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INDIRECT TAX UPDATES

RSA Legal Solutions

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About RSA Legal Solutions

RSA Legal Solutions is an Indian Law firm specialized in the area of Indirect taxation i.e. Goods and Services Tax, Customs, Central Excise, Service Tax, Foreign Trade Policy (FTP), Special Economic Zone ('SEZ'), Value Added Tax (VAT)/ Central Sales Tax (CST), Foreign Exchange Management Act etc. With experience, constant training and updation of knowledge, the firm has developed unique expertise in the entire spectrum of indirect taxes. We provide litigation, advisory and compliance services to our clients.

Tax Services

Advisory

Litigation

Compliances

Audit

GST Handholding

Facility to furnish LUT online is now available on the GST portal.

General Updates

- Union Finance Minister Arun Jaitley said that India being a 'significantly tax non-compliant' country with wide socio-economic diversities, it cannot have a single GST rate in near future.
- GST will not be charged on the cost of food served to patients by hospitals as advised by doctors, the Government has said.
- Around 64% of the Indians surveyed are of the view that GST rollout led to a disruption among business community across the country, says IFAC survey.
- The Finance Ministry has sought a report from GSTN, the IT-backbone provider for GST, on glitches in the system that derailed the anti-tax evasion electronic way bill system on the very first day of launch.
- The Narendra Modi Government has budgeted for INR 900 billion to be paid as compensation to States to make good their losses on account of GST in 2018-19.
- The Centre may have to shell out more money than initially expected to compensate States shortfalls in tax revenue after GST.

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Key Notifications/Circulars/Public Notice

- The CBE&C vide **Circular No. 33/2018 dated 23.02.2018**, has provided directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under Section 140 of the CGST Act or non-utilization thereof in certain cases.

- The CBE&C vide **Circular No. 05/2018-Customs dated 23.02.2018** has provided clarifications on the issued pertaining to sanction of refund of IGST paid on export and an alternative mechanism to give exporters an opportunity to rectify errors committed in the initial stages has been introduced by the Government.

- The CBE&C vide **Circular No. 32/2018, dated 12.02.2018** has notified certain clarifications regarding GST in respect of certain services as decided on the 25th GST Council meeting.

Case Laws

GST

- Goods and Services Tax (GST) on works contract – Representation of Association – Non-consideration thereof – Contempt against Commissioner of Commercial Tax – High Court in its earlier order directing said Commissioner to dispose of and reply to representation of Contractors Welfare Association seeking GST rate of 12% on aforesaid activity – said authority while not complying with aforesaid directions, pleading in reply to contempt notice that it has nothing to do with this matter as same falls within domain of Central Government – Nothing prevented said authority to take this plea ab initio during initial hearings in writ proceedings = Although said authority can be pulled up for contempt of Court for flouting its orders, in view of fact that this would put petitioner Association under more hardship, another opportunity granted to said authority to dispose of Association's representation within 2 weeks after hearing them – Article 226 if Constitution of India. **[Coimbatore Road Contractors V/s. Dr. C. Chandramouli, I.A.S. 2018 (9) G.S.T.L. 361 (Mad)]**

- Exports refund – Credit on input services – Export of services – Denial of refund for payments received in India rupee – HELD: Consistent view of Tribunal that merely because payment received in Indian rupee, payment against export not to be considered as not received in "convertible foreign exchange" as provided in Export of Services Rules, 2005 – Since Indian rupee received from recipient of services through foreign bank, same to be treated as "convertible foreign exchange" – Further, FIRC issued by Standard Chartered Bank clarifying that remittances are in "convertible foreign exchange" – Acceptance of Revenue's contention amounts to levying of Service Tax on services exported – It is axiomatic that goods and services exported not to be subjected to local taxes and denying refund would

violate this fundamental principle of taxation – Impugned orders not sustainable in law – impugned orders set aside - Rule 3 of Export of Services Rules, 2005. **[Support.Com India Pvt. Ltd. V/s. Commissioner of S.T., Bangalore-II. 2018 (9) G.S.T.L. 260 (Tri. – Bang.)]**

- Export rebate – Export of Services – Claim under Notification No.12/2005-S.T. – Rejection of, alleging availment of Cenvat credit of Service tax paid on Input services, on the basis of ST 3 return of appellant – Appellant denied any availment and utilization of Cenvat credit, contending that amount of rebate claim erroneously mentioned in column relating to availment of Cenvat credit in ST-3 return – Matter remanded back to adjudicating authority for limited purpose to verify appellant's claim regarding non-availment of Cenvat credit, and accordingly disburse rebate eligible to them – Rule 5 of Export of Services Rules, 2005. **[CENVO Publisher Services India Pvt. Ltd. V/s. C.C., C. Ex. & S.T., Noida. 2018 (9) G.S.T.L. 416 (Tri. – All.)]**

- Refund of Service Tax – Input services used for export of goods – Rejection of assessee's claim of being exporters of goods for the company's name mentioned in shipping bills at time of export of goods – HELD: Other company to be exporter of goods under Customs Act – Assessee's claim cannot be accepted – Appeal allowed after considering pre-ponderence factor, beyond scope of Notification No.17/2009-S.T. – Adjudication orders upheld – Impugned order set aside – Section 11B of Central Excise Act, 1944 made applicable to Service tax vide Section 83 of Finance Act, 1994.
  Export of goods – Meaning of -Section 2(19) of Customs Act, 1962 defined 'export good'to mean any goods to be taken out of Indiato place outside India.
  Exporter – Meaning of – Word éxporter'in Section 2(20) of Customs Act, 1962 defined in relation to any goods at any time between their entry for import and time when they are imported includes any owner or any person holding himself out to be an exporter. **[Commissioner of C.Ex., Cus. & S.T., BBDR-I V/s. Auroglobal Contrade. 2018 (9) G.S.T.L. 278 (Tri. – Kolkata)]**

- Goods and Services Tax (GST) – Migration from VAT to GST - Error in issuance of fresh registration certificate – Certificate depicting PAN number of one of assessee's partner instead of Pan number of Partnership firm – Error of clerical nature can be easily rectified by Department on verification of records – Government seeking one week time for getting instructions and to ensure that the mistake, if any, is rectified – Authorities not to initiate any penal action against assessee for non-filing of GST for month of July and August, 2017 and for not depositing tax in respect thereof provided returns are filed within two weeks of issuance of correct ID/password and tax accordingly paid within another two weeks. **[Manu International Vs. State of U.P. 2018(9) G.S.T.L.4 (All.)]**

- Goods and Services Tax (GST)- Implementation of – Public Interest Litigation (PIL) challenging implementation of GST on various grounds – HELD: Petitioner cannot urge and/or seek direction to respondents to postpone decision to implement GST with effect from 1-7-2017 as levy and collection of taxes on goods and services had sanction of law – All such necessary taxpayers already migrated to GST network and obtained registrations, rates and taxes notified, rules framed and notified, wide publicity given in public domain and entire machinery geared up not only to accept new challenge but to ensure GST was implemented effectively – Article 226 of Constitution

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of India. **[Dr. Kanagasabapathy Sundaram Pillai Vs. Union of India. 2018(9) G.S.T.L. 57 (Bom.)]**

- Export rebate – notification Nos. 14/2001-C.E. (N.T.) and 19/2004-C.E. (N.T.) – Rebate admissible only when goods directly cleared from place of manufacturer – biscuits manufactured from contract manufacturing units (CMUs) in terms of Notification No.36/2001-C.E. (N.T.) brought into assessee's factory and stuffed into containers along with goods manufactured at its own factory and cleared for export – Stuffing of container shifted to another factory wherein no process carried out -Commissioner in his letter had advised following of provisions in Rule 16(1) and 16(2) of Central Excise Rules, 2002 – No permission under Rule 16(3) of Central Excise Rules, 2002 given for bringing goods to another factory and for stuffing them in containers – Since products were not manufactured in said factory there was no occasion to export them – Contention that permission granted was in nature of misrepresentation and attempt to mislead authorities and Court - Rule 18) of Central Excise Rules, 2002**. [Parle Products Pvt. Ltd. V/s. Union of India. 2018(9) G.S.T.L.133 (Bom.)]**

- Demand - Cenvat credit – wrongful availment of Cenvat credit on raw materials /inputs, proof of - Revenue assailing Commissioner (Appeals),s rejecting allegation of receipt of Cenvat credit documents without raw materials – HELD: Adjudicating Authority failing to exercise powers vested for purpose of ensuring attendance of witness – Manufacture and clearance of final products out of raw materials alleged to be not received, on payment of duty and tax returns file for same, not questioned by Revenue – Revenue's failure to establish source of raw material, in absence of non-receipt of inputs on which Cenvat credit taken, leads to conclusion that entire case based on presumptions – Further, payments made by account payee cheques to suppliers not received back by assessee and not of Directors or employees admitting to non-receipt of inputs covered by invoices doubted by Adjudicating Authority - Revenue's appeal not tenable – Section 11A of Central Excise Act, 1944correspodning to Section 73 of Finance Act, 1944. **[Commissioner of C. Ex., Kanpur V/s. Good Earth Steel Pvt. Ltd. 2018(9) G.S.T.L.177 (Tri. - All.)]**

- Demand – Job work for sister unit – Confirmation of duty demand on principal manufacture on the ground that sister concern being trading firm not entitled to benefit of Exemption Notification No. 84/94-C.E. – HELD: materials sent under cover of challans by sister concern, after giving undertaking to its jurisdictional Assistant Commissioner of Central Excise , as required in impugned notification – Manufacturing unit in business, proceeds on the basis of documents produced and cannot be held to be legal expert with respect to availability to benefit of notification to trading firm, especially when undertaking produced and no objection ever raised by Revenue, prior to period in question – Subsequent change in opinion of revenue, resulting in confirmation of demand against manufacturing unit or confiscation of goods or imposition of penalties, cannot be appreciated – Impugned orders set aside – Section 11A of Central Excise Act, 1944 corresponding to Section 73 of Finance Act, 1944. **[Maccas Automotive – V/s. Commissioner of C. Ex. & S.T., Delhi-IV. 2018(9) G.S.T.L.193 (Tri. – Chan.)]**

- Cenvat credit of Service Tax – Post export services – storage and warehousing services performed outside country – Invoice for rendering such services issued by local warehousing service provider to assessee – Place of removal in respect of goods cleared for

export was port of dispatch or lad port and not warehouse situated abroad – Appellate Authority had rightly denied credit - Rule 2 (1) and 3 of Cenvat Credit Rules, 2004. **[Maini Precision Products Pvt. Ltd. V/s. C.C.E. (Appeals), Bangalore. 2018(9) G.S.T.L.203 (Tri. - Bang.)]**

Customs

- Stay/Dispensation of pre-deposit – Redemption fine – CESTAT has inherent power to dispense its pre-deposit - Department plea that there was no question of recovery of redemption fine during pendency of appeal, and after statutory deposit under Section 129E of Customs Act, 1962 CESTAT cannot entertain application for interim relief, rejected – Rule 41 of CESTAT (Procedure) Rules, 1982- Section 129E of Customs Act, 1962. Recovery – Duty and penalty – Pending appeal – No steps can be taken till disposal of appeal when 7.5% of total duty and penalty has been deposited – C.B.E. & C. Circular No.984/08/2014-CX. dated 16-9-2014. **[Mydream Properties Pvt. Ltd. V/s. Commr. of Cus. (Imports), Mumbai. 2018 (9) G.S.T.L. 354 (Bom.)]**

- Cenvat credit – Recovery of – Reversal of credit on instruction of Range Superintendent in view of audit objection stating availment of inadmissible credit – HELD: Amount recovered not adjudicated by competent authority and matter not reached stage where Range Superintendent could have recovered same – Proper course of action to be to examine merits of audit objection and if objection found to be sustainable, issue show cause notice – sums ought to have become recoverable after due process of law – Range Superintendent's action not as per law – Impugned order set aside – Rule 14 of Cenvat Credit rules, 2004. **[Ambica Steels Ltd. V/s. Commissioner of C. Ex. & S.T., Ghaziabad. 2018 (9) G.S.T.L. 272 (Tri. – All.)]**

- Refund of accumulated Cenvat credit–Jurisdiction – No dispute as to appellants entitlement to refund of accumulated credit – Commissioner (Appeals) set aside the order of lower authority only on the ground that office was not having jurisdiction inasmuch as the refund should have been filed with Commissionerate-III and not Commissionerate-I – In absence of any dispute about legality refund claim or about appellant's entitlement to the same, setting aside the order by the Commissioner (Appeals0 is not justified – It was for officer to return the papers back to assessee for proper filing or to transfer the same to correct Commissionerate – Appellate authority set aside the order instead of remanding the matter to be re-adjudicated by proper officer – Impugned order set aside and order of granting refund by original adjudicating authority restored – Rule 5 of Cenvat Credit rules, 2005. **[VIT Consultancy Pvt. Ltd V/s. Commissioner of Service tax, Chennai-I. 2018 (9) G.S.T.L. 286 (Tri. – Chennai)]**

- Refund of Cenvat credit - Inputs were used in manufacture of finished goods which were ultimately exported – Contention that inputs which were received in particular month ought to have been used in same month to be eligible to cash refund of credit accumulated, even though inputs were used in subsequent months in manufacture of goods exported – HELD: No merit in such contention as objective was to allow such refund of accumulated Cenvat credit availed on inputs and used in manufacture of export goods, but credit

could not be utilized for payment of duty for home consumption – No intention that there should be one-to-one relationship between inputs and finished goods in claiming cash refund of credit, accumulated due to export – Assessee eligible to cash refund of accumulated credit, except amount of credit availed on 'sugar cess', included in said refund claim – Rule 5 of Cenvat Credit Rules, 2004. **[Global Food Industries V/s. Commr. of C. Ex., Ahmedabad-II. 2018(9) G.S.T.L.92 (Tri. – Ahmd.)]**

- Cenvat credit - Capital goods – Dummy supply – No evidence produced by Revenue of supplier of capital goods being a dummy recipient – Mere funding by recipient not a decisive factor when registration granted to supplier by Revenue itself and manufacture of said goods established – Credit not deniable - Rule 3 of Cenvat Credit Rules, 2004**. [Sparkon Engineering V/s. Commissioner of Central Excise, Pune-II. 2018(9) G.S.T.L.411 (Tr. - Mumbai)]**

- Drawback – inter unit transfer of materials – Duty paid raw materials were brought into one unit in the zone but finished goods were manufactured and exported from another unit hence violation of Rule 34 of Special Economic Zone Rules, 2006 alleged – Finding of revisional authority regarding non-maintenance of records which would demonstrate utilization of raw materials in consonance with the findings in the order-in-original – No dispute with regard to the writ petitioner having procured duty paid raw materials from Domestic Tariff Area in FSEZ or used such materials in the manufacturer of goods within the zone – Finished goods were exported from the zone and export proceeds were realized in foreign currency from the current account to which the foreign currency export proceeds to unit –III were credited, considering the same to be substantial compliance of Rule 30(8) ibid – Regulation 6A of Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Third Amendment) Regulations, 2002 does not make it mandatory for unit located in Special Economic Zone to open a Foreign Currency Account. **[Kariwala Industries Limited V/s. Development Commissioner, Falta Economic Zone. 2018(9) G.S.T.L.153 (Cal.)]**

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