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INDIRECT TAXES CASE STUDY

FOR

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COMPILED BY

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Source / Journals Referred:

- **The Chartered Accountant Journal by ICAI.**
- **Income tax Review : Monthly journal of The Chamber of Tax Consultants.**
- **BCAJ (Bombay Chartered Accountant Society) Monthly journal**
- **Taxmann.com**
- **S.T.R. : Service Tax Review.**
- **E.L.T. : Excise Law Times.**

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SERVICE TAX

❖ Service tax is not leviable on Hire Purchase Finance : CCEx vs. Bajaj Auto Finance Ltd. (SC)

The assessee company is engaged in business of providing finance for vehicle purchase. The question before the SC is that whether Hire Purchase finance services will fall under the purview of Service Tax. Hon'ble Court held that there is quite a difference between Hire Purchase agreement and Hire Purchase finance and hence the same will not fall under the purview of Service Tax.

❖ Outdoor catering services is input service for the purpose of Cenvat Credit : CCE vs. Ultratech Cement Limited (Mum) (Oct 2010)

Facts:

Assessee is engaged in the manufacture of cement which is excisable under Chapter 25 of the Central Excise Tariff Act, 1985. On scrutiny of the CENVAT register, it was noticed by the Excise Authorities that, during the period 2004-08, the assessee had availed credit of service tax paid on outdoor catering services under the provisions of Cenvat Credit Rules, 2004 (In short, "the 2004 Rules") & utilized the same in paying excise duty, that is, central value added tax on clearance of cement manufactured by the assessee.

Department was of the opinion that outdoor catering services was not a "Input service" under Rule 2(l) of the 2004 Rules and therefore, the assessee was not entitled to take credit of service tax paid on outdoor catering services and accordingly rejected the claim of the assessee.

Decision:

Hon'ble Court held that the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.

❖ Letting out of a lawn by a members club to its members will not be taxable under Mandap Keeper Services : UOI vs. Karnavati Club Ltd. (SC) (Apr 2010)

Facts:

The assessees are companies registered under the provisions of the Companies Act, 1956. The main object of the petitioners is to encourage and promote the game of cricket and other different games and sports in the State of Gujarat and to provide facilities and infrastructure in connection with such games, sports and for other purpose. The petitioner is a members club without any shareholders and makes available facilities exclusively for its members and their guests and recoups expenses. The assessee is therefore, a mutual undertaking which does not earn any profit as understood in commercial parlance and does not carry on any trade or business. In legal parlance, the element of mutuality in the affairs and dealing of the club exists. The assessee club is having open lawn (space) and the said lawn of the club is provided for marriage ceremonies and other social functions to the members on charges.

The department stated that the service tax has been imposed upon the service rendered by the 'Mandap Keeper' to its clients and as insisted upon by the officers of the assessee has got themselves registered under provision of Finance Act, 1994 for the purpose of making the payment of service tax as 'Mandap Keeper' provided by the petitioner to its members and started payment of service tax as per the provisions of Finance Act, 1994. Against which the assessee is in appeal. Gujarat HC had decided the issue in favour of the assessee.

Decision:

The Gujarat High Court, in the impugned order, had held that the assessee club did not become Mandap Keeper for allowing club space to be occupied by member or his family members or by his guest for a function, by constructing Mandap. The High Court held that members of a club cannot be considered as its clients and the transaction between members and the club was not commercial. Against this the department had filed SLP in SC, which was dismissed by SC.

❖ A procedural lapse could not result in denial of rebate claim. CCE vs. Convergys India (p) Ltd. (P & H) (Aug 2010)

Facts:

The assessee is engaged in rendering customer care services falling under the category of "Business Auxiliary Services" under the provisions relating to levy of service tax under the Finance Act, 1994. It claimed credit for input services in accordance with Notification No. 12/2005-ST dated 19-4-2005. Claim of the assessee for the rebate was for the period from 19-4-2005 to 30-4-2005 and 1-5-2005 to 31-5-2005. On that basis, refund was also claimed. The original authority rejected the claim of the assessee but the appellate authority i.e. Commissioner (Appeals) upheld the plea of the assessee which has been affirmed by the Tribunal.

The question before the court was that mere delay in filing the declaration before the department would denied the assessee the eligible claim of rebate.

Decision:

The assessee explained the delay by submitting that they had to consider various options and to obtain the management's approval and as per judgment of the Hon'ble Supreme Court in M/s. Mangalore Chemicals & Fertilizers v. Deputy Commissioner - 1991 (55) E.L.T. 437 (S.C.), the procedural requirement could be condoned for valid reasons particularly when the rebate extended was a new benefit. Accordingly decided in favour of the assessee.

❖ Department cannot grant registration other than the category applied by the assessee for registration. Circulars, which are challenged, but outcome of which is pending, are binding on the department till the time overruled. Karamchand Thapar & Bros vs. UOI (KOL.)

The Assessee applied for registration under business auxiliary services under which he was covered. However, the department had granted the same under clearing and forwarding agent. HC had decided that registration should be granted under the category of ' Business Auxiliary Category' and the commissioner has no power to grant the registration on his own without receiving any application for registration under that specific category.

Court had further held that circulars are binding on the department. Department can challenge the circular but till the outcome of the said challenge, the same should be binding on the department.

- Legal representative cannot file appeal on behalf of deceased assessee. : Abhay Intelligence & Security Services vs. CCEx. (Vadodara) (July 2010)

In this case the assessee challenged the levy of penalty on dissolved proprietorship firm after death of the proprietor. The tribunal observed that appeal filed by legal representative against the penalty levied on deceased assessee is not maintainable. However, the penalty being personal in nature can be recovered only from the person on whom it was imposed and as such it could not be recovered from a legal representative.

- Cenvat Credit will be allowed on Garden Maintenance service : ISMT Ltd. vs. CCEx (Mum) (Jan 2010)

The main issue before the tribunal was whether Garden maintenance service be eligible for Cenvat Credit. Tribunal had held that a good garden increases the working efficiency and consumer also feel good and therefore garden maintenance services are in relation to business activity. Cenvat Credit was thus allowed.

- No Interest is leviable for wrong availment of Cenvat credit subject to condition that there should be sufficient balance in Cenvat credit account. CCEx vs. Superfil Products.

Facts:

The assessee, a manufacturer of 'nylon multifilament yarn' was availing CENVAT credit on inputs and capital goods and utilizing for payment of excise duty for clearance of the final products. The respondent has also been sending some of the inputs for the purpose of getting the goods manufactured on job work basis. They opted to avail exemption under Notification No. 30/2004 dated 9-7-2004 with effect from 19-7-2004. When they opted for this exemption, naturally there were some quantities of inputs lying in their own factory and in the premises of job workers either as inputs as such or as inputs in processing stage and/or as inputs in the finished goods which are lying unclear in stock. Some amount of credit was also lying in their account. They also admittedly taken credit, inadvertently, on the basis of ineligible documents. Consequent to opting out of the scheme, opting for exemption and for having taken credit on ineligible documents, they are required to reverse the credit. There is no dispute about the credit that was to be reversed.

Department has held that in respect of credit wrongly taken and in respect of credit which was required to be reversed as on 19-7-2004 but reversed subsequently, interest is payable irrespective of the fact, whether the said amount was utilized or not.

Decision:

(a) Interest will become payable only in respect of credit wrongly taken and which have been utilized.

(b) In a situation, where the assessee opts for an exemption and consequently adjustment requires to be made on the CENVAT account, it was not a case of credit taken wrongly but adjustment warranted in view of opting for an exemption in such a situation, it would be appropriate that a proper account of stock of the material involved and the credit available is taken. If sufficient credit was available on the date of opting out, the mere fact that the physical debiting took place at a later point of time does not involve any benefit to the assessee and no interest shall be payable.

(c) Naturally, there is a time lag involved in quantifying the available stock and determining the amount of credit to be reversed. If the credit available was less than the credit that should be reversed, the balance requires to be paid in cash with interest due.

In the present case, interest is not justifiable as there is sufficient balance in Cenvat A/c. however, where the Cenvat credit Balance is less than the credit to be reversed, then the balance should be paid in cash with interest.

❖ Cenvat credit is not available for input services utilized outside the factory premises : Atul Auto ltd. vs. CCEx. (Ahd.)

Facts:

The dispute in the present appeal relates to the service tax credit paid by the service provider for the purposes of erection and commissioning of Wind Mills for generation of electricity situated at a distance of about 225 kms. from the assessee's factory. The electricity generated at the said wind mill was being transferred to M/s. Pacchim Gujarat Vidut Corporation Ltd. (PGVCL), which is an independent State Government company. The said company was in turn providing electricity to the assessee and raising bills.

Decision:

It is admitted position that the electricity generated at the wind mill firm unit is not being supplied directly to the appellant, but is transferred to PGVCL, who are further supplying the same to the appellant. It is not necessary that the electricity generated at the wind mill firm is totally being transferred to the appellant. Their consumption can be less or more than the requisite units of electricity. As such, the lower authorities have rightly concluded that the electricity generated at the wind mill is being supplied to PGVCL and the electricity purchased by them from PGVCL is being consumed by them for the manufacture of their goods. It cannot be said that the said wind mill firm unit is a part of the appellant's factory premises so as to allow credit of service tax paid in respect of services utilized at the wind mill firm house.

❖ Cenvat credit is available on installation and training services carried out at customer's premises. Autoprint Machinery Manufactures (p) Ltd. vs. CCEx (Chennai) (Feb 2010)

Credit taken on service tax paid on 'installation and training' has been objected to by the department on the ground that the 'installation and training' was carried out not at the factory premises of the appellants but at the premises of their customers and on the ground that the service cannot be treated as an 'input service' for the reason that it is not used by the manufacturer either directly or indirectly in or in relation to the manufacture of final products and clearance thereof from place of removal.

Tribunal had decided the issue in favour of the assessee by relying on earlier decisions pronounced in favour of the assessee.

❖ Cenvat credit will be allowable on invoices in the name of branch, not registered under the Service Tax Act. : Manipal Advertising Services (p) Ltd. (Bang)

Facts:

The assessee is having Service tax registration and is registered as providers of advertisement services. It appeared assessee had contravened the previsions of Rule 9 of Cenvat Credit Rules, 2004 in as much as they have availed credit during the period 1-4-2005 to 31-5-2005 on the documents which are not addressed to the appellants but addressed to the other premises of the appellants at Bangalore, New Delhi, Chennai etc. Hence a show cause notice dated 26-9-2006 was issued demanding the reversal of such service tax credit, with interest and penalty was sought to be imposed. Adjudicating authority confirmed the demand and imposed penalties and also confirmed payment of interest. Hence this appeal.

Decision:

Tribunal had held that since the assessee had discharged the liability of service tax, the benefit of CENVAT CREDIT could not be denied on the ground that invoices were in the name of branch. Appeal of the assessee allowed.

❖ Procuring Export orders for parent company abroad will be considered as export of services. Lenovo (India) private Ltd. (Bangalore)

Facts:

The assessee had claimed rebate of Rs. 1,00,71,975/- for the Service tax paid on the commissions received for the Business Auxiliary Services provided by them to M/s. Lenovo Singapore Pvt. Ltd., Singapore for the period from April, 2005 to March, 2006 in terms of Rule 5 of the Export of Services Rules, 2005. They were issued a show cause notice proposing to deny the rebate claim as the impugned services were rendered in India and did not amount to export of services. The adjudicating authority in his order rejected the rebate claim on ground that the business auxiliary service is rendered by the appellant by way of promoting sale of the products of M/s. Lenovo, Singapore in India and as such the exemption available in terms of Export of Services Rules, 2005 is not applicable. Against the same assessee is in appeal.

Decision:

The assessee and the parent companies are separate entities and the recipient are located outside India. Court Held that as recipient of service being overseas company, service not delivered in India and the same tantamount to export of services eligible for rebate.

❖ Penalty cannot be reduced below the minimum limit prescribed. CCEx. vs. Custom & Port officer . (Guj)

The issue before the High court is that whether penalty u/s 76 can be reduced below the minimum limit. Section 76 deals with the penalty provisions. Further, section 80 overrides provisions of section 76, 77,78 & 79 which states that if assessee proves that there is reasonable cause for failure, no penalty can be imposed. The provision does not state that even upon establishment of reasonable cause, reduced quantum of penalty is imposable.

Hence, minimum penalty cannot be reduced further.

❖ No Penalty can be imposed on ignorance for payment of Service Tax. : J K Industries Ltd. vs. Com. Service Tax, (Ahmadabad) (May 2010)

Facts:

The assessee is engaged as a consignment agent of M/s. Hindalco and even though appellant took registration in the year 1999, they were not paying service tax till March, 2004. They had not filed service tax returns also. The premises of the appellant were searched on 5-7-04 and the statement of partner was recorded on 21-7-04 and assessee accepted the liability and deposited the service tax on 6-7-04, 4-8-04 and 17-8-04 from their own pocket. The appellant is against the decision of imposition of penalty under Sections 75, 76, 77 and 78 of Finance Act, 1994.

Decision:

The court held that correspondence between the assessee and the principal supports the case that there was no intention to evade payment of tax. Moreover, the assessee paid tax before any order passed by the authority. Therefore, penalty will not be levied on this case.

❖ Penalty u/s 76 & u/s 78 cannot be imposed simultaneously for the same default. CCEx vs. City Motors (P & H) (Feb 2010)

Department had levied penalty u/s 76 & u/s 78 simultaneously for the same default. Tribunal had reduced the quantum of penalty u/s 78 and set aside the penalty u/s 76, against which the department is in appeal.

High Court had held that penalty u/s 78 is sufficient to cover the default and two penalties for the same default cannot be imposed.

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CENTRAL EXCISE

❖ Liability to pay duty arises at the point of time when the goods are to be removed from the factory premises. No duty can be levied otherwise. CCE vs. Resham Petrochem Ltd. (Guj).

Facts:

Central Excise Officers visited the factory premises of assessee manufacturing unit. Certain stock of finished goods as well as raw material was found lying in the factory premises. Upon physical verification, excess stock of finished goods and raw material was found when compared with the statutory records maintained by the assessee.

Accordingly an order came to be made after adjudication to confiscate the goods with an option to redeem the same upon payment of redemption fine. Personal penalty was also imposed upon the assessee manufacturing Unit as well as the Production Engineer. While framing the order, the adjudicating authority disregarded the contention of the assessee that the finished goods could not be entered in RG-1 Register since last three days as the person concerned was on leave but the same had already been entered in the Production Register. The department submitted that a presumption arose that the excess stock was going to be removed clandestinely and sold without payment of excise duty, and this warranted confiscation, redemption fine in lieu thereof, and imposition of personal penalty on the manufacturing Unit and the Production Engineer. On appeal Tribunal had held that confiscation was not justified and in reducing the personal penalty on the manufacturing unit, and also deleting the penalty in total insofar as the Production Engineer was concerned. Against the same the department is in appeal.

Decision:

It is an accepted position that the liability to pay duty arises at the point of time when the goods are to be removed from the factory premises. Admittedly, the goods were found lying in the factory premises. Therefore the occasion to pay duty had not arisen. In other words, the liability to pay duty had not accrued in law. In the circumstances, it is not possible to accept the contention of the appellant that an inference should be drawn that the goods were to be clandestinely removed and hence confiscation was permissible. Such an inference should be possible if there is other surrounding or attendant circumstances. In the present case, no such evidence exists on record. The Tribunal was therefore, justified in coming to the conclusion that the confiscation of goods was not justified.

❖ Physicians sample have to be valued on pro rata basis : CCE vs. Bal Pharma Ltd. (SC) Sept 2010 (Imp)

Mumbai Tribunal in impugned order while relying upon an earlier order of Trinity Pharmaceuticals concluded that as per section 4 of Central Excise Act, Valuation (Central Excise) Physician's samples be valued on pro rata basis.

Department had filed an appeal against the said impugned order of the tribunal before the SC. Hon'ble SC had observed that said decision of Trinity Pharma was not challenged by the department. In that view, Hon, ble court had declined to entertained the appeal. In other words, SC had affirmed the view that Physicians sample have to be valued on pro rata basis.

❖ Mines if captive mines so as to constitute one integrated unit with concerned cement factory, Cenvat/ Modvat credit available, otherwise not. Madras Cement Ltd. vs. CCE (SC) July 2010.

Hon'ble SC had to consider two issues in this appeal namely

- Whether Cenvat credit of excise duty paid on inputs such as lubricants, explosives etc used for blasting mines to produce limestone for use in the manufacture of cement/ clinkers in the factory situated at some distance away from mines, is available?
- Whether Cenvat credit of excise duty paid on capital goods used in the mines is available to the cement manufacturer?

Decision:

On the First issue, SC held that there is no requirement in Cenvat Rules that input should be used within the premises of the factory of production. Use of inputs outside factory is not prohibited under the rules. Based on this reasoning, SC allowed the Cenvat credit.

As regards the Modvat/Cenvat credit on capital, goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat/Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessee, and it is found that the said goods were being used in the lime stone mines outside the factory of the assessee, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules.

❖ Tarpaulin made-ups made out of Tarpaulin fabric by cutting fabric to required size, stitching margins and punching eyelets is not amounted to manufacture : CCE Chennai vs. Tarpaulin International and Others (SC) (Aug 2010)

Facts:

The assessee is carrying on the business of producing and selling 'tarpaulin made-ups'. The 'tarpaulin made-ups' are nothing but the tarpaulin cloth which is prepared by making solution of wax, aluminum stearate and pigments which are mixed and the solution is heated in a vessel and transferred to a tank. Grey cotton canvas fabric is then dipped into this solution and passed through two rollers, where after the canvas is dried by exposure to atmosphere. Thereafter, the tarpaulin made-ups are prepared by cutting the cloth into various sizes and stitched and eye-lets are fitted. The assessee states that the process of mere cutting, stitching and putting eyelets does not amount to manufacture and hence, the department cannot levy Excise Duty on tarpaulin made-ups. However, the view of the department is that, the “made-ups” prepared by means of cutting, stitching and fixing of eye-lets amounts to manufacture and, hence, they are exigible to duty under the Central Excise Tariff Act, 1985 (for short ‘the Act’).

Decision:

Hon’ble SC held that Manufacture implies a change but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use.

There is no manufacture when Tarpaulin sheets are stitched and eyelets are made. Further, it does not change basic characteristic of the raw material and end product. The process does not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, is still called tarpaulin made-ups even after undergoing the said process. Hence, it cannot be said that the process is a manufacturing process. Therefore, there can be no levy of Central Excise duty on the tarpaulin made-ups. The process of stitching and fixing eyelets would not amount to manufacturing process, since tarpaulin after stitching and eyeleting continues to be only cotton fabrics. The purpose of fixing eyelets is not to change the fabrics. Therefore, even if there is value addition the same is minimum. To attract duty there should be a manufacture to result in different Goods and the Goods sought to be subject to duty should be known in the market as such.

- Cenvat Credit can be taken on strength of private challans, if it is satisfied that proper duty on them had been paid. CCE vs. Stelko Strips Ltd. (P & H) (April 2010)

The issue before the High Court is that “Whether private challans other than the prescribed documents are valid for taking Modvat credit under the Central Excise Rules, 1944”.

Hon’ble High Court had held that the respondent-manufacturer would be entitled to claim Modvat credit on the strength of private challans, as the same were not found to be fake and there was a proper certification that duty had been paid.

- Production of Mustard Oil and oil cakes from mustard seeds amounts to Manufacture : Jai Bhagwan Oil & Flour Mills vs. UOI. (SC) (April 2009)

Facts:

The assessee has its industrial unit at Tinsukia, Assam, was engaged in the manufacturing activity of crushing mustard seeds and producing two distinct products namely mustard oil and oil cake, as finished goods; It was claimed that crushing of mustard seeds yielded 30-34% mustard oil and 60-64% oil cake, each product having a separate identity and different markets and the activity is to be treated as manufacture.

Decision:

In this case SC held that true test to determine whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade by those by who dealt in it, as a marketable product distinct in identity from raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cakes were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake had a distinct and different identity form mustard seeds and it has a separate name, character, use and marketability. Hence, it can be concluded that it amounts to manufacture.

- Department had to prove that product is excisable / marketable and capable of being marketed. Double Textured febrics used in the footwear's are not marketable. Bata India Limited (SC) (April 2010)

Facts:

The Assessee is a well known manufacturer of foot wear. For the manufacture of foot wear, various raw materials are purchased by the assessee from the market and/or from their respective manufacturers such as fabrics, rubbers, chemicals, solvents etc. During the process of manufacturing of foot wear various chemicals/rubbers/solvents etc., are mixed together and a thin layer of such mixed materials is sandwiched in between two sheets of textile fabric, in running length, through a three bowl calendaring machine.

The resultant product Double Textured Rubberized Fabric (DTRF) is later cut and stitched according to the assessee's requirements and in-process materials are used as shoe-uppers in the foot wear. Such fabrics are also at times sent to job workers for stitching purposes only and the fabric sandwiched with the mixed materials are inputs of the intermediate stage during the course of manufacture of footwear. Vulcanization of the foot wear takes place only after completing the entire process and then it would be a finished product as a footwear, made available in the market and acquires commercial identity and turns out to be a commercially known product.

The contention of the department that DTRF are marketable fulfilling the requirement of the definition of excisable goods as per Section 2(d) of the Central Excise, 1944 (in short the Act) attracting the levy of central excise duty under the Act.

Decision:

The process undertaken by the assessee has been elaborately dealt and it is unnecessary to reiterate the same. Suffice it to say that the product in question is used as an intermediate product, goes to make the component for the final product. The burden to show that the product in question is marketed or capable of being bought or sold in the market so as to attract duty is entirely on the Revenue. Revenue in this case has not succeeded in establishing that the product in question was either marketed or was capable of being marketed. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. No evidence has been produced by the Revenue to show the product unvulcanised sandwiched fabric as such is capable of being marketed, without further processing. The mere fact that the product in question was entrusted outside for some job work such as stitching is not an indication to show that the product is commercially distinct or marketable product. Without proof of marketability the intermediate product would not be goods much less excisable goods. Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue.

CUSTOMS

❖ No export duty leviable on goods cleared from DTA to SEZ: Essar Steel Ltd. v. UOI (Guj.):

In case of goods cleared from DTA (Domestic Tariff Area i.e. Non-SEZ area) to SEZ, the said goods are 'deemed to be exported' but only for the limited purpose of allowing export incentives to the seller. The same cannot be deemed to be export for the purpose of levy of export duty.

❖ No export duty leviable on goods cleared from DTA to SEZ: Shyamaraju & Co. (India) (p) Ltd. (Kar) July 2010

Facts :

The assessee are either a 'Developer, a 'Co-Developer', an 'Entrepreneur', or an 'existing Unit', as defined under the sub-clauses of Section 2 of the Special Economic Zones Act, 2005 (hereinafter referred to as the 'SEZ Act', for brevity). The SEZ Act, inter alia, provides for the establishment, development and management of Special Economic Zones for the promotion of exports. While notifying an area as a SEZ, the Central Government is guided by the objects enumerated under Section 5 of the SEZ Act, viz., generation of additional economic activity, promotion of exports of goods and services, promotion of investment from domestic and foreign sources, creation of employment opportunities, development of infrastructure facilities and maintenance of the sovereignty and integrity of India including its security and friendly relations with foreign countries.

Section 26 of the SEZ Act provides for duty exemptions, drawbacks and concessions to every 'developer', entrepreneur', 'co-developer' and an 'unit', as defined under the SEZ Act. There is exemption from duty of customs on goods imported into or services provided in a SEZ to carry on the authorised operations and exemptions from customs duty on goods exported from or services provided from a SEZ. Exemption from duty of central excise under the Central Excise Act, 1944 (hereinafter referred to as the '1944 Act' for brevity) or the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the CET Act' for brevity), on goods brought from the 'Domestic Tariff Area' (hereinafter referred to as 'the DTA' for brevity), as defined under the Act, to an SEZ. These exemptions are claimed as per Rule 22 of the Special Economic Zones Rules, 2006 (hereinafter referred to as 'SEZ Rules' for brevity).

By virtue of the Finance Act, 2008, various items were included in the Second Schedule-Export Tariff, to the Customs Tariff Act, 1975, including pig-iron, ferrous products, iron and steel products of various types, so as to introduce tariff rates of duty at 20% ad valorem on all iron and steel items. Simultaneously, on 10-5-2008, the Central Government issued an exemption notification prescribing the effective rates of duty on sixteen items added to the Export Tariff Schedule. Consequently, all Development Commissioners were made aware that "export duty" had been levied on export of steel products and therefore they were to allow supply of steel products to SEZs on submission of a bond and a bank guarantee in case the duty would be finally payable. The notification dated 10-5-2008 was amended by another notification dated 13-6-2008, reducing the rates of exemption and thereby increasing the effective rate of duty.

The effect of the customs notifications issued under Section 25 of the Customs Act, 1962 has been construed as enabling the levy of customs duty on transactions treated as exports. In other words, a domestic manufacturer or supplier of the subject items, is treated as an "exporter" and the purchaser within the SEZ, such as the petitioners, as "importers".

The assessee contend that the impugned action has the unnatural effect of levying duty of customs on goods which are neither physically moving out of the territory of India by treating them as "export" of goods outside India nor physically moving into India from outside India as "import" of goods. It is also contended that yet another effect of the action of the assessee that goods manufactured in India, which are subject to levy under the Central Excise Tariff Act, are being treated as goods exported outside India and imported into India for levy of customs duty.

Decision:

As seen from definition of "export". It indicates a supply of goods from DTA to the SEZ unit. But, it does not indicate that such a supply ought to be treated as supply of goods being exported outside the territory of India as is the definition of "export" under the Customs Act. Hence, it is not possible to hold that by a deeming fiction the supply to a SEZ unit from DTA would amount to goods moving out side India. Hence no export duty will be levied on the same.

Note: All the case decisions pronounced between the period Jan 2010 to October 2010 specifically applicable for May 2011 term. All Decisions are very important for exams as well as for practical applications.

*Friends, In case of any query including **Full text of the decisions,** please feel free to contact me at +91-9930934403 or mail your query to bikashbogi@yahoo.co.in.*

Disclaimer : Please go through the full facts of the decision before applying the same in practical situations.

Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.