Held: Identical matter disposed of by Division Bench directing expeditious completion of adjudication and permitting release of the goods pending adjudication in terms of rule 140(1) of Kerala GST Rules, 2017 - Adjudication to be completed within one week and if petitioner complies with rule 140(1) supra, goods detained shall be released forthwith: High Court [para 2] [**Shankar Mohan v. Intelligence Inspector, 2018 TIOL 01 HC Kerala GST**]
- CGST - Input Tax Credit (ITC) on pre-GST stock - stipulation in Section 140(3)(iv) of CGST Act restricting transitional credit up to 1 year - Petitioner challenging the same. Held: It is open to the petitioner to claim whatever it wish to and in the event the credit sought is denied, the respective entitlement of the parties shall be subject to the final decision - Notice issued - List on 25.01.2018: High Court [para 2] [**Lupin Ltd. v. Union of India, 2017 TIOL 45 HC DEL GST**]
- GST - Petition challenges the constitutional validity of Clause (iv) of sub-section (3) of Section 140 of the CGST Act, 2017 which mandates that the registered person can take credit in his electronic credit ledger of eligible duties in respect of inputs held in stocks and inputs contained in



semi-finished goods or finished goods held in stock on the appointed day subject to the condition that such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day. Held: Notice issued to the Attorney General, returnable on 22 nd January, 2018 - On the returnable date, Bench will endeavour to dispose of the writ petition finally - Court not inclined to grant any ad-interim relief. High Court [para 4] **[Evergreen Seamless Pipes and Tubes Pvt. Ltd. v. Union of India, 2017 TIOL 44 HC MUM GST]**

- GST - Petitioner had filed a writ petition expressing difficulty in filing e>Returns as there was a problem in the GSTN portal and that due to which they are unable to file returns for which reason they would be levied with a penalty u/s 47

of the Tamil Nadu Goods and Services Tax Act, 2017 – on 21.11.2017, the petitioner informed the Bench that the difficulty in the portal has been rectified and that they are able to access the same – furthermore, it is also informed that the respondent Department has waived the penalty fee for the months of July, August and September 2017 and that the petitioner now can access the portal, file their returns for October 2017 and pay the tax. Held: Taking note of the fact that the penalty fee has been waived for three months i.e. July, August and September 2017 and since the portal has been activated, no further orders are required except to record the stand taken by the parties before this Court – Writ Petition disposed: High Court [para 6, 7] **[Rajaguru Spinning Mills Pvt. Ltd. v. Secretary, 2017 TIOL 36 HC MAD GST]**

Customs

- Customs – Adjudication – Appellants being co-noticees to main case and main case being settled before the Settlement Commission, appellants are entitled to be absolved from all the liabilities, in view of the precedent decision of Larger Bench. Appellant's submissions that since main case was settled before Settlement Commission, they being co-noticees to main case, proceedings against themselves also should be considered as concluded and as per Section 127(F)2 of Customs Act, 1962, if any application is seized by Settlement Commission, any other forum lacks jurisdiction to entertain any matter relating to the application, are acceptable – Revenue's contentions that if the liability of co-noticees arises from different acts committed in their own capacity, even if the main case was settled before Settlement commission, the co-noticees will not get immunity from further

proceedings and that the appellants are not applicants before the Commission, are not acceptable – Larger Bench has discussed the issue in detail, provisions of Section 127(F)2 and the situation where co-noticees did not file an application before the Commission and had held in favour of assessee – Hence, appeal allowed. [paras 1, 2, 4, 6, 7] **[Anil Goyal v. C.C., C.E. & ST, 2017 TIOL 262 CESTAT HYD]**

- Customs - Goods are imported consignments lying in containers at the Port - The authorities are obstructing de-stuffing of containers and as such, huge demurrage charges are being incurred. - application was made on behalf of the owner for provisional release of the goods - There cannot be any dispute regarding ownership since the bills of lading are in name of assessee, a partnership firm which is the owner of imported



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consignments - Assessee refers to section 49 of Customs Act, 1962, which provides for storage of imported goods in warehouse pending clearance - Assessee hands up copy of letter dated 4th December, 2017 addressed to his clients by which respondent no.1 rejected the previous application for provisional release of goods on the ground that the importer firm was a "shell company" - He also refers to CBEC Circular 35/2017-Customs to submit that authorities have not disclosed any reason contemplated therein to obstruct provisional release of the goods - Now that representation has been made by a partner of the firm who had imported the goods, respondent no.1 is to consider and dispose of the same within ten days - For the purpose of dealing with representation, the said respondent will call for hearing of person making the representation as well as DRI - In dealing with representation, said respondent, if is to exercise discretion to deny provisional release of goods, must take care to give reasons within the scope of observations of Madras High Court as mentioned in said circular - Assessee will be at liberty, in that event, to urge for warehousing of goods under section 49(a): HC [Aman Exports v. C.C., 2018 TIOL 43 HC KOL CUS]

- Customs - Noncompliance with the provision of Section 129E of Customs Act, 1962 - Assessee submitted that they had deposited 7.5% at first appellate stage, before Commissioner (A), hence, they are required to deposit balance 2.5% and not the entire 10% - It is settled position of law that in taxing statute, the Courts have to adhere to literal interpretation - Amount paid under clause (i) of Sec.129E, which was paid at the time of filing appeal before first Appellate Authority cannot be adjusted against amount of deposit required to be made under clause (iii) while filing the appeal before this forum: CESTAT interpretation - Amount paid under clause (i) of Sec.129E, which was paid at the time of filing appeal before first Appellate Authority cannot be adjusted against amount of deposit required to be made under clause (iii) while filing the appeal before this forum: CESTAT [Essar Oil Ltd. v. C.C., 2017 TIOL 285 CESTAT AHM]

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WISHES YOU AND YOUR FAMILY

A VERY HAPPY NEW YEAR 2018!