



# INDIRECT TAX UPDATES

RSA Legal Solutions

10<sup>th</sup> October 2017

## 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

Advisory  
Litigation  
Compliances  
Audit  
GST Handholding

***Last day of filing GST TRAN-1 is 31<sup>st</sup>  
October, 2017***

### General Updates

- GSTR-3B which has been submitted for July but has not been filed, can be done now: GSTN.
- GST Registration- Main fields such as business details, nature of business activities etc., can now be amended, says GSTN.
- Deadline for selling pre-GST goods extended to December 31, 2017.
- Small exporters have been exempted from giving bank guarantee.
- Deadline for filing GSTR-1, GSTR-2, GSTR-3 and GSTR-6 for the month of July'17 has been extended.
- The deadline to file GST Form TRAN 1 has been extended till October 31, 2017.
- Delay in filing GST returns to attract fine of 200 a day.
- A four-member standing committee, comprising tax officials of the Centre and states, has been set up to receive complaints of undue profiteering by any entity under the new GST regime.



## Key Notifications/Circulars/Public Notice

- Waiver of late fee for failure to file GSTR-3B return for July, 2017 by due date, however, interest will be leviable from all taxpayers who have not discharged their complete tax liability for July, 2017 by August 25, 2017. **NOTIFICATION NO. 28/2017-C.T., dated 1.09.2017 and C.B.E & C. Press Release No. 97/2017, dated 2.09.2017.**
  - The Central Government has notified the new Customs and Excise Duties Drawback Rules, 2017 along with the revised All India Rates of Duty Drawback. They will come into force from 1.10.2017. **NOTIFICATION NO. 88/2017, dated 21.09.2017; NOTIFICATION NO. 89/2017-Customs (N.T.), dated 21.09.2017; CIRCULAR NO. 38/2017-Customs, dated- 22.09.2017**
  - The Central Government based on the recommendations of the GST Council has issued a notification stating that persons making inter-state taxable supplies of handicraft goods are exempted from obtaining registration. Provided, the aggregate value of such supplies, to be computed on all India basis does not exceed twenty lakh rupees in a financial year. **NOTIFICATION NO. 8/2017- Integrated Tax, dated: 14.09.2017**
  - The Central Government based on the recommendations of the GST Council has released a notification specifying that job workers engaged in making inter-state supply of services to specified category of persons are exempted from obtaining registration under the GST Act.
- **NOTIFICATION NO. 7/2017- I.T., dated: 14.09.2017; NOTIFICATION NO. 8/2017-I.T., dated: 14.09.2017**
  - The C.B.E& C. issued a circular amending the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The amendment was made in light of the ruling given by the Apex Court in the case of M/s. Wipra Ltd. v. Assistant Collector of Customs. **CIRCULAR-39/2017-Customs, dated: 26.09.2017; NOTIFICATION NO. 91/2017- Cus (NT), dated: 26.09.2017**
  - The Central Government has extended the due date for filing GSTR-1, GSTR-2 and GSTR-3 for the month of July, 2017 to 10 October 2017, 31 October 2017 and 10 November 2017. **NOTIFICATION NO. 30/2017- C.T., dated: 11.09.2017**
  - The Central Board of Excise and Customs notified the 8th Amendment to the Central Goods and Services Act, 2017 on 29.09.2017 vide **Notification No. 36/2017- Central Tax**. Under the said notification, the last date to file Tran-1 has been extended to October 31, 2017 under all rules. Further, Form GST Reg-29 has been renamed to Application for Cancellation of Registration of Migrated Taxpayers. **NOTIFICATION NO. 36/2017- Central Tax, dated 29.09.2017**
  - **Press Release by the Ministry of Finance, dated: 30.09.2017**, wherein facility to furnish Letter of Undertaking, in place of bond, has been extended to small exporters and no bank guarantee will be required.



- The Central Board of Excise and Customs has extended the time limit for intimation of details of stock held on the date from which the option for composition levy is exercise in FORM GST CMP-03 to October 31, 2017. **ORDER NO. 04/2017-GST, dated: 29.09.2017**
- The Government has clarified and extended the date of filing of GST TRAN 1 to 31.10.2017. **ORDER- 03/2017-GST, dated 21.09.2017 and ORDER 02/2017-GST, dated 18.09.2017**

## Case Laws

### GST

- GST - No coercive action be taken against any lawyer or law firms for non-compliance with any legal requirement under the CGST/IGST/DGST Act till a clarification is issued: High Court (Para 14). Further, all legal services provided by Advocates, law firms of Advocates, or LLPs of advocates will be continued to be governed by the reverse charge mechanism - No coercive action. **J.K. MITTAL & CO. V. UOI [2017-TIOL-02-HC-DEL-GST]**
- Search, Seizure & Inspection- Powers of- Deputy S.P. of Bureau of Investigation for Economic Offences (BIEO)- Whether a Competent Authority- Petitioner contending that Joint Commissioner and above only having powers of inspection, search & seizure under Section 67 of Central Goods and Services Tax act, 2017- Bona fide seizure also questioned on the account of threat meted out to petitioner for inadequate donation to certain organization in Assam- time granted to Standing Counsel for receiving instructions from Department as requested by him- Till then, respondent to ensure that petitioner not to further harassment on account of subject search & seizure. **KUMAR TRADERS AND COMPANY v. STATE OF ASSAM [2017 (4) G.S.T.L. 120 (Gau)]**
- Right to Information – High Court website – Details of impugned orders of lower Courts/Tribunals, in relation to matters decided by High Court – Uploading of information Website of High Court will help general public, litigants and all stake holders in linking orders/judgments of High Court with impugned orders, and thereby serve a larger public interest - As such, commission recommended for making available such details on website of High Court – Section 19 (8) of Right to Information Act, 2005. **R.K. JAIN VS. CPIO, HIGH COURT OF MADRAS. [2017 (4) G.S.T.L. 28 (CIC)]**
- Registration – GST – Incorrect Registration Certificate (RC) – Amendment therein – Petitioner on migration from existing law, issued RC under GST law as proprietorship concern instead of partnership concern – department directed to issue new GST ID as partnership concern an correct mistake in RC within 10 days in terms of C.B.E. & C. Circular dated 25-8-2017 – High Court be intimated of action taken - Section 22 of Central Goods and Services Tax Act, 2017 – Article 226 of Constitution of India. **SACHDEVA OVERSEAS VS. STATE OF U.P. [2017 (4) G.S.T.L. 443 (ALL.)]**



## Customs

- Customs-Transaction between petitioner, Customs Department and Professional Auctioneers is a private contract and not amenable to jurisdiction of High Court under Art. 226 of Constitution: Madras HC. **M/S KRISHNA CREATIONS V. COMMISSIONER OF CUSTOMS, CHENNAI [2017-TIOL-2043-HC-MAD-CUS]**
- Anti-Dumping Duty – Imposition of – Dumping margin, normal value and export price – Determination of – Provisions of Section 9A (I) (c) of Customs Tariff Act, 1975 for determining normal value followed by DA – Accepted, consistent practice of relying on international price of raw material for determining normal value of non-cooperating exporters for subject country, followed by DA –Duty on import of subject goods of subject country arrived at after due consideration of all relevant factors - Final findings of DA cannot be interfered with Appeal praying for modification of final finding dismissed as devoid of merit – Section 9A (I) (c) of Customs Tariff Act, 1975. **MANALI PETRO CHEMICALS LTD. VS. DESIGNATED AUTHORITY (ANTI-DUMPING), [2017 (353) E.L.T. 107 (TRI. – DEL)]**
- Section 129E of Customs Act, 1962 as amended on 1.10.2014- Constitutional validity- Mandatory requirement of pre-deposit incorporated in the section and powers and discretion conferred with appellate authority to waive/dispense with the pre-deposit taken away- Section 129E ibid amended to curtail substantial time expended on adjudication of waiver/dispensation applications- Thus, amended Section 129E ibid, cannot held to be unreasonable, onerous, unfair or discriminatory having been brought for speedy disposal of appeals before appellate authorities- Also, amount which is required to be deposited, i.e. 7.5% or 10% not unreasonable- By virtue of Section 129E of Customs Act, 1962 right to appeal as conferred under the said provision being a conditional right, condition to deposit of a percentage of duty demanded or penalty levied or both not unreasonable. **HARESH NAGINDAS VORA V. UNION OF INDIA, [2017 (353) E.L.T. 154 (BOM.)]**
- Natural justice- Hearing alone when not sufficient- Allegation of suppression of purchase by importer- Assessment order passed without complying with importer's request for breakup details of imports data obtained by Department, which formed basis for issuing show cause notice- Duty of Assessing Authority to furnish details to assessee in order to show and establish that principles of natural justice followed in its strict sense- Mere hearing of petitioner not enough to show compliance of principles of natural justice, unless such hearing was effective one preceded by furnishing of all materials sought to be relied by Assessing Authority- Assessee should not have taken by surprise by producing those materials at time of personal hearing- Assessee had sought for such details well in advance and Department had not chosen to furnish those details at any point of time- Assessment not sustainable solely on the ground of violation of principles of natural justice- Matter remanded to Assessing Authority- Section 17 of Customs Act, 1962. [paras 10, 11, 12]. **APPLE INDIA (P) LTD. V. ASSISTANT COMMISSIONER (CT), CHENNAI [2017 (353) E.L.T. 206 (MAD.)]**



## Service Tax

- Refund claim- Payment under protest- not to be considered as acceptance of liability- Department cannot wriggle out of its responsibility to adjudicate an issue and pass speaking order- Marking of protest is message to Department that there liability to tax was disputed- Rejecting of refund claim by deficiency memo on ground assessee liable to pay Service Tax for periods 2006-07 and 2007-08 without determination of amount due after raising a dispute, not proper- Amount paid becomes an amount paid by mistake and assessee eligible for refund- Section 11B of Central Excise Act, 1994 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **FEDERATION OF ANDHRA PRADESH CHAMBER OF COMMERCE AND INDUSTRY v. C.C.E., CUS. & S.T., HYDERABAD- II [2017 (4) G.S.T.L. 193 (Tri.- Hyd.)]**
- Refund – Unutilized Cenvat credit of Service Tax – Denial of- Nexus of input services with manufacture of final product - General Insurance service – Refund denied on the ground that services were utilized for insuring premises and other proper ties of assessee – **HELD:** Services had been availed by assessee for insuring the employees during their travel for business purposes–Credit availed on such services eligible for refund-Tribunal had in earlier order had held that assessee was eligible for refund- Assessee eligible to refund in respect of all these services – Assessee not eligible for refund in respect of rent-a-cab – Rule 5 of Cenvat Credit Rules, 2004. **NETCRACKER TECHNOLOGIES SOLUTIONS INDIA PVT. LTD. VS. C.C, C.E. & S.T., HYDERABAD-IV. [2017 (4) G.S.T.L. 1 (TRI.-HYD.)]**
- Pre-deposit – Mandatory pre-deposit of 7.5% of Service Tax amount before Commissioner (Appeals) – Amount deposited before issuance of show cause notice whether to be considered towards mandatory pre-deposit for hearing appeal before Commissioner (Appeals) - In view of Larger Bench decision in ASR Multimetals Pvt. Ltd. [2017 (349) E.L.T. 477 (Tri. – LB)] 10% Service Tax amount deposited before issuance of show cause notice not to be considered towards mandatory pre-deposit – Assessee required to deposit further amount of 7.5% of service Tax for hearing their appeal before Commissioner (Appeals) – Section 35F of Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of Finance Act, 1994. **NCS SUGARS LTD. VS. COMM. OF C. EX. & S.T., VISAKHAPATNAM-I. [2017 (4) G.S.T. 9 (TRI. – HYD.)]**
- Demands and penalty – ST- returns not filed prior to 1-3-2013 and no taxes paid till that date inspite of being registered – Cenvat credit not available when returns not filed – Failure to file proper and correct VCES declaration when opportunity given to appellant – Demand and imposition of penalty upheld- Sections 73 and 78 of Finance Act, 1994. **CHAITANYA ENGINEERING VS. COMMISSIONER OF C. EX., AURANGABAD. [2017 (4) G.S.T.L. 236 (TRI. – MUMBAI)]**
- Interest – Delay in payment of Service Tax – Fact of non-receipt of payment from customer categorically recorded by both lower authorities – Also, payment of total Service Tax due subsequently by assessee before issue of show cause notice – Having accepted Service Tax liability needs to be discharged and having





discharged the same, interest liability needs to be fastened upon assessee - Upholding tax liability, assessee directed to discharge interest liability within 30 days from receipt of order n- Section 75 of Finance Act, 1994. **COMMISSIONER OF CUS., C.EX. & S.T., HYDERABAD-IV VS. JK INSULATIONS. [2017 (4) G.S.T.L. 282 (TRI. – HYD.)]**

- Refund of Service Tax – Export of Goods – Notification No. 41/2007-S.T. – Refund denied on the ground that commission paid to foreign agent was received in India and as services had been availed by assessee in quarter, December 2008 and export of goods took place in January, 2009 – HELD: Commission agent services used for export of goods, procuring order etc. – Goods sent to docks in December, 2008 and exported later – Claim of drawback not to affect refund claim for services used in export of goods – Assessee entitled to refund – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vid Section 83 of Finance Act, 1994. **S.T. COTTEXT EXPORT (P) LIMITED VS. COMMISSIONER OF C. EX. & S.T., CHANDIGARH. [2017 (4) G.S.T.L. 322 (TRI. – CHAN.)]**
- Demand – requantification of - Renting of immovable property - Renting of premises to Central Bank of India – Agreement as well as Central Bank of India's letters confirming discharge of Service tax on rent paid, by bank – Rejection of claim by lower authority on the ground that letter not sufficient to prove payment of service Tax, incorrect – In case of any doubt

regarding said letter, lower authority ought to have asked for report from jurisdictional Service Tax depart of bank – Demand needs to be reduced to extent of the Service Tax paid by bank - Matter remanded to original authority to requantify Service Tax demand by reducing Service Tax paid by bank –Section 73 of Finance Act, 1994. Penalty – Waiver of – Bona fide belief – Renting of premises to Central Bank of India – Payment of Service Tax on rent paid by bank – HELD: Assessee's belief of Service Tax ought to be payable by recipient of service found to be reasonable - Assessee deserves waiver of penalty by invoking Section 80 of Finance Act, 1994 – Penalty imposed under Section 78 ibid set aside – Section 80 of Finance Act. 1994. **MOTIWAL YUNUS JANMOHAMMAD VS. COMM. OF C. EX., AURANGABAD. [2017 (4) G.S.T.L. 322 (TRI. – MUMBAI)]**

- Refund of Service Tax – Export of goods/services –Notification No.47/2007-S.T. – Denial of - Payment of Service Tax only after filing of refund claim – Since export consideration received after filing - refund claim and Service Tax paid thereafter under reverse charge mechanism, denial of refund not justified when cause of action arises at the time of export of goods/services – Section 11B of Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of Finance Act, 1994 and Notification No. 41/2007-S.T. **COMMISSIONER OF CENTRAL EXCISE, LUDHIANA VS. RALSON INDIA LTD. [2017 (4) G.S.T.L. 382 (TRI. – CHAN.)]**



## Central Excise

- ST – Taxable event is time of provision of service and not date of receipt of payment: **CESTAT COMMISSIONER OF CENTRAL EXCISE, PUNE V. VASCON ENGINEERS LTD. [2017-TIOL-3542-CESTAT-MUM]**
- Duty paid under wrong Assessee code – Discrepancy in code under which challan and payment was made and code under which return was filed – HELD: No demand of duty or any sum payable from assessee in respect of wrong code and authority has also knowledge that there was a mistaken payment made under challan, which contained incorrect code though it belonged to assessee, who also had correct code – Assessee cannot be subjected to technical defect so as to saddle with liability – Authorities to treat payment from date of payment – Assessee exempted from any coercive liability of so-called non-payment against correct code – all communications and order in this regard quashed and set aside – Rule 8 of Central Excise Rules, 2002. **AURO PUMPS PVT. LTD. VS. UNION OF INDIA. [2017 (353) E.L.T. 7 (GUJ.)]**
- Cenvat Credit- Availment of- Scrap arising during manufacturing, repair, replacement and reconditioning of various machineries, pipes, fittings, etc., in refinery- HELD: They are not inputs and have no contribution on manufacturing process- Input credit is not required to be reversed on their clearance- Rule 3 of Cenvat Credit Rules, 2004. [para 4, 5]. **C.C.E., MANGALORE V. MANGALORE REFINERY & PETRO-**
- CHEMICALS LTD., [2017 (353) E.L.T. 287 (KAR.)]**
- Order- Order beyond SCN- Appellate Order partly dismissing appeal by disallowing refund and interest- Show cause notice proposing rejection of refund claim only on the ground of time-bar- Various decisions cited clearly establishing new case not to be made out at appellate stage and Department ought not to travel beyond show cause notice- Impugned order not sustainable in law as same travelled beyond show cause notice- Section 11B of the Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. **ASHOK SHETY & ASSOCIATES C.A. V. COMMISSIONER OF C. EX., MANGALORE. [2017 (4) G.S.T.L. 53 (Tri. – Bang.)]**
- Refund – Cenvat credit – Input service – Service of sub-contractor availed for rendering ultimate service to service recipient abroad – Inextricable link between input service and output service – Assessee entitled to Cenvat credit of Service Tax paid to sub-contractor – Authority below not recording date of realization of foreign exchange – Such date relevant date for purpose of counting of limitation to entertain refund application – Matter remanded to adjudicating authority for readjudication and to count limitation from date of realization of foreign exchange - Rules 2 (1), 3 and 5 of Cenvat Credit Rules, 2004. **NEW GLOBAL TECHNOLOGIES VS.**



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**COMMISSIONER OF C. EX., COIMBATORE.  
[2017 (4) G.S.T.L. 317 (TRI. – CHENNAI)]**

- Cenvat credit – Availment of - Change of address intimated to Department and Central Excise registration amended accordingly – New address to be considered from the date of application for amendment of registration - Delay by Department

to record change of address not debars the appellant to Cenvat credit arising in terms of invoices issued to it showing the new address – Rule 10 of Cenvat Credit Rules, 2004. **JOUE INDIA PVT. LTD. VS. COMMISSIONER OF SERVICE TAX, CHENNAI. [2017 (4) G.S.T.L. 362 (TRI. – CHENNAI)]**

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