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EXCISE LAWS

NOTIFICATIONS AND CIRCULARS

- Notification No. 10/2017-CENT dated 13.04.2017 seeks to amend CENVAT Credit Rules, 2004 to allow the importer of the goods to take CENVAT credit on the basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charter w.r.t. goods destined for India.

JUDGEMENTS

- A writ of Mandamus cannot be issued to the Central Government directing it to issue a notification under Section 11C of the Central Excise Act, 1944.




In the case of *Mangalam Organics Limited v. Union of India* [2017] 80 *taxmann.com* 358 (SC), the Supreme Court of India concluded that a writ of mandamus cannot be issued to the Central Government directing it to issue a notification under section 11C of the Central Excise Act, 1944, to the effect that duty payable by the manufacturer on goods manufactured by it shall not be paid. A **(writ of) mandamus** is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

Merely because conditions laid in the said provisions are satisfied, would not be a reason to necessarily issue such a notification. It is purely a policy matter. Policy of the

Government not to issue the notification under section 11C when it benefits only a few assesses is justified as the specific policy of the Government is that when a large section of trade is affected and any relief is proposed to be given, a notification under section 11C is issued. Issuance of a notification under section 11C is in the nature of subordinate legislation. Directing the Government to issue such a notification would amount to take a policy decision in a particular manner, which is impermissible for the judiciary.

SERVICE TAX

NOTIFICATIONS AND CIRCULARS

- Notification Nos. 14/2017-ST dated 13.04.2017 seeks to amend  Point of Taxation Rules, 2011 with effect from 22nd January, 2017 so as to provide the point of taxation of services provided by a foreign shipping line to foreign charterer w.r.t. goods destined for India as the date of bill of lading of goods in the vessel at the port of export.
- Notification No. 15/2017-ST dated 15.04.2017 seeks to amend notification No. 30/2012-ST dated 20.06.2012 so as to, specify the importer as defined under clause (26) of section 2 of the Customs Act, 1962 (52 of 1962) of goods as the person liable for

paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India.

- The date of submission of the Form ST-3 for the period 01st October 2016 to 31st March 2017 was extended from 25th April 2017 to 30th April 2017 due to problems faced by the assesseees to upload the returns.
- The Board also released Circular No. 206/4/2017-ST dated 13-04-2017 vide File No. 354/42/2016-TRU dealing with issues related to levy of service tax on the services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India

JUDGEMENTS

- **Demand of service tax was set aside since leviability of tax as provider of 'Club or association service' to its members lacked legal validity merely owing to existence as a club without being conductor for rendering of service.**



In the case of Maharaja Bagh Club v. Commissioner of Central Excise & Customs, Nagpur at the CESTAT, Mumbai Bench [2017] 80 taxmann.com 383 (Mumbai – CESTAT) the appellant filed appeal against order of Commissioner of Central Excise & Customs, which had confirmed demand of service tax with interest thereon, and imposed penalties under sections 76, 77 and 78. The demand pertained to provision of 'club or association service', for rendering 'mandap keeper service' and as provider of 'renting of immovable property service'.

It is well settled by decisions of High Courts and of the Tribunal that the leviability of tax as provider of 'club or association service' to its members lacks legal validity. The Tribunal has set aside the demands raised on 'clubs or association' by going beyond the principle of mutuality to examine taxability of contribution of members for common cause or a common objective can merely owing to existence as a club or association without being conductor for rendering of a service. For a service to be taxable, it is necessary that the service has to be rendered and by one person to another; without a perceived service, money contribution cannot be held to be a consideration that is liable to tax. The contention that the membership of appellant organisation comprises shareholders as well as non-shareholder with the mutuality principle not applying to the latter is also not tenable, as the levy of tax does not distinguish the various categories of membership.

CUSTOMS

NOTIFICATIONS AND CIRCULARS

- Notification No. 12/2017-Customs dated 05.04.2017 to amend Notification No.12/2012-Customs, dated the 17th March, 2012, so as to allow duty free import of raw sugar upto a quantity of 5 lakh MT under Tariff Rate Quota (TRQ) upto and inclusive of 12th June 2017
- Notification No. 14/2017-Customs dated 18.04.2017 seeks to amend Notification No.41/1999-Cus to align the said notification with para 4.36 of FTP 2015-20 by omitting the word 'for export' in the proviso to the notification.
- Notification No. 15/2017-Customs dated 20.04.2017 seeks to amend 8/2011 dated 14.2.2011 to extend the exemption of additional duty of Customs to specified jute products imported from Nepal.
- Notification No. 17/2017-Customs dated 21.04.2017 seeks to exempt goods, falling under the First Schedule to the Customs Tariff Act, 1975, when imported into India by or along with a unit of the Army, the Navy, the Air Force or the Central Paramilitary Forces on the occasion of its return to India after a tour of service abroad, from basic customs duty (BCD), CVD and SAD subject to the specified conditions.

- Notification No. 12/2017-Cus (ADD) dated 11.04.2017 seeks to levy anti-dumping duty on the imports of Linear Alkyl Benzene originating in or exported from Iran, Qatar and People's Republic of China for a period of five years (unless revoked, superseded or amended earlier).

JUDGEMENTS

- **Classification of Imaging Plates and IP Cassettes has been referred to a Larger Bench for disposal by the Supreme Court.**



FUJIFILM

In the case of Fujifilm India (P) Ltd. V. Commissioner of Customs (Import) [2017] 81 *taxmann.com* 53 (SC) under Section 2 of the Customs Tariff Act, 1975, in the appellate proceedings, issue before Tribunal was with regard to classification of Imaging Plates and IP Cassettes. There was an order dated 20-2-2013 of Tribunal in case of Jindal Photo India Pvt. Ltd. v. CC (Import), Nahva Sheva' holding that Imaging Plates and IP Cassettes to be classifiable under chapter 90 CTH 90189099 and, therefore, entitled to benefit of Notification No. 21/2002 dated 1-3-2002. In the impugned order, Tribunal did not accept decision of coordinate Bench in Jindal Photo India Pvt. Ltd. [Order No. 12/1237/13/C-I, dated 20-2-2013] and took view that two items were more appropriately classifiable under Chapter 37. As benefit under Notification No. 21/2002-Cus dated

1-3-2002 was allowable in respect of Imaging Plates and IP Cassettes even if same was to be classified under chapter 37, Tribunal, held that said two items would be eligible to benefit of aforesaid notification. Since assessee would be liable for payment of additional duty of customs by virtue of notification under Serial No. 357B, instant appeal was filed. Whether on facts, if Tribunal was not in a position to accept correctness of decision of a co-ordinate Bench of Jindal Photo India (P.) Ltd. (supra), correct course of action would have been to seek views of a Larger Bench. Thus, the Honourable Supreme Court held impugned order was to be set aside and, matter was to be remanded back for disposal afresh by Larger Bench of Tribunal.

taxation enables us to determine the rate of tax, value, and due dates for payment of taxes.

- Under GST, the taxable event in general is supply. However, its taxability has been deferred until the Time of Supply (TOS), which differs according to the situation. The TOS is the point of taxation when the liability to pay GST arises.
- The time of supply of goods shall be the earlier of the following dates:
 - (i) The date of issuing of invoice; *or*
 - (ii) The date of receipt of payment, **whichever is earlier**
- In case of Reverse Charge, the time of supply shall be the earliest of the following dates:
 - (i) The date of receipt of goods, or
 - (ii) The date of payment, or
 - (iii) The date immediately after 30 days from the date of issue of invoice by the supplier (60 days for services)

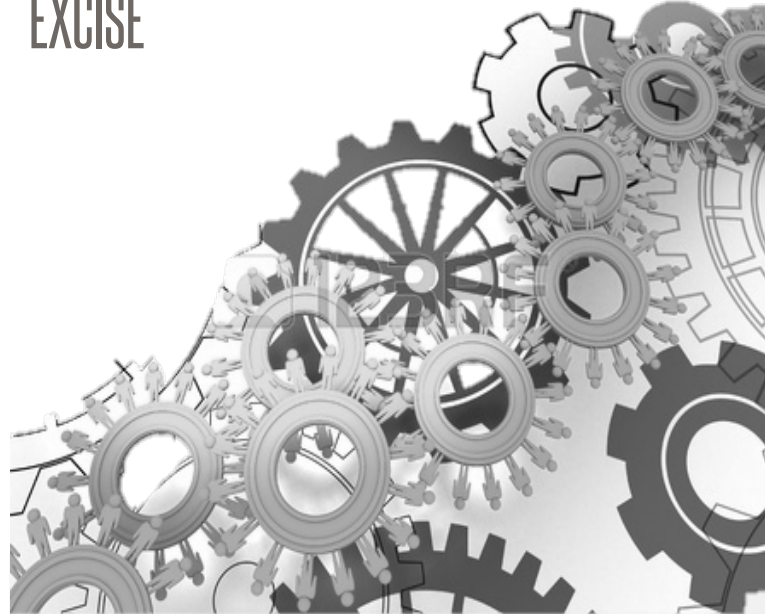
If it is not possible to determine the time of supply under the above-mentioned clauses, then the time of supply shall be the date of entry in the books of accounts of the recipient.
- If it is not possible to determine the time of supply by the above provisions, then it will be:
 - (i) The date on which the periodical return has to be filed, or
 - (ii) The date on which the CGST/SGST is paid.

GOODS & SERVICES TAX (GST)



- Point of Taxation means the point in time when goods deemed to be supplied or services deemed to be provided. The point of

- In GST regime, the tax collection event will be earliest of the dates as given above. The various events like issuing invoice/making payment in case of supply of goods /services or completion of event-in case of supply of service triggering the tax levy, confirms that the Government wants to ensure tax is collected at the earliest point of time.
- The time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed consideration shall be the date on which the supplier receipts such additional consideration.
- As per Section 28 of CGST/SGST Act a registered taxable person shall issue a tax invoice showing description, quantity and value of goods, tax charged thereon and other prescribed particulars, before or at the time of
 - (i) removal of goods for supply to the recipient, where supply involves movement of goods or
 - (ii) delivery of goods or making available thereof to the recipient in other cases.



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