



INDIRECT TAX UPDATES

RSA Legal Solutions

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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

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GST Handholding

The DGFT released the mid-term review of the Foreign Trade Policy, 2015-2020 on 05.12.2017

General Updates

- Arun Jaitley speaking at the HT Leadership Summit has hinted at merging 12 and 18 per cent tax rates under GST once revenue collections pick up. He also said that the top 28 per cent slab would be for a 'very thin' list of luxury and sin goods.
- Trade body of Cotton Association of India (CAI) has threatened to go on a one-day protest on 15.12.2017 followed by an indefinite strike against Reverse Charge Mechanism if the GST Council does not resolve the issue in its meeting scheduled on 21.12.2017.
- Citizens can report GST fraud or avoidance by visiting www.cbec-gst.gov.in and clicking on CBEC Mitra Helpdesk. You can also send in your grievance to cbecmitra.helpdesk@icegate.in.
- Six-member committee set up by Government to provide inputs to GST law review committee.
- Bardi Narain Sharma, a Rajasthan cadre IAS officer of 1985 batch has been appointed as the first chairman of the National Anti-Profiteering Authority (NAA).
- Prakash Kumar, CEO, GSTN: GSTN to provide remaining IT functions on GST portal in next 2-3 months.



Key Notifications/Circulars/Public Notice

- The CBE&C vide **Circular No. 21/21/2017-GST dated 22.11.2017**, has issued a clarification on the Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes].
- The Government vide **Public Notice dated 29.11.2017**, has advised exporters to file Table 6A and GSTR-3B for processing of IGST Refund and for Refund of the unutilized Input Tax Credit. It further stated that error by exporters while filing their returns are the sole reason for delay in grant of refund or rejection thereof.
- **DGFT vide Notification No. 41/2015-2020, dated 05.12.2017** has notified the revised Foreign Trade Policy, 2015-2020, which shall come into effect from 05.12.2017.
- **DGFT vide Public Notice No. 43/2015-2020, dated 05.12.2017**, has notified the revised edition of Handbook of Procedures.
- **DGFT vide Public Notice No. 44/2015-2020, dated 05.12.2017** has notified amendments to Appendix 3B of the Foreign Trade Policy, 2015-2020. The rate of rewards under MEIS for certain S.nos of Table 2 in Appendix 3B are revised by the Public Notice. The revised rates shall be applicable for exports made w.e.f. 01.11.2017 to 30.06.2018. The Notice further incorporates Table-3 in Appendix 3B specifying a list of categories which are ineligible for Duty Credit Scrip entitlement under MEIS.
- **DGFT vide Public Notice 45/2015-2020, dated 05.12.2017**, by amending the Schedule under Appendix 3D has stated that the services export rendered between 01.04.2017 to 31.03.2018, comprising rates and conditions for rewards under the Services Exports from India Scheme (SEIS) is extended up to 31.03.2018 with rates of reward as specified in the Public Notice.
- The Government vide **Press Release dated 16.11.2017** approved the establishment of the National Anti-Profiteering Authority under GST.
- **DGFT vide Public Notice No. 46/2015-2020, dated 05.12.2017**, expanded the list of services where payment has been received in Indian Rupees, which can be treated as receipt in Demand Foreign Exchange as per guidelines of the Reserve Bank of India in terms of para 3.08 (c) of the FTP 2015-2020 to include Ground Handling services.
- CBE&C vide **Circular No. 46/2017- Customs, dated 24.11.2017**, clarified the applicability of GST on goods transferred/sold while being deposited in a warehouse.



Case Laws

GST

- Goods and Services Tax (Compensation to States) Act, 2017 – Vires thereof – Compensation Cess on Coal in stock – Petitioner pleading that said Act ultra vires of Article 279A of Constitution of India inasmuch as that Coal lying in stock as on appointed date already suffered Green Energy Cess for which no credit admissible and provisions of impugned Act levying Compensation Cess afresh on such stock – Section 8 of Goods and Services Tax (Compensation Cess afresh) Act, 2017 – Article 226 of Constitution of India – Notice issued to Union of India and Attorney General. **[FC Aggarwal Coal Pvt. Ltd. V/s. Union of India. 2017 (6) G.S.T.L. 368 (Guj.)]**
- Goods and Services Tax (GST) – Appearance before Court – Personal appearance - GST – Council Secretary – In spite of serving of notice, none appearing for GST Council – Not known as to whether petitioner's representation disposed of by said Council in terms of Court's directions – Accordingly, Secretary GST Council directed to be personally present on next date of hearing – Article 226 of Constitution of India. **[Hughes & Hughes Chem. Ltd. V/s. Union of India. 2017 (6) G.S.T.L. 369 (Del.)]**
- Cenvat/Modvat – Rule 44A of Central Goods and Services Tax Rules, 2017 inserted vide Notification dated 17-8-2017, providing for reversal of 5/6th of already accrued Cenvat credit in respect of additional duty of Customs paid at time of import of gold dore bar – Challenge to on the ground of being ultra vires Section 140 of Central Goods and Services Tax Rules, 2017, which allowed such credit to be carried forward in full as transitional measure, as well as, rule-making power under Section 164 ibid – Petitioner contending that Rule 44A ibid, imposing restriction only in respect of gold dore bar, grossly discriminatory and unreasonable - Prima facie case made out for grant of interim relief – Balance of convenience also in favour of petitioner - Hence, respondent directed not to take any coercive steps till next date of hearing to recover Cenvat credit already availed by petitioner - Article 226 of Constitution of India. **[Salasar Synthetics V/s. Union of India. 2017 (6) G.S.T.L. 396 (Del.)]**
- Writ jurisdiction – Delay and laches – Delay of 4 years in filing writ petition – Sufficiency of explanation – Delay due to waiting outcome of others proceedings whether valid ground – Levy of Service Tax under Reverse Charge – Appellant not filing any appeal against adjudication order of Joint Commissioner demanding Service Tax under RCM on Commission paid to overseas agent, rather started making gradual payments against said demand – Writ petition filed after 4 years against adjudication order after decision of Apex Court the Service tax under RCM not leviable prior to 16-6-2005 – HELD: settled in catena of judgements that a decision of other similar cases cannot be a cause of invoking writ jurisdiction especially when original order in own



case not challenged in appeal and thus stood finalized – Merely sitting on fence and watching proceedings in other similar cases is no valid explanation for delay and laches of 4 years in approaching writ court – No infirmity in High Court order of dismissing writ petition/appeal on this ground – Article 226 of Constitution of India. **[Sholine V/s. Commissioner of Service Tax. 2017 G.S.T.L. 226 (S.C.)]**

- GST registration – Cancellation of - GST registration cancelled as is depicted on website but copy of order not supplied to petitioner – Notice or opportunity of hearing not given before cancelling the registration – Proceedings in the matter difficult in absence of any order of cancellation on record – Respondents directed to seek instructions as to whether registration of petitioner cancelled if so by which Authority and to bring on record the cancellation order, if any, so that reasons of cancellation can be known - Section 29 of Goods and Services Tax Act, 2017. **[Annapurna International V/s. State of U. P. 2017 G.S.T.L. 233 (All.)]**
- GST Network – Filing of Advance Ruling application – web portal for upholding application seeking advance ruling not going to be ready till 15 January, 2018 – As an alternative, all such applications, including application from unregistered persons, to be accepted by GSTN manually with facility to deposit prescribed fees through GST Portal – However, it is not clear under what authority of law, GSTN decided to postpone availability of this alternative system of filing applications seeking advance ruling

manually till 20th October, 2017 when provisions of law are already in force – Clarification sought from GSTN by issue of Notice. **[Sanjeev Sharma V/s. Union of India. 2017 G.S.T.L. 261 (Del.)]**

- Writ jurisdiction – Maintainability against assessment order – alternative remedy – Petitioner challenging assessment order on the ground that officer passing order imposing 18% IGST on imported goods having no jurisdiction – HELD: Petitioner by himself asking assessing officer to issue a speaking order, admitting jurisdiction of such officer to assess IGST on imported goods – Hence jurisdiction ground cannot be raised at this stage – Impugned order duly recording reasons for its conclusion and having been issued after grant of hearing to petitioner, not challengeable under writ jurisdiction – Petitioner directed to avail alternative remedy of appeal - Article 226 of Constitution of India. **[Jaap Auto Distributors V/s. Assistant Commissioner of Cus., Chennai. 2017 G.S.T.L. 262 (Mad.)]**
- Adjudication – Suo motu re-adjudication – Power of re-adjudication without filing appeal by adjudicating authority against his first adjudication order – Once adjudicating authority passes order sanctioning refund, he becomes functus officio and cannot issue show cause notice and pass another order on second thought demanding repayment of duty already refunded – Only course open for him to file appeal against his own order if so directed by Jurisdictional Commissioner after review of such order under Section 35E(2) of Central Excise Act, 1944 – Section 33 of Central



Excise Act, 1944. [Commr. of C. Ex. & S.T., Bangalore-III V/s. Subex Systems Ltd. 2017 (355) E.L.T. 414 (Tri.-Bang.)]

Credit Rules, 2004. [Reliance Forge V/s. commissioner of Central Excise, Faridabad. 2017 (355) E.L.T. 418 (Tri.-Chan.)]

- Demand – Cenvat credit – Non-receipt of inputs – Benefit of doubt -Manufacturer stating that he only issued invoices and not supplied goods – Transporter also denying transportation of goods – Since, assessee on investigation stated that he received goods and used same in manufacture of final products, which were cleared on payment of duty, allegation of non-receipt of goods not sustainable when Department failed to prove as to from where such goods were received - Cenvat credit availed by assessee regularized giving them benefit of doubt - Rules 2 and 3 of cenvat
- Refund – Cenvat credit remaining unutilized on closure of factory – Cash refund of unutilized Cenvat credit permissible even if assessee not surrendered their registration certificate as on date of passing of adjudication order on their refund claim but surrendered same during pendency of appeal before Commissioner (Appeals) Section 11B of Central Excise Act, 1944 and Rule 5 of Cenvat Credit Rules, 2004. [Commissioner of C. Ex., Ludhiana V/s. Standard Electricals Ltd. 2017 (355) E.L.T. 479 (Tri.-Chan.)]

Customs

- Appellate Tribunal's order – Recall of – rectification of mistake – Tribunal has powers to recall its order while exercising its powers of rectification Section 129B (2) of Customs Act, 1962. [Commissioner of Central Excise, Nagpur V/s. Rio Tinto India Pvt. Ltd. 2017 G.S.T.L. 264 (Bom.)]
- Imports-Prohibited goods- Definition of- “Any goods the import or export of which is subject to any prohibition”- Goods prohibited not only in terms of Customs Act, 1962 but under “any other law for the time being in force” would be covered by definition under Section 2(33) of the Customs Act, 1962. [Alchemist Food Ltd. v. Additional Commissioner of Customs, 2017 (356) E.L.T. 38 (Del.)]
- Drawback claim- Limitation- Claim filed under wrong provision of law not disentitle legitimate claim under correct provisions cannot be denied- Claim for duty paid on goods re-exported initially filed incorrectly under Section 26A of the Customs Act, 1962 and later filed under Section 74 ibid- Benefit of Section 14 of the Limitation Act, 1963 available to assessee- Claim of drawback filed by assessee under Section 74 of Customs Act, 1962 within time- Authorities below directed to entertain claim of drawback on merits. [Artlife Wellness Products P. Ltd. v. C.C., ICD, PPG, New Delhi, 2017 (356) E.L.T. 134 (Tri.- Chan.)]
