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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.

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General Updates

- The Goods and Services Tax (GST) Council has met 30 times & taken 918 decisions related to GST laws, rules, rates, compensation and taxation threshold etc.
- GST collection surges to over Rs. 1-lakh crore in October
- Businessman arrested for availing credit worth Rs. 440 Crores using fake invoices.
- The GST Council has asked six States including Delhi, Madhya Pradesh and Punjab, and the Union Territory of Puducherry to set up appellate authorities to enable aggrieved entities to file appeals against orders of the Authority for Advance Ruling.
- The GSTN enables the facility of claiming the refund of tax on account of excess payment of tax.
- The CESTAT, Delhi asserted that Service Tax is payable under Reverse Charge mechanism on Service of Foreign Institutions availed in getting External Foreign Commercial Borrowings (ECBs).
- A two-judge bench of the Hon'ble Delhi High Court has allowed petitioners to file the GSTR-3B manually.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 54/2018-CT dated 09.10.2018** has made further amendment (Twelfth Amendment, 2018) to CGST Rules, 2017. The said notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10).
- The CBIC vide **Notification No. 53/2018-CT dated 09.10.2018** has made amendments (Eleventh Amendment, 2018) to the CGST Rules, 2017. The said notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No. 39/2018- Central Tax dated 04.09.2018.
- The CBIC vide **Notification No.55/2018 - CT dated 21.10.2018** had extended the due date for furnishing the return in FORM GSTR-3B for the month of September, 2018 from 20th Oct. to 25th Oct, 2018. The extension also implied that the last date for availing ITC for the period July, 2017 to March, 2018 was further extended up to 25th Oct, 2018.
- The CBIC vide **Notification No. 56/2018 - CT dated 23.10.2018** has superseded the Notification No. 32/2017 dated. 15.09.2017 which provided that the Casual Taxable Person as well as person making the interstate supplies of Handicraft goods as the category of persons exempted from obtaining registration under GST act.
- The CBIC vide **Notification No. 57/2018-CT dated 23.10.2018** has exempted the authorities which comes under the jurisdiction of the Ministry of Defence (MoD) other than the authorities as specified in the Annexure-A and their offices from the compliance of TDS under section 51 of CGST Act 2017 w.e.f. 1st October, 2018.
- The CBIC vide **Notification No. 58/2018 – CT dated 26.10.2018** has extended the due date for furnishing the Final Return in FORM GST-10 till 31st December, 2018 for stipulated class of taxpayer whose registration under the GST Act has been cancelled on or before the 30th September, 2018.
- The CBIC vide **Notification No. 59/2018 – CT dated 26.10.2018** has extended the last date for furnishing the declaration in FORM ITC-04 till 31st December, 2018 during the period from July, 2017 to September, 2018.
- The CBIC vide **Circular No. 68/42/2018-GST dated 05.10.2018** has enabled the UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, to be entitled for refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them.
- The CBIC vide **Circular No. 69/43/2018-GST dated 26.10.2018** has clarified the process of applications for cancellation of registration filed by the taxpayer in FORM GST REG-16.



- The CBIC vide **Circular No. 70/44/2018-GST dated 26.10.2018** has clarified the issues relating to refund. The issues which are clarified are referred below:
 - a) Status of refund claim after issuance of deficiency memo and re-credit of electronic credit ledger
 - b) Allowing exporters who have received capital goods under EPCG to claim refund of IGST paid on exports
- The CBIC vide **Circular No. 71/45/2018-GST dated 26.10.2018** has clarified various issues related to casual taxable person and recovery of excess Input Tax Credit distributed by an Input Service Distributor (ISD).
- The CBIC vide **Circular No. 72/46/2018-GST dated 26.10.2018** has delineated the procedure w.r.t. the return of drugs or medicines after their expiry.
- The CBIC vide **Circular No. 35/2018 – Customs dated 01.10.2018** has introduced Single Window Interface for facilitating Trade (SWIFT) as part of ease of doing business initiative to integrate Customs and other Participating Government Agencies (PGAs) for seamless processing of import and export clearances.
- The CBIC vide **Circular No. 37/2018- Customs dated 09.10.2018** has clarified where the exporters are availing the option to take drawback at higher rate in place of IGST refund.
- The CBIC vide **Circular No. 38/2018- Customs dated 18.10.2018** has delineated the procedure to be followed where the manufacturer or other operations undertaken in bonded warehouses under section 65 of Customs Act.
- The CBIC vide **Circular No. 39/2018- Customs dated 23.10.2018** has clarified that in cases of warehouse to warehouse transfer of goods, the owner of the goods should be allowed to procure a RFID seal from the destination warehouse instead of originating warehouse.
- The CBIC vide **Circular No. 40/2018- Customs dated 24.10.2018** has further clarified the IGST Export Refunds mechanism. The circular throws light on rectification of the mistakes to enable sanction of balance refund amount. The circular has extended the rectification facility to shipping bills and refund of IGST amount generated due to lesser amount in shipping bills.
- The CBIC vide **Circular No. 41/2018 – Customs dated 30.10.2018** has deferred the date for the implementation of E-sealing from 1st November 2018 to 1st Jan 2019 where goods are deposit in and remove from the Customs Bonded Warehouse.
- The DGFT vide **Trade Notice No. 34/2018 dated 04.10.2018** has enabled the activation of E-Com module for applying for SEIS, based on ANF-3B.
- The DGFT vide **Trade Notice No. 35/2018 dated 25.10.2018** has delineated the procedure/documents for obtaining the Export Authorization for export of restricted items as mentioned under the Schedule 2 of ITC (HS) Classification of Export & Import Items 2018.



- The CBIC vide **Instruction No. 15/2018- Customs dated 04.10.2018** has clarified the applicability of provision of Customs Act and its allied acts w.r.t. Cruise Tourism.
- The CBIC vide **Instruction No. 16/2018- Customs dated 08.10.2018** has classified E-seal on merits under the chapter heading 8309.
- The CBIC vide **Instruction No. 17/2018-Customs dated 15.10.2018** has provided guidelines for handling and storage of valuable goods that are seized or confiscated by the Department.
- The DGTR vide **Trade Notice No. 14/2018 dated 01.10.2018** has provided the additional clarification pertaining to Disclosure of Information in Confidential Version/Non-Confidential Version of Response filed by the Supporting Producers.
- The GST Council has issued an **advisory dated 16.10.2018** pertaining to filing of refund application for multiple tax period.
- The DGFT vide **Circular No. 13/2015-2020 dated 05.10.2018** has clarified the eligibility of Indian Institute providing educational services to NRI Student under SEIS but services provided to Indian students sponsored by NRIs would not be eligible.
- The CBIC vide **Notification No. 88/2018 – Customs dated 30.10.2018** has deferred the date for the implementation of Sea Cargo Manifest and Transshipment Regulations, 2018 from 1st November 2018 to 1st March 2019. In other word, the said regulation will come into force w.e.f. 1st March 2019.

Case Laws

GST

- The issue was whether the Compensation to States Act, 2017 or Rules framed thereunder indicate giving of credit or set off of the Clean Energy Cess already paid till 30.06.2017. The Finance Act, 2010 with effect from 01.07.2010 levied Clean Energy Cess which was in the nature of a duty of excise on the production of coal and was being collected at the time of removal of raw coal, raw lignite and raw peat from the mine to the factory. Clean Energy Cess was repealed by Taxation Laws (Amendment) Act, 2017. Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016 enabled the Parliament to levy a cess for five years to compensate the States for the loss of revenue on account of GST. It was argued that the State compensation cess is "with respect to" goods and services tax. When Constitution provision empowers the Parliament to provide for Compensation to the States for loss of revenue by law, the expression "law" used therein is of wide import which includes levy of any cess. It was argued that the Compensation to States Act, 2017 is not beyond the legislative competence of the Parliament.



The Compensation to States Act is not a colourable legislation. Principle is well settled that two taxes/imposts which are separate and distinct imposts and on two different aspects of a transaction are permissible as "in law there is no overlapping. Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law. Clean Energy Cess and States Compensation Cess are entirely different from each other, payment of Clean Energy Cess was for different purpose and has no bearing or connection with States Compensation Cess. It was held that Compensation to States Act, 2017 or Rules framed thereunder does not indicate giving of any credit or set off of the Clean Energy Cess already paid till 30.06.2017. **[Union of India and ANR Vs. M/s. Mohit Mineral Pvt. Ltd., C.A. No. 10177 of 2018]**

- The facts of case is that the penalty has been levied on petitioners under Section 129 of Punjab GST, 2017 and Haryana Goods and Services Tax Act, 2017. The goods were detained in custody of Departments. As a pre-condition of filing appeal, 10% of disputed tax amount has also been deposited. In terms of Section 107(7) of the Act, recovery of balance amount is deemed to be stayed. Section 129(1)(c) of the Act provides that goods can be released on furnishing of security as prescribed. Section 129(2) provides for application of Section 67(6) of the Act, which in turn has been referred to in Rule 140 prescribing the bond and the bank guarantee to be furnished. The legal issues sought to be raised by petitioners need examination in detail by GST Council. Thus, the respondents are directed to release the goods on furnishing of security other than bank guarantee or cash. As there is no dispute regarding identity of

goods, the release shall not be treated as provisional **[M/s. Modern Insecticides Ltd Vs State Of Punjab, 2018-TIOL-148-HC-P&H-GST]**

- The fact of present case is that the Petitioner has challenged the vires of GST (Compensation to States) Act, 2017 and notification issued thereunder. The Hon'ble High Court of Gujarat held that the identical challenge was considered by the Supreme Court in the decision recently delivered in the case of Mohit Minerals Pvt. Ltd. wherein the vires of the Act were upheld. Hence the petition is disposed off. **[M/s. FC Agrawal Coal Pvt. Ltd. Vs. UOI, 2018-TIOL-151-HC-AHM-GST]**
- The facts of the case is that petitioner is looking for the direction to allow them to resubmit/rectify its form TRAN-1 filed u/s 140 of the CGST Act, 2017. Direction is being sought as the petitioners had, by mistake, entered incorrect figures of CENVAT credit available as on 1st July 2017 to be utilized under the new GST regime. Whereas, the Respondent submits that in view of the directions dated 26.09.2018 of the Bombay High Court, it has been decided by the CBIC that relief may be extended to the petitioner after due verification from GSTN of the bona fides of the claims made and he may be allowed to amend the TRAN-1 to file correct amount of CENVAT credit to be transitioned. The Hon'ble High Court is of the view that Petitioners would have to file representation to CBIC and the same would be considered for verification and bona fides of the claim made. If satisfied, petitioners would be allowed to amend the TRAN-1 to reflect the correct amount of credit available. **[M/s. O/E/N India Ltd Vs UOI, 2018-TIOL-152-HC-MUM-GST]**



- The facts of the matter is that the applicant supplies Indigo Press printing ink (Electro Ink) bundled along with supply of ancillaries comprising of oil, binary ink developer, bip, blanket, print imaging plate and other machine products. The applicant seeks a ruling on the classification of ink supplied along with consumables and determination of the time and value of supply of printing ink with consumables under the Indigo Press contract. The Authority is of view that the supply of Electro Ink along with consumables is a mixed supply as defined u/s 2(74) of the GST Act. Time of supply of Electro Ink along with consumables under indigo press contract would be the earliest date between the date of invoice or the date of receipt of payment. With this regards value of supply of Electro Ink and consumables, the same would be the transaction value as reflected in the invoice issued u/s 31(4) of the GST Act. **[Applicant: HP India Sales Pvt. Ltd., 2018-TIOL-226-AAR-GST]**
- The applicant is engaged in the refining activity of petroleum products which requires Industrial gases. The applicant allowed M/s Prodair Air Products to set up facility for processing of Industrial gases on Build Own Operate basis. Applicant proposes to execute job work agreement with M/s Prodair Air Products for processing and producing the Industrial gases using the inputs provided by the applicant and sending back the Industrial gases to the applicant. Ruling is sought as to whether Re-gasified Liquefied Natural Gas, Demineralized water, Hydrogen Rich off gas and raw water etc. can be sent by applicant to M/s Prodair Air Products Pvt. Ltd. without payment of GST under job work provisions and whether the Industrial gases so produced by M/s Prodair Air Products Pvt. Ltd. can be brought by the applicant without payment of GST under the job work provisions. The Authority held that the transport of Inputs from principal through pipe lines to the premises of the job worker for processing as well as return of processed goods after job work to the principal cannot be treated as taxable supply. Such manufacture of Industrial gases by M/s Prodair Air Products Pvt. Ltd. amounts to job work as defined u/s 2(68) r/w section 143 of the CGST/KSGST Act. **[Applicant : M/s. Bharat Petroleum Corporation Ltd, 2018-TIOL-233-AAR-GST]**
- The issue of the present case is of profiteering against the applicant. Without mentioning the email/name or contact address, the applicant had alleged profiteering against the respondent, Amway India Enterprises Private Limited; inasmuch as that the respondent had not passed on the benefit of reduction in GST rates from 28% to 18% on selected items to its customers or Amway Business Owners (ABOs). The applicant was requested to provide the name and address of supplier against whom the complaint was made and to provide the pre and post-GST amount charged by the supplier and the invoices evidencing the same, however, no reply was received and even contact on phone also did not yield any information from the applicant's side. DG, Safeguards informed that in the absence of any details and any specific evidence of profiteering by respondent, no further investigation could be conducted. During the hearing, respondent submitted that since DG, Safeguards (now re-designated as DG, Anti-Profiteering) had not recommended initiation of any proceedings against them u/s 171 of the CGST Act, 2017, the present proceeding should be dropped. The National Anti-Profiteering Authority held that in spite of repeated requests, Applicant had not supplied any details of the



products or invoices vide which he had bought items from the respondent and, therefore, investigation conducted could not establish any evidence of profiteering for want of cogent and reliable evidence. There is no violation u/s 171 of CGST Act, 2017 has

been found in this case. **[Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs Vs Amway India Enterprises Pvt Ltd, 2018-TIOL-11-NAA-GST]**

CUSTOMS

- The issue involved in the present case is that petitioner's grievance is with respect to certain observations in the final disclosure statement, made under Rule 16 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 by the Designated Authority. Petitioner submits that unless the High Court intervenes at this stage, grave and serious prejudice would ensue because the Rule 16 disclosure statement, so far as it contains adverse observations, as the petitioner would ultimately face residual anti-dumping duty which would be considerably higher than what might be proposed in respect of other exporting/manufacturing entities. The Hon'ble High Court is of the view that if the record discloses a basic flaw or irregular approach by the DA in the proceedings, the Court under Article 226 is not helpless. The petitioner's grievance can be best addressed by affording it an opportunity of making, what according to it, are relevant submissions, in writing to the Designated Authority with respect to the disclosure statement. The Court held that respondent-complainant should also be given the opportunity to make its submissions, in reply to the submissions on behalf of the petitioner & the entire process should be completed as fast as possible within five days, and the final findings should be rendered by the DA. **[M/s. PT Indah Kiat Pulp And Paper TBK Vs UOI, 2018-TIOL-2287-HC-DEL-CUS]**
- The issue involved in the present case with regards to the appropriate classification of imported goods, i.e. whether the goods have to be classified as declared by the importer or as claimed by the Revenue. The Supreme Court in case of Navin Chemicals Mfg. & Trading Co. Ltd. 2002-TIOL-460-SC-CUS has inter alia held that the words "the determination of any question having a relation to the rate of customs duty or the valuation of goods for the purposes of assessment of duty" inter alia would include an issue of classification of goods. Therefore, in terms of Section 83 of FA, 1994 read with Section 35G (1) of CEA, 1944, the appeal on issue of classification is not maintainable before this Court. The remedy for the appellant, if any, is to file an appeal to the Supreme Court under Section 35L(1)(b) of CEA, 1944 as made applicable to FA, 1994 by Section 83 thereof. Thus, the appeal is dismissed as not maintainable before this Court. **[CC Vs. M/s. J Sons Foundry Pvt Ltd., 2018-TIOL-2264-HC-MUM-CUS]**
- The petitioner seeks for the clarification regarding (i) Whether in the facts and in the circumstances of the case, the Tribunal was right in suo motu restoring the order of the Additional Commissioner of Customs,



Adjudicating Authority, when there was no appeal filed by the Department under section 129A or cross appeal under section 129A(4) of Customs Act is correct in law and (ii) Whether on the facts and in circumstances of the case, the Tribunal was right in holding that the Department has discharged the burden of proof is correct in law. The Hon'ble High Court held that the power of the appellate Tribunal is exercisable under section 129B(1) only against the decision or order appealed against. Admittedly, the Department did not file an appeal against the order of the Commissioner (Appeals) permitting the redemption of the seized gold. In such circumstances, the Revenue should not be said to be aggrieved by such a direction granting redemption and the Tribunal clearly erred in dismissing the appellant's appeal and restoring the order passed by the original authority. The order passed by the Tribunal is set aside and the matter is remanded for a fresh decision on the appellant's appeal to test as to whether the Commissioner (Appeals) was right in fixing the market value of the gold on the date when he passed the order, when according to the appellant, the market rate prevailing on the date of seizure should be taken into consideration -the remand is restricted to that aspect [Rajaram Johra Vs. CC, 2018-TIOL-2258-HC-MAD-CUS]

- In the present case, the petitioner seeking a writ of mandamus etc. for ordering and directing the respondent to forthwith reimburse the demurrage and detention charges along with interest. The petitioner submits that payment of demurrage charges arose on account of the malafide action on the part of the respondent is not accepting the transactional value declared of goods imported in February 2013; that although the Tribunal by its order dated 14th May 2013 upheld the Petitioner's contention, respondent took over three months before allowing the release of goods on the ground that it was in the process of filing an appeal to the Supreme Court. The Hon'ble High Court is of the opinion the Respondent did not release the goods as they were in the process of filing an Appeal to the Supreme Court would not, by itself which lead to the conclusion that the decision was mala-fide. All this is a matter of evidence and can be best adjudicated before the Civil Court by leading evidence; it requires determination of factual issues. Therefore, is not inclined to entertain the Petition, as there is a remedy available to the Petitioner, is to file a suit in a Civil Court where above aspect can be considered.[M/s. PNP Polytex Pvt Ltd Vs UOI, 2018-TIOL-2220-HC-MUM-CUS]

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