

Applicability of indirect taxes on packaged/canned software

Assessment of packaged software where affixation of Retail Sale Price (RSP) is mandatory under the Standards of Weights and Measures Act, 1976 (i)

Excise duty

MRP based valuation of the packaged or canned software

Packaged or canned software is to be valued on the basis of MRP* under section 4A of the Central Excise Act, 1944 for the purpose of charging excise duty. An abatement of 15% of retail sale price is allowed while arriving at the assessable value.

[Notification No. 30/2010-C.E. (N.T.) dated 21-12-2010]

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(ii) Custom duty

Packaged or canned software is to be valued on the basis of MRP under section 4A of the Central Excise Act, 1944 for the purpose of charging additional duty of customs under section 3(1) of the Customs Tariff Act.

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(iii) Service tax

Exemption to packaged/canned software from service tax on specified taxable service when excise/customs duty is paid

Notification No. 53/2010-S.T. dated 21.12.2010 has been issued to exempt the service of providing the right to use the **packaged or canned software** (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax.

Conditions to be fulfilled:-

(i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and

(ii) **(a) In case of domestic production:** the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or

(b) In case of import: the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Note: Notification No. 02/2010 and 17/2010 have been rescinded by Notification No. 51/2010 and 52/2010 respectively.

Meaning of important terms

(i) Appropriate duties of excise

It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) Appropriate duties of customs

It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

Assessment of packaged software which does not require affixation of Retail Sale Price (RSP) under the Standards of Weights and Measures Act, 1976

(i) Excise duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, the assessment would be based on the value determined under section 4 of the Central Excise Act, 1944. Further, the excise duty will be charged only on the value, excluding the

value representing consideration for transfer of right to use such packaged/canned software.

[Notification No. 14/2011-C.E. dated 1-3-2011]

(ii) Custom duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, additional duty of customs under section 3(1) of the said Customs Tariff Act would be charged on the value excluding the value representing consideration for transfer of right to use such packaged/canned software. **[Notification No.**

25/2011-Cus. dated 1-3-2011]

(iii) Service tax

Service tax would be charged under the category of information technology software service on the value representing consideration for transfer of right to use such packaged/canned software.

Meaning of packaged or canned software

“Packaged software or canned software” means a software developed to meet the needs of variety of users, and which is intended for sale or capable of being sold off the shelf.