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INDIRECT TAX UPDATES

RSA Legal Solutions

16th October 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.

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General Updates

- Govt. plans to bring realty sector under the ambit of GST soon
- Leased vehicles to now attract GST of 65% of the applicable GST rate
- Tax department seeks details of transitional credit data
- Govt. has notified NIL rate for GTA service to unregistered person
- Display of GST number must from November: CBEC
- Govt. has suspended RCM in case of supplies from unregistered persons
- Businesses with turnover of up to Rs 1 crore can opt for the composition scheme
- Govt. has notified nil rate on supply of Duty Credit Scrips
- RBI on GST: Adverse impact on manufacturing, may delay investment revival
- Offline utility of GSTR-2 has been made available on gst.gov.in



Key Notifications/Circulars/Public Notice

- CBEC has specified the conditions and safeguards for furnishing a Letter of Undertaking in place of a Bond by a registered person who intends to supply goods or services for export without payment of integrated tax under rule 96A of the Central Goods and Services Tax Rules, 2017 subject to certain conditions and safeguards. This notification has been issued in supersession of Notification no. 16/2017 – Central Tax dated 7th July, 2017 except as respects things done or omitted to be done before such supersession. **NOTIFICATION NO. 37 /2017 – Central Tax, dated: 4.10.2017**
- The last date for filing GSTR-1 for the month of July, 2017 was 10th October, 2017 and it is not extended further. **PRESS RELEASE, dated: 09.10.2017**
- Instruction regarding refund of IGST paid on exports of goods under rule 96 of the CGST Rules 2017 have been issued by the CBEC. It also states that the process for giving refund for the exports done in July shall start from 10.10.2017. **INSTRUCTION NO. 15/2017- Custom, dated:13.10.2017**
- CBEC has exempted payment of tax under reverse charge mentioned under Section 9(4) of the CGST Act, 2017 till 31.03.2018. **NOTIFICATION NO. 38/2017- Central Tax (Rate), dated: 13.10.2017**
- The process of giving out refund of IGST paid on exports in July through PFMS portal cannot initiate from 10.10.2017 due to ongoing migration of existing hardware and software infrastructure of PFMS rather it has been directed to use the existing tax refund payment system for refund payment of IGST on exports w.e.f. 10.10.2017 till 14.10.2017 and the PFMS portal would start from 16.10.2017. **INSTRUCTION 16/2017- Customs, dated 9.10.2017**
- **Press Release by the Ministry of Finance, dated: 06.10.2017**, wherein the GST Council allowed small companies and traders to file quarterly returns instead of monthly submissions, expanded the scope of the Composition Scheme for paying GST and made it easier for exporters to claim tax refund also the tax rate on over two dozen goods and services categories have been slashed
- CBEC has issued to provide clarification on issues related to furnishing of Bond/Letter of Undertaking for exports. In order to maintain uniformity in the procedures related to export, this Circular has revised the Circulars viz. Circular no. 2/2/2017 – GST dated 5.07.2017, Circular no. 4/4/2017 – GST dated 7.07.2017 and Circular no. 5/5/2017 – GST, dated 11.08.2017. **CIRCULAR NO. 8/8/2017-GST, dated: 4.10.2017.**
- CBEC has issued clarification on issues related to furnishing of Bond/Letter of Undertaking for exports. In order to maintain uniformity in the procedures related to export, this Circular has revised the Circulars viz. Circular No. 2/2/2017 – GST dated 5.07.2017, Circular No. 4/4/2017 – GST dated 7.07.2017 and Circular No. 5/5/2017 – GST dated 11.08.2017. **CIRCULAR NO. 8/8/2017 - GST, dated: 4.10.2017**



- CBEC has exempted payment of tax under reverse charge mentioned under Section 5(4) of the IGST Act, 2017 till 31.03.2018. **NOTIFICATION NO. 32/2017- Integrated Tax (Rate), dated: 13.10.2017**
- CBEC has increased the turnover limit to 1 crore from 75 lakh for composition scheme by amending N/No. 8/2017-Central Tax, dated 27.6.2017 **NOTIFICATION NO. 46/2017-Central Tax, dated: 13.10.2017**
- CBEC has cross-empowered the state officers for processing and grant of GST refund. **NOTIFICATION NO. 39/2017- Central Tax, dated: 13.10.2017 and NOTIFICATION NO. 11/2017- Integrated Tax, dated: 13.10.2017**
- Time limit for filing FORM GSTR-6 by an ISD for the months of July, August and September, 2017 has been extended to November 15, 2017. **NOTIFICATION NO. 43/2017- Central Tax, dated: 13.10.2017**
- Time limit for submission of FORM GST ITC-01 for the months of July, August and September, 2017 has been extended to October 31, 2017. **NOTIFICATION NO. 44/2017- Central Tax, dated: 13.10.2017**
- CBEC has notified the payment of tax on issuance of invoice by registered persons having an aggregate turnover less than INR 1.5 crore. The requirement to pay tax on the advance received is dispensed with for them. **Notification No. 40/2017- Central tax, dated: 13.10.2017**
- CBEC has amended the CGST Rules, 2017. Rule 46A which provides for issuance of 'Invoice cum bill of supply while making supplies to unregistered person has been inserted. **NOTIFICATION NO. 45/2017- Central Tax, dated: 13.10.2017**
- CBEC has exempted persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of 20 lakh rupees (10 Lakh rupees in case of special category states) from obtaining registration under Section 23(2) of the CGST Act. **Notification No. 10/2017- Integrated Tax, dated: 13.10.2017**
- CBEC have added certain items have been added to the list of 'handicraft goods'. **NOTIFICATION NO. 38/2017- Central Tax, dated: 13.10.2017 and NOTIFICATION NO. 9/2017- Integrated Tax, dated: 13.10.2017**
- Time limit for filing of FORM GSTR-4 by composition dealer for the quarter July to September, 2017 has been extended till November 15, 2017. **NOTIFICATION NO. 41/2017- Central Tax, dated: 13.10.2017**
- CBEC has amended the N/No. 9/2017- Integrated Tax (Rate), dated: 28. 06. 2017 by exempting the services provided by a goods transport agency to an unregistered person. **NOTIFICATION NO. 33/2017- Integrated Tax (Rate), dated: 13.10.2017**
- CBEC has amended N/No. 2/2017-Integrated Tax (Rate), dated: 28.06.2017 by exempting Interstate supplies of Duty scrips. **NOTIFICATION NO. 36/2017-Integrated Tax (Rate), dated: 13.10.2017**



- CBEC has prescribed rates of BCD and IGST on certain products by amending N/No. 50/2017-Cus, dated: 30.06.2017 to **NOTIFICATION NO. 77/2017-Cus, dated: 13.10.2017**
 - CBEC has amended N/No. 8/2017- Integrated Tax (Rate), dated: 28.06.2017 by prescribing GST rates for work contract services, passenger transport Services, rental services of transport vehicles and leasing of motor vehicles vide **NOTIFICATION NO. 39/2017-Integrated Tax (Rate), dated: 13.10.2017**
 - CBEC has amended N/No. 1/2017- Integrated Tax (Rate), dated: 28.06.2017 by prescribing rates for various products. **NOTIFICATION NO. 35/2017-Integrated Tax (Rate), dated: 13.10.2017**
 - CBEC has amended N/No. 2/2017- Central Tax (Rate), dated: 28.06.2017 by exempting supplies of Duty scrips. vide **NOTIFICATION NO. 35/2017-Central Tax (Rate), dated: 13.10.2017**
 - CBEC has amended N/No. 12/2017- Central Tax (Rate), dated: 28.6.2017 by exempting the services provided by a goods transport agency to an unregistered person vide **NOTIFICATION NO. 32/2017-Central Tax (Rate), dated: 13-10-2017**
 - CBEC has provided exemption to goods imported by EOUs from IGST and compensation cess. **NOTIFICATION NO. 78/2017- Cus, dated: 13.10.2017**
 - CBEC has amended various custom notification viz. N/No.16/2015-Cus, dated: 1.4.2015, N/No 18/2015-Cus, dated: 1.4.2015, N/No. 20/2015-Cus, dated: 1.4.2015, N/No.21/2015-Cus, dated: 1.4.2015, N/No. 22/2015-Cus, dated: 1.4.2015 and
- N/No.45/2016-Cus, dated: 14.8.2016. **NOTIFICATION 79/2017 -Cus, dated: 13.10.2017**
 - CBEC has amended N/No. 2/2017-Compensation Cess (Rate) dated: 26.8.2017 regarding reduction in cess rates for leasing of motor vehicles purchased and leased prior to 01.07.2017. **NOTIFICATION NO. 06/2017-Compensation Cess (Rate), dated: 13.10.2017**
 - CBEC has prescribed compensation cess rate on the leasing of motor vehicles. **NOTIFICATION NO. 07/2017-Compensation Cess (Rate), dated: 13.10.2017**
 - CBEC has amended N/No.11/2017-Central Tax (Rate), dated 28.06.2017 by prescribing GST rates for work contract services, passenger transport Services, rental services of transport vehicles and leasing of motor vehicles vide **NOTIFICATION NO. 31/2017-Central Tax (Rate), dated: 13.10.2017**
 - CBEC has amended N/No. 1/2017-Central Tax (Rate), dated 28.06.2017 by prescribing rates for various products vide **NOTIFICATION NO.34/2017-Central Tax (Rate), dated: 13.10.2017**
 - CBEC has prescribed GST rate on the leasing of motor vehicles. **NOTIFICATION NO.37/2017-Central Tax (Rate), dated: 13.10.2017 and NOTIFICATION NO.38/2017- Integrated Tax (Rate), dated: 13.10.2017**
 - CBEC has extended the time limit for filing of FORM GSTR-5A for the months of July, August and September, 2017 has been extended to 20.11.2017 vide **NOTIFICATION NO.42/2017-Central Tax, dated: 13.10.2017**



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.S. STATE OF KARNATAKA [2017-TIOL-02-SC-GST]**
- GST - Press Release issued by the Ministry of Finance dated 6th October 2017 setting out the relief package announced for exporters by the Goods and Service Tax Council ("GST Council") at its 22nd Meeting held on 6th October 2017 is placed before the High Court by the Counsel for UOI; also informed that formal notification, in all probability, would be issued in immediate future – Petitioner states that notwithstanding the above relief measures announced by the GST Council on 6th October 2017, the situation on the ground remains the same; that Petitioner was not permitted to clear the goods viz. Gold bars without payment of IGST of Rs. 58,58,345/- and that the Petitioner's protest to the authorities was to no avail. Held: High Court directs that, in view of the aforementioned press release dated 6th October 2017, which prima facie makes no distinction as regards the Advance Authorisations (AA) issued prior to or after 1st July 2017, the Petitioner will not hereafter be required to pay IGST in respect of the imports of gold bars made by it in terms of the AAs issued to it - interim relief is granted subject to the Petitioner furnishing to the Respondent authorities a letter of undertaking that the clearance of the imported goods in terms of the AA will be subject to the final result of the present petition – Matter listed on 28 November 2017: High Court. **JINDAL DYECHEM INDUSTRIES PVT LTD VS UOI [2017-TIOL-22-HC-DEL-GST]**
- GST - No appearance on behalf of the GST council although dasti was served - CGSC appearing for UOI stated that he has no instructions to appear on behalf of GST council - since it is also not known as to whether the GST council has disposed of the petitioner's representation, the High Court is constrained to direct the Secretary of the GST Council to remain present in Court on the next date of hearing - Matter listed on 6 November 2017: High Court. **HUGHES & HUGHES CHEM LTD VS UOI [2017-TIOL-21-HC-DEL-GST]**
- GST - Petitioners are dealers and importers of manufactured goods - They have challenged condition contained in section 140(3)(iv) of the CGST Act, 2017 - It is the case of the petitioners that they have sizeable stock of goods purchased prior to twelve months preceding the said appointed date of 1st July 2017, however, with the introduction of GST, the petitioners can avail CENVAT credit only in respect of stock of goods lying with them, on which the purchases were



made not earlier than one year - inasmuch as by virtue of the said condition contained in section 140(3)(iv) of the CGST Act, 2017, no CENVAT credit is admissible to them. Held: Notice issued returnable on 17.11.2017 - notice issued to

Attorney General also as legislation framed by the Parliament is under challenge: High Court. **FILCO TRADE CENTRE PVT LTD VS UOI [2017-TIOL-20-HC-AHM-GST]**

Customs

- Export rebate –Claim of-Merchant exports-Goods not exported directly from factory or warehouse – Verification of identity of goods, its duty paid character and all other particulars-HELD: According to para 8.4 CBEC Circular No.294/10/97-CX stage for such verification is prior to export of goods-Jurisdictional Officer of range of factory from where excisable goods were originally cleared on payment of duty has to requisition from manufacturer turer relevant invoices/duty paying documents, and certify their correctness on triplicate and quadruplicate copies of AR-4- This condition does not require correlation of exported goods with goods cleared from factory of manufacturer –This co-relation is obligation of jurisdictional officer of storage premises of merchant exporter-Notification No.19/2004-C.E.(N.T)-Rule 18 of central Excise Rules,2002.Export rebate-Claim of-Merchant exports-Goods not exported directly from factory or warehouse –Verification of goods-Goods may not have mark /batch no., etc.,in absence of statutory obligation of manufacturer –Hence ,such obligation cannot be read on part of buyer/trader –plea that merchant exporter has to resolve problem of lack of distinguishing mark and correlation of goods with invoices, rejected.

SHAKTI SHIPPING INTERNATIONAL V.S. UNION OF INDIA [2017(354) E.L.T.167 (Guj.)]

- Drawback Manner and time for claiming drawback –Deficiency memo issued stating that Department did not agree with classification and self-assessment of exported goods as made by exporter –HELD: Deficiency memo did not relate to either of two eventualities mentioned in Rule 13(3) of Custom , Central Excise Duties and Service Tax Drawback Rules,1995 Question of raising dispute with regard to classification and self-assessment would not arise-Memo travelled much beyond scope of Rule 13(3) ibid-Drawback claim has been partly allowed and in respect of remaining part, deficiency memo had been issued –If claim for drawback was deficient, it was required to be returned together with deficiency memo calling upon party to remove such deficiency-Approach adopted by Department not in consonance with provision of Rule 13 ibid – Deficiency memo contrary to Rule 13(3) ibid and quashed –Department directed to process claims and release drawback amount with interest as expeditiously as possible –Section 75 A of Custom Act,1962. **NEW PENSLA INDUSTRIES V.S. UNION OF INDIA [2017(354) E.L.T.231 (Guj.)]**



Service Tax

- Refund –Input services used in export-Denial of refund for drawback claimed on exported goods – Services used for export of goods not forming part of drawback claim –Assessee entitled for refund of service tax paid on specified services –Section 11B OF central excise Act ,1944 as applicable to services tax vide section 83 of finance Act ,1944.Refund claim –Input services used in export –Business Auxiliary services-Denial of refund claim for non-submission of agreement or contract showing commission agent located outside India provided services to exporter in relation to sale of goods-HELD : Notification specifying any other documents meaning thereby of invoices ,for commission paid, to serve condition of notification –Invoice of commission agent on record and condition of notification complied with-Assessee entitled for availing refund –Section11B of Central Excise Act ,1944 as applicable to service tax vide section 83 of Finance Act, 1944. **MITTAL INTERNATIONALS VS OF EX., ROHTAK/ GURGAON [2017(5) G.S.T.L.186 (Tri.-Chain.)]**
- Penalty under Section 78 of Finance Act, 1994,imposition of –Determination of service Tax liability under Section 73(4) ibid-HELD: penalty under such section may only be imposed when service Tax determined under sub-Section (2) of section 73 ibid penal provisions of impugned Section 78 ibid consequently not applicable – Even during the period 2005-06 penalty under Section 78 ibid not applicable in respect of Service Tax not liable to be paid but collected from services recipient –penalty imposed without any authority of law, and same not sustainable – penalty set aside –Section 78 of Finance Act, 1994. **G.V.ALURKAR V.S. COMMR.OF**
- **CENTRAL EXCISE & S.T.,KOHLAPUR[2017(5)G.S.T.L. 202 (Tri.-Mumbai)]**
 - Rule 6A of Service Tax Rules, 1994 ultra vires the Finance Act, 1994 hence invalid – Export of Service – Tour Operator service to foreign tourists visiting India and neighboring countries – Exemption during period from 1-7-201- to 1-7-2017 – Denial of in view of sub-rule (1)(d) of Rule 6A of Service Tax Rules, 1994m inserted w.e.f. 1-7-2012 vide Service Tax (Second amendment) Rules, 2012, stipulating ‘place of provisions of service’ to be ‘outside India’, for treating same as export of service’ – Services rendered outside taxable territory of India not amendable to Service tax by virtue of Section 66B read with 65(51), 65(52)and 64(1) & 64(3) of Finance Act, 1994 – Rule 6A ibid, by bringing within its ambit a non-taxable service, travelled beyond delegated rule making power under Section 94(2) (f) ibid, which permits making of rules in respect of ‘taxable service’ only – Hence, rule 6A ibid. being ultra vires Finance Act, 1994, declared invalid – Services provided by petitioners during relevant period held not amendable to Service tax –Article 226 of Constitution of India. **[Indian Association of Tour Operators Vs. Union of India. 2017 (5) G.S.T.L. 4 (Del.)]**
 - Cenvat credit of Service tax – Input service – Definition of - Service must be used by manufacturer/assessee in or in relation to manufacture of the assessee’s final product and clearance of the final product from the place of removal – Rule 2(1) of Cenvat Credit Rules, 2004. Demand and penalty – Limitation -No fraud or suppression – Complex question of law involved



- Not case of Revenue that assessee withheld any information for any mala fide reasons – Discretion by Tribunal setting aside demand for extended period along with penalty, not interfered with – Sections 73 and 78 of Finance Act, 1994 – Rule 15 of Cenvat Credit Rules, 2004. **[Maruti Suzuki India Limited Vs. Commr. of Central Excise, Delhi – III. 2017 (5) G.S.T.L. 18 (P&H)]**

- Cenvat credit of Service tax – Input services credit – job work – applicability of embargo created in Rule 6 of Cenvat Credit Rules, 2004 to activities exempted from payment of Service Tax under Notification No.8/2005-S.T., dated 1-3-200 – HELD: Such exemption though conditions, availed by assessee – Mischiefs of said Rule 6(3) ibid to be attracted - Notification No.8/2005-S.T. provides for exemption from Service Tax, when process undertaken not amounting to manufacture – No further follow up of service Tax liability at hands of principal manufacturer – Ratio adopted for Central Excise Notification No. 214/86-C.E. in respect of Central Excise duty exemption not to be applied to Notification No.8/2005-S.T to determine applicability of Cenvat Credit Rules, 2004 – No infirmity in impugned order – Rule 6(3) of Cenvat Credit Rules, 2004. **[Hema Engineering Industries Ltd.**

Vs. Commissioner of S.T., New Delhi. 2017 (5) G.S.T.L. 43 (Tri. - Del.)]

- Demand - Sale or Service – Assessee exporting goods procured from domestic clients against advance payments – ‘Trade Margin’ i.e., difference between sale price and purchase price sought to be taxed as consideration for providing ‘business auxiliary services’ under Section 65(105)(zzb) of Finance Act, 1994 – On appeal – HELD: Assessee deducting service charges of 2% on experts, bank charges and trade margin, etc. – If transactions were one of trading, it would have treated sale value of goods as receipts – It does not, at any stage, become owner of goods and therefore, such income not trading profit but consideration for some specific services rendered by assessee – Section 73 ibid sole statutory authority for initiating recovery proceedings – Contention of assessable value was not determined by invoking Section 70 and 72 ibid before proceeding to Section 73 ibid not tenable – Adjudication order passed after elaborate discussions and detailed examination of various agreements – Not justifiable reason to interfere with it. **[State Trading Corporation of India Ltd. Vs Commr. of S.T., Mumbai. 2017 (5) G.S.T.L. 55 (Tri. – Mumbai)]**

Central Excise

- Valuation (Central Excise) –Cost of design and art work supplied by customers free of cost ,used for printing on packing material-Whether includible in assessable value of packing material manufactured by assessee- HELD: Charges of said art work includible in assessable value as per introduction of provision in Central Excise Valuation (Determination of Retail Sale Price of Excisable Goods) Rules 2000 with effect from 1-

7-2007- For period prior to said date also ,cost of such design work includible in assessable value in view of Large Bench Judgment in case of Mutual Industries Ltd.[2000(117) E.L.T.578 (Tribunal)] –Assessee claiming value of drawings as Rs 99,04,012 for 2200 drawings as against demand of Rs 1,24,72,818, and since out of 2200 drawing only 335 drawing used, therefore only proportionate cost of said quantity includible in



assessable value –Matter remanded to adjudicating cost of said quantity includible in assessable value –Matter remanded to adjudicating authority for verification of facts – Assessee eligible for cum-duty benefits as per settled law –Impugned order set aside –Section of Central Excise Act, 1944. **TETRA PAK INDIA PVT LTD. V.S. COMR.OF CENTAL EXCISE , PUNE [2017 (354) E.L.T. (Tri –Mumbai)]**

- Cenvat credit –Reversal of –Capital goods removed by appelalants after procuring from predecessor –Only capital goods purchased by virtue of sale agreement-Appellants has not taken previous running unit with responsibility of liabilities –Capital goods actually used in manufacture of appellant’s final product –Rule 3(4) of Cenvat Credit Rules, 2002 not applicable, Capital goods not being cleared as such-Duty not liable to be paid on clearance of cenvated capital goods prior to 13-11-2007. **KAMKO FOOD PRODUCTS V.S. COMR.OF CENTRAL EXCISE,GOA [2017(354) E.L.T.(Tri-Mumbai)]**
- Appeal to appellate Tribunal - Delay in filing appeal – Application for condonation of delay not signed by person authorized by Committee of Commissioners as per Section 86(2A) of Finance Act, 1994 read with Section 35B(2) of Central Excise Act, 1944 – In light of Simplex Engineering Pvt. Ltd. [(2012) (278) E.L.T. 390(Tribunal)] and Archean Granites Pvt. Ltd. [2011 (264) E.L.T. 290 (Tribunal), impugned applications not

maintainable – HELD: If the order passed by Commissioner (Appeals) is not legal or proper, then the Committee of Commissioner is required to examine such order and may have the powers to direct an officer to file appeal before the Tribunal – Section 86(2A) of Finance Act, 1994 read with Section 35B (2) of Central Excise Act, 1944. **[Commr. of C. Ex. & S.T., Delhi-IV Vs. SK E & C India Pvt. Ltd. 2017 (5) G.S.T.L. 39 (Tri. Chan.)]**

- Refund – Cenvat credit –Accumulated credit of input service – Services rendered to Special Economic Zone (SEZ) – SEZ Territory of India – Any services provided by DTA unit to unit located in such SEZ shall be treated as export of service provided all other conditionalities of Rule 6A or Service Tax Rules, 1994 does not make distinction between export and deemed export - Export of services to SEZ will necessarily have to be treated as deemed export and will be eligible for refund of accumulated credit under Rule 5 ibid and notifications issued thereunder subject to various conditionalities of that Rule and related notifications being satisfied - Matter remanded to original authority only to limited purpose of verifying whether payment received towards such services have been v received in convertible foreign exchange – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **[Orbis India Pvt. Ltd Vs. Commissioner of Central Excise, Chennai. 2017 (5) G.S.T.L. 57 (Tri. - Chennai)]**
