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Service Tax

CBEC clarifies on manner of distribution common input service credit

CBEC vide. Circular No. 178/4/2014-ST dated July 11, 2014 has issued clarification on input service credit distribution manner prescribed under Rule 7(d) of CENVAT Credit Rules, 2004.

Rule 7(d) was amended vide Notification No. 5/2014-CE to provide that *"service tax credit attributable to service used by more than one unit shall be distributed on pro-rata basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year."*

However, doubts were raised w.r.t. the meaning of the expression 'such units' in Rule 7(d). Trade interpreted that due to the use of the term 'such unit', the distribution of the credit would be restricted to only those units where the services are used and the credit available for distribution would get reduced by the proportion of the turnover of those units where the services are not used.

With this regard, CBEC has clarified that Rule 7 was amended to simplify the manner of distribution. The amendment seeks to allow distribution of input service credit to all units in the ratio of their turnover of the previous year, irrespective of whether such common input services were used in all the units or in some of the units.

Comments: The Clarification would of great importance for Trade as it allows input service credit distribution to all units.

Bus transportation facility provided on contractual basis by Governmental corporation not taxable as rent-a-cab service

In the case of Bangalore Metropolitan Transport Corporation (BMTC) vs. Commissioner of ST, Bangalore CESTAT held that bus transportation facility provided by city transport corporation on contractual basis to factories, schools, colleges are not taxable as 'rent-a-cab service' u/s 65(105) (o) of Finance Act. CESTAT pointed out that that the main ingredients of rent-a-cab service are: (a) the service provided to any person; (b) the service provided by a rent-a-cab scheme operator; (c) the service provided in relation to renting of cab. In view of this, CESTAT stated that BMTC cannot be considered as a person engaged in renting of cab service at all as the business undertaken by BMTC was to provide bus transport facility to the citizens of Bangalore city and its main activity was running the buses in city for the convenience of citizens.

Moreover, it was observed that BMTC was collecting monthly rental and that the charges were made on the basis of number of kilometers actually run multiplied by the amount fixed per kilometer. Whereas in case of rent-a-cab, minimum number of kilometers may also be fixed, crossing which the customer may have to pay extra.

Thus, it was held that Bus services provided by BMTC are not taxable under 'rent-a-cab service'.

Comments: The aforementioned decision would be of great relevance as city transport bus services cannot be treated as rent-a-cab service for service tax purposes.

Input service credit available on re-insurance services availed by Insurance services from foreign companies

In the case of PnB Metlife India Insurance Co. Ltd. vs. Comm. of Cus, CE & ST, Bangalore CESTAT held that CENVAT Credit would be available on re-insurance services availed by Indian Insurance service providers from foreign

CESTAT noted that as per Sec 101A of Insurance Act, 1938 reinsurance is mandatory and every insurer dealing with insurance business is required to reinsure a specified percentage of sum assured with another insurance company.

CESTAT further rejected Revenue's stand that reinsurance have no direct nexus with output service i.e. insurance service and stated that reinsurance involves transfer of portion of risk / sum assured and thus, directly connected to premium collected by assessee from customers.

In light of above, CESTAT allowed input service credit on reinsurance services availed by Indian Companies.

Comments: The said decision would provide respite to Indian Insurance Companies.

Advertisement film shooting / production a 'video production service, not taxable under advertising agency'

The Division Bench of Mumbai CESTAT in Mad Entertainment Ltd., held that the ad film shooting and production would be taxable as 'videotape production service' w.e.f. July 16, 2001 and not as 'advertising agency service'.

CESTAT observed that the activity of ad film shooting is not connected with preparation, display or exhibition of advertisement. Further, CESTAT stated that ad film shooting is only shooting the programme prepared by advertising agency and thus, assessee activity would not fall under 'advertisement shooting agency service'.

CESTAT thus concluded that ad film shooting not to be taxed as 'advertisement agency service', but as videotape production service.

Supplementary Tour Operator services provided to foreign tourists on behalf of Principal Tourist operator based abroad taxable pre-post 2004

Allahabad HC in the case of Touraids (I) Travel Services, held that supplementary tourist services provided to foreign tourists on behalf of Principal Tour Operators (PTO) .would be taxable both pre and post 2004.

HC rejected assessee's contention that service tax on the entire amount had already been paid by the PTO . It was observed that assessee's acted as a PTO agent for transport services and also provided supplementary services like air / rail booking for foreign tourists on behalf of the PTO.

Moreover, HC rejected assessee's stand that supplementary services was included in 'tour operator' definition only after Sept. 10, 2004 and not before. In view of this, HC pointed out that 2004 amendment enlarging the definition of 'tour operator' u/s 65(15) of Finance Act was only clarificatory. HC stated that prior to Sept 10, 2004 amendment, definition of taxable service u/s 65(105)(n) was wide enough to enough to include all supplementary activities.

Thus, all supplementary services in relation to 'tour' was taxable as 'tour operator service' pre-2004 also.

Comments: The said decision is of great importance as it provides that supplementary tour operator services are also taxable pre-2004.

Central Excise

No excise duty leviable on fertilizer subsidy : Fin Min Circular

Ministry of Finance vide Circular No. 983/7/2014-CE dated July 10, 2014 has issued clarification with regard to excise duty applicability on fertilizer subsidy given by Government for valuation purposes.

It was clarified that SC ruling in FIAT India Pvt. Ltd. would not be applicable in this case. FinMin noted hat the manufacturers of fertilizers do not gain any extra commercial advantage vis-a-vis other manufacturers because of the subsidy received from the Government. Moreover, subsidy paid by the Government to the manufacturer is in larger public interest and not for benefitting any individual manufacturer-seller .

Further, FinMin made a comparison with FIAT India ruling and pointed out that in said case t was a conscious decision on the part of the manufacturer to sell the goods below the cost of production to penetrate the market and to compete with the other manufacturers of similar cars.

In light of the above, it was concluded that the subsidy component is not an additional consideration and hence, the MRP at which the fertilizer is sold to buyers by the manufacturers is the sole consideration for its sale and even though the subsidy component has money value, it cannot be considered as an additional extra-commercial consideration flowing from the buyer to the seller.

Comments: Clarification would come as a relief to the Fertilizer Industry as Government subsidy value cannot be considered as additional consideration for excise duty valuation purposes.

'Material Cost + Job Work charges', correct valuation for job-worked goods

In the case of CCE vs. Reclamation Welding, Ahmedabad CESTAT held that valuation of job-worked goods has to be done on the basis of cost of raw materials supplied plus job work charges after inclusion of job worker profit.

CESTAT noted that there was no evidence to prove that job

worker and raw material supplier are related parties for the purpose of valuation under Rule 8 of Valuation Rules.

In order to support the above finding, complete reliance was placed on SC rulings in Ujjagar Prints Ltd. [1989 (39) ELT 493 (SC)] and Pawan Biscuits Co. (P) Ltd [2000 (120) ELT 24 (SC)]

Comments: CESTAT upheld the valuation of job-worked goods as per the 'Ujjagar Prints' ruling.

Additional excise duty (AED) credit payable pre-2000 cannot be adjusted against basic excise duty (BED)

The Division Bench of Mumbai CESTAT in CEAT Ltd., disallowed the CENVAT credit of AED paid in 2006 (which ought to have been paid during 1995-98) against BED

CESTAT observed that as per Rule 3 of CENVAT Credit Rules (CCR) credit of duties paid on input/ capital goods could be taken if such inputs or capital goods were received in the factory of manufacture on or after Sept. 10, 2004.

CESTAT further pointed out that expressions "leviable under Sec 3" and "paid on or after Sep 10, 2004" in Explanation to Rule 3(6) of CCR should be construed as duty ought to be leviable u/s 3 of Additional Duties of Excise (Goods of Special Importance) Act and ought to have been paid on or after April 1, 2000.

Moreover, CESTAT pointed out that assessee claim could not be accepted on a simple reasoning that an honest taxpayer who had discharged duty liability in accordance with law during 1995-98 would not have been eligible for said credit. Thus, assessee could not be eligible to take credit merely because he contested the levy and did not discharge during 1995-98. Tribunal observed that law cannot be interpreted in such a way so as to grant benefit to dishonest tax payer as this would amount to doing injustice to an honest taxpayer and encourage litigation/evasion of taxes.

Comments: The said decision would be important as it rules on AED credit availability against BED pre-2000 and interprets Explanation added to Rule 3(6) of CCR, 2004.

Photocopies of duty paid documents not enough to avail input credit

In a recent Mumbai CESTAT ruling, it was held that input credit would not be available on the basis of photocopy of duty paid documents statutorily prescribed.

CESTAT observed that the CENVAT Credit scheme adopted and operationalized in India is based on the Tax Credit Method which relies upon the sanctity of documents and that's the reason why certain documents have been prescribed for availing credit. It was noted that if the prescribed documents were not submitted, there was no vested right accruing to the assessee for taking credit. Reliance was placed on SC rulings in Harichand Sri Gopal [2010 (260) ELT 3 (SC)] and Indian Oil Corporation Ltd. [2012 (276) ELT 145 (SC)]

CESTAT thus concluded that the assessee was not eligible to avail CENVAT Credit on the basis of documents that were not statutorily prescribed.

Comments: The said decision would be important for manufacturers as they are not allowed to take credit on the basis of photocopies of documents.

Statutory labeling / MRP affixation on imported goods does not amount to manufacture

In the case of L'Oreal India Pvt. Ltd., Mumbai CESTAT held that the activity of affixing labels / declaring MRP was undertaken when goooods were under Customs control and before they were released into DTA and therefore, would not amount to manufacturing. CESTAT observed that as long as goods remained under Customs control, they could not be said to have been imported into India. It was pointed out that where assessee undertook the activity of labeling in the Customs bonded warehouse or in a private warehouse on execution of bond and bank guarantee with Customs, the control of goods remained with Customs and importation of goods could not be said to have been completed.

CESTAT observed that SC in Garden Silk Mills Ltd. v UOI had held that import of goods into India would commence when they cross the territorial waters of India but is completed when it becomes part of the mass of the goods within the country, taxable event is when goods reach the Customs barrier and bill of entry for home consumption is filed.

In the light of above, CESTAT concluded that the question of 'manufacture' attracting excise duty liability would not arise at all before goods are cleared for home consumption.

Comments: The said decision would provide respite to manufacturers affixing labels / MRP on imported goods.

Customs

Invoice endorsement condition not mandatory to avail SAD refund

In the case of Chowgule & Company Pvt. Ltd., Larger Bench of Mumbai CESTAT held that condition of endorsement of invoice under Notification 102/2007-Cus is not mandatory to avail Special Additional Duty (SAD) refund.

LB CESTAT observed that condition 2(b) of said notification pertaining to endorsement on the invoice was merely a procedural one and that the purpose / object of such endorsement could be achieved when the duty element itself was not specified in the invoice.

It was held that since the object was achieved by non-specification of duty element, mere non-making of endorsement could not have undermined the purpose of exemption.

LB CESTAT followed this Tribunal ruling in Equinox Solution Ltd. v. Commissioner of Customs (Import) [2011 (272) ELT 310] , wherein it was observed that "*in a case where the trader issues a commercial invoice without making the endorsement as stipulated in paragraph 2(b) of the notification and quantum of SAD paid is not specifically mentioned in the invoices, refund of SAD paid should not be denied merely because the required endorsement was not made as that would constitute only a technical infraction.*"

CESTAT thus concluded that SAD refund would be available to assessee, even though no endorsement to the effect that "credit of duty is not admissible" was made on the commercial invoice.

Comments: It is important to note this LB ruling as it has allowed SAD refund, calling invoice endorsement condition only procedural and not mandatory.

VAT

Trade discount through credit notes after completion of sale not excluded from taxable income

In the case of Samsung India Electronics Ltd., Karnataka HC held that trade discount issued at month end after sale completion would not be allowed for deduction from taxable income under Karnataka VAT Act (KVAT).

HC observed that CESTAT order excluding the discount from taxable income was erroneous as the so called discount did not find any case in the tax invoice and was given after completion of sale, which was not acceptable.

In order to support the said finding, complete reliance had been placed on its coordinate bench ruling in Southern Motors [W.A.Nos.57695-785/2012], wherein it was observed that, ""*once the sale invoice is issued and the sale price is collected along with tax, the aggregate of such sale constitutes the total turnover and the tax is payable on taxable turnover. To arrive at the taxable turnover what are the deductions that are legitimately be made ii provided under Rule 3(2) of the Rules. One such permissible deduction is that the amount paid by way of discount provided that the discount is reflected in the sale invoice. Accordingly, by issuing a credit note after receiving the amounts, of course, before filing the returns it cannot be said that the amount of discounts goes outside the purview of the turnover.*"

HC stated that the above ruling is under challenge before SC and assessee would be entitled to the benefit only when the apex Court decides in favour of assessee.

HC thus denied deduction of trade discount made through credit notes issued after completion of sale.

Comments: The said ruling has denied deduction of trade discount made through credit notes after sale completion. However, the issue is still contentious as the ruling on similar issue is under challenge before the Apex Court.

Food / Beverages supply in factory canteen amounts to 'sale', taxable @ 12.5%

Division Bench of Karnataka HC in a recent ruling TVS Motors Co. Ltd. vs. State of Karnataka, held that supply of food and beverages at subsidized rates in factory canteen would amount to 'sale' and would be taxable @ 12.5%.

HC interpreted definition of Business u/s 2(6)(b) of KVAT Act and pointed out that running of canteen is in connection / ancillary / incidental to assessee's main business of manufacturing two wheelers

Further, HC rejected assessee's contention that running a canteen is a welfare measure under Factories Act and that the food / beverages sold in the canteen is on non-profit basis. In order to support this, HC placed reliance on SC ruling in BURMAH Shell Oil Storage & Distributing Company of India, wherein it was held that the proof of profit-motive is unnecessary to constitute a business and that the transaction of supply of food and drink to the workers in the Canteen maintained by the assessee in pursuance of the Factories Act and Rules, were sales and constitute business for the purpose of the Act. HC thus stated that when once there is a transaction of sale, irrespective of profit or loss, the said transaction has to be shown in the returns.

In light of the above, HC concluded that supply of food / beverage in factory would fall under the definition of 'Business' and 'sale' and therefore, would be taxable @ 12.5%.

Comments: The said decision would be of great relevance for manufacturers as HC has interpreted the definition of 'Business' post amendment and in view of that, running factory canteen would be construed as something incidental to manufacturing business.

EOU

Finance Ministry exempts goods cleared by EOU into DTA from education cess and secondary & higher education cess

Ministry of Finance vide. Notification No. 18/2014-CE dated July 11, 2014, exempted DTA clearance of goods by EOU / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) from Education Cess.

Further, exemption of secondary & higher education cess was also granted to EOUs, EHTPs and STPs.

Comments: The said notification has come as a relief to EOUs / STPs as now the tax burden will be lower on them while clearing goods into DTA.

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