Indirect Tax News Update

VOLUME III, ISSUE VII

JULY, 2016

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Service Tax

No Krishi Kalyan Cess where services completed & invoice issued before May 31st

Notification No. 35/2016 -ST **June 23, 2016**

Recently, Finance Ministry notified that the exemption of all taxable services from whole of Krishi Kalyan Cess where invoice has been issued on or before May 31, 2016. Such exemption is subject to the condition that provision of service has also been completed on or before May 31, 2016.

Comments: This CBEC clarification has come as a relief to service providers.

'Service-exporters' CENVAT credit refund scheme is complementary to general parameters

CBEC Circular No. 195/05/2016-ST **June 16, 2016**

CBEC vide Notification No. 195/05/2016 –ST clarifies that applicability of CENVAT Credit Refund Scheme, introduced by vide Circular No. 187/6/2015-ST for service exporters, is meant to complement and operate within general parameters of Notifications governing accumulated CENVAT credit refunds under Rule 5 of CENVAT Credit Rules and same would apply to refund claims filed on or before March 31, 2015 and which have not been disposed of as on the date of issue of Circular, remanded claims are out of the scheme's purview.

It has been clarified that the Statutory Auditor's Certificate (for companies) / CA Certificate (other) to be submitted in addition to documents required to be filed along with the claim, is not a substitute for verification by refund sanctioning authority and that no Certificate can be furnished by a Cost & Management Accountant or Company Secretary.

Further, the authorities can not reject the Certificate furnished by auditors on ground of any disclaimers which they have to give owing to ICAI Guidance Notes, as long as averments contained in the annexed format to said Circular are present .

Comments: It has clarified that benefit of Refund Scheme would also apply to pre 2015 claims as well.

Senior Advocate's services upto turnover of Rs. 10 lakh has been exempted.

Notification Nos. 32/2016-ST, 33/2016-ST & 34/2016-ST
All Dated June 6, 2016

Recently, Finance Ministry notifies that legal services provided by Senior Advocates to any person other than business entity and to business entity with turnover upto Rs. 10 lakh turnover in preceding FY under Notification No. 25/2012-ST would be exempted.

The Finance Ministry amended Rule 2(1)(d) of Service Tax Rules and Notification No. 30/2012-ST so as to specify 100% service tax liability on service recipient i.e. business entity in respect of representational services provided by Senior

Advocates before any Court, Tribunal or any Authority : Finance Ministry Notifications.

Comments : It is a welcome decision by Finance Ministry as levy of Service Tax on ordinary person made to Justice delivery a costly affair.

Post 2011, Credit refund allowed on office renovation works, Association membership

Recently, the CESTAT in Alliance Global Services IT India Pvt. Ltd. vs. CCE & ST Hyderabad-IV , has allowed CENVAT credit in respect of manpower recruitment or supply agency, cleaning, renting of immovable property, club or association, commercial training or coaching, courier, Customs House Agents, management, maintenance or repair, telecommunication and works contract services post April 2011

CESTAT rejected Revenue's stand that since aforesaid services have no nexus with Services exported by assessee , it would not qualify as 'input services'. Further, upheld that membership in Associations like American Chamber of Commerce would not fall in exclusion portion of "input service " definition. Further, noted that activity of renovation, repair of premises, which includes, fixation of doors, locks, glass windows & polishing would also fall within the ambit of "input services".

Comments : The ambit of "input services" has been widened and CENVAT Credit on renovation, associate membership has been allowed. This ruling clarifies the position and is helpful for the Industry.

Service Tax leviable on 'Preferential Location Charges', however no Service Tax leviable on 'value of undivided share of land

Recently, Delhi HC in Suresh Kumar Bansal & Anr, vs. Union Of India, held that service tax would be leviable on services of construction of residential complex and on preferential location charges collected by builder / developer. Further, HC observed that in absence of machinery provision for ascertaining the service element involved in composite construction contract involving sale of land the levy would fail.

HC, clarified that service tax cannot be levied on the value of undivided share of land acquired by a buyer of a dwelling unit or on the value of goods which are incorporated in the project by a developer. Further, noted that the measure of tax must have a nexus with the object of tax and it would be impermissible to expand the measure of service tax to include elements such as the value of goods because that would result in extending the levy of service tax beyond its object and would impinge on the legislative fields reserved for the State Legislatures.

HC, accepted that the Explanation inserted u/s (115) (zzzu) of Finance Act 2010 deeming construction of complex intended for sale as a taxable service but the Rule 2A of Service Tax (Determination of Value) Rules, 2006 which provides the mechanism to ascertain value in case of composite works contracts, does not cater to determination of value of composite construction contracts.

Further, rejected the Revenue's plea that abatement of 75% indicates exclusion of value of immovable property as well as property in goods incorporated in the works, states that such abatement cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.

Comments : This is a welcome decision as no levy can be imposed without clear provisional backing. Thus, rule of law upheld.

Strikes down Rule 5A(2) of Service Tax Rules 1994, empowering Officers to summon audit reports, a check on Executive over-reach

Recently, Delhi HC in Mega Cabs Pvt Ltd, vs. Union of India, struck down Rule 5A(2) of the (as amended by Dec. 2014 notification) to the extent it empower Service Tax Department officers, audit party deputed by Commissioner or CAG to seek production of cost audit / income tax audit reports on demand. Holds Rule 5A(2) to be ultra-vires Sections 72, 72A, 73 & 82 of Finance Act,

Analyzing the Sec 72, HC observed that the AO cannot 'mechanically' call for accounts, documents & other evidences even if there was a prima-facie satisfaction that the return filed by the assessee fails to assess the tax in accordance with law; Further noted that under Sec. 72, not every officer of the Department can exercise such power

Delhi HC Accepted the contention of petitioner that Rule 5A(2) empowers an Officer of the Department to simply demand production of documents without any requirement of recording reasons or without any authorisation to carry out search u/s 82 or an assessment u/s 72 of Finance Act.

Further, quashed CBEC Circular No. 995/2/2015-CX prescribing detailed norms to be followed by Audit Commissioners, states that Circular does not have any statutory backing under Finance Act and the Audit would only be carried out by duly qualified persons like Cost Accountant or a CA and not by any officer in terms of Sec 92(4)(k).

Comments: this decision is good for the industry as now audit would only be done by persons like Cost Accountant or a CA, and not by officers of department, reduces the hardship for Tax Payers.

No Service Tax on Construction of academic complex, gives relief to IIT

Patna HC, in Shapoorji Paloonji & Company Pvt. Ltd. vs. CCE&ST, Patna and Others, exempted the construction of academic complex of IIT from levy of Service Tax in terms of Notification No. 25/2012-ST r/w Notification No. 2/2014-ST.

Further, rejected the Revenue's contention that as per Article 243W of Constitution for an institution to qualify as "Governmental Authority", 90% or more participation by way of equity / control to carry out any function entrusted to municipality. Concluded, that IIT had been set up by an Act of Parliament, viz. Institutes of Technology Act, as an institute of national importance under Article 248 of Constitution r/w List I of Seventh Schedule

Comments : considering the national educational institutions under the ambit of "Governmental Authority" and exempting them for levy of Service Tax is a welcome step.

Central Excise

Brand name & RSP affixation on readymade garments essential to tax retail-outlets

Circular No. 1031/19/2016-CX **June 14, 2016**

Finance Ministry vide Circular No. 1031/19/2016-CX, clarified that Excise duty would be leviable on the readymade garments and articles of textile bearing or sold under a brand name and having RSP of Rs. 1000/- or more. Further, liability to excise duty will arise only if retailer, who purchases such garments from open market, affixes a brand name and a label of Rs. 1000/- or above.

Further, Ministry clarified that no excise duty liability would arise if RSP is less than Rs. 1000/-, or aggregate value of clearances for home consumption is less than Rs. 1.5 Cr in a year (provided such aggregate value in previous FY was less than Rs. 4 Cr..

Comments: it would make the branded cloths costlier and would affect both retail market and the consumers.

Optional single registration & return for first stage dealers and importers

Notification No. 30/2016-CE (N.T.) and Circular No. 1032/20/2016-CX **June 28, 2016**

Central government vide Notification No. 30/2016-CE (N.T.) and Circular No. 1032/20/2016-CX, clarified that first stage dealer and importer have option of single registration and return. As per Notification, assessee who conducts business as first stage dealer would be exempt from taking separate registration as an importer and vice versa; However, same is optional and any assessee needing separate registration for his own business purposes may so register; This is so as credit chain becomes shorter when an importer operates also as first stage dealer; Moreover, such assessees henceforth shall have option to file single quarterly return giving details of transactions as first stage dealer and importer in one single table .

Comments : This is a welcome move by the Government as option of single registration & return for first stage dealers and importers would give additional option / choice to dealers.

Right of appeal not absolute, condition of pre-deposit u/s 35F would apply retrospectively to show cause proceedings.

Recently, Madras HC in Dream Castle and Anr. vs. Union of India and Ors., uphold the mandatory pre-deposit requirement in terms of Sec 35F of Central Excise Act r/w Sec 83 of Finance Act and refused the plea to amend Sec 35. Observed that right of appeal neither absolute nor ingredient of natural justice, but mere statutory right which can be circumscribed by conditions in grant.

It has been clarified that If one condition already available in the statute for exercise of right of appeal, is merely replaced by another condition, same cannot be said to be retrospective unless amended condition is more onerous. Accordingly, the amendment did not take away a right vested, but merely made a chance divested.

Comments : This decision conditioning pre-deposit would come harsh on the Industry.

Non-reversibility of CENVAT credit on capital goods removed 'after use' prior to 2007

CESTAT in HI-REL Components (I) Ltd. vs. Commissioner of Central Excise, Pune-II, has ruled out reversal of CENVAT credit on removal of capital goods from factory after being put to use, prior to 2007; Rule 3(5) of CENVAT Credit Rules (CCR) 2004, as it stood then, contemplated credit reversal upon removal of capital goods / inputs 'as such'.

Rejected the Revenue's contention that expression 'as such' will include both used as well as unused capital goods and clarified that till the was amended vide Notification No. 39/2007-CE(NT), no liability to pay duty arose in respect of used capital goods.

Comments : This ruling has amply clarified that till the amendment there was no liability to pay duty on used capital goods and therefor it is a welcome decision.

EOU's DTA-sale beyond permitted limit dutiable per Schedule rates

Recently, SC in Sarla Performance Fibers Limited & Others vs. Commissioner of Central Excise, Surat, ruled that EOU is liable to pay excise duty as per Sec 3(1) of Central Excise Act on sale of goods in India without Development Commissioner's permission prior to May 11, 2001. Rejected the Revenue's stand based on CESTAT Larger Bench ruling in Himalaya International Ltd, that such sale would be governed by proviso to Sec 3(1) whereby excise duty equivalent to aggregate of customs duties would be leviable thereon.

Further, SC noted the another bench's decision in SIV Industries Ltd and resultant CBEC Circular No. 618/9/2002-CX where it was clarified that clearances from EOUs if not "allowed to be sold" in India, shall continue to be chargeable to duty under main Sec 3(1) of Central Excise Act and observed that CBEC took into consideration that expression "allowed to be sold" in proviso to Sec 3(1) had been replaced with "brought to any other place" w.e.f. May 11, 2001 and same was in consonance with Apex Court decision, hence distinction by CESTAT Larger Bench and subsequent withdrawal of said Circular vide Circular dated January 5, 2004 clearly an erroneous approach.

Comments: This decision is yet another important decision with regards to the importance of adjudication orders.

Customs

CBEC dispenses with requirement of payment of interest prior to allowing extensions of warehousing period

CBEC Circular No. 23/2016–Cus **June 1, 2016**

CBEC dispenses with the requirement of payment of interest prior to allowing extensions of warehousing period as prescribed vide Circular No. 47/2002-Cus, in view of the stipulation of furnishing bank guarantee as security. Furthermore, states that there would be no need to issue demand notice for payment of interest upon the importer, as provided vide Circular No. 10/2006-Cus; Interest, if any, shall be paid at the time of ex-bonding of goods from the warehouse.

Comments: It will help the importers, who now can easily extend the period of warehousing.

No security for initial 1 year of warehousing on specified importers & strategic goods

Circular No. 21/2016-Cus **May 31, 2016**

Recently, CBEC has waived the requirement of 'security' for warehousing u/s 59 of Customs Act for certain categories of importers / industries with long gestation / goods of strategic importance. Accordingly, imports by Central Govt. / State Govt. / UT administration or their undertakings, machinery, equipment & raw materials imported for manufacture and installation of power generation units, project imports, goods warehoused and sold through Duty Free Shops and import of petroleum products, will not require furnishing of security in addition to bond.

It further, clarifies that importers under Accredited Clients Program or approved as Authorised Economic Operators shall be required to provide security, further, this Circular shall not apply to EOUs, EHTP units & STPI units. Goods permitted to be warehoused, other than sensitive goods like alcoholic beverages, cigarettes and tobacco products, shall require no security for the initial period of 1 year but subsequent extensions in warehousing period will be subjected to security by way of bank guarantee. Also quantum of security in case of sensitive goods will depend upon type of warehouse, viz. public or private bonded warehouse, clarifies CBEC while stating that security shall be furnished by importer or owner of goods at the port of import where Bill of Entry for warehousing was filed.

Comments : This clarification has come as a relief and is a right step towards making India a manufacturing hub.

Allows duty drawback of BCD regardless of payment through DEPB scrip during import

Recently, the Gujrat HC in Ratnamani Metals and Tubes Ltd. and Others vs. Union of India and Others, allowed duty drawback of Basic Customs Duty (BCD) on export of final product, though import duty on inputs and raw materials utilized therein paid through debit in Duty Entitlement Pass Book (DEPB) scrip. HC notes that as per Sec 75(1), Central Government is empowered to make Drawback rules.

Further, HC noted that as per Rule (3) of the Drawback Rules, drawback will be allowed on export of goods at such rates as may be determined by the Central Government. Further, HC also noted proviso to Rule 3 specifies the categories where drawbacks are not allowed. HC observed that none of those categories include the payment of customs duty on the goods through DEPB scrip. Therefore, no restriction is provided under Customs Act / Drawback Rules.

Also, notes that DEPB scheme aims at neutralizing the incidence of customs duty on import component of export product, where upon export, duty credit would be given at specified percentage of FOB value of the exports. Such credit could be utilized for payment of duty in future or may even be traded. Further, HC relied upon the SC judgment in Liberty India vs. Commissioner of Income-tax [17 ITR 218], where it was observed that "DEPB being an incentive which flows from the scheme framed by the Central Government, hence, incentives profits are not profit derived from the eligible business and belong to the category of ancillary profits of the undertaking. Such incentive in the nature of DEPB benefit from the angle of the income tax has been seen as income of the undertaking".

Moreover, HC stated that imports under different incentive schemes substantially stand on the same footing and observed that in case of FMS, purpose of FMS was to offset high freight cost and other externalities to select International markets to enhance India's export competitiveness in these markets. Thus disqualifying the assessee from such duty drawback would amount to denying of benefit of the export incentive scheme itself.

Further, SC applied Constitution Bench's ratio in K.G. Khosla & Co. that movement of goods from another country to India should be in pursuance of conditions of contract in order to invoke Sec 5(2) of CST Act, and Apex Court ruling in South India Viscose Ltd that if there is a "conceivable link" between contract of sale and movement of goods from one state to another to meet the obligation thereunder, it would amount to inter-state sale.

Comments : There was no indication therein regarding Rules being interpreted erroneously and it is a welcome decision.

Unsustainability of Preferential rate denial on Jewellery imported from Indonesia absent origin verification

Telangana & Andhra Pradesh HC in a recent Judgment in Noble Import Pvt. Ltd. vs Union of India, sets aside order denying preferential customs duty benefit (Nil rated) on import of gold jewellery from Indonesia under ASEAN-India Free Trade Agreement (AIFTA), in terms of Notification No. 46/2011-Cus.

Further, HC sustained maintainability of writ petition in view of alternative appellate remedy, and observed that without conducting a retroactive check as to the origin of goods in terms of Clause 16 of Annexure III to Customs (Provisional Duty Assessment) Regulations, 2011, competent authority cannot pass an adjudication order. Observed that Revenue has violated the principles of natural justice by not making available documents relied upon while passing the order.

However, refuses to pass direction for release of goods upon payment of 30% of provisionally assessed duty with security for remaining 70% as in the case of Mahadev Metaliks Pvt. Ltd., or upon furnishing bank guarantee for 30% of differential duty as in the case of Navshakti Industries Pvt Ltd., in view of discretion accorded to competent authority under Regulation 4 of said Regulations, enabling him to require execution of bond with such surety / security / both, as he deems fit; Clarifies that CBEC Circular dated October 6, 2015 does not fetter exercise of such discretion regarding sum to be deposited by assessee-importer, since Circular requiring 100% bank guarantee has no bearing on "not wholly obtained jewellery imported from Indonesia"

Comments: This decision boosts and encouraged the importation form countries with which Indian government have some special trade related Agreement.

VAT

No set-off on plant & machinery under works contract resulting into immovable property

Recently, .Maharashtra Sales Tax Tribunal in Saroj Iron Industries & Another vs. State of Maharashtra, upholds rejection of set-off claimed under Rule 54(g) of MVAT Rules towards purchase of plant & machinery during execution of works contract in respect of windmills for electricity generation.

On scrutiny of tax invoices raised by contractor, viz. Suzlon Infrastructure Ltd during the period April 1, 2005 to March 31, 2006, Tribunal holds that such purchases resulted into immovable property i.e. the plant & machinery were permanently embedded in the earth / attached to things embedded in earth. Further, notes coordinate bench ruling in Priyadarshini Polypacks which held that amendment to Rule 54(g) inserting the words "other than plant and machinery" was not retrospective w.e.f. April 1, 2005 but only prospective from September 8, 2006. Consequently, ruling out application of Rule 53(7B) relating to reduction of set-off, Tribunal observes that till September 8, 2006, even if purchases effected by assessees were presumed to be not plant & machinery, they would not be entitled to any set-off.

Comments : Tribunal rightly said that Law cannot apply retrospectively.

TDR against tenements construction under slum rehabilitation scheme, taxable

Maharashtra Sales Tax Tribunal in Sumer Corporation vs. The State of Maharashtra, sustained the levy of VAT on Transferable Development Rights (TDR) received towards construction of buildings and tenements for Slum Rehabilitation Authority. Further, Tribunal relied upon on SC judgment in Larsen & Toubro Ltd, Tribunal observes that tripartite agreement, where under assessee had taken up building work on land acquired for development, constitutes 'works contract' involving transfer of property in goods

Also, Rejected assessee's contention that said transaction was barter / free of cost / without consideration and hence non-taxable, notes that u/s 2(24) of MVAT Act, the term "other valuable consideration" includes anything that directly / indirectly fetches some element of money and in present case, TDR was encased by assessee subsequently; Distinguishes Chheda Housing Development vs. Bibijan Shaikh Farid which held TDR to be purely for immovable property, states that in present case, TDR was received not only for land but also for all other services and building construction. However, holds that as per said Larsen & Toubro judgment, what is taxable is value of goods at the time of incorporation in works contract, hence taxing entire amount received by way of sale of TDR by treating it as value of entire contract by Assessing Authority is bad in law.

In absence of specific contract value in the instant case, value would require to be ascertained as the price that would fetch on date of agreement if tenements were sold in open market as per stamp duty ready-reckoner under Bombay Stamp Act. Thereafter, value of goods at the time of transfer during execution of works contract would be determined by applying deductions envisaged under Rule 58 of MVAT Rules. Thus, directed the Appellate Authority to rework applicable tax while clarifying that liability would arise not from date of contract, but from June 20, 2006 when Sec 2(24) and Rule 58 were retrospectively amended pursuant to SC directions.

Comments : It is another important and welcome decision as it will result in importation of machinery which is right step towards making India a manufacturing hub and will benefit importers of said items.

Reconstruction scheme pending before BIFR cannot obliterate pre-deposit condition for VAT appeal

Recently, Gujarat HC in Hynoup Food and Oil Industries Ltd vs. State of Gujarat, Affirmed the power of VAT Tribunal to impose condition of pre-deposit and subsequently dismissed the appeal for non-fulfilment thereof, despite pendency of application before Board for Industrial & Financial Reconstruction (BIFR) or Appellate Authority for Industrial & Financial Reconstruction (AAIFR) for status of 'sick company'.

Further, HC Rejected the assessee's contention that since scheme for reconstruction was pending before AAIFR, no condition of pre-deposit could be imposed in terms of Sec 22(1) of Sick Industrial Companies (Special Provisions) Act [SICA]. Observed that right to appeal u/s 73 of Gujarat VAT Act is conditional upon assessee satisfying the requirement of pre-deposit, provided same can be waived by Appellate Authority at his discretion and the condition of pre-deposit was neither a proceeding for execution, distress or the like against properties of company nor can it be equated with any proceedings for recovery in the nature of suit and therefore, would fall outside the scope of Sec 22(1) of SICA.

Furthermore, relying upon SC ruling in Indian Maize & Chemicals Ltd., HC observed that pendency of any proceedings before BIFR / AAIFR by itself would not obliterate condition of Sec 73 (4) of Gujarat VAT Act, however, reduces the pre-deposit amount to 10% considering assessee's financial condition

Comments : Imposition of pre-deposit condition while pendency of application before BIFR would be harsh on the already liquidity stressed assessee.

SC LB to decide levy of sale tax on food / beverages by Clubs to its Members

SC refers to Larger Bench on the question of levy of sales tax on provision of food and beverages by incorporated clubs to its permanent members. Also, referred the issue of applicability of doctrine of mutuality to incorporated clubs or any club after 46th amendment to Article 366(29A) of Constitution.

Further, SC noted the Calcutta HC's view that members collectively are the real life and club is a mere superstructure, therefore mere fact of presentation of bills, non-payment thereof and consequent striking off club membership, would not bring club under sales tax net.

SC has viewed, that although decisions in Cosmopolitan Club and Fateh Maidan Club have drawn distinction as to when a club acts as members' agent and when property in goods is sold, i.e. property in food and drinks is passed onto members, same do not elucidate and clearly expound, when club could be stated as acting as an agent and therefore, not be construed as party which had sold goods.

Furthermore, SC observed that "the agency precept necessarily and possibly refers to a third party from whom the goods, i.e., the food and drinks had been sourced and provided to by the club acting as an agent of the members, to the said members. These are significant and relevant facets which must be elucidated and clarified so that there is no ambiguity". In view thereof, SC referred the question of whether Young Men's Indian Association still hold field even after 46th amendment and whether decisions in Cosmopolitan Club and Fateh Maidan Club, which remitted the matter applying doctrine of mutuality after constitutional amendment be treated to be stating correct principle of law.

Comments : It is important to note that there is no provision in VAT Act or the Rules which allows levy / exemption of Sales Tax on the permanent members of the Clubs. Moreover, imposing the Sales Tax would be harsh on the permanent membership.

Customs Dept. a "dealer", upholds sales tax on confiscated goods

Patna HC, in Customs Department, Patna vs. State of Bihar & Anr, confirmed the levy of sales tax on public auction of confiscated goods which are imported in contravention of Customs law, holds Customs Dept. as "dealer" u/s 2(e) of Bihar Finance Act 1981; Rejects Customs Dept.'s contention that sold goods are property of Union and therefore, exempt from State taxes in terms of Article 285 of Constitution, while Article 289 bars Union from levying tax on property and income of State; Refers to SC decision in Sea Customs Act case where majority of 9-Judge Bench opined that exemption of property from tax contemplated in Article 289 is confined to direct tax and not to levy of indirect taxes like customs duty, excise duty and sales tax; Further relies on SC judgment in Karya Palak Engineer, CPWD where it was observed that although ratio in Sea Customs was laid down in context of Article 289, same would apply to exemption under Article 285 in full force; However, remits to Assessing Authority question of penalty and interest on account of non-filing of returns and non-production of books of account.

Comments: It is another fine example of curative interpretation of the provisions of the Constitution by the HC.

FTP

Restrictions on alienation of goods imported under SFIS violative of FTP provisions

Delhi HC, in Greatship (India) Ltd. vs. Union of India and Ors., quashed the Notification No. 91/2009-Cus, restricting the transfer / sale of goods imported using 'Served From India Scheme' (SFIS) duty credit scrips, on account of violation of Foreign Trade (Development & Regulation) Act, Foreign Trade (Regulation) Rules as well as FTP 2004-09 and FTP 2009-14.

Observes, "The FTDR Act, FTR Rules, the FTP and the HBP are a complete code governing the SFIS…. They ought to be operationalised in a manner that is coordinated and harmonious and not at cross-purposes…", Para 3.12.7 of FTP 2009-14 has been amended in exercise of powers u/s 5 of FTDR Act w.e.f August 1, 2013 to permit alienation of imported goods after 3 years from date of import. Thus, such denial of permission would attract the vice of impermissible discrimination in terms of Article 14 of Constitution particularly since it is based on no rational basis, and in fact, contradicts the intent expressed in relevant paras of FTP 2004-09 and HBP.

Comments: It is trite law that if procedural norms prescribed by an authority are in conflict with the Policy, then the latter will prevail and procedural norms to that extent, are liable to be held to be bad in law.

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