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L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

L&S GST Update
No. 7 of 2018,
dated 29-05-2018

Circular No. 3/1/2018-IGST clarifying levy of IGST on in-bond sales

Background

- Circular No. 46/2017-Cus., dated 24.11.2017 was issued by Central Board of Indirect Taxes & Customs (CBIC) on the issue of levy of GST on sale of imported goods while lying in bonded warehouse.

- The said circular was later revised and updated on 6.12.2017.

- As per the aforesaid Circular (as amended), sale of goods while they remain deposited in customs bonded warehouse would qualify as supply under GST law and would attract IGST separately.

- The above said Circular No. 46/2017-Cus., while stating that IGST would be independently leviable on such sale of imported goods did not discuss or consider the applicability of the proviso to Section 5(1) of IGST Act.

Relevant Legal Provisions

- The proviso to sub-section (1) of Section 5 of the IGST Act provides that the IGST on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 ("CTA") on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.
- Sub-section (8A) has been inserted in Section 3 of the CTA with effect from 31st March, 2018 by Section 102 of Finance Act, 2018.
- Section 3(8A)(a) of CTA provides that where the goods deposited in a warehouse under the provisions of the Customs Act are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the IGST under sub-section (7) shall be the value determined under sub-section (8) or the transaction value of such goods, whichever is higher, where the whole of the goods are sold.

Circular No. 3/1/2018-IGST

- In continuation of Circular No. 46/2017-Cus, CBIC has issued Circular No. 3/1/2018-IGST dated 25.05.2018 on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse.

- The said circular clarifies the following:

  - In case of supply of the warehoused goods, the point of levy will be the time of clearance of such goods as per Customs Act in terms of proviso to Section 5(1) of IGST Act.

  - IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e. at the time of filing the ex-bond bill of entry.

Circular No. 3/1/2018-IGST

- Value will be either the transaction value or the valuation made at the time of filing the into-bond bill of entry, whichever is higher in terms of recently inserted Section 3(8A) of CTA.

- Therefore, the supply of goods before their clearance from the warehouse will not be subject to IGST and the same will be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

- However, it is to be noted that Circular No.3/1/2018-IGST is applicable only for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018.

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