



INDIRECT TAX UPDATES

RSA Legal Solutions

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About RSA Legal Solutions

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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

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GST Handholding

Inter-state E-way bill has become mandatory from 01.04.2018. However Intra-state movement of goods does not require e-way bill at present, except for the State of Karnataka.

General Updates

- A new functionality has been introduced on the GST portal that shows status of last 10 returns filed by a taxpayer in the pre-login search taxpayer menu.
- CBE&C has started "e-Sanchit" application. It's a facility through which ICEGATE registered persons can file documents online.
- Interstate E-way bills have been made applicable from 1 April 2018 and 1,71,503 E-way Bills were successfully generated on the portal till half day of 1 April 2018.
- GSTR-4 offline tool new version 2.0 is now available. GSTR-4 is a quarterly return that taxpayers opting for Composition Scheme need to furnish.
- A new functionality has been introduced on the GST portal that shows status of last 10 returns filed by a taxpayer in the pre-login search taxpayer menu.
- CBE&C organised GST refund fortnight across all its field formations from 15th - 29th March, 2018 to deal exclusively with the GST refund claims (IGST & ITC).



Key Notifications/Circulars/Public Notice

- The CBE&C vide **Order No. 01/2018- GST dated 28.03.2018** has extended the due date for filing GST Tran-2 to 31 June 2018.
- The CBE&C vide **Circular No. 38/2018- GST dated 26.03.2018** has provided clarification on various issues regarding Job work viz. scope, registration, documents and intimation, place of supply etc.
- The CBE&C vide **Notification No. 20/2018- Central Tax dated 28.03.2018** has notified that the application for refund by the Notified agencies of tax paid by it on inward supplies of goods or services or both shall be filed before the expiry of 18 months from the last date of the quarter in such supply was received.
- The CBE&C vide **Notification No. 19/2018- Central Tax dated 28.03.2018** has extended the due date for filing GSTR-6 i.e. return by an Input Service Distributor has been extended from 31 March'18 to 31 May'18.
- The CBE&C vide **Notification No. 17/2018- Central Tax dated 28.03.2018** has extended the due date for filing GSTR-1 for the quarter April'18 – June'18 by the suppliers having turnover up to 1.5 crores to 31 July 2018.
- The CBE&C vide **Notification No. 16/2018- Central Tax dated 23.02.2018** has prescribed the dates for filing of GSTR-3B for April to June 2018.
- The CBE&C vide **Notification No. 15/2018- Central Tax dated 23.02.2018** has notified that E-way bill provisions will be applicable from 1 April 2018.
- The CBE&C vide **Notification No. 14/2018- Central Tax dated 23.03.2018**, has notified Central Goods and Services Tax Rules (Third Amendment), 2018 through which anti-profiteering rules and rules related to job work has been amended.
- The CBE&C vide **Notification No. 10/2018- Central Tax (Rate) dated 23.02.2018 and Notification No. 11/2018- Integrated Tax (Rate) dated 23.02.2018** has notified the postponement of reverse charge mechanism applicable on supplies from unregistered person till 30 June 2018.
- The CBE&C vide **Notification No. 12/2018-Central Tax dated 07.03.2018**, has amended CGST Rules, 2017 inter alia to extend the submission date of GSTR-TRAN-2 to 31 March 2018 and to notify the new E-way Bill rules.
- The CBE&C vide **Circular No. 08/2018- Customs dated 23.03.2018** has clarified that shipping bills filed till 28.02.2018, having SB005 error cases will be corrected through alternative mechanism.
- The CBE&C vide **Notification No. 13/2018- Central Tax dated 07.03.2018**, has rescinded Notification No. 06/2018- Central Tax dated 23.01.2018, by which amount of late fee payable by a registered person for failure to furnish the return in FORM GSTR-5A by the due date was reduced, except as respects things done or omitted to be done before such rescission.
- The CBE&C vide **Circular No. 37/2018- GST dated 13.03.2018**, has provided clarifications in regard to export refunds.



- The CBE&C vide **Circular No. 36/2018- GST dated 13.03.2018**, has provided clarifications in regard to return and refund filing processes for entities having Unique Identification Number (UIN).
- The CBE&C vide **Notification No. 18/2018- Central Tax dated 28.03.2018** has notified the following due dates for filing of GSTR-1 by the suppliers having turnover more than 1.5 crores:

Month	Last Date
April'18	31 May'18
May'18	10 June'18
June'18	10 July'18

Case Laws

GST

- GST - GSTR-3B returns for the period from October 2017 allowed to be filed with late fees first and once paid and proof submitted, amount will be auto-credited/refunded within one week by GSTN - Statement of ASG accepted as undertaking to the High Court - outstanding and pending grievances to be redressed by Council/Ministry - systems should operate strictly in terms of the Act and Rules - Matter placed on 24 April, 2018: High Court. **[PADMAVATI ENTERPRISES V/S. UOI, 2018-TIOL-19-HC-MUM-GST]**
- CX/GST – Rebate – Section 142(3) of the CGST Act, 2017 - Costs were imposed on Respondent Revenue to impress upon the Authorities that the proceedings before the High Court should not be delayed; that Public Interest suffers and that was not present to the mind of the Authorities - it is only to remind the Respondents of the duties and obligations to the public, that costs were imposed - on account of the subsequent development and particularly the Central Goods and Services Tax Act, the issue in the Petition is purely academic and it is rendered infructuous - earlier order imposing costs of Rs.25,000/- on the Respondents recalled and the amount paid be returned to Respondent – Writ Petition disposed of without costs: High Court. **[HINDALCO INDUSTRIES LTD V/S. UOI, 2018-TIOL-18-HC-MUM-GST]**.
- Goods and Services Tax – Works Contract – Under Tamil Nadu Value Added Tax, 2006 rate was 2% whereas Central Goods and Services Tax Act, 2017, with both Central and State taxes, it became 12% - No order passed on contractors association representation that works for which agreements were executed prior to GST only 2% VAT was applicable – HELD – Appropriate person to consider assessee's representation was Commissioner of Commercial Taxes (CCT) and not Government Authorities for whom contractors had executed contracts – CCT directed to pass order on merits. **[COIMBATORE CORPN. CONTRACTORS WELAFRE ASSOCIATION VS. STATE OF TAMIL NADU, 2018 (10) G.S.T.L. 165 (Mad.)]**.
- Detained goods, release of – Direction of competent authority to complete adjudication within a week from date of production of copy of judgment Detained goods to be released if petitioner complied with Rule 140(1) of Kerala Goods and Service Tax Rules, 2017 – Section 129 of Central Goods and Services Tax Act,

2017 – Kerala State Goods and Services Tax Act, 2017. **[SHANKAR MOHAN VS. INTELLIGENCE INSPECTOR, ERNAKULAM 2018 (10) G.S.T.L. 211 (Ker.)]**.

- GST – Petitioner seeks inclusion of Petrol and diesel under GST on the ground that although International market price of crude oil per barrel is very low an exorbitant increase in the selling price of petroleum products directly affects the common man for the reason that most of the goods are transported through road/service transport and any increase in price of the fuel is bound to increase the selling price of the commodities, especially essential commodities and it is high time that the petrol and diesel prices should be brought within the ambit of Goods and Service Tax (GST); that though the petitioner has submitted a representation dated 16.06.2017 to the respondents and in spite of receipt and acknowledgment, no response is forthcoming, hence petitioner before High Court. Held: Goods and Services Tax council is having representation of the State Governments also and, therefore, their views have also to be elicited, before the Goods and Services Tax council take a call as to bring the petrol and diesel within the ambit of Goods and Services Tax - it is the prerogative of the Central Government to take a call on the basis of the recommendations of the Goods and Services Tax council - it is a well-settled position of law that “it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair” and that Court can interfere only when it is found to be arbitrary or based on an irrelevant consideration or malafide or against any statutory provisions – High Court is not in a position to issue any positive direction to the respondents to consider the prayer sought for by the petitioner – Petition

dismissed: HC. **[K K RAMESH V/S UOI, 2018-TIOL-20-HC-MAD-GST]**.

- Service Tax - Valuation - inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service - Rule 5(1) of the Service Tax (Determination of Value) Rules - only with effect from May 14, 2015, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessee. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service. This position did not change even in the amended Section 67 which was inserted on May 01, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of subsection (1). Mandate of sub-section (1) of Section 67 is manifest, viz., the service tax is to be paid only on the services actually provided by the service provider. **[UOI V/S INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT LTD, 2018-TIOL-76-SC-ST]**.



- Section 2(119) of the Central Goods and Services Tax Act, 2017, read with Section 6 of the Tamil Nadu Value Added Tax Act, 2006 – Works Contract- Petitioner was as association formed for welfare of members of road contractors carrying works for National Highways, and other Governmental organisations – It was a case of petitioner that contractor used to remit 2 % tax on value of work executed by them towards Work Contract Tax under Tamil Nadu Value Added Tax, 2006 – But, when CGST Act, 2017 came into force i.e. with effect from 01.07.2017, Central Government issued notification notifying that 6% of tax has to be levied towards work contract – Since State Government was also empowered to levy tax towards work contract tax in addition to work contract tax imposed by Central Government, contractor would be liable to pay 12% of tax towards work contracts- Whether contract work for which agreements were executed prior to 01.07.2017, GST could be imposed and 2% VAT alone was applicable – Held, yes. **[COIMBATORE CORPORATION CONTRACTORS WELFARE ASSOCIATION V/S STATE OF TAMIL NADU, [2018] 91 taxmann.com 191 (Madras)]**.
- Strictures against Department – Adjudication – Demand - Supply of document – Relied on in show cause notice – Request of noticee not accepted in spite of precedent cases and Department directions – Conduct of Revenue Officer deprecated as it increased litigation in High Court – Hence, ex parte order passed directing Revenue Officer to act in accordance with law and not proceed arbitrarily, without giving proper opportunity to noticee – Section 73 of Central Goods and Services Tax Act, 2017. **[JVS FOOD PVT. LTD. V/S. UOI, 2018 910) G.S.T.L. 291 (Raj.)]**.
- CGST – Petitioner challenging section 140(1), second proviso thereto of Gujarat GST Act in terms of which certain restrictions have been placed on a dealer for taking tax credit of the taxes already paid under the VAT Act – Petitioner submits that the provision deprives a dealer of his vested right and thus the statute acts retrospectively and imposes an unreasonable restriction. Held: Notice returnable on 19.04.2018 – As vires of the Act are under challenge, notice to be issued to Advocate General also: High Court. **[WILLOWOOD CHEMICALS PVT LTD V/S. UOI, 2018-TIOL-21-HC-AHM-GST]**.
- GST - assessee-company is engaged in the real estate business - The Department declined to accept the GST TRAN-1 returns, amongst others, submitted by the assessee-company - Hence the present writ. Held - considering the decision of the Bombay High Court in Abicor and Binzel Technoweld Pvt. Ltd. Vs. The Union of India & anr. the Department is directed to accept the GST TRAN-1 submitted by the assessee - This is to be done manually or by opening the portal - Notices issued to parties: High Court. **[ARIHANT SUPERSTRUCTURES LTD. V/S UOI, 2018-TIOL-22-HC-RAJ-GST]**.
- Demand – Adjudication – Show cause notice – Relied upon documents – Several documents referred to in show cause notice and relied on by adjudicating authority not supplied to assessee – Even if documents were concerning assessee and were seized from its custody, in absence of any proof suggesting that it had copies of such documents within its possession, adjudicating authority could not have passed order without supplying copies thereof to assessee- Assessee had contended it would be handicapped in its defense unless copies of



documents collected by authorities were supplied to it – Order set aside and matter remanded to the adjudicating authority for fresh consideration after supplying copies of all documents relied upon in show cause notice – Writ petition allowed without relegating party to appellate remedy – Section 11A of Central Excise Act, 1944 corresponding to Section 73 of Finance Act, 1994 – Article 226 of Constitution of India. **[M.G.M. METALIESERS LTD. VS. UNION OF INDIA, 2018(10) G.S.T.L. 537 (GUJ.)]**.

- Minerals – GST on E-auction thereof – Input Tax Credit Rights Liability of Lessee – GST payable on sale value of such minerals to be paid by purchasers directly to lessee who made responsible for complying with provisions of GST law – Such lessee entitled to avail to the Input Tax Credit – Monitoring Committee directed to take suitable action in this regards and also to ensure allocation of proper Tax Identification Number to such lessees – Section 9 and 16 of Central Goods and Services Tax Act, 2017. **[SAMAJ PARIVARTANA SAMUDAYA VS. STATE OF KARNATAKA, 2018(10) G.S.T.L. 526 (S.C.)]**.
- Goods and Services Tax – Seizure of goods and conveyances in transit - Goods transported from Kanpur to Delhi seized as they were not accompanied with proper documents and penalty notice issued on same date – Contention that documents produced before proper officer in response to show cause notice – Service of penalty order also disputed by petitioner – On a challenge to seizure and penalty order – HELD: Department contended that penalty order passed ex parte contained some defects – Penalty order set aside and matter remitted to be decided afresh – Existence of documents disputed by Department and enquiry required to be conducted – Prim fa facie petitioner being registered dealer in state of U.P., no

useful purpose would be served in allowing goods to continue under detention – Direction for release of goods and vehicle subject to petitioner's furnishing of indemnity bond to satisfaction of proper officer for value of goods seized – Sections 129(1) and 129(3) of Uttar Pradesh Goods and Services Tax Act, 2017 – Article 226 of Constitution of India. **[SAPNA GOODS CARRIER VS. UNION OF INDIA, 2018(10) G.S.T.L. 539 (ALL.)]**.

- Cenvat credit of Service Tax – Common input services used for manufacturing activity of finished goods and trading activities – Failure to maintain separate accounts. Period prior to amendment of provisions of Cenvat Credit Rules, 2004 by insertion of an explanation with effect from 1-4-2011 – Responsibility of assessee to follow provision of said Rules – Rule 9(6) of Cenvat Credit Rule, 2004 requires maintenance of records – Trading neither services nor exempted services during the material time – Assessee could not take credit on input services utilised for trading activity as it was not covered by Cenvat Credit Scheme with reference to such activity – Cenvat Credit Scheme itself applicable to excisable finished goods and output services – Taking credit on services utilised either wholly or partly to activity not covered under services not tenable – Matter remitted back to adjudicating authority to quantify amount on the basis of Rule 6(3A) of Cenvat Credit Rules, 2004 along interest. Demand – Limitation – Extended period – Wrongful availment of Cenvat credit – Till fiction introduced stating trading was exempted service by "Explanation" introduced with effect from 1-4-2011 in Cenvat Credit Rules, 2004 trading activity could not have been considered as a taxable service or exempted service – Credit of duty paid on input services consumed for trading activities could not have been availed or taken for discharging Services Tax on



services provided by assessee – No scope for any interpretational misconception on this aspect – Invocation of extended period without any error – Section 73 of Finance Act, 1994 – Rule 14 of Cenvat Credit Rules, 2004. **[AKSH OPTIFIBRE LTD. VS. COMMISSIONER OF CENTRAL EXCISE, JAIPUR-I, 2018 (10) G.S.T.L. 551 (TRI. – DEL.)].**

- Demand – Adjustment of excess and short paid Cenvat credit – Appellant has short paid the Service Tax during some periods but paid excess in many other months – Appellant had taken centralized registration and have been paying Service Tax every month on the basis of provisional determination of liability – Subsequently, the correct liability has been reflected in the relevant ST-3 returns – Appellant entitled to adjustment of excess and short paid Cenvat credit and will be liable to pay the Service Tax only to the extent of net demand if any - Matter remanded to Adjudicating Authority for verification and determination of net Service Tax payable. Cenvat Credit – Irregular availment of Cenvat credit – Show cause notice proposes disallowance of Cenvat credit on the ground that credit have been availed in the absence of details of input service providers as well as

the number and date of document – Commissioner had travelled beyond the show cause notice and has disallowed as part of credit in respect of services, which he consider to be other than input services – Adjudicating Authority is not allowed to travel beyond the allegations made in the show cause notice and to deny the credit altogether new ground. **[SYNDICATE BANK VS. COMMISSIONER OF CENTRAL EXCISE, MANGALORE [2018 (10) G.S.T.L. 555 (TRI. – BANG.)].**

- Incentive/Bonus received on sale of goods – whether liable to tax – Valuation (Service Tax) – Manufacturer as well as service provider - Bonus for the fulfilment of contractual obligation, inclusion of – Revenue alleging additional amount received to depress assessable value of goods cleared liable to Services Tax – HELD : No nexus brought out by Revenue to prove consideration received in relation to clearance of goods – In absence of such element, Revenue not to allege incentives received towards assessee's efficiency, sale price to levy duty – Section 67 of Finance Act, 1994. **[THERMAX LTD. VS. COMMISSIONER OF CENTRAL EXCISE, PUNE-I, 2018 (10) G.S.T.L. 567 (TRI. – MUMBAI)].**

Points to note at the beginning of the new F.Y. 2018-19:

- The exporter need to submit a fresh LUT for export of goods or/and services without payment of IGST
- The supplier, buyers, transporter of goods shall register on E-way Bill portal and start generating e-way bill for Interstate supply of goods
- The new series of invoices shall be generated for the financial year which should be as per the format accepted by GST portal which should not contain more than 16 digit and can be alphanumeric.
- Reconciliation shall be done between books of accounts and returns filed for the previous financial year
- Ensure that payment of purchase invoices is done within 180 days from the issue of invoice otherwise do the reversal of input tax credit, if required to avoid interest liability.