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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

No GST Levy on Petrol, Diesel until Revenue Stabilizes, says Former CEA

General Updates

- Govt unearthed Rs 12,000 crore GST Evasion in 8 Months.
- GST Evasion swings into top gear: 3200 cases booked.
- Govt sanctioned Rs 91,149 crores of GST Refund So far.
- Option to file Appeal against Advance Ruling Authority enabled.
- Mr. Pranab Kumar Das has been appointed as New Chairman of CBIC.
- The Govt. of Jammu & Kashmir has initiated the proceeding against 1300 dealers for Non-Filing of GST Returns.
- New GSTR - GSTN working on components unlikely to be amended further: MoS
- Advance Ruling Application can be withdrawn through E-mail.
- The Govt. of Punjab has requested the Central Govt. to grant more relief under the GST regime before the general elections.
- The facility of E-Sanchit is now available on the ICEGATE website.
- GST, Demonetisation & IBC made Economy more efficient & transparent: Finance Ministry Report.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No.86/2018-CUS dated 31.12.2018** has provided the exemption from payment of IGST and Cess merely for the temporary importation of private vehicles.
- The CBIC vide **Notification No.85/2018-CUS dated 31.12.2018** has provided the deeper tariff concession rate of Basic Customs Duty in respect of tariff item classified under HSN Code 87084000 [gear box & parts thereof, of specified motor vehicles] when imported under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA) w.e.f. 1st January, 2019.
- The CBIC vide **Notification No.84/2018-CUS dated 31.12.2018** has provided the deeper tariff concession in respect of specified goods when imported from Malaysia under the India Malaysia Comprehensive Economic Partnership Agreement (IMCECA) w.e.f. 1st January, 2019.
- The CBIC vide **Notification No.83/2018-CUS dated 31.12.2018** has provided the deeper tariff concession in respect of specified goods when imported from Korea Republic under the India Korea Comprehensive Economic Partnership Agreement (CEPA) w.e.f. 1st January, 2019.
- The CBIC vide **Notification No.82/2018-CUS dated 31.12.2018** has provided the deeper tariff concession in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement w.e.f. 1st January,2019.
- The CBIC vide **Notification No.81/2018-CUS dated 17.12.2018** has partially amended notification No. 37/2017-Customs dated 30.06.2017 in order to exempt BCD and IGST for imports by NTRO.
- The CBIC vide **Notification No.80/2018-CUS dated 15.12.2018** seeks to further postpone the implementation of increased customs duty on specified imports originating in USA from 17th December, 2018 to 31st January, 2019.
- The CBIC vide **Notification No.79/2018-CUS dated 05.12.2018** has provided Amendment to notification no. 52/2003-Customs dated 31.03.2003 -reg.
- The CBIC vide **Notification No.98/2018-CUS (N.T.) dated 14.12.2018** has provided tariff notification in respect of fixation of tariff value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver - Reg.
- The CBIC vide **Notification No. 97/2018-CUS (N.T.) dated 07.12.2018** has made amendment to Notification No.62/94-CUS(N.T.) dated 21.11.1994 notifying Port Meadow U/s. 7(a) of Customs Act, 1962 for unloading of imported goods and loading of export goods or any class of goods.
- The CBIC vide **Notification No. 95/2018-CUS (N.T.) dated 06.12.2018** has revised All Industry Rates (AIR) of Duty Drawback.
- The CBIC vide **Notification No.57/2018-CUS (ADD) dated 13.12.2018** has imposed the anti-dumping duty on imports of "Zeolite 4A (detergent grade)" originating in or exported from China PR.
- The CBIC vide **Notification No.56/2018-CUS (ADD) dated 04.12.2018** has levied definitive anti-dumping duty on the imports of "Uncoated Copier



Paper" originating in or exported from Indonesia, Thailand and Singapore.

(Form B-17) to be executed by the Export Oriented Units (EOUs).

- The CBIC vide **Circular No.54/2018-CUS dated 31.12.2018** has further deferred the implementation of RFID- sealing of goods deposited & removed from the Customs Bonded Warehouses.
- The CBIC vide **Circular No.53/2018-CUS dated 28.12.2018** has laid down the procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act.
- The CBIC vide **Circular No.52/2018-CUS dated 12.12.2018** has revised All Industry Rates (AIR) of Duty Drawback.
- The CBIC vide **Circular No.51/2018-CUS dated 07.12.2018** has introduced AEO programme digitization - Ease of doing business – Development of web-based application for AEO-T1 - reg.
- The CBIC vide **Circular No.50/2018-CUS dated 06.12.2018** has provided the clarification with respect to amendments to Customs and Central Excise notifications for EOUs.
- The CBIC vide **Circular No.49/2018-CUS dated 03.12.2018** has delineated the procedure for disposal of un-claimed/un-cleared cargo under section 48 of the Customs Act,1962, lying with the custodians.
- The CBIC vide **Notification No. 23/2018-CE dated 05.12.2018** has made amendment to Notification No.22/2003-CE, 23/2003-CE & 24/2003-CE all dated 31.03.2003 -reg.
- The CBIC vide **Notification No.01/2018-CE(NT) dated 05.12.2018** has notified that the General Bond
- The CBIC vide **Notification No.78/2018-CT dated 31.12.2018** has extended the due dates for filing the details in FORM GST ITC-04 in respect of goods received from job worker or dispatched to job worker for the period of July,2017 to December,2018 till 31st March, 2019.
- The CBIC vide **Notification No.77/2018-CT dated 31.12.2018** has waived off the late fee for the composition taxpayers who failed to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to September, 2018 but furnishes the said return between the period 22nd December, 2018 to 31st March, 2019.
- The CBIC vide **Notification No.76/2018-CT dated 31.12.2018** has waived off the late fee on account of delayed furnishing of FORM GSTR-3B for the months/quarters from July, 2017 to September, 2018 during the period from 22nd December, 2018 to 31st March, 2019. The Notification further provides that where the said return filed is nil, the late fee charged for failure from the month of July,2017 onwards shall stand waived off to the extent which is in excess of an amount of ten rupees for every day during which such failure.
- The CBIC vide **Notification No.75/2018-CT dated 31.12.2018** has waived off the late fee on account of delayed furnishing of FORM GSTR-1 for the months/quarters from July, 2017 to September, 2018 during the period from 22nd December, 2018 to 31st March, 2019.
- The CBIC vide **Notification No.73/2018-CT dated 31.12.2018** has exempted the supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS.



- The CBIC vide **Notification No.72/2018-CT dated 31.12.2018** has extended the due dates for filing the return in FORM GSTR-1 for the newly migrated taxpayers (having aggregate turnover above Rs. 1.5 crores) for the period July,2017 to February,2019 till 31st March, 2019.
 - The CBIC vide **Notification No.71/2018 CT dated 31.12.2018** has extended the due dates for filing the return in FORM GSTR-1 for the newly migrated taxpayers (having aggregate turnover up to Rs. 1.5 crores) for the period July,2017 to December,2018 till 31st March, 2019.
 - The CBIC vide **Notification No.68/69/70/2018 CT, dated 31.12.2018** has extended the due date for the newly migrated taxpayer filing the return in FORM GSTR-3B for the period July,2017 to February,2019 till 31st March, 2019.
 - The CBIC vide **Notification No.67/2018-CT, dated 31.12.2018** has extended the time period for migration of taxpayers who received provisional IDs but could not complete the migration process. The taxpayer shall furnish the details to the jurisdictional nodal officer on or before 31st January, 2019.
 - The CBIC vide **Notification No.29/2018-CT (Rate) dated 31.12.2018** has exempted the GST rate on services provided by GTA to Government departments/local authorities under RCM for the purposes of deducting tax under Section 51 w.e.f. 1st January, 2019.
 - The CBIC vide **Notification No.28/2018-CT (Rate) dated 31.12.2018** has exempted the GST rate of various services w.e.f. 1st January,2019. Few has been highlighted below:
 - Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders
 - The CBIC vide **Notification No.27/2018-CT (Rate) dated 31.12.2018** has amended the GST rates on various services w.e.f. 1st January, 2019. Few highlighted below:
 - GST rate on cinema tickets above Rs. 100 shall be reduced from 28% to 18%.
 - Services provided in construction or engineering or installation or other technical services used for conversion of waste into energy shall be taxed at 18%.
 - GST rate on third party insurance premium of goods carrying vehicles shall be reduced from 18% to 12%.
 - Air travel of pilgrims by non-scheduled/charter operations, for religious pilgrimage facilitated by the Government of India under bilateral arrangements shall attract the same rate of GST as applicable to similar flights in Economy class (i.e. 5% with ITC of input services).
 - The CBIC vide **Notification No.26/2018-CT(Rate) dated 31.12.2018** has exempted the central tax on supply of gold by nominated agencies to registered persons w.e.f. 1st January, 2019.
 - The CBIC vide **Notification No.25 /2018-CT (Rate) dated 31.12.2018** has exempted the GST on various goods inclusive of vegetables, (uncooked or cooked by steaming or boiling in water), frozen, branded and put in a unit container or Supply of gift items received by the President, Prime Minister, Governor or Chief Minister of any State or Union territory, or any public
- under Pradhan Mantri Jan Dhan Yojana (PMJDY).
- Services supplied by rehabilitation professionals recognized under Rehabilitation Council of India Act, 1992 registered under section 12AA of the Income-tax Act.



servant, by way of public auction by the Government, where auction proceeds are to be used for public or charitable cause w.e.f. 1st January, 2019.

- The CBIC vide **Notification No.24/2018-CT (Rate) dated 31.12.2018** has amended the GST rates on various goods w.e.f. 1st January, 2019 such as Monitors, TVs, Video Games Console, Music Books and Natural Corks etc.
- The CBIC vide **Circular No.81/2018-GST dated 31.12.2018** has clarified GST rate for Sprinkler and Drip irrigation System including laterals.
- The CBIC vide **Circular No.80/2018-GST dated 31.12.2018** has clarified issues regarding GST rates & classification (goods). Few are highlighted below:
 - Movement of Rigs, Tools & Spares and all goods on wheels
 - Polypropylene Woven and Non-Woven Bags and PP Woven and Non-Woven Bags laminated with BOPP falls under HS code 3923 and attract 18% GST rate.
 - Concessional GST rate of 5% applies to the LPG supplied in bulk to an OMC by refiners/factioneers for bottling for further supply to household domestic consumers.
- The CBIC vide **Circular No.79/2018-GST dated 31.12.2018** has clarified on various issues relating to refund.
- The CBIC vide **Circular No.78/2018-GST dated 31.12.2018** has clarified the issue pertaining to the export of services.
- The CBIC vide **Circular No.77/2018-GST dated 31.12.2018** has clarified the procedure for the withdrawal from composition scheme.
- The CBIC vide **Circular No.76/2018-GST dated 31.12.2018** has clarified certain issues pertaining to the sale by Government Departments to an unregistered person, valuation methodology in case of TCS under Income Tax Act, rate of tax in case of debit note/credit note and definition of the owner of Goods etc. under GST regime.
- The CBIC vide **Circular No.75/2018-GST dated 27.12.2018** has issued the guidelines for processing of applications for financial assistance under the Central Sector Scheme named 'Seva Bhoj Yojna' of the Ministry of Culture.
- The CBIC vide **Order No.04/2018-CT dated 31.12.2018** has extended the due dates for furnishing the statement in FORM GSTR-8 by E-commerce companies for the months of October, 2018 to December, 2018 till 31st January, 2019.
- The CBIC vide **Order No.03/2018-CT dated 31.12.2018** has amended the 'Removal of Difficulty Order' No. 1/2018 dated 11.12.2018 to extend the due date for furnishing of annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the FY 2017-2018 till 30th June, 2019.
- The CBIC vide **Order No.02/2018-CT dated 31.12.2018** has extended the due dates for availing ITC on the invoices or debit notes which are pertaining to such invoices issued in FY 2017-18 till 31st March, 2019.
- The CBIC vide **Order No.1/2018-CT dated 11.12.2018** has issued the Removal of difficulty order regarding extension of due date for filing of Annual return (in FORMs GSTR-9, GSTR-9A and GSTR-9C) for FY 2017-18 till 31st March, 2019.



- The DGFT vide **Notification No. 47/2015-20 dated 31.12.2018** has made addition of Krishnapatnam Port for import and export of Sawn Timber classified under Chapter 44 of Schedule 2 of ITC(HS) Classification of Export & Import items.
- The DGFT vide **Notification No.46/2015-20 dated 24.12.2018** has prohibited the import of milk and milk products from China.
- The DGFT vide **Public Notice No.64/2015-20 dated 27.12.2018** has made all Advance Authorization Holders to apply & get their authorization based on the ratified norms on repeat basis.
- The DGFT vide **Public Notice No.63/2015-20 dated 27.12.2018** has facilitated for the second revalidation of Advance Authorisation for six months and has provided for making imports proportionate to export obligation already fulfilled.
- The DGFT vide **Public Notice No.62/2015-20 dated 24.12.2018** has clarified on the definition of raw sugar.
- The DGFT vide **Public Notice No.61/2015-20 dated 18.12.2018** has notified the list of capital goods which are permitted for import under the EPCG Scheme. Few are highlighted below:
 - Import of PUF panels/doors only for Chilled rooms/cold storages.
- Import of furniture & fixtures etc. merely for Hospitals.
- The DGFT vide **Public Notice No.60/2015-2020 dated 17.12.2018** has amended Appendix 3B, Table 2 of the Merchandise Exports from India Scheme (MEIS) and have incorporated HS code 15159010 at the rate of 5% in the said table.
- The DGFT vide **Public Notice No.59/2015-20 dated 12.12.2018** had made inclusion of Paragraph 2.79 E in the Handbook of Procedures (HBP) of the Foreign Trade Policy (FTP) 2015-20 to lay down the procedure for re-export/return of imported SCOMET items.
- The DGFT vide **Public Notice No.58/2015-20 dated 12.12.2018** has made amendment of Para 2.63(a) of the Handbook of Procedure (2015-20) which refers to 'exhibits required for National and International Exhibitions and Fairs and Demonstrations'.
- The DGFT vide **Public Notice No.56/2015-20 dated 05.12.2018** has made amendment in Appendix 1A of Foreign Trade Policy, 2015-20 whereby they have revised few regional authorities and their jurisdiction.
- The DGFT vide **Trade Notice No.39/2018-19 dated 12.12.2018** has provided the list of the requisite documents for obtaining the online IEC applications.



Case Laws

GST

- Refund claim under GST – Adjudication - Natural Justice - Non-consideration of assessee's reply to deficiency memo issued in refund application advising him to file it afresh and non-affording of personal hearing as requested by him in the said reply- Authority having failed to consider assessee's reply and also to afford him opportunity of hearing, order passed rejecting claim reiterating same deficiency not sustainable - Authority directed to pass fresh order on merits after considering assessee's reply to deficiency memo and affording him opportunity of hearing – Section 54 of Central Goods and Services Tax Act, 2017 and Section 20 of Integrated Goods and Services Tax Act, 2017. **[Sri Gayathri Cashews Vs. Assistant Commr. of GST & C. Ex., Cuddalore. 2018 (19) G.S.T.L. 408 (Mad.)]**
- Appeal under GST - Modes of filing - Manual filing Permissibility of – Assess contending that he is not in a position to upload appeal electronically and despite Rules 97A and 107A of West Bengal Goods and Services Tax Rules, 2017 permitting its manual filing, the Appellate Authority not receiving it manually – Appeal papers having been given by the assessee's Advocate to the Advocate for the State in the Court itself, same is directed to be handed over by the State Advocate to Appellate Authority within a week who is requested to consider the same to be within limitation period subject to assessee's complying with pre-deposit condition and other formalities and will dispose of the same – Section 107 & 108 of Central Goods and Services Tax Act, 2017/ West Bengal Goods and Services Tax Act, 2017 read with corresponding Rules. **[Calcutta Ahmedabad Roadlines Pvt. Ltd. Vs. State Tax Officer, Kharagpur Range. 2018 (19) G.S.T.L. 411 (Cal.)]**
- Seizure under GST – Order passed without taking notice of objections of assessee and non-speaking order - Order set aside and Authorities directed to give fair opportunity of hearing to assessee – Sections 129 and 130 of Rajasthan Goods and Services Tax Act, 2017 – Section 129 ad 130 of Central Goods and Services Tax Act, 2017 – While the power exists with the respondents to take action under Section 129 (3) of the Act and thereafter to proceed under Section 130 of the Act, before taking any such decision, the concerned person has to be given an opportunity of being heard which inherently means that the submissions which the concerned person may take up while filing his objections have to be examined and a speaking order has to be passed giving out reasons for not accepting the objections. It is to be noted that once such an order has been passed, it can be challenged by the aggrieved person by filing an appeal under Section 107 of the Act. Order passed under Section 129 and proceeding under – Section 130 of Rajasthan Goods and Services tax Act, 2017 set aside and matter remanded for fresh consideration. **[Sakeel Vs. State Tax Officer. 2018 (19) G.S.T.L. 419 (Raj.)]**
- Re-export of goods – Permission to re-export on furnishing of bank guarantee to 25% of Customs duty that may be leviable on re-determined value on re-



determined value of goods - Difference of view over “re-determined value” between assessee and department - On petition contending that fact no IGST was to be levied on import as it was a SEZ unit was ignored by competent authority while computing re-determined value of goods and that goods were deteriorating – HELD: On facts ad-interim relief to be granted and Department direct to permit re-export of goods on undertaking by assessee’s director that eventually, if court does not accept its contention, it shall furnish the remaining bank guarantee. **[Zip Zap Exim (P) Ltd. Vs. Union of India. 2018 (19) G.S.T.L. 422 (Guj.)]**

- 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: AAR **[Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Ltd. 2019-TIOL-01-AAR-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%: AAR **[Shreeji Infrastructure India Pvt Ltd 2019-TIOL-06-AAR-GST]**

- GST - Commission received by applicant in convertible foreign exchange for rendering services as an ‘Intermediary’ between an exporter abroad receiving such services and an Indian importer of an equipment is not an export of service - said supply will be treated as inter-state supply and IGST will be levied @18%: AAR **[2018-TIOL-287-AAR-GST Micro Instruments]**
- GST - In case of goods supplied on out and out basis, there is no levy till the time of their customs clearance in compliance with section 12 of the Customs Act and section 3 of the Customs Tariff Act - imported goods sold from and to a non-taxable territory, though they are clearly in the nature of inter-state supply would come in the category of ‘exempt supply’ as no duty is leviable on them except in accordance with proviso to section 5(1) of the IGST Act - legal position is also further reiterated and confirmed by CBIC Circular 3/1/2018-IGST dated 25.05.2018 - Sale of goods which are located outside India is not liable to tax in India under section 7(5)(a) of the IGST Act, 2017: AAR **[Ina Bearing India Pvt Ltd 2018-TIOL-286-AAR-GST]**



- GST - Applicant is not liable to pay GST on the supply of goods located outside India to customers within India without physically bringing the goods to India – Supplies in the present case would be 'non-taxable supply' as per section 2(78) of the CGST Act, 2017: **AAR [Enmarol Petroleum India Pvt Ltd 2018-TIOL-285-AAR-GST]**
 - GST - Petitioner, a transporter, when transporting goods for a consignor, the Assistant State Tax Officer detained the goods as well as the conveyance on the ground that Part B of the accompanied e-way bill was not completed, hence the same is not valid for movement of goods as per section 138 of the Act - Petitioner submits that it receives paltry sums never exceeding 2,000/- rupees as transport charges and Section 129 in its entirety does not apply to the transporter; it may affect either the consignor or the consignee, at best; that the transaction is genuine and there is no possibility of, not even a doubt about, any tax evasion; that in view of s.122 if somebody transports any taxable goods without the cover of documents, at best he can be mulcted with Rs.10,000/- as fine, and nothing more. **Held:** If the petitioner desires to have the interim release of the goods, there is no escape from Section 129 of the CGST Act, 2017 - Contention of petitioner that they are only a transporter and so the onerous Section 129 should not affect it is unacceptable since the Act does not provide for any such exemption - In fact, Section 129(1)(b) applies to all other persons interested in the goods than the consignor - If the petitioner is interested, then it answers that description - notices of detention do not suffer from any legal infirmity - If the petitioner wants the interim custody of the goods, it may comply with the statutory mandate under Section 129(1)(b) and get them released - **Petition dismissed:**
- High Court [para 12 to 14] **[Daily Express Vs Assistant State Tax Officer 2018-TIOL-175-HC-KERALA-GST]**
- GST - The Applicant-company engaged in the construction of commercial complexes, which are then sold or rented out - It approached the AAR seeking to know the date which is considered as date of completion of property, between the date on which the necessary approvals are received from the BBMP/Karnataka Pollution Control Board/Karnataka Electricity Board or else the date on which a completion certificate is received from the Chartered Engineer - It also sought to know the GST liability on amount received as consideration for sale of completed offices, after date of completion & where part of the consideration is received before date of completion - It also sought to know if GST is leviable on consideration received from sale of completed offices, where entire consideration is received after date of completion of construction. **Held** - The date of occupancy certificate issued by the competent authority, namely the Bruhat Bengaluru Mahanagara Palike, should be treated as date of completion of construction - Also, if any part of the consideration is received before such date of completion, then the transaction is to be treated as supply of services as per Entry 5 of Schedule II to the GST Act and so will attract levy of GST - Moreover, if the entire consideration is received after the date of completion, in such case, the transaction will not attract levy of GST: **AAR [Bindu Ventures 2018-TIOL-294-AAR-GST]**
 - GST - The applicant-company provides health-care services categorized as 'In-Patient' and 'Out-Patient' - It also supplies medicines to in-patients and out-



patients & is also engaged in operating restaurant and canteen services in its premises, from where food and eatable items are supplied to patients & attendants - The applicant sought to know if two or more supplies of goods or services are naturally bundled, whereupon the principal supply is exempt & other supplies are taxable & whether such supplies can be treated as composite supplies - Also, if in the affirmative and considering that principal supply is exempt supply, then can such composite supply be treated as exempt supply or composite supply - Further, if the supply is not composite supply, then is registered person allowed to claim ITC pair on procurement of capital goods, inputs & input services related to both taxable & exempt supply. **Held** - Two or more supplies of goods or services or both which are naturally bundled, wherein the principal supply is exempt & others are taxable, can be treated as a composite supply of the principal supply if such principal supply is not a non-taxable supply u/s 2(78) of the CGST Act 2017 - Such composite supply with the principal supply would be treated as exempt composite supply - Besides, the applicant can claim ITC only on such taxes paid for inputs, input services & capital goods which are attributed to supplies of goods or services taxable under CGST Act 2017 & which are not attributable to exempt supplies of goods & services under CGST Act: AAR **[Columbia Asia Hospitals Pvt Ltd 2018-TIOL-293-AAR-GST]**

- CGST - Petitioner challenges validity of Circular 07/07/2017-GST dated 01.09.2017 as being violative of section 39 of the CGST Act and rule 61(5) of the CGST Rules, 2017 - Petitioner further submits that sub-rule 5 of Rule 61 of the Rules states that the Commissioner, by notification, can specify the manner and condition subject to which return in Form

GSTR-3B can be electronically furnished which, the petitioner urges, amounts to excessive delegation, beyond the legislative mandate of Section 39 of the Act - Respondents to file affidavit within four weeks - matter to be re-listed on 12th February, 2019: High Court. **[Anil Goel And Associates Vs UOI 2018-TIOL-177-HC-DEL-GST]**

- GST - Applicant, a land owner, entered into an agreement with M/s Nforce Infrastructure India P Ltd. for development and promotion of "N Force - Pauline", a residential/commercial building at Valencia, Mangalore - builder offered to develop and promote a multi-storied residential apartment cum commercial building - applicant seeks a ruling as to whether the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members. **Held:** Notification 4/2018-CTR notifies a person or persons who supply development rights to a developer/builder etc. against a consideration, which may be in the form of a construction service, is liable to be registered under CGST/KGST Act, 2017 - It also provides that the person who supplies the development rights shall pay central tax at the time when the developer/builder transfers possession or right in the building by way of conveyance deed or similar instrument - Therefore, applicant being the person who has supplied the development rights to a developer in respect of his land is liable to registration and payment of tax: AAR **[Sri Patrick Bernardinz D'sa 2018-TIOL-292-AAR-GST]**
- CGST - Applicant seeks a ruling as to whether the procedure to raise invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata, where they do not have any separate GST registration, and charge IGST from Mumbai to their customers is



correct or whether they have to take separate registration in the State of West Bengal. **Held:** Place of supply is the location of the importer who is situated in the State of Maharashtra and hence the applicant will be clearing the goods by paying IGST from their GSTIN issued in Mumbai, Maharashtra - Since applicant has no establishment or place of operation or any godown or GSTIN in the State of West Bengal i.e. port of import, therefore, exbonding of imported goods from the Customs warehouse at Kolkata and for further sales after exbonding, whether that would be interstate or intrastate supply would depend upon the place of supply of goods as per sections 10 & 11 of the IGST Act, 2017 - Place from where the applicant makes a taxable supply of goods shall be his location, in this case, the Mumbai Head Office and since the applicant does not have any godown in the State of West Bengal, the applicant can clear the goods on the basis of invoices issued by Mumbai Head Office and need not take a separate registration in the State of West Bengal - they can, therefore, do further transaction mentioning the GSTIN of their Mumbai HO in the E-way bill and despatch place as Customs Warehouse, Kolkata: AAR **[Sonkamal Enterprises Pvt Ltd 2018-TIOL-301-AAR-GST]**

- CGST - Segoma India takes photos of diamonds and uploads photos on software of Segoma, Israel - Segoma, Israel is also a subsidiary of R2Net based in USA and as per the agreement between R2Net and its customers, R2Net lists on the system only those diamonds that are photographed with R2Net Display technology - As per the terms of the agreement, customers of R2Net send their diamonds and or gem stones to be photographed to Segoma India who issues memo of receipt of diamonds to customers of R2Net - Applicant claims that this transaction between

Segoma, India and Segoma, Israel of providing photography services is a zero rated export supply within the meaning of s.16 of the IGST Act and exempt from levy of tax. **Held:** There is no need that the goods physically required for rendering services must be owned by the recipient of the services - on the other hand, it is sufficient for the recipient to make them physically available to the service provider for rendering services - in this case, the event of photography services pertaining to diamonds made physically available by the recipient of services to the provider of services is over and the service is clearly provided in India where the services are actually performed - all the conditions stipulated in section 2(6) of the IGST Act are to be simultaneously complied with in order to consider any services as export of services - since conditions (iii) and (iv) have not been complied with, impugned supply is not "export of service" within the scope of section 2(6) of the IGST Act - as location of the supplier of service is in Mumbai and the place of supply as determined as per provisions of section 13(3) of the IGST Act is also in Mumbai, a place where the services are actually performed, the services are to be treated as intra state supply in terms of section 8(2) of the IGST Act and liable to tax under the provisions of MGST Act and CGST Act - supply of 'photography service' is liable to SGST under the MGST and CGST Acts: AAR **[Segoma Imaging Technologies India Pvt Ltd 2018-TIOL-300-AAR-GST]**

- CGST - Club is not formed to provide any supply of goods or services to its members qua the fees received from them - There being no supply qua the fees received, there arises no occasion to visit the definition of "Supply" under the GST Act - Applicant club, as per the facts put up, does not render any



“Supply” for the purposes of the GST Act - Registration not required: AAR [**Lions Club of Poona Kothrud 2018-TIOL-299-AAR-GST**]

- CGST - Supply of Towers and Transmission line Products; Services Contract - Applicant seeks an advance ruling as to whether GST is leviable on the transportation charges levied by the applicant on Power Grid Corporation of India Limited; as to whether they are entitled to exemption in terms of Sl. No.18 of Notification 12/2017-CTR. **Held:** Subject contracts are for commissioning of immovable property wherein transfer of property in goods is involved in the execution of said contracts - contracts are clearly covered by the definition of Works Contract as per section 2(119) of the CGST Act - composite supplies in the nature of works contract is declared as supply of services as per section 7 r/w Entry no. 6(a) of the Schedule II of the CGST Act - Impugned supply of transportation service is not supply of standalone service - Accordingly, applicant is liable to pay GST @18% as per Entry at Sr. no. 3(ii) of Notification 11/2017-CTR and corresponding notification under MGST Act - inasmuch as GST is leviable on the transportation charges levied by applicant on PGCIL: AAR . [**Emco Ltd 2018-TIOL-297-AAR-GST**]
- CGST - Appellant is in the business of Taxi Aggregation Service and Taxi Service and states that the billing is done in the name of the Taxi Driver who provides the service for the particular trip and the taxi driver would collect the amount from the customer on the completion of the trip - Ruling was sought on whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether applicant company is liable to pay GST on this amount - Advance Ruling authority had held

that applicant, now Appellant, is liable to tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it, in accordance with the provisions of sub-section (5) of section 9 of the Central Goods and Services Tax Act 2017 read with Notification No. 17/2017 - Central Tax (Rate) dated 28.06.2017 - Appeal to AAAR. **Held:** Service of transportation of passengers is supplied by the taxi drivers using the digital application developed by the appellant - appellant manages the digital application which facilitates the supply of the service of transportation of passengers - appellant owns and operates the IT platform for the supply of service of transportation of passengers over the digital network - customer would book the taxi using the IT platform provided by the appellant and the taxi operator would be intimated about the potential customer through the same IT platform - on completion of service, the appellant sends an invoice to the customer through the digital network facility which is payable by the customer to the taxi driver, therefore, the appellant is an 'electronic commerce operator' in terms of s. 2(45) of the CGST Act - section 9(5) of the CGST Act shifts the liability to pay the tax from the actual supplier of the notified services to the e-commerce operator - electronic commerce operator shall, therefore, be liable to pay tax on the services provided by a motor cab or maxi cab or motor cycle or radio-taxi, by way of transportation of passengers, if such services are supplied through it and it shall be deemed that the electronic commerce operator is the supplier in such cases - Order passed by Advance Ruling authority upheld and the appeal is dismissed: AAAR - Appeal dismissed: AAAR [**Opta Cabs Pvt Ltd 2018-TIOL-26-AAAR-GST**]



- GST - Incidence of tax is on the supply and not on the nature of transport - When a person residing in one State goes to another State and purchases goods for his own use, the supply with respect to the transaction terminates on the individual taking possession of the goods in that other State - goods have come into the possession of the purchaser and the vehicle having been used, however negligible the distance run, it is a "used personal effect" - there can be alleged no taxable transaction insofar as the movement of goods from Puthuchery to Trivandrum in Kerala, especially since the car had been registered in the name of the purchaser - "personal effects" includes a car - intra-State sale having occasioned and the transport being of used personal effects, the detention was illegal - notice issued and the order passed u/s 129 of the Act being illegal and totally without jurisdiction, same is quashed - judgment of the Single Judge set aside and the appeal is allowed: Division Bench High Court [para 12 to 15, 17, 20 to 25, 27, 29, 30] - Appeal allowed: KERALA HIGH COURT. [**Kun Motor Co Pvt Ltd Vs ASTO 2018-TIOL-185-HC-KERALA-GST**]
- GST - Applicant seeks a ruling as to whether the marketing, promotion and distribution services provided by Sabre India to Sabre APAC would be subject to tax under the CGST Act, 2017 or would remain excluded under the said Act as the said activities qualify as export of service in accordance with section 2(6) of the IGST Act, 2017 read with the said Acts. **Held:** As per intra-state provisions contained in section 8(2), the said provisions are subject to the provisions of section 12 of the IGST Act and the provisions of section 12 would be applicable only for determining the place of supply of service where the location of supplier of services and the location of recipient of the services is in India - when recipient is located outside India, the said provisions of section 12 cannot be made applicable and since provisions of section 8(2) are inter-linked with provisions of section 12, the same cannot be made applicable in case the recipient of service is located outside India - in case the intermediary services are provided to the recipient located outside India, the inter-state provisions as contained under section 7(5)(c) shall be applicable and hence IGST is payable under such transaction - resultantly, the marketing, promotion and distribution services provided by applicant to Sabre APAC would be subject to tax under the GST Act: AAR . [**Sabre Travel Network India Pvt Ltd 2018-TIOL-309-AAR-GST**] (***RSA differ with the AAR**)
- GST - Merck Life Science P Ltd. has entered into business transfer agreement with Merck Limited (seller) wherein the seller has agreed to sell, transfer, convey, assign and deliver to the applicant or to any affiliates as directed by applicant for the BPL business which would be transferred as going concern on a slump sale basis - Ruling sought as to whether applicant's direction to the seller for direct transfer of BP business to MSPL and PM business to MPMPL respectively would qualify as a 'supply between the applicant' and 'MSPL/MPMPL'. **Held:** Role of the applicant is clearly a service provider covered in para 5(e) of Schedule II of Section 7 of the CGST Act, wherein the applicant is doing the act of giving direction to the seller for transfer of BP and PM businesses to MSPL and MPMPL respectively as per his directions and terms and conditions agreeable to him due to special authority in this regard, vested in him through the agreement between him and the seller - therefore, question answered in the affirmative; value is to be determined as per rule 28 of the CGST



- Rules, 2017: AAR . **[Merck Life Science Pvt Ltd 2018-TIOL-308-AAR-GST]**
- GST - Amortized value of tool received on FOC basis from the customer is not required to be included in the value of finished goods manufactured and supplied by applicant to customer - Paragraphs 1.1 and 1.2 of the CBIC Circular 47/21/2018-GST cover the case and not paragraph 1.3: AAR . **[Lear Automotive India Pvt Ltd 2018-TIOL-306-AAR-GST]**
 - GST - Applicant is engaged in selecting and recruiting the shipping personnel on behalf of the foreign ship owner and have been charging administrative fees in this regard and paying GST on the same - Applicant seeks a ruling as to whether GST is applicable on reimbursement of salary on behalf of foreign entity. **Held:** Applicant is acting as 'pure agent' of M/s RMS Ltd., Bermuda in as much as the entire amount received by them as 'Crews' salary' will be disbursed to the crew and no amounts from the said receipt will be used by the applicant for their own interest - for performing as a 'pure agent' they will also be receiving compensation separately in the form of fixed fees to be charged as service charges - applicant, therefore, will not be liable to pay GST on Salary amount received from M/s RMS Ltd., Bermuda: AAR . **[Dbs Marine Services Pvt Ltd 2018-TIOL-304-AAR-GST]**
 - GST - Applicant has entered into a tie-up agreement with Privilege Industries Limited (PIL) whereby PIL brews, manufactures, packages and supplies beer from its bottling unit located in Maharashtra to buyers/distributors in the territory identified by applicant - applicant seeks a ruling as to whether GST can be levied on the above mentioned consideration paid for supply of alcoholic liquor for human consumption. **Held:** From the transaction between the applicant and PIL it is clear that in respect of the 'costs' paid and received there is no supply of goods/services in the form of sale, transfer, barter, exchange etc. and, therefore, there is no requirement to pay GST on such costs paid by applicant to PIL - however, in respect of the 'fixed costs' paid by applicant to PIL, the same are because they are providing job work services to the applicant - entire services rendered by PIL and the consideration paid by the applicant for receiving such services in the course of furtherance of business of both, the applicant and PIL, hence this amount is liable to tax and such tax is payable by PIL - As for the tax rate, had the applicant brewed, manufactured, packaged and supplied beer on their own account then their activity would not have been liable to tax under the GST laws since supply of alcoholic liquor for human consumption is not taxable under GST laws - however, the job work which is a service provided by PIL that is required to be taxed: AAR . **[Crown Beers India Pvt Ltd 2018-TIOL-303-AAR-GST]**



CUSTOMS

- Facts- 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. **[Big Bags International Pvt Ltd Vs CC, CE & ST, 2018-TIOL-2681-HC-MAD-CUS]**
- Facts- Deemed export drawback application was rejected – It was held that power project itself cannot be said to be goods; that goods which are imported are directly used in the power project; that the goods imported for which the benefit of deemed export drawback is claimed, cannot be said to be 'manufactured in India' and, therefore, the claim of the petitioner of deemed export drawback is rightly rejected appeal to Supreme Court. **[Gujarat State Electricity Corporation Ltd Vs Uoi-2018]**
- 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 Sanjivani Non-Ferrous Trading Pvt Ltd, 2018-TIOL-447-SC-CUS]**