



# INDIRECT TAX UPDATES

## About RSA Legal Solutions



RSA Legal Solutions is an Indian Law firm specialized in the area of Indirect taxation i.e. Goods and Services Tax, Customs, Central Excise, Service Tax, Foreign Trade Policy (FTP), Special Economic Zone ('SEZ'), Value Added Tax (VAT)/ Central Sales Tax (CST), Foreign Exchange Management Act etc. With experience, constant training and updation of knowledge, the firm has developed unique expertise in the entire spectrum of indirect taxes. We provide litigation, advisory and compliance services to our clients.

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## APEX COURT STAYS GUJARAT HC's PRE-IMPORT CONDITIONS ORDER

### General Updates

- India loses export incentive case filed by US at WTO, to appeal against the ruling.
- The E-invoicing under GST may be made mandatory in future, says GSTN CEO Prakash Kumar.
- Panel set up to boost GST revenue after sharp collection dip.
- Duty free shops at airports saved from GST.
- Finance Minister states that GST Law might have flaws but it's the law of land and cannot be undone.
- GST Refunds denied to MNC back offices
- Experts call for multiple GST rate cuts in India citing Singapore example.as they have only one tax rate under GST i.e. seven percent which is leviable on taxable goods and services.
- Single window clearance required for cross-border movement of goods: RS Subramanian, Country Manager DHL Express.
- Tax officers from the states and the Centre will get together for a day-long meeting on 11.11.2019 to discuss administrative, legal, revenue and implementation-related issues under the indirect tax regime.



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## Key Notifications/Circulars/Public Notice

- The CBIC vide **Notification No. 44/2019-CT, dated 09.10.2019** has notified the due dates for payment of taxes for discharge of tax liability as per FORM GSTR-3B for the months of October, 2019 to March, 2020 to be 20<sup>th</sup> of succeeding month.
- The CBIC vide **Notification No. 45/2019-CT, dated 09.10.2019** has notified the due dates for filing of GSTR-1 for the registered person whose aggregate turnover is up to Rs. 1.5 Cr for the quarter Oct-Dec 19 by 31st Jan, 2020 and Jan-Mar, 2020 by 30th April 2020.
- The CBIC vide **Notification No. 46/2019-CT, dated 09.10.2019** has notified the due dates for filing of GSTR-1 for the registered person whose aggregate turnover is above to Rs. 1.5 Cr for the months of October, 2019 to March, 2020 to be 11<sup>th</sup> of succeeding month.
- The CBIC vide **Notification No. 47/2019-CT, dated 09.10.2019** has made the filing of annual return under section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date.
- The CBIC vide **Notification No. 49/2019-CT, dated 09.10.2019** has amended the CGST Rules, 2017. The culmination of the same has been reproduced below:-
  - ❖ Rule 36(4) inserted in the CGST Rules, 2017 which asserted that the ITC shall not exceed 20% of the eligible credit reflected in GSTR-2A.
  - ❖ Rule 142 (1A) inserted in the CGST Rules which asserted that the proper officer shall communicate the details pertaining to any tax, interest and penalty under Section 73(1) or 74(1) before the service of any notice to the assessee which ascertained by him in Part A of FORM GST DRC01A.
  - ❖ The taxpayer after receiving DRC-01A, may file any submissions against the proposed liability in Part B of FORM GST DRC-01A.
  - ❖ Taxpayer will be able to take advantage of nil or reduced penalty under section 73(5) and 74(5).
- The CBIC vide **Notification No. 69/2019-Cus (N.T.), dated 01.10.2019** has notified the manufacture and other operations in Warehouse (no. 2) Regulations, 2019 superseding the Manufacture and Other Operations in Warehouse Regulations, 2019
- The CBIC vide **Notification No. 78/2019-Cus (N.T.), dated 31.10.2019** has extended date for implementation of the Sea Cargo Manifest and Transshipment Regulations, 2018 from 1<sup>st</sup> November, 2019 to 16<sup>th</sup> February, 2020.
- The CBIC vide **Circular No. 110/2019-GST, dated 03.10.2019** has delineated the procedure for filing of the refund application where the applicant inadvertently filed a NIL refund claim for a certain period under a particular category on the common portal in FORM GST RFD-01A/RFD-01 in spite of the fact that they have a genuine claim for refund for that period under the said category.



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- The CBIC vide **Circular No. 111/2019-GST, dated 03.10.2019** has delineated the procedure to claim the refund subsequent to favorable order in appeal or any other forum.
- The CBIC vide **Circular No. 112/2019-GST, dated 03.10.2019** has withdrawn the Circular No. 105/2019-GST dated 28.06.2019 wherein certain clarifications were given in relation to various doubts related to treatment of secondary or post-sales discounts under GST.
- The CBIC vide **Circular No. 113/2019-GST, dated 11.10.2019** has provided the elucidation regarding GST rates & classification for goods. The culmination of the same has been reproduced below:-
  - ❖ Taxability of goods imported under lease- the expression “taken on lease/imported under lease”. Covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation. The above clarification holds for such transactions in the past.
  - ❖ It is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.
  - ❖ It is clarified that the parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only.
- The CBIC vide **Circular No. 114/2019-GST, dated 11.10.2019** has provided the clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both.
- The CBIC vide **Circular No. 115/2019-GST, dated 11.10.2019** has provided the clarification with respect the several issues of GST on Airport levies.
- The CBIC vide **Circular No. 116/2019-GST, dated 11.10.2019** pertains to levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts by individual donors.
- The CBIC vide **Circular No. 117/2019-GST, dated 11.10.2019** has provided the clarification on applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by Maritime Training Institutes of India.
- The CBIC vide **Circular No. 118/2019-GST, dated 11.10.2019** has provided the clarification pertains to the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a

Accordingly, 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022.

composite supply, where such testing on the sample prototype hardware / test kits is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

- The CBIC vide **Circular No. 119/2019-GST, dated 11.10.2019** has provided the clarification with respect to the taxability of supply of securities under Securities Lending Scheme, 1997. The culmination of the same has been reproduced below:-

- ❖ For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST
- ❖ However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
- ❖ With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of

GST to be paid shall be IGST under RCM.

- The CBIC vide **Circular No. 121/2019-GST, dated 11.10.2019** has clarified that the service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called, by State Government as neither a supply of goods nor a supply of service
- The CBIC vide **Circular No. 34/2019-Cus, dated 01.10.2019** has delineated the procedure to follow by the registered person who undertakes the process of manufacture and other operation in bonded warehouses.
- The CBIC vide **Instruction No. 04/2019-Cus, dated 11.10.2019** has provided the clarification regarding inclusion of cesses, surcharge, duties, etc. levied and collected under legislations other than Customs Act, 1962, Customs Tariff Act, 1975 or Central Excise Act, 1944 in Brand Rate of duty drawback.
- The CBIC vide **Circular No. 1073/2019-CX, dated 29.10.2019** has provided the clarification with respect to the Sabka Vishwas Legacy Scheme, 2019
- The DGFT vide **Notification No. 25/2015-20 dated 18.10.2019** has incorporated the new para 2.15A in the chapter 2 of FTP-2015-20 which asserted that if any Company/ Firm coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of

any outstanding export obligations/liabilities under any of the schemes under FTP.

- The DGFT vide **Notification No. 28/2015-20, dated 31.10.2019** has amended the para 7.03(b) of chapter 7 of FTP 2015-20 which asserted that the refund of drawback of duty paid on inputs is also allowed on All Industry Rate. The same shall be come into the force retrospectively w.e.f. 05.12.2017.
- The DGFT vide **Circular No. 29/2015-20, dated 04.10.2019** has provided the clarification pertains

to several issues pertaining to Steel Importing System (SIMS).

- The DGFT vide **Trade Notice No. 36/2015-20, dated 09.10.2019** clarifies that the late cut will not be calculated from the second submission date as calculated by the system but the date of the submission of Shipping Bill from the first/earlier application will be considered. The steps for imposition of late cuts while re-applying MEIS on the reactivated shipping bill is clarified vide this Trade notice.

## Case Laws

### GST

- **GST** – The Applicant provides shared work/office spaces on rent for which it receives various services from constructors. The applicant got fitted detachable wooden flooring and sliding & stacking glass partition in the work space to make separate work spaces. The question for consideration is whether it can claim ITC on the flooring and sliding glass which are capitalized as 'furniture and fixtures' and not as immovable property? **Held:** With regard to the detachable glass partition, the authority stated that it is a *sine qua non* for setting up office space and are permanently fastened to the building. Consequently, these are additions to immovable property and hence are used for construction of immovable property. Thus, ITC is not available for construction of stacking and sliding glass. With respect to the detachable wooden flooring, it observed that the same is attached using foam on a cemented floor. The authority stated that it only adds to the value of the building and is not *sine qua non* for the office space unlike the partitions and it is not covered under 'construction of immovable property'. Thus, ITC is available on affixing wooden flooring: **AAR [WeWork Indian Management Private Limited, 2019-TIOL-416-AAR-GST]**
- **GST** – The Applicant has introduced parental insurance for employees' parents. As per this scheme, the Applicant initially pays the entire premium along with taxes to the insurance company. 50% of the premium is recovered from the respective employees who opt for parental insurance scheme. The Applicant would like to know whether GST is payable on recovery of 50% of the insurance premium from the salary of the employees. **Held:** The Authority finds that the activity undertaken by the applicant like providing of mediclaim policy for the

employees' parent through insurance company neither satisfies conditions of section 7 to be held as "supply of service" nor it is covered under the term "business" of section 2(17) of CGST ACT 2017. Therefore, the applicant is not rendering any services of health insurance to their employees' parent and hence there is no supply of services in the instant case of transaction between employer and employee. **AAR [Jotun India Private Limited, 2019-G.S.T.L. 778 (AAR-GST)]**

- **GST** – The applicant company is engaged in the business of manufacturing decorative paints meant for interiors as well as exterior surfaces. The applicant purchases certain gifts like TV, Gold and Foreign Trips as part of incentive scheme for dealers and specified buyers. The applicant approached the AAR seeking to know if it is eligible to claim GST Input Tax Credit on the items purchased for furtherance of business. **Held:** The applicant is not eligible to avail ITC on the inward supplies of goods and services which are attributable to the incentives provided in the form of gifts of goods and services to the painters and dealers and other persons, under the CGST, SGST or IGST Acts: **AAR [M/s Surfa Coats India Pvt. Ltd, G.S.T.L.789 (AAR-GST)]**
- **GST** - The applicant company is a joint venture between the Volvo Group and Eicher Motors Limited. It is in the business of selling Volvo branded trucks and providing after sale support services, including warranty services for Volvo branded trucks and buses in India. The applicant approached the AAR seeking to know whether the supplies made by it to Volvo Sweden is supply of services. It also sought to know whether the supplies made by the applicant amount

to export of services to Volvo Sweden and hence zero rated under the GST law. **Held:** The services supplied by the applicant is supplied in India only and not abroad. The applicant is providing composite supply of goods and services to the customers wherein the principal supply is that of goods or services depending on the nature of each case - Besides, the transaction is an intra-State or inter-State transaction (but not export transaction) depending on the place of supply. Since the transaction is not export of services, the transaction is not a zero-rated supply under the IGST Act: **AAR [M/s Volvo-Eicher Commercial Vehicles Ltd, 2019 (29) G.S.T.L. 801 (A.A.R.- GST)]**

- **GST** - The applicant-company proposes to operate hotels and rent out rooms to employees of SEZ units. The services rendered by the hotels are entirely consumed at the premises itself. The applicant approached the AAR, seeking to know whether accommodation service proposed to be rendered by the applicant to the SEZ unit would attract CGST, SGST or IGST - The applicant also sought to know that in case, accommodation service to SEZ is covered under the IGST Act, can these be treated as zero-rated supplies and invoice be raised without charging tax after executing LUT u/s 16. **Held:** The accommodation service proposed to be rendered by the applicant to the SEZ units are covered under the IGST Act, as it is an inter-State supply as per Section 7(5)(b) of the IGST Act. Further, the accommodation service supplied to an SEZ is covered under the IGST Act, the same can be treated as zero-rated supply and the invoice can be raised without charging tax after executing LUT u/s 16: **AAR [M/s CARNATION HOTELS PVT LTD, 2019-TIOL-323-AAR-GST]**



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- **GST** - The applicant company is engaged in reselling food products such as cakes, baked items like cookies, brownies, ready to eat homemade packed food, ready to eat snacks, hot & cold beverages through dispensing machines. All food items sold are pre-packed and no cooking is done at the premises. The applicant approached the AAR seeking to know whether resale of food & bakery products falls under restaurant services. **Held:** A restaurant is a place of business where food is prepared in the premises and served based on orders received from the customer. In the instant case, it is a bakery where ready to eat items are sold and merely a facility is provided to have it from the shop. Therefore, it is not a restaurant service. **AAR [Square One Homemade Treats; 2019-TIOL-440-AAR-GST]**
- **GST**- As per the facts, the applicant i.e. the authorized distributor of M/s. Castrol India Ltd, Mumbai supply Castrol brand industrial and automotive lubricants. The applicant is paying the tax due as per the invoice value and availing the input tax credit of GST shown in the

inward invoice received by the applicant from the Principal Company or their stockiest. The issue is whether the discount provided by the Principal Company to their dealers through the applicant attracts any tax under the GST Laws. **Held:** Prices of the products supplied by the applicant is determined by the supplier/principal company and the applicant has no control over the same therefore, it is evident that the additional discount given by the supplier through the applicant which is reimbursed to the applicant is a special reduced price and such additional discount is liable to be added to the consideration payable by the customer to the distributor/applicant to arrive at the the value of supply in terms of s.15 of the Act. Supplier of goods/principal company issuing the commercial credit note is not eligible to reduce its original tax liability and hence recipient/applicant will not be liable to reverse the ITC attributable to the commercial credit notes received by him from the supplier. **AAR [M/s Santosh Distributors; 2019-TIOL-433-AAR-GST]**

## CUSTOM

- **Cus** – Appellant manufacturer had exported textile goods and claimed benefit of duty drawback under Duty Drawback Rules, 1995. Later, on an investigation carried on by the DRI, a SCN was issued proposing a demand equivalent to the drawback claimed by the exporter alleging that it had grossly over-valued the exported goods to claim higher rate of drawback. The demand was confirmed by the Jt. Commissioner's order against which present writ was filed. **Held:** The pure question of law that arises before the HC is whether the Jt.

Commissioner, DRI had the power to re-assess the shipping bill of the goods which have already been exported? Observing that the goods in question cannot be called as 'export goods' as per S. 2(19) of the Customs Act, re-assessment of the shipping bill could not have been done by the Jt. Commissioner as the valuation rules do not apply to 'export goods' and not the goods which have already been exported. HC held that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both the parties. It cannot be modified by issuing a



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SCN: High Court [M/s Jairath International and Anr. V. Uol & Ors., 2019-TIOL-2459-HC-P&H-CUS]

- **Cus** – Appellant had an arrangement with the exporter that if he clears goods without any loss of time, exporter will provide certain discount in the form of dispatch earnings. Even though the amount was not known, the appellant filed BoE for clearance on payment of applicable duty. On knowing the amount of discount, they filed an application for refund which came to be rejected. **Held:** Pre-requisite for refund application is to challenge the previous assessment order in first appeal. The law is settled in light of judgment of SC in Priya Blue Industries that no refund can be sanctioned without challenging the assessment order: CESTAT [M/s. Coromandel International Ltd. v CCE & ST Guntur, 2019-TIOL-3053-CESTAT-Hyd]
- **Cus** – The assessee imported aluminium scrap and declared the invoice value as transaction value (TV) in the bill of entry. However, the assessing officer was not satisfied with the TV and re-assessed the same, thereby enhancing the value declared by the assessee. No reason was given for such enhancement of TV. **Held:** Order of the adjudicating authority set aside as no cogent reasons given by the Commissioner to reject the transaction value. The reasons need to be supported by an exercise to establish that the price paid is not the sole consideration: CESTAT [M/s Century NF Castings

v. Commissioner of Customs, ICD PPF, New Delhi, 2019-TIOL-3106-CESTAT-Del]

- **Cus** - Appeals were filed in the Hon'ble Supreme Court involving whether in absence of challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained or not. **Held:** While deciding on this issue, the Hon'ble Supreme Court decided that the order of self-assessment is an order of assessment as per section 2(2) of the Customs Act, as such, it is appealable in case any person is aggrieved by it; Secondly, Order of self-assessment can be challenged by the importer before the Commissioner (Appeals) under section 128 of the Customs Act, even if there was no lis at the time of said self-assessment or import; Thus, in terms of the above judgement of the Hon'ble Supreme Court, an importer can legally challenge the self-assessed bill of entry (which is an assessment order in itself) before the Commissioner (Appeals) even if there was no lis at the time of said self-assessment or import. **SC [M/s. ITC Ltd v. Commissioner of Central Excise, Kolkata IV 2019 TIOL-418-SC-Cus-LB]**





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