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GST

CEA Arvind Subramanian panel suggests standard rate of 17-18% : Committee Report

December 04, 2015

CBEC Committee headed by Chief Economic Advisor Dr. Arvind Subramaniam submitted its Report on possible GST rates to Finance Minister. The report, titled 'Report on the Revenue Neutral Rate and Structure of Rates for the Goods and Services Tax (GST)' recommends conditional rate structures that depend on policy choices made on exemptions and taxation of certain commodities such as precious metals, and accordingly suggests Revenue Neutral Rate (RNR) in the range of 15% to 15.5% (Centre & States combined), Standard Rate between 17% to 18% for taxing maximum possible tax base & lower rate of around 12%.

While CEA Arvind Subramanian at the press meet said the recommended standard rate is 17-18 per cent, an executive summary of the report released alongside suggested the rate to be between 16.9-18.9 per cent in a tabular form. The summary in narration, however, put the rate at 17-18 per cent.

Also, the report recommends sin / demerit rate of about 40% (Centre plus States) applicable to luxury cars, aerated beverages, pan masala, tobacco and tobacco products (for States). For precious metal, it recommended a range of 2-6 per cent.

Further, the report clarifies that allocation of such combined rates between Centre & States will be determined by GST Council, as per their revenue requirements, while discouraging "band" of rates. Report strongly recommends rationalisation of exemptions between Centre & States, states that instruments other than tax exemptions such as direct transfers could be deployed to meet policy objectives of cleaner overall tax system.

Further, eliminating all taxes on inter-state trade, including 1% additional tax, and replacing them with one GST and bringing alcohol, real-estate, electricity & petroleum within GST ambit while eliminating exemptions on health & education also recommended in the Report.

However, the Committee opined against providing a "band of rates" saying it complicates administration of the tax machinery, by stating that there are sound reasons not to provide for an administration-complicating band of rates, especially given the considerable flexibility and autonomy that states will preserve under the GST (including the ability to tax petroleum, alcohol, and other goods and services).

Additionally, report suggested that evaluation of GST implementation should not be taken over short-term period, but over longer period of time like 1-2 years, and that the facilitation of tax payer compliance and easy administration in early stages of roll out would help realising the benefits of GST and added that the aim should be to strive towards one-rate structure in the medium term.

Comments: The report seem to suggest that a compromise has been made to remedy the deadlock between the Congress and the Govt., which wanted the GST rate to be at 17 per cent and to be a part of the Bill.

Service Tax

Job Work services by garments exporters from third party amounts to manufacture/production, falls under negative list: CBEC Circular

December 15, 2015 Circular No.190/9/2015-Service Tax

The Finance Ministry had issued a clarification on applicability of service tax on services received by apparel exporters in relation to fabrication of garments.

While field formations have taken a view that such services are taxable as 'manpower supply services', trade has urged that they amount to job-work involving a process of 'manufacture' or production of goods, and thus would fall under negative list.

To remedy the situation, Fin Min has clarified that terms of agreement under each case and scope of activity undertaken by service provider would determine the nature of service being provided, and where service provider is accountable for job he undertakes and it is for him to decide how he deploys and uses his manpower, activity would amount to 'job-work' as service recipient is concerned only as regards the job work.

However, Fin Min has further clarified that where service provider provides manpower which is at the disposal and temporarily under effective control of service recipient during period of contract, service would be taxable as 'manpower supply'

Comments: This is in line with the non-applicability of service tax for processes that lead to manufacture or production.

CAG releases report on "Levy & Collection of Service Tax on Works Contract"

The Comptroller and Auditor General of India (CAG) has released a report on "Levy & Collection of Service Tax on Works Contract" containing results of performance audit of 33 selected Commissionerates, including examination of records relating to 237 assessees, for the period 2010-11 to 2013-14.

Also, the report identifies 425 works contractors who had executed works contracts, but had neither registered with the Dept. nor paid service tax of Rs 447.76 Cr; Observes delays in submission of returns involving late fee of Rs 1.70 Cr in 1857 cases under 17 Commissionerates, 145 cases of non / short-payment of service tax of Rs 44.74 Cr, 34 cases of irregular availing / utilization of CENVAT credit involving an amount of Rs 22.59 Cr, 14 cases of incorrect availing of exemptions involving an amount of 17.81 Cr, and 44 cases of incorrect application of tax rate and non / short payment of interest of Rs 8.84 Cr.

Accordingly, the report recommends making inter-departmental coordination obligatory mainly with Commercial Tax Dept. for identification of unregistered service providers and broadening of tax base in particular with VAT records through the Regional Economic Intelligence Committee meetings.

Additionally, the report states that 'Tax 360' program started within Dept. of Revenue is a step in right direction and results thereof should be reflected in periodical report such as Monthly Technical Reports (MTRs).

Audit has recommended CBEC to consider designing a tool to correlate service tax payments from the ST3 return filed either by service provider or recipient involving liability under reverse charge mechanism; Monitoring mechanism to watch non / late filers should be strengthened keeping in view determination of service tax payments through self-assessment, also suggests automatic levy of late fee on belated filing of returns.

Lastly, the report asks CBEC to review the requirement of submission of records and to ensure that the rule may be adhered to strictly, or else to revise the provision accordingly

Comments: Works Contract Service (WCS) is one of top 10 revenue contributing services, with revenue collection of Rs 7434 Cr in 2013-14 which is 4.80% of overall service tax collection, and Performance Audit was conducted "to seek an assurance that the indirect tax administration is adequately placed to safeguard the interests of revenue."

No claim for deduction of tax payable from contract value u/s 67(2) of Finance Act, 1994, where service tax liability discharged by opting for WCS Scheme

In a recent decision, Sunraj Construction vs Commissioner of Central Excise & Customs, Mumbai CESTAT was faced with an issue which pertained to differential service tax liability on services rendered during 2008-2009 under 'Works Contract Services'.

In this case, CESTAT rejects assessee's claim for deduction of tax payable from contract value u/s 67(2) of Finance Act, 1994, where service tax liability discharged by opting for Works Contract Composition Scheme.

CESTAT stated that, Rule 3(1) of said Scheme starts with non-obstante clause indicating that Section 67 provisions may not be applicable in this case.

Further, CESTAT observed, "It is very clear that the said scheme is an optional one and once an assessee opts to discharge the service tax liability under the Composition Scheme, he has to follow the provisions in the said Composition Scheme which will not be bound by the provisions to Section 67 of the Finance Act, 1994";

Further, assessee charged an amount to service recipient as per contract entered, which would imply that service tax liability under works contract services needs to be discharged on gross amount charged without claiming any deduction. CESTAT noted that assessee had charged an amount to service recipient as per contract entered into them and hence, service tax liability under 'Works Contract' needs to be discharged and therefore assessee, cannot claim any deduction.

Accordingly, CESTAT upheld differential duty liability along with interest, however, sets aside penalty since issue involved of interpretational nature.

Comments: This decision is important as Rule 3(1) of the said Scheme has been considered, and the discretionary nature of the scheme has been discussed.

No liability of service tax accrues on salary and allowances payable to seconded employee under Negative List regime

Recently, the Advance Ruling Authority (AAR) in North American Coal Corporation India Pvt. Ltd vs. Commissioner of Central Excise, Pune, has ruled in favor of assessee, by finding that service tax is not applicable on salary and allowances payable to seconded employee under Negative List regime.

The AAR noted that Sec 66(44)(b) of Finance Act excludes services rendered by employee to an employer in relation to employment from definition of "service", hence it is against canons of interpretation to refer to pre-amendment provisions, particularly Sec 65(68) r/w Sec 65(105)(k) viz. 'manpower supply services'.

Though employee's social security interests are taken care by American (Parent) entity in terms of tripartite / dual employment agreement, the benefits are mutually exclusive insofar as they concerned with salary.

Further, AAR rejected Revenue's stand that bearing of social security amounts to consideration paid by applicant for employing services of secondee, not amounting to pure service contemplated under exclusion clause of Sec 66(44). Since there is no reimbursement of such social security to parent entity, no question of attracting service tax on salary paid to employee would not arise.

Comments : This advanced ruling is a step in the right direction, as originally, the legislature had sought to keep employee-employer relationship out of the ambit of service tax.

Refund of unutilized input service credit under Rule 5 of CENVAT Credit Rules not to be denied for non-registration prior to export of output services

Recently, Delhi CESTAT, in Dorling Kindersley India Pvt. Ltd. vs. CCE & ST, Noida, was faced with an issue that pertained to entitlement of input service credit refund on export of services prior to obtaining registration.

CESTAT held that refund of unutilized input service credit under Rule 5 of CENVAT Credit Rules cannot be denied for non-registration prior to export of output services. CESTAT clarified that requirement of registration under Rule 4(1) of Service Tax Rules is for some other purpose and not for Rule 5, moreover, Notification No. 27/2012-CE (N.T.) cannot override Rule 5 provisions for claim of service tax refund by service provider.

Also, CESTAT held that Karnataka HC judgment in mPortal India Wireless Solutions P. Ltd. squarely applicable to present case, wherein it was held that in absence of statutory provision prescribing the condition that registration is mandatory, authorities cannot take a view that assessee shall not be entitled to refund. Further, CESTAT found that denial of courier service credit refund unsustainable in the absence of discussion on nature of utilisation by service provider, especially when services have been exported.

Comments : no stipulation / embargo is created in Rule 5 to the effect that refund can be denied in absence of Registration Certificate issued by Service Tax Authorities, which means that the CESTAT has judiciously, and being in line with SC's decision in various cases, not denied the benefit for procedural lapses.

Central Excise

Minutes of Tariff Conference of Central Excise held on October 28 & 29, 2015: CBEC Instruction

December 07, 2015 **Instruction F.No.96/85/2015-CX.I**

Recently, CBEC has released Minutes of Tariff Conference of Central Excise held on October 28 & 29, 2015, where several decisions regarding technical issues of assessment and applicability of law were taken.

The Conference took final decisions on 53 issues relating to assessment & valuation, classification, scope of exemption, CENVAT credit, Central Excise Rules and Procedures, Implementation and other related issues.

Further, the Conference inter alia, decided that valuation of goods (cement) i.r.o. clearances to industrial consumers from depot will be made u/s 4 of Central Excise Act and not u/s 4A as in case of industrial / institutional buyers, depot is only an extended arm of manufacturer being place of removal. It was further decided that any VAT retained through a mechanism of adjustment against subsidy payable under State Govt. Scheme, would be added to assessable value u/s 4 of Central Excise Act, and that deeming fiction would apply only for purposes of considering VAT fully paid under the State law, not for allowing abatement under said section.

On the issue of fixing monetary limit of Rs 1 lakh for filing appeals before Commissioner (Appeals), Conference was against depriving assessee's right to appeal at first stage where small duty amounts had been confirmed unfairly, however, it suggested CBEC to examine such proposal w.r.t. Departmental appeals.

Proposal for no penalty on non-filing of NIL excise return was rejected inasmuch as manufacturer-assessee has better set-up for compliance vis-à-vis service provider and therefore, it is expected that returns including NIL return would be filed in time.

Conference also concluded that time-limit of 1 year from date of issue of input invoices as prescribed in 5th proviso to Rule 4(7) of CENVAT Credit Rules to take credit thereon, shall not apply when finished goods are brought back to factory for reprocessing or reconditioning in terms of Rule 16 of Central Excise Rules.

After discussion, Conference also noted that depot is a place of removal of the manufacturer under section 4(3)(c)(iii) of the Central Excise Act, 1944 from where cement is sold to the institutional/ industrial buyers who are not covered under Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011. It was also noted that definition of 'Industrial Consumer' and 'Institutional consumer' has been substituted by Legal Metrology (Packaged Commodities) (Amendment) Rules, 2015 in terms of notification dated May 14, 2015, issued by the Ministry of Consumer Affairs, Food &Public Distribution.

Comments : This is of note as Conference has taken final decisions on 53 major Central Excise related issues, that had been plaguing various assessees.

Challenge to Sec. 35F of Central Excise Act mandating pre-deposit for entertaining appeals before Commissioner (Appeals) or CESTAT dismissed

In Hindustan Petroleum Corporation Ltd & Others vs. Union of India & Others, Karnataka HC dismissed challenge to Sec. 35F of Central Excise Act mandating pre-deposit for entertaining appeals before Commissioner (Appeals) or CESTAT, as the case may be.

HC said Section, as amended by Finance Act 2014 w.e.f. August 8, 2014, is a piece of procedural legislation and does not fall within the realm of 'substantive law', hence principles applicable to interpret an amendment made to a substantive law not applicable in instant case. Further, HC rejected assesses' contention that such amendment adversely affects substantive and vital right of appeal u/s 35 & 35B of the Act, observes that though the right of appeal is substantive, said Sections do not confer an absolute right and are subscribed / controlled by Sec 35F.

HC held that requirement of 7.5% / 10% pre-deposit is not an onerous condition precedent to filing an appeal by aggrieved party, same made "with a view to regulate the exercise of the right of appeal so as to enforce the order appealed against in case the appeal is ultimately dismissed.." Further, HC ruled that Sec. 35F has retrospective operation, applying to all lis which have commenced prior to or after enforcement of amendment, except to cases covered under second proviso thereof.

Also, HC observed that second proviso (which states that amended Section shall not apply to stay applications and appeals pending before any appellate authority filed prior to August 8, 2014) is in the nature of saving clause, necessitated so as to obviate a situation whereby, applications pending before appellate forum would become infructuous on account of amendment to Sec. 35F.

Rejecting assessees' plea of violation of doctrine of equality, HC states that "…the date on which the lis has commenced in each case has no bearing on the amendment as it has a retrospective effect. Even if the lis had commenced prior to the date of amendment and an appeal had not been filed on that date, even in such a situation, the main amended Section 35F would apply and a pre -deposit as per amended provision would have to be made."

Comments: The dismissal of the challenge means that Section 35F of the Central Excise Act, dealing with mandatory pre-deposit, is mandatory.

'Pre-delivery inspection' (PDI) and 'after-sale service' (ASS) charges not includible in assessable value of two-wheelers cleared to dealers

In Commissioner of Central Excise, Mysore vs. TVS Motors Company Ltd, SC ruled in favour of assessee, 'pre-delivery inspection' (PDI) and 'after-sale service' (ASS) charges not includible in assessable value of two-wheelers cleared to dealers, u/s 4 of Central Excise Act.

HC clarified that position prior to Sec 4 amendment is clear, that expenditure could not be deducted from price charged to buyer where manufacture himself undertook ASS, but where goods were sold to dealer and such dealer incurred expenditure towards said services, it could not be added back to sale price charged by manufacturer.

HC elucidated that post amendment w.e.f July 2000, definition of 'transaction value' exhaustive covering within its purview, price of goods and various other amounts charged by assessee by reason of sale or in connection with sale.

HC observed that expression "any amount that the buyer is liable to pay" thereunder would mean that sale of goods would not be made unless buyer is also to pay an additional amount to manufacturer apart from price of goods, this is also supported by use of expression "by reason of, or in connection with the sale".

Comments : The ruling is of note as SC overrules CESTAT LB ruling Maruti Suzuki India Ltd as same did not lay down correct law.

Larger Bench to decide issue of interest chargeability u/s 11AB of Central Excise Act on payment of differential duty owing to price escalation post removal of goods

In Steel Authority of India Ltd vs. Commissioner of Central Excise, Raipur, SC has called for constitution of Larger Bench to decide issue of interest chargeability u/s 11AB of Central Excise Act on payment of differential duty owing to price escalation post removal of goods.

SC observed that it is axiomatic that interest u/s 11AB can be charged / levied where any excise duty has not been levied or paid or has been short levied or short paid and in such case, interest is payable from first date of month succeeding the month in which duty 'ought to have been paid'. Sec 4(1)(a) provides that value of goods shall be the price 'actually paid or payable' and hence, expression "ought to have been paid" in Sec 11AB would mean the time when price is agreed upon by seller and buyer; Noting the difference between 'quantum of duty to be paid' and 'when such duty is payable', SC states that "… interest clock for differential duty will start ticking from the date differential duty is due, i.e., the date of agreement of escalated prices and not before…" as both parties not aware of final price at the time of goods removal.

Comments: The constitution of LB was necessitated as decisions in SKF and Auto International require a re-look owing to the fact that Bench did not consider the effect of expression "ought to have been paid" in Sec 11AB.

Duty payment through CENVAT Credit Account not sufficient compliance of mandatory pre-deposit u/s 35F

In Supermax Personal Care Pvt Ltd vs Commissioner of Central Excise & Service Tax (LTU), Mumbai, CESTAT held that duty payment through CENVAT Credit Account not sufficient compliance of mandatory pre-deposit u/s 35F of Central Excise Act.

CESTAT noted that whole purpose of Sec 35F is to ensure that orders issued by various authorities are complied with, at least in part, before appeals against same are entertained.

Commissioner clearly ordered payment in cash, hence assessee's contention that no further pre-deposit required as 100% duty paid utilising CENVAT Credit Account not sustainable; Refers to SC ruling in Jayaswal Neco, while granting time to assessee to pay 7.5% of disputed amount.

Comments: The decision is of note as pre-deposit cannot be paid through CENVAT Credit Account.

VAT

In absence of any exceptional circumstances, attachment of bank accounts unwarranted

In Automark Industries (I) Ltd vs. State of Gujarat & Others, HC has quashed attaching of Bank Accounts belonging to assessee despite pendency of appeals and stay applications against re-assessment orders before First Appellate Authority.

HC observed that though Revenue authorities are empowered to call upon assessee to pay the assessed amount within 30 days from date of service of notice, they are required to act in reasonable manner when appeal is preferred alongwith stay application by assessee.

HC elucidated that attachment of bank accounts seriously affects a person's reputation not only in the eye of the bank but also in the business community, thereby affecting the business itself.

Observes, "When drastic powers are conferred on the executive, it is imperative that those powers be exercised with due sense of responsibility and with circumspection by an officer or authority."

Comments: The decision that Attachment order issued on same day as demand notice unwarranted and in fact, suffers from vice of non-application of mind inasmuch as Assessing Officer sought to recover entire demand from each of assessee's banks comes a huge relief to almost all assessees.

Sodexo Meal Vouchers not 'goods' within the meaning of Sec 2(25) of Maharashtra Municipal Corporation Act

In Sodexo SVC India Pvt Ltd vs. State of Maharashtra & Ors., SC has overruled Bombay HC and held that Sodexo Meal Vouchers not 'goods' within the meaning of Sec 2(25) of Maharashtra Municipal Corporation Act and therefore, not liable to either octroi or LBT.

SC observed that Octroi or LBT is a tax 'on the entry of goods into the limits of the city', which goods are meant for 'consumption, use or sale therein'. SC observes that intrinsic and essential character of entire transaction is to provide 'services' by assessee, which is achieved through means of said vouchers. SC noted that assessee only a facilitator and medium between affiliates (restaurants / departmental stores / shops) and customers, who only gets service charges for services rendered.

"Goods belong to the affiliates which are sold by them to the customers' employees on the basis of vouchers given by the customers to its employees" and this fundamental mistake in understanding the whole scheme of arrangement has led to wrong conclusion by HC. Noting RBI's Policy Guidelines issued to regulate such transactions in terms of Payment and Settlement Systems Act, 2007, SC holds that 'paper based vouchers' can by no stretch of imagination be termed as "goods".

Also, SC quoted test laid down in BSNL & Idea Mobile Communication Ltd rulings to observe that vouchers cannot be traded and sold separately.

Comments: Vouchers are a perquisite given by the customer to its employees by adopting the methodology of vouchers and for its proper implementation, services of assessee were utilized, meaning not LBT is to be levied.

"600 VA Pure Sine Wave Home UPS" classifiable under Schedule Entry C-56 r/w Notification Entry-11 dated October 17, 2005 as 'IT Product'

In The Addl. Commissioner of Sales Tax vs. Sun Systems & Another, Bombay HC has upheld classification of "600 VA Pure Sine Wave Home UPS" under Schedule Entry C-56 r/w Notification Entry-11 dated October 17, 2005 as 'IT Product'.

HC rejected Revenue's stand that product essentially maintains uninterrupted power supply to home appliances and therefore, taxable at 12.5% under residuary entry E-1. If IT products extensively used in modern day business and even at home, require uninterrupted power supply, then facility or product ensuring such uninterrupted power supply with its parts ought to relate to IT products.

HC observed, "Once the uninterrupted power supply and its parts have been specifically made referable to Entry No.56, then, there was no warrant for invoking and applying the residuary entry merely because that guarantees higher revenue."; According to HC, since product has been classified in light of the plain and clear language of entry, no question of law arose for determination and resultantly, dismissed Revenue appeals

Comments : The explanation with regards to relation between IT products and facility to provide uninterrupted power supply to

Disposal of repossessed hypothecated cars by a Bank would constitute 'sale'

Recently, Citi Bank vs. Commissioner of Sales Tax, Delhi HC, whilst dealing with the issue ether disposal of repossessed hypothecated cars by a Bank would constitute 'sale' and whether such activity would amount to 'business' and therefore, make the Bank a 'dealer' under Delhi Sales Tax Act, held that disposal of hypothecated cars repossessed from defaulting borrowers by a Bank constitutes 'sale' under Delhi Sales Tax Act; 'Dealer' u/s 2 (e) inter alia includes "an auctioneer who sells or auctions goods belonging to any principal, whether disclosed or not…", thus assessee-bank a dealer in light of broad definition.

HC observed that even if borrower is owner in possession of car, sale is made by the Bank on strength of letter of authorization executed in its favour by borrower and since definition of 'business' u/s 2(c)(i) also includes "any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern", selling of assets by way of auction or otherwise to realise dues and adjust it against outstanding loan would indeed form part of permissible business activity of assessee.

HC referred to Madras HC ruling in HDFC Bank Ltd and Orissa HC judgment in State Bank of India, while refusing to consider assessee's argument urged for the first time that sale of motor vehicles which had already suffered first point sales tax could not be subjected to any further sales tax.

Comments: Citibank has been held to be a "dealer" within the meaning of Section 2 (e) read with Section 2 (c) of the Delhi Sales Tax Act, meaning that sale of the repossessed cars by Citibank is "incidental or ancillary or in connection with the Bank's business.

Customs

Software license fee includible in assessable value of media packs imported from related group company

Recently, in Oracle India Pvt. Ltd. & Others vs. CC (Export), New Delhi, while dealing with the issue whether software licence fee was includible in the assessable value of media packs imported from related group company & whether customs duty was payable on software downloaded via internet including on licence fee in relation to the same, Delhi CESTAT held that oftware licence fee includible in assessable value of media packs imported from related group company pursuant to purchase order from customer in India, in terms of Rule 9(1)(c)/10(1)(c) of Customs Valuation Rules, 1988/2007, being 'condition of sale'.

However, CESTAT observed that since no licence fee was payable / actually paid in case of non-commercial transactions such as internal shipments, for educational purposes, free of cost shipments towards defectives, levy of customs duty on notional value of such fee is unsustainable.

Software even in intangible form qualifies as "goods" as has been held by SC in Tata Consultancy Services, however, Customs Act in its present form provides mechanism for collection of duty only i.r.o. tangible goods and since it is well settled principle of taxation that in absence of mechanism for collection of tax, the levy fails, software downloaded electronically via internet cannot be subjected to customs duty.

Comments: The decision is of note as CESTAT upheld dual levy of service tax & customs duty on licence fee, & found no Constitutional embargo inhibiting levy of taxes under different statutes on various aspects of same transaction.

Conversion of free shipping bills to drawback shipping bills disallowed

In Cargill India Pvt Ltd vs. Commissioner of Customs & Central Excise, Visakhapatnam-II, SC has disallowed SC disallows conversion of free shipping bills to drawback shipping bills under Rule 12(1)(a) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995.

SC elucidated that a bare reading of said Rule demonstrates that such conversion is permissible only when exporter is able to satisfy the Commissioner that "for reasons beyond his control" drawback was not claimed. SC noted that mere non awareness of correct legal position would not afford any such ground that it was beyond assessee's control, observes SC.

Comments: This judgment of the SC is of note to all.

Larger Bench to decide whether optical fibre cable (OFC) merits classification under Customs Tariff Heading (CTH) 85.44

In Commissioner of Customs (Import), Mumbai vs. Vodafone Essar Gujarat Ltd. and Ors., Mumbai CESTAT had held that CESTAT Larger Bench (LB) is to decide whether optical fibre cable (OFC) merits classification under Customs Tariff Heading (CTH) 85.44 and hence eligible for exemption under Notification No. 24/2005, or CTH 90.01 liable to customs duty at 10% under Notification No. 21/2002.

CESTAT observed that only differentiating factor to fall under CTH 85.44 is that cables should be made up of individually sheathed fibres, while CTH 90.01 covers optical fibre bundles/cables used primarily in optical apparatus, particularly endoscopes.

OFC imported in present case has in all 48 optical fibres and cannot be called OFC of Heading 90.01 which consists of hundreds or thousands of optical fibres, same is also used for data transmission, which is incapable of transmitting light or image as required by endoscope or an optical apparatus, hence, CTH 85.44 is more appropriate classification.

Comments: As CESTAT differed with AAR ruling in Alcatel, and distinguishes co-ordinate bench ruling in Optel Telecommunications Ltd. and Reliance Communications Infra Ltd., wherein it was held that OFC classifiable under CTH 90.01, stating that benefit of Technical books/Literature was not available to Bench in these cases, CESTAT has rightly called for the constitution of a LB to decide the issue.

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