



S.C. Jain
Managing Partner
☎: 9891086862



INDIRECT TAX UPDATES

RSA Legal Solutions

18th Mar, 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 Relief for Real Estate, Duty Relaxation for The Exporters.

General Updates

- Taxman targets banks for free logo use by subsidiaries - Banks may not be able to claim ITC.
- Levy interest on input tax credit, Hyderabad GST Commissionerate orders.
- Govt. reports revenue collection of Rs. 97,247 crores for Feb 2019, 13% higher than Feb 2018.
- The GST Returns to be linked with E-Way Bills to curb Evasion.
- The GST Rate has been slashed on the under-construction flats and affordable housing scheme.
- GST threshold to be raised for suppliers of goods in most states.
- Delayed filing of the returns: Rs. 4,172 crore late fee collected since GST launch.
- Govt. issues Standard Operating Procedure (SOP) for TDS updated as on February 18, 2019
- CBIC instructs all registered persons to specify POS along with the name of the state in the Tax Invoice.
- CBIC instructs reporting of Inter-State transactions with URD in Form GSTR-3B and GSTR-1.



Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 09/2019-CT, dated 20.02.2019** had extended the due date for furnishing FORM GSTR-3B for the month of January, 2019 from 20.02.2019 to 22.02.2019 and for Jammu and Kashmir is 28.02.2019.
- The CBIC vide **Notification No. 08/2019-CT, dated 08.02.2019** has extended the due date for furnishing of FORM GSTR – 7 for the month of January, 2019 till 28.02.2019.
- The CBIC vide **Notification No. 02/2019-IT (Rate), dated. 04.02.2019** has rescinded SI. No. 10D of Notification No.09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.
- The CBIC vide **Circular No. 91/2019-GST, dated 18.02.2019** has allowed one-time exception to suppliers who had paid central tax and state tax on supply of warehoused goods between July, 2017 to March, 2018. The same will be deemed to be complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount central tax and state tax paid is equal to the due amount of integrated tax on such supplies
- The CBIC vide **Circular No. 90/2019-GST, dated 18.02.2019** has clarified that mentioning of place of supply on invoice as per Rule 46(n) of the CGST Rules, 2017 is mandatory.
- The CBIC vide **Circular No. 89/2019-GST, dated 18.02.2019** has instructed that the registered persons making inter-State supplies to unregistered persons shall report the details of such supplies along with the place of supply in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR–1 as mandated by the law.
- The CBIC vide **Circular No. 88/2019-GST, dated 01.02.2019** has amended various circulars issued earlier under the CGST Act, 2017 which shall come into force w.e.f. 01.02.2019.
- The CBIC vide **Notification No.05/2019-CUS, dated 16.02.2019** has inserted the tariff item 9806 00 00 in chapter 98 of the First schedule to Customs tariff act, 1975 and imposed the basic customs duty of 200% on all goods originating in or exported from Pakistan.
- The CBIC vide **Notification No. 04/2019-CUS, dated 07.02.2019** has amended the Notification No.08/2016- customs dated 05.02.2016 to allow temporary importation of aircrafts, for the purposes of participation in Aero Show organised by the Central Government, without furnishing a bank guarantee or cash deposit.
- The CBIC vide **Circular No. 08/2019-CUS dated 26.02.2019** has clarified issues related to carriage of coastal cargo from one Indian port to another port in foreign going vessels/coastal vessels through foreign territory.
- The CBIC vide **Circular No. 5/2019-CUS dated 20.02.2019** has amended the All Industry Rates of duty drawback with effect from 20.02.2019.
- The CBIC vide **Circular No. 06/2019 -CUS dated 20.02.2019** has rescinded Board Circular No. 132/95-Customs dated 22nd December, 1995



S.C. Jain
Managing Partner
☎: 9891086862



regarding “Warehousing–grant of in-bond manufacture facility under Section 65 of the Customs Act, 1962.”

- The CBIC vide **Notification No. 17/2019-CUS(NT) dated 27.02.2019** has postponed the date of coming into force of Sea Cargo and Manifest and Trans-shipment Regulations, 2018 from 1st March 2019 to 1st August 2019.
- The DGFT vide **Circular No. 20/2015-20 dated 22.02.2019** has issued clarification on eligibility of Exports made from SEZ/EOU units on behalf of the DTA units, but not through DTA units.
- The DGFT vide **Circular No. 19/2015-20 dated 14.02.2019** has discontinued the physical copy of Advance/EPCG Authorisations issued from 01.03.2019 onwards, for EDI ports.
- The DGFT vide **Public Notice No. 75/2015-20 dated 25.02.2019** has amended Para 2.54 (d) (v) iv in Handbook of Procedures, 2015-2020, pertains to the metallic waste and scrap should be imported from the stipulated ports.
- The DGFT vide **Trade Notice. 47/2015-20 dated 11.02.2019** has come up with Online Module for Filing & Tracking Quality Complaints or Trade Disputes relating to International Trade.
- The DGFT vide **Trade Notice. 46/2018-19 dated 06.02.2019** has activated the ANF 3D under the E-com module for applying for MEIS for courier/postal shipments under Para 3.05 of the FTP and Para 3.02 of the HBP.
- The DGFT vide **Trade Notice 45/2018-19 dated 01.02.2019** has provided clarity on Interest Equalisation Scheme (IES) for pre and post Shipment Rupee Export Credit and its expansion.



Case Laws

GST

- **GST - Words 'Hiring' and 'Renting' are synonymous -** Applicant is not eligible for Input Tax credit of GST charged by the contractor for hiring of buses/cars for transportation of employees - Restriction on 'Rent-a-cab' service specified in sec.17(5)(b)(iii) of the Act is applicable to Input Tax Credit on GST charged by contractor for hiring of buses/cars for transportation of employees: AAR [M/s. Yk India Pvt. Ltd., 2019-TIOL-48-AAR-GST]
- **GST - Invoices being raised by supplier in previous month and goods being received in succeeding month -** Input Tax credit is available only when goods are received - liability to pay tax arises on the basis of time of supply, which in case of supply of goods is date of issue of invoice by supplier or last date on which he is required to issue invoice in terms of Sec.31(1) or the date on which supplier receives payment, whichever is earlier: Application Dispose of: **AAR. [M/s. Pasco Motor Llp, 2019-TIOL-50-AAR-GST]**
- **GST - Section 22, 2(71), 2(85) and 2(113) of CGST Act, 2017 -** Applicant is supplying transport services to various manufacturers to transport their vehicles to the retail outlets in different states - applicant is billing and maintains book of accounts at Jaipur only - applicant is incorporated as a company having its registered office at Jaipur - applicant has, therefore, rightly taken GST registration in State of Rajasthan as supply of transport services is initiated from the state of Rajasthan: AAR GST - Applicant has taken on lease some vacant lands so as to park his vehicles and to provide resting place for drivers - as the vacant land is situated in the State of Haryana, which is beyond the jurisdiction of the AAR, Rajasthan, question relating to registration of vacant lands is out of purview of the authority, no ruling given thereon: AAR - Application Dispose of: AAR [M/s. KM Trans Logistics Pvt Ltd., 2019-TIOL-39-AAR-GST]
- **GST - Appellant had sought advance ruling on the following questions viz. Taxability of stated services provided by Espirit India to its associate concern in Hong Kong EDCFE; whether the said services are covered under Export of Service having zero rated taxability; whether Espirit India is eligible for seeking refund of GST for the taxes paid on input services or goods or both -** AAR had held that questions asked by the appellant were out of the scope of section 97(2) of the CGST Act and the questions could not be taken up by the AAR due to lack of jurisdiction. **Held:** AAR has rightly identified the SAC description with rate of tax while answering the first question and rightly declined answering the questions 2 and 3 raised by the applicant/appellant as being outside the purview of section 97(2) of the Act - Advance Ruling does not suffer from any infirmity or illegality and same is upheld - Appeal dismissed: AAR.[M/s. Esprit India Pvt. Ltd., 2019-TIOL-03-AAAR-GST]
- **GST - Anti-Profiteering -** Allegation is that the respondent had indulged in profiteering in contravention of Sec.171 of the CGST Act on the supply of 'Socks' [Jockey Socks 7052 FS ASSTD] by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f. 01.07.2017 - DGAP has in its report submitted that 'Socks' were exempted from Central Excise duty vide



- notification 30/2004-CX and attracted only VAT @5%; that after implementation of GST i.e. 01.07.2017, the tax rate on the said product was fixed @5%; the rate of tax on the product remained same in the pre-GST and the post-GST era - moreover the pre-GST and post-GST base prices (excluding tax) had remained the same, therefore, the provisions of Sec.171 of the CGST Act, 2017 had not been contravened and the allegation of profiteering by respondent was not established. **Held:** The only issue that needs to be dwelled upon is as to whether there was a case of reduction in the rate of tax and whether the provisions of Sec.171 of CGST Act, 2017 are attracted - It is clear from the facts and the report of DGAP that there was no reduction in the rate of tax on the said product "Socks" w.e.f. 01.07.2017 and hence Sec.171(1) of the CGST Act, 2017 is not attracted -no merit in the application, hence same is dismissed. **[M/s.Sudarsansec., 2019-TIOL-10 NAA-GST]**
- GST - Project Management Consultancy (PMC) services contract is entered by the applicant with Chennai Metro Water Supply and Sewerage Board (a governmental authority) for construction, management and supervision including off-site inspection for the proposed design, build, commission of 45MLD capacity, Tertiary Treatment Reverse Osmosis Plant and for consultancy services for preparation of detailed project report for providing smart water supply and sewerage services under the Smart City Mission are the Pure services and exempted from CGST under sl. No. 3 of notification 12/2017-CTR: AAR- Application disposed of: AAR [Bank of Nova Scotia, 2019-TIOL-03-HC-KERALA-GST 2019-TIOL-30-AAR-GST]**
 - GST - Writ Petitioner Authorised Dealer of Bajaj Auto. Goods shipped from Bajaj Auto at Pune to Petitioners for delivery at their premises at Virudhunagar. The vehicle transporting two wheelers instead of halting at Virudhunagar, had moved towards Sivakasi. When the vehicle was enroute to Sivakasi and 7 km away from Virudhunagar, it was intercepted by the respondent roving squad. The respondent seized the vehicle and called upon the driver of the vehicle to cooperate. It appears that the driver of the vehicle did not extend proper cooperation. In these circumstances, the impugned order of the detention came to be passed. The respondent had also passed release order putting the writ petitioner on terms. A sum of Rs.18,96,000/- had been levied as a penalty. **Held:** When the writ petitioner is a registered dealer, when the tax in respect of the goods have already been remitted and when the transportation of goods is duly covered by proper documentation, the respondent ought to have taken a sympathetic and indulgent view of the lapse committed by the driver of the vehicle. Respondent ought to have directed the driver of the vehicle to move back towards Virudhunagar instead of taking the drastic step of detaining the vehicle/seizing the goods and directing payment of penalty of Rs.18,96,000/- for release of vehicle. Respondent has chosen to be harsh and vindictive. The detention order dated 28.12.2018 and the order dated 11.01.2019 suffer from vice of gross unreasonableness and disproportionality - When a power is conferred on a statutory authority, it should be exercised in a reasonable manner - upon payment of fine of Rs.5000/-, vehicle as well as goods in question to be released forthwith. **[M/s. R K Motors.,2019-TIOL-27-HC-Mad GST.]****



- GST** - The applicant is providing certain services to its clients /partner which is based on issuance of reward points, also known as payback points by the applicant to end customers - For managing this loyalty programme, applicant is getting Management fee and/ or service charge fee - Applicant had sought a ruling as to whether this amount of issuance fee retained/forfeited by applicant would amount to consideration for actionable claims and subject to GST - AAR had held that the value of points forfeited on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by applicant to its clients and, therefore, would qualify as “supply of services” in terms of Section 7 of the Act and would be within the scope of levy of GST and consequently be chargeable to GST - appeal to AAAR. **Held:** Consideration for the unredeemed payback points has already flowed from the partners. After validity period, the same has become appellant's Revenue by virtue of the contract for servicing of the loyalty scheme including the points *ibid*, executed between the partners and the appellants - Even if it is admitted that there is a provisioning of service by the appellant to the end-customers, there cannot be any such service or actionable claim against the payback points not redeemed by them against anyone - Advance Ruling upheld and appeal dismissed: AAAR. **[M/s. Loyalty Solutions And Research Pvt Ltd., 2019-TIOL-04-AAAR-GST]**
- GST** - Clearing & forwarding-cum-packaging agent - levy of service tax on reimbursement of expenses such as godown rent, fixed expenses towards fixed capital reimbursement, etc., made as per agreement with TATA Chemical Limited - Assessee disputing demand on the ground that vivisection of one service into its components, not permissible. **Held:** In the instant case, single agreement existing embodying separate contracts for each kind of service provided-vivisection of composite services not attempted by revenue as there is no single composite service-contract, not composite contract as each head of reimbursement billed and charged separately-amounts recovered under independent separate clause of agreement of rate schedule constitute independent and separate service-demand sustains on merits – Section 65 (25) of Finance Act,1994. **[M/s.Deep Chemicalsec.,2019(21)G.S.T.L. 409 Tri.-Ahmedabad]**
- GST** - Intermediary Services – Export of service – Applicant has obtained a non-exclusive, royalty-free right and license from its parent company, i.e. Sabre APAC, to distribute the CRS Software in India – Applicant definitely acting as a broker/agent, etc. and facilitating the process of sale of CRS Software belonging to their foreign parent company, to the Indian subscribers because they identify such subscribers on their own in India – applicant is not providing services on their own account but on the account of Sabre APAC, and thus providing intermediary services – Place of supply of intermediary services shall be the location of supplier of services i.e., the applicant is in taxable territory, the said intermediary services cannot be treated as export of services. Therefore, Inter-state provisions as contained under Section 7(5)(C) of Integrated Goods and Services Act, 2017 shall be applicable and hence IGST is payable under such transaction. **[In RE:M/s. Sabre Travel Network India Pvt. Ltd.,2019 (21) G.S.T.L. 87 (A.A.R. –GST)]**



- GST - Input Tax Credit – Place of Supply –** Adjustment of credit received in Tamil Nadu by Assessee registered in West Bengal. The location of supplier, providing hotel, banquet hall or restaurant in Tamil Nadu and location of recipient i.e., Assessee, receiving service, also Tamil Nadu. Assessee can avail ITC on said invoices in Tamil Nadu only, if registered in Tamil Nadu but Assessee cannot claim/adjust/avail ITC outside Tamil Nadu on the said invoices, even if invoices issued as B2B mentioning Assessee's GSTIN in West Bengal – Assessee not registered in Tamil Nadu, SGST and CGST paid on inter-state inward supply in Tamil Nadu are not 'input tax' to said person. No concept of 'input tax' to an unregistered person and no credit of this is, therefore, admissible – A person, registered in West Bengal, cannot claim ITC for CGST & SGST of other states- He cannot adjust ITC of one state's CGST for payment of another state's CGST. He cannot adjust ITC of Tamil Nadu GST for payment of another IGST as he is not registered in Tamil Nadu- Section 2(62), 25 and 49(4) of Central Goods and Services Tariff Act, 2017. **[M/s. Storm Communications Pvt. Ltd., 2019 921] G.S.T.L. 272 (A.A.R. – GST).**
- GST - Rent a cab service - supply of Non-AC Vehicles to Army – exemption – Rate of GST – Advance Ruling –** Applicant claiming exemption on said supply in terms of Sl. 15 of Notification No.12/2017-C.T.(Rate), dated 28.06.2017. **Held:** Said notification exempts a Non-AC contract carriage other than radio taxi for transportation of passengers, excluding tourism, conducted tour, charter or hire-vehicle supplied by applicant is not covered under definition of term 'Contract Carriage' in as much as conditions prescribed in sections 2(7)(a) and 2(7)(b) of Motor Vehicles Act, 1988 are not fulfilled - Further, even assuming that the said vehicle is a contract carriage, same is being 'Hired' and hence specifically excluded from exemption notification – ibid - exemption as claimed, not admissible - services fully covered under 'Rent-a-Cab-Service' with 5% GST [2.5% CGST + 2.5% SGST] without ITC and 12% GST [6% CGST + 6% SGST] with ITC benefit - Ruled Accordingly. **[M/s. Pawanputra Travels., 2019(21)G.S.T.L.328(A.A.R.-GST)**
- GST - Goods are not to be subjected to IGST when bonded and the payment of Integrated tax is to be affected when the goods are removed for home consumption from bonded warehouse under the provisions of the Customs Act, 1962 - Board Circular 3/1/2018-IGST dated 25 May 2018 relied upon: AAR.** In the event the applicant is exclusively conducting the activity of exporting goods to Free Trade & Warehousing Zones and which are subsequently sold to Indian customers who clear the same on payment of appropriate Customs duties, they are not liable to registration u/s 23(1) of the CGST Act: AAR. **[M/s Sadesa Commercial Offshore De Macau Ltd., 2019-TIOL-33-AAR-GST]**



CUSTOMS

- **CUS** – Constitutionality of Pre-import condition - Several writ petitions were clubbed by the Hon'ble Gujarat High Court. Up-front exemption was not allowed with respect to Integrated GST (IGST) in case of imports under the advance authorisation scheme. **Held:** The “pre-import condition” contained in paragraph 4.14 of the Foreign Trade Policy, 2015-2020 inserted vide Notification No.33/2015-2020 dated 13.10.2017 and inserted vide clause (xii) in Notification No.18/2015-Cus vide Notification No.79/2017-Cus dated 13.10.2017, are hereby struck down as being ultra vires the Advance Authorisation Scheme as contained in the Foreign Trade Policy, 2015-2020 as well as the provisions of the Handbook of Procedures. **[M/S Maxim Tubes Company Pvt. Ltd. v. Union of India, SLP No. 14558 of 2018 (Guj HC)]**
- **CUS** - Re-export of Vehicle - Both the lower authorities not analyzed or justified imposition of penalty under section 114AA of Customs Act, 1962 nor there is a finding given by any of the lower authorities for appropriating amount paid by appellant towards duty of the impugned vehicle, in a situation when at the same time re-export of the vehicle has been allowed on payment of redemption fine - Importer having accepted option to re-export the imported vehicle, and the said vehicle are not cleared for home consumption into the DTA, question of import duties of customs not arises - penalty imposed under section 114AA ibid and appropriation of amount paid towards duty not sustainable. **[M/s.Orion Enterprises., 2019 (21) G.S.T.L. 397 (Tri.Chennai)]**
