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Service Tax

Trading neither 'service' nor 'exempted service' pre-2011

In the case of HCL Infosystems vs CC&CE, Noida, Delhi CESTAT held that Trading activity is neither 'service' nor 'exempted service' for the period prior to April 2011.

CESTAT stated that explanation added to Rule 2 of CENVAT Credit Rules (CCR), 2004 vide Notification No. 3/2011-CE clarified that exempted services include trading.

However, it was further held that Explanation added in 2011 though stated to be clarificatory in character, could only have prospective effect since the Finance Act does not authorise rules to be made with retrospective effect. Therefore, trading would be covered within the scope of an exempted service only w.e.f. April 1, 2011, i.e. the date of coming into force of the Explanation added to Rule 2 of CCR 2004.

In view of above terms, Tribunal concluded that CENVAT credit could not be availed on input services utilized in trading activities.

Comments: The aforementioned decision would be of great relevance as CENVAT availed on inputs/ input services in connection with trading activities before April 2011 was contrary to CCR.

Relevant date for filing refund of service tax paid on 'exported services' to be computed from date of issuance of invoice

In the case of Affinity Express India Pvt. Ltd. vs. Pune, Mumbai CESTAT held that 1 year limitation period for filing refund of service tax paid on 'export of services' has to be computed / calculated from the 'date of issuance of invoice' and not from the 'date of receipt of consideration'.

In order to conclude above, CESTAT played heavy reliance on Madras HC decision in GTN Engineering. Moreover, CESTAT rejected the view taken by its coordinate bench in Eaton Industries, wherein it was held that as per Rule 3(2) of Export of Service Rules, relevant date in export of services would be date when payment towards export has been received.

CESTAT observed, "*If Rule 3(2) is to be read as export will take place only after receipt of payment in convertible foreign exchange then except in case of advance payment no service can be exported without payment of service tax. Thus, a harmonious reading of sub-rule (2) to Rule 3 and Rule 4 would indicate that the services are exported when (i) these are provided from India and used outside India and (ii) payment terms are in convertible foreign exchange.*"

Comments: The aforesaid decision has unsettled the issue as settled in the case of Eaton Industries. The decision would affect lot of assessee engaged in exporting services.

Central Excise

CBEC extends excise duty concession on automobiles, capital and consumer goods till December, 2014

Central Board of Excise and Customs ("CBEC")

vide Notification No. 06/2014-CX dated June 25, 2014 has extended excise duty concession on automobiles, capital and consumer goods by 6 months i.e. till December, 2014.

Comments: The said Notification has come as a relief to Indian Auto-mobile Industries.

Finance Ministry directs departmental officers to follow judicial discipline in adjudication proceedings

Ministry of Finance vide Instruction F. No.201/01/2014-CX.6 dated June 26, 2014 has issued instructions, directing all officers to follow judicial discipline, especially in refund matters. The said Circular has been issued on the directions given by Gujarat HC in E.I. Dupont India Pvt. Ltd. In the said matter, Department had failed to consider the binding precedent and proceeded against the assessee.

Therefore, FinMin has directed all field officers to pursue the said ruling for complete understanding of the issues involved and directions of the HC on need to follow judicial discipline. Moreover, it has been clarified that Circular No., 695/11/2003-CX on the subject of consequential refund is binding on all field officers and must be followed scrupulously.

Comments: The said Instruction would be of great importance as it strongly disapproves any kind of 'judicial indiscipline' on the part of lower adjudicating authority.

CENVAT Credit available on 'goods exported', despite exemption against domestic sale

The Division Bench of Mumbai CESTAT in Modi Bakers, held that the requirement of affixing MRP is only meant for goods

required to be sold in India and has no application whatsoever in respect of identical goods exported. In order to support to this, CESTAT placed reliance on Bombay HC ruling in Repro Pvt. Ltd., wherein it was held that credit under Rule 6(6) of CCR would be admissible even in respect of exempted goods, if such goods are exported.

It was further observed that Tribunal observed that law made in India applies to the whole of India or within the territory situated in India and it does not have extra territorial jurisdiction.

In the light of above, Tribunal concluded that CENVAT Credit would be available on input / input services used in manufacture of goods exported irrespective of such goods being exempted in domestic market.

Comments: The said decision would provide respite to lot of manufacturers who are exporting their goods.

Labeling / Re-labeling of material handling equipment parts prima-facie amounts to manufacture

In a recent Mumbai CESTAT ruling, having regard of facts of the case, it was observed that parts of material handling equipment which improves the marketability would prima-facie amount to manufacture under Section 2(f) (ii) of Central Excise Act, 1944.

Customs

5 lakh Enhanced Security amount under 2013 Customs Brokers License regulations not applicable for renewal of licenses issued under earlier regulations

Central Board of Excise and Customs ("CBEC") vide Circular No. 8/2014-Cus dated June 13, 2014 has issued clarifications with regard to renewal amount and documents required at the time of renewal under Customs Brokers Licensing Regulations (CBLR), 2013.

It was clarified that enhanced security amount of Rs. 5 lakhs prescribed under Customs Brokers Licensing Regulations (CBLR) 2013 would not be applicable to holders seeking renewal of license issued under erstwhile Customs House Agents Licensing Regulations (CHALR), 2004 or CHALR, 1984. CBEC stated that the enhanced security amount would

only apply in case of fresh licenses. However, CBEC provided that other conditions of CBLR, 2013 would have to be satisfied for renewal.

Moreover, for clarification, CBEC prescribed the list of documents which are required to be supported at the time of renewal of license under CBLR, 2013.

Comments: This Circular would come as a relief to the Customs Brokers by clarifying that amount of Rs 75000/- prescribed under CHALR, 2004 would apply for the renewal and not the enhanced security of Rs 5 lakhs.

SEZ

Commerce Ministry allows Free Trade Warehousing Zones (FTWZs) to provide product related services to other units

Commerce Ministry vide Instruction No. 80/2014 dated June 3, 2014 has amended Instruction No. 49 dated March 12, 2010.

Ministry has allowed Free Trade Warehousing Zone (FTWZ) units located in Sector Specific SEZ to provide services in relation to sector approved products, to other SEZ / SEZ units.

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