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Contents

Service Tax

- Govt. tightens grips with Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016.
- Service tax exemption for services provided by Govt./local authority to certain people.
- Service Tax Education Guide by CBEC has no legal backing.
- Maintenance of software classifiable as “information technology software service” and not “maintenance or repair service”.
- Provisions of Sec 93 of Finance Act cannot be overridden by CCR, 2004.Insurance plays an active role and has direct nexus with manufacturing & clearance of final products.
- Insurance plays an active role and has direct nexus with manufacturing & clearance of final products
- Onsite services provided through overseas branch qualifies as 'export'.

Central Excise

- Tax Policy Research Unit set up to bridge gap b/w CBDT and CBEC.
- If SLP dismissed ‘in limine’, there cannot be ground for filing review .
- Chennai LB rules on valuation of inter-unit transfer of goods received for captive consumption.
- Entire food tray served on aircraft not 'manufacture' of excisable goods.
- Credit allowed on aluminium coils, S.S. Sheets, plates channels, M.S. angles etc., used for making support structure / foundation of reactor and chimney.
- MRP based valuation of professional beauty products sold to salons / parlors for their consumption.

SEZ

- Fresh guidelines for generation, transmission and distribution of power in SEZs prescribed.
- HC admonishes Puducherry Govt’s selection process for private SEZ developer

VAT

- Legality and validity of Trade Circular No. 2T of 2010 dated January 11, 2010 upheld.
- 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.
- HC admits Flipkart’s writ petition, stays attachment & recovery of VAT demand.
- No justification in declining Form-C issuance for non-inclusion of inter-state purchases in revised returns.

Customs

- Circulars prescribe the procedure for renewal of SVB orders and ongoing SVB inquiries.
- New customs duty rates for import of electricity from SEZ to DTA notified.
- MRP valuation of imported LED/LCD monitors meant for sale to HCL / Wipro after affixation of their brand name upheld.
- CBEC Circular Nos. 6/2008-Cus, 10/2012-Cus & 18/2013-Cus quashed.
- DGFT clarification dated September 23, 2014 restricting the benefit of ‘Incremental Export Incentivisation Scheme’ (IEIS) for last quarter of 2012-13 quashed.

Service Tax

Govt. tightens grips with Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016

Notification No. 04/2016-ST **February 15, 2016**

Central Govt. notifies Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016 w.e.f. April 1, 2016 vide Notification No. 04/2016-ST dated February 15, 2016.

The same now requires annual submission of information return u/s 15A(1) of Central Excise Act by RBI Officer i.r.o. foreign remittances for receipt of services declared recorded on or after 1st day of April, 2015 in Form AIRF. Also, it requires State Electricity Board Officer or any such officers entrusted with functions of Central / State Govt. to annually submit information return i.r.o. electricity consumed by manufacturers who use an induction furnace or rolling mill to manufacture goods and whose aggregate value of clearances exceeds Rs 150 lakhs in financial year.

Further, it has been notified that Form AIRF shall be filed on or before December 31 following the financial year to which the return pertains unless such date is extended by CBEC. Moreover, said returns are to be filed electronically, along with prescribed Annexures, to Directorate General of Systems and Data Management

Comments: The step has been taken to ensure that the audits of Central Excise and Service Tax assessees and taxpayers are carried out in a uniform, efficient and comprehensive manner, adhering to the stipulated principles and policies.

Service tax exemption for services provided by Govt./local authority to certain people

Notification No. 07/2016-Service Tax **February 18, 2016**

Recently, the Finance Ministry granted service tax exemption for services provided by Govt / local authority to business entity having turnover upto Rs 10 lakhs preceding financial year w.e.f. April 1, 2016.

Further, necessary amendment has been made to Notification No. 25/2012-ST dated June 20, 2012, in order to exempt such business entities.

Comments: This is in line with Govt.’s intention to facilitate trade, and allow small business entities to grow.

Service Tax Education Guide by CBEC has no legal backing

TRU Instruction No. 354/311/2015-TRU January 20, 2016

The Finance Ministry has accepted recommendation of High Level Committee i.r.o. valuation of flats handed over to land owners for levy of service tax, and directed adoption of method envisaged under CBEC Circular No. 151/2/2012-ST in lieu of Education Guide 2012.

According to Education Guide, value of construction service provided to land owner will be value of land when same is transferred and point of taxation must be determined accordingly. On the other hand, Circular envisages determination in terms of Sec 67(1)(iii) r/w Rule 3(a) of Service Tax (Determination of Value) Rules, 2006, i.e. equal to value of similar flats charged to other buyers. TRU reiterates that service tax is liable to be paid by builder / developer on 'construction service' involved in flats to be given to the land owner, at the time when possession or right in property of said flats is transferred to land owner by entering into a conveyance deed or similar instrument.

Further, it also states that Education Guide neither being "Departmental Circular" nor a manual of instructions issued by CBEC, does not command required legal backing to be binding on either side in any manner

Comments: Circular is in accordance with provisions relating to valuation laid down by Finance Act and Service Tax Valuation Rules, while Education Guide is purely a measure of facilitation so that all stakeholders could obtain preliminary understanding of new issues for smooth transition.

Maintenance of software classifiable as "information technology software service" and not "maintenance or repair service"

Recently, Mumbai CESTAT, in Persistent Systems Ltd. vs. Commissioner of Central Excise & Service Tax Pune – III, ruled in favour of assessee, and held that maintenance of software classifiable as "information technology software service" (ITSS) u/s 65(105) (zzzze) of Finance Act w.e.f. May 16, 2008 and not "maintenance or repair service" u/s 65(105)(zzg) prior thereto.

Undoubtedly, CESTAT clarified, computer software of a type (canned) has been held to be "goods" by SC in Tata Consultancy Services ruling in the context of AP General Sales Tax Act, but absence of intent to tax all software is apparent from subsequent inclusion of ITSS in Sec. 65(105).

Relying on coordinate bench ruling in SAP India Pvt Ltd, CESTAT observes that software, other than 'canned', would not be amenable to description as "computer software" which is essential to start up and run the core programs of a system, instead assessee's clients would be users of 'information technology software' that is essential for smooth running of business activities and thus, any maintenance thereof would be taxable only after May 16, 2008. CESTAT noted that Adjudicating Authority has omitted to take into account assessee's 'STP' status, as also fact that services being rendered enhance performance & efficiency of clients' systems situated overseas, which entitles assessee to derive exemption benefit as service exporter.

Comments: This comes as a huge relief to all software companies and related service providers.

Provisions of Sec 93 of Finance Act cannot be overridden by CCR, 2004

In Tata Technologies Ltd & Anr. vs. Commissioner of Central Excise, Pune-I & Anr., CESTAT finds no fault in reversal of proportionate input services credit attributable to exempted output services in exercise of option under Rule 6(3)(ii) of CENVAT Credit Rules (CCR), despite belated filing of declaration prescribed under Rule 6(3A)(a).

CESTAT rejected Revenue's stand that belated exercise of such option amounts to not exercising the option at all and hence, assessee liable to pay amount equal to 6% / 8% of value of exempted services under Rule 6(3)(i), and held that condition of filing declaration is only directory, not mandatory and as has been held by Rajasthan HC in Grasim Industries Ltd, in case of substantive compliance by assessee i.e. calculation of CENVAT credit reversible on annual basis and payment thereof before prescribed date, substantial benefit cannot be denied. Also noted Adjudicating Authority's observation for subsequent period that intention of legislature is only to deny undue benefit in form of CENVAT credit which is attributable to exempted output services, minor procedural lapses cannot deny assessee substantial benefit.

Comments: In the garb of Rule 6, provisions of Sec 93 of Finance Act cannot be overridden and / or exemption provided thereunder cannot be negated by CCR, which is a delegated legislation and subservient to main Act. .

Insurance plays an active role and has direct nexus with manufacturing & clearance of final products

In a recent decision, CCE Mumbai & Anr. vs. Reliance Industries Ltd & Anr., Mumbai CESTAT has allowed ENVAT credit in respect of service tax paid towards insurance of plant & machinery, equipment, inputs, factory & residential buildings / township.

CESTAT rejected Revenue's contention that insurance does not play any active role and has no direct nexus with manufacturing & clearance of final products, hence not "input service" under Rule 2 (l) of CENVAT Credit Rules. CESTAT referred to coordinate bench ruling in assessee's own case where it was held that when cost of any service is included to determine valuation of final product, CENVAT credit of tax paid thereon cannot be denied. Further, CESTAT restrained Revenue from contesting Adjudicating Authority's choice to accept Cost Accountant's certificate instead of undertaking special audit in terms of Sec 14AA of Central Excise Act pursuant to CESTAT's direction in earlier round of litigation.

Comments: As service tax paid on insurance has been included in the cost of final products manufactured and cleared, credit should not be denied thereon.

Onsite services provided through overseas branch qualifies as 'export'

In Commissioner of Central Excise, Pune-III vs. Zensar Technologies Limited, Mumbai CESTAT has held that onsite services provided through overseas branch qualifies as 'export', upholds inclusion of value of such services in both export as well total turnover, for refund computation, in terms of Para 5 of Notification No. 5/2005-CE (NT).

Comments: Since said services provided through overseas branches, it is part and parcel of total business transaction of assessee, therefore, correctly added in 'total turnover'

Central Excise

Tax Policy Research Unit being set up to bridge gap between CBDT and CBEC

FinMin Press Release **February 2, 2016**

Based on Shome Committee recommendations (TARC), Govt. announced setting up of Tax Policy Research Unit (TPRU) & high-powered Tax Policy Council, in order to bridge gap in independent functioning of CBDT & CBEC

The objective is " ....to bring consistency, multidisciplinary inputs, and coherence in policy making" between both Boards. Apart from CBDT & CBEC officials, TPRU to include economists, statisticians, operational researchers, legal experts & unit head to report to Revenue Secretary. TPRU to adopt three pronged approach for every tax proposal, namely - a) legislative intent behind proposal, b) Expected increase/decrease in tax collection & c) likely positive/negative 'economic' impact of the same.

Govt. also announced a 10 member, high-powered Tax Policy Council under Chairmanship of Finance Minister for more consistent, coherent & inter-disciplinary approach to tax policy, and the Council's role to be advisory in nature, will look at research findings of TPRU & suggest broad policy measures for taxation .

Comments : This is of note as The Tax Policy Council will look at the research findings from TPRU and will be advisory in nature, meaning that key policy decisions will be coming from TPRU through TPC.

If SLP dismissed 'in limine', there cannot be any ground for filing a review petition

CBEC issues clarification on effect of 'in limine' dismissal of Special Leave Petition (SLP) by SC and filing of review petition.

Clarification refers to Apex Court ruling in Kunhayammed v. State of Kerala wherein SC laid down two distinct stages: a) granting of special leave to appeal and b) hearing of appeal, and notes principle laid down therein, that once leave is granted but SLP converted into appeal is dismissed with or without reasons, law is declared and it is not longer permissible to move the HC by review, and no Court, Tribunal or authority can express a contrary opinion.

Also, reference has been made to Supreme Court Rules, 1966 on Review Petition and Apex Court ruling in Kamlesh Verma vs. Mayawati & Ors which laid down 3 principles where review will be maintainable: i) discovery of new and important evidence which was not within knowledge of petitioner or could not be produced, ii) mistake apparent on face of record or iii) any other sufficient reason.

Comments : The clarification is in line with the law laid down by the SC.

Chennai LB rules on valuation of inter-unit transfer of goods received for captive consumption

Chennai CESTAT Larger Bench, in ITC Ltd. vs. CCE, Chennai-I, has ruled on valuation of inter-unit transfer of goods received for captive consumption, actual cost of production (COP) determined in terms of Cost Accounting Standard-4 (CAS-4), w.r.t. goods (i.e. raw material) procured from Unit 1 (excluding notional loading pursuant to Central Excise Valuation Rules) accountable for determining actual COP of goods manufactured by Unit 2 of same entity.

LB also held that Chennai bench of CESTAT in Eveready Industries and assessee's own case has laid down correct position in law, while overruling Mumbai CESTAT's view in Tata Iron and Steel Co. Ltd. (TISCO). LB stated that notional loading of 10% /15% in terms of Rule 8 of Valuation Rules, for excise duty payment by Unit 1 cannot be considered as cost of goods consumed for manufacture by Unit 2 for arriving at COP, where goods manufactured by Unit 2 supplied to a Unit 3 of same entity.

Observes that if all decisions been brought to Mumbai bench's knowledge, it would have taken appropriate decision i.e. either to follow said decisions or refer issue to LB, in which case, present reference could have been avoided. Further, holds that, ratio laid down by SC in Union Carbide and Challapalli Sugars shall squarely be applicable.

Comments: While Mumbai CESTAT ruling in TISCO delivered subsequent to Chennai CESTAT rulings, it appears that Mumbai bench was not sensitized either by Revenue or assessee to Chennai bench decisions.

Entire food tray served on board an aircraft not 'manufacture' of excisable goods

Recently, Delhi CESTAT, in Taj Sats Air Catering Ltd. vs. CCE, Delhi-II, allowed assessee's appeal, entire food tray served on board an aircraft, not 'manufacture' of excisable goods (i.e. food preparations) supplied under brand name.

Assessee, engaged in airline catering business, prepares food items such as roti, rice & curry, wraps them in aluminium foil, places in bowls and plates provided by airlines and discharges excise duty thereon, further supplies other bought out items like cut fruits & curd, which do not require pre-heating, and all foods items are placed in a tray by airline staff before serving to passengers.

Accepts assessee's plea that, entire tray served to passengers, containing food items manufactured by assessee as well as bought out readymade items, does not amount to 'manufacture' u/s 2(f) of Central Excise Act, 1944.

CESTAT further observed that without examining the nature of manufacture, the Original Authority straight away moved to the classification of the impugned meal tray applying the provisions of Rule 3 (c) of interpretation rules to determine the correct classification under Central Excise Tariff.

It was observed that Adjudicating Authority straight away moved to classification of meal tray applying Rule 3(c) of Interpretation Rules of Central Excise Tariff and concluded that, same classifiable under Heading 2108 i.e. last occurring in numerical order. Authority failed to examine sequentially, application of said Rules and it is not clear as to which equally competing headings merit consideration, accordingly, demand unsustainable as Revenue failed to substantiate and support its claim on taxability of complete food tray on whole value.

Comments: Lower authority's order rightly set aside, as order lacked analysis/discussion about nature of 'manufacture' undertaken by assessee.

Credit allowed on aluminium coils, S.S. Sheets, plates channels, M.S. angles etc., used for making support structure / foundation of reactor and chimney

Recently, in Aarti Industries Ltd. vs. Commissioner of Central Excise, Thane II, CESTAT allowed CENVAT credit on goods falling under Chapter 72, viz., aluminium coils, S.S. Sheets, plates channels, M.S. angles etc., used for making support structure / foundation of reactor and chimney, which are categorically part of assessee's manufacturing process.

Perusing explanation (2) to Rule 2(k) of CENVAT Credit Rules, observes that "inputs" include goods used in manufacture of capital goods which are further used in factory of manufacturer. Rejects Revenue's reliance on LB ruling in Vandana Global Ltd, states same held to be wrong by 2 different HCs, viz. Calcutta HC in Surya Alloy Industries Ltd & Gujarat HC in Mundra Ports and Special Economic Zone Ltd, wherein they held that amendment to explanation (2) w.e.f. July 2009 is not clarificatory in nature.

Also CESTAT noted coordinate bench decision in Lloyds Metals and Engg. Ltd. which referred to SC ruling in Rajasthan Spinning & Weaving Mills. Further, quashed demand on limitation, finding that same issue has been subject matter of interpretation by various benches and hence, no malafide can be attributed to assessee.

Comments: When same provision of law is subject to various interpretations, extended period of limitation should not be invoked.

MRP based valuation of professional beauty products sold to salons / parlors for their consumption

Recently, in Commissioner of Central Excise, Mumbai - I vs. L'Oreal India Pvt. Ltd., CESTAT rejected Revenue appeal, and upheld MRP valuation of professional beauty products sold to salons / parlors for their consumption, by relying on SC ruling in case of Jayanti Foods Processing Pvt Ltd.

Further, CESTAT rejected Revenue's plea that since such products ultimately used by salon industry for service to customers, Rule 34 of Standards of Weights & Measures (Packaged Commodity) Rules, 1977 (PC Rules) would apply and hence, valuation would be governed by Section 4 absent requirement to declare MRP on said products. Further, CESTAT noted that, technical products bearing endorsement "For use of Salon and by Salon", were purchased by salons from assessee's dealers (who are not individual consumers) and were not allowed to be sold for direct sale to consumers.

CESTAT observed that the Adjudicating Authority was correct in applying law laid down by Bombay HC in L&T and stating that, in terms of Rule 2 of PC Rules (containing various definitions) it is irrelevant as to who consumes products ultimately, only issue relevant is whether goods sold in retail or consumed by industrial consumers.

Comments: Professional technical products were sold by assessee through the dealers and wholesalers to the salons and beauty parlors for their consumption, and therefore, assessee was not error in discharging the duty liability on the clearance made by them of these products to salons and beauty parlors under the provisions of Section 4A of the Act.

SEZ

Fresh guidelines for generation, transmission and distribution of power in SEZs prescribed.

Notification No. P. 6/3/2006-SEZ (vol.III) February 16, 2016

Recently, the Ministry of Commerce, vide Notification No. P. 6/3/2006-SEZ (vol.III), has prescribed fresh guidelines for generation, transmission and distribution of power in SEZs w.e.f. February 16, 2016. The Notification states that a power plant, including non-conventional energy power plant, to be set up by developer / co-developer as part of infrastructure facility will be in Non-processing Area of SEZ only, and shall be entitled to fiscal benefits for initial setting-up alone, with no obligation to achieve positive NFE.

Henceforth, it has been notified that no single stand-alone power plant shall be permitted to be set-up in SEZ in which there would be no other units. Setting-up of captive power plant, including non-conventional energy power plant, can be permitted in Processing Area as a unit, subject to NFE obligations and shall be entitled to all fiscal benefits for initial set-up, maintenance and duty free import of raw materials & consumables for generation of power.

In case of IT/ITES SEZs where there is statutory requirement on developer / co-developer to supply 24 hours uninterrupted quality power supply in terms of Rule 5A of SEZ Rules, generation of power will be carried out as a unit within the processing area, and such power plant shall be entitled to fiscal benefits under Sec. 26 of SEZ Act.

Comments: Power plants in SEZ which were approved prior to February 27, 2009 will be allowed O&M benefits only w.r.t. average monthly power supplied to entities within SEZ during preceding year.

HC admonishes Puducherry Govt's selection process for private SEZ developer

Recently, Madras HC, in Om Infra Projects Ltd. & SPML Infra Ltd. vs. UOI and others, has admonished Puducherry Govt's selection process for private SEZ developer absent observance of well established procedures in tender processing like technical and commercial criteria, and submission of Development Project Report (DPR).

Ministry of Home Affairs justified in directing Puducherry Govt to cancel assessee's agreement upon noticing irregularities and illegalities brought to notice by Planning Commission subsequent to grant of ex-post-facto approval.

However, refuses to apply doctrine of promissory estoppel and legitimate expectation against the Govt., observes, "If the promise given was on suppression of facts or against the well-established principles and procedures of law or without appraisal of the entire facts, the promisor can always withdraw from such promise either by direct action or by implication". Assessees possess no legal right to insist for Notification u/s 4(1) of SEZ Act to develop the SEZ since such issuance at Govt.'s discretion, observes that even Courts cannot interfere in Govt.'s decision to have / not to have SEZ, being an economic policy involving huge expenditure and parting of vast extent of land.

Comments: Since application filed by assessee as 'a single company' and not 'consortium of companies' , no legal right can be given to assessee.

VAT

Legality and validity of Trade Circular No. 2T of 2010 dated January 11, 2010 upheld

In Johnson Matthey Chemicals India vs. The State of Maharashtra and Ors., Bombay HC dismissed assessee's challenge to legality of Circular No. 2T of 2010, and held, furnishing of Form F where goods returned back after job-work is a requirement in law and only if same fulfilled, burden on dealer cast u/s 6A of Central Sales Tax Act, 1956, that movement of goods is not by way of sale, is discharged, else consequences would follow.

The issue before HC pertained to the legality and validity of Trade Circular No. 2T of 2010 dated January 11, 2010, which mandated burden of proof on the person claiming transfer of goods otherwise than by way of sale and not liable to pay tax under the Central Act to be discharged by furnishing declaration in Form F.

CESTAT accepted Revenue's plea that, issue covered by DB of Allahabad HC ruling in Ambica Steels, wherein placing reliance upon SC ruling in Ashok Leyland Ltd., HC held that, Form 'F' required where goods sent/received after job-work, if dealer claims that, he is not liable to pay tax on such transfer from one State to another.

Rejecting assessee's contention that, said HC ruling has not been upheld by SC, states, SC did not lay any law on legal principle or overturn/reverse HC judgment, all it clarified was that, if some States are not issuing Form 'F', then, that approach of a particular State should be brought to Assessing Officer's (AO) notice in dealer's State, in which case AO may pass requisite order.

Thus, Section 6A neither poses any difficulty nor is in anyway invalid/illegal, more so, when ambit and scope of legal provision has been duly explained by SC in Ashok Leyland Ltd. and same has been applied and followed by Allahabad HC in Ambika Steels Ltd.

Consequently, Circular of 2010 neither misread/misinterprets SC or HC judgment, nor runs counter to Circular 16T of 2007 and Trade Circular 5T of 2009, however, holds that, if declaration is not issued by States despite dealer's efforts to obtain it, then in terms of SC decision, dealer may request AO to consider that circumstance and pass such orders as permissible in law.

Comments: Section 6 sets out the liability to tax on the inter-state sale and by section 6A, on whom the burden of proof would fall in case of transfer of goods is claimed otherwise than by way of sale, and therefore, section 6A enacts a presumption or a rule of evidence.

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, SC, in State of Jharkhand & Ors vs. Tata Steel Ltd & Ors., rules in favour of Revenue, and held that period for repayment of deferred sales tax benefit by an industrial unit under Jharkhand VAT Act must be computed from completion of eligibility period of deferment or prescribed percentage limit of fixed capital investment, whichever is earlier.

SC rejected assessee's submission that "date of start of deferment" under Notification SO No. 480 dated December 22, 1995 has to be the date when deferment commences and span of 13 years has to be computed from that date. Referring to the plain meaning of the words employed in said Notification, SC observes that language clearly postulates repayment of total deferred amount in 10 equal 6 monthly instalments in such manner so as to be completed within 13 years from date of start of deferment. Words, "from the date of start of deferment" have to have nexus with the policy, viz. – unit has commenced between September 1995 and August 2000, has obtained registration and most importantly, has been given eligibility certificate for said purpose.

SC observed, "It does not flow from the notification that if a benefit is granted for 8 years or for a lesser period, the assessee cannot claim that the repayment has to be completed within 13 years from the date of grant". Assessee's interpretation not only causes serious violence to the language employed in the Notification but if allowed to be understood in such manner, it shall lead to absurdity. Period has to relate back to date of eligibility with a maximum limit of 13 years, it cannot be construed to mean 13 years from the date of completion of eligibility period, rules SC.

Comments : The decision is of note as assessee's interpretation would lead to an anomalous situation.

HC admits Flipkart's writ petition, stays attachment & recovery of VAT demand

Allahabad HC admits Flipkart's writ petition, stays attachment & recovery of VAT demand from already attached bank accounts. Further, HC issued notice and directed Revenue to respond as to how and in what manner attachment order was passed and proceedings were adopted with or without service of any notice.

HC further noted that on an earlier occasion, Rs 27.65 Cr was recovered from assessee's bank accounts, but same was set aside by Appellate Authority on finding that notice of assessment & attachment order had been sent to assessee's earlier address. Not satisfied, Revenue once again attached & recovered Rs. 49.82 Cr without any attachment / assessment order, following same procedure. HC has listed the matter for hearing in this month, with liberty to assessee to file application for recalling ex-parte assessment order, which was served after filing of writ, whereupon concerned Authority shall pass a reasoned and speaking order after giving opportunity of hearing to assessee.

Comments : The writ petiton against recovery of VAT demand through attachment of bank accounts of assessee, Flipkart India Pvt. Ltd., is of interest.

No justification in declining Form-C issuance for non-inclusion of interstate purchases in revised returns

Delhi HC, in Ingram Micro India Pvt. Ltd. vs. Commissioner, Department of Trade and Taxes, ruled in assessee's favour, Revenue not justified in declining Form-C issuance for non-inclusion of interstate purchases in revised returns, when assessee offered a valid explanation for such omission.

Relies on SC ruling in India Agencies to observe that, essential purpose of Central Sales Tax Rules is to ensure that inter-state sale transactions are genuine and no dealer is permitted to take lower tax rate benefit on an dubious transaction.

Comments: Authorities were satisfied about genuineness of inter-state purchase transactions that had escaped inclusion in revised returns, which had no adverse impact on State revenue.

Customs

CBEC Circular prescribes the procedure for renewal of SVB orders and ongoing SVB inquiries

Circular No. 4/2016-Customs and Circular No. 5/2016- Customs February 09, 2016

CBEC revises instructions for examination of related party transactions and those involving royalty, license fee etc. by Special Valuation Branches (SVBs).

The Circular states that SVBs shall henceforth, function under supervisory control of jurisdictional Chief Commissioner / Principal Commissioner / Commissioner, instead of Director General of Valuation (DGOV) who shall continue to support SVBs by issuing advisories on legal issues & guidance notes. In cases where import takes place through Customs Houses (CH) of Mumbai / Delhi / Chennai / Kolkata / Bangalore, importer will be free to select SVB of CH of import or CH most proximate to corporate office, as convenient to him.

For sake of reducing transaction cost and bringing uniformity across CH, no Extra Duty Deposits (EDD) shall be obtained from importers, however on failure to provide documents and information required for SVB inquiries within 60 days of such requisition, security deposit at 5% of declared assessable value shall be imposed for maximum 3 months. Further, no appealable order shall be issued by SVB and instead, it shall convey investigative findings to referring customs formation for finalizing provisional assessments, also importer shall require to fill a questionnaire which would enable jurisdictional Commissioner to take decision on whether a case needs to be referred to SVB for investigations. Import of samples and prototypes from related sellers, imports from related sellers where duty chargeable (including additional duty of customs) is unconditionally full exempted or nil, and any transaction where value of imported goods is less than Rs 1 lac but cumulatively these transactions do not exceed Rs 25 lacs in any FY, shall not be taken up for SVB inquiries. Also prescribes detailed procedure to be followed by SVB officer for investigation and final assessment.

CBEC also prescribes procedure i.r.o. pending SVB cases initiated in terms of Circular No. 1/98-Cus & 11/2001-Cus and those involving renewal of SVB orders. Inter alia provides a system of one-time declaration for quick disposal of cases wherein importers shall submit to jurisdictional SVB, declaration in prescribed formats by May 31, 2016

Comments: With an intent to simplify doing business in India, the Ministry Of Finance on February 09, 2016 has introduced two circulars i.e. Circular No. 4/2016-Customs and Circular No. 5/2016- Customs which impact the Special Valuation Branch proceedings.

New customs duty rates for import of electricity from SEZ to DTA notified

Notification No. 09/2016-Customs February 09, 2016

Central Govt notifies new customs duty rates for import of electricity from SEZ to DTA w.e.f February 16, 2016. Prescribes standard customs duty rate of 100 paisa per KWh except where electrical energy supplied from Processing Area of SEZ.

DTA generated using (i) imported coal as fuel shall be dutiable at 40 paisa per KWh, (ii) domestic coal as fuel at 65 paisa per KWh, (iii) mix of domestic gas / RLNG as fuel at 59 paisa per KWh, and (iv) RNLG as fuel at 89 paisa per KWh. Where electrical energy is supplied from Non-processing Area of SEZ to DTA, generated using aforesaid materials, customs duty would be leviable at 24, 24, 18 and 21 paisa per KWh respectively. Electrical energy supplied to DTA by power plants of 1000MW or above, who have been granted formal approval for setting up in SEZ prior to February 27, 2009, as also that originating from Nepal and Bhutan, has been exempt.

In case of power plants of less than 1000MW, customs duty shall be levied on supply of electrical energy at same rates as prescribed for supply from Non-processing Area of SEZ

Comments: This Circular 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

Circular No. 06/2016-Customs February 9, 2016
Notification No. 22/2016-Cus (N.T.) February 8, 2016

Central Govt. amends All Industry Rates (AIR) of Duty Drawback w.e.f. February 11, 2016. Circular inter alia provides for AIR for rice packed in High Density Poly Ethylene (H.D.P.E.) / Poly Propylene (P.P.) bags.

Creates separate tariff entries with AIRs (including caps) for - i) “hair-on” varieties of mats / carpets and other articles under heading 4303. ii) blended cotton yarns with MMF under heading 5206. ii) fabrics of MMF blended with wool under heading 5515. iv) blankets of MMF under heading 6301 and for other items.

Moreover, restructures sub-headings under four digit heads of 8409, 8413, 8481 and 8708 to distinguish drawback caps for products exported. Includes “notebooks” in tariff items 482006 and 482007 and “dresses, skirts, undivided skirts” in 610403.

Also, increases drawback rates / caps for fishing nets, sports nets, leather articles, MMF Fabrics, leather footwear, steel tanks tractors & carpets made of silk / wool and cotton.

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.

CBEC Circular Nos. 6/2008-Cus, 10/2012-Cus & 18/2013-Cus quashed

In Allen Diesels India Pvt Ltd. vs Union of India & Ors., Delhi HC quashed CBEC Circular Nos. 6/2008-Cus, 10/2012-Cus & 18/2013-Cus inasmuch as they deny importers and exporters refund of 4% Additional Customs Duty (SAD) paid by using DEPB scrips under Notification No. 102/2007-Cus. Though Revenue has projected that said Circulars have been issued to streamline the procedure and to

remove ambiguities, in fact what they seek to amend is Notification itself by introducing an additional condition for being entitled to refund.

HC observed that although the said Circulars were projected to have been issued for streamlining the procedure and to remove ambiguities, in fact, what they sought to amend was Notification No. 102/2007-Cus itself by introducing an additional condition for being entitled to refund, which condition did not find place in the Notification. In this regard, HC noted that the question whether the device of Circulars could be adopted for modifying a Notification had been decided in the cases of Sandur Micro Circuits Ltd. vs. Commissioner of Central Excise [2008 (8) TMI 3 SC], Modi Rubber Ltd. vs. Union of India [1978 (2) ELT (J127)(Del.)] and Pioneer India Electronics (P) Ltd. vs. Union of India.

Comments: Since the assessee had fulfilled the conditions set out in the Notification for availing refund, Revenue was directed to issue orders granting refund within stipulated period, alongwith applicable interest.

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

In Bhagyanagar Metals Ltd & Ors vs. CCE Hyderabad – II & Anr., CESTAT LB rules on valuation of imported Fixed Wireless Telephones (FWT), holds that software embedded in Flash memory unit not distinct from hardware and hence, value thereof includible in value of FWT exigible to customs duty.

LB rejected assessee's contention that memory unit should be considered as storage media of software, which in turn should be considered as separate goods in view of Note 6 to Chapter 85 and accordingly, entitled to exemption. Perusing said Note as it stood prior to & post January 2002, LB finds no remote possibility of calling 'memory unit' as one of media covered thereunder, states, "The memory unit is clearly part of the circuit board of the telephone and more appropriately covered under Tariff heading 85.42." Tariff Heading 85.42 covers Electronic Integrated Circuits whether or not combined with memories, memory unit which identifies the individual phone as well as contains essential basic command is integrated to circuit board, and is neither removable in normal course nor interchangeable. Hence, in view of technical literature, nature of said memory unit and nature software contained therein, there are no two separate, distinct goods for assessment, viz. (a) CDMA FWT and (b) media containing software presented with such telephone, holds CESTAT. Notes that all along, assessee claimed that software is contained in CD-ROM presented separately alongwith FWT cell phones at the time of import and now for the first time, made current claim. Observes, "It is the clearly admitted fact that the software/ data loaded on the Flash memory is specific to the user/customer. It contains caller ID and caller block software. The phones imported have embedded software with required parameters for its functioning."

LB distinguishesd the rulings of PSI Data Systems Ltd, Acer India Ltd & Vodafone Essar Gujarat Ltd cited by assessee, but dispenses with interest on differential duty absent statutory provision authorizing such collection upon finalization of provisional assessment during 2003-2004. Also, LB dispensed with redemption fine in the absence of any seizure or provisional release of seized goods, and also deletes penalty as duty not determined in terms of Sec. 28 and hence, invocation of Sec 114A is not legally tenable

Comments: It is trite that software/data loaded on the Flash memory is specific to the user/customer.

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