Indirect Tax News Update

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Service Tax

Directorate General of Audit releases Audit Manual to outline principles and policies conducted under Central Excise Act

CBEC through Directorate General of Audit has released new Integrated Central Excise and Service Tax Audit Manual (CESTAM 2015), replacing the existing Central Excise & Service Tax Audit Manuals.

The Manual, inter alia provides for coordinated and integrated audit covering two or more duties / taxes for assessee / taxpayer having common PAN instead of individual audit for each tax separately.

Also, the Manual streamlines and brings under one chapter, Audit process beginning from the Assessee Master File, desk review, revenue risk analysis, trend analysis, gathering of information, evaluation of internal controls, scrutiny of annual financial statement, audit plan, audit verification, working papers, apprising the assessee about irregularities noticed and ending with suggestions for future compliance.

Further, separate Annexures have been prepared containing detailed verification checks for Central Excise and Service Tax, while annexures containing lengthy information to be filled in by assessees have been discontinued. Additionally, the Manual revises the duration of audit covering 1 year period, inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report as follows : (i) LTUs – 8 to 10 working days, (ii) Large taxpayers – 6 to 8 working days, (iii) Medium taxpayers – 4 to 6 working days, and (iv) Small taxpayers – 2 to 4 taxpayers.

Comments: The Audit Manual ensures a standard procedure, in addition to various Reports / Registers required to be maintained by Audit Commissionerates. However, accepting the possibility of minor inaccuracies and errors creeping in the Manual, invites suggestions, valuable feedback and constructive criticism from users.

Development of land owned by Housing Corporation for township neither taxable as 'construction of complex service' nor 'works contract'

Recently, the SC, in Commissioner of Central Excise & Service Tax, Jaipur-I vs. Alokik Township Corporation, found no good ground to interfere with CESTAT's view that development of land owned by Housing Corporation for township neither taxable as 'construction of complex service' nor 'works contract'.

CESTAT had held that construction of roads, laying of sewer lines, landscaping alongwith plantation and construction of boundary wall were not covered either u/s 65(105)(zzzh) r/w Sec 65(30a) and Sec 65(91a) or u/s 65(105)(zzzza) of Finance Act; Noting that construction of residential complex was undertaken by other contractors, CESTAT set aside service tax demand with interest and penalties u/s 76 and 78.

Comments: The This comes as a huge relief, as development of land is not covered by the definition of "construction of complex service" as given in Sec 65(105)(zzzh) r/w Sec 65(39a) and 65(91a) or by the definition of "works contract service" in Sec 65(105)(zzzza) w.e.f. June 1, 2007.

Assessee entitled to CENVAT credit of 26 services, including air travel agent, works contract, business support & auxiliary services

The Mumbai CESTAT, in Willis Processing Services (India) Pvt. Ltd vs Commissioner of Service Tax, Mumbai-II, held that assessee (service exporter) is entitled to CENVAT credit of 26 services, including air travel agent, works contract, business support & auxiliary services, architect services, legal, general insurance service i.r.o. office assets, outdoor catering services, commercial training and coaching services and online information & database services.

The CESTAT set aside Commissioner (Appeals) order which rejected assessee's unutilized input service credit refund claim under Rule 5 of CENVAT Credit Rules r/w Notification No. 5/2006-CE, on ground that said services had no nexus with output services exported.

Noting the nature of services availed, CESTAT observes that said services are essential for assessee's business, without which services cannot be exported and hence, qualify as 'input services'; However, disallows credit refund i.r.o. excise duty paid on capital goods as said Rule and Notification thereunder only contemplate inputs and input services. Also, CESTAT remanded the matter to Adjudicating Authority for re-processing of assessee's claims and accordingly disposes 16 appeals.

Comments: This is in line with the judicial pronouncement that CENVAT Credit is available for all the services and expenditure borne by assessee which are essential services for providing output services.

Study material package supplied by coaching centre not exigible to service tax

Recently, the Delhi CESTAT, in Mastermind Classes Pvt. Ltd. vs. CCE Indore, held that the study material package supplied by coaching centre not exigible to service tax.

According to assessee, separate invoices are raised showing the value of study material on which sales tax is levied. It has been in the business of publication of books since 1993. In addition to sale of study material through different book sellers, they are sold to students of its institute and coaching centres. Assessee argued that lower authorities had erroneously denied benefit of Notification No. 12/2003 alleging that same are not standard text books as provided in CBEC Circular No. 59/8/2003 dated June 2003. In this regard, reliance was placed on coordinate bench ruling in Cerebral Learning Solutions Pvt Ltd vs CCE Indore.

On the other hand, Revenue reiterated that study material could not be called as Standard Textbooks, on which Notification benefit could be claimed. Any study material or written text provided by such institute as part of service would be subject to service tax.

CESTAT noted, and it was not disputed, that assessee had shown the sale value of study material separately in the invoice. Coordinate bench in Cerebral Learning Solutions Pvt Ltd had occasion to consider similar issue and had held that the clarification of CBEC was illegal and contrary to the statutory exemption granted by the Notification.

Hence, applying the dictum laid down in said case, CESTAT held that the demand was not sustainable. In view thereof, it set aside the order-in-original and allowed assessee's appeal.

Comments: This is a welcome decision, as the lower authorities had erroneously denied benefit of Notification No. 12/2003 alleging that same are not standard text books as provided in CBEC Circular No. 59/8/2003 dated June 2003

Composition scheme w.e.f. June 1, 2007 i.r.o. ongoing works contracts on which service tax was paid allowed

In a recent decision, Larsen and Toubro Limited vs. C.S.T, Delhi, Delhi CESTAT ruled in favour of assessee, and allowed composition scheme w.e.f. June 1, 2007 i.r.o. ongoing works contracts on which service tax was paid, in light of SC decision in L&T Ltd and others.

CESTAT held that when works contracts were not liable to service tax before June 1, 2007, opting such scheme for contracts entered prior thereto cannot be called midway migration, and SC's Nagarjuna Construction Co. Ltd. decision would have no consequence, holds CESTAT. However, it clarified that if assessee did not opt for composition scheme w.e.f. June 1, 2007 or did not avail same from very beginning on contracts entered thereafter, it would be disentitled in light of said SC judgment.

As regards demand pertaining to mobilization advance, CESTAT noted that same was received to enable assessee to procure the wherewithal to render the service and this was adjusted towards payments for service rendered, on which tax was paid accordingly. According to CESTAT, as mobilization advance was received during the period w.e.f. June 16, 2005, service tax was payable as and when the same was received w.r.t. date of receipt, in view of Sec 67(3) of Finance Act. Said Sec. stated, "the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service."

CESTAT observed, "When the works contracts were not liable to service tax prior to 01.06.2007 opting for composition scheme from 01.06.2007 in respect of on-going works contracts cannot be called mid-way migration even if service tax was paid thereon during the period prior to 01.06.2007 as no service tax was payable prior to 01.06.2007". I.r.o. contracts entered into on or after said date, CESTAT held that assessee was eligible to opt for the composition scheme. However, CESTAT also observed that if on any contract entered prior to said date, assessee did not opt for composition scheme with effect therefrom or on contracts entered thereafter, did not opt for composition scheme from the very beginning, it would be disentitled to opt for such scheme in light of Nagarjuna Construction Co. Ltd. judgment.

Further, CESTAT ruled on taxability of 'mobilization advance' received from clients in view of Sec 67 of Finance Act, states that (i) same not liable to tax i.r.o. contracts executed prior to June 1, 2007, (ii) w.r.t. ongoing contracts executed before June 1, 2007, tax payable on such advance as if same received after said date, not w.r.t. date of rendition of service, and (iii) same taxable w.r.t. contracts entered on or after June 1, 2007.

Lastly, CESTAT set aside rejection of abatement option under Notification Nos. 15/2004-ST, 18.2005-ST and 1/2006-ST for including value of free of cost material, in light of Larger Bench judgment in Bhayana Builders (P) Ltd.

Comments: This decision is yet another important decision with regards to composition scheme.

Central Excise

Order to the extent it directed apportionment of credit of common input services used both in relation to manufacture of goods and trading activities set aside

Recently, Bombay HC, in Mercedes Benz India Pvt Ltd vs. The Commissioner of Central Excise, Pune-I, allowed Mercedes Benz's appeal, setting aside CESTAT order to the extent it directed apportionment of credit of common input services used both in relation to manufacture of goods and trading activities i.r.o. imported goods in the ratio of 'turnover of manufactured cars vis-à-vis turnover of traded cars', to determine liability under Rule 6 of CENVAT Credit Rules.

CESTAT, while holding inapplicability of clause (c) to Explanation 1 after Rule 6(3D) (i.e. difference between sale price & cost of goods sold) for apportionment of credit, was of the view that amendment has been adopted to encourage trading of goods rather than manufacturing.

Finding no justification in such observation vis-à-vis formula arrived at by CESTAT, HC observes, "The Tribunal must firstly refer to the substantive Rule and as operative prior to 1st April 2011 and then arrive at a conclusion in relation to the Explanation introduced with sub-clauses with effect from 1st April 2011." HC observed that Parliamentary intent has to be gathered from language used, if words are plain, simple and clear, there is no scope for interpretation or applying any principle thereof. Hence, HC sent matter back to CESTAT to rework the denominator & numerator for apportioning credit, but clarifies that it should not reopen everything concluded in favour of assessee. Accordingly, directed CESTAT to re-determine inter alia whether margin / value addition on trading of goods is to be considered and not entire sale price / turnover of traded goods while calculating amount of eligible CENVAT credit i.r.o. common input services.

Comments : This is of note as margin / value addition on trading of goods is to be considered and not entire sale price / turnover of traded goods while calculating amount of eligible CENVAT credit i.r.o. common input services.

Deposit taken at time of booking motorcycle does not consitute 'additional consideration', absent any relevance to motorcycle cost

In Commissioner of Central Excise, Delhi - III vs. Hero Honda Motors Limited, SC upheld GEGAT order, and held that deposit taken at time of booking motorcycle does not consitute 'additional consideration', absent any relevance to motorcycle cost.

CEGAT had observed that overall effect of deposit on financial position of company or its profitability had no direct relevance to dispute and relevant consideration for excise valuation, was whether deposits had the effect of lowering sale prices of motorcycles or whether sale prices were normal sale prices unaffected by deposits. SC noted that CEGAT considered each and every aspect of issue before concluding that prices of motorcycle manufactured were market driven and assessee did not follow cost of production plus reasonable profit pricing policy. Finding no reason to interfere with said findings, SC dismissed Revenue appeal for lack of merit.

Comments : This comes as a huge relief to all two wheeler manufacturers, and the trade in general.

Order to the extent it directed apportionment of credit of common input services used both in relation to manufacture of goods and trading activities set aside

Recently, in Commissioner of Central Excise vs. Dashion Ltd., Gujarat HC upheld CESTAT order, and allowed cross-utilisation of CENVAT credit between 2 units without pro rata distribution by input service distributor (ISD), absent any restriction before insertion of clause (d) under Rule 7 of CENVAT Credit Rules, 2004 (CCR). CESTAT observed that at relevant time, Rule 7 only permitted ISD to distribute CENVAT credit w.r.t. service tax paid on input service to its manufacturing units or units providing output service subject to specific conditions, and it was only later that additional condition by way of clause (d) to Rule 7 was added, which stipulated pro rata distribution of service tax credit on the basis of turnover of such units to total turnover of all units, operational in relevant period.

Comments: HC is right in holding that, non-registration as ISD would not automatically and without any additional reasons, disentitle ISD from availing CENVAT credit and said requirement being procedural is 'curable' when records are available to verify correctness.

Sale price between two competing parties may get depressed when substantial and huge advance are periodically extended

Recently, in CCE, Pune vs. Hindustan National Glass and Industries Ltd., SC remanded matter pertaining to inclusion of notional interest accrued on advance received from customers, noting that assessee received 90% advance from Coco Cola India and 100% advance from Pepsico India Holdings Pvt. Ltd. for bottled supplies and on that count, gave 3-4% discount to said Companies.

Third Member of CESTAT earlier stating that, rulings in Hero Honda and Metal Box were inapplicable, accepted Technical Member's observation that, absent nexus of interest with price, demand was unsustainable. Stating that there should be a connect and link between the two, holds, "Evidence and material to establish the said factual matrix has to be uncovered and brought on record to connect and link the sale price paid on paper and the "other" consideration, not gratis, but by way of interest free advances".

Comments : It is of noted as SC has pointed out that the effect of depressing sale price, onus of which lies on Revenue has to be considered.

I.r.o. rebate on goods supplied from DTA to SEZ within India, appeals would not lie to Appellate Tribunal

In Sai Wardha Power Ltd. vs Commissioner of Central Excise, Nagpur, CESTAT Larger Bench concluded that i.r.o. rebate on goods supplied from DTA to SEZ within India, the appeals would not lie to Appellate Tribunal under clause (b) of proviso to Sec. 35 (1) of Central Excise Act.

It observed that whole purpose and effect of statutory provisions relating to grant of rebate is to authorize the Jt. Secretary (Revision Applications) to hear appeals against orders in domain of export.

Comments : It is to be noted that since SEZ Act came into existence after Central Excise Act, it could not have been Govt.'s intention to segregate rebate matters into 2 categories for appeal purposes, viz. (i) physical exports outside India, and (ii) deemed exports from DTA to SEZ.

VAT

No sales tax exigible on pure labour contracts under Delhi Sales Tax on Works Contract Act 1999 (Act)

In HS Power Projects Pvt. Ltd. vs. Commissioner of Trade & Taxes, Delhi HC set aside assessment orders, no sales tax exigible on pure labour contracts under Delhi Sales Tax on Works Contract Act 1999 (Act).

HC observed that a combined reading of Act & Rules thereof indicates that same does not intend to bring to tax anything other than value of goods transferred whether as goods or in some other form in execution of works contract. However, when dealer avails composition benefit u/s 6(1), he is expected to pay tax at lower rate on "total amount of the contract or the total aggregate value of the contracts received or receivable towards the execution of the works contract".

Assessing Authority's stand that once dealer opts for composition, he is required to pay tax on aggregate value of all contracts including pure labour contracts, is not based on correct understanding of provisions of Act. While referring to Kerala & Karnataka HCs' interpretation in Geogy George & H.S. Chandra Shekhar Hande rulings respectively, HC however clarified that where composite works contract includes demand of labour charges, service charges and the like, then dealer availing Sec 6(1) benefit would require to pay reduced amount of 4% tax on entire value of composite works contract.

Comments: The decision is in line with purpose of enactment of Act i.e., levy and collection of tax on "the transfer of property in goods whether as goods or in some other form involved in the execution of a works contract in the National Capital Territory of Delhi".

Supply of natural gas (NG) to Govt. of India through its nominee GAIL, where delivery is effected from ONGC pipeline, not liable to sales tax

Recently, in BG Exploration and Production India Ltd. vs. State of Gujarat, Gujarat HC allows writ by holding that supply of natural gas (NG) to Govt. of India through its nominee GAIL, where delivery is effected from ONGC pipeline, not liable to sales tax under Gujarat Sales Tax Act.

On a conjoint reading of "Product Sharing Contract" (PSC) entered into between Reliance Industries, ONGC, British Gas Exploration and Production India Ltd. (collectively referred as 'Contractors') & Govt. of India, and "Interim Sale Purchase Agreement" (ISPA) between GAIL and Contractors, it appears that, NG was agreed to be delivered at 'Delivery Point' viz. upstream weld at underwater connection between sellers' (i.e. contractors') pipeline and ONGC's underwater Gas transmission line (viz. offshore T-Junction). NG was not ascertained at time when PSC was executed though 100% of Associated Natural Gas (ANG), Non-Associated Natural Gas (NANG) and Condensate was agreed to be produced and delivered thereunder.

Further, appropriation, delivery and passing of title take place at Offshore Processing Facility outside State of Gujarat, hence merely because goods were subjected to process of sweetening within the State post appropriation, transaction cannot be made amenable to tax under Gujarat Sales Tax Act, and parties intentionally employed the term "received" and not "delivered" in PSC, having regard to nature of NG since same cannot be delivered like ordinary goods, hence, once gas is appropriated and delivered at 'Delivery Point', it can only be received downstream of ONGC's sweetening and separation facilities alongwith other gas in pipeline.

Comments : Merely because the Sellers have decided to charge on the basis of what is ultimately received by the Buyer cannot be determinative of the fact as to where the sale takes place.

No sales tax exigible on pure labour contracts under Delhi Sales Tax on Works Contract Act 1999 (Act)

In Nandi Constructions vs State of Karnataka, Karnataka HC upheld Tribunal's order, rejects assessee's claim for higher land cost deduction (i.e. 50% of sale consideration) on construction and sale of apartments, over and above cost disclosed in returns. Appellate Authority, though on facts concluded that, land cost as per registered sale deed and CA Certificate was over 50%, he restricted same to claim made in returns by assessee (i.e. 45%), which was upheld by Tribunal.

HC relied on Division Bench ratio in Infinite Builders & Developers and Centum Industries Private Ltd.; States, if assessee failed to avail benefit of revised return then, only return which is filed has to be considered by authorities.

Comments : Nothing more than what is claimed by the assessee in its return can be given by the authorities, and if it is permitted, then the assessing authority or the appellate authorities would be given unfettered powers to grant any such relief which may not even have been claimed by the assessee in its returns.

Benefit of compounded tax @ 2% u/s 8(a)(i) of Kerala VAT Act extended to a works contractor for AY 2005-06, despite non-compliance with condition of non-registration under CST Act

Recently, in Cyril Jacob Vellappally vs. Commercial Tax Officer, Kerala HC extended benefit of compounded tax @ 2% u/s 8(a)(i) of Kerala VAT Act to a works contractor for AY 2005-06, despite non-compliance with condition of non-registration under CST Act.

HC noted that, after assessee opted for compounded levy, said section amended retrospectively w.e.f. April 2005 on August 28, 2005, hence it could not comply with condition of not holding CST registration for said AY. HC accepted assessee's contention that, for AY 2005-06, it was not possible to comply with said requirement, as concessional rate was opted at time when Section 8(a) did not contemplate holding of registration as a disqualification for exercise of said option.

Further, observed that since amendment to Section 8(a)(i) came into force in the middle of AY, it was almost impossible on account of statutory provisions of Section 7(5) of CST Act (which stipulates cancellation to take effect from end of year), to get a cancellation of registration certificate issued in 2005-06 itself, accordingly penalty levy unsustainable.

Comments : This decision is of note.

Customs

Customs duty leviable on crude oil actually received at shore tank in India, not on 'Bill of Lading' quantity

Recently, in Mangalore Refinery & Petrochemicals Ltd. vs. Commissioner of Customs, Mangalore, SC overruled CESTAT, customs duty leviable on crude oil actually received at shore tank in India, not on 'Bill of Lading' quantity.

Perusing the statutory scheme, including Rules 4 & 9 of Customs Valuation Rules, observed that unless goods are brought into India, act of importation which triggers the levy does not take place and therefore, "it is the quantity of goods brought into India alone that attracts levy of import duty".

Moreover, SC stated that as per Sec 47 of Customs Act, the importer has to pay import duty only on goods that are entered for home consumption and clearly, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption. After taking note of Section 14, SC insisted that, said section also states that when goods are to be valued for the purpose of assessment, such valuation is only when the goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade. Taking note of 9(2) of Customs Valuation Rules, SC stated that, rule merely restates what is already stated in Section 14, that the value of imported goods has to be the value of such goods for delivery only at the time and place of importation. Therefore, it is clear that even a reading of "transaction value" under the Rules would necessarily arrive at the same result that the quantity of goods to be seen for purposes of valuation can only be after they are imported, that is, brought into India and have to be so at the time and place of importation.

According to SC, CESTAT lost sight of Sections 13 and 23 of Customs Act which stipulate no duty when imported goods are lost, pilfered or destroyed, and also misread Section 14 which affords measure of levy viz. time and place of importation. A Bill of Lading quantity could only be validly looked at in case of purchase tax but not in case of an import duty, and it makes no difference if basis of customs duty is at a specific rate or ad valorem. SC further held that , "When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of "ocean loss", it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules".

Comments: When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of "ocean loss", it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules.

Loading of 12.5% on declared value of watches imported by distributor (assessee) from related foreign supplier quashed

Richemont India Pvt. Ltd. vs. CC, New Delhi, CESTAT quashed loading of 12.5% on declared value of watches imported by distributor (assessee) from related foreign supplier, in terms of Rule 4 of Customs Valuation Rules.

As per said Rule, transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued should be used to determine value of imported goods; Assessee has been able to demonstrate that its imports were at different commercial level and in much larger quantity compared to imports by individual retailers.

Adjudicating Authority only compared prices of 2 models and simple extrapolation to all other models for revising their values upwards had no legal basis, finds "complete disregard of the requirement of adjustment to be made for differences in commercial levels as well as in the quantity of goods imported" in impugned order. Also refused to delve into includibility of marketing & advertisement expenses as 'condition of sale' absent invocation of Rule 10 by Adjudicating Authority, but states that requirement of prior approval for incurring expenses in distributor agreement cannot be read to mean supplier had right to dictate the amounts to be spent by assessee.

Comments: This judgment of CESTAT is of note to all.

MRP valuation of imported LED/LCD monitors meant for sale to HCL / Wipro after affixation of their brand name upheld

In TOP Victory Investments (P) Ltd. and Ors. vs. CC, Trichy, CESTAT upheld MRP valuation of imported LED/LCD monitors meant for sale to HCL / Wipro after affixation of their brand name, u/s 3(2)(b) of Customs Act r/w Sec. 4A of Central Excise Act, for period prior to May 14, 2015.

CESTAT relied on SC's ruling in Jayanti Food Processing Pvt. Ltd. to observe that, once goods are covered under Legal Metrology Act (LMA) as "packaged commodity", same required to be assessed basis RSP / MRP u/s 4A, and it is inconsequential whether brand-owner clears goods in retail or for personal consumption. SC rejected Revenue's contention that goods are supplied to industrial consumer and not intended for retail sale, since HCL and Wipro use monitors for manufacture of their computers.

Noting that Revenue accepted MRP assessment under Notification No. 49/2008 for CVD purposes till May, 10, 2012, CESTAT observes, "…once it is accepted, that the goods are covered under LMA as packaged commodity, for certain period the same goods cannot be held that these are not packaged commodities w.e.f. 10.05.2012 because of the higher abatement allowed on LCD/LED monitors." CESTAT observed that prior to May 2015, definition of "industrial consumer" under LMA and the Rule related to sale of packaged commodities directly by 'manufacturers', inclusion of 'importers' and 'wholesale dealers' thereunder w.e.f said date would confirm that assessee (importer / dealer) not covered under said category prior thereto.

Comments: The SC, in a host of decisions, has held that once the goods are covered under LMA, as a packaged commodity, they are required to be cleared on RSP on the packages as per the provisions of Section 4A, the assessment shall be on MRP basis.

FTP

DGFT clarification dated September 23, 2014 restricting the benefit of 'Incremental Export Incentivisation Scheme' (IEIS) for last quarter of 2012-13 quashed

Recently, in JSW Steel Limited & Others vs. Union of India & Others, Bombay HC allowed writ petitions and quashed DGFT clarification dated September 23, 2014 restricting the benefit of 'Incremental Export Incentivisation Scheme' (IEIS) for last quarter of 2012-13 to 25% growth or incremental growth of Rs. 10 Cr. in value, whichever is less.

HC accepted assessees' contention that cap of maximum Rs. 20 lakhs (2% of Rs. 10 Cr.) irrespective of actual export growth would render "greater scrutiny" by Regional Authority as contemplated in clause (ii) of Notification Nos. 43 & 44(RE-2013)/2009-14, redundant/ HC found no restriction in either Notification No. 27(RE-2012)/2009-14 (which inserted Para 3.14.4 in FTP) or aforesaid 2 Notifications, states that if such cap did exist, no exporter no matter what his incremental export for the period in question is, would ever submit an application or make claim in excess of Rs. 20 lakhs. HC further observed that what clause (ii) says is that while claims upto value of Rs. 20 lakhs will require one degree of scrutiny, those in cases of more than that amount will require much greater study, examination and scrutiny.

Additionally, HC stated, "The fact that clause (ii) of the 2013 Notification speaks of 'claim in excess of this value' and 'greater scrutiny' can only mean that the 2013 Notification itself contemplated the issuance of incentive scrips above Rs.20 lakhs". Being mindful of principles of interpretation that none can claim benefit or incentive as an absolute right, HC stated that once definite policy is enunciated, terms thereunder must receive an interpretation as would advance its stated purpose, viz. to promote & encourage exports.

Further, HC observed, "…any interpretation of the 2013 Notification…that restricts the incentives in their entirety would therefore be arbitrary, violating the policy's objective and the mandate of Article 14 of the Constitution of India". In view thereof, HC directed authorities to consider assessees' applications on merits without any regard to impugned clarification.

Comments: Though Revenue sought to justify that there was concern about undue or unintended benefit, it cannot suggest that any benefit above Rs. 20 lakhs is axiomatically and ipso facto an "unintended benefit", this was never the purpose nor object of 2012 Notification

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