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EXCISE LAWS

Notifications and circulars

- Circular No. 1046/34/2016-CX dt. 16.09.2016 clarifies that Notification No. 23/2003-CE dated 31.03.2003 as amended, issued in respect of goods manufactured by EOUs and cleared in DTA, specifically exempts Central Excise duty when such manufactured goods are supplied to an Advanced Licence/Authorisation Holder. In fact, clearance from EOU or DTA unit to Advanced Licence/Authorisation Holder has been allowed without payment of Central Excise duty, as both the cases are of "Import substitution". In case of supply of goods to Advanced Licence/Authorisation Holder, the export obligation is cast upon the person holding Advanced Licence/Authorisation.
- Instruction vide F.No. 275/29/2016-CX.8 A dt. 21.09.2016 directs the field formations to closely monitor and ensure strict compliance with the conditions stipulated in the order of the Settlement Commission whereby as per sub section 2 of Section 32K of the Central Excise Act, 1944 ; Section 83 of the Finance Act, 1994 and sub section 2 of Section 127H of the Customs Act, 1962 the immunity granted to a person from prosecution, penalty and fine shall stand withdrawn if such person fails to pay any sums specified under the order of settlement within the stipulated time.

Judgements

- In the case of Commissioner of Central Excise & Customs, Surat- I v. Vandana Art Prints (P.) Ltd., {[2016] 74 Taxmann.com 158 (SC)}, the Tribunal confirmed duty demand of Rs. 40,44,720 but levied evasion penalty at Rs. 20,00,000. Department argued that penalty under section 11AC cannot be below duty-amount; hence, penalty be enhanced. The Honourable Supreme Court held that upon reading of Section 11AC of the Central Excise Act, 1944 read with section 78 of the Finance Act, 1994 and section 114A of the Customs Act, 1962, the Tribunal could not reduce penalty for an amount lesser than duty which has been upheld - Hence, penalty was enhanced to Rs. 40,44,720.



SERVICE TAX

Notifications and circulars

- Notification No. 45/2016-Service Tax dt. 30.09.2016 seeks to amend services provided by an educational institution to its students, staff and faculty, which are exempt from the levy of service tax, vide clause 9(a) of Mega Exemption Notification No. 25/2012-ST as amended by Notification No. 06/2014-ST dated 11th July 2014. The current notification has exempted the services of transportation, by an educational institution to its students, faculty and staff from the levability of Service Tax for the period 1st April, 2013 to 10th July, 2014. Here, it is worthwhile to mention that educational institutions, who have earlier discharged service tax liability on these services, can file refund claim within six months from 30th September, 2016 subject to other conditions mentioned in Section 11B of the Central Excise Act, 1944.
- Notification No. 44/2016-Service Tax dt. 28.09.2016 has amended Notification No. 30/2005-Service Tax dt. 10.08.2005 thereby increasing



the amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A. The revised limits are highlighted in the table below:

Sl.No.	Rank of the Central Excise Officer	Revised Limit
1.	Superintendent	Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)
2.	Assistant Commissioner or Deputy Commissioner	Not exceeding rupees fifty lakhs (except cases where superintendents are empowered to adjudicate)
3.	Joint Commissioner or Additional Commissioner	Rupees fifty lakh and above but not exceeding rupee two crores
4.	Commissioner	Without limit

- Notification No. 40/2016-Service Tax dt. 06.09.2016 seeks to amend Notification No. 25/2012-Service Tax dt. 20.06.2012 by seeking to substitute Entry 5 for clause (a) by specifying the meaning of religious

place. Earlier only the words 'religious place' were mentioned, however after the due amendment exemption shall be



available only to religious places which are owned or managed by an entity registered under Section 12AA of the Income Tax Act, 1961 or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income Tax Act or anybody/authority covered under clause (23BBA) of section 10 of the Income Tax Act.

Judgements

- In the case of *Makemytrip (India) (P.) Ltd. v. Union of India* {[2016] 73 taxmann.com 31 (Delhi)}, the honourable High Court of Delhi concluded that before making arrests under service tax, department must prima facie adjudicate demand and also grant hearing to assessee as to materials collected; however, in case of habitual tax-evaders, arrests may be made straightaway, but, subject to review of past conduct and only after recording prima facie view as to how assessee is a habitual tax-evader.
- In the case of *Union of India v. Mega Cabs (P.) Ltd.* {[2016] 73 Taxmann.com 402 (SC), Judgment of Delhi High Court quashing rule 5A(2) of Service Tax Rules, 1994 and holding service tax audits as

invalid, has been stayed by Supreme Court; hence, for time being, service tax audits will continue. Rule 5A(2) was amended w.e.f. 5-12-2014 authorising officers of Service Tax Department or audit party to seek production of documents on demand and Circulars 181/7/2014-ST and Circular 995/2/2015-CX were issued power of audit and audit norms. Assessee challenged said rule and Circulars on ground that there is no power of audit with service tax authorities and chartered or Cost Accountants can conduct only audit under Section 72A.

High Court held that, (A) there is no general power with service tax authorities to conduct audit; (B) word 'verify' in section 94(2)(k) empowers verification of records and does not empower 'audit' of records, as audit is an specialized function and cannot be entrusted to any and every officer of department; (C) moreover, 'records' would mean 'records' required to be kept under rule 5(2), therefore, rule 5A(2) requiring even furnishing of 'audit reports' exceeds mandate of 'records'; and (D) hence, Rule 5A(2) and two Circulars were ultra vires and quashed.

On Revenue's Special Leave Petition before Supreme Court, it was HELD and the court directed that a Notice be issued in the petition - In meanwhile, there shall be a stay of operation of judgment of the High Court.

CUSTOMS

Notifications and Circulars

- Notification No. 49/2016-Cus dated 16.09.2016 seeks to amend Notification No. 12/2012-Customs, dated 17.03.2012 so as to increase the effective rate of Basic Customs Duty to 20% for Marble and Travertine Blocks, Marble and Granite Slabs with effect from 01.10.2016.
- Notification No. 51/2016-Cus dated 22.09.2016 seeks to further amend Notification No. 12/2012-Customs dated 17.03.2012 so as to
1. Reduce import duty on potatoes from 30% to 10% up to 31.10.2016.
2. Reduce import duty on wheat from 25% to 10% up to 29.02.2017.
3. Reduce import duty on palm oil from 12.5% to 7.5% for crude palm oil of edible grade, and from 20% to 15% for refined palm oil edible grade.
- Notification No. 53/2016-Cus dated 22.09.2016 seeks to further amend Notification No. 12/2012-Customs dated 17.03.2012 so as to retain the basic customs duty on ghee, butter and butter oil at 40% beyond 30.09.2016, for a further period up to 31.03.2017.
- Notification No. 48/2016-Cus (ADD) dated 01.09.2016 seeks to impose definitive anti-dumping on all imports of Glass Fibre and Articles thereof falling under heading 7019 of the First schedule to the Customs Tariff Act, 1975 , originating in or exported from China PR.

- Notification No. 49/2016-Cus (ADD) dated 07.09.2016 seeks to extend the levy of anti-dumping duty on imports of Para Nitroaniline, originating in, or exported from People's Republic of China, (imposed vide notification No. 88/2011-Customs, dated 9th September, 2011) for a period of one year i.e. upto and inclusive of the 8th September, 2017.



Judgements

- In the case of Under Water Services Company Limited v. Union of India, {[2016] 73 taxmann.com 316 (Bombay)}, the Assessee imported a Barge/Pontoon. Department issued notice changing classification and demanding duty. Assessee applied for settlement stating that: (a) classification made by department is accepted and not disputed; and (b) it had already paid huge amounts during investigation and it be treated as payment of 'full duty and interest'. Settlement Commission proceeded with application, but, vide a majority order, rejected application on ground that: (a) full duty and interest were not paid prior to filing application; and (b) matter involved classification dispute. It was HELD by the Bombay High Court that the assessee had clarified that it had already paid huge amounts during investigation

far exceeding demand raised in notice and said explanation was accepted by Settlement Commission at admission-stage, hence, subsequent rejection of application on this very ground was bad. Secondly, since assessee had accepted classification made by department and clarified that interpretation of classification was not raised, hence, rejection of application on ground of involvement of classification-issue was bad. Hence, matter was remanded back to Settlement Commission and the ruling was made in the favor of the assessee.

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