Indirect Tax News Update

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CONTENTS

Service Tax

Finance Ministry : Central Govt. amended exemption with respect to services provided by renting of precincts of a religious place meant for general public

Circular F. No. 200/10/2016-ST & Notification No. 40/2016-ST

Date : September 30, 2016

Central Govt. amended exemption with respect to services provided by way of renting of precincts of a religious place meant for general public, owned and managed by an entity registered as charitable or religious trust under Section 12AA of Income-Tax Act, or a trust or institution registered under Section 10 (23C) (v) of I-T Act or a body or an authority covered under Section 10 (23BBA) of I-T Act in terms of Notification No. 25/2012-ST. The circular clarified that "precincts" mean all immovable properties of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located. Further, it also clarified that immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of exemption.

Comments: This has added to the benefit given by the 2012 Notification which had granted the said service tax exemption on renting religious place meant for general public

Finance Ministry exempted one-time upfront amount in certain cases of lease

Notification No. 41/2016-ST **Date : September 22, 2016**

Recently, by way of the said Notification, Finance Ministry exempted one-time upfront amount called as premium, salami, cost, price or development charges payable by industrial units towards long term lease (30 years or more) of industrial plots granted by State Government Industrial Development Corporations / Undertakings

Comments: This exemption will provide great relief to the Industrial units

Finance Ministry notified Service Tax (Third Amendment) Rules, 2016

Notification No. 43/2016-ST **Date : September 28, 2016**

Recently, Finance Ministry notified Service Tax (Third Amendment) Rules, 2016 and thereby amended Service Tax Return Form ST-3 in order to make it applicable to 'one person company' and 'partnership'. The accounts for Krishi Kalyan Cess payable / deposited in advance, by cash or through CENVAT credit as well as arrears, interest and penalty in relation thereto have been introduced by way of the said amendment.

In Part DA, which is relating to Swachh Bharat Cess, an entry for "adjustment of excess amount" paid earlier as Swachh Bharat Cess in respect of immovable property on account of non avail-

ment of deduction of property tax paid and adjusted in this period under rule 6(4C) of the Service Tax Rules 1994, has been added. Also the Amendment substituted Table I-1 delving with details about assessee providing exempted and non-taxable service or manufacturing exempted excisable goods, so as to calculate proportionate input stage CENVAT credit. Further whole of Part J which requires Credit Details of Input Service Distributor, has been substituted while Sr. No. J1.4, J2.4 & J3.4 and entries relating thereto from Table of Instructions to fill up Form ST-3 have been omitted.

Comments: The amendment has enlarged the scope of Service Tax Rules by incorporating OPC and Partnership in it

CBEC revised monetary jurisdiction of Central Excise Officers

Notification Nos. 44/2016-ST & 47/2016-CE(NT)

Date : August 18 2016

Recently, CBEC revised monetary limit of Central Excise Officers for purpose of adjudging penalty in service tax matters. According to the revised monetary jurisdiction, the following authorities can adjudicate penalty where demand of service tax / CENVAT credit does not exceed:

i. Superintendent , the limit is upto Rs. 10 lakhs (excluding cases relating to taxability of services / valuation & cases involving extended limitation period),

ii. Asst. / Dy. Commissioner has been fixed upto Rs. 50 lakhs,

iii. Jt. / Addl. Commissioner shall adjudicate penalty in case of demand between Rs. 50 lakhs to Rs. 2 Cr,

iv. Commissioner has no monetary limit;

Further, CBEC has granted adjudication powers to Central Excise Officers working in Audit formations, in addition to powers to audit & issue show cause notice.

Comments: The revision has substantially widened the jurisdiction of adjudicating authorities

CBEC : Issues fresh guidelines for arrest in relation to offences punishable under Finance Act and Central Excise Act

Circular F. No. 201/11/2016-ST Date : September 30, 2016

Recently, CBEC issued fresh guidelines for arrest in relation to offences punishable under Finance Act and Central Excise Act. The said guidelines emphasized the factors to be adhered to before arresting a person, viz.
(i) collection of service tax,
(ii) amount should exceed Rs. 2 Cr,
(iii) failure to pay collected amount to credit of Central Govt., and (iv) such failure should be beyond 6 months from due date.
On fulfillment of these legal ingredients, the Commissioner must determine if the alleged offender is likely to hamper the course of further investigation by his unrestricted movement and if he is likely to tamper with evidence or intimidate / influence witnesses, then arrest may be made. On the other hand, if the offender assists in investigation and deposits atleast half of evaded tax then no arrest may arise.
CBEC by way of the said guidelines revised monetary limits for arrests and prosecution in Central Excise to Rs. 2 Cr in relation to offences specified under clause (a) to (d) of Section 9(1) so as to maintain uniformity of practice with Service Tax. The Circular, accordingly, amended Circular Nos. 974/08/2013-CX and 1009/16/2015-CX while it rescinded Circular No. 1010/17/2015-CX. The Circular reiterated that arrest and prosecution should not be resorted to in cases of technical nature i.e. where the additional demand of duty/ tax is based totally on difference of opinion regarding interpretation of law. Clarified that transitional provisions prescribed in Circular No. 1009/16/2015-CX shall apply mutatis mutandis, i.e. all cases where sanction for prosecution is examined and accorded after the issue of present Circular, shall be dealt in accordance herewith irrespective of date of offence, while cases where prosecution was sanctioned but no complaint was filed before Magistrate, such cases shall be reviewed in light of enhanced monetary limit.

Comments: It will bring uniformity and regulate the law relating to arrest under the Finance Act and Central Excise Act

Clinical Pharmacology and Clinical Research activities proposed to be undertaken in respect of formulations provided by customers located outside India, shall be liable to service tax acc. to Rule 4 of Place of Provision of Services Rules 2012 (POPS Rules)

AAR in Steps Therapeutics Ltd. vs. Commissioner of Customs, Central Excise & Service Tax, Hyderabad ruled that Clinical Pharmacology and Clinical Research activities proposed to be undertaken in respect of formulations provided by customers located outside India, shall be liable to service tax in light of Rule 4 of Place of Provision of Services Rules 2012 (POPS Rules). In light of Rule 4 of Place of Provision of Services Rules 2012 (POPS Rules), AAR noted that place of provision of service would be the location where services are actually performed if – a) services are provided in respect of goods, and b) said goods are made physically available by the service recipient to service provider.

In the present case, formulations in various forms were to be provided by the service recipient (customers outside India) to service provider (applicant) as same were crucial to render services and hence, such activities satisfied the conditions as laid down under Rule 4. AAR rejected applicant's reliance on TRU's Educational Guide which gave examples of some services covered under Rule 4 such as technical testing / analysis of goods, which is akin to clinical testing, and it ruled that the contents of Education Guide cannot be substitute for POPS Rules. Further noting that consideration shall be charged from customers on project to project basis, AAR held that where only service of clinical research is provided and that is not in relation to the formulation, no tax will be payable in light of Rule 3 of POPS Rules as applicant would render said service to customers located outside.

AAR, at the outset, observed that as per Rule 14 of POP Rules, whereas the provision of service is prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. It rejected applicant's contention that as per requirement of Rule 4(a), it is mandatory that the services are provided qua the specified goods and not class thereof. AAR observed that the language of said Rule does not state that services provided be in respect of specified goods.

Accordingly, AAR ruled that -*"The proposed activities of undertaking Clinical Pharmacology by the applicant are taxable under the Act in light of Rule 4 of the Place of Provision of Services (POP) Rules, 2012, as the services are proposed to be provided in respect of goods that are required to be made physically available by the service receiver to the service provider (applicant). Clinical*

Research service provided in respect of goods that are required to be made physically available by the service receiver to the service provider (applicant) are also taxable under the Act in light of Rule 4 of the Place of Provision of Services (POP) Rules, 2012. However, where service of Clinical Pharmacology is not provided by the applicant and only service of Clinical Research is provided, then such service would not be in relation to formulation provided by the service receiver located outside India, to the applicant.

Comments: By virtue of Rule 3 of (POPS) Rules, 2012, as the applicant renders services to its customers and the place of provision is located outside India and therefore, its services will not be taxable.

Benefit of Notification No. 25/2012-ST cannot be extended to the Principal manufacturer availing excise duty exemption in terms of Notification No. 12/2012-CE(NT)

AAR in Sarkar & Sen Company vs. Commissioner of Service Tax, Kolkata denied service tax exemption on job-work proposed to be undertaken in the factory of principal-manufacturer, under Notification No. 25/2012-ST. Notification No. 25/2012-ST as amended vide Notification No. 6/2015-ST inter alia exempts service of carrying out an intermediate production process as job work in relation to any goods excluding alcoholic liquors for human consumption on which appropriate duty is payable by principal manufacturer. Sub-clause 2(z) of said Notification defines "principal manufacturer" as any person who gets goods manufactured or processed on his own account from another person.

In regard to the present case, AAR noted that in present case, the principal manufacturer avails excise duty exemption on manufacture of "jute loom machine" in terms of Notification No. 12/2012-CE(NT) and therefore, the benefit of exemption under Notification No. 25/2012-ST cannot be extended to the applicant.

Comments: AAR denies benefit of Notification No. 25/2012-ST to the applicant as principal manufacturer avails excise duty exemption on manufacture of "jute loom machine" in terms of Notification No. 12/2012-CE(NT)

In case of outbound shipment, service tax would be exempt in light of Rule 10 of Place of Provision of Services Rules 2012 (POPS Rules) and in case of inbound shipment, service tax shall apply on the transportation of goods by vessel from place outside India

In regard to applicability of service tax on freight margin recovered from customers towards outbound and inbound shipment of goods, AAR held that in case of outbound shipment, service tax would be exempt in light of Rule 10 of Place of Provision of Services Rules 2012 (POPS Rules), viz. destination of goods is outside India and in case of inbound shipment, service tax shall apply on the transportation of goods by vessel from place outside India in view of amendment to Section 66D of Finance Act w.e.f. June 1, 2016, while transportation by air could continue to be exempt in terms of Notification No. 9/2016-ST. AAR rejected Revenue's stand that freight margin is in respect of intermediary service in terms of Rule 9(c) of POPS Rules and therefore, place of rendition of service is location of service provider.

While ruling in the present case, AAR noted that relationship between applicant & airline / shipping line is separate & distinct from relationship with its customer, contract is on principal to principal basis and hence, applicant is covered by exclusion clause of 'intermediary' definition under Rule 2(f) of POPS Rules viz. provides service on its own account and not as agent of customer

Comments: AAR ruled that place of provision of service of transportation of goods shall be the place of destination of goods, as per Rule 10 of POPS Rules.

Central Excise

Excise and customs duties exemption on inputs where EOU supplies manufactured goods to Advance Authorization holder

CBEC Circular No. 1046/34/2016-CX Date: September 16, 2016

Recently, CBEC extended excise and customs duties exemption on inputs where EOU supplies manufactured goods to Advance Authorization holder without excise duty payment. The Circular stated that if EOUs are made liable to pay back the amount availed as exemption on inputs, they would be placed at disadvantageous position when compared to a DTA unit which supply manufactured goods to Advance Authorization holder without payment of excise duty and without reversal of CENVAT Credit availed on inputs. Accordingly, it clarified that second proviso to para 6 of Notification No. 22/2003-CE and proviso to para 3 of Notification No. 52/2003-Cus would not be applicable in case of such EOU - Advance Authorization holder supplies.

Comments: This is a positive move to put EOU out of their disadvantageous position.

Clarification on simultaneous availment of Customs duty drawback and rebate of Excise duties paid on raw materials used in manufacture or processing of export goods

CBEC Circular No. 1047/35/2016-CX & Notification No. 44/2016-CE (NT) Date: September 16, 2016

CBEC issued clarification on simultaneous availment of Customs duty drawback and rebate of Excise duties paid on raw materials used in manufacture or processing of export goods. The Circular clarified that where CENVAT credit has been availed, AIR duty drawback of customs portion shall be available at rates and caps prescribed under columns (6) & (7) of Drawback Schedule, even if rebate on inputs has been taken in terms of Rule 18 of Central Excise Rules, or if such inputs have been procured without payment of excise duty under Rule 19(2). Further it states that rates and caps as per column (4) and (5) of the drawback schedule will be applicable only in cases where CENVAT credit or facility of input stage rebate under Rule 18 or facility of procurement of inputs under bond under Rule 19(2) has not been availed. With respect of diesel, CBEC clarified that no drawback shall be available in cases where input stage rebate is availed or same has been procured without payment of excise duty. The Circular contained a direction to Divisional Assistant/Deputy Commissioner of Central Excise for verifying this aspect while sanctioning the rebate claim, while amending declaration (d) of Form ARE-2 to the said effect

Comments:

Refund of unutilized input services credit filed electronically under Notification No. 5/2006-CE (NT) allowed

CESTAT in Boston Scientific India Pvt Ltd vs. CST Delhi allowed refund of unutilized input services credit filed electronically under Notification No. 5/2006-CE (NT). It quashed lower authorities' stand that claim was time barred since physical copies were received much later than the prescribed limitation period, and that e-filing of refund claims is not mandatory as there is no provision in law equating e-filing with physical filing. Ruling in favour of assessee, it observed that Trade Notice dated September 17, 2009 issued by jurisdictional Commissioner as well as CBEC Circular dated September 28, 2011 clearly allow refund to be filed electronically and in fact, encourage use of electronic mode to reduce Dept. interface, save time and paper work. Further noting various decisions which held that date of filing initial claim has to be considered as the relevant date and not submission of all documents, CESTAT ruled that since assessee in present case had filed the claim with certain supporting documents within prescribed period, the date of electronic filing should be considered as relevant date

Comments: The is a welcome decision and encouraging for e-filing, which would save both, time and paper work

CENVAT credit of service tax paid on GTA services for outward transportation of goods from factory to buyer's premises

In CCE Dehradun vs. Forace Polymers Pvt. Ltd., CESTAT allowed CENVAT credit of service tax paid on GTA services for outward transportation of goods from factory to buyer's premises. CESTAT observed that the issue involved in present case pertained to availability of CENVAT credit on outward transportation of finished goods, whereas SC decision referred to, dealt with valuation. In its decision, CESTAT noted that assessee was clearly selling goods on the basis of purchase order which stipulated 100% payment on receipt of goods at buyer's premises, and that the insurance and transport was at vendor's (assessee's) cost upto delivery. CESTAT held that during the relevant period, there was no definition of "place of removal" under CENVAT Credit Rules and hence, definition u/s 4 of Central Excise Act had to be taken to interpret same for credit purposes. CESTAT observed that since freight was integral part of value of goods on which excise duty was discharged, it would not open to Revenue to rely on SC decision to deny credit thereon, states that "Such assertion will result in self-contradiction."

Comments: In view of this decision, if freight was integral part of value of goods on which excise duty was discharged, then CENVAT credit on the same would be allowed

Barcode & blank stickering does not amount to manufacture u/s 2(f) of the Central Excise Act

In Amazon Wholesale (India) Pvt. Ltd. vs CCE, Bengaluru, AAR while ruling on the question of whether various activities proposed to be undertaken by Amazon in respect of purchased goods under its B2B wholesale trading operations in India, would amount to 'manufacture' / 'deemed manufacture' u/s 2(f) of Central Excise Act, held that activity of barcode & blank stickering does not involve affixation, alteration or any change in pre-printed MRP / RSP of product / item received, while quality check stickering only identifies & sidelines defective goods for inspection, thus they do not amount to 'manufacture' in terms of Section 2(f). It further relied on Calcutta HC decision in Bholanath Sreemony to hold that activities relating to spectacles & frames such as fitting suitable lenses, placing frames inside cases and tightening screws also do not constitute manufacture. As regards tagging, particularly of jewellery, AAR noted that tag would be applied to prevent return of counterfeit items and same does not involve affixing / embossing of brand name thereon and accordingly ruled out the applicability of Section 2(f). Also AAR relied on 2012 ruling in case of applicant's sister entity, where activities of debundling, sorting, wrapping, boxing, stuffing and adding dunnage to glassware, taping, consignee detailing and sensitive material covering were held to be not constituting to 'manufacture'

In view of the observations made, AAR held, "following activities undertaken by the applicant would not amount to manufacture or deemed manufacture under Section 2(f) of the Central Excise Act, 1944, namely; Inspection and testing, Cleaning and lint brushing, Jewellery correction, Activities relating to spectacles and frames (placing in case, tightening screws on eyewear), Folding and hanging, Tagging, Inserting freebies, Placing the product in original box / pack, Inserting warranty cards, Inserting moisture absorbing tablets, Inserting bookmark, Debundling, Sorting, Wrapping, Sensitive material covering, Bagging, Bundling, set creation and rubber banding, Stickering, Boxing, Stuffing and adding dunnage to glassware, Taping, Consignee detailing and Cardboard foot printing."

Comments: The decision has brought clarity w.r.t. a number of activities which would not amount to manufacture.

VAT

'Construction of glass walls' are neither contract for construction of building nor incidental or ancillary contract to construction

Recently, Bombay HC in the case of Permasteelisa (India) Pvt. Ltd. vs. State of Maharashtra & Ors., ruled that 'construction of glass walls' can neither be construed as contract for "construction of buildings" nor an incidental or ancillary contract under Notification dated March 8, 2000 in order to qualify for concessional rate of tax. It noted that contracts eligible for lesser rate of tax are enumerated in the Notification, thus while referring to the case of Tata Iron and Steel, HC stated that provisions of said Notification have to be construed strictly. Words "construction" and "building" are not defined in the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contracts (Re-enacted) Act, 1989 and should be read in the context of their ordinary meaning, observed HC while rejecting assessee's reliance on Regulation 2(3)(11) of Development Control Regulation for Greater Mumbai, 1991 (DCR) on ground that definition of 'building' therein is in the context and for purposes of DCR and same cannot be applied to facts and circumstances of present case. Further it held that assessee is not a building contractor and activity of affixing glass and erecting glass walls with aluminium framework requires an altogether different expertise, which is ordinarily sub-contracted by the building contractor. HC upheld the decision of the Tribunal and stated that the contract for construction of glass curtain walls would neither constitute contracts of building nor contracts incidental or ancillary to the contracts as per para 'A' of the Notification.

Comments: The decision has clarified that construction of glass walls is not same as construction of building.

If the goods stored by assessee in the bonded warehouse sold before the import was completed, there would be no liability to pay VAT on such transaction

In the case of Trafigura India Pvt Ltd vs. State of Gujarat, HC allowed clearance of imported goods from customs bonded warehouse for sale to customers in India, without further attachment by VAT authorities in terms of Section 45(1) of Gujarat VAT Act. HC observed that in terms of Section 45(1), the competent authority has the power of provisional attachment where during the pendency of proceedings of assessment / re-assessment of escaped turnover, he is of the opinion that for the purpose of protecting the interest of Revenue, it is necessary to do so. It further noted Revenue's stand that there was a mismatch in goods imported and those sold under different agreements, and that there was possible VAT evasion on such transactions resulting in provisional attachment to protect Revenue interest. It held that prima facie, since goods stored by assessee in bonded warehouse were sold before import was completed, there would be no liability to pay VAT, as held by SC in case of Hotel Ashoka and that even though Section 45(1) empowers competent authority to attach property in the interest of Revenue, said power has to be exercised with due care / caution and only in appropriate cases, where material is available justifying exercise of such extreme power. However, since entire assessment was yet to be made and without full material and contention from both sides, HC refrained from making any final observation in this respect and refused to impose further condition in view of bank guarantee offered by assessee

Comments: The HC once again directed the Revenue Dept. to exercise its power u/s 45(1) with caution and only when needed

Value of work entrusted to the sub- contractors or the payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka VAT Act

Recently in the case of Larsen and Toubro Ltd vs. Addl. Deputy Commissioner of Commercial Taxes, SC held that value of the work entrusted to the sub- contractors or the payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka VAT Act. The Apex Court observed that Section 5-B is a special provision made for imposing sales tax on works contract and tax is payable on 'taxable turnover of transfer of property in goods', thus transfer of property in goods is a necessary event and unless there is a transfer of property, the amount paid is not to be included in the total turnover. Deciding the case in hand, the Court observed that amount paid to the sub-contractor is not for transfer of property in goods, since the materials are brought to the site by sub-contractor and they remain the property of the sub- contractor and that the ratio laid down by SC in assessee's own case in respect of Andhra Pradesh VAT clearly applies to the present case as well wherein it was observed that 'once the work is assigned by the contractor (L&T), the only transfer of property in goods is by the sub-contractor(s) who is a registered dealer in this case and who claims to have paid taxes under the Act on the goods involved in the execution of the works. The SC observed that once the work is assigned by L&T to its sub- contractor(s), L&T ceases to execute the works contract in the sense contemplated by Article 366 (29- A)(b) because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form. The SC also agreed with earlier observation that 'even if there is no privity of contract between the contractee and the sub- contractor, that would not do away with the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee'; The SC, rejecting Revenue's stand that sales tax is leviable at single point, whereas turnover tax is leviable at multi-point, both at the hands of main contractor and sub-contractor, held that such a practice "would result in plurality of deemed sales which would be contrary to Article 366(29- A)(b) of the Constitution, Moreover, it may result in double taxation which may make the said Act vulnerable to challenge as being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India"

Comments: SC ruled in favour of assessee by excluding value of work entrusted to the sub- contractors or the payments made to them shall while computing total turnover

Levy of entry tax on goods brought into local areas of Bihar through e-commerce transactions is discriminatory and unconstitutional

Recently, delivering a landmark judgment in the case of Instakart Services Pvt Ltd & Anr. vs. The State of Bihar & Ors., the Patna HC quashed levy of entry tax on goods brought into local areas of Bihar through e-commerce transactions, for personal use or consumption of individual customers, holding the levy as discriminatory in nature and therefore violative of Constitutional provisions. It held the provisions of Bihar Finance Act 2015 amending Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act 1993 & Rules thereunder as well as Notifications S.O. 176 & 18 as discriminatory and violative of Article 304(a) read with Article 303 of the Constitution. After taking note of the relevant provisions and contentions, Patna HC analysed the scheme of Chapter XIII of Constitution dealing with freedom of trade, commerce and intercourse (Articles 301 to 304) and in view thereof observed that *"to save any law from being violative of Article 301 of the Constitution, the fiscal State legislation must not be discriminatory meaning thereby it should not discriminate between two States or give preference to one State over another and, by virtue of Article 304(a) of the Constitution, must not impose tax on the goods imported from other States or Union territories, when similar goods manufactured or produced in the State, are not subject to such tax so as to discriminate between goods manufactured and produced within the State and also not to put restrictions on the movement of goods except when such restrictions are reasonable or in public interest subject to the condition that previous assent of the President is taken before any amendment or Bill is introduced."*

Rejecting Revenue's stand that since the levy is compensatory in nature and that the State has power to impose discriminatory tax, the Patna HC referred to SC Constitution Bench decisions in Atiabari Tea Co. Ltd, Automobile Transport (Rajasthan) Pvt Ltd & Jindal Stainless Ltd, to observe that although a compensatory tax may not amount to restriction on the freedom guaranteed under Article 301, yet the same may be discriminatory if the State does not impose any such tax on the goods produced within the State. HC observed that Constitution does not allow to make such a compensatory law which can discriminate and if such discrimination is allowed in the name of a tax being compensatory, then Article 301 to 304 would become nugatory. It further remarked that the "framers of our Constitution never intended that under the guise of imposing com-

Noting that both conditions of Article 304(a) & (b) are required to be fulfilled, HC observed, "It is only nondiscriminatory tax, which imposes reasonable restrictions on the freedom of trade, commerce and intercourse and which is in public interest and while imposing such tax, the Bill or amendment introduced in the State legislature has received the previous assent of the President, then, the same can be said to be valid." Under the Bihar Entry Tax law, amount of entry tax paid by an importer while importing goods into the State is liable to be set-off against VAT payable in the State, however, such set-off is negated in respect of goods imported through e-commerce, in terms of second proviso to Section 3(2) of Entry Tax Act and therefore, the levy is a colourable exercise of powers with the legislative objective and scheme to realize sales tax / VAT in advance. The HC observed that such a situation squarely falls within the ambit of Article 304(a) of the Constitution of India.

Comments: The judgment is of utmost importance as it firmly clarifies the law on the point that a discriminatory levy cannot allowed even if it is a compensatory levy.

Customs

CBEC allows transfer of unutilized CENVAT credit lying in the books upon conversion from DTA unit to EOU

Circular No 41/2016-Cus **Date: August 30, 2016**

Recently, CBEC allowed transfer of unutilized CENVAT credit lying in the books upon conversion from DTA unit to EOU. The CBEC in its circular noted that Rule 10 of CENVAT Credit Rules 2004 which unambiguously provides that if manufacturer transfers his factory on account of change in ownership or lease, then the manufacturer shall be allowed to transfer CENVAT credit lying unutilized in his accounts to transferred entity. Since EOU is a manufacturer, CBEC held that such transfer on the date of conversion is admissible. It withdrew Circular No. 77/99-Cus which was issued in view of erstwhile Rule 100H of Central Excise Rules 1944 that specifically prohibited EOUs from availing MODVAT credit of inputs / capital goods under Rule 57A and 57Q. It noted that consequent to supersession of these Central Excise Rules by Central Excise Rules 2002, there is no provision similar to Rule 100H which prohibits EOU from availing input / capital goods credit

Comments: It is a welcome decision and would definitely add to ease of doing businesses.

CBEC explains and provides guideline framework for implementation of Scheme for Rebate of State Levies 2016 (ROSL Scheme) on Export of Garments

CBEC Circular No 43/2016-Cus **Date: August 31, 2016**

CBEC explained and provided guideline framework for implementation of Scheme for Rebate of State Levies 2016 (ROSL Scheme) on Export of Garments, notified recently by Ministry of Textiles. It noted that the Scheme is applicable to export of goods falling under Chapters 61 or 62 of the Schedule to All Industry Rates of Drawback with Let Export Orders from September 20, 2016 onwards, and the same will remain in operation for 3 years, however the Scheme is not mandatory for an exporter and hence, he must make a conscious choice to opt for it by making rebate claim. Further the Scheme is not available to exports made under the general Advance Authorization Scheme with claim of duty drawback under Rule 6 of Drawback Rules, clarified CBEC while stating that definition of 'export' in ROSL Scheme does not cover movement of goods from DTA to SEZ units. Further it stated that rebate of State levies will comprise State VAT/CST on inputs including packaging, fuel, duty on electricity generation and duties and charges on purchase of grid power, as accumulated through the stages of production from yarn to finished garments. Also the rebate allowed shall be subject to receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which, the same shall be deemed never to have been allowed on the same lines as Duty Drawback, and any other cause that also affects the Drawback shall be deemed to have similar effect on rebate.

Comments: The explanation and the guidelines will ensure smooth implementation of Scheme for Rebate of State Levies 2016 (ROSL Scheme) on Export of Garments

Grants exemption from SAD on import of refrigeration / food services products for sale to individual dealers, industrial consumers or retail consumers, under Notification No. 21/2012-Cus

AAR in Middleby Celfrost Innovations Pvt. Ltd. vs. Commissioner of Customs, Nhava-Sheva & Ors., granted exemption from Special Additional Duty (SAD) on import of refrigeration / food services products for sale to individual dealers, industrial consumers or retail consumers, under Notification No. 21/2012-Cus. It noted that to claim the exemption from payment of SAD, 3 conditions are required to be met, viz. i) import of prepackaged goods, ii) intended for retail sale, and iii) declaration of Retail Sale Price on the package as per Legal Metrology Act or Rules thereunder. In the present case, finding no dispute regarding fulfillment of first condition, AAR notes that provisions applicable to packages intended for retail sale under Chapter II of Legal Metrology (Packaged Commodities) Rules, 2011 (PC Rules) do not apply to industrial and institutional consumers. It observed that applicant does not fall under the definition of industrial / institutional consumer as the imported packages do not contain the declaration "not for retail sale" and hence, Chapter II provisions would apply to subject pre-packaged goods. Also placed reliance on CESTAT ruling in H&R Johnson Ltd. while observing that the imported packages contain declaration of RSP and thus, satisfy the conditions of Rule 6 of PC Rules

Comments: The decision rules out applicability of provisions rel. to packages under PC Rules w.r.t. to industrial and institutional consumers.

Partial respite to importer-assessees by modifying provisional release order

Bombay HC in the case of Grant Investrade Ltd. & Anr. vs Union of India & Ors., modified provisional release order for seized set-top boxes (STBs by reducing the amount of bond & bank guarantee (BG) to be furnished in respect thereof. It noted that investigation was initiated by DRI on the allegation that assessees had indulged in mis-declaration of value of imported set-top boxes by not including value of licensee fee paid / payable separately to overseas third party in respect of Conditional Access System (CAS) software therein. HC observed that it is only on the conclusion of investigation that authorities can issue show cause notice and demand amounts styled as customs duty on license fee. The HC therefore, observed that "It is their duty to bring such cases of alleged evasion to the notice of the customs, which they have after the outcome of the investigation, whenever they are concluded. It is thereafter for the Commissioner of the Customs and all authorities under the Customs Act to take appropriate steps and measures"

Comments: HC directs Dept. to issue SCN only on completion of investigation and arrival of a conclusion w.r.t. to fraudulent act.

FTP

Procedure for Special Advance Authorization Scheme (SAAS) notified

Trade Notice No. 15/2016, **dated July 21, 2016**

Ministry of Commerce Public Notice & Trade notified the procedure for Special Advance Authorization Scheme (SAAS) introduced for export of Articles of Apparel and Clothing Accessories under Chapter 61 & 62 of ITC(HS) Classification of Export & Import. The Notice explained that procedure for filing application online for this authorization is similar to application for regular Advance Authorization, and exporters can choose any scheme of their choice. It further stated that authorization under this scheme shall be granted only for import of relevant fabrics including interlining and minimum value addition of 15% shall be required vis-à-vis exports. The Notice lays that Value addition is automatically calculated in DGFT EDI system based on FOB value of exports & CIF value of imports, but value of any other input used on which benefit of AIR Duty Drawback is claimed shall be equal to 22% of FOB value of export realized. By the said notice, the Handbook of Procedures 2015-20 is amended to incorporate the procedure under the new scheme, Commerce Ministry specifies an Export Obligation of 12 months from date of issue of authorization (not from date of import) while allowing further extension of said period as permissible.

Comments: The notified procedure shall govern the implementation of the Special Advance Authorization Scheme.

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