

New Letter

Central Excise, Customs, Service Tax & Foreign Trade Policy

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Central Excise Notification & Circulars

Excise & Service Tax Number to be Compulsory mentioned on the Invoice

Notification No.19/2007-CE (NT) dated 09-03-2007 - Central Excise or Service Tax registration number of the person issuing the invoice shall be compulsory provided in the invoice. Non compliance may lead to non allowance of CENVAT Credit by the Jurisdictional Assistant / Deputy Commissioner of Central Excise.

Refund of unutilised CENVAT Credit for units set up in North East

Notification No.24/2007-CE (NT) dated 25-04-2007 - Rule 5A has been inserted in CENVAT Credit Rules 2004 to provide refund of unutilised CENVAT Credit to a unit setup in specified area in North East, clearing final product in terms of provisions of Notification No. 20/2007/-CE dated 25-04-2007. Notification No.25/2007-CE (NT) dated 25-04-2007 has been issued to provide procedure for claiming such refund.

CENVAT Credit to be paid on Write off

Notification No.26/2007-CE(NT) dated 12-05-2007 - CENVAT Credit on inputs or capital goods to be paid, if value of input or capital goods before being put to use are fully written off or provision to write off is fully made in the Books of Accounts. However, if such input or capital goods are subsequently used for manufacture of final products, credit may be allowed.

Notification No.27/2007-CE (NT) dated 12-05-2007 - Necessary provisions inserted in the CENVAT Credit Rules'2004 towards credit of Secondary and Higher Education Cess.

Vide circular no.851/9/2007-CX dated 03-05-2007 a procedure for movement of indigenous goods from a factory of manufacture or warehouse to a unit set up under EOU/EHTP/STP/BTP scheme have been specified.

Vide Board's Circular No. 44/89-CX.3, dated 19.7.1989 the field formations were instructed that no central excise duty is to be paid on prilled ammonium nitrate obtained from melt ammonium nitrate, and that no modvat of such duty, even if paid is to be allowed. Subsequent the larger Bench of the CESTAT in the case of Supreme Chemicals Works Vs. CCE, Jaipur [2000 (119) ELT 707 (Tribunal-LB)] had held that ammonium nitrate in the form of fine powder particles obtained from crude lumps of ammonium nitrate, damaged calcium ammonium nitrate (CAN) and ammonium nitrate melt satisfy the two tests - one of manufacture and other of marketability, for subjecting any goods to levy of excise duty. The Central Board of Excise & Customs vide circular no. 848/06/2007-CX dated 18-04-2007 has accepted the larger Bench's decision and accordingly withdrawn Board's Circular No. 44/89-CX.3, dated 19.7.1989.

Central Excise Case Analyses

Supreme Court held that the process of cutting betel nuts into small pieces and the addition of essential/non-essential oils, menthol, sweetening agent etc. does not result in a new and distinct product having a different character being formed. Accordingly, to there was no "manufacture" involved.

Ahmedabad Tribunal held that mere non-entry in RG-I register will not amount to non-accountable of the goods unless it is supported by past conduct of the assessee in removing the goods or that the raw materials used in the manufacture of the finished goods have not been accounted for.

Bangalore Tribunal held that for the purpose valuation under Central Excise, the process of in-lining and out-coating with Cement Mortar being carried out at the site after clearance of such pipes from the factory i.e., value addition outside the factory cannot be included in the assessable value.

Kolkata Tribunal held that only assembling of computers in the business premises with no manufacturing activity or infrastructure for the same, amounts to trading activity only, thereby not attracting any excise duty.

Madras Tribunal held that for the purpose of Central Excise valuation cost of advertisement expenses incurred by the dealers and reimbursement to them by the assessee not includible in the assessable value of the goods.

Delhi Tribunal held that cenvat credit can be availed on copper wire and aluminium wire used as inputs for manufacture of insulated wires. It has been held that the drawing of wire from wire rod amounts to manufacture and therefore, the cenvat credit can be availed on the inputs used to manufacture insulated wires.

Kolkata Tribunal held that the services rendered for erection and installation of the equipment shall not be included in the value of goods for calculating for levy of Central Excise duty. The sale of equipment was totally dis-integrated from the services and assessable value had no connection with the service consideration. For this purposes, there is no necessity to include the consideration received for erection and installation charges to be clubbed with assessable value.

Mumbai Tribunal on a issue as to whether the manufacturer is eligible to take credit even in respect of non common inputs i.e. inputs which exclusively go into the manufacture of exempted final products, it has been held, that the credit will be available even on non-common inputs used exclusively for the manufacture of exempted final products.

Service Tax Notification & Circulars

Penalty for delay in submitting Service Tax Return Specified

Vide Notification No. 20/2007-ST dated 12-05-2007, Rule 7C has been inserted in Service Tax Rules'1994 whereby penalty for delay in filing service tax return has been specified based on period of delay in following manner :

Period of Delay	Amount (Rs.)
15 days or less	500
15 days to 30 days	1000
Beyond 30 days	1000 plus 100 per day from 30 th day

Provision of Secondary and Higher Education Cess on taxable services provided in the notifications in relation rebate of service tax and cess issued under Export of Services Rules'2005 - Vide Notification No.21/2007-ST dated 12-05-2007 & Notification No.22/2007-ST dated 12-05-2007

Vide Circular no. 37/58/2007-CX.4 issued by the Central Board of Excise & Customs its has been clarified that persons who are not liable to pay service tax (because of the exemption) are also not required to file ST-3 returns. Accordingly, field formation has been directed to dispose of pending show cause notices based on non-filing of service tax return based on above view.

Vide Circular no. 92/3/2007-ST issued by the Central Board of Excise & Customs its has been clarified that service tax is not leviable on money changing, as such activity does not fall under the category of foreign exchange broking. The Board has clarified that 'money

changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange. On the other hand, foreign exchange broking is the activity performed as an intermediary, on a commission/brokerage basis.

The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC). A question has been raised as to whether this service is taxable and accordingly, whether service tax is applicable to IUC. **Vide Circular no. 91/2/2007-ST** issued by the Central Board of Excise & Customs its has been clarified that vide Finance Bill 2007, a new definition of 'telecommunication service' has been incorporated vide clause (104) of section 65 of the Finance Act, 1994, which specifically includes IUC services and hence service tax would be applicable to IUC charges effective from 01-06-2007. The board has further clarified that service tax would not be applicable to IUC charges for the period upto 31-05-2007.

A question has arisen as to whether the service tax would be chargeable on the 'entry and exit load' amount charged by a mutual fund to the investor. Mutual Fund' statutorily means a fund established in the form of a trust to raise money through sale of units to the public for investing in securities including money market instrument. **Vide Circular no. 94/5/2007-ST** it has been clarified by the Board that under the SEBI (Mutual Fund) Regulation, 1996, the initial issue expenses are amortized over

a period of the scheme, and the entry and exit load charges are paid by the investors to the fund to meet these expenses. So, entry and exit load charges are not towards fund management service provided by the asset management company (AMC) but to meet the initial issue expense incurred by the mutual fund. It is accordingly clarified that "entry and exit load" charged by mutual fund would not attract service tax levy under the category of fund management service. Further, an AMC charges the mutual fund an 'investment and advisory fee', in accordance with SEBI regulation. This fee is chargeable to service tax under 'fund management service'. Similarly, service provided by the distributors/ selling agents, brokers, custodians, trustees etc., to the fund, is also taxable under respective taxable service such as business auxiliary service, stock broking service and banking & other financial services.

Service Tax Case Analyses

Delhi Tribunal held that the demand of service tax on consulting engineering service would not be leviable on manufacturer during the period of June 2001 to August 2003 as the said tax during the said period was leviable on engineering firm and professionals and not on manufacturer.

Mumbai Tribunal held that the Revenue department cannot demand payment under Section 11D, for the reason that the appellant collected Service Tax from customers for rendering cleaning & gardening services which is a non-taxable service.

Chennai Tribunal held that no interest is chargeable or penalty is payable if the recipient of Goods Transport Operator Services has paid the tax and filed the return

within the time prescribed in statute (within 6 months of Finance bill 2003 got the assent of the President).

Bangalore Tribunal held that for the purpose of valuation of photography services, in the Services relating to photography, if certain goods and materials are consumed, then the value of these goods and materials cannot be included in the value of the Services for levy of Service Tax.

Bangalore Tribunal held that royalty payment made to the foreign collaborator for supply of know-how cannot be brought within the definition of Consulting Engineers service and therefore Service Tax cannot be levied.

Madras Tribunal held that technical know-how rendered by UK company to Indian company relating to goods manufactured in India does not fall within the category of 'Management Consultancy' services and therefore service tax demand is not sustainable.

Bangalore Tribunal held that that service tax levied on services rendered by clearing and forwarding agent shall not include godown rent and staff salary for calculating the gross value of services on the ground that these expenses are being reimbursed on actual basis by the principal and are not liable to be included in their gross receipts for calculating service tax liability. The rent paid towards maintaining godown and staff salary cannot be considered as the service charges and the elements which are not forming part of taxable services other than receipt of Commission cannot be brought within the ambit of service tax.

Bangalore Tribunal held that Service Tax is to be levied on services rendered by a Mandap Keeper in relation to letting out premises for the purpose of conducting social functions. It was held that drama, music and dance should also be considered as social functions.

Bangalore Tribunal held that promoting sales of computer in abroad and marketing them in India through overseas cannot be brought within the ambit of 'C & F Agent' Services.

Bangalore Tribunal held that engagement of taxi by Government officers who were not provided with car, does not fall within the category of Tour Operator and such service cannot be brought within the ambit of Service Tax net.

Delhi Tribunal held that services like Cable TV, Food and Telecom services in the executive lounge are not airport services, as they have nothing to do with the arrival or departure of aircraft. It is also to be seen that some of these services like Cable TV, Phone etc. are separately leviable to service tax under respective headings. The mere fact that a service is rendered within airport area does not give that service the character of airport service. Such a service is prima facie hospitality service and not liable to tax.

Delhi Tribunal held that a club letting out space exclusively to its Members for functions against no specific consideration cannot be termed as a commercial activity and therefore does not fall within the ambit of services rendered by Mandap keeper and is therefore not taxable.

CUSTOMS Notification & Circulars

Vide Board's Circular no. 18/2007-Customs dated 24-04-2007; the requirement of Bank guarantee in respect of imported goods to be warehoused in public or private bonded warehouses has been reiterated. It has been further clarified that in order to ensure uniformity the existing procedure of cash deposit or bank guarantee equal to 25% of the duty in respect of sensitive goods is to be strictly followed. The requirement of Bank guarantee is further justified on the grounds that insurance cover provided is for third-party only and not for frauds committed by warehouse owners themselves.

Vide Board's Circular no. 17/2007-Customs dated 19-04-2007, it has been clarified that higher technology featured mobile, cellular handset & telephones are to be classified under sub-heading 8517 12. Presently, telephone for cellular networks or for other wireless networks are classified under heading 8517. Prior to the changes in Harmonized Commodity Description and Coding System (HS) effective from 1.1.2007 cellular phone were classified under heading 8525. It is further explained by the Board that goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GRI) of the First Schedule to the Customs Tariff Act, 1975. Some value addition or additional features such as accessing internet, video recording/camera, word processing etc. do not change the basic functions of such equipment i.e., 'telephony'.

Vide Circular no. 16/2007-cus dated 18-04-2007 issued by the Central Board of Excise & Customs it has been clarified that certain items mentioned in the Annexure-I

to the notification no. 52/2003-Cus dated 31.03.2000 are to be allowed for the facility of inter unit transfer of capital goods from one EOU/STP/EHTP to another. Confusion has arisen regarding the scope of the term 'capital goods' for inter unit transfer from one EOU/STP/EHTP unit to another unit in the notification No. 52/2003-Cus dated 31.03.2003 as amended. Now the Board has specifically explained that the items listed at Sl. Nos. other than Sl. No. 1 of the Annexure to the said notification may also be allowed for inter unit transfer, if the same are qualify as capital goods depending upon their use. The above clarification would also apply to capital goods covered under annexures to notification No. 22/2003-C.E. dated 31.03.2003 as amended.

CUSTOMS Case Analysis

Bangalore Tribunal held that import of goods described as 'server and parts of Computer' can be classified under CTH 847150.00 and exemption can be sought under Central Excise Notification No. 6/2002 (Sl. No. 261) as amended by the Central Excise Notification No. 23/2004 dated 9.7.2004. It was held that Imported server even without Hard discs can be considered as CPUs and are entitled for benefit of Notification No. 6/2002-Cus.

Delhi Tribunal on a issue as whether redemption fine and penalty can be imposed on goods ordered to be re-exported, held that if redemption fine and penalty are imposed under different Sections of the Customs and both can be imposed together and further redemption fine could not be reduced where the offending goods attracts anti-dumping duty.