



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.

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GST Handholding

*Intra-state e-way bill introduced from
3rd June, 2018 throughout the country*

General Updates

- Facility to intimate payment made voluntary or made against SCN or statement has been enabled on GST Portal which will enable a taxpayer to make voluntary payments, before issue of notice u/s 73 or 74 of the CGST Act, 2017.
- Taxpayer is required to fill in the ARN of their Form GSTR 1, or Table 6A of Form GSTR 1, by which export invoices were submitted in table 6A, to track and see the information about status of refund process
- GST Council approved the simplified format of GST Return - known as the Fusion Model.
- The total Gross GST revenue collected in the month of April 2018 is Rs.1,03,458 crore.
- Creation and submission of Form GSTR 6 statement, in offline tool, is now available on GST Portal to persons registered as Input Services Distributors.
- Taxpayers whose turnover is above 1.5 Cr. and who have wrongly selected option as quarterly filing, now has been provided with facility to change the option to monthly, provided the taxpayer has not filed any return, as per wrongly selected quarterly option of filing return.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Circular No. 44/18/2018-CGST**, **dated 2-5-2018** held that transfer of tenancy rights to a new tenant against considerations in the form of tenancy premium is taxable.
- The CBIC vide **Circular No. 209/ 1/2018- S.T.**, **dated 4-5-2018** held that services where data, instructions etc. and services involving testing, debugging, so as to develop software and services of software- Place of Provision of services Rules, 2012 is the location of recipient of the service.
- The CBIC vide **Press Release No. 156/2018**, **dated 4-5-2018** held inter alia, principles for filing of new return as follows:
 1. All taxpayers except composition dealer shall file one monthly return.
 2. Unidirectional flow of invoices uploaded by the seller during the month would be valid document to avail input tax credit.
 3. B2B dealers will have to fill invoice- wise details of the outward supply made by them, based on which system will automatically calculate his tax liability.
 4. No automatic reversal of input tax credit from buyer on non-payment of tax by the seller.
 5. Recovery of tax or reversal of input credit shall be through a due online and automated process of issuing notice and order.
 6. The present system of filing of return GSTR-3B and GSTR-1 will continue for a period not exceeding 6 months.
 7. Uploading of invoices by seller to pass input tax credit who has defaulted in payment of tax above threshold limit shall be blocked to control misuse of input credit facility.
- The CBIC vide **Notification No. 25/2018 – Central Tax** **dated 31-05-2018** has extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 for the months of July, 2017 to June, 2018, till the 31st day of July, 2018.
- The CBIC vide **Notification No. 22/2018-Central Tax**, **dt. 14-05-2018** has waived the late fee for filing GSTR-3B for the months from October, 2017 to April, 2018.
- The CBIC vide **Notification No. 23/2018-Central Tax**, **dt. 18-05-2018** extended the due date for filing of FORM GSTR-3B for the month of April, 2018 from 20th May to 22nd May, 2018.



- The CBIC vide **Circular No. 3/1/2018-IGST dated 25.05.2018** has clarified the procedure for applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse-reg.
- CBE&C vide **Circular no. 3/1/2018- IGST dated 25.5.2018** clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry. And therefore, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax.
- The CBIC vide **Circular No. 45/19/2018-GST dated 30th May, 2018** has clarified on refund related issues.
 1. In case of refund claim by ISD, for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in FORM GSTR-1 and the return in FORM GSTR-3B is not mandatory. Instead, the return in

FORM GSTR-4 filed by a composition taxpayer, the details in FORM GSTR-6 filed by an ISD and the return in FORM GSTR-5 filed by a non-resident taxable person shall be sufficient for claiming the said refund.

2. In case Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal.

3. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess, cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

4. It is clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.



Case Laws

CUSTOMS

- CUS - The assessee imported some Petrochemical derivatives which they declared as Polypropylene mopen HP-546J. The assessee claimed to be eligible to utilize duty-free import authorization licenses. The Department did not permit de-stuffing & release of the imported goods, on grounds that the DRI was enquiring into whether the goods were duty-free. Subsequently, the Department imposed certain conditions for releasing the goods. Although the assessee satisfied the conditions for release, the Department did not oblige it. **Held** - The conditions imposed for release of the goods have been satisfied on payment of cash as well as invocation of the bank guarantees. It cannot be held that the assessee took additional advantage of the orders passed by the Court at the interim stages of the two writ proceedings as withdrawal of the writ petitions is being prayed for at a stage when the entire sum has been realized by the authorities, which was asked for as duty. The payments made so far is subject to any further adjudication if such adjudication is made in future in accordance with law. The payment already made thus shall not be treated as finally determined duty in such a situation: HC [Pushkar Impex Pvt Ltd V/s. CC, 2018-TIOL-992-HC-KOL-CUS (HC – Calcutta).]
- CUS - The assessee company imported PVC roll mats and PVC Carpets. The Department refused to accept the value of the goods as declared by the assessee. It insisted that the assessee accept loaded value. Request for provisional release of the goods was denied. When importing a subsequent consignment, the assessee experienced the same encumbrance. When it decided to pay duty as per loaded value, the Department did not pass an appealable order against such goods, as contemplated u/s 17(5) of the Customs Act. Thus the assessee was unable to challenge such demand before the appellate authority. **Held** - The goods be released conditional upon execution of bank guarantee for payment of balance duty. The Department is directed to examine whether duty paid as per loaded value was paid under protest. HC [Quality Traders Vs CC, 2018-TIOL-1026-HC-KERALA-CUS (HC – Kerala)].
- CUS - The Assessee is engaged in the business for using lining material in hand bags, brief cases & jewellery boxes. The import of goods & fabric was restricted as per the provisions of Import Export Policy 1985-88. The Central Government had framed a policy of encouraging the export of leather goods,



according to which, exporters of leather goods were entitled to obtain import licenses for replenishment of input requirements for export products i.e. leather goods. The Assessee placed an order with a foreign supplier, in Korea for total import of lining material - On arrival of the goods at the port and an order for first check examination of the goods was passed to ascertain the description and nature of the goods and to forward a sample of the goods for analytical test - On inspection of the goods imported it was found that they were "Nylon Flocked Member Tricot Fabrics". In the invoices, the goods were declared as Art Solk Fur cloth. Further, there were certain discrepancies in the net weight and length of the goods imported. The exercise of inspection & examination took place with the knowledge of the Assessee. The Department opined that the modus operandi of the Assessee was to illegally import high quality fabric to be used in garment industry and divert them in the local market to reap huge profit at the cost of Government exchequer. **Held** - The conclusion reached by the Revenue on inspection, examination and test of the imported material wherein serious discrepancies were noted, is factual in nature. Hence, it is not a fit case for interference in writ jurisdiction: HC [Mina of India V/s. Uol, 2018-TIOL-951-HC-MUM-CUS, (HC – Bombay)].

- Two petitioners were detained u/s 3 of the COFEPOSA. They claimed that they were provided soft copies of relevant Relied Upon Documents (RUDs) & that such documents were put in a CD. The petitioners claimed that they were not provided any hardware like laptop, computers or CD players to open & read such CDs. Thus they claimed to be unable to access the documents relied upon by the authorities when passing the detention order. On this ground, the petitioners challenge the detention order. **Held** - RUDs are an integral part of Grounds of Detention, which contain the justification provided by the detaining authority for explaining the need to detain the person. Such justifications provided are to satisfy the necessity of Article 22(5) of the Constitution as well as Section 3(3) of the COFEPOSA. Thereby, it is obligatory for the detaining authority to supply copies of all RUDs to a detained person. The documents supplied through a CD are not per se readable to the human eye and require the use of additional equipment. Hence, to enable the petitioners to be able to access the documents, the necessary equipment for reading the CD should have been provided as well. Hence, the detention of the petitioners cannot be sustained and so the detention orders are set aside: HC [Dharaneesh Raju Shetty Vs Uol, 2018-TIOL-934-HC-DEL-COFEPOSA, (HC – Delhi)]



- Cus - Anti-dumping duty - The Act, the Rules and the Implementing Agreement sanction a legal regime for protective measures but not for protectionism. Infusion of fresh life into the levy for a period of one year requires a fresh notification, in addition to the notification for initiation of the Sunset Review. Levy under impugned Notification No. 17/2013 is without authority, hence it has to be and is set aside. Likewise, the second notification 35/2014 imposing Anti-Dumping Duty for a period of five years too cannot be sustained because it has to be issued within the period of first five years or in the extended one year period of Sunset Review in which the earlier existing duty has been extended. There would have to be a duty in existence for it to be extended, therefore, there could be no imposition of Anti-Dumping Duty for a further period of five years under the first proviso of Section 9A(5) of the Act. Three month period in rule 18(1) of Customs Tariff (Identification, Assessment and Collection of Anti-dumping duty on dumped articles and for determination of Injury) Rules, 1995 is not a stand-alone authorization to the Government. It has to be harmoniously read with the strict timeline fixed in the statute under section 9A(5) of the Customs Tariff Act, 1975 - The thread of the existing duty has to continue from the initial five year levy to the one year extended period of Sunset Review to the proposed five year period and there should be no break in between. In the present case, there are two breaks, therefore, Rule 18(1) does not and cannot be read to lend any authority or power to the Central Government to issue Customs Notification No. 35/2014 which is illegal and, accordingly, set aside: HC **[Forech India Ltd Vs Designated Authority, (HC – Delhi)]**
- Cus - the assessee herein was aggrieved by an Order-in-Original & alleged violation of the principles of natural justice. He claimed that the appellate authority denied him the opportunity to present the requisite documents. **Held** - the assessee was served an SCN, which was followed by an Order-in-Original - Thereupon the assessee approached the appellate authority - At both stages, the assessee failed to produce the requisite bank statements as required under law - Hence the actions of the two authorities are not vitiated by the principles of natural justice: HC **[Wakil Ahmed Vs Uoi, 2018-TIOL-1051-HC-KOL-CUS, (HC – Delhi)]**



GST

- GST is required to be paid at 18% on entire value of composite supply: AAR – Applicant is a supplier of materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up of sub-stations collectively called Tower Package - applicant also raises separate freight bills on contractee and wants a ruling on whether they are liable to pay tax on such freight bills - contention of applicant is that since they are not a goods transport agency (GTA), they are exempt in terms of Notification No. 9/2017-IT (Rate) dated 28/06/2017 from payment of tax on such freight bills. **Held:** As Applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, GST is required to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc. AAR **[West Bengal AAR, Applicant – EMC Ltd. 2018-TIOL-31-AAR-GST]**
- Applicant is a re-seller and Importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc. having Head Office in West Bengal. Goods, namely, Optical Lenses and Frames for Spectacles and Accessories, are transferred from the Head Office in West Bengal to its branches in other states - Advance Ruling has been sought on whether such goods supplied to the branches in states other than West Bengal can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of the same Rule.
Applicant has the option of not supplying goods to its branches under the first Proviso of Rule 28 and is eligible to value these goods by applying the terms of the second Proviso to Rule 28 of CGST Rules: AAR **[West Bengal AAR, Applicant - GKB Lens Pvt. Ltd. 2018-TIOL-42-AAR-GST]**
- Applicant is printing, content supplied by the customers, on photographic paper - Advance Ruling is sought regarding the nature and classification of the activity – whether it is supply of goods or service and whether the activity carried out by the Applicant is taxable under HSN 4911 or SAC 9989. **Held:** Activity carried out by Applicant of “printing of photographs from media” is classifiable under SAC 9989; is taxable at CGST @ 6% under Serial No. 27 (i) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 & equivalent SGST@6%: AAR **[West Bengal AAR, Applicant – Photo Products Company Pvt. Ltd. 2018-TIOL-41-AAR-GST]**



- IGST - the petitioner purchased some goods from Tamil Nadu and transported them to the second petitioner located in Kerala - The goods were detained in transit, u/ S. 129 of the Kerala GST Act, 2017 - SCN was issued raising demand for IGST with penalty - The petitioners were aggrieved by the supposed inaction of the authorities in completing adjudication u/s 129 of the Act with regard to the detained goods. **Held** - The relevant officer is directed to consider the petitioner's objections to such detention - Entire adjudication process to be completed within two weeks' time: HC **[Manjunathaa Rock Drills V/s. Assistant State Tax Officer, 2018-TIOL-43-HC-KERALA-GST (HC – Kerala)]**
- GST - a consignment of marble, granite slabs & tiles was detained - Later, detention notice was issued to the assessee u/s 129(3) of the CGST Act, 2017 - The assessee claimed that the defect in the notice was purely technical - That the vehicle details were not updated in the e-Way bills - The assessee claimed that such defect did not warrant detention of goods, particularly without there being any evasion of tax. **Held** - Goods detained under a detention notice issued under CGST or SGST, cannot be released without furnishing security equivalent to the duty demand raised - Hence assessee directed to deposit bank guarantee, upon payment of which, the goods & vehicle would be released - Department to then adjudicate upon imposition of penalty: HC **[Kairali Granites V/s. Assistant State Tax Officer, 2018-TIOL-40-HC-KERALA-GST (HC – Kerala)]**
- GST - Alleged evasion of SGST and CGST - Single Judge ordered release of the vehicle and goods by executing a simple bond - State has challenged the order contending that it is passed overlooking Rule 140 of the SGST Rules. Held: On a reading of Rule 140, Division Bench of High Court is of the view that the impugned order has to be modified - In the absence of any challenge against the rules, the goods and vehicle can be released only in accordance with Rule 140 - Therefore, interim order modified directing to release the goods and vehicle either on furnishing the bank guarantee or depositing the amount demanded - HC **[State Tax Officer (INT) V/s. Kerala Gujarat Cargo Express, 2018-TIOL-39-HC-KERALA-GST (HC – Kerala)]**
- GST - the assessee company is engaged in mining Limestone, further used to manufacture Cement & for which High Speed Diesel (HSD) is used - The assessee is permitted to purchase goods during inter-state trade, at rates specified u/s 8(1) of the CST Act 1956 - Prior to introduction of GST, the Department would issue C-Forms to the assessee for



the goods covered u/s 2(d) of the CST Act 1956 - Such C-Form would be used for purposes of Section 8 of the CST Act - The assessee claimed that after the transition to GST, the C-Form was not being issued - Attempts to obtain C-Form showed an error message on the website stating that the invoice date should be prior to July 1, 2017 - Hence the present writ - **Held** - In the present case, the assessee's registration certificate under the CST Act continues to be valid for purposes of inter-State sale & purchase of HSD, even after migration to GST - The definition of goods u/s 2(d) of the CST Act had been amended to include HSD, prior to the introduction of GST - Besides, the GST Council made no representation to bring HSD under the ambit of GST - Thus the assessee's registration certificate under the CST Act is still valid for goods mentioned u/s 2(d) of the CST Act, which includes HSD - Hence the assessee is entitled to C-Form for inter-state purchase of HSD against the C-Form HC [Shree Raipur Cement Plant V/s. State Of Chhattisgarh, 2018-TIOL-37-HC-CHHATTISGARH-GST (HC – Chhattisgarh)]

- GST - GST is applicable on Liquidated damages levied in case of delay on the part of the contractor to provide materials services (in respect of Operation and Maintenance activities) and construction of new power plants or renovation of old plants - Same is

classifiable under HSN Code 9997 (Other services) and chargeable @9% in terms of Sl. No. 35 of Notification 11/2017-CGST(R) - Time of supply would be when the delay in successful completion of trial operation is established on the part of the contractor and decision to impose liquidated damages is taken - as to the question as to whether GST will be applicable to the liquidated damages imposed for entire period of delay or to the period falling after GST roll-out, section 13(1) of the CGST Act, 2017 provides that the liability to pay tax on services shall arise at the time of supply - since no precise facts are available, section 14 of the CGST Act, 2017 would have to be referred to - as to whether the contractor/vendor will be able to utilize the amount of Liquidated damages imposed over him as ITC, the question is left unanswered as the proper person to raise this question is the contractor/vendor and not the appellant: AAR [Maharashtra AAR, Applicant - Maharashtra State Power Generation Company Ltd. 2018-TIOL-33-AAR-GST]

- GST - Hotel Accommodation & Restaurant services provided by the Applicant, within the premises of the Hotel, to the employees & guests of SEZ units - rendition of such services cannot be said to have been 'imported or procured' into SEZ Unit/Developer by any stretch of imagination - supply is, therefore,



intra state supply and is taxable accordingly: AAR
[Karnataka AAR, Applicant – Gogte Infrastructure Development Corporation Ltd. 2018-TIOL-29-AAR-GST]

- GST - Works Contract Service of maintaining existing railway tracks is classifiable under Heading 9954, Group 99542, Sub-group 995429 and taxable @18% under Sr. no. 3(ii) of Notification 11/2017-CT(R). AAR **[West Bengal AAR, Applicant – Sreepati Ranjan Gope And Sons 2018-TIOL-28-AAR-GST]**
- CGST Act, 2017 – Section 171 - Anti-profiteering - ITC available to the respondent as a percentage of the total value of taxable supplies was between 2.69% to 3% whereas GST on the outward supply of Basmati Rice was 5% which was not sufficient to discharge the tax liability – moreover, there was an increase in the cost of purchase price of paddy - there has been no net benefit of ITC available to the respondent which could be passed on to the consumers – no case of profiteering made out **[Kumar Gandharv V/s. KRBL Ltd., 2018-TIOL-02-NAPA-GST (National Anti-Profiteering Authority)]**
- GST - the applicant supplies educational books for increasing linguistic fluency in children - It raised the question as to whether such books are classifiable

under HSN 4820 as 'Exercise Books' or under HSN 4901 as 'Printed Books' & HSN 4903 - The other issue is whether the applicant is liable to pay GST on the same - Considering their nature & purpose, the books are correctly classified under HSN 4820 - Hence they are not covered under Entry Nos 119 or 121 of Notfn No 2/2017- Central Tax (Rate) & corresponding SGST & IGST Notfns - Nonetheless, applicant is liable to seek registration if it has GST liability under reverse charge, even if it is not liable to pay GST on supplying such books: AAR **[Delhi AAR, Applicant - Sonka Publications (India) Pvt. Ltd 2018-TIOL-30-AAR-GST]**

- GST - Dried Tobacco Leaves which have undergone the process of curing after harvesting of tobacco leaves are 'unmanufactured tobacco' (HSN 2401) - they are not covered under Sl. No. 109 of Schedule-I of Notfn. 1/2017-CT(R) but under Sl. No. 13 of Schedule-IV and attract @14% CGST + 14% SGST or 28% IGST: AAR **[Delhi AAR, Applicant – Shalesh Kumar Singh 2018-TIOL-25-AAR-GST]**
- GST – Applicant having three manufacturing units situated at Ramanagara, Hiriyur and Bengaluru (Seshadripuram) intend to sell the unit situated at Hiruyur along with all its fixed assets namely land, building, plant and machinery etc., current assets namely stock & trade receivable etc. and liabilities



namely, bank term loans, bank working capital loans, creditors for supplies etc. for a lumpsum consideration – such transaction of transfer of one of the units of the applicant as a going concern amounts to supply of service and is covered @ Nil rate under Sl. No. 2 of the Notification 12/2017-CT(R) subject to the condition that the unit is a going concern as the applicant has only asserted but not proved or shown conclusively that the transaction involves a going concern - Application disposed: AAR **[Karnataka AAR, Applicant - Rajashri Foods Pvt. Ltd 2018-TIOL-36-AAR-GST]**

- GST – Applicant is a cardiology specialized hospital running on a premises taken on lease and are providing cardiology related, life-saving health care services to the patients and which output services are exempt from GST – They have also taken premises of one floor on rental basis from existing building of Mallige Hospital for heart care services only –

Applicant seeks advance ruling on the question whether GST is leviable on the rent payable by a Hospital catering to life saving services. **Held:** Applicant has taken the premises on lease and running exclusive heart care center and providing health care services on commercial basis – impugned service of Rental or leasing services involving own or leased non-residential property is classified under heading SAC 997212 and is taxable under GST – Further no specific exemption is available in respect of the said service under any notification for the time being in force – also there is no provision in the Act which allows exemption on an Input service if the Output service provided by the taxable person is exempt – GST is, therefore, leviable on the rent paid/payable for premises taken on lease by the applicant: AAR **[Karnataka AAR, Applicant – Tathagat Health Care Centre Llp. 2018-TIOL-35-AAR-GST]**.
