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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

GOVERNMENT MAY INTRODUCE NEW GST RETURN TO CHECK THE TRANSITIONAL CLAIMS

General Updates

- The Government plans to make modification to the existing E-Way Bill (EWB) generation form with effect from 1st October 2018.
- The Government has raised the customs duty on 19 items in order to curb the import of such items. Few of them are air conditioners, household refrigerator, radial car tyres, lab grown diamonds among others.
- The Offline utility for return filed in the FORM GSTR-10 is now available on the GST portal.
- GSTN has enabled the facility to file TDS Return (Form 7) and the TDS Certificate (Form 7A) in the portal.
- The Union Cabinet has approved the proposal to convert the GSTN into Government entity with eleven Directors.
- The Ministry of Finance has launched the new webportal stipulated for MSME sector which provides the principal approval of loan upto one crore rupees within 59 minutes.
- The Federation of Karnataka Chambers of Commerce and Industry has requested the government to extend the due date for the reconciled GST returns for the financial year 2017-18 from September 2018 to 31st December.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 39/2018 - CT dated 04.09.2018** has made further amendments to the CGST Rules, 2017 and introduced new GSTR FORMS i.e. annual return FORM GSTR-9 for normal taxpayer, annual return FORM GSTR-9A for composition taxpayers and the declaration FORM ITC-04.
- The CBIC vide **Notification No. 40/2018 - CT dated 04.09.2018** had extended the due date for filing the FORM GST ITC-04 for the period of July, 2017 to June, 2018 till 30th September, 2018.
- The CBIC vide **Notification No. 41/2018 - CT dated 04.09.2018** waives the late fees for the stipulated classes of taxpayers.
- The CBIC vide **Notification No. 42/2018 - CT dated 04.09.2018** has extended the time limit for making the declaration in FORM GST ITC-01 by registered persons who have filed the application in FORM GST-CMP-04 between the 02.03.2018 -31.03.2018, for a period of thirty days
- The CBIC vide **Circular No. 58/32/2018 - GST dated 04.09.2018** has clarified that taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B.
- The CBIC vide **Circular No. 59/32/2018 - GST dated 04.09.2018** has clarified on refund related issues.
- The CBIC vide **Circular No. 61/35/2018 - GST dated 04.09.2018** has clarified in respect to the E-way bill in case of storing of goods in godown of transporter.
- The CBIC vide **Notification No. 43/2018 - CT dated 10.09.2018** has revised the due dates for quarterly return filing in FORM GSTR-1 for the registered person having the aggregate turnover upto Rs. 1.5 crores.

Period	Due Date
Jul – Sep, 2017	31 st Oct, 2018
Oct – Dec, 2017	31 st Oct, 2018
Jan – Mar, 2018	31 st Oct, 2018
Apr – Jun, 2018	31 st Oct, 2018
Jul – Sep, 2018	31 st Oct, 2018
Oct – Dec, 2018	31 st Jan, 2019
Jan – Mar, 2019	30 th Apr, 2019

Further, the taxpayer who have obtained the GST registration in terms of Notification No. 31/2018 CT dated 06.08.2018 shall file quarterly return in FORM GSTR-1 for the period July,2017 to September,2018 till 31st December, 2018.

- The CBIC vide **Notification No.44/2018 - CT dated 10.09.2018** has revised the due dates for monthly



return filing in FORM GSTR-1 for the registered person having the aggregate turnover exceeding Rs. 1.5 crores.

Period	Due Date
Jul, 2017 – Sep, 2018	31 Oct, 2018
Oct, 2018 – Mar, 2019	11 th day of the succeeding month

Also, the taxpayer who have obtained the GST registration in terms of Notification No. 31/2018 CT dated 06.08.2018 shall file monthly return in FORM GSTR-1 for the period July, 2017 to November, 2018 till 31st December, 2018.

- The CBIC vide **Notification No. 45/2018 – CT dated 10.09.2018** has revised the due dates for return filing in FORM GSTR-3B for the period July, 2017 to November, 2018 till 31st December, 2018 for stipulated class of taxpayer who received provisional IDs but could not complete the migration process.
- The CBIC vide **Notification No. 8/2018 – CT dated 10-09-2018** has made amendments (Ninth Amendment, 2018) to the CGST Rules, 2017.
- The CBIC vide **Notification No. 49/2018 - CT dated 13.09.2018** amended the Central Goods and Services Tax Rules, 2017 and have come up with a format of FORM GSTR-9C (Audit Report) for the registered person whose aggregate turnover in the previous financial year exceeded two crore rupees.
- The CBIC vide **Notification No. 50/2018 - CT dated 13.09.2018** enforced the provision with respect to the Tax Deducted at Source (TDS) under section 51 of CGST Act, 2017 w.e.f 1st October, 2018.
- The CBIC vide **Notification No. 50/2018 - CT dated 13.09.2018** has enforced the provision with respect to the Tax Collected at Source (TCS) under section 52 of CGST Act, 2017 w.e.f 1st October, 2018.
- The CBIC vide **Circular No. 64/38/2018 -GST dated 14.09.2018** has further modified the procedure for interception of conveyances for inspection of goods in movement, detention, release, and confiscation of such goods and conveyances.
- The CBIC vide **Circular No. 65/39/2018 - DOR dated 14.09.2018** has delineated the guidelines for the deductions and deposits of TDS by the Deductor under GST.
- The CBIC vide **Order No. 4/2018 - GST dated 17.09.18** has extended the time limit of submitting the declaration in FORM GST TRAN-1 till 31st Jan, 2019 for the stipulated class of registered persons who could not submit the declaration within the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.
- The CBIC vide **Circular No. 66/2018 - GST dated 26.09.2018** has provided the elucidation with respect to the applicability of GST on the services provided by religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga.



- The DGFT vide **Public Notice No. 33/2015-20 dated 04.09.2018** has inserted the Paragraph 2.79 C in the Hand Book Procedure (HBP) of FTP 2015-20 in order to notify the procedure for export of SCOMET items for stipulated purposes i.e. repair or replacement.
- The DGFT vide **Public Notice No. 34/2015-20 dated 04.09.2018** has inserted the Paragraph 2.79 D in the Hand Book Procedure (HBP) of FTP 2015-20 in order to notify the procedure for export of SCOMET items for stipulated purposes i.e. display/exhibition/tenders/RFP/RFQ/NIT.
- The DGFT vide **Public Notice No. 36/2015-20 dated 04.09.2018** has made amendments in the Appendices & Aayat Niryat Forms pertaining to Chapter 6 & 7 of FTP/HBP 2015-20 after the mid-term review of policy.
- The DGFT vide **Public Notice No. 39/2015-20 dated 13.09.2018** has decided to grant the one time relaxation for regularization & issue of EODC for export made prior to imports under Advance Authorization/DFIAs issued for import of Natural rubber/Silk.
- The DGFT vide **Trade Notice No. 30/2018-19 dated 11.09.2018** has delineated the guidelines to apply for MEIS under the System Driven approval mechanism where the export has been done from EDI ports w.e.f. 13.09.2018 in order to free from manual interference.
- The CBIC vide **Notification No. 60/2018 - CUS dated 11.09.2018** has allowed re-import of certain indigenously manufactured electronic goods, for repair and reconditioning within seven years from the date of exportation, without payment of basic customs duty subject to the condition that the goods are re-exported back after repair and reconditioning within one year from the date of re-importation.
- The CBIC vide **Notification No. 61/2018 - CUS dated 14.09.2018** has brought necessary changes as per second protocol amending the India Singapore Comprehensive Economic Cooperation Agreement.
- The CBIC vide **Notification No. 65/2018 - CUS dated 24.09.2018** has extended the exemption from Integrated Tax & Compensation CESS upto 31.03.2019 on goods imported by EOU.
- The CBIC vide **Notification No. 79/2018 CUS(NT) dated 14.09.2018** has amended the Customs Tariff Determination of Origin of Goods under Comprehensive Economic Cooperation Agreement between the Republic of India and Republic of Singapore Rules, 2005.
- The CBIC vide **Circular No. 33/2018 - CUS dated 19.09.2018** has provided the authorization to Cost Accountant to attest the documents pertaining to "IGST Refund claim" of exporters whose records were not transmitted from GSTN to Customs due to the mismatch in GSTR 1 and GSTR 3B.
- The Government of Gujarat vide **Notification No. N-B-19-2018-ST dated 19.09.2018** has asserted that there is no requirement of E-way bill where Intra-



City movement of goods and Intra-State movement of stipulated goods i.e. Hank, Yarn, Fabrics and Garments transported solely for job work purposes irrespective of their values.

- The CBIC vide **Circular No. 34/2018 - CUS dated 28.09.2018** has deferred the date for implementation of Electronic sealing-deposit in and removal of goods from Customs Bonded warehouse

Case Laws

GST

- The Applicant is seeking ruling in respect of applicability of GST on determination of GST leviable on operation and maintenance work order given by municipal corporations. Whether the same will be admissible as ITC. It was held that Services provided by applicant are not pure services and rather involve supply of materials and consumables. The supply is in the nature of composite supply and works contract and are not exempt from levy of GST in terms of Sl. No. 3 of notification 12/2017-CT(R). The services will attract GST w.e.f 01.07.2017 and post 25.01.2018 the services would be exempt subject to fulfilment of condition that the value of supply of goods and services does not exceed 25% of value of composite supply. Applicant eligible for availing ITC on purchases against such work order subject to terms and conditions laid down in the Act/Rules. Liability to pay GST is on supplier. **[Maharashtra AAR, Applicant- M/s. Khilari Infrastructure Pvt Ltd, 2018-TIOL-126-AAR-GST]**
- The fact of case is that the applicant is providing manpower supply services to NTPC BHEL Power Projects Pvt. Ltd. (NBPPL), Andhra Pradesh. The applicant is have come before the Advance Ruling Authority for clarification in respect to chargability of tax as whether the transaction would be categorized as Interstate or Intrastate and if they charge IGST, then whether the credit of the same is admissible for NBPPL. It has held that the tax liability is directly allied with the place of supply. The AAR observed that NBPPL, Andhra Pradesh is registered in the state of Andhra Pradesh i.e. place beyond the state of Chattisgarh. Thus, Chattisgarh is not the proper authority to pronounce ruling regarding availability or otherwise of ITC to a firm which is registered and situated at a place outside State of Chattisgarh. **[Chhattisgarh AAR, Applicant- M/s. Utility Powertech Ltd, 2018-TIOL-124-AAR-GST]**
- The fact of present case is that the company is betrothed in the manufacture, supply & export of industrial SS Tube, fittings and pipe fittings. The company is located in Ghaziabad. The assessee company has received a demand for a consignment from a dealer located in Gujarat. The assessee charged IGST @ 18% on the consideration amount. The goods were dispatched through a vehicle and the relevant challan and e-way bill were generated with their pertaining details i.e. consignor, consignee,



challan number, etc. However, the vehicle was intercepted and the goods were detained en route for not having Part B of the e-way bill. Duty demand was raised u/s 129(3) with imposition of equivalent penalty. The assessee claims that Part B of the e-way bill should not be filled because the goods are to be loaded onto a different vehicle before reaching their destination. The Hon'ble Allahabad High Court held that there is no mala fide intention on part of the assessee on convey goods without e-waybill. It cannot be expected to fill up vehicle number before the goods are loaded where such vehicle is transporting the goods to the final destination. The assessee had duly attached all the documents with the goods and mentioned all the details. Mere non-mention of vehicle number in Part B of e-way bill cannot be a grounds for seizure of goods. Hence the order of seizure is illegal. **[M/s. Vsl Alloys India Pvt Ltd Vs. State of Uttar Pradesh and Another, 2018-TIOL-118-HC-ALL-GST]**

- In the present case the petitioner is challenging the provisions of Section 109 & 110 of the CGST & the TNGST Act. The above provisions relates to the Appellate Tribunal and also lay down the qualifications, conditions of appointment & service conditions of the members. The petitioner alleged that such provisions contravened the doctrine of separation of powers and ran contrary to the independence of the judiciary. The petitioner was particularly aggrieved by the fact that the Technical members in the Tribunals outnumbered the Judicial members. The petitioner claimed that members of quasi-judicial bodies must have judicial expertise & legal training. The petitioner also claimed that Technical Members only played supporting roles and

could not assume judicial functions. The petitioner also claimed that the eligibility to be a Judicial Member excluded advocates. The petitioner claimed that such provision was highly unfair as advocates by training were inculcated with the requisite qualities to discharge functions of Judicial members. The Hon'ble Madras High Court held that the constitution of the Appellate Tribunal runs contrary to the decision in Union of India vs. R.Gandhi. Hence, the notice shall be issued to the parties as the power conferred under section 109 & 110 of the CGST & TNGST Act respectively have been challenged. The Hon'ble court has issued the notice to the Attorney General of India. **[Mr. V Vasanthakumar Vs. Union of India, 2018-TIOL-122-HC-MAD-GST]**

- In the present matter, the applicant is supplying printed question papers for various examinations conducted by Government/Government aided educational boards/councils/universities etc. The applicant seeks a ruling as to whether GST is to be charged on such supply and if so, at what rate and under what HSN or SAC code or whether they are eligible to take credit of GST paid on Inputs used for provisioning the supply can be availed. The Authority is of view that the service of printing Question papers for Educational Institutions (defined in Notification No. 12/2017-CTR) is classifiable under SAC 9992 & supply of the service to such Educational Institutions relating to conduct of examination as described in 66(b)(iv) of Notification No. 12/2017-CTR includes supply of the service of printing question papers and is exempt under GST Act. Therefore, being an exempt supply no credit of GST paid on inputs is admissible. **[West Bengal AAR, M/s. Manali Enterprise, 2018-TIOL-171-AAR-GST]**



CUSTOMS

- The issue involved in the present case is that the applicant is importing cosmetics items which includes various categories of skin shave gel in semi liquid form. These cosmetic items are subjected to regulations under the Drugs and Cosmetics Act, 1940 and Rules framed thereunder. The petitioner company used to import the concerned items at ICD Tughlakabad in the past. The communication was issued dated 16.5.2017 where henceforth they were not to book the containers carrying hazardous cargo at ICD Tughlakabad but to ICD Dadri. The company was compelled to import the goods at ICD Dadri on account of CONCOR's decision. The Court is of the opinion that absolute confiscation without the option of redemption is not justified, having regard to the previous conduct of petitioner. Furthermore, the penalty imposed appears to be excessive. The impugned order to the extent it confiscates the goods without redemption as also penalty to the tune of 100% value is hereby set aside. **[M/s. Gillette India Ltd Vs UoI, 2018-TIOL-1981-HC-DEL-CUS]**
- The issue involved in the present case that the petitioner has imported the cement from the one of neighbouring country i.e. Pakistan and availed the exemption of CVD under notification no.4/2006-CE dated 1.3.2006. The Show Cause Notice has been issued to the petitioner which asserted for denial of the exemption, recovering the duty with interest as prescribed and imposing the penalty. The Hon'ble Madras High Court is of opinion that the appellate authority has rejected the petitioner's appeal on the technical ground of limitation. There are materials, which should have been considered by the authority, which are now available before the Court. Also, the Court emphasized on the consideration for these material evidence may change the cause of order and non-consideration will cause grave hardship and irreparable hardship to the petitioner. The matter is remitted back to original authority for fresh consideration on the basis of the material evidences produced by the petitioner. **[M/s. Joe And Company Vs CC, 2018-TIOL-1958-HC-MAD-CUS]**
- The petitioner seek permission to re-export the goods which have been exported by them into India from China. The need to re-export the goods has arisen, as the importer has abandoned the same as he has not filed Bill of Entry for Clearance of goods. The Commissioner of Customs (Import) was directed to dispose both the applications for reexport of goods in accordance with law. **[M/s. YIWU Safe Import & Export Trading Co Ltd Vs CC, 2018-TIOL-1940-HC-MUM-CUS]**
- In the present case, the demand of duty was made in the show cause notice issued u/s 124 Customs Act, 1962. It was held that that Revenue is not entitled to recover customs duty u/s 125 of the Customs Act, 1962, if the quantum of duty is not spelt out properly in the show cause notice. It was further held that if the primary obligation of the state official is not discharged, it cannot be contended at a later stage that the importer was under an obligation to pay the relevant duty, which was never assessed in the first instance. **[CC Vs RK International, 2018-TIOL-1762-HC-DEL-CUS]**
