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INDIRECT TAX UPDATES

RSA Legal Solutions

11th Feb, 2019

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 has decided to raise the threshold limit from 20 lakhs to 40 lakhs for GST registration for suppliers of goods

General Updates

- GST collections cross Rs 1 lakh crore in January: Finance Ministry.
- Insurance Regulatory and Development Authority of India (IRDAI) is in talks with the government to reduce the goods and services tax (GST) on essential insurance items.
- The tax department has started issuing notices to banks that allow subsidiaries, such as mutual fund and insurance units, to use their logos for free.
- GST Networks develops system to fetch e - way bill data into monthly sales returns to curb tax evasion.
- GST on Real Estate: A Group of Ministers (GoM) for boosting the Real Estate Sector under GST regime has been constituted.
- The Union Cabinet has approved the creation of the National Bench of the Goods & Services Tax Appellate Tribunal (GSTAT) to be located at New Delhi.
- Scrapping of STT and a possible single GST rate of 15% could boost to the equity markets.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No.01/2019-CT, dated 15.01.2019** has amended the meaning of “*Advance Authorisation*”.
- The CBIC vide **Notification No. 02/2019-CT, dated 29.01.2019** has notified the Central Goods and Services Tax (Amendment) Act, 2018 (31 of 2018), to come into force w.e.f. 1st February, 2019, except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28.
- The CBIC vide **Notification No. 03/2019-CT, dated 29.01.2019** has made amendment to the CGST Rules, 2017 which shall come into force w.e.f. 1st February, 2019.
- The CBIC vide **Notification No. 04/2019-CT, dated 29.01.2019** has amended the *Notification No. 02/2017-CT, dated 19.06.2017* so as to define the jurisdiction of Joint Commissioner (Appeals), which shall come into force w.e.f. 1st February, 2019.
- The CBIC vide **Notification No. 05/2019-CT, dated 29.01.2019** has specified the rate of tax for Composition Taxpayers as per the rates specified under Rule 7 of the Central Goods and Services Tax Rules, 2017.
- The CBIC vide **Notification No. 06/2019-CT, dated 29.01.2019** has explicitly defined the expression “special category States”.
- The CBIC vide **Notification No.01/2019-CT(Rate), dated 29.01.2019** has rescinded the *Notification No. 8/2017-CT(Rate), dated 28.06.2017* in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts.
- The CBIC vide **Notification No. 01/2019-IT, dated 29.01.2019** has notified the Integrated Goods and Services Tax (Amendment) Act, 2018 (32 of 2018), to come into force w.e.f. 1st February, 2019.
- The CBIC vide **Notification No. 02/2019-IT, dated 29.01.2019** has amended the *Notification No. 7/2017-IT, dated 14.09.2017* to align with the amended Annexure to Rule 138(14) of the CGST Rules, 2017.
- The CBIC vide **Notification No. 01/2019-UT, dated 29.01.2019** has notified the Union Territory Goods and Services Tax (Amendment) Act, 2018 (33 of 2018), to come into force w.e.f. 1st February, 2019.
- The CBIC vide **Notification No. 01/2019-CC, dated 29.01.2019** has notified the Goods and Services Tax (Compensation to States) Amendment Act, 2018 (34 of 2018), to come into force w.e.f. 1st February, 2019.
- The CBIC vide **Circular No.86/05/2019-GST, dated 01.01.2019** has clarified that the banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent and for the purpose of availing Exemption under GST it should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company.
- The CBIC vide **Circular No. 87/06/2019-GST, dated 02.01.2019** has provided clarification in regard to section 140(1) of the CGST Act, 2017 by allowing transition of CENVAT credit under the existing law viz. Central Excise and Service Tax law, only in respect of “eligible duties”.



- The CBIC vide **Circular No. 85/04/2019-GST, dated 01.01.2019** has clarified that , supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST@ 5%.
- The CBIC vide **Circular No.01/2019-CUS dated 02.01.2019** has provided resolution pertaining to the EGM errors hampering IGST refund processing.
- The CBIC vide **Notification No. 01/2019-CUS, dated 10.01.2019** has obviated the “*pre-import condition*” and include specified deemed export supplies for exemption from integrated tax and Compensation cess for materials imported against Advance Authorizations and Advance Authorizations for Annual Requirement.
- The DGFT vide **Notification No. 53/2015-20, dated 10.01.2019** has amended the para 4.14 of FTP 2015-20 in order to remove the “pre-import condition” under Advance Authorisation.
- The DGFT vide **Public Notice No. 66/2015-20, dated 03.01.2019** has rationalized the of procedures in handling redemption requests under Advance-EPCG Authorizations.
- The DGFT vide **Public Notice No. 68/2015-2020 dated 09.01.2019** has issued Directives for processing of application for MEIS claims under Foreign Trade Policy 2015-20.
- The DGFT vide **Public Notice No. 70/2015-20, dated 30.01.2019** has made amendment to Para 4.38 of Handbook Procedure of FTP 2015-20 which pertains to Facility of clubbing of Advance Authorization.
- The DGFT vide **Circular No. 15/2015-20, dated 04.01.2019** has provided the clarification in respect of “*not permitting*” the import of the capital goods required for “distribution of electrical energy (power)” under the EPCG Scheme.
- The DGFT vide **Circular No. 18/2015-20, dated 31.01.2019** has provided the relief in average export obligation in terms of Para 5.19 of Hand Book of Procedures of FTP 2015-20.
- The DGFT vide **Trade Notice 41/2018-19 dated 04.01.2019** has rationalized the procedures in handling EODC requests under Advance-EPCG Authorizations
- The DGFT vide **Trade Notice. 42/2018-19 dated 11.01.2019** has made mandatory to record the information on DGFT website about transfer of MEIS/SEIS Scrips issued from 14.1.2019 onwards (for EDI ports only).
- The DGFT vide **Trade Notice No. 43/2018-19, dated 30.01.2019** has requested the Applicants who are seeking for the relaxation of FTP/HBP provision from the Policy Relaxation Committee must fill the column 15 in ANF-2D while submitting application.



Case Laws

GST

- **GST** – The applicant provides sales promotion and marketing support to Asahi Kasei group and for this they have entered into a services agreement with Asahi Japan and Marketing services agreement with various group companies of Asahi Kasei group - applicant seeks a ruling as to whether such service constitutes "support services" or "intermediary services" and whether the same is an "export of service". **Held:** Services provided by applicant in the nature of research on the matter related to functioning of the holding company would fall under SAC 99859 as 'Other support services'; services in the nature of information on market would fall under SAC 99837 as 'Market Research services'; services provided by the Marketing Services Agreement would qualify as an export of services as defined u/s 2(6) of the IGST Act AAR. **[Asahi Kasei India Pvt Ltd, 2019-TIOL-14-AAR-GST]**
- **GST** - Delayed payment surcharge/late payment surcharge/surcharge on outstanding amount cannot be treated as separate service and same shall be included in the value of the initial supply to which such charges relate to - portion of delayed payment surcharge attributable to exempted supply will be exempted and the portion of Delayed payment surcharge attributable to taxable supply is taxable at the rate on which the corresponding supply is removed. Thus, the application disposed of: AAR. **[M/s. Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd, 2019-TIOL-01-AAR-GST]**
- **GST** - Petitioner assails the order passed by Asstt. Commissioner whereby the petitioner-Company has been held guilty of suppressing Gross Turn Over of Rs. 95,90,00,000/- and consequently, it has been subjected to SGST and penalty to the tune of Rs. 23,01,60,000/- Petitioner submits that the order is appealable before Commissioner(A) u/s 107 of the Act, however, since no such appellate forum has been notified for the State of Himachal Pradesh, they have been denied valuable right of appeal and left with no other option, the present petition has been filed. **Held:** In view of the fact that the Statute contemplates the remedy of appeal, High Court is of the view that the aggrieved party cannot be left remediless merely because the State Government has not notified the Appellate Forum - Writ Petition is disposed of with a direction to the Additional Chief Secretary-cum-Financial Commissioner, State Taxes and Excise, to notify the Appellate Forum within one week - Petitioner may file an appeal within one week from the date of said notification - No coercive action to be taken against petitioner: High Court [para 4] **[M/s. Scott Edil Pharmacia Ltd Vs Assistant Commissioner, State Taxes And Excise, 2019-TIOL-04-HC-HP-GST]**
- **AAR** - Applicant has entered into an agreement with Inland Waterways Authority of India (IWAI) for construction of multi-modal IWT terminal at Haldia on EPC basis - applicant seeks a ruling on applicability of notification 24/2017-CTR and 31/2017-CTR viz. the rate at which GST should be charged on the Works



Contract Service to be supplied for construction of above terminal. **Held:** IWAI is clearly not the Government of India but a Government entity having no sovereign authority to collect Government Revenue - moreover, the user fees that IWAI collects is not credited to the Consolidated Fund of India and is, therefore, not Revenue but proceeds from business as defined u/s 2(17) of the Act - Applicant is, therefore, supplying Works Contract Service for an original work that is meant for commerce and business and hence does not satisfy the conditions laid down under Sr. no. 3(vi)(a) of the Notification 11/2017-CTR - Services will attract GST @18% under Sr. no. 3(xii) of Notification 11/2017-CTR: AAR [M/s. ITD Cementation India Ltd, 2019-TIOL-10-AAR-GST]

- **GST - Anti-Profitteering - S.171 of the CGST Act - Allegation is that the respondent did not pass on the benefit of reduction in the GST rate applicable to detergents from 28% to 18% w.e.f. 15.11.2017 but increased the base prices so that there was no reduction in the prices to the recipients - Respondent submitting that he was availing SSI exemption under Central Excise and charging VAT @12.5% on the base prices; that on introduction of GST, 28% tax was levied and since this disturbed his pricing pattern, he had reduced the base price and absorbed the burden and when the GST rate was reduced from 28% to 18% w.e.f 15.11.2017, though the base prices were increased, they were much less than the base prices in the pre-GST Era. **Held:** Argument of the respondent does not hold good as decision not to increase MRPs when tax rates were increased on account of implementation of GST was a business call taken by him and, therefore, he cannot claim any concession on this ground - benefits arising due to the**

GST rate reduction cannot be denied to the consumers just because in the earlier scenario MRPs were not changed to extend some extra benefit to consumers - report of DGAP reveals that the base price of the products has been increased irrespective of the fact that there was GST rate reduction from 28% to 18% - Respondent has admittedly not passed on the benefit of tax reduction since the base prices of the products were increased to maintain the same selling prices which were existing before the reduction of rate of tax - respondent is liable to pass on the benefits to the recipients irrespective of the fact whether the base prices are still lower as compared to the pre-GST price or not - since respondent has admittedly accepted the fact that there was no reduction in the prices post 15.11.2017 on any of the products sold by him, they have violated the provisions of section 171 inasmuch as the prices have remained the same in spite of reduction in tax rate - plea that base prices were drastically lowered when GST came into effect cannot absolve him from not passing on the benefit - Profitteering proved - respondent directed to immediately reduce the sale prices of the product commensurate to the reduction in rate of tax - the profiteered amount of Rs.4,64,849.74 as computed by DGAP is ordered to be deposited in the Consumer Welfare Fund along with interest - respondent is liable to penalty under Rule 133 of the CGST Rules, 2017 for the offence committed u/s 122 of the Act - notice to be issued to respondent asking him to explain why penalty should not be imposed: NAA [M/s. Surya Prakash Loonker Vs Excel Rasayan Pvt Ltd, 2019-TIOL-02-NAA-GST]

- **GST - Applicant is engaged in providing computer training services to the Government aided secondary**



and higher secondary schools across the State of Maharashtra to implement the Information and Computer Technology (ICT) @ School Project - they seek a ruling on the applicability of exemption under Entry no. 72 of notfn. 12/2017-CT. **Held** : It is incorrect to dub the entire project as training programme and it is rather a composite supply of goods and services, not naturally but artificially bundled; as per paragraph 1(c) of Schedule II of the Act, any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed is a supply of goods and not a service, therefore, the second condition of the notification is also not satisfied; nonetheless, the source of funding the expenditure is the State government, so except for fulfillment of this condition, the other two conditions are not satisfied - Therefore, Supply of goods and services as made by the applicant under ICT@School project is not in compliance of all the conditions of the exemption, hence the poser is answered in the negative - benefit of exemption 12/2017-CT is not available: AAR [M/s. **II And Fs Education And Technology Services Ltd 2019-TIOL-12-AAR-GST**]

- **GST** - Consignment was booked by the petitioner for transportation from Allahabad to Mirzapur - It is claimed that requisite documents were accompanied during the course of movements of the goods, however, the Assistant Commissioner (In charge), Commercial Tax, Mobile Squad, Unit-1, Mirzapur, U.P. has intercepted the goods on 27.03.2018 and has issued a notice/detention memo under Section 129(1) of the Act - According to the petitioner, he was not aware about the requirement of E-Way Bill for the purposes of transportation of goods from one place to another place within the State of U.P. - claim of the

petitioner is that he has downloaded the E-Way Bill on 27.03.2018 from the official department portal and produced the same before the respondent, however, respondent no. 2 has illegally proceeded to pass impugned seizure order ignoring the relevant fact that he himself has directed the petitioner to appear and file his reply before him on 28.03.2018 at 11-00 a.m. whereas the impugned seizure order has been passed on 27.03.2018, hence the same is illegal and is liable to be quashed. **Held**: Impugned seizure order cannot sustain in the eyes of law as the same has been passed ignoring the fact that the time and date has been given by the respondent no. 2 to the petitioner for appearance and for production of the relevant documents on 28.03.2018, whereas the order has been passed on a day before the date allowed by the respondent no. 2 - no time has been mentioned by the respondent no. 2 whereas while issuing notice/detention memo he has specifically mentioned the time and which clearly goes to show the ill intention on the part of the respondent no. 2. - In view of above, the seizure order dated 27.03.2018 passed by the respondent no. 2 as well as consequential notice issued under Section 129(3) of the Act are quashed - respondent no. 2 is hereby directed to release the goods and the vehicle forthwith - Petition allowed: High Court [M/s. **Singh Tyres Vs State of Uttar Pradesh, 2019-TIOL-09-HC-ALL-GST**]

- **GST** - Applicant seeks ruling as regards applicable GST rate on supply of services of 'Solid waste management, garbage collection, disposal, water supply, cleaning of colony' to Chattisgarh Housing Board. **Held**: Pure services supplied to Chattisgarh Housing Board, a government authority fully owned by the State government, by their very nature, appear to fall in the list of services enumerated under serial



- no. 5, 6, 8, 10, 12 and 17 of twelfth schedule of Article 243W of the Constitution of India, thus qualifying the admissibility criteria laid down in notification 12/2017-CTR, sr. no.3 - impugned services are exempted. Thus, the application disposed of: AAR [M/s **Dhananjay Kumar Singh, 2019-TIOL-23-AAR-GST**]
- GST on TCS** - Petitioner submits that the amount of 1% the dealer collects from the purchaser of the car worth more than ten lakhs under section 206C(1F) of the Income Tax Act cannot be treated as an integral part of the value of goods and services supplied by petitioner; that the petitioner as a dealer of the motor vehicle acts only as an agent for the State to collect income tax u/s 206C(1F) and that amount will eventually go to the vehicle purchaser's credit - Counsel for the department contends that section 15(2)(a) of the CGST Act, 2017 mandates that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any other law in force. **Held:** Constitution Bench of the Supreme Court in the case of Dilip Kumar & Co.- 2018-TIOL-302-SC-CUS-CB has held that any ambiguity in taxing provision should be resolved in the State's favour - Yet, in the present context, to conclude either way it needs further and deeper adjudication-Authority will, therefore, not act on the clarification given at Sl. No. 5 of Circular 76/50/2018-GST dated 31.12.2018 pending disposal of the Writ petition - however, it is clarified that this arrangement shall be subject to the outcome of the Writ Petition and without prejudice to the rights of the department in collecting the taxes in future if the Writ outcome is adverse to the petitioner- Interim order : Kerala High Court [M/s. **PSN Automobiles Pvt Ltd Vs Union of India, 2019-TIOL-14-HC-KERALA-GST**]
 - GST** - Madhya Pradesh Power Generation Company Limited is a Government entity for the purpose of law as per definition in notification 31/2017-CTR - Essential work entrusted to MPPGCL by the Government of Madhya Pradesh is of electricity generation - Civil construction of residential quarters is neither the primary work entrusted to MPPGCL nor it has any bearing on the work of power generation - No reason to extend the benefit of concessional rate of 12% to this particular work contract awarded to the applicant - any work having direct involvement in the entrusted work i.e power generation would merit exemption envisaged under sr. no. 3(vi)(c) of notification 11/2017-CTR but extrapolating and extending this concessional rate to any or all of the activities of MPPGCL is unwarranted and would defeat the very purpose of concessional rate - Therefore, Works Contract Service of construction of 599 residential quarters by applicant would merit classification under SAC 9954 and attract GST @18%. Application disposed of:AAR [M/s. **Shreeji Infrastructure India Pvt. Ltd, 2019-TIOL-06-AAR-GST**]
 - GST** - Appellant, a dealer in timber, purchased goods inter-state and while the goods were transported, it was detained within the State of Kerala - invoice accompanying showed collection of CGST and SGST, which is leviable on an intra-state sale, therefore, goods were detained and notice was issued - consequently, an order was passed u/s 129(3) of the IGST Act demanding tax applicable of IGST and imposing penalty for non-production of goods u/r 140 of the CGST Rules - appellant had obtained provisional release of goods by furnishing bank guarantee for the applicable tax and penalty as also bond for production of goods and security for value of



goods - order was challenged in a Writ Petition and the Single Judge found there was no reason to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution when appellate remedy was available - appeal before Division Bench against this order. **Held:** Appellant had specifically challenged Rule 140(2) of the CGST Rules - In such circumstances, it would have been appropriate, even if refusing to interfere with the impugned order on grounds of efficacious alternate remedy being available, to independently consider the challenge against the Rule itself - production of goods under Rule 140 is

only for invocation of confiscation proceedings, which would not be necessary if the security equivalent to the value of the goods is furnished under Rule 140, in case of detention under Section 129 - Writ Appeal disposed of confirming the order of the Single Judge refusing to exercise discretion under Article 226 in interfering with an order, which could be properly challenged in an alternative remedy - it is made clear that the non-production of goods as noticed in the order is not a ground for imposition of penalty: High Court [**M/s. Noushad Allakkat Vs State Tax Officer (WC), 2019-TIOL-07-HC-KERALA-GST**]

CUSTOMS

- **CUS** - Company had exported flexible Intermediate bulk container bags (FIBC) in capacity of manufacturer exporter and claimed 100% duty drawback on all Industry rates. During disputed period, because of huge exports orders, the petitioner had sourced the goods from another manufacturer and exported the same, under claim of 100% duty drawback as merchant exporter on all Industry rates. A Show Cause Notice (SCN) was issued on petitioner to show cause against the demand and recovery of duty drawback along with interest under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 read with Section 75A (2) of the Customs Act and also the proposed penalty – **Held:** Court is of the view that in all fairness, the respondents can wait till an order is passed in the rectification petition - the writ petition is disposed of, only by directing the respondents to keep the detention notice in abeyance, till the disposal of the rectification petition by the first respondent. [**M/s. Big**
- **Bags International Pvt Ltd Vs CC, CE & ST, 2018-TIOL-2681-HC-MAD-CUS]**
- **CUS** - Kingfisher woes - Import of aircraft engine for fitting in a cannibalized aircraft - there is no question of respondents/Customs Authorities insisting that the Guaranteed Remittance Declaration [GR] requirement under Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 was mandatory or that, in its absence, exemption from RBI was necessary - in cases like the present one, if compelling circumstances lead the original owner to bring in goods to remedy an unforeseen eventuality, such as the need to fly back an aircraft, it is not to be subjected to such requirements - absurdity is writ large on the face of the record - Order-in-original quashed and set aside - drawback claim u/s 74 of the Customs Act, 1962 to be processed within four weeks and amounts to the extent permitted in law be released along with interest: High Court



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[International Lease Finance Corporation Vs Union of India, 2019-TIOL-175-HC-DEL-CUS]

- **CUS** - DRI submits that 'No Objection' was issued by Department - The respondents are directed to pass appropriate orders for provisional release of goods within a week and indicate it directly to the petitioner - All rights and remedies of the parties are kept open - 'No Objection' has been provided currently in respect of eight consignments; likewise seizure of the goods was resorted to in these cases - However, the petition pertains to nine Bills of Entry - The orders to be passed will cover all the nine Bills of Entry: High Court **[Gauri Global Exports & Trading Vs DRI, 2019-TIOL-180-HC-DEL-CUS]**
- **CUS** - Settlement Commission - Seizure of gold bars - section 123 of the Customs Act, 1962 - jurisdiction of the Commission to settle cases involving goods referred to in Section 123(2) is excluded - jurisdiction of the Commission is barred on account of the third proviso to Section 127B(1) in cases involving or concerning smuggling of gold or watches - impugned order cannot be sustained, hence set aside - matter is remitted to the Adjudicating Officer concerned - Revenue Petition allowed: High Court **[CC Vs Jyotsna Chikersal, 2019-TIOL-176-HC-DEL-CUS]**
- **CUS** - The issue is with regard to rejection of refund claim on the ground of being time-barred - The assessee has filed the refund on 24.5.2012 while the due date for filing the refund claim is 26.5.2012 - The letter dated 12.11.2012 issued by Deputy Commissioner of Customs (Refunds) indicates that the Sea Cargo Commissionerate has received the refund claim on 24.5.2012 - They have also assigned number to the refund claim - The Sea Cargo

Commissionerate has slept over the refund claim for almost six months without rejecting or returning the same to the assessee for want of jurisdiction - The department having slept over the refund claim for almost six months and thereafter rejecting the same alleging that it is time-barred is unjustified - Assessee has filed the refund claim within the due date before the department - When it has been transferred to correct Commissionerate (Air Cargo Commissionerate), the Assistant Commissioner of Customs (Refunds) ought to have considered the same on merits - Therefore, the impugned order is set aside and the matter is remanded to Assistant Commissioner (Refunds), Air Cargo Commissionerate for processing the refund as per law within a period of four weeks:CESTAT **[M/s. Symbio Generics Vs CC, 2019-TIOL-273-CESTAT-MAD]**

- **CUS** - Appellant imported goods and paid the duty assessed without claiming the benefit of exemption under Notification No 21/2002-Cus dated 01.03.2002, SI No 155 - Later they filed a refund claim which was rejected by the lower authorities on the ground that they had not challenged the assessment order - appeal to CESTAT.**Held:** Tribunal being the creation of statute does not have such extraordinary jurisdiction as can be exercised by the High Court - clear position which emerges from all the decisions of Supreme Court and High Court cited is that the refund claim under section 27 is not maintainable unless the order of assessment is modified in the appellate proceedings - no merits in appeal, hence dismissed: CESTAT **[Currency Note Press Vs CC, 2019-TIOL-179-CESTAT-MUM]**
- **CUS** - Used Multi-function printers have been rightly classified as 'Other Wastes' under the Waste



Management Rules and were not prohibited but restricted items for import - Merely because earlier on more than one occasion, similar consignments of the respondent or others may have been cleared by the customs authorities at other ports on payment of redemption fine cannot be a justification simpliciter to demand parity of treatment for the present consignment also - respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the customs authorities with fine under Section 112(a) of the Customs Act, 1962 - no error in the penultimate direction of the High Court to the respondents for deposit of bond without sureties for 90% of the enhanced valuation of the goods leaving it to the DGFT to decide whether confiscation needs to be ordered or release be granted on redemption at the market value, in which event the respondents shall be entitled to set off - Revenue appeals dismissed: Supreme Court Larger Bench. **[Commissioner of Customs Vs M/s. Atul Automations Pvt Ltd, 2019-TIOL-35-SC-CUS-LB]**

- **CUS** - The issue pertains to the valuation of assessable value (AV), where the respondent has imported the various varieties of Aluminum Scrap and file BOE with its corresponding invoices and purchase order mentioning the transaction value for the purpose of payment of customs duty. The declared value was rejected by AO & reassessment was done on the increased AV. The Hon'ble Tribunal has set aside the order of Commissioner (Appeals) & allowed the appeal of importer with the view that as specified u/s. 14 of Customs Act, 1962, the AV will ascertain on the basis of price which is actually paid. It is also provided that the where the price isn't merely the sole consideration or both the buyer or seller are related

parties, then only after establishing that the price is not the sole consideration, the transaction value can be rejected and taking other evidences into consideration, the AV can be ascertained. **Held:** No such exercise has been performed by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous. **[CCE & ST Vs M/s. Sanjivani Non-Ferrous Trading Pvt Ltd, 2018-TIOL-447-SC-CUS]**

- **CUS** - Container Freight Station - Suspension to be made by invoking Regulation 11(2) of Handling of Cargo in Customs Areas Regulations, 2009 must be on the known principle that "prevention is better than cure" - Regulation 11(2) can be invoked for suspending the license only when the Commissioner of Customs feels and comes to a conclusion that immediate action is necessary to suspend the license - Thus, the materials to be relied on for initiating and taking action under Regulation 11(1) cannot be the sole basis for taking action under Regulation 11(2) - there is a clear distinction between the nature of action taken under Regulation 11(1) & 11(2), while the former is a punitive, the later is a preventive - except extracting Regulation 11(2) and stating that an enquiry is contemplated in this case and that allowing the petitioner to continue for work will seriously jeopardize the Customs duties and security of Cargo, no other reason has been stated anywhere as to why an immediate action is required in this case - Impugned order of suspension quashed and petition allowed: High Court **[M/s. Thiru Rani Logistic Pvt Ltd Vs Commissioner of Customs Chennai, 2019-TIOL-208-HC-MAD-CUS]**
