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- Clarifications by the Board on levy of Service Tax on Freight Forwarders and on hiring/leasing of goods.
- Anti-Dumping Duty levied on various products imported/originating from China.

& more...

EXCISE LAWS

Notifications and circulars

- Notification No. 32/2016-CE, dated 26.08.2016 seeks to prescribe 2% Basic Excise Duty at a concessional rate on Aviation Turbine Fuel drawn by operators or cargo operators from the Regional Connectivity Scheme (RCS) airports for a period of 3 years by seeking to amend Notification no 12/2012-Central Excise dated 17.03.2012.
- Notification No. 30/2016-CE dated 10.08.2016 seeks to further amend notification no. 12/2012 dated 17.03.2012 so as to withdraw the excise duty exemption on ethanol produced from molasses generated in the sugar season 2015-16 for supply to the public sector OMCs for blending with petrol.
- Vide Notification No. 41/2016-CENT, dated 10.08.2016 CBEC seeks to amend CENVAT Credit Rules, 2004 so as to withdraw the facility to avail of CENVAT credit of duty paid on molasses generated in the sugar season 2015-16 which is used for producing ethanol for supply to public sector OMCs for blending with petrol by omitting rule 6(6) (ix) of the CENVAT Credit Rules, 2004.



Judgements

- In the case of SML Isuzu Ltd. vs. Union of India {[2016] 72 Taxmann.com 107 (Delhi)} the assessee challenged the retrospective validation of law with regards to Section 37(2) (xxviii) of Central Excise Act, 1944, where the Central Govt. has rule making powers to make rules for lapsing of accumulated credit. The High Court held in the favour of Revenue that as Rule 57F(4A) of Central Excise Rules, 1944 (as retrospectively validated vide sections 131 and 132 of Finance Act, 1994) was a part of scheme for rationalisation of inverted duty structure to ensure that accumulated credit does not lead to reduced collection of revenues; hence, said rule and validation sections providing for lapsing credit were rational/reasonable.
- In the case of T.T. Recycling Management India (P.) Ltd. {[2016] 72 Taxmann.com 329 (AAR-New Delhi)}, the assessee appeared before The Authority for Advance Ruling (Central Excise, Customs & Service Tax), New Delhi seeking an advance ruling on whether the activity of mixing Low Manganese and High Manganese scraps into homogeneous products as per customer specifications amounts to manufacture? AAR held that blended steel scrap is not put to same use to which unprocessed steel scrap is put and vice versa. The processing results into input (unprocessed stainless steel) losing its identity and new commodity (blended stainless steel scrap) coming in existence - Since a distinct product with distinct name/identity and use comes into existence, process amounts to manufacture.

SERVICE TAX

Notifications and circulars

- Notification No. 38/2016-Service Tax dt. 30.08.2016 seeks to amend Notification No. 26/2012-Service Tax dt. 20.06.2012 by allowing an abatement of 90% to passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport. However, the notification also states that no CENVAT Credit shall be allowed on inputs, capital goods and input services. This step is a boost to increase air connectivity in the nation.
- CBEC issued a Circular No. 197/07/2016-ST on 12.08.2016 for File No. 137/54/2016-Service Tax-Part I, stating that as per the Place of



Provision of Services Rules, 2012 and other provisions of the Service Tax Act, 1994, Freight Forwarder if an acting as an agent of the principal transporter will be subject to service tax

only on the services provided by him as a freight forwarder and not on the actual service of transportation. However, if he is acting as a principal, no service tax shall be levied on him if the destination of the goods is from a place of in India to a place outside India.

- CBEC issued a Circular No. 198/08/2016-ST on 17.08.2016 for File No. 137/54/2016-Service Tax-Part-II, clarifying the issue related to service tax liability on hiring of goods (without the actual transfer of rights to use

the goods). The department has clarified that such transactions involving hiring, leasing, etc. should be examined on case to case basis for determining the service tax liability. The Department further referred to the celebrated case of BSNL vs. Union of India 2006(2) STR 161 SC, in this regards and outlined the following non- exhaustive guidelines to determine whether a transaction involves transfer of right to use goods:

- There must be goods available for delivery
- There must be a consensus ad idem as to identity of goods
- The transferee should have a legal right to use the goods

Thereby, the department states that in all cases of hiring/leasing no a priori generalisations or assumptions about service tax liability should be made and the terms of the contract should be carefully vetted.

Judgements

- In the case of Federation of Hotels & Restaurants Association of India vs. Union of India {[2016] 72 taxmann.com 161(Delhi)} the Delhi High Court has shed clarity on the Service Tax on restaurants levied under Section 65(105)(zzzzv) or Section 66E(i) of the Finance Act 1994. The High Court upholds the constitutionality of the above mentioned sections and Rule 2C of the Service Tax(Determination of Value)Rules, 2006. Therefore levy of service tax on restaurant sales and also the valuation of 40% of the amount is valid , however if the assessee maintains records determining the actual value of service portion, then Rule 2C will not apply.
- In the case of Carlsberg India(P.) Ltd. vs. Union of India {[2016] 72 Taxmann.com 157 (Delhi)} the Honbl' Delhi High Court was presented with the problem of determining whether job work in the nature of

manufacturing, brewing and bottling of alcohol for human consumption will fall in the ambit of Service tax or will be taxed under State Excise. The Court held that the levy of service tax on 'manufacturing of alcohol on job-work basis' is valid and, therefore, same is not hit by Entry 51 of State List of Schedule VII of the Constitution.

CUSTOMS

Notifications and Circulars

- Notification No. 45/2016-Cus dated 23.08.2016 provides exemption for import of fabrics under Special Advance Authorisation Scheme under Para 4.04A of FTP 2015-20 for manufacture and export of garments. The said notification came into force on the 1st day of September, 2016.



- CBEC has extended the levy of anti-dumping duty on imports of various items imported from or exports originating from China. The following tables summarizes such goods with relevant Notification Numbers.

Sl. No.	Items/Particulars	Notification No.	Remarks
1.	Polytetrafluoroethylene (PTFE)	36/2016-Cus (ADD), dt. 02-08-2016	For a period of one year

2.	sewing machine needles	37/2016-Cus (ADD), dt. 04-08-2016	-
3.	Opal Glass Ware	38/2016-Cus (ADD), dt. 04-08-2016	-
4.	Sodium Nitrite	39/2016-Cus (ADD), dt. 08-08-2016	For a period of one year
5.	Rubber Chemicals, namely MBTS [Dibenzothiazole disulphide]	40/2016-Cus (ADD), dt. 08-08-2016	For a period of one year
6.	PVC Flex Film	42/2016-Cus (ADD), dt. 08-08-2016	For a period of five years

- Vide Notification No. 107/2016-Cus(NT) dt. 04.08.2016 and Notification No. 108/2016-Cus(NT) dt. 04.08.2016 the Board has ammended the Export Manifest(Aircraft) Regulations, 1976 and Import Manifest (Aircraft) Regulations, 1976 respectively.

Judgements

- In the case of Sterlite Industries (India) Ltd. vs. Central Board of Excise & Customs {[2016] 72 taxmann.com 328 (Madras)} the high court held that since various wings of revenue act closely and cohesevly towards avoiding loss thereof, therefore, there is no impediment to Customs Authorities issuing notice on basis of materials gathered/input received from Excise Authorities. Thereby, the High Court quashed the appeal of the assessee that the Excise Authorities cannot examine vioation under EXIM Policy or Customs law and notice issued by commissioner of customs at behest of the excise department was void.

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