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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

## GST Annual Return dates extended to March 31<sup>st</sup>, 2019 for the financial year 2017-18

### General Updates

- The Government had extended GST return filing deadline for taxpayers affected in the state of Andhra Pradesh and Tamil Nadu.
- The Directorate General of GST Intelligence (DGGI) said that, GST evasion of Rs 4,562 crore has been detected in 571 cases.
- The State of West Bengal had decided to introduce scheme for settlement of disputes for all taxation cases.
- The GST dept. of Chhattisgarh had cancelled the registrations of 655 traders based in Raigarh district on the ground for not furnishing the details in 3B form format for the last six months.
- Goods and Services Tax (GST) revenues collected in November this year came in at ₹97,637 crores lower than expectation.
- Feedback and Action Room (FAC) has been set up to support and and reach out to the MSMEs
- Government set to unleash next generation of changes to the Customs duty architecture to speed up India's trade and improve the ease of doing business
- The Bihar Assembly had passed the GST Amendment Bill, 2018 with voice notes



## Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 61/2018- CT dated 05.11.2018** had exempted the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018.
- The CBIC vide **Notification No. 62/2018- CT dated 29.11.2018** had extended the last date for filing of FORM GSTR-3B for taxpayers in Srikakulam district of Andhra Pradesh and 11 districts of Tamil Nadu.
- The CBIC vide **Notification No. 63/2018- CT dated 29.11.2018** had extended the due date for filing of FORM GSTR-1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu.
- The CBIC vide **Notification No. 64/2018- CT dated 29.11.2018** had extended the due date for filing of FORM GSTR-1 for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.
- The CBIC vide **Notification No. 65/2018- CT dated 29.11.2018** had extended the due date for filing of FORM GSTR - 4 for the quarter July to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.
- The CBIC vide **Notification No. 66/2018- CT dated 29.11.2018** had extended the due date for filing the return in the FORM GSTR-7 for the period of October 2018 to December 2018 till the 31st day of January 2019.
- The CBIC vide **Circular No. 73/47/2018-GST dated 05.11.2018** had elucidated about the principal-agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent & issue pertaining to the valuation of supply of goods or services or both from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.
- The CBIC vide **Circular No. 74/48/2018-GST dated 05.11.2018** had elucidated that TCS @ 1% shall be collected by Tea Board respectively from the: -
  - (i) Sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
  - (ii) Actioners on the net value of supply of services (i.e. brokerage)
- The GST Council had issued an **Advisory dated 12.11.2018** related to the augmentation/enhancement in the E-Way Bill portal where they address the various issues faced by trade and industry which are as follows:
  - a) duplicate generation of e-way bills based on same invoice number
  - b) Shipping address in case of export supply type
  - c) Dispatching address in case of import supply type and many more.
- The CBIC vide **Notification No.77/2018-Customs dated 01.11.2018** had further postponed the implementation of increased customs duty on specified imports originating in USA from 2nd November, 2018 to 17th December, 2018.



- The CBIC vide **Notification No. 55/2018-Customs (ADD) dated 15.11.2018** had extended the existing anti-dumping on "O-Acid" originating in or exported from China PR and imposed vide notification No. 6/2018-Customs (ADD) dated 12th March, 2018 to the imports originating and exported from China PR of "O-Ester".
- The CBIC vide **Circular No. 42/2018 Customs dated 02.11.2018** had delineated the procedure for a Pilot on Transshipment of Export Cargo from Bangladesh to third countries through Land Customs Stations (LCSs) to Kolkata Port / Airport, in containers or closed bodied trucks
- The CBIC vide **Circular No. 43/2018 Customs dated 08.11.2018** had delineated the procedure and implementation of Paperless Processing under SWIFT- Uploading of supporting documents (eSANCHIT) in exports.
- The CBIC vide **Circular No. 44/2018 Customs dated 13.11.2018** in order to reducing physical interface between Customs/regulatory agencies & the trade and to increase the speed of clearance in the both Imports & Exports, it is proposed to introduce a facility to upload digitally signed Licenses/Permits/Certificates/Other Authorization (LPCOs) by Participating Government Agencies (PGAs) on eSANCHIT at all ICES location across India from 16.11.2018.
- The CBIC vide **Circular No. 45/2018 Customs dated 19.11.2018** had provided a clarification w.r.t. the re-import of goods through the post which were exported in terms of Notification No. 45/17-Customs dated 30.06.2017 & Notification No. 46/17-Customs dated 30.06.2017.
- The DGFT vide **Public Notice No. 44/2015-2020 dated 05.11.2018** had amended the appendix-2T of Appendices and Aayat Niryat Forms of FTP 2015-20 which pertains to jurisdiction for the issuance of RCMC.
- The DGFT vide **Public Notice No. 45/2015-2020 dated 15.11.2018** had extended the period for installation & operationalization of Radiation Portal Monitors & Container Scanner in the designated port upto 31<sup>st</sup> March 2019.
- The DGFT vide **Public Notice No. 46/2015-2020 dated 15.11.2018** had amended the Para 2.79A and 2.79B of Handbook of Procedure for issue of export authorization for "Stock & Sale" of SCOMET items which allowed the re-transfer/re-export of SCOMET items within the country of the stockiest & to the end users in other specified countries approved by IMWG, on post reporting basis.
- The DGFT vide **Public Notice No. 47/2015-20 dated 16.11.2018** has extended the import validity period under the Export Promotion of Capital Goods (EPCG) Authorization from 18 months to 24 months. It will be significant where the EPCG Authorization has been issued prior to the date of above-mentioned notice or whose validity has not expired on the date of issuance of this notice shall also be extended to 24 months. The extension for the import validity will be done without any charge/fee.
- The DGFT vide **Public Notice No. 48/2015-2020 dated 20.11.2018** had notified the town of Bhadohi in Uttar Pradesh as a Town of Export Excellence for the carpets & other floor coverings.



- The DGFT vide **Public Notice No. 49/2015-2020 dated 22.11.2018** had amended the Appendix 3B, table 2 of MEIS w.e.f. 26.11.2018 & upto 25.03.2019.
- The DGFT vide **Trade Notice No. 37/2018-19 dated 02.11.2018** had advised all the Export Promotion Councils who were issuing RCMCs in the manual mode have to complete the exercise to shift to online mode positively by 31<sup>st</sup> December 2018. Also, the EPCs issuing through online mode have to upload the same to DGFT server have to complete the exercise to shift to online mode positively by 31<sup>st</sup> December 2018.
- The DGFT vide **Notification No. 43/2015-2020 dated 05.11.2018** had amended the Para 6.01 (a) of FTP 2015-20 in order to allow the export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats only from DTA and EOU/EHTP/STP/BTP units.
- The DGTR vide **Trade Notice No. 15/2018 dated 22.11.2018** had rationalized the anti-dumping investigation process. The Prima Facie scrutiny of application for completeness of documents as per the checklist.

## Case Laws

### GST

- The case is pertaining to the E-way Bill. A person from Trivandrum goes to Pondicherry, purchases a car, and entrusts it to the car dealer to transport it to Trivandrum. On the way, in Kerala, the officials under the GST Act, intercept the vehicle and detain the goods, for no E-way bill accompanies the consignment. After responding to the statutory notice and after suffering a penalty order under section 129 of the GST Act, both the dealer and the purchaser file this writ petition. Should the transport at the behest of an individual, an unregistered person, suffer the same statutory limitations as does the transport by a registered person or transporter? Does the second proviso to sub-rule (3) of Rule 138 of the KSGST Rules save the transaction? And can we treat the car, sought to be transported without an e way bill, as an item of "used personal and household effects". The Hon'ble High Court is of view that if the conditions under the CGST Act and Rules are not complied with, definitely Section 129 operates and confiscation would be attracted. Respondents are entitled to adjudication, but they would have to prove that the goods being transported stand exempted from the rigours of the GST regime. Either of the petitioners can get the goods released by complying with Section 129 and the relevant rules, & seek an early adjudication of the dispute. **[M/s. Kun Motor Company Vs Asstt. Sales Tax Officer, 2018-TIOL-163-HC-KERALA-GST]**
- In the present case, the applicant company holds a Special Warehouse License issued u/s 58(A) of the Customs Act 1962. It is engaged as a duty-free ship store supplier through the special warehouse. The applicant sought to know whether it is exempted from GST in outward supplies made to ocean-going



merchant vessels on foreign run, or to Indian Navy Ships & Indian Coast Guard Ships. Also, if found liable to pay GST, whether the applicant can charge GST from the recipients of such supplies. Initially the AAR held the applicant to be not exempted from GST & that it could collect GST from the recipients in case the supply did not amount to export. Later the AAAR observed that the applicant had raised a new issue for clarification which had not been placed before the AAR, namely whether the transactions are zero rated and so directed the AAR to hear the applicant afresh. The Authority is of view that the outward supplies made by the applicant to ocean-going merchant ships, Indian Navy Ships and Indian Coast Guard Ships, are to be treated as exports. Therefore, the application disposed of. **[M/s. Fairmacs Ship stores Pvt Ltd., 2018-TIOL-247-AAR-GST]**

- In the present case, the applicant provides back office support services to overseas companies-clients who are engaged in Trading of chemicals and other products in International Trade. The applicant comes into picture only after finalization of purchase/sale order by a client. The applicant seeks a ruling as to whether the aforesaid services proposed to be rendered qualify as "zero rated supply" in terms of s.16 of the IGST Act. It was held that activities undertaken by the applicant are for and on behalf of the clients to facilitate supply of goods and services between their clients and their customers. The applicant clearly is covered and falls in the definition of "intermediary" as defined under the IGST Act and, therefore, provisions pertaining to 'place of supply' in case of intermediary services as provided in sub-section 8 of section 13 are relevant - place of supply in case of services provided by the applicant being

intermediary would be the location of the supplier of services i.e. the location of the applicant which is the state of Maharashtra - to qualify as "export of services" all five ingredients of the definition should be satisfied simultaneously. condition (iii) not being satisfied such services do not qualify as " export of services" as defined u/s 2(6) of the Act and thus not a "zero rated supply" as per section 16(1) of the IGST Act, 2017. The application disposed of. **[M/s. Vservglobal Pvt Ltd, 2018-TIOL-263-AAR-GST]**

- The fact of the present case, the petitioner is a registered dealer & purchased goods from Chennai. While transporting the goods to the state of Kerala, the same were detained while in transit by the Assitant State Tax Officer and based upon that the Officer raised the demand. The Consignor paid the taxes and penalty under head of IGST instead on SGST. Thus, the Authority refused to release the goods. This Writ petition was filed. The Hon'ble High of Kerala held that Section 77 of the GST Act, 2017 provides for the refund of the tax paid mistakenly under one head instead of another. However, Rule 4 of the GST Refund Rules speaks of adjustment. The amount of refund is completely adjusted against any outstanding demand under the act, an order giving details of the adjustment is to be issued in Part A of FORM GST RFD-07. Under these circumstances, the High Court does not find any difficulty for the respondent officials to allow the Petitioner's request and get the amount transferred from the head 'SGST' to 'IGST'. It is inequitable for the authorities to let the petitioner suffer on the count that such transfer may take some time. Second respondent directed to release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty which already stood





remitted under the 'SGST' is transferred to the head 'IGST'. Thus, the petition disposed of. **[M/s. F Saji S Vs Commissioner, State Tax Department, 2018-TIOL-162-HC-KERALA-GST]**

- In the present case, Petitioner does not dispute sizeable outstanding dues to the tax department but pleads extreme financial hardship in clearing such dues in single installment. The Petitioner prays for granting installments for clearing the Government dues. The applicant states that they have fulfilled all the terms of the interim order dated 20.9.2018 [2018-TIOL-125-HC-AHM-GST], despite which, the respondents are enforcing coercive recoveries inasmuch as the department is enforcing garnishee order contained in earlier communications issued to ONGC - letter dated 30.10.2018 written by Assistant Commissioner of Central GST & Central Excise, Division-IV, Vadodara to the DGM-Head Finance, Onshore Engineering Services, ONGC is adverted to. When this Court has by interim order stayed coercive recoveries of the dues of the petitioner, the respondents could not have insisted on ONGC either paying up the dues of the petitioner to the department or even prevented ONGC from releasing such payments in favor of the petitioner. This would be plainly carrying out coercive recoveries of the dues which this Court by way of interim injunction prevented the department from doing so. The Court through its communication dated 30.10.2018 stayed the action. It is clarified that as long as the petitioner continues complying with the conditions of interim order dated 20.9.2018 and till such order is not recalled or modified, the respondents shall not compel ONGC or any other debtor of the petitioner to deposit any amount with the department or prevent the debtor

from paying such sum to the petitioner. **[M/s. Indus Projects Ltd. Vs. UOI,2018-TIOL-158-HC-AHM-GST]**

- In the present case, the applicant has sought advance ruling on the following question that whether the amortized cost of the tool is to be added to arrive at the value of the goods supplied. The Advance Ruling Authority is of view that the Applicant could not have manufactured the components without the tool & the cost of tool is borne by the recipient of the supply whereas the same should have been borne by the applicant. The facts and circumstances of the transaction invite the play of Section 15(2)(b) of the CGST Act, 2017. Therefore, amortized cost of tools which are re-supplied back to the applicant free of cost shall be added to the value of the components while calculating the value of the components supplied as per Section 15 of the CGST/SGST/IGST Act, 2017. The application disposed of. **[M/s. Nash Industries (I) Pvt Ltd, 2018-TIOL-260-AAR-GST]**
- In the present case, goods belonging to the Petitioner, a registered dealer, were detained u/s 129(3). Petitioner paid the amount through the portal and obtained payment receipt but the State Tax officer refused to release the goods. Counsel for Revenue submitted that the amount must be apportioned between the Centre and state as the liability is under the head IGST. That it is not within the State's purview. The Court observed that Government both at the Centre and in the State, have ushered in the GST Tax regime to ensure that everything is made online with minimum manual interventions. Yet strangely, the authorities still insist that the payment should be by physical means i.e. either in cash or through



Demand Draft. Such insistence seems to be archaic and out of tune with the very spirit of the GST regime. In apportionment, there may be delays and difficulties, but the taxpayer cannot be made to suffer, on that count - applying the ratio of the judgment in Fashion Marbles and Granites Pvt. Ltd. 2018-TIOL-

62-HC-KERALA-GST, the Assistant State Tax Officer is directed to release the goods and the vehicle forthwith. **[Pioneer Polyleathers Ltd Vs Assistant State Tax Officer 2018-TIOL-168-HC-Ker-GST]**

## CUSTOMS

- The issue involved in the present case is that the assesses were served SCNs by officers of the DRI during the period of dispute. The issue of show-cause notices and adjudications are linked to preliminary objection with reference to jurisdiction to initiate proceedings, is admitted. As regards the objection of the Revenue, to list the appeals again for some other day, the Tribunal note the appeal themselves can be disposed of, as there could be no submissions on merits of the case, from either side. In view of the admitted position and pending legal dispute before the Hon'ble Supreme Court, the Tribunal find that all these appeals are to be allowed by way of remand by setting aside the impugned orders. The appeals is allowed by way of remand and for decision by the original authority, in terms of the observation of the Tribunal. Consequently, the stay applications also get disposed of. **[M/s. Rangasami Vs Commissioner of Customs, 2018-TIOL-3438-CESTAT-MAD]**
- The issue involved in the present case with regards to the substantial questions of law regarding the scope and ambit of Rule 22 of the ADD Rules. In the absence of time limit fixed, a review undertaken under Rule 22 is required to be completed on an accelerated basis i.e. definitely before the time period prescribed in Rule 17 or Rule 23. The Statutory interpretation of a

provision is never static but is always dynamic though literal rule of interpretation, till some time ago, was treated as the 'golden rule', it is now the *doctrine of purposive interpretation* which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. The Single Judge erred in applying the literal Rule of Interpretation, to come to a conclusion that to fix the time limit in Rule 22 would amount to rewriting the Rule. If the time taken in review under 22 is longer than the original investigation, then this would allow the foreign exporter to dump its goods into India, on the basis of provisional assessment, to the detriment of the Indian Domestic Industry. The exporter can manipulate his prices and create documents, if the period for investigation, under Rule 22 is not shorter than the original investigation and the very purpose of imposing Anti- Dumping duty will be lost. The judgment of the Single Judge is set aside and writ appeals are allowed. The Hon'ble High Court of Madras is of view that the order of the Designated Authority is appealable, yet that does not take away the jurisdiction of the High Court in entertaining the writ petition. The Writ petition raises substantial questions of law regarding the scope and ambit of Rule 22 of the ADD Rules, and as to whether the period of limitation must be read into the Rule, an exercise which the appellate authority could



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not have undertaken as a creature under the Statute would be bound by the literal Rule of Construction. **[M/s. Saint Gobain India Pvt Ltd Vs UOI, 2018-TIOL-2438-HC-MAD-CUS]**

- The petitioner herein referred to as an importer had faced an allegation of "short levy of Anti-Dumping Duty". The Tribunal dismissed the appeal for petitioner's failure to comply with mandatory pre-deposit under Section 129E of Customs Act, 1962. Earlier, dealing with an identical issue; whether a statutory appeal on a substantial question of law under Section 130 lies even against an interlocutory order-stood decided in judgment dated 31st August 2018, this Court has held that the petitioner's recourse must be under Section 130. A statutory appeal before a learned Division Bench. Therefore, no merit found in the writ petition and accordingly same is dismissed in the Hon'ble High Court of Kerala. **[M/s. Rishabh Exports Vs Commissioner of Customs (Appeals), 2018-TIOL-2424-HC-KERALA-CUS]**
- In the present case, Petitioner filed the petition under under Article 226 of Constitution of India & challenges

the final findings as recorded in order passed by Designated Authority, Directorate General of Anti-Dumping and Allied Duties. The impugned order after considering the petitioners' application for initiation of Anti-Dumping Investigation in respect of import of Polyester Staple Fibre (goods) under Customs Tariff Act, 1975 r/w Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles for Determination of Injury) Rules, 1995 (Anti-Dumping Rules) and investigating into it found imposition of Anti-Dumping Duty not warranted. The impugned order rejects the application by its final finding under Section 9B(bii) of the Tariff Act r/w Rule 14(b) of the Anti-Dumping Rules. In view of decision of Delhi High Court in *Jindal Poly Film Ltd. 2018-TIOL-1970-HC-DEL-CUS*, Court is not entertaining this petition. This as an efficacious alternative remedy to the Tribunal is available from the impugned order dated 25th January, 2018. Therefore, court have not examined the merits of the petitioner's grievance. The petitioner is at liberty to file an appeal to the Tribunal under Section 9C of the Tariff Act. **[ M/s. Bombay Dyeing and Manufacturing Company Ltd Vs. UOI & ORS, 2018-TIOL-2403-HC-MUM-CUS]**

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