



S.C. Jain
Managing Partner
☎: 9891086862



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

Maiden 'GST Day' was celebrated on 1st July, 2018 marking one year of successful implementation of GST.

General Updates

- Delhi implemented intra state e-way bill on 16th June, 2018 and has increased the threshold limit for the e-way to Rs 1 Lakh and above.
- GST ITC-04 quarterly return for goods sent to job worker or returned has to be filed this month.
- Due date for GSTR 6 from July 2017 - June 2018 has been extended till 31st July 2018.
- Centre and the concerned state will equally share the GST anti-profit funds.
- Langars to get GST refund from Centre in compliance with the 'Seva Bhoj Yojana'.
- Central Board of Indirect Taxes and Customs (CBIC) has successfully concluded the second refund extended fortnight from 31st May, 2018 to 16th June, 2018.
- In relation to the e-way bill, unique common enrolment number for the transporter has been introduced.
- WTO's 19th monitoring report on Group of 20 (G20) trade measures covering the period from mid-October 2017 to mid-May 2018 shows that new trade-restrictive measures from G20 economies have doubled compared to the previous review period .



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 12/2018-Central Tax (Rate) dated 29.06.2018** has deferred the provisions relating to Reverse Charge Mechanism (RCM) under Section 9 (4) of the CGST Act, 2017 for further period of 3 months upto 30 September 2018. Similar notifications have been issued under IGST and UTGST.
- The CBIC vide **Notification No. 26/2018- Central Tax dated 13.06.2018** has amended the CGST Rules, 2017, whereby second proviso has been added to Rule 37(1) of CGST Rules which relates to reversal of ITC; formula for refund has been substituted giving it retrospective effect from 01.07.2017; one more situation has been prescribed where no e-way bill would be required for movement of goods.
- The CBIC vide **Notification No. 27/2018-Central Tax ,dt. 13.06.2018** has notified the goods which shall be disposed off by the proper officer after its seizure having regard to their perishable or hazardous nature, depreciation in value with the passage of time or any other relevant considerations.
- The CBIC vide **Notification No. 28/2018-Central Tax ,dt. 19-06-2018** has again amended the CGST Rules, 2017, whereby sub-rule 1A has been inserted to rule 58 which provides for unique common enrolment number for the transporter.
- The CBIC vide **Circular No. 46/2018-GSTdated 06.06.2018** has clarified the applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips.
- The CBIC vide **Circular No. 47/2018-GSTdated 08.06.2018** has clarified certain issues under GST relating to moulds and dies owned by OEM; maintenance of books of accounts and availing ITC in case of auction of tea, coffee, rubber and requirement of e-way bills in certain circumstances.
- The CBIC vide **Circular No. 48/2018-GSTdated 14.06.2018** has clarified miscellaneous issues related to SEZ and refund of unutilized ITC for job workers.
- The CBIC vide **Press release dated 14.06.2018** enlisted the procedure to be followed for change of email and mobile number of the authorized signatory by taxpayers.
- CBIC vide **Circular No. 49/23/2018-GST dt. 21-06-2018** modified the procedure for interception of conveyances, where e-way bill or other related documents are not produced shall only be confiscated and not the other consignments coming together with those consignments.



Case Laws

GST

- **GST** – Section 129 of the UPGST Act, 2017 - Non-accompaniment of E-way bill. As e-way bill was produced on the same day of the interception of goods along with documents indicating payment of IGST but before seizure order is passed, no justification for passing orders of seizure of goods/vehicle and tax demand/penalty order quashed, Respondent directed to immediately release goods/vehicle - Petition allowed: High Court. **[Modern Traders v. State of UP, Writ Tax no. 763 of 2018 (All.)]**
- **GST** - the applicant promotes dairy and other agriculture based industries - In this regard, it provides technical, financial & managerial assistance and is also empowered to transfer the whole or part of its functions to any organization. It is also empowered to take up activities entrusted to it by the Central or State governments wherever its expertise is required. Hence the applicant sought to know whether in light of such tripartite agreements, any arrangement between itself and Unions would be considered as supply between 'related persons' in accordance with Schedule 1 of the Central Goods & Service Tax Act, 2017. If yes, it further sought to know if it would be required to determine value of activities undertaken by it, as per Section 15(5) of CGST Act, 2017 r/w Rule 28 of the CGST Rules, 2017. Held - The transactions undertaken by the applicant & Unions in accordance with the agreements made by the applicant with State Governments are not to be considered as supply between 'related persons' as per Schedule I of CGST Act, 2017 CGST Act r/w Section 15 of CGST Act and corresponding provisions under the Gujarat Goods and Services Tax Act, 2017. **[National Dairy Development Board, 2018-TIOL-79-AAR-GST]**
- **GST** - the petitioners were transporting some goods to their business premises after process of powder coating - The goods were accompanied by purchase invoice & another invoice for the service of powder coating - The goods were detained in transit for not uploading the e- way bill - The Department claimed that only on uploading the e-way bill would it be informed of the movement of goods & in absence of the same, an evasion would be suspected – Held- the dealer intended to re-sell the goods, due to which suspicion of evasion cannot be brushed aside - Thereby, the furnishing of bond by the petitioners is not sustainable - Hence the goods be released on furnishing of simple bond for the value of goods & furnishing of bank guarantee equivalent to the tax & penalty amount payable. **[Assistant State Tax Officer v. Alfa Alluminium, 2018-TIOL-57-HC-KERALA -GST (Kerala)]**
- **GST** - the applicant company is engaged in the distribution of electricity - It entered into a franchisee agreement to cater to power requirements of customers in Ajmer - For this purpose the applicant created a Special Purpose Vehicle - Hence the applicant seeks to know whether it is eligible to avail exemption from GST under Notfn No 12/2017-CT(R) with regard to non-tariff charges recovered from customers - Also whether the applicant is liable to pay tax on recovery made from customers. Held - Considering clarification issued under Circular No. 34/8/2018-GST dated 01.03.2018 as well as relevant provisions of CGST Act, such services are not eligible for exemption - Hence applicant is liable to pay tax on non-tariff charges recovered from its customers. **[TP**



Ajmer Distribution Ltd., 2018-TIOL-77-AAR-GST (AAR)]

- **AAR** - Ruling sought as to whether GST is leviable on 'MargSudharanShulk' and 'AbhivahanShulk' charged by the Forest Division, Dehradun from the non-government, private and commercial vehicles engaged in mining work in lieu of use of forest road. Held: 'MargSudharanShulk' is nothing but toll charges collected by applicant from users for using forest road and the said toll charges are being used for maintenance of the forest road - no GST is applicable: AAR 'AbhivahanShulk' is charged and collected by applicant in respect of forest produce carried out by a person - from the Uttarakhand Transit of Timber and Other Forest Produce Rules, 2012, it is observed that a person who desires to obtain forest produce is required to be registered with the forest department after paying applicable fee and the said 'AbhivahanShulk' is charged on the basis of quantum and quality of forest product - it cannot be called as toll tax and rather is a form of consideration received by applicant in lieu of services provided to the person for carrying forest product - applicant is liable to pay GST @18% on the said 'AbhivahanShulk' under SAC 9997 as 'Other services'. **[Divisional Forest Officer, 2018-TIOL-70-AAR GST (AAR)]**
- **GST** - the applicant seeks to know whether any work executed & invoice to be raised for the pending event of testing and commissioning after the implementation of GST amount to supply, and specifically supply of works contract - Also whether the applicant is entitled to avail proportionate credit worth 10% duty of excise and VAT paid on materials bought vide invoices showing Excise and VAT separately under the transition provisions. Held - The activity of laying underground pipeline network falls under "works contract" u/s 2(119) under the CGST Act, 2017 and the GGST Act, 2017 - In respect of that part of supply wherein time of supply is on or after the appointed date, GST is required to be paid -

Thereby, the applicant is ineligible for availing input tax credit u/s 140(6) of the CGST Act, 2017 and the GGST Act, 2017. **[RB Construction Company, 2018-TIOL-57-AAR-GST (AAR)]**

- **GST** - the applicant is a local authority under the ambit of the State Govt of Uttarakhand - It seeks to know whether material procured by it from the govt or from govt authority is exempt from GST. Held - the applicant is covered under local authority which is receiving services from IIT, Mumbai which is covered under Central Govt - Considering Sr No B of Part 3 of GST-Tariff (Services) (Chapter 99), which is a list of nil rated & exempt services, it is seen that a govt authority providing services to another govt authority is exempt from GST - However, there is no exemption on supply of goods. **[IT Development Agency, 2018-TIOL-78-AAR-GST (AAR)]**
- **GST**- the applicant seeks to know whether the *cereals, pulses, spices, copra, jaggery (Gur), groundnuts (with or without shell), groundnut seeds, turmeric dried and ginger dried (soonth), cashew, almond, kismis, jardalu, anjeer(fig), date, ambli foal*, classify as 'Agriculture Produce' under Notification No. 11/2017-Central Tax (Rate) - Also whether the taxability of such goods changes if they are received for storage either in bulk packing or small or retail packing with or without name or brand name, which is not registered under the Trade Mark Act, 1999 where no further processing is done or such processing is done which does not alter its essential characteristics but makes its marketable for primary market. Held - *Pulses (de-husked or split), jaggery, processed dry fruits such as processed cashew nuts, raisin (kismis), apricot (jardalu), fig (anjeer), date, tamarind (ambali foal), shelled groundnuts & groundnut seeds, and copra* are not agriculture produce- Besides '*Cereal*' on which any processing is done as is not usually done by a cultivator or producer will fall outside the definition of agriculture produce - Moreover, processed spices including processed



turmeric and processed ginger (soonth), are not agriculture produce - However, groundnuts with shell, turmeric and ginger on which no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but make it marketable for primary market, would fall within definition of agriculture produce - Lastly, whole pulse grains such

as *whole gram, rajma and 'cereal'* on which no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market, fall under the definition of agriculture produce. **[Guru Cold Storage Pvt. Ltd., 2018-TIOL-58-AAR-GST (AAR)]**

CUSTOM

- **Cus** - the assessee company imported 17 pellets with 269 cartons of Hops Pellets - It omitted to file bill of entry for home consumption until after about four months of date of import - Later the Hops Pellets were seized & examined, based on the belief that they had been undervalued - The assessee was served an SCN in this regard - During pendency of proceedings, the assessee sought to correct the details mentioned in the bill of entry - It claimed that the goods had erroneously been declared under the wrong chapter, leading to payment of duty in excess - Later when the assessee sought provisional release of the goods, the same was granted albeit subject to certain conditions - Aggrieved by such conditions, the present writ was filed. **Held** - The matter involves disputed questions of facts & also the valuation of Hops Pellets imported - There was a gap of about one year between date of import & date of issuing SCN - Besides provisional release was sought after 18 months from date of seizure - Hence assessee is left open to approach the appellate authority: **[HC Agya Import Ltd v. Joint Commissioner of Customs, 2018-TIOL – 1186 – HC – DEL - CUS]**
- **Cus** - Assessee, a 100% EOU is manufacturer and exporter of processed and upgraded ilmenite falling under CTH 26140020 and paid duty under protest @ 10% - But the appropriate duty would be 5% from 01.03.2013 vide Notfn 15/2013-Cus. and 2.5% from 01.03.2015 vide Notfn 08/2015-Cus. - When a decision was taken by Higher Judicial Forum, it is binding on subordinate authorities - The Tribunal, admittedly, held that duty is not leviable @ 10% as claimed by assessee, but, it is only leviable under CH26140020, as per the Notfn issued by Department then and there - It is well settled that duty paid by assessee under protest, if ultimately found, was not leviable, it would automatically entitle him for refund - The payment under protest by itself would tantamount to claiming refund, but, it cannot be turned down merely because he has not filed any appeal or appeal was filed by the Department before a higher forum - Petitioner is entitled to get refund - Since a binding decision has not been followed by Adjudicating Authority in this case, Court can interfere straight away without relegating the assessee to file an appeal - The second respondent is directed to refund the amount in question to petitioner within a period of four weeks after taking immovable property security from the petitioner: **[M/s Industrial Mineral Company (Imc) v. Commissioner of Customs 2018-TIOL-1165-HC-Mad-Cus]**
- **Cus** - Petitioner seeks for issuance of a writ of mandamus to call for assessments of Bill of Entry and seeks for a direction upon respondent to re-assess the Bill of Entry after extending the benefit of Sl.No.20 of notfn 50/2017, as it stood when the entry inwards



of vessel prior to e-publication of Notfn 93/2017 customs - When the petitioner has an appellate remedy, Bill of Entry cannot be quashed in a writ petition as matter requires to be adjudicated before Commissioner (A), where it will be open to importer to raise the issues raised in this writ petition - Revenue submitted that already a SCN has been issued to petitioner - Therefore, issues raised by petitioner are preserved and petitioner is granted liberty to adjudicate the same before the respondent in pending SCN: **[M/s Nagavalli Traders v. Deputy Commissioner of Customs Group, 1 Chennai 2018 – TIOL– 1164 - HC-Mad - Cus]**

- **Cus** - Revenue has challenged the legality of impugned order, whereby Tribunal has allowed an appeal filed by assessee with regard to refunding of SAD in terms of Notfn 102/2007-Cus - For taking credit, quantum of duty paid should be shown in invoices and same should be shown separately for each type of duties - In respect of a commercial invoice, which shows no details of the duty paid, question of taking of any credit would not arise at all - Therefore, non-declaration of duty in invoice issued itself is an affirmation that no credit would be available - Therefore, non-declaration/non-specification of duty element as to its nature and quantum in invoice issued would itself be a satisfaction of condition prescribed under clause (b) of para 2 of Notfn 102/2007 - Although notfn may have prescribed the words which should be included in an invoice, but the

words are not magical in their scope since it is a procedural condition, as long as intention is made clear, even by use of other words, assessee cannot be denied the benefit of refund of SAD - Therefore, it has validly concluded that non-declaration of SAD in commercial invoice is an affirmation that no CENVAT credit thereof, shall be available and the same satisfies the condition of the notification - Hence the assessee is justified in claiming the refund **Commissioner of Customs and Service Tax Bangalore v. Chneider Electric IT Business, 2018 – TIOL - 1138 - HC - Kar – Cus]**

- **Cus-** Goods received within ‘Customs area’ as defined under Section 2 (11) of Customs Act, 1962 and to be treated as supply of goods in course of inter-state trade – Such goods supplied not exempt supply as per definition under Section 2 (47) of Central Goods and Services Tax Act, 2017 as it is neither nil rated or exempt by any notification. Ship stores when treatable as exports of goods - Outward supplies made to ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships – Collection from recipient – Applicant can collect applicable GST from customers, in case it is not exports – In case of exports option lies with applicant based on manner of exports, i.e., whether they intend to export under bond or on payment of tax. **[In Re: Parsan Brothers. 2018 (13) G.S.T.L. 445 (A.A.R. – GST)]**