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Contents

Service Tax

Service Charge collected by hotels is not Service Tax : Finance Ministry Press Release

July 14, 2015 FM Press Release

Finance Ministry has clarified that the service charges collected by Restaurants, Hotels and / or Eateries are not 'Service Tax' collected on behalf of Central Govt.

The Ministry elucidated that such charges are retained by Restaurants / Hotels / Eateries and not imposed by Govt. The press release reiterates that effective service tax rate applicable on restaurant, eating joint or mess having facility of air-conditioning or central air-heating in any part of the establishment is 5.6% (14% of 40%) of total amount charged.

Comments: The release helps in keeping the apprehension of public in check, who have been told that service charge too was collected on behalf of the Govt.

CBEC revises guidelines for detailed manual scrutiny of ST-3 Returns w.e.f. August 1, 2015

June 30, 2015 CBEC Circular No. 185/4/2015-ST

The CBEC has issued a circular prescribing revised guidelines for detailed manual scrutiny of ST-3 Returns with effect from August 1, 2015.

It has been clarified that the purpose of detailed manual scrutiny is to ensure correctness of self-assessment which inter alia includes checking taxability of service and effective tax rate after taking into account admissibility of exemption, abatement or exports, if any, and same should be completed within 3 months.

Focus of detailed manual scrutiny of returns to be on such assessees whose total service tax paid (Cash + CENVAT) for FY 2014-15 is less than Rs. 50 lakhs. However, Chief Commissioner may direct detailed manual scrutiny of an assessee's return who has paid service tax more than Rs. 50 lakhs.

To ensure validation of information furnished in the self-assessed ST-3 return, information furnished in the ST-3 return to be reconciled with ITR Form Nos. 4, 5, 6 and 26AS and any third party information made available.

Comments: The clarification is of use to all the assessee's who have paid total service tax of less than 50L in 2014-15.

Service Tax credit allowed on civil construction services for setting up of factory : Punjab & Haryana HC

POD —

In a recent case, Commissioner Central Excise Commissionerate, Delhi-III vs. Bellsonica Auto Components India P. Ltd., P&H HC dismissed Revenue's appeal to allow service tax credit on civil construction services for setting up of factory as also land lease rentals, prior to 2011.

The HC rejected Commissioner's view that though definition of 'input service' is wide, does not cover services that remotely or in roundabout way contribute to manufacture of final products and that since factory is an immovable property i.e., neither 'service' nor 'goods', input credit ineligible.

HC concurred with assessee's analysis of Rule 2(l) of CENVAT Credit Rules that present case would fall under both 'means' and 'includes' parts as phraseology is wide enough to cover said services, same being directly or indirectly or in any event in relation to manufacture of final products.

Concurs with assessee's analysis of Rule 2(l) of CENVAT Credit Rules that present case would fall under both 'means' and 'includes' parts as phraseology is wide enough to cover said services, same being directly or indirectly or in any event in relation to manufacture of final products.

It observed that, "….land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land…"

Comments: This decision is of note to every manufacturer.

Mandatory pre-deposit of 7.5% of tax amount not a pre-condition to file an appeal before CESTAT, pre-2014 : Madras HC

In Fifth Avenue Sourcing (P) Ltd. vs. Commissioner of Service Tax, Chennai, Madras HC has held that mandatory pre-deposit of 7.5% of tax amount u/s 35F of Central Excise Act not a pre-condition to file an appeal before CESTAT, pre-2014.

Taking note of Sec 35F of the Finance Act (2 of 2014), HC observed that the second proviso thereto made it abundantly clear that provisions of this section were inapplicable to stay applications and appeals pending before appellate authority prior to commencement of Finance Act (2 of 2014). HC noted that assessee till date had not filed any appeal nor moved any stay application against order-in-original dated February 27, 2015. Hence, it was entitled to have the benefit of the ratio laid down by both Kerala and AP HCs.

Comments: This decision is of note to all assessees.

Noservice tax payable on recharge vouchers distributed free of cost to dealers as commission for sale of pre-paid SIM cards by them : Mumbai CESTAT

[POD — April 2003 to September 2006 May 28, 2015]

In a recent decision, Vodafone Essar Ltd vs. Commissioner of Central Service Tax, Mumbai, CESTAT held that no service tax is payable on recharge vouchers distributed free of cost to dealers as commission for sale of pre-paid SIM cards by them.

CESTAT observed that during the period April 2003 to September 2006, Explanation to Sec 67 of Finance Act did not indicate inclusion in the gross value of any costs towards free distribution made by service provider.

Rule 6(1) of Service Tax (Determination of Value) Rules 2006, as introduced w.e.f. April 19, 2006 (relating to inclusion / exclusion of commission in value of services), also did not include "telephone services" by any stretch of imagination, observes CESTAT.

Comments: This decision is important to the telecommunication industry.

No one year time limit applicable to refund of unutilised input services credit : Mumbai CESTAT

In a recent decision, Affinity Express India Pvt Ltd vs CCE Pune-I, CESTAT clarified that no one year time limit as envisaged u/s 11B of Central Excise Act applicable to refund of unutilised input services credit under Rule 5 of CENVAT Credit Rules.

W.r.t. eligibility of certain input services, CESTAT found that the same were essential and in fact, were used for provision of output services. When assessee claimed credit thereon, the same was not challenged.

Further, CESTAT Further, upheld assessee's refund claim relating to input services viz. transport, xerox, meal vouchers noting no objection of Revenue at the stage of credit availment, observes, "It is settled principle, that there cannot be different yardsticks in allowing the credit and granting the refund."

Comments: This decision is important to all manufacturers.

Extended period of limitation invokable, confirms that works contract can be vivisected even prior to June 1, 2007 : Third Member

In Larsen & Toubro Ltd. vs. Commissioner of Service Tax, Mumbai – II, Third Member of CESTAT ruled in favor of Revenue by concurring with Member (Technical) that extended period of limitation is invokable.

He also confirmed that works contract can be vivisected even prior to June 1, 2007 & service portion discernible in contract can be subjected to levy of service tax.

Third Member relied on Dewas Metal Section Ltd. to note that in terms of system of self-assessment, failure to disclose any fact which was necessary to enable the assessing officer to ascertain correctness of self-assessed tax amounts to suppression of the relevant facts.

Further, he observed that assessee choice to rely on Daelim Industrial Co. decision, and ignore subsequent SC's decisions post amendment to Constitution not bona fide, Daelim Industrial Co. decision relates to service tax on consulting engineering service introduced in 1998 & not erection, commissioning and installation introduced in 2003.

Comments: This decision further confirms the Larsen & Toubro ratio of vivisection.

Basic requirement of nexus between input & output services, as a condition flowing from CENVAT Credit Rules to be met : Mumbai CESTAT

In Dai Ichi Karkaria Ltd vs CCE Pune - I, CESTAT held upheld disallowance of CENVAT credit utilisation of input services such as repair & maintenance service, legal & CHA services availed at factory in Pune towards dispensing service tax liability on renting of immovable property located in Mumbai.

CESTAT noted that even separate accounts for input services to be used for manufacturing and output services may not be maintained, basic requirement of nexus between input & output services, as a condition flowing from CENVAT Credit Rules, must be met.

Comments: This is of note to all manufacturers.

Central Excise

CBEC lays down guidelines for Detailed Scrutiny of Central Excise Returns

July 21, 2015 Circular No. 1004/11/2015-CX

Recently, CBEC has clarified that scrutiny of a minimum of 2% and maximum of 5% of total returns received in a month shall be mandatorily performed by proper officer.

Also, vide Circular No. 1004/11/2015-CX, CBEC has further clarified that selection of assessees by Commissionerates shall be based on Risk score, but Chief Commissioners and Commissioners shall also have powers to manually select returns using such criteria as deemed fit to further complement list of assessees selected on risk basis.

Comments : The clarification is of note to all CE registrants.

Finance Ministry (TRU) issues clarification on recent amendments to Notification Nos. 30/2004-CE, 1/2011-CE & 12/2012-CE

July 21, 2015 Circular No. 1005/11/2015-CX

Recently, Finance Ministry (TRU) has issued clarification on recent amendments to Notification Nos. 30/2004-CE, 1/2011-CE & 12/2012-CE.

The amendments were carried out consequent to SC judgment in the case of SRF Ltd & ITC Ltd. In said case, SC held that, benefit of excise duty exemption [available to final products manufactured by domestic manufacturer, subject to condition of non-availment of CENVAT credit on inputs / capital goods used therein] would also be available to importers of final products for the purposes of CVD on the ground that importer was not availing credit of duty on inputs or capital goods.

Noticing errors apparent on record / interpretational issues, review petition / revision application filed against said judgment, and pending same, Notifications amended to make intention abundantly clear, that condition of credit non-availment to be satisfied by manufacturer, not buyer / importer, and phrase "appropriate duty" includes Nil duty / tax or concessional duty / tax.

TRU clarified that domestically manufactured goods covered under said Notifications / entries continue to be exempt / subject to concessional duty as prior to amendment

Comments: This is of note to all domestic manufacturers.

CBEC notifies conditions, safeguards & procedures for issuance of invoices & preserving records in electronic form & their authentication by digital signatures

July 6, 2015 Excise - Notification No. 18/2015-CE(NT)

CBEC notifies conditions, safeguards & procedures for issuance of invoices & preserving records in electronic form & their authentication by digital signatures, under Central Excise & Service Tax laws.

States inter alia that every assessee shall use only Class 2 or Class 3 Digital Signature Certificate duly issued by Certifying Authority in India.

Comments : This is of note to all digital/electronic invoice enthusiasts.

SC applies 'best judgment assessment' under Rule 7 for determining value of smoke detectors

In UTC Fire and Security India Ltd. vs. CCE, Belapur, SC applied 'best judgment assessment' under Rule 7 of Central Excise Valuation Rules 1975, for determining value of smoke detectors used captively in execution of turnkey projects i.e., while setting up fire-fighting systems in buildings.

SC rejected Revenue's stand that for valuation purpose, price at which same smoke detectors and parts thereof sold by assessee in loose condition, must be adopted for excise duty payment.

Comments : The decision is of note to every turnkey manufacturer.

'Car air-conditioning kit' falling under CETH 8415 minus 'automotive gas compressor, covered under Sr. No. 8 of Notification No. 166/86-CE : SC

Recently, the SC, in Commissioner of Central Excise, Delhi-IV vs. Sandan Vikas (I) Ltd., affirmed the 2-Judge Bench ruling to hold that 'car air-conditioning kit' falling under CETH 8415 minus 'automotive gas compressor with or without magnetic clutch, covered under Sr. No. 8 of Notification No. 166/86-CE i.e. dutiable @ 65% ad valorem rate as "parts and accessories of car air conditioner including car air-conditioning kit."

SC observed that Notification consciously and deliberately treats a complete or finished air-conditioner as a dutiable entity under Sr. No. 3, but a 'kit' of same air-conditioner not treated at par and similar to a complete or finished air-conditioner.

Further, SC noted that after insertion of Explanation 2, Notification intends to tax car air-conditioning kits without compressor under Sr. No. 8 and compressor itself would be dutiable separately under Sr. No. 1.

Hence, Revenue's stand that in terms of Explanation (2) to Notification r/w Rule 2(a) of Rules of Interpretation and Section Note 4 to Section XVI, goods manufactured by assessee covered by Sl. No. 3 of Notification i.e., dutiable as "air conditioners" , does not commend acceptance.

Observed, ratio laid down by 2 Judge Bench cannot be found erroneous and accordingly, upholds CEGAT's reliance on same while ruling in assessee's favour.

Comments: SC's take on classification is important for manufacturers of kit and automotive gas compressor.

CENVAT credit in respect of service tax paid on renting of premises, before inclusion of same in Central Excise Registration of factory allowed : Mumbai Tribunal

Recently, in Vako Seals Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai-V, CESTAT allowed CENVAT credit in respect of service tax paid on renting of premises, before inclusion of same in Central Excise Registration of factory.

Observed that said premises used for storage of goods and hence, it cannot be said that merely because registration not taken thereof, same not used for activity related to manufacture.

Further held that service not tangible like inputs or capital goods, its scope not confined to four corners of factory and that even if same services received by assessee at any place directly or indirectly in relation to manufacture or in relation to business of assessee, credit would be admissible irrespective of whether it is provided within or outside factory.

CESTAT set aside Commissioner (Appeals) order noting that Revenue did not dispute credit admissibility post inclusion of premises in Excise Registration

Comments: This decision is important for assessee's availing CENVAT Credit on premises.

Input service credit on outward transportation of cement till buyer's door step allowed, post April 2008 : Karnataka HC

Recently, the Karnataka HC, in Madras Cements Limited vs. The Additional Commissioner of Central Excise, Bangalore & Anr, allowed input service credit on outward transportation of cement till buyer's door step, post April 2008 i.e. post amendment to 'input service' definition substituting "clearance of final products, upto the place of removal" by "clearance of final products, from the place of removal".

HC stated that Commissioner's instruction to deny credit in view of Rule 2(qa) inserted in CENVAT Credit Rules vide Notification dated July 11, 2014 and ensuing CBEC Circular dated October 20, 2014 not based on sound reasoning, observes "...change in definition of 'input service'....would not make any difference."

'Place of removal' must be ascertained in terms of Central Excise Act r/w provisions of Sale of Goods Act as per which, intention of parties as to time when property in goods has to pass to buyer is material consideration.

Comments: This decision is important w.r.t. GTA related CENVAT.

VAT

Delhi VAT (Second Amendment) Act, 2015 receives Lt. Governor's assent on July 10, 2015 : DVAT Notification

July 10, 2015

Recently, Delhi VAT (Second Amendment) Act, 2015 receives Lt. Governor's assent on July 10, 2015, thereby notifying the changes proposed during State Budget 2015-16. It, inter alia, amends Sec 4 thereby enabling levy of VAT on goods enlisted in Fourth Schedule such as liquor, tobacco, aerated drinks and others at flexible rates ranging from 12.5% to 30%, instead of flat slab of 20%.

It also disallows adjustment in output tax to selling dealers towards offer for an incentive or post sale discount through credit note after issuance of tax invoice to registered dealer, similarly, no reduction of input tax credit required by respective buying registered dealer in this regard.

Increases time limit to obtain security from dealers claiming refund as a safeguard, from 15 days to 45 days, and deletes requirement of submission of Registration Certificate alongwith cancellation application as also the ensuing imprisonment provision u/s 89.

Comments: This ruling is of note to all sellers in Delhi.

Tax at higher rate on account of non-submission of statutory forms unsustainable : Karnataka HC

Recently, in Weir BDK Valves vs. Asst. Comm. of Commercial Tax, HC quashed assessment order and held that tax at higher rate on account of non-submission of statutory forms is unsustainable.

HC held that Assessing Officer (AO) is bound to consider belatedly submitted forms in view of Circular No.9/2006-07 dated June 7, 2006.

Observes that, "even on belated production of statutory forms, the statutory authority is bound to take into consideration the same and give the benefit of reduction of the tax."

Comments: This Notification is of importance to all AOs.

Placing advance orders and dispatching goods to meet same not an 'intra--state sale', but an 'inter--state' one : Bombay HC

Recently, Bombay HC in Thyssenkrupp Electrical Steel India Pvt Ltd vs The State of Maharashtra and Anr, set aside Sales Tax Tribunal order directing pre-deposit treating 'branch transfer' as pre-determined sale, taxable as 'inter-state sales' under Central Sales Tax Act, 1956 (CST Act).

HC held that Tribunal failed to apply independent mind w.r.t. AO's observation that, placing advance orders and dispatching goods to meet same not an 'intra--state sale', but an 'inter--state' one.

Comments: The decision is of note to inter-state sellers.

Customs

SC upholds rejection of declared invoice price of imported speakers by CESTAT

SC, in Mytri Enterprises vs. Commissioner of Customs, dismissed assessee's appeal, and upheld rejection of declared invoice price of imported speakers by CESTAT, in terms of Rule 10A of Customs Valuation Rules.

SC upheld CESTAT's observation that value had been misdeclared so grossly that it attracted the charge of undervaluation. In other words, it was not merely an issue where a transaction value was rejected; it was something more.

CESTAT had further took note of the fact that there was suppression of facts on the part of assessee in order to evade the duty as the packing list did not specify the details of the speaker imported and it was on the basis of catalogue that Revenue came to know the technical details of each of the models under import.

Comments: The Notification is of note for valuation related issues.

Supply of imported equipments & material by EPC contractor to main contractor for power plant project under ICB, eligible for SAD refund : CESTAT

CESTAT in Commissioner of Customs, Kandla vs. Luna Infraprop Pvt. Ltd, ruled in favour of assessee, to hold that supply of imported equipments & material by EPC contractor to main contractor for power plant project under ICB, eligible for SAD refund under Notification No. 102/2007-Cus.

Sales Tax Authorities accepted sale of goods basis invoices and confirmed CST payment, and perusal of agreement would reveal that title of goods would stand transferred to main contractor as soon as invoices raised by EPC contractor, therefore, sale complete on such title transfer, held CESTAT

Comments : The decision is of note to everyone availing SAD Refund.

FTP

DGFT launches online payment facility for application fees towards various schemes of FTP

July 9, 2015 Commerce & Industry Ministry Press Release

DGFT launches online payment facility for application fees towards various schemes of FTP, through credit /debit cards and electronic fund transfer (net banking) from 53 banks as a measure of trade facilitation & Ease of Doing Business.

Applicants can now pay fees online in 24x7 environment, thus obviating the need to visit DGFT offices or banks for submission of applications.

Comments: The press release is of note as applicants can now pay fees online.

Challenge to Notification No. 65(RE-2010) / 2009-14 revising import floor price of marbles dismissed : Madras HC

Madras HC, in HRB Boarding & Lodging Pvt. Ltd. and Anr. vs. The Union of India & Ors, dismissed challenge to Notification No. 65(RE-2010) / 2009-14 revising import floor price of marbles & other stones falling under Chapter 68 of Customs Tariff Act, from USD 50 & above per sq.mt to USD 60 & above sq.mt.

Also, HC rejected assessees' contention that DGFT has no jurisdiction to issue said Notification since only Central Govt empowered to formulate and announce export-import Policy and also amend it, in terms of Sec 5 of Foreign Trade (Development & Regulation) Act.

Comments: The decision is of note as validity of notification is challenged.

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