



S.C. Jain
Managing Partner
☎ 9891086862



INDIRECT TAX UPDATES

RSA Legal Solutions

3rd Sept, 2018

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 AMENDMENT ACTS ASSENTED BY THE HON'BLE PRESIDENT

General Updates

- The Government has decided to amend the warehousing provisions in order to ease trade and enable the importer or owner who seeks for extension in the warehousing period to pay duties online.
- The state Kerala has demanded aid from the GST Council by levying the calamity tax, special tax or cess in order to raise the additional resources.
- National Anti-profiteering Authority has started the helpline to address the grievances.
- The CBIC has introduced a web-help service in its website which will enable the tax payers to get faster solution for their issues.
- The issue of levying cess on sugar has been referred by Department of Revenue to Department of Legal Affairs, Ministry of Law & Justice for legal opinion.
- Government has extended the due dates for filing the return in the area which has been devastated by flood i.e. Kerala, Kodagu and Mahe.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 22/2018-CT (Rate) dated 06.08.2018**, the provision of Reverse Charge Mechanism (RCM) under section 9 (4) of CGST Act, 2017 has been deferred till 30th Sept, 2019.
- The CBIC vide **Notification No. 23/2018-IT (Rate) dated 06.08.2018**, the provision for RCM under section 5 (4) of IGST Act, 2017 has been deferred till 30th Sept, 2019.
- The CBIC vide **Notification No. 31/2018-CT dated 06.08.2018**, has specified the special procedure for completion of migration of taxpayers who received provisional IDs but could not complete the migration process. On registration, it will be deemed that such taxpayers have been registered with effect from the 1st July, 2017.
- The CBIC vide **Notification No. 34/2018-CT dated 10.08.2018**, has extended the validity of GSTR-3B from July, 2018 to March, 2019.
- The CBIC vide **Notification No. 33/2018-CT dated 10.08.2018**, has revised the due date for quarterly return in FORM GSTR-1 for registered persons with aggregate turnover up to Rs. 1.50 Crores.
- The CBIC vide **Notification No. 32 /2018-CT dated 10.08.2018**, has revised due dates for the monthly return in FORM GSTR-1 for registered persons with aggregate turnover above Rs. 1.50 Crores for the period July, 2018 to March, 2019 shall be 11th day of succeeding month.
- The CBIC vide **Circular No. 52/26/2018-GST dated 09.08.2018**, has provided the elucidation regarding the applicability of GST on various goods and services i.e. *Fortified Toned Milk, Drinking Water, Marine Engine and Disk Brake Pad etc.*
- The CBIC vide **Circular No.55/29/2018-GST dated 10.08.2018**, has provided the elucidation pertaining to the taxability on services provided by Industrial Training Institute (ITI).
- The CBIC vide **Notification No. 35/2018-CT dated 21.08.2018**, had extended the last date of filing the monthly return in FORM GSTR-3B for the month of Jul, 2018 from 20th Aug, 2018 to 24th Aug, 2018.
- The CBIC vide **Circular No. 26/2018-CUS dated 10.08.2018**, providing the simplification and rationalization on the processing of AEO-T1 application.
- The CBIC vide **Circular No. 27/2018-CUS dated 14.08.2018**, has asserted the elucidation regarding the bank guarantee/ cash security/ surety for various categories of importers which is required to be furnished for the bond to be executed as per sub-rule (2) of Rule 5 Customs (import of goods at

Period	Due Date
Jul,2018 - Sept,2018	31 Oct,2018
Oct,2018 - Dec,2018	31 Jan, 2019
Jan,2019 - Mar,2019	30 Apr, 2019



concessional rate of duty) Rules, 2017 by Export Oriented Units (EOUs).

- The CBIC vide **Circular No. 25/2018-CUS dated 08.08.2018**, asserted the standard operating procedures for discharge of bonds executed by nominated agencies/ banks under Notification No. 57/2000-Customs dated 08.05.2000
- The CBIC vide **Instruction No. 12/2018-CUS dated 13.08.2018**, asserted the safeguard duty on Solar cells whether or not assembled in modules or panels which shall be assessed provisionally on furnishing of simple letter of undertaking/bond by the concerned person.
- The DGFT vide **Public Notice No. 26/2015-2020 dated 01.08.2018**, inserted the list of 15 categories of services includes the category of "OTHERS" services on S.no. 15 under which Service Export Promotion Council (SEPC) shall issue the Registration-Cum Membership Certificate (RCMC).
- The DGFT vide **Public Notice No. 30/2015-20 dated 14.08.2018**, asserted one-time relaxation and condonation of delay in submission of installation certificate to RA's under the EPCG Scheme for authorization issued upto 31.03.2015, without payment of any penalty.
- The DGFT vide **Trade Notice No. 24/2018-19 dated 16.08.2018**, asserted that the new facility has been introduced by the DGFT EDI division which enables the exporter who obtained the Advance Authorization on the self- declaration basis to ascertain the status of their application in the Norms Committee.
- The DGFT vide **Public Notice No. 32/2015-20 dated 29.08.2018**, has amended the para 5.14 (b) of Hand Book Procedures 2015-20 which asserted that the Authorization Holder would intimate the Regional Authority on the fulfillment of export obligation, as well as average exports, within three months of completion of the block. Earlier, it was intimated to RAs by electronic filing using Digital Signature (DSC).
- The DGFT vide **Trade Notice No. 31/2015-20 dated 29.08.2018**, has amended the para 5.04 (a) of Hand Book Procedure 2015-20 which permitted the EPCG Authorization Holders to shift the capital goods imported during the entire export obligation period to any other units as mentioned in RCMC & IEC.
- The Ministry of Commerce and Industry vide **Instruction No. 90/2018 dated 03.08.2018**, providing the elucidation on Instruction No. 89 dated 17.05.2018 on guidelines regarding change in Share holding pattern, Name change of SEZ Developers and SEZ units, prior approval of BOA not need to apply before ROC.
- The CBIC vide **Circular No. 29/2018-Cus dated 30.08.2018**, asserted the pilot implementation of paperless processing under SWIFT-uploading of supporting documents (eSANCHIT) in Exports



Case Laws

GST

- **GST:** The applicant is engaged in trading of diesel engines & its spare parts along with services of diesel engine, either on AMC or need basis. The applicant seeks to know whether or not supply of goods & on-site services to customers in SEZ area to any SEZ unit or SEZ developer would be zero-rated supply u/s 16 of the IGST Act, 2017. Also whether GST is leviable on supply of goods or services to SEZ unit or SEZ developer. It was held that the applicant shall be liable to pay tax when supplying to Units and Developers of Special Economic Zones subject to the provisions of Section 16 of the IGST Act, 2017. **[West Bengal AAR, Applicant- M/s. Garuda Power Private Limited, 2018-TIOL-111-AAR-GST]**
- **GST:** The facts of the case are that an applicant ordered a Godrej Interio Slimline Metal Almirah through the Respondent and a tax invoice dated 07.11.2017 was issued to Boyce Mfg. Co. Ltd., Mumbai. At the time of delivery, another invoice dated 29.11.2017 was issued by the Supplier for an amount of Rs. 14,152/-. The Applicant had alleged that he had paid an amount of Rs. 14,852/- to the Respondent and the excess amount charged should have been refunded to him. The Applicant had further alleged that by not refunding the differential amount, the Respondent was resorting to profiteering which amounted to the contravention of the provisions of Section 171 of the CGST Act, 2017. It was held that withdrawal of discount does not amount to profiteering as the same was offered from his profit margin by the Supplier and does not form part of the base price and, therefore, also the Supplier cannot be held guilty under Section 171 of the Act. It was further held that Respondent i.e. M/s Flipkart Internet Pvt. Ltd. is not the Supplier/manufacturer of the Almirah and was only an agent who had offered his platform to the Supplier to sell the Almirah by charging commission, and was also not responsible for collection or refund of GST and hence he cannot be held accountable for contravention of Section 171 of the CGST. **[National Anti-Profitteering Authority, Rishi Gupta Vs. Flipkart Internet Private Limited, 2018-TIOL-04-NAPA-GST]**
- **GST:** Applicant is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines and undertakes the following types of transactions: a) The applicant installs beverage vending machines inside SEZ premises, prepares beverages using the vending machines & its ingredients, supplies to SEZ units which are consumed by the employees of SEZ units and charge the SEZ units based on number of cups of beverages supplied. (Cuppage billing). b) The applicant installs beverage vending machines inside SEZ premises, supplies beverage ingredients to the SEZ units and bills based on the quantity of ingredients supplied. SEZ units prepare the beverages using the vending machines and serve them to its employees. There will not be any consideration for the usage of vending machine by the SEZ units. Ruling sought as to whether - Whether supply of non-alcoholic beverages to SEZ units using coffee vending machines is in the nature of zero rated supply as defined under Section 16 of the IGST Act 2017? It was held that the supply of non-alcoholic beverages ingredients for such beverages to SEZ units



using coffee vending machines installed by the applicant, do not qualify as zero rated supply, as defined under Section 16 of the IGST Act, 2017.

[Karnataka AAR, Applicant- M/s. Coffee Day Global Limited, 2018-TIOL-114-AAR-GST]

- GST:** Applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The Company is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. It also operates Restaurant/Canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants. Question on which advance ruling is sought is - "Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act?" It was held that activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act. Application disposed of. **[Karnataka AAR, Applicant- M/s. Columbia Asia Hospitals Private Limited, 2018-TIOL-113-AAR-GST]**
- GST:** Applicant is engaged in the activity of providing services in the nature of warehousing, wherein they allow clients to store material or goods on specific compensation allowed under Bombay Warehousing Act, for which state license is provided - applicant seeks ruling as to whether exemption provided in Sr.no.54 of Notification 12/2017-CT(R) is applicable to them in respect of supply of warehouse services used for packing & storage of tea. It was held that goods being stored in the applicant's godown are not 'agricultural produce' as defined in Notfn. 12/2017-CT(R) and as reiterated by Board Circular 16/16/2017-GST, therefore, the exemption is not admissible to the applicant. **[Maharashtra AAR, Applicant - Nutan Warehousing Company Pvt Ltd, 2018-TIOL-119-AAR-GST]**
- GST:** Applicant is a supplier of end to end system solutions for controlled casting of iron and steel which includes supply of refractory components and associated services intends to offer a new supply, namely Contract Management System ("CMS"), and is seeking a Ruling on whether the activity proposed to be undertaken as CMS will result in supply of goods or services within the meaning of that term under the CGST/WBGST Acts, 2017 and the time of supply when so determined. It was held that activities proposed to undertaken are services associated with manufacturing of metal, and may be termed as "continuous supply of service" within the meaning of Section 2(33) of the GST Act, provided the service is agreed to be provisioned for a period exceeding three months - time of supply shall be the date of issue of invoice in terms of Section 13(2) (a), read with Section 31(2) of the GST Act and Rule 47 of the GST Rules. **[West Bengal AAR, Applicant - VESUVIUS INDIA LTD, 2018-TIOL-117-AAR-GST]**



CUSTOM

- **CUS:** The issue involved in the present case was to examine the correctness of the ratio laid down in Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay (1997) 6 SCC 564 ("Sun Export") where it was observed that if two views are possible in interpreting the exemption notification, the one favorable to the assessee in the matter of taxation has to be preferred. The Hon'ble Supreme Court in the judgment has held that the Exemption notifications should be interpreted strictly. The burden of proving the applicability of the exemption notification would be on the assessee for availing the benefit of the exemption notification. In case of an ambiguity in an exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by an assessee, it must be interpreted in favour of the Revenue and the ratio in Sun Export is incorrect and all judicial precedents which took a similar view as Sun Export, stand overruled. The assesses will have to ensure that they are able to prove that an exemption notification is squarely applicable to their case. The benefit of ambiguity cannot be claimed by an assessee, and it will be interpreted in favour of the Revenue. **[Commissioner of Customs (Import), Mumbai Vs. M/s Dilip Kumar and Company & Ors CA No. 3327 of 2007]**
- **CUS:** The petitioners challenge an order/letter of 24.10.2017 issued by respondents which had rejected the request for conversion of Bills of Entry for Home Consumption to Bills of Entry for Warehousing and further, directions to permit clearance of goods in terms of Notification No. 18/2015-cus, as amended by Notification No. 79/2017-cus are sought. The petitioners relied upon Section 18 (1) (a) of Customs Act, 1962 and sought provision of assessment of its goods. Through the Court's order of 27.11.2017, the goods were permitted to be released on condition of petitioners furnishing an undertaking-cum-bond to the respondents, but without payment of countervailing duties. It was directed that since the benefit of exemption in fact existed at that point of time, the respondent authorities have to verify whether the petitioner in fact fulfilled the export obligations. Hence, the respondents were directed to proceed to consider whether the petitioners has fulfilled their export obligations. **[Priyanka India Pvt Ltd and Ors Vs. Uol & Others, 2018-TIOL-1735-HC-DEL-CUS]**
- **CUS:** In case of ambiguity, the benefit of interpretation should go to the Revenue. In respect of the appellants, it has been held previously i.e. in similar matter where there were ambiguity in the notification, the benefit of notification shall be extended. Therefore in the present matter, similar to the one previously held, the benefits cannot be denied in respect of Anesthesia Ventilatory System imported by the appellant. It was held that technological advancement cannot become an impediment to the availment of benefit under the notification **[Datex Ohmeda India Pvt Ltd Vs CC, 2018-TIOL-2647-CESTAT-BANG]**
