

BT ASSOCIATES



CHARTERED ACCOUNTANTS

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

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NEWS LETTER- XXVII

Dear Sir,

Please find amendments carried out during March' 2006.

Please note that in case you would like to have full text of the decision mentioned herein, please visit our site at www.btassociate.com and select discussion forum. There you can leave your query as regards text of the decision you require. You may also send your query to our e-mails.

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

- Kurien says good bye to 'Amul'.
- FM amends Finance Bill; exempts Candle, Bricks, scented supari upto 50 paise MRP and cardiac cathoder from excise duty and reduces duty on carbon black and polyester chip to 10% .
- FM inserts new Section 93A related to granting rebate for exports of services or goods.
- VAT Panel for more services for States for levying service tax.
- Income Tax junior staff protest against Large Taxpayers' Unit concept in many cities .
- CCEA approves one-year extension to DEPB Scheme.
- Lanka to lower import duty on host of Indian goods under bilateral treaty from April.
- Central Excise, Ahmedabad II, is first Commissionerate to get ISO 9001 2000 certificate.
- Anti-dumping duty levied on Sodium Formaldehyde Sulphoxylate

II. ANALYSIS OF IMPORTANT CIRCULARS & NOTIFICATIONS :

DGFT :

- DGFT vide various circulars, liberalises import of narco drugs for medical and scientific purposes & allows exports of samples of shed antlers.

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

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

- Supreme Court rules that no statute shall have a retrospective operation unless such a construction appears very clearly or arises by necessary and distinct implication.
- Supreme Court rules that telephone connection does not allow a subscriber possession of electro-magnetic waves? SC rules telecom services not liable to sales tax.

Decisions of Hon'ble Tribunals :

- Hon'ble Mumbai Tribunal held that residential colony/township cannot be considered as a part of the factory, hence furnace oil used for generation of electricity supplied to the residential colony/township is not entitled for Cenvat Credit.
- Hon'ble Mumbai Tribunal held that exemption under SSI notification cannot be denied on the ground that invoices showed brand name of another person when the goods themselves did not bear any brand name.
- Hon'ble Mumbai Tribunal held that Waste Filter Cake generated during the course of manufacture of Chemical additives is non-excisable – it is established law that everything that is sold is not necessarily a marketable commodity - Revenue appeal rejected.
- Hon'ble Mumbai Tribunal held that repacking done at depot – Cost of such repacking even if activity not amounting to manufacture to be included in the Transaction value.
- Hon'ble Mumbai Tribunal held that heading 38.08 covers goods which are Insecticides – Boric acid imported in the form is incapable of killing pests, hence correctly classifiable under heading 28.10.
- Hon'ble Mumbai Tribunal held that common Antenna System & Dish Antenna System are goods having individual functions and hence correctly classifiable under heading 85.43 of CETA'85 – Revenue appeal allowed.
- Hon'ble Mumbai Tribunal held that refund based on clerical errors of not declaring quantity correctly and thus being charged to duty – Provisions of consequential refund due to quantification errors are also liable to rigors of Section 27 of the Customs Act – LB decision in Polymer Paints followed – Stay application rejected.
- Hon'ble Mumbai Tribunal held that door handles for refrigerators are appropriately classifiable under heading 83.02 as an article of base metal.
- Hon'ble Mumbai Tribunal held that hydraulic fluids used in hydraulic press, for manufacturing press components from CRCA sheets & the components subsequently used in 2 & 3 wheelers which are final products, is entitled for modvat credit.
- Hon'ble Mumbai Tribunal held that printers are classifiable under heading 84.71 and the printer software imported along with it is separately classifiable under heading 85.24 of the Customs Tariff Software is exempted by virtue of notification and the value of software is not includible in value of the printers.
- Hon'ble Mumbai Tribunal held that epoxidised oils used as plasticizers or stabilizers are correctly classifiable under chapter 15 as per HSN Explanatory Notes & not under heading 38.12.
- Hon'ble Mumbai Tribunal held valuation under Section 4A – Scoring out of MRP on package – Board Circular dated 28-10-2002 merely clarifies the legal position and therefore has retrospective effect.
- Hon'ble Delhi Tribunal held that Column switches for excavator loader to be part of loader classifiable under 8431 and not as independent goods under 8536.
- Hon'ble Delhi Tribunal held that no credit on photocopy of triplicate copy of invoice is available.
- Hon'ble Delhi Tribunal held that M.S. Plates used in repairs and maintenance are eligible for availment of Modvat Credit.
- Hon'ble Delhi Tribunal held that Service Tax – penalty should be waived for procedural irregularities.
- Hon'ble Delhi Tribunal held that appellants had obtained certain process patents and were receiving money for the exploitation & use of the said patent – said activity coverable under Service Tax on Intellectual Property w.e.f 10.09.04 and not as Consulting Engineer – Prima facie case in favour of appellant – stay granted.
- Hon'ble Delhi Tribunal held that chemicals falling under heading 38.23 used for separation of impurities from the intake air and installed in the D.G. sets – eligible for capital goods credit .
- Hon'ble Delhi Tribunal held that deep sea Matdrill is classifiable under Customs Tariff heading 8905.20 and not under 8905.90.

- Hon'ble Bangalore Tribunal held that Demand without SCN, without investigation and without evidence not sustainable.
- Hon'ble Bangalore Tribunal held freight and insurance, unloading charges at the customer's premises and third party inspection charges at the instance of the buyer are not includible in the assessable value.
- Hon'ble Madras Tribunal held that Service Tax - Consulting Engineer - it should be established that he is a professionally qualified engineer - No service tax is payable on the Royalty or other consideration for technical know how received by an assessee in India from a foreign company.
- Hon'ble Madras Tribunal held that cash refund of Cenvat Credit – The assessee was unable to take credit of the amount in question on account of their having closed down the unit and surrendered Central Excise registration - cash refund of the credit is allowed.
- Hon'ble Madras Tribunal held that input-duty credit on lubricants used in machinery, which were used, in limestone mines is disallowed.
- Hon'ble Madras Tribunal held that second-hand photocopiers imported are to be treated as "capital goods".

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 :

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