



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.

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GST Handholding

E-way bill application deferred, trial to continue as Government faces tech glitch.

General Updates

- The Government is considering a nationwide single GST registration process for the aviation, banking and insurance sector.
- With an aim to support the Government's GST initiative, GST made easy is soon to be launched with end-to-end business solution for MSMEs/Small traders.
- Goods moved within cities may be exempted from E-way Bills, says GSTN CEO, Mr. Prakash Kumar.
- Expecting GST to stabilise in the next few quarters, rating agency Moody said that this recently introduced indirect mechanism is still work in progress that will ultimately result in formalisation of the economy.
- Confederation of Indian Industry seeks simplification of the GST compliance procedure ahead of Budget.
- Worried by the apparent GST evasion, the Govt. is likely to bring the composition scheme under the reverse charge mechanism
- GST refunds delay hits state textile units hard: Ahmedabad Textile Association.



Key Notifications/Circulars/Public Notice

- The CBEC vide **Notification No. 2/2018-Central Tax dated 20.01.2018** has extended the time period for filing GSTR-3B for the month of December'17 to 22.01.2018.
- The CBEC vide **Notification No. 3/2018- Central Tax dated 23.01.2018** has changed the rate of tax for composition scheme, inserted rule 54 (1A) regarding tax invoice/credit or debit note issued by an ISD, substituted rule 138 regarding E-way Bill through the CGST (Amendment) Rules, 2018.
- The CBEC vide **Notification No. 4/2018-Central Tax dated 23.01.2018** has reduced the late fees for non-furnishing of Form GSTR-1 to INR 25/day and for a nil Form GSTR-1 it has been reduced to INR 10/day.
- The CBEC vide **Notification No. 5/2018- Central Tax dated 23.01.2018** has reduced the late fees for non-furnishing of Form GSTR-5 to INR 25/day and for a nil Form GSTR-5 it has been reduced to INR 10/day.
- The CBEC vide **Notification No. 6/2018-Central Tax, dated 23.07.2018** has reduced the late fees for non-furnishing of Form GSTR-5A to INR 25/day and for Form GSTR-5A having nil IGST payable, it has been reduced to INR 10/day.
- The CBEC vide **Notification No. 7/2018-Central Tax, dated 23.07.2018** has reduced the late fees for non-furnishing of Form GSTR-6 to INR 25/day.
- The CBEC vide **Notification No. 8/2017-GST dated 23.01.2018** has extended the time period for filing of Form GSTR-6 for the months of July'17 to February'18 till 31.03.2018.
- The CBEC vide **Notification No. 10/2018-Central Tax dated 23.01.2018** has amended Notification No. 39/2017-Central Tax dated 13.10.2017 for cross-empowerment of State tax officers for processing and grant of refund.
- The CBEC vide **Notification No. 1/2018- Central Tax (Rate) dated 25.01.2018** has amended the GST rate for various services including composite supply of works contract, rental services of transport vehicles etc.
- The CBEC vide **Notification No. 2/2018-Central Tax (Rate) dated 25.01.2018** has exempted certain services viz. services by way of providing information under the Right to Information Act, 2005, services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India etc. as recommended by GST Council in its 25th meeting held on 18.01.2018.
- The CBEC vide **Notification No. 9/2018-Central Tax dated 23.01.2018** has notified www.gst.gov.in as the Common Goods and Services Tax Electronic Portal and www.ewaybillgst.gov.in as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.



- The CBEC vide **Notification No. 4/2018-Central Tax (Rate), dated 25.01.2018** has specified special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa.
- The CBEC vide **Notification No. 6/2018-Central Tax (Rate), dated 25.01.2018** and **Notification No. 8/2018-Central Tax (Rate) dated 25.01.2018** has amended rates of various goods in pursuance of the decisions taken at GST Council in its 25th meeting held on 18.01.2018.
- The CBEC vide **Notification No. 7/2018- Central Tax (Rate) dated 25.01.2018** has amended the list of exempted goods provided under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.
- The CBEC vide **Notification No. 3/2018-Central Tax (Rate), dated 25.01.2018** has specified services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person under CGST Act, 2017 under Reverse Charge Mechanism.
- The CBEC vide **Notification No. 8/2018-Customs (NT) dated 22.01.2018** has amended the rates of AIR rates of Duty Drawback for various products provided under Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.
- The CBEC vide **Circular No. 27/2018- GST dated 04.01.2018** has provided clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.
- The CBEC vide **Circular No. 28/2018- GST dated 18.01.2018** along with a **corrigendum** has provided clarifications regarding GST on College Hostel Mess Fees.
- The CBEC vide **Circular No. 30/2018- GST dated 25.01.2018** has provided clarification regarding supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86.
- The CBEC vide **Notification No. 11/2018-Central Tax dated 02.02.2018** has deferred the e-way bill system from 01.02.2018 till further notification.
- The CBEC vide **Circular No. 4/2018- Customs dated 24.01.2018** has notified that amendments to the AIR rates of Duty Drawback made through Notification No. 8/2018- Customs (NT) dated 22.01.2018 shall be effective from 25.01.2018.

Case Laws

GST

- GST - Petitioner seeks a writ of mandamus directing the GST Council to make recommendations to the State Government to extend the time period for filing of GST TRAN-1 because their application was not entertained on the last date i.e. 27.12.2017 and they have filed complete application for the necessary transitional credit – Petitioner submits that despite making several efforts on the last date for filing the application, the electronic system did not respond as a result of which petitioner is likely to suffer loss of credit that it is entitled to by passage of time; that they have also submitted an application for transition credit manually on 10.01.2018 - Respondents were served with a notice on 19.1.2018 with a copy of the petition and they have also obtained instructions and it is submitted by counsel for respondents that portal is likely to



be opened but is unable to say that when the portal is likely to be opened. Held: Respondents are directed to reopen the portal within two weeks from today - In the event they do not do so, they will entertain the application of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner - They will also ensure that the petitioner is allowed to pay its taxes on the regular electronic system also which is being maintained, for use of the credit likely to be considered – Writ petition stands disposed: High Court [**Continental India Pvt. Ltd. vs. UoI, 2018-TIOL-04-HC-ALL-GST**]

- Goods and Service Tax (GST) – Registration – Migration of existing registrants – Password, non-issuance of - Petitioner's registration migrated to GST after mentioning wrong PAN number, which though subsequently amended after much persuasion but password for accessing GSTN website not issued due to which petitioner unable to migrate to new system, file return and pay tax – UP GST department directed to immediately issue a password to enable petitioner to complete aforesaid activities as per law – Section 139 of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India. [**Metro Institute of Medical Sciences Pvt. Ltd. V/s. State of U.P. 2018 (8) G.S.T.L. 28 (All.)**]
- Excluding period for which assessee had not applied for date it became liable to be refunded - Refund - Limitation – Deposit of tax under protest – Claim filed four years after decision of High Court in assessee's favour – HELD: Specific finding recorded by Tribunal that duty amount has been deposited under protest Limitation of one year to make claim of refund would not apply at all to such cases – Amount liable to be refunded along with interest – Interest beyond that time may

be given - Section 11b of Central Excise Act, 1944 as applicable to Service tax vide section 83 of Finance Act, 1944. [**Kisan Cooperative Sugar Factory Ltd. V/s. Commissioner of C. Ex. 2018 (8) G.S.T.L. 365 (All.)**]

- Refund – SEZ – Exemption by way of refund under Notification No.9/2009-S.T. – services consumed wholly within Special Economic Zone - HELD: Exemption by way of refund not available to services consumed wholly within Special Economic Zone under said notification however as per first para of notification all services provided in relation to authorized operations in SEZ and received by SEZ unit, exempted – Refund in respect of Service Tax paid on such services not governed by said notification - Payment of Service Tax on services otherwise exempted, undisputed hence, assessee entitled for refund not under impugned notification but under Section 11B of Central Excise Act, 1944 – Adjudicating authority directed to process refund claim under provisions of impugned Section 11B ibid – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide section 83 of Finance Act, 1944. [**Sears IT and Management Services (I) Pvt. Ltd. V/s. Commr. of C. Ex., Pune. 2018 (8) G.S.T.L. 425 (Tri.- Mumbai)**]
- Penalty – Wrongful availment of credit on duty towers, tower parts, pre-fabricated buildings/shelters – Assessee bona fide believing that Cenvat credit on such inputs was available – Belief could not be stated to be wholly untenable as there were conflicting decisions in this regard - credit claimed with full knowledge of Department – Merely because eventually such credit was disallowed, would not give rise to penalty proceedings – Reference to credit being wrongly taken or without taking reasonable steps in Rule



15(1) of Cenvat Credit Rules, 2004, had element of totally wrong or malicious claim – Where credit claimed was bona fide and belie that such credit was available was reasonable belief, penalty under said rule would not be imposed – Not compulsory to impose penalty the moment credit was disallowed. **[Asst. Commr. of CGST-VII, Vejalpur V/s. Vodafone Essar Gujarat Ltd. 2018 (8) G.S.T.L. 105 (Guj.)]**

- Refund of Cenvat credit – Calculation of - Adjustment of amounts available as input credit against raw materials lying in stock as on 31-12-2003, and input credit relatable to finished goods available on same date, against closing balance in Cenvat credit account, as on 31-12-2003 to restrict refund claim – Methodology followed by Revenue not in consonance, wither with Rules of Notification No. 11/2002-C.E.(N.T.) – Such adjustment ought not to have been made – Assessee entitled to refund of full amount - Rule 5 of Cenvat Credit Rules, 2004. **[MM Forgings Ltd. V/s. CESTAT, Chennai. 2018 (8) G.S.T.L. 137 (Mad.)]**
- Cenvat Credit – Suo motu credit – Assessee utilising Cenvat Credit amount for payment of tax in respect of output transportation service – Later paying Service Tax amount on said service in cash – Revenue’s demand for payment of Service Tax on said service already been done by assessee in cash, therefore, amount paid from Cenvat Credit account was required to be reversed – Tribunal’s order that assessee was entitled to take suo motu credit correct. **[Union of India V/s. J.K. Laxmi Cement Ltd. 2018 (8) G.S.T.L. 231 (Raj.)]**
- Refund claim – Accumulated Cenvat credit – 100% export oriented unit – Input service used in providing export output service – Refund claim filed on 24-4-2012 for services received during period 16-5-2008 to 31-3-2010 – HELD: Prima facie services received from 16-5-2008 to 31-3-2010 might have been used in said period – Assessee’s contention of no requirement of one to ne correlation between input service and export service , correct – Entire Cenvat credit availed, eligible for refund to assessee – Refund clam cannot be denied on merits – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1944. Refund – Limitation 100% EOU - Refund claim for period 16-5-2008 to 31-3-2010 filed on 24-4-2012 – HELD: Even if yearly refund filed within one year from date of export, same to be admissible in terms of Section 11B of Central Excise Act, 1944 – Impugned refund claim appears to be time-barred and refund admissible only for period of one year prior to impugned date attributed to export made during that period – Refund of Cenvat credit relatable to export prior to one year time-barred Refund needs to be re-quantified by adjudicating authority – Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1944. **[Emerson Innovation Centre V/s. Commissioner of C. Ex., Pune. 2018 (8) G.S.T.L. 400 (Tri. - Mumbai)]**
- Refund – Limitation – Refund of pre-deposit - Such deposit should abide by final orders to be passed by Tribunal and cannot be appropriated towards duty demand, unless and until appeal was dismissed by Tribunal – For all practical purposes, said amount remained in suspense account as deposit pending appeal before tribunal – Section 11B (5) of Central Excise Act, 1944 had no application – Even on facts claim within 7 months of Tribunal’s order was within time-limit



prescribed in said section – Claim not barred by limitation – Direction to return amount with interest – Section 11B and 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1944. **[Executive Engineer, P.W.D./W.R.O. V/s. Asst. Commr. of C. Ex., Thanjavur. 2018 (8) G.S.T.L. 264 (Mad.)]**

- Gold bars – IGST – Levy on import – Advance Authorization (AA) – Petitioner pleading that notwithstanding relief measures announced for

exporters as per decisions of 22nd meeting of GST Council on 6-10-2017, ground situation remaining same and they are being forced to pay IGST on import of said goods under AA – As an interim relief, no IGST shall be payable by petitioner on such imports till final decision of this petition subject to petitioner furnishing a letter of undertaking to bound itself to outcome of final decision – Article 226 of Constitution of India. **[Jindal Dyechem Industries (P) Ltd. V/s. Union of India. 2018 (8) G.S.T.L. 23 (Del.)]**

Customs

- Stay/Dispensation of pre-deposit – While deciding application for stay and/or for waiver, Appellate Tribunal not expected to write detailed judgement but prima facie consideration of merits of case required to be made – On fact, order reflecting non-application of mind by Appellate Tribunal as regards existence of prima facie case - application to be reconsidered by Appellate Tribunal – Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1944. **[Principal Commissioner of Customs (Import-1) V/s. Borsara Machines. 2018 (8) G.S.T.L. 383 (Bom.)]**
- Cus - Interest on delayed refund - The only question is the period for which petitioner is entitled to interest on the amount of refund - Petitioner submits that interest is liable to be paid from expiry of 90 days from the date of application under Section 27(1), which in this case is 23.07.2007, is well founded - A plain reading of Section 27A of Customs Act, 1962 supports his submission that the word "applications" throughout Section 27A refers to the application

for refund under Section 27(1) - There is no other application contemplated therein - Section 27A then provides for the payment of interest from the date immediately after expiry of three months from the date of receipt of "such application" - The words "such application" refer to the application under Section 27(1) - This view is supported by judgment of Supreme Court in Ranbaxy Laboratories Ltd. 2011-TIOL-105-SC-CX - In that case Sections 11B and 11BB of CEA, 1944, fell for consideration - The provisions of Sections 11B and 11 BB of CEA, 1944 correspond to Section 27(1) and 27A respectively insofar as they are relevant to this case - Even assuming that petitioner furnished the evidence with respect to issue of unjust enrichment later it would make no difference as Section 27A mandates the payment of interest from the date of the application - The revenue in any case does not suffer any loss as it has the benefit of the use of the money, in fact, even prior to the date of filing of application for refund under Section 27(1) - The petitioner shall be paid interest from 23.10.2007 i.e. 90 days after the date of the application under Section 27(1) viz. 23.07.2007



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till payment: HC. [M/s. Om Refoils Ltd. vs. Uol. 2018-TIOL-181-HC-P&H-CUS]

- Cus - Petitioner had availed drawback claim as early as 2013 and foreign remittances have not come to petitioner's bank account within the time permissible under the scheme - On 12.12.2017, petitioner sent a representation to Reserve Bank of India seeking extension of time for realization of export sale proceeds - It is stated that said representation is pending before Reserve Bank of India for consideration - Though, as on date, petitioner is not eligible to avail drawback claim, which had been availed in year 2013, same is in the stage of investigation as regards quantum of drawback eligible apart from the fact of non-

remittance of foreign exchange within the time permitted - In any event, there should have been a demand raised to the petitioner, which appears to have been not issued till date - Therefore, while permitting DRI to continue investigation, petitioner should be permitted to operate their bank account by simultaneously protecting the interests of Revenue - Petitioner is directed to furnish bank guarantee for 25% of drawback claim availed by petitioner to the satisfaction of third respondent or any other appropriate authority of Customs Department and execute a bond in proper format for differential amount to the satisfaction of appropriate officer: HC. [Pranav Exports vs. DRI. 2018-TIOL-132-HC-MAD-CUS]
