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January'2007

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CENTRAL EXCISE

Relevant Notifications & Circulars

- Vide notification No. 2/2007-CE(NT) dated 31-01-2007, abatement in relation to patent or proprietary medicaments has been increased from existing 35% to 42.5%.
- Vide Circular No. 209/11/2005-CX-6 dated 08-12-2006, the Central Board of Excise & Customs has clarified that the term 'duty paid' used in rule 18 does not include that portion of duty, which is subsequently refunded to the manufacturer. Presently area based exemption is available for North East (vide Not. nos. 32/99 CE and 33/99 CE both dated 8.7.1999) , Jammu & Kashmir (vide Not. nos 56/2002 & 57/2002 CE both dated 16.11.2002) , Kutch (Not No 39/2001 CE dated 31.07.2001) and Sikkim (vide Not. No 56/2003 dated 25.6.2003) is under examination of the Board. The issue involved was whether rebate is available under Rule 18 of Central Excise Rules 2002 on goods manufactured in area based exemption scheme. The Board clarified that such exemption from excise duty is available only to the extent it is in excess of the amount paid out of CENVAT credit. However the said exemption has been operationalised by way of paying the full amount of duty first, and thereafter granting of refund of duty paid in cash. A doubt has arisen as to whether the said payment of duty at first stage, which is subsequently refunded, can be considered as 'duty paid' in terms of rule 18 or not.

Important Judicial Pronouncements

- Bangalore Tribunal held that the benefit of MODVAT credit is allowable to slip ship unloader installed in the wharf area. Since without these capital goods, the inputs could not have come to the appellant's factory.
- Bangalore Tribunal held that in case of SSI, the clearance value on those goods which are cleared on payment of duty to unit-II cannot be added to the assessable value of unit-I.
- Bangalore Tribunal held that Solar power Traffic Signal Systems and Solar Street Lights are eligible for exemption from central excise duty under Notification no.6/2002 (Erstwhile Notification No.205/88).

Contact Details**BT ASSOCIATES**

Chartered Accountant

Address

3B, Lalbazar Street
 Sir RNM House,
 Room No.15, Basement,
 Kolkata – 700 001

Phone

033 2248 9692
 033 2231 7218
 033 2243 6332
 09830710662.

Fax

033 2231 7218

Mail

btcal@vsnl.net
 thakkar@btassociate.com

Website

www.btassociate.com

- Mumbai Tribunal held that "concrete mix" brings within its ambit ready mix concrete manufactured at site for the purpose of exemption under serial No. 51 of Notification 4/97-CE.
- Ahmedabad Tribunal held that SSI unit using a brand name and raising its invoice in the same name, but not declaring it, cannot be held to have an intention to evade payment of duty.
- Mumbai Tribunal held that furnace oil used for heat treatment which is an essential process in the manufacture of dutiable as also exempted goods is eligible for MODVAT credit.
- Mumbai Tribunal held that interest cannot be imposed by issuing a corrigendum .
- Mumbai Tribunal held that confiscation of Plant & Machinery cannot be ordered in cases of contravention of MODVAT rules as clause (bb) to 173Q (1) fails to find mention in sub-rule 2 of Rule 173 Q.
- Delhi Tribunal held that single Member bench must follow the larger bench decision which is neither expressly nor impliedly overruled by any decision of a higher forum.
- Delhi Tribunal held that MODVAT credit cannot be allowed to an assessee if he failed to prove that the materials received in the factory to be used as inputs as declared under Rule 57(!) are defective or sub-standard.
- Mumbai Tribunal held that re-quantification of demand by the commissioner, without giving an opportunity to the clients to controvert the same is violative of the principles of natural justice.
- Mumbai Tribunal When original dispute stands settled in favour of respondent's by Tribunal's decision, re-credit can be taken.
- Mumbai Tribunal held that non-production of original TR-6 challan cannot be a ground to deny refund of security deposit and that executing an indemnity bond would suffice.
- Mumbai Tribunal held that when original dispute stands settled in favour of Respondent's by Tribunal's decision, re-credit can be taken
- Mumbai Tribunal held that the cost of manufacture of tools/dyes at the hand of the principal manufacturer would be taken to arrive at AV and no further margin of profit would be added to the value of dyes and tools.
- Mumbai Tribunal held that credit available on LSHS (fuel) used in producing steam & electricity used in turn in relation to manufacture of exempted Fertilizers.
- Mumbai Tribunal held that no provision in the erstwhile Central Excise Rules, 1944 for reversal of credit on inputs used in the manufacture of final products when part of the product is cleared without payment of duty.
- The Hon'ble Supreme Court held that a beneficial circular is to be applied retrospectively while adverse one is to be applied prospectively. In other words if the circular is against the assessee, it has right to seek its enforcement prospectively.

- Madras High Court held that Grey cotton canvas cloth is classifiable under Chapter 52 and not 59 thereby reiterating the Hon'ble SC decision in case of M/s Simplex Mills Co. Ltd.
- Ahmedabad Tribunal held that non-accountal of finished goods stored in factory premise due to lack of storage space does not amount to clearance from the factory and thereby no liability of duty arises.

SERVICE TAX

Relevant Notifications & Circulars

Vide Circular No. F.No. 149/4/2005-CX.4 dated 3-01-07 the Central Board of Excise and Customs have clarified that the domestic telecom operators providing roaming service to international inbound roamers are liable to pay service tax on the amount received through the home network on account of service provided to such international roaming subscriber.

The dispute arose on account of applicability of Service Tax levy on roaming service provided to an international in-bound roamer i.e, subscriber of a foreign telecom network ,when in India by an Indian telecom service provider.The telecom operators are of the view that in-bound roamer is not a subscriber as no telephone connection is provided to him and such roamer does not undergo the processes of registering as subscriber like entering into contract with the visiting network, furnishing of identity, etc.

The Board has clarified that during international roaming, the visiting network provides service to a person treating him as a subscriber on a temporary basis for the period during which service is availed of by such person from the visited network. The only difference is that the payment is not directly received from the subscriber, but the same is routed through the home network. However, this does not alter the essential characteristics of the service, which is of a telephone connection. As regards the argument that no telephone connection is provided to an in-bound roamer, a telephone connection does not necessarily mean providing a telephone instrument or providing a SIM card. Telephone connection is provided so long as the telecom operator provides the facility to a person to make a connection for making or receiving a call (using a telephone) by assigning a unique identification number to line/instrument or card used for making a call. An identification number is essential, *interalia*, for routing the call to such line/instrument or card and to bill for the call charges based upon the duration of a call. Even if this number is allocated temporarily and internally, it remains a service of telephone connection. Further, the issues of entering into a contract or verification of the subscriber are not relevant to the levy of service tax.

Imporant Judicial Pronouncements

- Delhi Tribunal in a dispute on whether value of materials consumed in developing and printing of photographs excludable from gross amount chargeable to service tax, supported the order in Himalayan Co-op. Milk Product Union Ltd. wherein it was held that if an exemption has been given by Govt. no other meaning should be given to the statute to defeat the purpose.
- Mumbai Tribunal held that if assessee provides information related to displays , arranges sponsorships and advertising and collecting

advertisements from advertisers , such services cannot be placed under Advertising Service.

- Delhi Tribunal held that penalties be imposed for not filing returns and even if an assessee files return for a later period but conceals information about earlier period ,then also penalty shall be imposed.
- Delhi Tribunal held that licensing “know-how” is not service but technical assistance connected with the know-how is Consulting Engineer Service.
- Bangalore Tribunal held that for the purpose of levy of Service Tax , the ECO conservation works to preserve the waste land and bringing them into use ,especially for the development of the Tribals is not an activity coming within the ambit of consulting engineering services.

CUSTOMS

Relevant Notifications & Circulars

Vide Notification No. 8/2007-Cus dated 24-01-07, import duty on crude palm oil reduced from 70% to 60%; on RBD from 80% to 67.5%; crude sunflower oil and refined sunflower oil from 75% to 65% and 85 to 75% respectively

Imporant Judicial Pronouncements

- Bangalore Tribunal held that once DGFT decides to grant credit,the Customs authorities cannot modify the credit.
- Delhi High Court on a issue as to whether demurrage charges would be paid on goods detained by the customs, held that the Supreme Court decision on similar issue is pending and the goods were ordered to be released under an undertaking by the importer.
- Madras Tribunal held that that in case of reassessment of Bills of Entry,goods have to be reassessed under Section 17(4) consequent to amendment notification retrospectively.However the importer will have to seek reassessment under Section 149.
- Bangalore Tribunal held that for the purpose of valuation of Imports , the value as prevailing in the country of origin during the time and place of import is the criteria and not the retail price as prevalent in India for enhancing the value.
- Mumbai Tribunal held that cameras, zoom lenses are non-notified goods since the department has failed to produce any evidence to prove that they are goods of foreign origin and smuggled into India and thereby set aside the confiscation.
- Mumbai Tribunal held that for imposition of penalty u/s 112(A) of the Custom’s Act, all ingredients of the section has to be satisfied and general observation is no justification to imposition of penalty.

- Madras High Court held that Royalty paid for the right of reproduction and distribution of the feature film is includable in the transaction value as per Rule 9(1) (c) of the Customs Valuation (DOIG) Rule 1988.
- Mumbai Tribunal held that adjudication order did not survive merely because the appellant had not appealed against the orders of finalization of Bill of Entry cannot be accepted.

IMPORTANT AMENDMENT IN DUTY RATES

Customs duty has been reduced in several items vide various Notifications dated 22-01-2007. The details are as under :

- Specified capital goods and their parts and winding wires from 12.5%/10% to 7.5%.
- Project imports from 12.5% / 10% to 7.5%.
- Extension of project import rate of 7.5% to 'Airport development projects ' and 'Metro rail projects'.
- Inorganic chemicals, like halogens (Fluorine, Chlorine ,Bromine, Iodine) ,sulphur,carbon,hydrogen,rare gases (Nitrogen, Oxygen, Silicon, Phosphorus) and alkali metals (Sodium,Calcium etc.) from 10% to 5%.
- Carbon Black Feedstock from 10% to 5%.
- Primary and semi-finished forms of copper,Aluminium,Zinc,Tin, Other base metals from 7.5% to 5%.
- Ferro-alloys stainless steel and other alloy steel from 7.5% to 5%.
- Pipes and tubes of alluminium ,copper and zinc (heading 7907) from 12.5% to 7.5%.
- Calcined alumina from 7.5% to 5%.
- Refractories from 7.5% to 5% and specified raw materials of refractories from 10% / 7.5% to 5%.
- Portland cements from 12.5% to nil

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