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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

GST Council approved key features and new format of the GST returns

General Updates

- The GST decides that the taxpayers may opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory.
- The GST Council has approved the setting up of appellate tribunal.
- CBIC has shared the draft Format of Monthly and Quarterly Simplified GST returns.
- Central Board of Indirect Taxes and Customs (CBIC) has successfully concluded the Third refund extended fortnight from 16th July, 2018 to 31st July, 2018.
- GST Council hikes exemption limit from Rs 10 lakhs to Rs 20 lakhs in States like HP, Uttaranchal, Assam, Arunachal & two more.



Key Notifications/Circulars/Public Notice

- The Government vide **Notification 13/2018 CT(Rate) dated 26.07.2018** clarified the following:
 - GST @ 5 % shall be applicable in respect of food or any other article for human consumption supplied at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply.
 - GST @18% shall be applicable when goods supplied in Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.
 - The government defined multimodal transportation of goods and notified that GST shall be liable @ 12% where two different modes of transportation is required to deliver goods to the recipient.
 - CBIC substituted the words “Declared tariff” with the words “value of supply” in case of hotel accommodation. It means that GST will now be charged on transaction value instead of declared tariff.
- CBIC vide **Notification No 18/2018- CT(Rate) dated 26.07.2018** rationalized rates of goods and services.
- The CBIC vide **Circular No. 21/2018-Customs dated 18.07.2018** had set up the Help Desks for the refund of IGST paid on the export of Goods.
- The CBIC vide **Circular No. 22/2018-Customs dated 18.07.2018** provided the clarification in case of SB003 errors and extension of date in SB005 and other cases using officer Interface for rectification of errors.
- DGFT has issued **Circular No. 09/2015-2020 dated 09.07.2018** providing the clarification on acceptance of any copy of Shipping Bill in lieu of EP Copy of Shipping Bill for the grant of the EODC of Advance Authorisation.
- In order to reduce the government litigation, Department of Revenue via **Instruction dated 11.07.2018** has raised the monetary limits for filing appeals in the matters relating to Central Excise and Service Tax before CESTAT/ High Courts and Supreme Court. The instruction will apply to pending cases as well.
- DGFT vide **Public Notice No. 17/2015-2020 dated 03.07.2018** has provided the procedure for



the “No Incentive Certificate under MEIS” where the goods are reimported by the exporter.

- DGFT vide **Circular No. 10/2018-19 dated 13.07.2018** with respect to accountability of inputs where Advance Authorisation are issued on the net to net basis for the parts/components.
- DGFT vide **Trade Notice No. 22/2018-19 dated 30.07.2018** has notified the activation of ECom module for applying the SEIS as per new ANF-3B for financial year 2017-18 from 01.09.2018 onwards.
- CBIC vide **Notification No.20/2018-CT(Rate) dated 26.07.2018** inserted as proviso for the textile industry whereby, the input stage credit of the goods mention therein will be available to the

registered person w.e.f 1st August, 2018 and the regd. person can claim refund under inverted duty structure for the unutilized ITC. However as per the notification the unutilized accumulated Input tax credit on the inward supplies due to inverted duty structure on or up to the month of July, 2018 will lapse. For more information, please refer to the Notification No.05/2017 CT(Rate) dated 28th June 2017.

- CBIC vide **Notification No. 30/2018 CT dated 30th July 2018** has extended due date for furnishing the return by Input Services Distributor (ISD) in the **FORM GSTR-6** for the time period July 2017 to August 2018 upto 30th September 2018.

CASE LAWS

GST

- In the Advance Ruling hearing relating to Actionable Claim, the issue was whether the reward points/payback points not redeemed by the customer for reasons that their validity period has expired would continue to be actionable claim. Authority held that on expiry of the validity period, the reward/payback point can no longer be redeemed/encashed by the end customer and the end customer loses right over them. Hence, the

value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by applicant to its clients and thus would be outside the scope of being considered as 'actionable claim' other than lottery, gambling or betting and therefore would qualify as supply of



services in terms of Section 7 of CGST Act, 2017.

[M/s Loyalty Solutions and Research Pvt Ltd, 2018-TIOL-100-AAR-GST]

- In another AAR matter, the applicant desired a ruling on whether the services provided by the company in the form of composite supply are exempt vide entry no. 72 of notification 12/2017-Central Tax. The facts of the case are that Odisha Madhyamik Shiksha Mission (OMSM), Govt of Odisha mandated Odisha Knowledge Corporation Limited (OKCL), to implement ICT project in 4000 govt and govt aided higher secondary schools across Odisha. The applicant contended that the perspective 'recipient of supplies' is Govt of Odisha and in view of that the same service is exempt as per the captioned notification. Giving the ruling against the appellant, the Authority held that the that same activity does not fall under the ambit of services but is a composite supply. **[M/S IL& FS Education And Technology Service Ltd, 2018-TIOI-90-AAR-GST]**
- The petitioner is a dealer who was unable to upload FORM GST TRAN-1 within the stipulated time period due to some technical error. Consequently the petitioner was unable to take credit of input tax available to it upon migration to GST. Hence the present writ is filed seeking appropriate directions. It was held that the petitioner was directed to

approach the jurisdictional Nodal Officer, who would be uploading the Form GST TRAN-1. Where it is found that the petitioner was unable to upload Form GST TRAN-1 for no fault of its own, then the Nodal Officer will also enable the petitioner to take credit on input tax available on migration to GST. **[M/s Selfshine Polymers India Pvt Ltd Vs State Of Kerla, 2018-TIOL-82-HC-KERALA-GST]**

- The petitioner company is engaged in manufacturing & dealing in paints. The petitioner owned some paint mixing machinery which was seized by the Department. The petitioner provided bank guarantee & security bond to secure release of the machinery as well as the vehicle transporting it. While the petitioner was contemplating to avail appellate remedy, the Department threatened to invoke bank guarantee. Hence the writ was filed to challenge invoking of bank guarantee. It was held that Section 107 of the CGST Act read with Section 108 of the GST Rules allows three months' time to avail appellate remedy. Hence it would be inequitable if the Department invokes the bank guarantees before the petitioner exhausts appellate remedy & such remedy would become illusory. Hence the Department is restrained from invoking bank guarantee within such three month period. **[M/s Berger Paints India Ltd Vs State Tax Officer, 2018-TIOL-84-HC-KERALA-GST]**



- The applicant company manufactured some goods which were then supplied to authorised dealers & stockists both in and outside Maharashtra. Goods received from other states are also supplied. The applicant enters into agreements on principal to principal basis with such dealers. The prices are fixed by the applicant. Thereby, the applicant seeks to know whether amount paid to dealers & stockists as 'rate difference' after supplying goods to them can be considered when arriving at transaction value u/s 15 of CGST Act. It was held that the amount paid to authorised dealers on account of rate difference after supplying goods to authorised dealers & stockists cannot be considered when determining transaction value u/s 15 of CGST Act. Further, such amount cannot be allowed u/s 15(1) r/w Section 34(1) of the CGST Act or u/s 15(3) r/w Section 34(1). [**Ultratech Cement Ltd, 2018-TIOL-110-AAR-GST (AAR)**]
- The applicant seeks to know whether any work executed & invoice to be raised for the pending event of testing and commissioning after the implementation of GST amount to supply, and specifically supply of works contract - Also whether the applicant is entitled to avail proportionate credit worth 10% duty of excise and VAT paid on materials bought vide invoices showing Excise and VAT separately under the transition provisions. Held-

The activity of laying underground pipeline network falls under "works contract" u/s 2(119) under the CGST Act, 2017 and the GGST Act, 2017 - In respect of that part of supply wherein time of supply is on or after the appointed date, GST is required to be paid - Thereby, the applicant is ineligible for availing input tax credit u/s 140(6) of the CGST Act, 2017 and the GGST Act, 2017. [**RB Construction Company, 2018-TIOL-57-AAR-GST (AAR)**]
- The applicant is a local authority under the ambit of the State Govt of Uttarakhand. It seeks to know whether material procured by it from the govt or from govt authority is exempt from GST. It was held that the applicant is covered under local authority which is receiving services from IIT, Mumbai which is covered under Central Govt. Considering Sr No B of Part 3 of GST-Tariff (Services), which is a list of nil rated & exempt services, it is seen that a govt authority providing services to another govt authority is exempt from GST. [**IT Development Agency, 2018-TIOL-78-AAR-GST (AAR)**]
- The applicant are the manufacturer of various machines use for construction purposes such as tower cranes, tractors, harvesters etc. The applicant in the present ruling are inquisitive to know whether Truck Mounted Cranes (TMC) which are mounted over the readymade trucks would be classifiable under heading 8426 or 8705. The applicant explains



that they manufacture the cranes and fix or mount it on the trucks. The trucks are at time provide by the clients or they purchase it from the company directly on request of the client. It was held that the TMC will be classifiable under 8705 and not under 8426 as the final product i.e truck mounted cranes are used for unloading and loading of heavy material. Therefore, it is a special purpose vehicle (crane lorry) which is engaged in lifting/loading. **[Action Construction Equipment Ltd, 2018-TIOL-106-AAR-GST.]**

- In another AAR matter, the issue was whether the reimbursement expenses and salary paid by HO located in Netherland and the liaison office established in India is liable to GST as supply of service where no consideration for any service is charge or paid. The applicant contends that no consideration is flowing between HO and Liaison office, as per S. 9 of the CGST Act then the same

transaction is not covered under the scope of the term 'supply' as defined in s. 7 of CGST act, 2017. The authority held that since liaison office is strictly prohibited to undertake any activity of trading, commercial or industrial nature or entering into any business contacts on its own name and all the expenses and salary are paid by the HO then the same are not liable to GST nor are required to get registered under GST **[M/s Habufa Meubelen BV, 2018-TIOL-97-AAR-GST]**

- The applicant purchased goods from overseas related party which was completely dependent upon requirement of Customer. While the goods were in transit, they were sold to the customer before they entered in the customs clearance. The applicant sought as whether such transaction would be leviable of IGST. It was held the same was not liable to IGST. **[BASF India Ltd, 2018-TIOL-82-AAR-GST]**

CUSTOMS

- The respondents imported a consignment of Vitamin, E50 powder (feed grade). The respondent claimed the benefit of concessional rate of duty at 5%, instead of standard 30%, as per the Customs Notification No. 20/1999. However, the department rejected the same and took a view that the goods

under import contained chemical ingredients for animal feed and not animal feed/prawn feed, as such, the concessional rate of duty under the extant notification was not available. The Bench held that the exemption notification should be interpreted strictly; the burden of proving applicability would be



- on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. **[Commissioner of Customs, (Import), Mumbai Vs. Dilip Kumar and Company & Ors., C.A. No. 3327-2007-SC]**
- The assessee's grievance is that copy of O-I-O was never received by him and until he approached the CESTAT in appeal. His belated appeal was rejected on the ground that the reasons adduced for seeking condonation of delay were unsubstantial. There was some considerable laxity on the part of respondents, who appears to have used different addresses. The Court held that there is no clear material on record to show that the assessee was communicated with O-I-O and at the same time, Court notes some laxity on the part of assessee as well. Nevertheless, the fact remains that the assessee was denied an opportunity to have the order on merits in original adjudication. The Court held that Tribunal shall proceed to hear the merits of appeal after adequate notice to assessee. **[G and G Enterprises vs CC, 2018-TIOL-1463-HC-DEL-CUS]**
 - The petitioner filed writ petitions seeking a direction to respondents to implement the orders passed by Commissioner (A) and to release the imported goods by assessing Bills of Entry on the basis of declared value and issuance of detention certificates for waiver of detention charges from date of Bills of Entry till the date of clearance of goods. Court is not inclined to dwell into it, as the Court is convinced that the goods can be directed to be released and the detention certificates can be issued subject to condition that the interests of Revenue are safeguarded. The Assistant Commissioner (Legal-II), Chennai Customs has given written instructions wherein it has been stated that adequate security i.e by executing necessary bond and bank guarantee may be directed to be done for the differential amount of duty involved in these cases. Question of directing the petitioner to furnish a bank guarantee does not arise since the petitioner succeeded before Commissioner of Customs (Appeals-II) **[HLG Trading vs CC, 2018-TIOL-1464-HC-MAD-CUS]**
