

# BT ASSOCIATES



## CHARTERED ACCOUNTANTS

WE PROVIDE CORPORATE INDIRECT TAXATION SERVICES IN THE FIELD OF CUSTOMS, CENTRAL EXCISE, SERVICE TAX AND EXIM

Helping Clients Keep More of what they Earn

## NEWS LETTER XXVI

Dear Sir,

Please find amendments carried out during 01-02-2006 to 28-02-2006.

### I. FLASH (Bullet news on financial and fiscal markets) :

- PM for 'broad-based & moderate' tax regime.
- Madras High Court stays service tax on Services received abroad – Explanation to Section 65 (105).
- Service tax - Nokia asked to pay for consultancy work abroad.
- Oil companies want exemption from service tax on exploration services.
- Drawback ambit may be widened to include refund for service tax paid on inputs.
- Anti-dumping duty on pencil cells and primary batteries extended upto Feb 2007.
- CBI picks up Director of M/s DSQ Software in alleged Rs 595 Cr scam.

### II. ANALYSIS OF IMPORTANT CIRCULARS & NOTIFICATIONS :

Central Board of Excise and Customs consolidated instruction on waiver of interest on warehoused goods.

### III. LEGAL CORNER (Judicial pronouncements in summarised form) :

#### **Decisions of Hon'ble Supreme Court :**

- Sale price in India after import cannot be the basis for Customs valuation; Abatement of duty on damaged goods can be granted only to import and only if claimed.

**Decisions of Hon'ble High Courts :**

- Hon'ble Delhi high Court ruled that bar of unjust enrichment does not apply to final refund orders made prior to 1991.
- Hon'ble Mumbai high Court ruled that refusal by Customs to show records – 20 year old Show Cause Notice quashed by High Court.
- Hon'ble Kerala high Court ruled that private colleges not awarding degrees are not liable to service tax; Tax on education is regressive.

**Decisions of Hon'ble Advance Ruling Authority :**

- Advance ruling authority held that Alcatel Light Manager-1626 is classifiable under Customs Tariff Heading 8517 50 99.

**Decisions of Hon'ble Tribunals :**

- Hon'ble Mumbai Tribunal held that inputs on which credit has been taken can be removed as such on payment of duty or can be exported without payment of duty – clearance of such inputs against CT-3 certificate without payment of duty to another EOU cannot be called in question – demand of duty and penalty set aside.
- Hon'ble Mumbai Tribunal held that Aluco bond composite panels imported by the appellants for use in exterior architecture as façade and wall cladding panels after cutting to required size or profile, grooving, bending/ folding & then transferred for installation on special frame are not “consumer goods” hence freely importable in terms of para 5.1 of the Exim Policy 1997 – 2002.
- Hon'ble Mumbai Tribunal held that Rusto paper made out of plain kraft paper and polycoated kraft paper is a process of manufacture.
- Hon'ble Mumbai Tribunal held that capital goods installed in Molecular Medicines Research Laboratory are eligible for credit under rule 57Q as long as R&D Lab is situated within the factory of production.
- Hon'ble Mumbai Tribunal held that Selsun Blue containing active ingredient Selenium sulfide is classifiable as medicament (3003.10) and not under 3305.99 as a preparation for use on the hair.
- Hon'ble Mumbai Tribunal held that Zinc powder and Zinc dust are two separate commercially known products; hence Zinc dust cannot be covered under the expression Zinc powder for the purpose of interpreting the notification no. 44 – Cus. Dated 1.3.85.
- Hon'ble Mumbai Tribunal held that delay of 243 days in filing the appeal condoned in view of Supreme Court decision in the case of State of Hariyana Vs. Chandra Mani.
- Hon'ble Mumbai Tribunal held that Gears, Shafts and Gear boxes are correctly classifiable as a part of motor vehicles under heading 87.08 and not under 84.83.
- Hon'ble Mumbai Tribunal held that packing material such as corrugated and duplex boxes cleared to merchant exporters who in turn used this packing material for export of frozen marine products – Prima facie value of such goods cleared without payment of duty not includible for computing aggregate value under notification 8/2002 CE.
- Hon'ble Mumbai Tribunal held that on wrong calculation, appellant paid excise duty @32% instead of 24% - Goods supplied to buyers under contract price only – it cannot be said that appellants have recovered extra duty from customers – Prima facie refund admissible.
- Hon'ble Mumbai Tribunal held that since department not legally entitled to recover duty from assessee, question of principles of unjust enrichment being attracted does not arise.
- Hon'ble Mumbai Tribunal held that individual pieces of confectionary cleared in whole packs of jar, boxes or pouches, are not multi piece packages and are correctly assessable under Section 4 of the CEA'44.
- Hon'ble Mumbai Tribunal held that CTD Bars, Cement, S.S columns are building materials and not used in or in relation to manufacture of medicaments, hence do not qualify the definition of capital goods.
- Hon'ble Mumbai Tribunal held that Bar of unjust enrichment cannot be applied in respect of refunds arising out of finalization of provisional assessment under the Customs law in the absence of any specific amendment to the law as has been done in the case of refunds arising out of finalization of provisional assessment under the Central Excise law.

- Hon'ble Mumbai Tribunal held that Tata Sumo Ambulance vehicle is correctly classifiable under heading 8702.10 and not under heading 8703.90 of the CETA'85.
- Hon'ble Mumbai Tribunal held that Odhanies having knotted fringes on both ends are to be classified as fabrics and not as madeups since they are not stitched or hemmed – DEPB eligible @18% as applicable to fabrics.
  
- Hon'ble Chennai Tribunal held that quantum of penalty in case of delayed payment of Service Tax under Section 76 should be between the minimum and maximum limits.
- Hon'ble Chennai Tribunal held that Cenvat credit can be allowed on triplicate copy (assessee's copy) of invoice.
  
- Hon'ble Kolkata Tribunal held that When value of plastic crates is not included in assessable value of P.P.Caps, Credit is not admissible.
  
- Hon'ble Bangalore Tribunal held that credit of duty paid as scrap on dismantled crane is eligible when it is reassembled and used as crane by the appellant.
- Hon'ble Bangalore Tribunal held that LCD projectors are capital goods.
- Hon'ble Bangalore Tribunal held that when the duty is payable is NIL and the goods are sold at specified price, there is absolutely no question of passing on the benefit to buyer – The ratio of Priya Blue case cannot be applied to a case where the assessee fails to claim the benefit of exemption notification.
- Hon'ble Bangalore Tribunal held that credit allowed on HDPE pipes used for bringing water to the factory.
- Hon'ble Bangalore Tribunal held that Service tanks cannot be manufactured without CRSS sheets and the tanks are essential for storing of oil/fatty acid before feeding the same to soap crutcher , Hence eligible inputs.
- Hon'ble Bangalore Tribunal held that the claim of Modvat credit cannot be denied in respect of capital goods used in the manufacture of exempted goods since it generated dutiable waste and the capital goods were subsequently used for manufacture of dutiable goods.
- Hon'ble Bangalore Tribunal held that there is no infirmity in Commissioner (Appeals) orders in remanding the matter to Deputy Commissioner for deciding the matter in accordance with law.
- Hon'ble Bangalore Tribunal held that There is no requirement to reverse credit on inputs lying in stock and contained in the final products when the final products become exempted.
- Hon'ble Delhi Tribunal held that Royalty paid to foreign company is not a service.
- Hon'ble Delhi Tribunal held that Even though the inputs were imported under the EPCG issued under policy for the period 1992-97 (When the rate of duty was 15%), since the clearance of the goods from Customs took place subsequent to DGFT's Notification No. 3/1997-2002 dated 11.04.1997 and Notification No. 06/1997 dated 09.06.1997, rate of Customs duty applicable would be 10%.
- Hon'ble Delhi Tribunal held that EPS Sheets and EPS blocks are classifiable under chapter 39.
  
- Hon'ble Delhi Tribunal held that additional load of work cannot be considered as valid reason for condoning the delay.
- Hon'ble Delhi Tribunal held that Berseem seeds are classifiable under Heading 1209.99 of Customs Tariff.
- Hon'ble Delhi Tribunal held that proprietary firm engaged in loading and unloading slag in a factory is liable to Service Tax under cargo handling service.
- Hon'ble Delhi Tribunal held that carpets containing jute contents of 75 to 85 % , Classifiable as Jute floor coverings classifiable under heading 5703.20 and not as "Other carpets" under heading 5703.90.
- Hon'ble Delhi Tribunal held that installation and display of advertisements come under the advertising agency and are liable to Service Tax.

#### IV. ABOUT US :

We have pleasure of introducing our firm as BT Associates, firm of Chartered Accountants based in Kolkata providing specialised professional services in the field of ***Indirect Taxation, being Customs, Central***

**Excise, Service tax, EXIM Policy and Value Added Tax.** We are providing services in this field since last eight years.

We at BT Associates provide following services :

- **Core consultancy service in Indirect Taxation viz. Central Excise, Customs, Service Tax, Export Import Policy (EXIM) and VAT.**
- **New Set Up & Existing Set Up - Due diligence and planning services in relation to indirect taxation**
- **Departmental pursuits in relation to Indirect Tax Practice**
- **Training Programme and Seminars on Indirect Taxation for corporate**

Shri. Bhaskar Thakkar is regular writer of articles on Central Excise, Customs and Service tax laws in Excise Law Times, a weekly magazine on Customs, Excise, Import & Export and is also a regular speaker in various academic programme conducted by various organizations like the Institute of Chartered Accountants of India, EIRC and the Institute of Chartered Accountants of India, CIRC, Calcutta Management Association etc...

He is also regular faculty to various corporate for conducting training programme, seminars and lectures.

#### **V. OUR ASSOCIATES IN INDIA :**

We association with CA firms accross the country, so that we may provide better services to our client. We have associate in **Mumbai, Delhi, Pune, Chennai, Bangalore, Ahemdabad & Kanpur**. We are shortly going to have an associate in **Hyderabad, Chandigarh & Jaipur**.

#### **VI. CONTACT DETAILS :**

**BT ASSOCIATES,Chartered Accountant,  
3B, Lalbazar Street, Room No.15, Sir RNM House, Basement, Kolkata - 700 001  
Phone : 033 22489692 / 2231 7218 / 2243 6332 / 3022 7692 Fax : 033 2231 7218**

**Mail : btcal@vsnl.net, thakkar@btassociate.com, website : www.btassociate.com**

**Branch Office : 4A, Jackson Lane Room No. 41, 2nd floor, Kolkata – 700 001.**