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EXCISE LAWS

Notifications and circulars

- CBEC issued a circular, C. No. 1020/8/2016-CX on 11th March 2016, through which it has been settled that in the case of import of set top box provided to the ultimate customers free of cost, CVD shall not be leviable on the basis of Retail Sale Price. In view of the above, it has been clarified that the judgement of Hon'ble Tribunal in case of M/s Bharti Telemedia Ltd (supra), may be followed for assessment of CVD on imported STBs, where the circumstances are identical.

Case laws

- It has been held by the Apex court in the case of Union of India & Ors. Vs. Hamdard (Waqf) Laboratories, that interest u/s 11BB of Central Excise Act, 1944 on delayed refund, is payable on expiry of 3 months from date of receipt of application.
- In Kitex Ltd. Vs Commissioner of Central Excise (2016 -TMI 897-CESTAT-Bangalore), the tribunal held that CENVAT credit of inputs lying in stock, WIP and final products is not required to be reversed when final products become exempt from payment of duty in terms of Notification No. 30/2004-CE.

- Recently, The Chennai CESTAT, in Srinivasa Hair Industries Vs. CCE, Chennai II, (2006 (201) ELT 559) allowed refund of unutilized CENVAT credit under Rule 5 of CENVAT Credit Rules, absent possibility of utilization in future on account of closure of unit.
- In the case of Commissioner of Central Excise, Chennai II Vs. Shri. S.C. Rajan, the tribunal allowed Revenue's appeal, and held that packing together of components and manufactured parts in a carton box and clearance thereof as 'Gas Conversion Kits' (GCK), with the brand name of the company amounts to 'manufacture' in terms of Sec 2(f) of Central Excise Act and consequently chargeable to duty.
- In the case CCE Vs. Diffusion Engineering Ltd. (2016 (331) ELT 153), it has been held by the Mumbai Tribunal that the amount collected from dealers towards diaries and calendars should not be includible in the assessable value, as purchase of such material by dealers is optional and only a few dealers are buying them.
- It has been held by Delhi Tribunal that cost of 'mastering charges' collected from customers for producing specific holograms

should be includible in the assessable value. *Shriram Holographics Vs. CCE (2016 (331) ELT 612)*.

- In the case of *Ultraseal India Pvt. Ltd Vs. CCE (2016-TIOL-352-CESTAT-MUM)*, the Mumbai Tribunal held that where erection and commissioning of plant was undertaken on request of customers, charges collected towards the same were not includible in the assessable value.
- In *Shree Cement Ltd. Vs. CCE (2016 (332) ELT 759)*, the Delhi Tribunal held that the cable tray used for holding cables for a power distribution system was eligible for credit as an accessory of capital goods.
- In *West Coast Paper Mills Pvt. Ltd. Vs. CCE (2016 (332) ELT 847)*, the Bangalore Tribunal held that input credit was admissible on cement used in the construction of a chimney, which was a part of the pollution control system.
- In *Andhra Polymers Pvt. Ltd. Vs. CCE (2016 (332) ELT 831)*, the Bangalore Tribunal held that eligibility of credit had to be determined with reference to the dutiability of the final product

on the date of receipt of capital goods, and hence, credit would not be admissible if final products were exempt on the date of receipt of such capital goods.

- In *Steel Authority of India Ltd. Vs. CCE (2016 (332) ELT 825)*, the Delhi Tribunal held that input credit was admissible on goods transferred to a power plant owned by another entity within the factory premises, since such inputs were fully utilized in or in relation to the manufacture of electricity, which in turn was fully used by the appellants.

CUSTOM

Notifications and Circulars

- CBEC issued a notification, through which it notified India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016 w.e.f. date of publication in Official Gazette.

According to the notification so issued, the Director General [DG], either suo-moto or upon the receipt of application from the Domestic Producer, may investigate existence of serious injury/threat of serious injury to domestic industry as consequence of increased imports of goods into India in terms of

Trade Agreement and recommend adequate safeguard measure along with duration to prevent the same.

Final Findings shall be determined within 8 months, and the same, if affirmative, shall contain all information on matter of facts, law and reason which have led to conclusion; DG shall then issue a public notice recording final findings and send copy thereof to Central Govt. (CG) in Ministry of Commerce and Finance, Govts. of exporting State and other member States of Associations of Southeast Asian Nations, on receipt of which, CG may suitably amend notification issued u/s 25(1) of Customs Act i.e. suspend further rate reduction provided under trade agreement or increase rate of customs duty.

(Notification no. 37/2016-Customs (N.T.) March 4, 2016.)

- CBEC issued a notification, making changes in baggage rules. Superseding Notification No. 136/1990-Customs dated March 20, 1990, according to which articles exceeding specified limit shall be taxable @ 35% ad valorem. This rate of duty is now not applicable to certain goods like alcohol in excess of two liters.

(Notification no. 26/2016-Customs dated March 31, 2016)

- Suppressing the Notification No. 137/1990-Customs dated March 20, 1990, according to which specified persons after residing outside India for a particular period can import specified items up to specified limit (Rs.2,00,000/-or Rs.5,00,000/-) without payment of import duty, subject to conditions given in the notification, now CBEC has issued a notification according to which imports beyond that limit shall be taxable @ 15% ad valorem for items given in Table –II.

(Notification no. 27/2016-Customs dated March 31, 2016)

SERVICE TAX

Notifications and circulars

- As per Notification No. 21/2016, a change in Point of Taxation Rules has been made. According to the notification, where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

- Form ST-3 for Service tax return has now been revised. New form has been notified, after insertion of the Swachh Bharat Cess in the form, required to be paid for the period started from 1st January, 2016 (*Notification No. 2/2016-Service Tax dated 30th March, 2016*)

Case laws

- The Gujarat High Court, vide its' order dated 30.03.2016 in the case of Percy Cawas Kavina Vs. UOI Special Civil Application No. 4926 of 2016, has issued an ad-interim stay of Notification No. 18/2016-ST and Notification No. 9/2016 – ST with respect to the levy of service-tax on senior advocates.
- In the case of TAFE Ltd. (PSD iii) Vs. Commissioner of Central Excise, (Appeal No.ST/40331/2015), it has been held by CESTAT Chennai that gardening service is an input service for the manufacturer who is covered under the Factories Act read with Tamil Nadu Pollution Control Board Act and accordingly the appellants are eligible for input service on the gardening service. In the result, the impugned order was set aside and the appeal was allowed with consequential relief.
- In the case of TVS Motor Company Ltd. Vs. Commissioner of Service Tax (Appeal Nos. ST/42487 & 42488/2014), where assessee utilized the service tax paid on GTA services received as CENVAT to discharge the duty liability of other service, it has been held by the CESTAT, Chennai that a reading of Rule 2(l) and 2(p) would show that they cover two different situations and though their operations are totally different, yet, for the purpose of giving credit to the Service Tax payable from the Cenvat credit available, the recipient is also entitled to the same relief as a provider of the service. Thus, not finding any error in the reasoning of the Tribunal, that in the payment of Service Tax liability by the recipient of taxable service, such assesseees are also entitled to make use of Cenvat credit to discharge their liability under the Service Tax provisions, the CESTAT did not agree with the submission of the Revenue to set aside the order of the Tribunal.
- In the case of Reliance ADA Group Pvt. Ltd. Vs. Commissioner of Service Tax (Appeal no. ST/86341/15), it has been held by the CESTAT Mumbai that that activity of procuring services on behalf of Participating Group Cos. under 'cost sharing arrangement' is

not taxable as Business Support Services (BSS) u/s 65(104c) r/w 65(105) (zzzq) of Finance Act.

- The Mumbai CESTAT, in the case Magarpatta Township Development & Construction Co Ltd. Vs. Commissioner of Central Excise, Pune-III has held that income tax deducted at source (TDS) and paid to Govt. of India by assessee on amount remitted to foreign architect towards technical consultancy services is not liable to service tax.

According to the provision of section 67 of the Finance Act, "Value of Taxable Service" shall be the "gross amount" charged by the provider of service and the TDS deposited by the service recipient is from out of his own pocket, not charged by the provider of the service.

- Delhi CESTAT, in the case of, Usha International Ltd Vs CST, held that Service tax paid by transferee company (assessee) to transferor company (Jay Engineering works (JEW)) on royalty, where HC approved merger from prior date, is the 'service to self', and service tax is not payable on that. CESTATE granted refund thereof.

VAT

Notifications and circulars

Chandigarh

- W.E.F. 1 March, 2016, filing of online application for registration has been made mandatory. (Circular dated 15 March, 2016)

Daman and Diu

- W.E.F 8 March, 2016, Corporation Bank, Daman branch has been notified as authorized bank for payment of taxes, penalty, interest and any other dues. (Notification No. DMN/VAT 2015/201415/ 17/ DCVAT 2016 Dated 8 March, 2016)

Delhi

- Now it has been made mandatory that quarterly online return should be filed by affixing digital signature for following dealers:
 - Having gross turnover under VAT/CST during FY15 exceeded 50 lakhs for the tax period 1 January, 2016 to 31 March, 2016 and subsequent tax periods;

-Who are registered on or after 1 April, 2015 for the tax periods following the year during which their gross turnover exceeds 50 lakhs.

(Notification No. F.3 (643)/ Policy/ VAT/ 2016/ 15851597 Dated 1 March, 2016)

Himachal Pradesh

- W.E.F. 1 March, 2016, VAT rate on sale of all kind of concrete blocks including Autoclaved Aerated Concrete (AAC) Blocks, has been decreased from 13.75% to 5%. (Notification No. EXNF (10)5/ 2015 Dated 24 February, 2016).
- W.E.F. 1 March, 2016, VAT rate on sale of all types of cables viz. Industrial cables, high voltage cables, XL cables, PF cables, jelly-filled cables, optical fibrecables including household electrical wires and electrical cables has been increased from 5% to 9%. (Notification No. EXNF (10)5/2015 Dated 24 February, 2016)

Uttar Pradesh

- Sale of 'LED bulbs' have been made exempt from VAT, effective from 3 March, 2016,

(Notification No. K.A. NI2319/ XI9 (135)/ 12 U.P. Act 52008 Order (151) 2016 Dated 3 March, 2016).

- Sale of machinery operated by Bio-fuel, has been exempted from VAT for ten years from 12th September, 2015. (Notification No. K.A. NI2230/XI9 (205)/ 2014 U.P. Act 52008 Order (153) 2016 Dated 11 March, 2016)

Uttarakhand

- W.E.F. 4 March, 2016, every transporter who is transporting goods from any place in the State to any place within or outside the State is required to prepare a Lorry Challan. (Notification No. 126/ 2016/ 03(120)/ XXXVII (8)/ 2016 Dated: 3 March, 2016)

West Bengal

- Effective 15 March, 2016, procedure has been prescribed for obtaining registration within 1 working day of furnishing hard copy of completed application, along with necessary documents, including application fees and security payment details. (Circular No 2/2016 dated 15 March, 2016)

Case law

- In the case of Tata Power Delhi Distribution Ltd Vs. Commissioner of Sales Tax, Delhi & Ors [2016-TIOL-559-HC-DEL-VAT], it has been held by the Delhi High Court that a lease transaction occasioning the movement of goods from one state to another was an inter-state sale. It could not be construed to be an intra-state sale merely on the grounds that the goods were located within a particular state at the time of transfer of the right to use the goods.
- In the case of Maple Exports Pvt. Ltd. Vs. Additional Commissioner, Sales Taxes Central Refund Unit & Ors [2016-TIOL-538-HC-KOL-VAT], it has been held by the Calcutta High Court that an assessee seeking input tax credit was not liable to take any responsibility for his seller's valid registration.

Entry Tax

Notifications and circulars

Uttar Pradesh

- W.E.F. 3rd March, 2016, entry tax has been exempted on sugar manufactured during crushing season in 2015-16, subject to conditions mentioned in the notification.
(Notification No. 3411-FIN-CT1-TAX-0034-2015 dt. 09-02-16)

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