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NEWS LETTER

Amendments in CUSTOMS, EXCISE, SERVICE TAX & FTP] February'2007

Budget'2007

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CENTRAL EXCISE

Relevant Notification & Important Judicial Pronouncements

- Vide Notification No. 7/2007 C E (N.T.) dated 21-2-2007 "worked monumental or building stones, mosaic stone and other natural stones" which were previously eligible for CENVAT credit as capital goods, have been excluded.
- Mumbai Tribunal held that the transfer of Cenvat credit upon shifting of spinning plant i.e a part of a factory from one place to another is not permissible under Rule 8 of Cenvat Credit Rules, 2002 which refers to shifting of factory and not a part of factory.
- Mumbai Tribunal held that allegation of clandestine removal and duty demand based on difference between quantity shown in RG1 & stock declaration made to State Bank of India without any physical stock taking or statements admitting clandestine clearances to support finding, be set aside.
- Mumbai Tribunal held that credit cannot be allowed in respect of Fuel used in generation of steam which is used in canteen for cleaning utensils as by no stretch of imagination can it be said to have been used in or in relation to manufacture of final product.
- Mumbai Tribunal held that once an order passed by the Tribunal becomes final having not been appealed against before higher appellate forum, fresh appeal against same order is not entertainable.
- Mumbai Tribunal held that Iron Ore fine is a "waste" emerging during the manufacture of Sponge Iron from Iron Ore pellets and that clearance of Iron ore fine does not amount to removal of inputs as such under Rule 57D & hence credit cannot be denied.
- Bangalore Tribunal held that under Central Excise law for the purpose of excisability and marketability, the goods which are not marketable and not satisfying the requirements for marketability cannot be considered as excisable goods.
- Mumbai Tribunal held that used capital goods are required to be cleared on payment of duty at transaction value & not on payment of duty equal to credit originally availed inasmuch as it cannot be considered as "removal as such".
- Bangalore Tribunal held that for transferring Cenvat credit, no permission required for transfer of credit on amalgamation.

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- Ahmedabad Tribunal held that for the purpose of Central Excise valuation , subsidy on the sale of Superior Kerosene Oil (SKO) and LPG received from the oil marketing company is not includible in the assessable value .
- Bangalore Tribunal held that there is nothing in Rule 4 of CENVAT credit Rules which debars the appellant from availing depreciation on the balance of 50% of the duty, which is not availed as cenvat credit .
- Delhi Tribunal held that Modvat Credit on air conditioners used in the manufacturing area to keep the temperature at 15 - 18 degrees which are capital goods are eligible for credit in view of the definition of capital goods during the relevant period.
- Delhi Tribunal held that bar of unjust enrichment is not applicable to the refund arising consequent upon the finalization of assessment under rule 9B(5).
- Ahmedabad Tribunal held that clearances made by 100% EOUs are entitled to concessional rate of Customs duty provided under EPCG Schemes ,even though what is required to be paid is in the nature of central excise duty but through a legal fiction, clearances by 100% EOUs have been placed at par with the imports and it is for this reason that the duty required to be paid is equal to the aggregate of Customs duty payable on such like goods if produced or manufactured outside India and imported into India.

SERVICE TAX

Imporant Judicial Pronouncements

- Mumbai Tribunal held that for the purpose of refund of excess Service Tax if the assessee out of ignorance files claim on plain paper rather than Form R, since it was a new levy and the assessee was not aware of the procedure, refund cannot be time-barred.
- Bangalore Tribunal held that for the purpose of levy of service tax on services rendered by a Chartered Accountant, billing of electricity and other related work for MESCOM cannot be considered as activities associated with Chartered Accountant's services.
- Ahmedabad Tribunal held that for the purpose of levy of Service Tax, no telegraph authority can be treated as subscriber of another telegraph authority in relation to the link established between one telegraph authority and another telegraph authority
- Bangalore Tribunal held that Service Tax on Tour operator services – plying taxi from airport to city for customers cannot be considered as tourist services or tour operator.
- Bangalore Tribunal held that Service Tax on Banking and other Financial Services – tax be paid at the enhanced rates even if not collected from customers because of agreement.

CUSTOMS

Imporant Judicial Pronouncements

- Madras Tribunal held that for the purpose of valuation demurrage and connected bank charges are not includible in the assessable value of imported liquefied propylene gas.
- Delhi High Court held that default in fulfilling exports obligations upon import of machinery under EPCG Scheme shall result in confiscation u/s 111 (o). In case the Machinery is attached to earth, in the absence of any evidence that detachment would lead to substantial damage to the machinery, such machinery can be confiscated.
- Bangalore Tribunal held that imported Pentium-II / Celeron Microprocessors are classifiable under Chapter Sub-heading 8473.30 of Customs Tariff Act.
- Supreme Court held that for the purpose of valuation technical knowhow cost cannot be added to the value of imported goods.
- Ahmedabad Tribunal held that for valuation the original price agreed between the Seller and the Buyer is to be taken as assessable value under Section 14 of the Customs Act, 1962 and that mutual reduction of price after import of goods into India by executing addendum of original agreement cannot be made the basis for the value of the vessel under the said Section .