

PAPER – 8 : INDIRECT TAXES

QUESTIONS

Manufacture

1. Parsvnath Music Systems Ltd. imported recorded audio and video discs in boxes each containing 50 discs. Each individual disc was then packed in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

Explain, with the help of a decided case law, if any, whether Department's contention is justified in law.

Annual Installed Capacity Statement

2. Madhav Bidi Company is engaged in the manufacture of biris, without the aid of machines, falling under tariff item 2403 10 31 of the Excise Tariff. It approaches you for advice whether it is required to submit Annual Installed Capacity Statement in Form ER-7 for the financial year 2010-11. You are required to advise Madhav Bidi Company regarding the same.

Marketability

3. The theoretical possibility of product being sold is sufficient to establish the marketability of a product. Critically examine the said statement.

Payment of duty and filing of return

4. The excise duty liability of Bindal Steel Industries for the month of April, 2010 is Rs. 50,000. The details of payment of excise duty by Bindal Steel Industries in the financial year 2009-10 are as follows:-

S.No.	Particulars	Amount (Rs.)
1.	Amount of excise duty paid in cash	5,60,000
2.	Amount of excise duty paid by utilising the CENVAT credit available on the inputs and capital goods	4,50,000

Using the information furnished above, answer the following questions:-

- (i) What is the due date for payment of excise duty by Bindal Steel Industries for the month of April, 2010?
- (ii) Central Excise Officer argues that Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form. Discuss, whether the said argument is correct?

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CENVAT Credit Rules, 2004

5. Solidmec Ltd. purchased 25 computer systems, eligible as capital goods under the CENVAT Credit Rules, 2004, on 01.07.2008 paying a duty of Rs. 2,600 on each computer system. However, since these systems became outdated, it sold 20 computer systems out of 25 on 30.06.2010 at a residual value of Rs. 2,000 each. Determine the amount of CENVAT credit required to be reversed in the financial year 2010-11.
6. State the validity of the following statements with reference to the CENVAT Credit Rules, 2004:-
 - (a) CENVAT credit of the service tax paid can be claimed in a case where a service receiver does not pay the full invoice value and the service tax indicated thereon due to certain reasons.
 - (b) Where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would not be required to reverse the credit on the inputs used.
 - (c) Items, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used in ceramic tiles industry for printing of design over the surface of the ceramic tiles, cannot be considered as capital goods/inputs for CENVAT credit purposes.

Settlement Commission

7. Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement?

Rule 18 of the Central Excise Rules, 2002

8. Whether the rebate under rule 18 of the Central Excise Rules, 2002 read with *Notification No. 19/2004- CE (NT) dated 06.09.2004* is admissible when the goods are supplied from units in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ)?

Movability

9. Rotomac Corporations Ltd. was engaged in the assembling and installing the parts and components of asphalt batch mix, drum mix/hot mix plant. The Department alleged that the assembling and installation of asphalt batch mix, drum mix/hot mix plant amounted to manufacture. It contended that the said plant was not per se immovable. Attachment of plant with nuts and bolts was only intended to provide stability and prevent vibration. The attachment was easily detachable from foundation and was not permanent. Therefore, the assessee was liable to pay duty on the said plant.

Explain, with the help of a decided case law, if any, whether Department's allegation is justified in law.

Valuation of goods on the basis of capacity of production

10. Urvashi Tobacco Pvt. Ltd. manufactures chewing tobacco, falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985, manufactured with the

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aid of packing machine and packed in pouches. You are required to advise the basis for valuation of the said goods.

Valuation of samples

11. Nerelac Foods India Ltd. is engaged in manufacturing the baby food. The valuation of said product is done on the basis of maximum retail price under section 4A. In order to promote its sales, it distributed the free samples of its product to various chemists and general store owners. Nerelac Foods India Ltd. approaches you to ascertain how the value of the samples of the said product will be determined? You are requested to advise the same.

SSI

12. Bhola Plastics Ltd. is a plastic manufacturing company. Following information is available for the financial year 2009-10:-

	Particulars	Rs. (in lakh)
(1)	Total value of clearances of goods bearing the brand name of Bhola Plastics Ltd.	75
(2)	Total value of clearances of plastic containers bearing the brand name of Teebok Jams. Teebok Jams use these plastic containers for packing the jam produced by them.	200
(3)	Job work under <i>Notification No. 84/94-CE dated 11.4.94</i>	30
(4)	Job work under <i>Notification No. 214/86-CE dated 25.3.86</i>	40
(5)	Clearances of excisable goods without payment of duty to a unit in Special Economic Zone	20
(6)	Clearances of certain non-excisable goods manufactured by it	50
(7)	Total exports (including for Nepal and Bhutan Rs. 200 lakhs)	500

On the basis of above information, you are required to ascertain whether Bhola Plastics Ltd. is eligible for the benefit of small scale exemption under *Notification No. 8/2003-C.E. dated 01.03.2003* during the year 2010-11.

Indian customs waters

13. Some custom officers received the information from a reliable source that a vessel was carrying smuggled goods. The custom officers located the said vessel in the sea when it was around 6 nautical miles away from the outer limit of territorial waters. The custom officers wish to stop the vessel there and examine and search the goods in the vessel.

You are required to examine whether the custom officers have the authority to stop the vessel and examine and search the goods in the vessel?

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Warehousing

14. Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:-
- (a) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
 - (b) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
 - (c) Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

Sale of goods during pendency of appeal against confiscation of goods

15. The custom authorities confiscated the gold carried by Rafiq (assessee) from Muscat. Rafiq informed the custom authorities that he was filing an appeal against the order of confiscation. The custom authorities informed Rafiq that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Section 141 of the Customs Act, 1962

16. Briefly explain the provisions relating to the conveyance and goods in a customs area being subject to control of officers of customs under section 141 of the Customs Act, 1962.

Classification of goods under customs

17. Flextonics Private Limited imported artemia cyst (brine shrimp eggs). It classified it as 'prawn feed' under the heading 2309 which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 which refers to other products in the category of non edible animal products. In reply, the importer pleaded that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of this product was not changed by nurturing or incubation.

You are required to examine whether the contention of the Department is justified in law.

Powers of CBEC and Commissioner of Customs

18. Answer the following questions with reference to the Customs Act, 1962:-
- (a) Who has the power to approve landing places and specify limits of customs area?
 - (b) Who has the power to declare places to be warehousing stations?

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- (c) Who has the power to appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India?

Settlement Commission

19. The Custom House Agent License of Barbara Shipping Agency (BSA) was suspended on the ground that authorised agent of BSA had committed misconduct by taking active part in the act of smuggling and has thus violated the Custom House Agent Licensing Regulations, 2004. During pendency of the misconduct proceedings, BSA approached Settlement Commission. The Settlement Commission after hearing all the parties held that Revenue had failed to prove that the authorised agent of BSA i.e. Custom House Agent (CHA) had a conscious knowledge of mis-declaration of goods. Thus, Tribunal decided the case in favour of BSA on the basis of the order of the Settlement Commission and dropped the misconduct proceedings against them. Revenue challenged the Tribunal's order alleging that the order passed by the Settlement Commission was ab-initio, null and void being without jurisdiction.

Examine, with the help of a decided case law, whether the order passed by the Settlement Commission is ab-initio null and void being without jurisdiction?

Appeal

20. Whether Revenue can prefer an appeal in case of a consent order?

Taxability of services

21. Which of the following services are liable to service tax?
- (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering.
 - (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange.

Business auxiliary service

22. Briefly explain the exemption from service tax available in relation to the inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages.

Manpower recruitment and supply agency's services

23. Anthrix Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2009-10, its receipts are as follows:-

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	15,00,000
Manpower recruitment services provided to Sindhu Transporters-a	

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goods transport agency	2,25,000
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On the basis of the above information, compute the service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10.

Note: Anthrix Consultants enjoys a good reputation among its clients. Resultantly, its aggregate value of taxable services amounted to Rs. 23 lakh in the financial year 2008-09. Further, the amount of service tax has been charged separately.

Custom house agent's service

24. Aqua Associates Ltd. is a custom house agent (CHA). It gets the import/export consignments cleared through customs. However, at times it also provides services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for its customers (i.e. importers or exporters). Aqua Associates Ltd. initially pays the service charges to these agencies and later recovers these charges from the customer along with its charges. Similar arrangement is there for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.

Aqua Associates Ltd. excludes the aforesaid reimbursable charges while computing the value of taxable service. The Department contends that the charges which are said to be paid by Aqua Associates Ltd. and later recovered from the customers (i.e. reimbursable charges) should be added to the value of taxable service.

Examine the veracity of the Department's contention in law.

Applicability of provisions of Chapter V

25. Some taxable services are provided by an oil rig of Global Oil and Natural Gas Company (GONC) established in the Continental Shelf of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas. The Department raised the demand for service tax on the said service.

Examine whether the demand raised by Revenue is valid in law.

SUGGESTED ANSWERS/HINTS

1. The Department's contention is not justified in law. The said process does not amount to manufacture. The facts of the given case are similar to the case of *CCE v. Sony Music Entertainment (I) Pvt. Ltd.* 2010 (249) E.L.T. 341 (Bom.). In the instant case, the High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the activities carried out by the assessee did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

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2. *Notification No. 26/2009 CE (NT) dated 18.11.2009* has exempted the assessee who manufactures the biris without the aid of machines (falling under tariff item 2403 10 31) from the submission of Annual Installed Capacity Statement. Therefore, Madhav Bidi Company is not required to file Annual Installed Capacity Statement for the financial year 2010-11.
3. The statement, that the theoretical possibility of product being sold is sufficient to establish the marketability of a product, is not correct. The Apex Court, in case of *Bata India Ltd. v. CCE 2010 (252) ELT 492 (SC)*, observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The question is not whether there is a hypothetical possibility of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known. The mere theoretical possibility of the product being sold is not sufficient, but there should be commercial capability of being sold. Theory and practice will not go together when one examines the marketability of a product. Hence, the theoretical possibility of product being sold is not sufficient to establish the marketability of a product.
4. (i) As per third proviso to rule 8(1) amended by *Notification No. 04/2010-CE (NT) dated 19.02.2010*, an assessee shall deposit the excise duty electronically through internet banking if he has paid the total duty of Rs. 10 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year. Therefore, Bindal Steel Industries is required to pay the duty electronically.

Further, rule 8(1) provides that the duty on the goods removed from the factory during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking. Thus, Bindal Steel Industries is required to pay duty for April, 2010 by 6th May, 2010.

(ii) The argument of the Central Excise Officer is not correct in the light of the provisions of third proviso inserted to rule 12(1) by *Notification No. 04/2010-CE (NT) dated 19.02.2010*. It has now made the electronic filing of returns mandatory for the assessee who has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year. Therefore, Bindal Steel Industries is required to file the return for the month of April, 2010 in the electronic form by 10th May, 2010.
5. *Notification No. 6/2010-CE (NT) dated 27.02.2010* has substituted the second proviso to rule 3(5) with the new proviso which provides as follows:-

If the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

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Type of capital goods	Percentage points calculated by straight line method	
	For each quarter in	Percentage
Computers and computer peripherals	Year 1	10 %
	Year 2	8 %
	Year 3	5 %
	Year 4 & 5	1 %

Therefore, the amount of CENVAT credit required to be reversed in the financial year 2010-11 is as follows:

Particulars	Amount (Rs.)
Amount of CENVAT credit availed on 20 computers=Rs. 2,600 × 20	52,000
Less: Amount computed as per second proviso to rule 3(5) (Refer to Note below)	<u>29,120</u>
Amount of CENVAT credit required to be reversed in the financial year 2010-11	<u>22,880</u>

Note: The computation of the amount as per second proviso to rule 3(5):-

Year	Amount of CENVAT credit availed in each year*	Amount as per proviso to rule 3(5)	Amount (Rs.)
1 (01.07.2008-30.06.2009)	50% of Rs. 52,000 = Rs. 26,000 (A)	=10% of (A) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	10,400
2 (01.07.2009-30.06.2010)	Balance 50% of Rs. 52,000 = Rs. 26,000 (B)	(i) 8% of (A) × 4 quarters =Rs. 26,000 × 8% × 4 = Rs. 8,320 (ii) 10% of (B) × 4 quarters =Rs. 26,000 × 10% × 4 = Rs. 10,400	<u>18,720</u>
			<u>29,120</u>

*Rule 4(2)(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of output service provider at any point of time in a given financial year as 50% in the same financial year and balance in one or more subsequent financial years provided the capital goods is still in the possession and use of the manufacturer or the output service provider. Therefore, the CENVAT credit availed on

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the computer systems would be Rs. 26,000 in Year 1 and and balance Rs. 26,000 in Year 2.

6. (a) The statement is absolutely valid. *Circular No. 122/03/2010 – ST dated 30.04.2010* clarifies that CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.
 - (b) The statement is absolutely incorrect. *Circular No. 907/27/2009-CX dated 07.12.2009* has clarified that where the finished goods are written off in the books of accounts and the amount of excise duty has been remitted, the manufacturer would be required to reverse the credit on the inputs used.
 - (c) The statement is absolutely incorrect. *Circular No. 920/10/2010-CX dated 01.04.2010* clarifies that these items are essential for operation of the machines. Therefore, being part/component of the machines, they would be considered as capital goods for the CENVAT credit purposes.
7. The Court, in case of *Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010 (251) E.L.T. 162 (Del.)*, ruled that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in the cases of settlement.
- It elucidated that the order of settlement made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. The scheme of settlement is contained in Chapter-V of the Central Excise Act, 1944 while adjudication undertaken by a Central Excise Officer is contained in the other Chapters of the said Act.
- Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer would not be attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the said Act.
8. *Circular No. 06/2010-Cus dated 19.03.2010* has affirmed that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even though rule 18 does not refer to such supplies in clear terms. Further, the circular clarifies that section 26 of the Special Economic Zone Act, 2005 allows the clearance of duty free goods for authorized operations in the SEZ and the procedure laid down under rule 18 of the Central Excise Rules, 2002 gives effect to the said provision of the SEZ Act.
9. The Department's allegation is justified in law. The facts of the given case are similar to the case of *CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)* wherein the Supreme Court observed that the machine was fixed by nuts and bolts to a

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foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.

In this regard, the Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

10. *Notification No. 10/2010 CE (NT) dated 27.02.2010* has notified the chewing tobacco falling under tariff item 2403 99 10 of the First Schedule to the Central Excise Tariff Act, 1985 manufactured with the aid of packing machine and packed in pouches for the purposes of section 3A of the Central Excise Act, 1944. Therefore, the duty on the said products would be charged on the basis of capacity of production.
11. Earlier, *Circular No. 813/10/2005-CX dated 25.4.2005* clarified that in the case of free samples, the value should be determined under rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

The CBEC has now clarified vide *Circular No. 915/05/2010 CX dated 19.02.2010* that in respect of the free samples of the products covered under MRP based assessment that the valuation of these samples shall also be done under rule 4 of the valuation rules by taking into consideration the deemed value under section 4A(1) notwithstanding the non availability of normal price under section 4(1)(a) of the Act. Accordingly, the value for excise duty would be determined under section 4A for the similar goods (subject to adjustment for size, pack etc.).

12. In order to claim the benefit of exemption under *Notification No. 8/2003 – C.E.* in a financial year, the total turnover of a unit should not exceed Rs.400 lakh in the preceding year. For the purpose of computing the turnover of Rs. 400 lakh:-
 - (i) clearances of goods bearing the own brand name would be included. Hence, clearances of Rs. 75 lakh of goods bearing the brand name of Bhola Plastics Ltd. would be included.
 - (ii) clearances of plastic containers bearing the brand name of others, provided that such plastic containers are meant for use as packing materials by the person whose brand name such goods bear. Hence, clearances of plastic containers bearing the brand name of Teebok Jams of worth Rs. 200 lakh would be included.
 - (iii) clearances to EOU, STP, SEZ etc. will not be considered. Therefore, clearances of excisable goods without payment of duty to a unit in Special Economic Zone of Rs. 20 lakh will not be included.

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- (iv) turnover of non-excisable goods has to be excluded. Therefore, clearances of non-excisable goods of worth Rs.50 lakh shall be excluded.
- (v) clearances exempted under job work notifications should not be considered. Therefore, exempted clearances of Rs. 70 lakh (30+40) lakh under job work notification will not be taken into account.
- (vi) export turnover has to be excluded. However, export to Nepal and Bhutan cannot be excluded as these are treated as “clearance for home consumption”. Therefore, clearances worth Rs.300 lakh exported to other countries will be excluded while clearances worth Rs.200 lakh exported to Nepal and Bhutan will be included.

Therefore, for the year 2009-10, the turnover of Bhola Plastics Ltd., for claiming the SSI exemption will be:-

=Rs. (75 + 200 + 200) lakh = Rs. 475 lakh

Since the turnover of Bhola Plastics Ltd. exceeds Rs. 400 lakh in the previous year 2009-10, it will not be eligible for SSI exemption under *Notification No. 08/2003 dated 01.03.2003* in the financial year 2010-11.

13. Section 106(1)(b) of the Customs Act, 1962, *inter alia*, provides that where the proper officer has reason to believe that any vessel in India/within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vessel and examine and search any goods in the vessel.

Further, section 2(28) defines the Indian customs waters as waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and contiguous zone as well. Indian territorial waters extend up to 12 nautical miles from the base line whereas contiguous zone extend to a further 12 nautical miles from the outer limit of territorial waters.

Thus, in the given case, since the vessel is within the Indian custom waters, the custom officers have the authority to stop the vessel and examine and search the goods in the vessel under section 106(1)(b) of the Customs Act, 1962.

14. (a) The statement is absolutely incorrect. Under section 62(3) of the Customs Act, 1962, the proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.
- (b) The statement is absolutely incorrect. Under section 57 of the Customs Act, 1962, Assistant Commissioner of Customs/Deputy Commissioner of Customs can appoint public warehouses wherein dutiable goods may be deposited.

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- (c) The statement is absolutely correct. Under section 58(2)(b) of the Customs Act, 1962, Assistant Commissioner of Customs or Deputy Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act.
15. The action of the custom authorities is not valid in law. The facts of the given case are similar to the case of *Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.)*. The High Court, in the instant case, held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner intimating that he was filing an appeal against the order of confiscation, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.
16. All conveyances and goods in a customs area shall, for the purpose of enforcing the provisions of the Customs Act, 1962, are subject to the control of officers of customs.
- The imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.
17. The contention of the Department is not justified in law. The facts of the given case are similar to the case of *Atherton Engineering Co. Pvt. Ltd. v. UOI 2010 (256) ELT 358 (Cal.)*. In the instant case, the Court noted that it was the use of the product that had to be considered in the instant case. If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the instant case, it examined whether the nature and character of the product remained the same.
- The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.
- Hence, the Court held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.
18. (a) Under section 8 of the Customs Act, 1962, the Commissioner of Customs may, —
- (i) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
 - (ii) specify the limits of any customs area.
- (b) As per section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be

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warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

- (c) Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
19. The order passed by the Settlement Commission is not null and void and is within the jurisdiction. The facts of the given case are similar to the case of *UOI v. East and West Shipping Agency 2010 (253) ELT 12 (Bom.)*. The High Court observed that as per section 127M of the Customs Act, 1962, the order passed by the Settlement Commissioner is in judicial proceedings and it is a judicial order. Further, Revenue had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside considering the scheme of Chapter XVIA. It must be held good in law so long as it is not set aside. Considering the facts and circumstances of the case, the High Court answered the question of law in affirmative in favour of the assessee and against Revenue.
20. In case of *CCus v. Trilux Electronics 2010 (253) ELT 367 (Kar.)*, High Court held that if an order was passed by CESTAT based on consent and the matter was remanded at the instance of Revenue, then Revenue could not pursue an appeal against such order in a higher forum.

In the instant case, the Tribunal had remanded the matter in order to re-compute the duty payable by the assessee on the basis of representation of Revenue. Thereafter, the Revenue filed an appeal against the said order.

The assessee contended that the appeal filed by the Revenue was not maintainable since the order had been passed by the Tribunal on the submission of the representative of the Revenue. Further, since it is a consent order, no appeal would lie. The High Court held that an appeal against the consent order cannot be filed by the Revenue.

Note: A consent order is a judicial decree expressing a voluntary agreement between parties to a suit, especially an agreement by a defendant to cease activities alleged by the Government to be illegal in return for an end to the charges.

21. (a) Service provided by a self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering are liable to service tax. *Circular No. 96/7/2007 ST dated 23.08.2007* clarified that consulting engineers include self-employed professionally qualified engineer, whether or not employing others for assistance. Further, services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service.
- (b) The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange is not liable to service tax. *Notification No. 31/2009 ST dated 01.09.2009* has exempted the business auxiliary service provided by a sub-broker, to a stock-broker in relation

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to sale or purchase of securities listed on a registered stock exchange from whole of the service tax leviable thereon.

- 22.** Notification No. 39/2009 ST dated 23.09.2009 has exempted the business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely:-
- (a) that no CENVAT credit has been taken under the provisions of the CENVAT Credit Rules, 2004;
 - (b) that there is documentary proof specifically indicating the value of such inputs; and
 - (c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Meaning of 'input' and 'capital goods'

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

- 23. Computation of service tax payable by Anthrix Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2009-10:-**

Particulars	Amount (Rs.)
Pre-recruitment screening of the prospective candidates	12,00,000
Verification of the credentials of the candidates	7,00,000
Supply of contractual employees to big business houses	<u>15,00,000</u>
Value of taxable services	<u>34,00,000</u>
Service tax @ 10% = Rs. 34,00,000 × 10%	3,40,000
Add: Education cess payable @ 2% = Rs. 3,40,000 × 2%	6,800
Add: Secondary and education cess payable @ 1% = Rs. 3,40,000 × 1%	3,400
Amount of service tax payable	3,50,200

Note:

1. Notification No. 1/2009 ST dated 05.01.2009 has exempted the services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise provided to a goods transport agency for transportation of goods by road in the said goods carriage from the whole of the

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service tax. Therefore, Rs. 2,25,000 would not be included in the value of the taxable services.

2. Exemption from service tax under *Notification No. 6/2005-ST dated 01.03.2005* is not available to Anthrix Consultants for the financial year 2009-10 because the aggregate value of taxable services exceeds Rs. 10 lakh in the preceding financial year 2008-09.
24. The contention of the Department is not valid in law. As per the clarification provided by *Circular No. 119/13/2009-S.T., dated 21-12-2009*, the said reimbursable charges paid by Aqua Associates Ltd. would be excluded from the value of taxable service if all the following conditions are satisfied -
 - (a) The activity/service for which a charge is made should be in addition to provision of CHA service.
 - (b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to:-
 - (i) arrange for such activities/services for the customer; and
 - (ii) make payments to other service providers on his behalf;
 - (c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;
 - (d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.
 - (e) CHA should provide evidence to prove nexus between such other (than CHA) services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.
 - (f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice.

Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.

25. The demand raised by Revenue is valid in law. The provisions of Chapter V have been extended to any service provided or to be provided by or to the installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas vide *Notification No. 14/2010-S.T. dated 27-2-2010*. Therefore, GONC is liable to pay service tax in the given case.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Indirect Tax Laws contains all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications

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issued up to 30.04.2009 and Budget notifications have also been incorporated therein. The following are the amendments which have been made between 01.05.2009 to 31.04.2010. It may be carefully noted that for the students appearing in November 2010 exams, the amendments made by the notifications, circulars and other legislations up to 30.04.2010 are relevant.

EXCISE

A. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002:

1. Certain manufacturers exempt from the submission of Annual Installed Capacity Statement [Rule 12(2A)(b)]

Rule 12(2A)(b) provides that the Central Government may specify assessee or class of assessee who may not require to submit an Annual Installed Capacity Statement.

The Central Government has exempted, vide **Notification No. 26/2009 CE (NT) dated 18.11.2009**, the assessee, from the submission of the Annual Installed Capacity Statement, who manufacture the following goods, namely,-

- (i) biris, manufactured without the aid of machines falling under tariff item 2403 10 31.
- (ii) matches manufactured without the aid of power falling under heading 3605.
- (iii) reinforced cement concrete pipes falling under heading 6810.

2. Quantum of excise duty reduced for e-payment from Rs. 50 lakh to Rs. 10 lakh

Prior to amendment

Earlier, an assessee was required to deposit the excise duty electronically through internet banking if he had paid the total duty of Rs. 50 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year [Third proviso to rule 8(1)].

Amendment made by Notification No. 04/2010-CE (NT) dated 19.02.2010

The aforesaid limit of Rs. 50 lakh has now been reduced to Rs. 10 lakh. Third proviso to rule 8(1) has accordingly been amended to provide that an assessee shall deposit the excise duty electronically through internet banking if he has paid the total duty of Rs. 10 lakh or more (including the amount of duty paid by utilisation of CENVAT credit) in the preceding financial year.

The said amendment is effective from 1st April, 2010.

Further, the procedure for electronic payment of excise duty has been detailed in **Circular No. 919 / 09 / 2010 – CX dated 23.03.2010**.

3. E-filing of returns made mandatory for assessee paying excise duty of Rs. 10 lakh or more in the previous year

Prior to amendment

The facility of e-filing of returns was earlier optional for the assessee.

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Amendment made by Notification No. 04/2010-CE (NT) dated 19.02.2010

Third proviso inserted to rule 12(1) has now made the electronic filing of returns mandatory for the assessee who has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year.

The said amendment is effective from 1st April, 2010.

Further, the procedure for electronic filing of central excise return has been detailed in **Circular No. 919 / 09 / 2010 – CX dated 23.03.2010.**

4. Payment of duty on quarterly basis rather than on monthly basis by an SSI

Prior to amendment

As per second proviso to rule 8(1), in case of an assessee availing the exemption under a Notification based on the value of clearances in a financial year (i.e. SSI), the duty on goods cleared during a **calendar month** was to be paid:

- (i) **If duty was paid electronically through internet banking:** by the 16th day of the following month.
- (ii) **In any other case:** by the 15th day of the following month.
- (iii) **In the case of goods removed during the month of March:** by the 31st day of March.

Amendment made by the Notification No. 5/2010-CE (NT) dated 27.02.2010

As per amended second proviso to rule 8(1), in case of an assessee availing the exemption under a Notification based on the value of clearances in a financial year (SSIs), the duty on goods cleared during a **quarter** shall be paid:

- (i) **If the duty is paid electronically through internet banking:** by the 6th day of the month following that quarter.
- (ii) **In any other case:** by the 5th day of the month following that quarter.
- (iii) **In the case of goods removed during the month of March:** by the 31st day of March.

Availability of the relaxation

Above relaxation is available to a unit who is “**eligible**” to claim SSI exemption regardless of whether he actually claims it or opts to pay duty. Further, the said relaxation is available to an “**eligible**” unit for the entire financial year even if it crosses the limit of Rs. 400 lakh (aggregate value of clearances) in the current financial year.

Meaning of eligible

An “**eligible**” unit is one whose aggregate value of clearances did not exceed Rs. 400 lakh in the preceding financial year.

The said amendment is effective from 1st April, 2010.

5. Pre-authentication of invoices dispensed with

Prior to amendment

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Earlier, each foil of the invoice had to be pre-authenticated by the assessee-i.e. by owner, working partner, Managing Director or the Company Secretary or any person duly authorized for this purpose, before being brought to use [Rule 11(5)].

Amendment made by the Notification No. 5/2010-CE (NT) dated 27.02.2010

The aforesaid rule has been omitted. Therefore, for the purpose of procedural simplification, pre-authentication of invoices is not required now.

The said amendment is effective from 1st April, 2010.

6. Date of filing of quarterly returns by SSI units aligned with non-SSI units

Prior to amendment

An assessee availing the exemption under a notification based on value of clearances in a financial year (SSI) was required to file a quarterly return of production and removal of goods **within 20 days** after the close of the quarter to which the return relates [Clause (a) of the second proviso to rule 12(1)].

Amendment made by the Notification No. 5/2010-CE (NT) dated 27.02.2010

Clause (a) of the second proviso to rule 12(1) has been omitted and third proviso to rule 12(1) has been inserted which provides as follows:-

An assessee availing the exemption under a notification based on value of clearances in a financial year (SSI) shall file a quarterly return of production and removal of goods **within 10 days** after the close of the quarter to which the return relates.

Availability of the relaxation

Above relaxation is available to a unit who is “**eligible**” to claim SSI exemption regardless of whether he actually claims it or opts to pay duty. Further, the said relaxation is available to an “**eligible**” unit for the entire financial year even if it crosses the limit of Rs. 400 lakh (aggregate value of clearances) in the current financial year.

Meaning of eligible

An “**eligible**” unit is one whose aggregate value of clearances did not exceed Rs. 400 lakh in the preceding financial year.

Reason for amendment

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies that the purpose of aforesaid amendment is to align the date of filing of quarterly returns by SSI units with the date for non-SSI units so that all returns are required to be filed by the 10th of the month following the said quarter.

The said amendment is effective from 1st April, 2010.

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B. CENVAT CREDIT RULES, 2004:

(a) Amendments in the CENVAT Credit Rules, 2004

1. Simplified provisions prescribed for computing the CENVAT credit allowable in respect of inputs/capital goods cleared on/after 07.09.2009 from an EOU/EHTP/STP

Prior to amendment

Earlier the provisions, relating to CENVAT credit allowable in respect of inputs/capital goods procured from EOU/EHTP/STP, were quite complicated.

Amendment made by the *Notification No.22/2009 CE (NT) dated 07.09.2009*

W.e.f. 07.09.2009, the said procedure has been simplified. For this purpose, second proviso has been inserted after the first proviso in rule 3(7)(a) which provides as follows:-

CENVAT credit in respect of inputs and capital goods cleared **on or after the 07.09.2009** from an export-oriented undertaking (EOU) or by a unit in Electronic Hardware Technology Park (EHTP) or in a software technology park (STP), as the case may be, on which such undertaking or unit has paid –

- A. excise duty leviable under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003 CE, dated 31.03.2003*; and
- B. the education cess and the secondary and higher education cess on the excise duty referred to in (A),

shall be the aggregate of –

- (a) that portion of excise duty referred to in (A), as is equivalent to -
 - the additional duty leviable under section 3(1) of the Customs Tariff Act (Countervailing duty) , which is equal to the duty of excise under section 3(1)(a) of the Excise Act;
 - the additional duty leviable under section 3(5) of the Customs Tariff Act (special countervailing duty @ 4%); and
- (b) the education cess and the secondary and higher education cess referred to in (B).

2. Lower percentage of CENVAT credit reversal required in case of used computers and computer peripherals

Prior to amendment

Earlier, if the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider was required to pay an amount equal to CENVAT credit taken on the said capital goods reduced by 2.5% for

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each quarter of the year or part thereof from the date for taking the CENVAT credit [Second proviso to rule 3(5)].

Amendment made by the Notification No. 6/2010-CE (NT) dated 27.02.2010

Second proviso to rule 3(5) has been substituted with the new proviso which provides as follows:-

If the capital goods, on which the CENVAT credit has been taken, are removed after being used, the manufacturer/output service provider shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT credit, namely:-

S.No.	Type of capital goods	Percentage points calculated by straight line method	
		For each quarter in	Percentage
1.	Computers and computer peripherals	Year 1	10 %
		Year 2	8 %
		Year 3	5 %
		Year 4 & 5	1 %
2.	Other capital goods	2.5% for each quarter	

3. Full CENVAT credit on capital goods in one installment in the year of receipt of such capital goods in the factory to an SSI

Prior to amendment

CENVAT credit in respect of capital goods could be taken only for an amount not exceeding **50% of the duty** paid on such capital goods in the year of receipt of such capital goods in the factory in case of both SSIs and non-SSIs [Rule 4(2)(a)].

Amendment made by the Notification No. 6/2010-CE (NT) dated 27.02.2010

Third proviso to rule 4(2)(a) has been inserted which provides as follows:-

An assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year is allowed to take the CENVAT credit in respect of capital goods for the **whole amount of the duty** paid on such capital goods in the same financial year.

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Above relaxation is available to a unit who is “**eligible**” to claim SSI exemption regardless of whether he actually claims it or opts to pay duty.

An “**eligible**” unit is one whose aggregate value of clearances did not exceed Rs. 400 lakh in the preceding financial year.

The said amendment is effective from 1st April, 2010.

4. Relaxation from brand name restriction under the SSI exemption scheme extended to plastic containers and plastic bottles used as packing materials

Prior to amendment

SSI exemption is available to following packing materials even if they bear the brand name of others:-

- printed cartons of paper or paper board
- metal containers
- HDPE woven sacks
- adhesive tapes
- stickers
- PP caps
- crown corks
- metal labels
- plastic bags
- printed laminated rolls

Amendment made by the Notification No. 4/2010-C.E. dated 27-2-2010

The aforesaid exemption would be available to the plastic containers and plastic bottles also, provided that such plastic containers or plastic bottles are meant for use as packing materials by the person whose brand name such goods bear.

5. Removal of jigs, moulds, dies, fixtures and dies to vendors permitted without reversal of CENVAT credit

Prior to amendment

The CENVAT credit, in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf according to his specifications is allowed [Rule 4(5)(b)].

Amendment made by the Notification No. 6/2010-CE (NT) dated 27.02.2010

Rule 4(5)(b) has been substituted with the new clause which provides as follows:-

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CENVAT credit is allowed, in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:-

- (a) another manufacturer for the production of goods, or
- (b) a job worker for the production of goods on his behalf

according to his specifications.

6. CENVAT credit admissible on the inputs and input services used in the manufacture of exempted goods supplied to specified mega power projects

Prior to amendment

Rule 6(6)(vii) provides that provisions of sub-rule (1) to (4) of rule 6 are not applicable in case of the goods supplied against International Competitive Bidding if such goods are exempt from customs duty when imported into India.

Amendment made by the Notification No. 6/2010-CE (NT) dated 27.02.2010

Rule 6(6)(vii) has been substituted with the new clause which provides as follows:-

The provisions of sub-rule (1) to (4) of rule 6 are not applicable to all the excisable goods exempt from customs duty when imported in India and are supplied:-

- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding.

7. Rule 15 [Confiscation and penalty] substituted with the new rule 15

New rule 15 provides as follows:-

1. Wrongful availment/utilization of CENVAT credit on inputs, capital goods or input services

If any person, takes or utilises CENVAT credit in respect of input/capital goods/input services,

wrongly or in contravention of any of the provisions of these rules,

then:-

- (a) all such goods shall be liable to confiscation and,
- (b) such person, shall be liable to a penalty not exceeding:-
 - (i) the duty or service tax on such goods or services, as the case may be,
 - or
 - (ii) Rs. 2,000

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whichever is greater.

2. Wrongful availment/utilization of CENVAT credit by reason of fraud etc. with the intent to evade the payment of duty

Where the CENVAT credit in respect of input/capital goods/input services has been taken or utilised wrongly **by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty** then, the manufacturer shall also be liable to pay penalty in terms of the provisions of **section 11AC** of the Excise Act.

3. Wrongful availment/utilization of CENVAT credit by reason of fraud etc. with the intent to evade the payment of service tax

Where the CENVAT credit in respect of input/capital goods/input services has been taken or utilised wrongly **by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax** then, the provider of output service shall also be liable to pay penalty in terms of the provisions of **section 78** of the Finance Act.

4. Principle of natural justice

Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.

[Notification No. 6/2010-CE (NT) dated 27.02.2010]

(b) Clarifications relating to the CENVAT Credit Rules, 2004

1. Treatment of CENVAT credit taken on inputs used in WIP/finished goods written off in the books of accounts

Rule 3(5B) of the CENVAT Credit Rules, 2004 provides for the payment of the CENVAT credit taken on the inputs written off in the books of accounts.

Circular No. 907/27/2009-CX dated 07.12.2009 has clarified about the treatment of the CENVAT credit taken on the inputs, which have gone into manufacture of work in progress (WIP), semi finished goods and finished goods, and have also been written off fully in the books of accounts.

(i) In case, finished goods are written off in the books of accounts and:-

S.No.	Excise duty on the finished goods under rule 21 of the Central Excise Rules, 2002 has	Treatment
1.	Not been remitted	the manufacturer would be liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.

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2.	been remitted	the manufacturer would be required to either:- • reverse the credit on the inputs used, or • pay the excise duty.
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(ii) In case, work in progress (WIP) is written off in the books of accounts and:-

S.No.	Stage of completion of the WIP goods	Treatment
1.	It can be considered as manufactured goods	same treatment as applicable to finished goods in point (i) mentioned above
2.	It cannot be considered as manufactured goods	the said goods should be considered as inputs and the treatment for reversal of credit applicable to inputs would be applicable.

2. Irregular availment of CENVAT credit on certain activities not amounting to manufacture

S.No.	In case where	
1.	the assessee has already paid duty, but subsequently the process of making the said product, is held by the Court as not amounting to manufacture	assessee is at liberty to approach the Central Govt. for issue of appropriate notification for regularization of the CENVAT credit availed.
2.	the assessee has not paid duty and the process undertaken by him indisputably does not amount to manufacture	Department should inform the assessee about the correct legal position and advise him not to pay duty and not to avail credit on inputs.

[Circular No. 911/1/2010-CX dated 14.01.2010]

3. Clarification regarding availment of credit of service tax paid on input services in certain cases

S.No.	Issue	Clarification
1.	Whether CENVAT credit of the service tax paid can be claimed	It is clarified that CENVAT credit is admissible in the said case. Rule 4(7) does

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	under rule 4(7) of the CENVAT Credit Rules, 2004 when payments are made through debit/credit notes, debit/credit entries in books of account or by any other mode as mentioned in Explanation (c) to section 67 of the Finance Act, 1994 for transactions between associate enterprises?	not indicate the form of payment and does not place any restriction on payment through debit in the books of accounts. If the service charges as well as the service tax have been paid in any prescribed manner which is entitled to be called 'gross amount charged', credit will be allowed under said rule.
2.	Whether CENVAT credit of the service tax paid can be claimed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to some reasons?	It is clarified that CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.

[Circular No. 122/03/2010 – ST dated 30.04.2010]

4. Items used in ceramic tiles industry - whether capital goods or inputs

S.No.	Issue	Clarification
1.	Whether items, namely, alumina balls/ ceramic pebbles which are grinding media used in ball mills in the ceramic tile industry should be treated as capital goods or inputs for CENVAT credit purposes?	It is clarified that alumina balls/ ceramic pebbles should be considered as component/ part of the machines and should be classified as capital goods for CENVAT credit purposes.
2.	Whether items, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used for printing of design over the surface of the tiles, should be considered as capital goods or inputs for CENVAT credit purposes?	It is clarified that these items are essential for operating of the machines. Therefore, being part/ component of the machines, they would be considered as capital goods for the CENVAT credit purposes.

[Circular No. 920/10/2010 – CX dated 01.04.2010]

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C. PRODUCTS NOTIFIED UNDER SECTION 3A-EXCISE DUTY CHARGED ON THE BASIS OF CAPACITY OF PRODUCTION

Chewing tobacco, jarda scented tobacco and branded unmanufactured tobacco notified under section 3A.

Following mentioned goods manufactured with the aid of packing machine and packed in pouches have been notified for the purpose of section 3A:-

- Unmanufactured tobacco bearing a brand name (tariff item heading 2401 of the First Schedule to Central Excise Tariff Act, 1985)
- Chewing tobacco (tariff item 2403 99 10 of the said Act)
- Jarda scented tobacco (tariff item 2403 99 30 of the said Act)

[Notification No. 10/2010 CE (NT) dated 27.02.2010 and Notification No. 17/2010 CE (NT) dated 13.04.2010]

D. CLARIFICATIONS ON SECTION 11AC OF THE CENTRAL EXCISE ACT, 1944

1. No discretion to reduce the mandatory penalty under section 11AC even though the duty paid before the issuance of show cause notice

It is clarified that *when the conditions spelled out under section 11AC are fulfilled*, there is no discretion to reduce the mandatory penalty which is equal to duty even though the duty is paid before the issuance of show cause notice.

[Circular No. 889/09/2009 CX dated 21.05.2009]

2. Benefit of reduced penalty under provisos to section 11AC not available at the appeal stage

It is clarified that a combined reading of all the four provisos to section 11AC makes it clear that the benefit of reduced penalty of 25% is available only if the assessee has paid duty, interest and the reduced penalty *within 30 days of communication of the order passed by the adjudicating authority*.

However, aforesaid benefit is not available at appeal stage, i.e. if assessee pays duty, interest and the reduced penalty, benefit of reduced penalty is not available *within 30 days of the communication of the order of appellate authority*.

[Circular No. 898/18/09 CX dated 15.09.2009]

E. CLARIFICATION ON CLASSIFICATION OF GOODS UNDER CENTRAL EXCISE

1. Classification of coconut oil packed in small containers

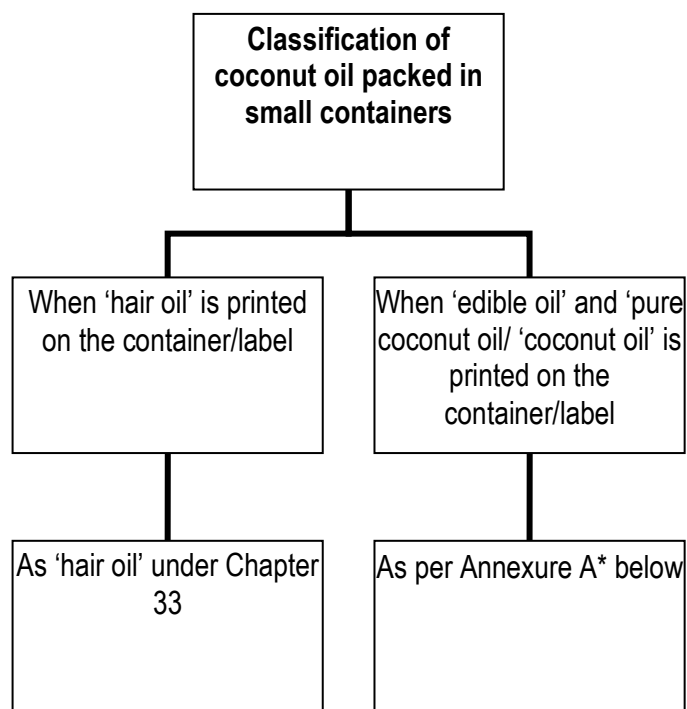
Issue

Under which of the following two chapters, the coconut oil sold in small packs (upto 200 ml), should be classified:

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- Chapter 15 covering various types of vegetable oil including coconut oil.
- Chapter 33 covering cosmetics including hair oil?

Clarification



*Annexure A

In this case, the classification of coconut oil would depend upon the fact as to how the majority of the customers use it. Therefore, it would be classified as follows:-

S.No.	Use by the consumer	It would be classified as
1.	Coconut oil packed in packages which are generally meant for sale in retail as hair oil (packed in containers upto 200 ml)	Hair oil under heading 3305 (refer Note below) (even though few consumers may use it as edible oil)
2.	Coconut oil packed in say 1 liter or 2 liter packages, which are generally used by consumers for edible	Vegetable oil under Chapter 15 (even though some customers may use it

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	purposes	as hair oil)
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Note: Reasons for the classification under heading 3305:-

1. Chapter Note 2 of Chapter 33 prescribes a condition that heading No. 3305 (which covers hair oil also) applies to products **put up in packing of a kind sold by retail for such use**.
2. Section Note 2 to Section VI also provides that goods classifiable in heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the aforesaid interpretation.

[Circular No. 890/10/2009 CX dated 03.06.2009]

2. Classification of textile quilted products like quilts, quilted bed spreads, etc.

Issue	Clarification
Under which of the following two headings the textile quilted products like quilts, quilted bed spreads, etc. would be classified:- (i) Heading 9404 (ii) Heading 5811	It is clarified that these products will be classified under heading 9404.

Reason for such classification:-

1. Heading 5811 covers quilted textile products which are further used in the manufacture of quilts, quilted bedspreads, etc. The term '**used in the manufacture**' in heading 5811 implies that heading 5811 covers only materials which are further used in making of quilted final products like bedding or bedspreads.

While it is heading 9404 which covers the final finished products like quilts and other articles of bedding and furnishing.

2. Explanatory Notes to Harmonized System of Nomenclature to Chapter Heading 5811 also states that the heading does not cover made up goods of this Section (Section Note 7) and articles of bedding or similar furnishing of Chapter 94 which are padded or internally fitted. Thus, the articles of bedding and furnishing fall in Chapter 94.

Note:

1. The **Explanatory Notes to Harmonized System of Nomenclature to Chapter Heading 5811** reads as follows:

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*‘These materials are commonly **used in the manufacture** of quilted garments, bedding or bedspreads, mattress pads , clothing, curtains, place-mats, underpads (silencers) for table linen etc.*

The heading does not cover:

- a. *Plastic sheets quilted, whether by stitching or heat sealing to a padded core (generally Chapter 39);*
- b. *Stitches or quilted textile products in which the stitches constitute designs giving them the character of embroidering;*
- c. *Made up goods of this Section;*
- d. *Articles of bedding or similar furnishing of Chapter 94 padded or internally fitted.’(emphasis supplied).*

The made up goods are defined by Section Note 7 of Section XI.

2. **The Explanatory Notes to Harmonized System of Nomenclature to Chapter 9404** clarify that the heading covers:

‘A. Mattresses supports,...

B. Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibers etc or are of cellular rubber or plastics (whether or not covered with woven fabrics, plastics. etc). For example:

1. *Mattresses, including mattresses with a metal frame:*
2. *Quilts and bedspread (including counterpanes and also quilts for baby - carriages) eiderdowns and duvets (whether of down or any other filling/mattress protectors, bolsters, Pillows/cushions, pouffes, etc.’*

Quilts, quilted bedspread etc. are articles of bedding and are covered under the Explanation (B)(2) as mentioned above.

[Circular No. 903/23/2009-CX dated 20.10.2009]

F. CLARIFICATIONS ON CENTRAL EXCISE VALUATION (DETERMINATION OF PRICE OF EXCISABLE GOODS) RULES, 2000.

1. **Assessable value in respect of goods manufactured on job-work basis to be determined as per rule 10A**

Issue	Clarification
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Some manufacturers of Motor Vehicles were getting complete Motor Vehicles manufactured by sending the Chassis of the Motor Vehicles to independent body builders for building the body as per the design/specification of the manufacturer. Following practice was being followed:- Chassis was transferred to the body builder on payment of appropriate excise duty on stock transfer basis and was not sold to them. The body builder availed the CENVAT credit of the duty paid on the chassis and cleared the same on payment of duty to the Depot/Sales Office/Distributor of the Motor Vehicle (MV) manufacturer. The duty was discharged by the body builder on the assessable value comprising the value of Chassis and the job charges i.e. cost construction method. The Depot/Sales office of the MV manufacturer sold the vehicles at a higher price than the price on which duty had been paid.	It is clarified that:- 1. Wherever goods are manufactured on job work basis, their value would be determined in terms of the provisions of rule 10A subject to fulfillment of the requirements of the said rule. 2. Rule 10A(ii) stipulates that the assessable value, in the cases where the job-worker transfers the excisable goods to the Depot/Sale office/Distributor and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place. 3. Accordingly, after the insertion of rule 10A, the practice of discharging the duty on cost construction method by the body builder is not legally correct.
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[Circular No. 902/22/2009-CX dated 20.10.2009]

2. Valuation of free samples of the product assessed on the basis of MRP

Circular No. 813/10/2005-CX dated 25.4.2005 clarifies that in the case of free samples, the value should be determined under rule 4.

The CBEC has now clarified in respect of the free samples of the products covered under MRP based assessment that the valuation of these samples shall also be done under rule 4 of the valuation rules by taking into consideration the deemed value under section 4A(1) notwithstanding the non availability of normal price under section 4(1)(a) of the Act. Accordingly, the value for excise duty would be determined under section 4A for the similar goods (subject to adjustment for size, pack etc.).

[Circular No. 915/05/2010-CX dated 19.02.2010]

G. CLARIFICATIONS ON EXCISABILITY OF GOODS

1. Bagasse, aluminium/zinc dross and other waste products arising during the course of manufacture and capable of being sold would be excisable goods

It has been clarified that, in view of the amendment made by the Finance Act, 2008 in the definition of excisable goods (see Note), bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of

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manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty. However, it may be noted that the said circular would be applicable for the period after the budget of 2008.

Applicability of rule 6 of the CENVAT Credit Rules, 2004 in case aforesaid products are nil rated/exempted:-

In case the rate of duty in respect of such products is Nil in the tariff or they are exempt from duty in terms of any exemption notification, and if CENVAT Credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of the CENVAT Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 5% amount.

Note: In the budget of 2008, the definition of “excisable goods” in section 2(d) of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, “goods” include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

[Circular No. 904/24/09 CX dated 28.10.2009]

2. Activity of transferring the goods from tankers into smaller drums not amounts to manufacture

As per note 10 to Chapter 29, the activity of repacking products mentioned in the said Chapter from bulk packs to retail packs shall amount to manufacture under section 2(f)(iii) of the Central Excise Act, 1944.

In this regard, it has clarified that the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10 because the tankers cannot be termed as bulk packs.

[Circular No. 910/30/2009-CX dated 16-12-2009]

H. OTHERS:

1. Permission to bring the duty-paid packing materials into export warehouse under rule 20 of Central Excise Rules, 2002

Circular No. 581/18/2001-CX dated 29.06.01 provides that duty paid goods are not permitted to be brought into the warehouse. In this regard, it has been clarified that duty paid packing material can be brought into the export warehouse subject to the fulfillment of following three conditions:-

1. Exporter submits a written request to the jurisdictional AC/DC of the Division, who may grant the permission for a period of one year at a time.
2. Exporter maintains proper account of such goods.

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3. Exporter does not claim any export benefit like rebate of duty paid on the said material.

Reason for grant of such permission

The reason for granting such permission is that a number of times packing material in small quantity is required at a short notice and the supplier may not be interested to follow the detailed procedure of removal of goods without payment of duty.

[Circular No. 900/20/2009-CX dated 06.10.2009]

- 2. Responsibility, of ensuring that goods received at concessional rate of duty being used by the manufacturer for the intended purpose, cast on the jurisdictional Assistant/Deputy Commissioner**

Rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 provides that if the material received at concessional rate of duty is not used for intended purpose, manufacture is liable to pay differential duty along with interest. Now the responsibility to ensure this is cast on the jurisdictional Assistant or Deputy Commissioner of Central Excise.

This has been done by substituting the words "The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used" for the words "Where the subject goods are not used".

[Notification No. 14/2009 CE (NT) dated 10.06.2009]

- 3. Records of principal inputs to be maintained for deterring the evasion of duty - Notification No. 32/2006 CE (NT) dated 30.12.2006 amended**

Notification No. 32/2006 CE (NT) dated 30.12.2006 provides that if a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in any of the specified contraventions, certain facilities would be withdrawn or certain restrictions would be imposed on them.

The above notification has been amended in the following manner:

- (i) Following contravention also added to the list of specified contraventions:**

If a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in the removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of rule 3(5) of the CENVAT Credit Rules, 2004, withdrawal of facilities or impose certain restrictions may be ordered.

- (ii) Two more restrictions imposed**

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Following restrictions may also be imposed if a manufacturer is prima facie found to be knowingly involved in committing the specified offences:-

- (a) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken.
- (b) the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.

Meaning of principal inputs

Principal inputs means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final product.

[Notification No. 15/2009 CE (NT) dated 10.06.2009]

4. Public sector company specified as class of persons eligible for advance ruling

Section 23A(c)(iii) of the Central Excise Act, 1944 provides that applicant means a resident falling in such class /category, as may be specified by the Central Government by issuing a notification and which or who, as the case may be, makes application for advance ruling.

Central Government has specified a public sector company for the purpose of aforesaid clause.

Meaning of public sector company

A public sector company shall have the same meaning as is assigned to it in section 2(36A) of the Income Tax Act, 1961.

[Notification No. 21/2009 CE (NT) dated 20.08.2009]

CUSTOMS

1. Public sector company and resident importing goods under project import scheme specified as class of persons eligible for advance ruling

Section 28E(c)(iii) of the Customs Act, 1962 provides that applicant means a resident falling in such class /category, as may be specified by the Central Government by issuing a notification and which or who, as the case may be, makes application for advance ruling.

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For the said purpose, Central Government has specified the following:-

- (a) a public sector company
- (b) a resident who proposes to import goods claiming for assessment under heading 9801 (items eligible for project import) of the First Schedule to the Customs Tariff Act, 1975

Meaning of public sector company

A public sector company shall have the same meaning as is assigned to it in section 2(36A) of the Income Tax Act, 1961.

Meaning of resident

Resident shall have the same meaning as is assigned to it in section 2(42) of the Income Tax Act, 1961.

[Notification No. 124/2009 Cus. (NT) dated 20.08.2009]

2. Clarification on whether rebate under rule 18 of the Central Excise Rules, 2002 is admissible for clearance to SEZ

Issue	Clarification
Whether the rebate under rule 18 of the Central Excise Rules, 2002 read with <i>Notification 19/2004- CE (NT) dated 06.09.2004</i> is admissible when the goods are supplied from units in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ)?	The circular affirmed that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even though rule 18 does not refer to such supplies in clear terms. Further, section 26 of the Special Economic Zone Act, 2005 allows the clearance of duty free goods for authorized operations in the SEZ and the procedure laid down under rule 18 of the Central Excise Rules, 2002 gives effect to the said provision of the SEZ Act.

[Circular No. 06/2010-Cus dated 19.03.2010]

SERVICE TAX

A. EXEMPTIONS:

1. Exemption to management, maintenance or repair of roads service

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The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads has been exempted from the whole of the service tax leviable thereon.

[Notification No. 24/2009 ST dated 27.07.2009]

2. Exemption to certain specified goods transported through national waterway, inland water and coastal shipping

The taxable service provided to any person in relation to the transport of following goods through national waterway, inland water and coastal shipping has been exempted from whole of the service tax leviable thereon:

- (i) Foodstuffs including edible oil seeds and edible oils; food grains (cereals and pulses) and flours; fruits, vegetables and flowers; agricultural, fishery, marine produce; meat and poultry; water; tea and coffee; salt, sugar, sugarcane; grocery; milk and milk products; livestock and cattle fodder, dhoties, sarees and voils, long cloth, sheeting
- (ii) Petroleum and petroleum products
- (iii) Fertilizer whether inorganic, organic or mixed
- (iv) Hank yarn made wholly from cotton
- (v) Raw jute and jute textile
- (vi) Seeds of food crops and seeds of fruits and vegetables; seeds of cattle fodder and jute seeds
- (vii) Medicine/pharmaceutical products
- (viii) Relief materials meant for victims of natural or manmade disasters, calamities, accidents and mishap
- (ix) Defence/ military equipments
- (x) Luggage of passengers, whether carried as personal luggage in the ship or booked separately as consignment/ postal mail / mail bags/household effects
- (xi) Newspaper/magazines registered with Registrar of Newspapers

The above amendment became effective from 1st September, 2009.

[Notification No. 30/2009 ST dated 31.08.2009]

3. Exemption to the business auxiliary service provided by the sub-broker to a stock-broker

FINAL (OLD) EXAMINATION: NOVEMBER, 2010

The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange has been exempted from the whole of the service tax leviable thereon.

[Notification No. 31/2009 ST dated 01.09.2009]

Note: Finance (No. 2) Act, 2009 amended the definition of stock-broker under section 65(101) to exclude sub-broker from the ambit of stock-broker service. Consequently, the services provided by a sub-broker under 'stock broker services' are outside the purview of service tax. The above circular has now exempted the services provided by the stock broker under business auxiliary service also.

4. Exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955

The business auxiliary service provided by any person, to a client in relation to the manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 has been exempted from the whole of the service tax leviable thereon.

[Notification No. 32/2009 ST dated 01.09.2009]

5. Exemption under 'club or association service' extended to five more associations/export councils till 31.03.2010

Notification No.16/2009 ST dated 07.07.2009 has exempted services provided by twenty two export promotion councils, which were earlier taxable under the category of club or association services.

Notification No. 35/2009 ST dated 03.09.2009 has amended the said notification so as to extend the exemption to the following organizations:

1. Electronics and Computer Software Export Promotion Council, PHD House, 3 rd Floor, Ramakrishna Dalmia Wing, New Delhi-110 016.
2. Indian Oilseeds & Produce Export Association Export Promotion Council, 62, Mittal Chambers, Nariman Point, Mumbai-400 021.
3. Jute Manufacturers Development Council, 3A, Park Plaza, 71, Park Street, Kolkata-700016.
4. Services Export Promotion Council, #1206, Chiranjiv Tower, 43, Nehru Place, New Delhi- 110 019.
5. Wool Industry Export Promotion Council, Churchgate Chamber, 7th Floor, 5, New Marine Lines, Mumbai - 400 020.

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Thus, now total of twenty seven export promotion councils have been granted exemption under Notification No. 16/2009. However, this exemption is till 31.03.2010 only.

6. Exemption to value of inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages

The value of inputs, used in providing the business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, is exempt from the service tax subject to the following conditions, namely:-

- (a) that no CENVAT credit has been taken under the provisions of the CENVAT Credit Rules, 2004;
- (b) that there is documentary proof specifically indicating the value of such inputs; and
- (c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Meaning of 'input' and 'capital goods'

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

[Notification No. 39/2009 ST dated 23.09.2009]

7. Exemption to specified taxable services used for export of goods — Notification No. 17/2009-S.T. amended

Notification No. 40/2009 ST dated 30.09.2009 has amended *Notification No.17/2009 ST dated 07.07.2009* which exempts certain specified taxable services received by an exporter and used for export of goods. The following service (inserted at point no. 17 in the original notification) received by an exporter and used for export of goods has also been exempted vide this notification:

17.	(zzzzl)	Service provided for transport of export goods through national waterway, inland water and coastal shipping.	i. The exporter shall- 1. produce the Bill of Lading or a Consignment Note or a similar document by whatever name called,
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			issued in his name; 2. produce evidence to the effect that the said transport is provided for export of relevant goods.
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8. Exemption to service in relation to execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry

The works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry, has been exempted from the whole of service tax leviable thereon.

[Notification No. 41/2009 ST dated 23.10.2009]

9. Exemption to the manufacture of parts of cycles or sewing machines in relation to specified processes subject to specified conditions.

Business auxiliary service provided by a person to any other person in relation to one or more of the **specified process*** during the course of manufacture of parts of cycles or sewing machines, if all the following conditions are satisfied:-

- (a) The aggregate value of aforesaid service does not exceed Rs. 150 lakh during the preceding financial year.
- (b) The exemption shall be restricted to the first clearances, wherein the aggregate value of aforesaid taxable service does not exceed Rs. 150 lakh, made on or after the 1st April in any financial year
- (c) Where the service provider also undertakes one or more of the specified process in relation to manufacture of parts or whole of goods leviable to central excise duty, he shall maintain separate accounts of receipt, production and clearance of exempted and dutiable goods and services.

***Meaning of specified process:-**

Here, **specified process** means:-

- electroplating
- zinc plating
- anodizing
- heat treatment
- powder coating
- painting including spray painting or auto black.

[Notification No. 42/2009-ST dated 12.11.2009]

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10. Exemption to Central and State Seed Testing Laboratories, and Central and State Seed Certification Agencies

Exemption from service tax has been granted to any service provided to any person in relation to the 'technical testing and analysis service' and 'technical inspection and certification service' provided by Central or State Seed Testing Laboratories, and Central or State Seed Certification Agencies notified under the Seeds Act, 1966.

[Notification No. 10/2010 ST dated 27.02.2010]

11. Exemption to transmission of electricity

Exemption from service tax has been provided to the taxable service provided to any person, by any other person for transmission of electricity.

[Notification No. 11/2010 ST dated 27.02.2010]

12. Certain services provided in relation to erection, commissioning or installation exempted

Exemption from service tax has been provided to services relating to 'erection, commissioning or installation' of:-

- Mechanized Food Grain Handling Systems etc.;
- Equipment for setting up or substantial expansion of cold storage; and
- Machinery/equipment for initial setting up or substantial expansion of units for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic, marine or meat products.

[Notification No. 12/2010 ST dated 27.02.2010]

13. Exemption provided to Indian News Agencies subject to specified conditions

Exemption from service tax has been provided to Indian news agencies under 'online information and database retrieval service' and 'business auxiliary service' only if such news agency:-

- (i) is notified as a **news agency set up in India** solely for collection and distribution of news,
- (ii) is **specified under section 10(22B)** of the Income Tax Act, 1961, and
- (iii) applies its income or accumulates it for collection and distribution of news and **does not distribute its income in any manner to its members.**

[Notification No. 13/2010 ST dated 27.02.2010]

14. Exemption to right to use the packaged/canned software subject to certain specified conditions

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The taxable service of providing the right to use the packaged/canned software, pre-packed in retail packages intended for single use has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.
2. **(a) In case of import:** The importer has paid the custom duty on the entire amount received from the buyer.
(b) In case of domestic production: The manufacturer/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. the benefit under the following notifications has not been availed:-
 - *Notification No. 17/2010 CE dated 27.02.2010*
 - *Notification No. 31/2010 Cus dated 27.02.2010*

[Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010]

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B. WITHDRAWAL OF/AMENDMENT TO EXISTING EXEMPTIONS:

1. Definition of vocational training institute substituted

Prior to amendment

Under 'commercial training and coaching services', the taxable services provided in relation to commercial training or coaching, by a vocational training institute is exempt. Earlier, the vocational training institute was defined as follows:-

"vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

Amendment made by the **Notification No. 3/2010-ST dated 27.02.2010**

The aforesaid definition of vocational training institute has been substituted by the following definition:-

"Vocational training institute" means an Industrial Training Institute (ITI) / Industrial Training Centre (ITC) affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961.

Note:

1. *The ITI and ITC have equivalent recognition and the certificates/diploma's granted by them have the same recognition. The only difference between ITC and ITI is that ITI are the institutes owned by the Government while the ITC are the institutes owned by the private parties.*
2. *List figuring under Schedule I of the Apprentices Act, 1961 covers engineering as well as non-engineering trades. Few of the designated trades covered are:-*
 - *cutting and tailoring trades*
 - *beautician trades*
 - *agricultural trades*
 - *electrical trades*
 - *glass and ceramic trades*
 - *heat engine trades*
 - *hi-tech trades*

Implication of the amendment

The exemption from service tax in relation to vocational training courses would be available only if the following conditions are satisfied:-

- Vocational training institute is an ITI/ITC which is affiliated to the National Council for Vocational Training.
- It offers course in any of the designated trades.

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Exemption extended to “Modular Employable Skill courses” provided by a vocational training provider

The above exemption from the service tax has been extended to the commercial training or coaching centre services provided in relation to “Modular Employable Skill courses” provided by a vocational training provider registered under ‘Skill Development Initiative Scheme’ with the Directorate General of Employment and Training, Ministry of Labour and Employment.

[Notification No. 23/2010-ST dated 29.04.2010]

2. Food grains and pulses included in the list of items eligible for exemption when transported by road

Prior to amendment

At present, transport of fruits, vegetable, eggs or milk by road by a goods transport agency is exempt from service tax.

Amendment made by the Notification No. 4/2010-ST dated 27.02.2010

The scope of exemption has been enhanced by including food grains and pulses in the aforesaid list of exempted goods.

3. Withdrawal of exemption available to the Government of Rajasthan under Group Personal Accident Scheme

Prior to amendment

Earlier, Group Personal Accident Scheme provided by Govt. of Rajasthan to its employees under ‘general insurance service’ was exempt from the service tax.

Amendment made by the Notification No. 5/2010-ST dated 27.02.2010

The aforesaid exemption has now been withdrawn.

4. Transport of goods by rail service

(a) Exemption from service tax on transport of goods by Government railway excluding transport of containerized goods by others withdrawn

Exemption from service tax on service provided in relation to ‘Transport of Goods by Rail’ by Notification No. 33/2009 ST dated 01.09.2009 has been withdrawn.

Implication of the Amendment

Now services provided in relation to goods transported by railways including Government railways, whether in containers or otherwise are liable to service tax.

The said amendment is effective from 1st July, 2010.

[Notification No. 7/2010-ST dated 27.02.2010 and Notification No. 20/2010 ST dated 30.03.2010]

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(b) Abatement of 70% of the gross value of the freight charged in relation to 'transport of goods by rail' service

Notification No. 1/2006 dated 01.03.2006 has been amended to provide an abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of 'transportation of goods by rail whether in container or otherwise'. Consequently, the service provider has to pay the service tax on only 30% of the value of the service subject to the fulfillment of the following conditions:-

- (i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004 and
- (ii) the service provider has not availed the benefit under *Notification No. 12/2003-ST dated 20.06.2003*.

The said amendment is effective from 1st July, 2010.

[Notification No. 9/2010-ST dated 27.02.2010 and Notification No. 22/2010 ST dated 30.03.2010]

(c) Exemption for transport of specified goods by rail

Service provided to any person in relation to transport of certain specified goods by rail has been exempted from the service tax. Few such specified goods are as follows:-

- Defence/ military equipments
- Railway equipments/ materials
- Postal mail bags
- Relief material for victims of natural calamities
- Kerosene oil meant for supply through public distribution system

The said amendment is effective from 1st July, 2010.

[Notification No. 8/2010-ST dated 27.02.2010 & Notification No. 21/2010 ST dated 30.03.2010]

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The sequence of the amendments made in relation to the 'transport of goods by rail service' has been detailed in the tables below depicting a comparative analysis of the situation:-

S.No.	Prior to 01.09.2009	01.09.2009 to 30.06.2010	With effect from 01.07.2010
1.	Transport of goods by rail in containers was liable to service tax. Following services were not taxable:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.	(a) Finance (No.2) Act, 2009 imposed service tax on goods transported by railways including Government railways, whether in containers or otherwise. (b) Thereafter, <i>Notification No. 33/2009-ST dated 01.09.2009</i> provided that following services were exempt:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers. Hence, only transport of goods by rail in containers remained liable to service tax. Conclusion: Position prior to 01.09.2009 was restored.	Transport of goods by railways including Government railways, whether in containers or otherwise has been made liable to service tax.
2.	<i>Notification No. 1/2006 dated 01.03.2006</i> provided an abatement of 70% of the gross value of the freight charged to the 'transport of goods in containers by rail service'.	(a) <i>Notification No. 1/2006 dated 01.03.2006</i> was amended to provide the said abatement to 'service of transport of goods by rail, whether in container or otherwise' w.e.f.	An abatement of 70% of the gross value of the freight charged has been provided to 'transport of goods by rail whether in containers or otherwise'.

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		01.09.2009. (b) <i>Notification No. 34/2009-S.T dated 01-9-2009</i> again amended <i>Notification No. 1/2006 dated 01.03.2006</i> to provide the said abatement to 'transport of goods in containers by rail'. Conclusion: Position prior to 01.09.2009 was restored.	
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Prior to 01.09.2009	01.09.2009 to 08.09.2009	09.09.2009 to 30.06.2010	With effect from 01.07.2010
There were no specified goods which were exempt in relation to transport of goods by rail in containers.	<i>Notification No. 28/2009-S.T. dated 31-8-2009</i> exempted transport of certain specified goods by rail. However, the said notification was subsequently rescinded by <i>Notification No. 36/2009-S.T. dated 9-9-2009</i> . Hence, the specified goods were exempt for the said period of 8 days.	With the rescission of <i>Notification No. 28/2009-S.T.</i> , position prior to 01.09.2009 was restored.	Exemption provided to transport of the specified goods by rail has now been restored.

C. AMENDMENT/CLARIFICATION IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006:

1. Statutory taxes levied by any Government on air passenger to be excluded from the value of service [Clause (v) inserted after clause (iv) of rule 6(2)]

Rule 6(2) enumerates the exclusions from the value of taxable services. The said Notification provides that the statutory taxes charged by any Government (including foreign Governments, where a passenger disembarks) on air passenger would be excluded from

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taxable value for the purpose of levy of service tax under the 'air passenger transport service'. Such charges would be eligible for exemption only if they are shown separately on the ticket/the invoice for such ticket.

[Notification No. 15/2010-S.T. dated 27-2-2010]

2. Exclusion of the service charges recovered by the custom house agent to be excluded from the value of the 'custom house agent service'

Issue

The principal job of a custom house agent (CHA) is to get the import/export consignments cleared through customs. However, at times they also provide services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges CHAs. Similar arrangement can occur for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.

Whether the charges which are said to be paid by the CHAs and later recovered from the customers (i.e. reimbursable charges) should be added to the value for charging service tax from CHAs?

Clarification

It is clarified that the aforesaid reimbursable charges would be excluded from the value of taxable service if all the following conditions are satisfied, -

- (a) The activity/service for which a charge is made should be in addition to provision of CHA service.
- (b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to:-
 - (i) arrange for such activities/services for the customer; and
 - (ii) make payments to other service providers on his behalf;
- (c) The CHA does not use the activities/services for his own benefit or for the benefit of his other customers;
- (d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin.
- (e) CHA should provide evidence to prove nexus between such other (than CHA) services provided and the reimbursable amounts. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like.

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- (f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice.

Any other miscellaneous/out of pocket expenses charged by the CHA would not be excluded.

[Circular No. 119/13/2009-S.T. dated 21-12-2009]

D. AMENDMENTS/CLARIFICATIONS IN THE SERVICE TAX RULES, 1994:

1. Quantum of service tax reduced for e-payment from Rs. 50 lakh to Rs. 10 lakh

Proviso to rule 6(2) has been amended to provide that an assessee shall deposit the service tax electronically through internet banking if he has paid the total service tax of Rs. 10 lakh or more (including the amount of service tax paid by utilisation of CENVAT credit) in the preceding financial year.

The said amendment is effective from 1st April, 2010.

Further, the procedure for electronic payment of service tax has been detailed in **Circular No. 919 / 09 / 2010 – CX dated 23.03.2010.**

[Notification No. 01/2010-ST dated 19.02.2010]

2. E-filing of returns made mandatory for assesseees paying service tax of Rs. 10 lakh or more in the previous year

The facility of e-filing of returns was earlier optional for the assesseees. Proviso inserted to rule 7(2) has now made the electronic filing of returns mandatory for the assessee who has paid total service tax of Rs. 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

The said amendment is effective from 1st April, 2010.

Further, the procedure for electronic filing of service tax return has been detailed in **Circular No. 919/09/2010 – CX dated 23.03.2010.**

[Notification No. 01/2010-ST dated 19.02.2010]

E. AMENDMENTS MADE IN THE EXPORT OF SERVICES RULES, 2005 & TAXATION OF SERVICES (PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA) RULES, 2006

(a) Definition of “India” substituted

The definition of “India” has been substituted with a new definition in both the aforesaid rules. New definition reads as follows:-

“India” includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

[Notification No. 6/2010-S.T. dated 27.02.2010 & Notification No. 16/2010-S.T. dated 27.02.2010]

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- (b) **Categorisation of the services introduced by the Finance (No.2) Act, 2009 under the clauses of rule 3(1)**

S. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Cosmetic and plastic surgery service	(zzzzk)	(II)	(II)
2.	Service provided in relation to transport of coastal goods and goods transported through inland water including National Waterways	(zzzzl)	(II)	(II)
3.	Legal consultancy service	(zzzzm)	(I) and (III)	(I) and (III)

[Notification No. 37/2009 ST dated 23.09.2009 and Notification No. 38/2009 ST dated 23.09.2009]

- (c) **Re-categorisation of certain services under the clauses of rule 3(1)**

In both the above mentioned rules, following four services have been re-classified as follows:-

S. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005		Taxation of Services (Provided from Outside India and Received in India) Rules, 2006	
			Prior to amendment	After the amendment	Prior to amendment	After the amendment
1.	Mandap keeper services	(m)	(II)	(I)	(II)	(I)
2.	Chartered Accountant services	(s)	(II)	(III)	(II)	(III)
3.	Cost Accountant	(t)	(II)	(III)	(II)	(III)

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	services					
4.	Company Secretary's services	(u)	(II)	(III)	(II)	(III)

[Notification No. 6/2010-S.T. dated 27-2-2010 & Notification No. 16/2010-S.T. dated 27-2-2010]

Note: In the tables above, please note that (I), (II) and (III) are as follows:-

(I) Immovable property related services [Rule 3(1)(i)]

For services under this category, criterion of services being in relation to an immovable property situated outside India is prescribed.

(II) Performance related services [Rule 3(1)(ii)]

For services under this category, criterion of performing the services, at least in part, outside India is prescribed.

(III) Location of recipient related services [Rule 3(1)(iii)]

For services under this category, criterion of location of recipient of service outside India is prescribed.

(d) Condition, of service to be provided from India and used outside India to qualify as export of service, relaxed

Prior to amendment

Earlier, conditions to be satisfied for the provision of any taxable service to be treated as 'export of service' were as follows:-

- (1) Such service is provided from India and used outside India.
- (2) Payment for such service is received by the service provider in convertible foreign exchange.

After the amendment made by the Notification No. 6/2010-S.T. dated 27-2-2010

Now, the condition (1) i.e. service to be provided from India and used outside India has been omitted.

Note: It may be noted that earlier the onsite services provided to the foreign clients by the Information Technology companies were not eligible as export of service. With the aforesaid amendment, such services have now become eligible as export of service.

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F. CLARIFICATIONS REGARDING SERVICE TAX LIABILITY IN CASE OF PROVISION OF CERTAIN SERVICES

1. Commission/remuneration paid to directors (whole-time or independent) and Managing Director not liable to service tax

S.No.	Issue	Clarification
1.	Whether service tax is payable on commission paid to Managing Director/Directors (whole time, or Independent) by the company under business auxiliary service?	Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.
2.	Whether service tax is payable by Independent Directors who are part of the Board of Directors under management consultant's service?	The Managing Director/Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

[Circular No. 115/09/2009 ST dated 31.07.2009]

2. Canals constructed by Govt. or under Govt. projects not liable to service tax under commercial or industrial construction service

Issue	Clarification
Whether service tax is leviable on the construction of canals for Government	As per section 65 (25b) of the Finance Act, 1994 "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system

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projects?	built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.
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[Circular No. 116/09/2009 ST dated 15.09.2009]

3. Dams, irrigation projects, buildings or infrastructure construction under turnkey/EPC contract by Government not covered under the works contract service

Issue	Clarification
Whether service tax is leviable on construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement & Construction) mode taken up by the Government?	The said service is covered under section 65 (105)(zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence, works contract in respect of above works even if done through EPC mode are exempt from payment of service tax.

[Circular No. 116/09/2009 ST dated 15.09.2009]

4. Service tax not leviable on tour operator service in connection with Haj & Umrah pilgrimage

Service tax will not be leviable on services provided by a tour operator in connection with Haj & Umrah pilgrimage. The amount charged to the pilgrims in India undertaking Haj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. As per Rule 3(1)(ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009 ST dated 24.02.2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India.

Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in the Export of Service Rules, 2005.

[Circular No. 117/11/2009 ST dated 31.10.2009]

**5. Re-insurance commission not liable to service tax
Meaning of re-insurance commission**

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When an insurance company re-insures the insurance business with another insurance company, it deducts a part of the premium paid to the reinsurance company for meeting the administrative expenses, i.e. they jointly bear the expenses for running the insurance/reinsurance business. This shared expense is commonly known as 'commission' though strictly it is not in the nature of a commission.

Service tax liability on re-insurance commission

The demand was being raised on this amount deducted alleging it to be the consideration paid to the insurance companies for promoting the business of re-insurers, thereby providing them the 'business auxiliary service'. It has been clarified that the arrangement between the insurance company and the reinsurer is only sharing of expenses. The insurance company is not promoting the business of re-insurer because the policy holder may not even be aware of the operations of the re-insurer. Resultantly, no service tax liability arises in the given case.

[Circular No. 120(a)/2/2010-ST dated 16.04.2010]

6. Container detention charges not liable to service tax

Meaning of container detention charges

Container detention charges are imposed by shipping companies for marine containers kept beyond the pre-determined period and not returned to the designated location within that period.

Service tax liability on container detention charges

Container detention charges are actually the 'penal rent' for retaining the containers beyond the pre-determined period.

The retention of the container beyond the pre-determined period is not a 'business auxiliary service' because:-

- it is not a service provided on behalf of the client
- it is not an infrastructural support in the business of either the shipping lines or the customer

Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

G. OTHERS

1. Conditions for exemption to services provided to a developer or units of special economic zone amended

Notification No.9/2009 ST dated 03.03.2009 was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has amended the aforesaid notification in the following manner:-

(A) Where the aforesaid services are consumed wholly within SEZ

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Unconditional exemption is provided to the services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. Therefore, the conditions to be satisfied in order to claim the exemption would be:-

(a) Approval of list of services

The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

(b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

(c) Exemption from payment of service tax

In case of the services consumed wholly within the special economic zone, the exemption can be claimed by the developer or units of special economic zone without following the refund route.

(d) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004.

(e) Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification.

(f) Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.

(B) Where the aforesaid services are consumed partially or wholly outside SEZ

Exemption is provided to the services consumed within the SEZ following the refund route with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. Therefore, the conditions to be satisfied in order to claim the exemption would be:-

(a) Approval of list of services

The developer or units of Special Economic Zone shall get the services

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required in relation to the authorized operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

(b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

(c) Actual payment of service tax

The developer or units of Special Economic Zone claiming the exemption has actually, in the first instance, paid the service tax on the specified services.

(d) Refund of service tax paid

The exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

(e) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004;

(f) Exemption under no other notification claimed

Exemption or refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone shall not be claimed except under this notification.

Further, in case where the services are consumed partially/wholly outside SEZ, following points would require consideration:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

- (b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;

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- (c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;
- (f) the claim for refund shall be filed, within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit, from the date of actual payment of service tax by such developer or unit to service provider;
- (g) the refund claim shall be accompanied by the following documents, namely:-
 - (i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;
 - (ii) documents for having paid service tax;
 - (iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in Special Economic Zone.
- (h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone.
- (i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

2. Public sector company specified as class of persons eligible for advance ruling

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Section 96A(b)(iii) of the Finance Act, 1994 provides that applicant means a resident falling in such class /category, as may be specified by the Central Government by issuing a notification and which or who, as the case may be, makes application for advance ruling.

Central Government has specified a public sector company for the purpose of the aforesaid clause.

Meaning of public sector company

A public sector company shall have the same meaning as is assigned to it in section 2(36A) of the Income Tax Act, 1961.

[Notification No. 27/2009 ST dated 20.08.2009]

3. Provisions of service tax extended to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes

The provisions of Chapter V have been extended to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes in the manner depicted in the table below:-

S.No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

[Notification No. 14/2010-S.T. dated 27-2-2010]