



INDIRECT TAX UPDATES

RSA Legal Solutions

24th November, 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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Details pertaining to FORM GSTR -3B for the months of August and September, 2017 can be edited from 20.11.2017

General Updates

- ASSOCHAM: If real estate sector is to be brought within the ambit of GST, then it should be along stamp duty and a moderate rate and should not add to the cost of housing or construction.
- Passenger vehicle exports from India have run into a GST speed breaker as manufacturers have been unable to file claims since July, resulting in their GST refund getting stuck.
- The delay on part of the Centre in notifying the GST Council's decisions permitting State Government to continue their own monitoring mechanism to check tax evasion till the introduction of e-way billing, has taken a heavy toll on the finances of the State.
- The Government is looking to reduce GST on consumer durables like washing machines and refrigerators from the 28% tax slab.
- Eateries such as Starbucks, McDonalds, Dominos have decided to increase the base prices of their products to offset the impact from GST rate cut.
- GSTN launches offline tool, for filing GSTR-4 on the GST portal.



Key Notifications/Circulars/Public Notice

- The CBE&C vide **Notification No. 56/2017- CT, dated 15.11.2017** has mandated the furnishing of return in **FORM GSTR-3B** till March, 2018.
- **Notification No. 57/2017- CT, dated 15.11.2017** prescribes quarterly furnishing of **FORM GSTR-1** for those taxpayers with aggregate turnover upto Rs. 1.5 Crore.
- **Notification No. 58/2017- CT, dated 15.11.2017** prescribes quarterly furnishing of **FORM GSTR-1** for those taxpayers with aggregate turnover more than Rs. 1.5 Crore.
- The time limit for filing of **FORM GSTR-4** has been extended to 24.12.2017 vide **Notification No. 59/2017 dated 15.11.2017**.
- The time limit for filing **FORM GSTR-5** for the months of July to October, 2017 has been extended to 11.12.2017 vide **Notification No. 60/2017-CT, dated 15.11.2017**.
- The time limit for filing **FORM GSTR-5A** for the months of July to October, 2017 has been extended to 15.12.2017 vide **Notification No. 61/2017-CT, dated 15.11.2017**.
- The time limit for filing **FORM GSTR-6**, for the month of July, 2017 has been extended to 31.12.2017 vide **Notification No. 62/2017-CT, dated 15.11.2017**.
- **Notification No. 63/2017-CT, dated 15.11.2017** has extended due dates for submission of details in **FORM GST ITC-01** to 31.12.2017.
- CBE&C notified the 12th amendment to the CGST Rules 2017 vide **Notification No.55/2017-CT, dated 15.11.2017** through which they inserted rules relating to manual filing and processing, appointment of Appellate authority, FORM GST RFD-01 A (Application for refund (manual)) and FORM GST RFD-01 B (Refund order details).
- **Notification No. 66/2017-CT, dated 15.11.2017** seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods.
- The due date for submitting **FORM GST TRAN-1** under Rule 117 and Rules 120A of the CGST Rules, 2017 has been extended to 27.12.2017 vide **Order No. 9/2017-GST and Order No. 10/2017-GST, dated 15.11.2017**, respectively.
- The CBE&C issued **Circular No. 17/17/2017-GST, dated 15.11.2017** with respect to Manual filing and processing of refund claims in respect of zero-rated suppliers.
- The CBE&C vide **Notification No. 43/2017-IT (Rate) dated 14.11.2017** and **Notification No. 41/2017- CT (Rate) dated 14.11.2017** has amended the rates of 176 goods under the 28%



- tax slab to 18% and 2 goods under the 28% tax slab to 12%.
- The CBE&C vide **Notification No. 46/2017- CT (Rate) dated 14.11.2017** and **Notification No. 48/2017- IT (Rate) dated 14.11.2017**, has amended Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 to notify rate @ 2.5% for standalone restaurants and @9% for other restaurants, reduce rate of job work on “handicraft goods” @ 2.5%.
- The CBE&C vide **Circular No.15/15/2017-GST dated 06.11.2017** notified the due date for generation of Form **GSTR-2A** and Form **GSTR-1A** in accordance with the extension of due date for filling Form GSTR -1 and GSTR-2 respectively.
- The CBE&C vide **Notification No. 64/2017- CT dated 15.11.2017** has reduced the maximum late fee payable for delayed filing of return in Form **GSTR-3B** from October 2017 onwards.
- The CBE&C vide **Notification No. 65/2017- CT dated 15.11.2017** has exempted the suppliers supplying services through an e-commerce from obtaining compulsory registration.
- The CBE&C has issued **Circular No. 18/17/2017- GST dated 16.11.2017** with respect to refund of unutilized input tax credit of GST paid on inputs in respect of exporters of fabrics.

Case Laws

GST

- GST - Senior Standing Counsel for Respondent UOI produced before the Court notification 37/2017 –CT (T) wherein it was notified that leasing of vehicles purchased and leased prior to 1st July, 2017 would attract GST at a rate equal to 65% of the applicable GST rate (including Compensation Cess) - in view thereof, the grievance of the petitioner no longer survived - Petition was disposed of: High Court. **APHRO ECOMMERCE SOLUTIONS PVT LTD vs UOI [2017-TIOL-30-HC-DEL-GST]**
- Refund of Service Tax paid by mistake – Inadvertent remittance by service recipient due to ignorance of law – HELD : Tax authorities had no jurisdiction to collect tax from service recipient during relevant period - Collection of tax under mistake of law unconstitutional being contrary to Article 265 of Constitution of India, as against impugned order of Tribunal, holding such tax collection as ‘without authority of law’ and not ‘unconstitutional’ – Refund claim not maintainable under Section 11B of Central Excise Act, 1944 as made applicable to Service Tax vide Section 83 of Finance Act, 1994 – Remedy for claiming refund of such amount would be action by way of suit or writ petition. **ENMAS ANDRITZ PVT vs. CESTAT, CHENNAI [2017 (6) G.S.T.L. 12 (Mad.)]**
- Refund – Limitation – protest on duty payment - In letters to jurisdictional authorities and CBEC assessee contended that it was not liable to pay tax, sought clarification and protested about pressure from department p HELF: Letters indicated that payment were made under protest, and not voluntarily or without reservation – Hence, limitation period for refund was not applicable - Section 11 B (1) of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of



Finance Act, 1994. Refund – Limitation - Protest on duty payment - It is necessary that it be accompanied by words “under Protest” If conduct indicates that payment was not voluntary and out of compulsion, it is under protest within meaning of second proviso to Section 11B(1) of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. Appeal to High Court – Substantial question of law – CESTAT’s findings that purchasers’ liability to pay Service tax was contingent upon assessee’s liability to do so – HELD: It was pure question of fact – Hence, appeal was not maintainable. **COMMR. OF C. EX., CHANDIGARH vs. IND SWIFT LANDS LTD. [2017 (6) G.S.T.L.21 (P & H)]**

- Penalty – Mandatory Penalty – Option to pay 25% of duty with interest paid within 30 days from date of communication of order of Central Excise officer determining such duty – Time frame for option given in proviso of Section 11AC of Central Excise Act, 1944 will also commence from date of Appellate order – Duty as determined under Section 11A (2) of Central Excise Act, 1944 attain finality only, if sustained by Commissioner (Appeals) – No fault in direction of Commissioner (Appeals) giving option to pay reduced penalty – Order of the Tribunal rejecting option to pay penalty granted by Commissioner (Appeals), not proper – Section 11AC of Central Excise Act, 1944. **AP STEELS vs COMMR. OF C.EX, TIRUCHIRAPALLI [2017 (355) E.L.T. 6 (Mad.)]**
- Demand – Interest – Cenvat credit for duty paid on inputs used in manufacture of exempted final products. Though liability to pay interest on default

is automatic, whether utilizable input credit was available during whole period of default of offset entire demand has to be gone into by original authority – If input credit was available, assessee is not liable for interest as it is only belated adjustment of duty credit of input credit available - if there is shortfall or deficit in input credit available, assessee is liable for interest for period of default – Section 11A of Central Excise Act, 1944. Demand – Interest - - Interest for period of pendency of appeal before High Court, assessee is liable to pay interest – Section 11A of Central Excise Act, 1944. **COMMR. OF C.EX. S.T. & CUS., COCHIN vs. FACT LTD. [2017 (355) E.L.T. 55 (Ker.)]**

- ST – Respondent borrowing funds under the scheme of External Commercial Borrowing from foreign lenders, Asian Development Bank (ADB) and International Finance Corporation (IFC) and were contractually obliged to pay commitment charges, up-front fee, arrangement fee, agency fee etc. – Revenue had held that the respondent is liable to pay Service Tax under reverse charge mechanism – CESTAT while setting aside the order and allowing the appeal with consequential relief held that when the enactments (viz. Article 253 of the Constitution of India) that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of FA, 1994 will not prevail; that there is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements and to attain that end, the taxing



statute, if it offers the scope, must be so interpreted; held that fees paid by respondent is not liable to service tax under reverse charge – Revenue in appeal. Held: Supreme Court after condoning the delay admitted the appeal. **COMMR. OF SERVICE TAX vs. M/s COASTAL GUJARAT POWER LTD [2017-TIOL-418-SC-ST]**

- CX – Notification. 20/2007-CX - There cannot be any surcharge when basic duty itself is Nil – Education Cess and SHE Cess also refundable - co-ordinate Bench of CESTAT could not take a

contrary view - Judicial discipline warranted reference of the matter to the Larger Bench which it did not do - It is also trite that when two views are possible, one which favours the assessee has to be adopted – Government itself has taken the position that where whole of excise duty or service tax is exempted, even the Education Cess as well as Secondary and Higher Education Cess would not be payable - These circulars are binding on the Department - Appeals allowed: Supreme Court. **M/s SRD NUTRIENTS PVT LTD vs. COMMR. OF C.EX, GUWAHATI [2017-TIOL-416-SC-CX]**

Customs

- Valuation (Customs) – Misdeclaration of values – Based on market enquiry without systematic data- it cannot alone become basis of enhancement of value without corroboration by independent evidence which could be contemporary imports or manufacturer’s price list supported by specific written declaration from manufacturer –Also ,Revenue needs to investigate differential payments made by importer to supplier from where goods are received Rule 4 and 9 of Custom valuation (Determination of value of Imported Goods) Rules, 2007, Section 14 (1) of Customs Act, 1962. Valuation (Customs)- Misdeclaration of values – Based only on market inquiry without enquiry with experts and not conducted scientifically HELD : such market inquiry cannot become sole basis for sustaining enhancement of value in absence of any corroboratory evidence –Rules 4 and 9 of Customs valuation (Determination of value of

Imported (Goods) Rules,2007-Section 14 (1) of Customs Act, 1962. **GOLDEN AGRO CORPORATION vs. COMMR. OF CUSTOMS, JAIPUR -I [2017 (354) E.L.T. 655 (Tri.-Del.)]**

- Seizure –Grant of- Document relating to year 2014 indicated that assessee had paid in full, in proportion, duty amount export obligation stipulated in licence- Till issuance of search warrant in 2017 there was no document or any act for Customs Department to doubted fulfilment of export obligations-HELD: If assessee was involved in fraud ,two years period was enough to unearth it , Department had to go for adjudication by raising demand with specific allegations, and mere affidavit –in-reply alleging fraud was not sufficient- Assessee directed to keep machine in safe custody for reasonable period up to 31st July ,2017 and execute bond for release of goods. Seizure- Supartnama– Record



indicating that lock placed by department on outer door of room where machine was installed, was removed, HELD : Department had locked and sealed on immovable property where machine was installed –This was not permissible under section 110 of Customs Act,1962.

AADARSH PRINTS vs. UNION OF INDIA [2017 (354) E.L.T. 478 (Bom.)]

- EXIM- Export Obligation- Fulfilment of –Imported raw material- Far in excess of required quantity and this fact not brought to notice of licensing authorities, who could have issued licences as per requirement- After duty free import, importer neither suppressed and came to light during investigation- Held: Demand of duty on excess inputs, by relying on Para 4.28 of Handbook of Procedures, was proper- It could not be said that

Para 4.28 *ibid* was applicable only in case of default by advance authorization holder- Advance licence in terms of FTP/EXIM Policy and exemption is subject to terms and conditions in notification and FTP/Handbook of Procedures- Hence, it could not be said that Para 4.28(v) *ibid* was either contrary to FTP and Customs notification or that it restricted scope of FTP- Pleas that demand was inflated as it had not accounted actual exports, ignored issue of clubbing of advance licences pending before DGFT, and only non-cenvatable Customs duty was payable, rejected- If and when DGFT granted request or Cenvat credit was admissible, importer could raise appropriate grievance.

UNIMARK REMEDIES LTD. vs. COMMR. OF CUS. (EXPORT PROMOTION), MUMBAI. [2017 (355) E.L.T. 193 (Bom.)]
