

Latest Updates in Indirect Tax Law

A. Central Excise

Nature	Provision
	Levy
Interpretation of levy / charging section	(a) In interpreting a taxing statute, equitable considerations are entirely out of place nor can taxing statutes be interpreted on any presumptions or assumptions. (b) A Taxing Statute must be interpreted in light of what is clearly expressed and nothing can be implied which is not expressed. No one can be taxed by implication. A Charging Section has to be construed strictly. If a person has not been brought within ambit of charging section by clear words, he cannot be taxed at all. (c) A legislature can make a law retrospectively or prospectively subject to justifiability and acceptability within Constitutional parameters. [State of Rajasthan vs Basant Agrotech (India) Ltd (SC) 41 Taxmann 93]
	Valuation of Excisable Goods
Exclusions from Transaction Value – Sales Tax actually paid	Facts: Under the Sales Tax New Incentive Scheme for Industries, 1989, the Assessee was entitled to retain 75% of the Sales Tax collected and pay only 25% to the Government. Decision: The Supreme Court held as under: - As per Rule 4, the Sales Tax actually paid to the Government can be reduced from the price to determine transaction value. Hence, if the Sales Tax is not actually paid, no benefit of reduction under the concept of "Transaction Value". 25% of the Sales Tax collected has been paid to the State Exchequer by way of deposit. The rest of the amount has been retained by the Assessee. That has to be treated as the Price of the goods under the basic fundamental concept of "Transaction Value". - Therefore, the Assessee is bound to pay the Excise Duty on 75% Sales Tax also, as it forms part of the Price collected. [Super Syntex (India) Ltd 2014-TIOL-19-SC dt 28.02.14]
Rule 8 – Captive Consumption	If the whole or part of the excisable goods is used for consumption by him or on his behalf in the production or manufacture of other articles, the value of such goods that are consumed shall be 110% of the cost of production or manufacture of such goods. Note: Earlier, Rule 8 was applied only in a situation where entire goods are captively consumed.
Rule 9 – Clearances to Related Persons	Earlier Rule 9 was applicable only when the excisable goods are sold exclusively to Related Persons. However, w.e.f. 22.11.2013, the above Rule 9 is applicable, even if the whole or part of the goods is sold to Related Persons. (Notification No.14/2013 dt. 22.11.2013)
Rule 10 – Clearances to ICUs	Earlier Rule 10 was applicable only when the excisable goods are sold exclusively to Inter-Connected Undertakings(ICU's). However, w.e.f. 22.11.2013, the above Rule 9 is applicable, even if the whole or part of the goods is sold to ICU's. (Notification No.14/2013 dt. 22.11.2013)
Valuation of Goods below Cost and Profit – Rule 6	1. Situations for Valuation below Cost: The Supreme Court has cited that in the following cases, a Manufacturer may sell goods at a price lower than the cost of manufacture and profit and yet the declared value can be considered as Normal Price: (a) The Company wants to switch over its business (b) If a Manufacturer has goods which could not be sold within a reasonable time. Hence, mere sale of goods below the manufacturing cost and profit cannot be taken as the sole basis for rejecting the Transaction Value. 2. Period of application of the decision in Fiat India decision: (a) In the FIAT judgment, sale of cars at an abnormally lower price to penetrate the market has been considered by the Supreme Court as constituting extra-commercial consideration, even when there was no additional consideration of money value flowing directly or indirectly from the buyer to the seller. (b) For the period prior to the date of the judgment, extended period of limitation is not acceptable. In such cases, only the normal period of limitation will apply. (c) For the period from 29.8.2012 onwards, if there is a sale in the circumstances similar to the case of M/s FIAT, and yet Transaction Value of goods is declared as the correct assessable value, then such declaration would amount to wilful mis-statement of the Assessable Value. [Circular No.979/03/2014-CX dt. 15.01.2014]

Nature	Provision
Independent Valuation of each clearance	- Transaction Value of excisable goods shall be valued independently for every clearance. Example: If an Assessee clears his first removal to an independent buyer, some goods are captively consumed, second removal is to a Related Person covered under Rule 9, and third removal is to a person covered under Rule 10, then the first removal should be assessed u/s 4, captively consumed goods should be assessed under Rule 8, second removal should be assessed under Rule 9, and third removal should be assessed under Rule 10. - Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 are not required to be followed sequentially. [Circular No.975/09/2013–CX dt 25.11.13]
Departmental Communication	
Whether a Circular necessarily needs to be issued u/s 37B, to bind the Department	- Any clarification issued by the Board is binding upon the Central Excise Officers who are duty-bound to observe and follow such Circulars. Whether Sec. 37B is referred to in such circular or not, is not relevant. - When other Central Excise Authorities of equal and higher rank have followed and acted as per the clarifications, the Commissioner (in the instant case), could not have taken a contrary view on the assumption that the clarifications are only letters and not orders u/s 37B. - Central Excise is a central levy and, therefore, such a levy has to be collected uniformly from all similarly situated manufacturers located all throughout the country. [Darshan Boardlam Ltd vs UOI 2013 (287) E.L.T. 401 (Guj.)]
SSI	
Removal under Brand Name and SSI Exemption	Facts: The Assessee was engaged in the manufacture and sale of cookies from branded retail outlets of "Cookie Man". The Assessee had acquired this brand name from M/s Cookie Man Pvt. Ltd, Australia (which in turn acquired it from M/s Auto-Bake Pvt. Ltd, Australia). The Assessee was selling some of these cookies in plastic pouches/containers on which the brand name described above was printed. No brand name was affixed or inscribed on the Cookies. Excise Duty was duly paid, on the cookies sold in the said pouches/containers. However, on the Cookies sold loosely from the counter of the same retail outlet, with plain plates and tissue paper, duty was not paid. The Assessee contended that SSI exemption would be available on cookies sold loosely, as they did not bear the brand name. Decision: The Supreme Court made the following significant observations: - Physical manifestation of the brand name on goods is not a compulsory requirement, as such an interpretation would lead to absurd results in case of goods, which are incapable of physically bearing brand names, viz, liquids, soft drinks, milk, dairy products, powders, etc. Such goods would continue to be branded good. - The test of whether the goods is branded or unbranded, must not be the physical presence of the brand, but whether it is used in relation to such specified goods for the purpose of indicating a connection in the course of trade between such specified goods and some person using such name with or without any indication of the identity of the person. - Once it is established that a specified good is a branded good, whether it is sold without any trade name on it, or by another Manufacturer, it does not cease to be a branded good of the first Manufacturer. Therefore, Soft Drinks of a certain company continue to be branded goods of that Company, even if they are served in plain glasses, without any indication of the Company, in a Private Restaurant. - It is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for SSI exemption. The most important of these factors being the specific outlet from which the goods is sold. Hence, in the given case, the products would be considered as branded. [CCEx vs Australian Foods India (P) Ltd 2013 (287) ELT 385 (SC)]
Other Procedures	
Registration	An Importer who issues Invoice on which CENVAT Credit can be taken, must be registered under the Central Excise Act and its Rules. [Notification No.6/2014–C.E.(N.T.) dt 26.02.2014]
E–Payment	W.e.f. 01.01.2014, E–payment is compulsory, if the total ED paid in the Previous Financial Year ₹ 1,00,000 or more. Note: Earlier, the limit was ₹ 10,00,000. (Notification No.15/2013 dt. 22.11.13)

B. Service Tax

Nature	Provision
Levy of Service Tax	
ST for Services from Foreign Banks	Foreign Banks are recovering certain charges for processing of import/export documents regarding remittance of Foreign Currency. The Banks in India would be treated as Recipient of Service, and therefore required to pay Service Tax. (Trade Notice No.20/13 dated 10.02.2014)
Negative List and Exemptions	
Charitable Purpose	(a) Income is applied for charitable purposes, only if it is known that major portion of income goes into charity, i.e. free medical services. (b) Had medical services been offered free to a majority of patients rather than a minority of patients, then, the conclusion could have been reached that buildings are principally used for charitable purposes. (c) Only those buildings utilized for providing free medical aid can be said to be used principally for charitable purpose and, therefore, all buildings of hospital cannot be exempted on the ground that overall object of hospital is charity although it is being pre-dominantly run on a chargeable basis. [S.H. Medical Centre Hospital vs State of Kerala (SC) 41 Taxmann 483]
Chit Fund and its taxability	Facts: The Assessee is an Association of Chit Funds. and it did not pay the Service Tax, treating the activity of Chit Fund as non-taxable. Principle: The Delhi High Court held that – (a) Services of Chit Fund were transaction in money, and hence not liable to Service Tax. (b) There was no question of exempting whole or any part thereof. (c) Exclusion of “activity which constitutes transaction merely in money” implies exclusion of “service rendered in connection with activity which constitutes merely a transaction in money” and, therefore, Chit Funds (including Business Chit Funds), which are “transactions in money” are not liable to Service Tax. (d) Providing partial exemption/abatement in relation to Chit Fund Business is not valid, as the entire activity itself is not a service. [Union of India vs Delhi Chit Fund Association 32 Taxmann 332 (Del.)]
Accommodation Service for Pilgrims	Facts: The Assessee was running guest houses for pilgrims. The Department issued Show Cause Notice stating that the assessee was liable to get Service Tax Registration under “short term accommodation service” and liable to pay Service Tax. The Assessee, on the other hand, submitted that it was a religious and charitable institution, and was running guest houses without any profit motive. Decision: The High Court held that since the Petitioner was running Guest Houses by whatever name called, whether it was a shelter for pilgrims or any other name, it was providing the taxable services and was thus liable to pay Service Tax. [Tirumala Tirupati Devasthanams vs Superintendent (30) S.T.R. 27 (A.P.)]
Franchise Services	Facts: The Petitioner, Mayo College, was a society running internationally renowned schools. It allowed other schools to use the name ‘Mayoor School’, its logo and motto, and as a consideration thereof received Collaboration Fees from such school, which comprised of a non-refundable amount and annual fee. The schools were required to observe certain obligations/terms and unimpeachable confidentiality. Decision: The High Court held that when the Petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing “Franchise Service” to the said schools. If the petitioner collected/earned the “Franchise” or “Collaboration Fees” from the Franchise Schools, the Petitioner was duty bound to pay Service Tax thereon. [Mayo College General Council vs CCEX. (Appeals) (28) STR 225 (Raj)]
Agriculture, etc.	(a) Loading, Packing, Transportation and Warehousing of Rice and Milling of Paddy into Rice on Job Work Basis is exempt. (b) Services provided by Cord Blood Banks by way of preservation of stem cells or any other service in relation to such preservation is exempt. (Notification No.5/2014 dt. 24.02.2014)

Nature	Provision
Sub Broker services	Services provided by an Authorised Person or Sub-Broker, to the Member of a Recognized Association or a Registered Association, in relation to a Forward Contract, is exempted from service tax. (Notification No.3/2014 dt. 03.02.2014)
Sponsorship Service	Exemption is provided for the sponsorship of sporting events organized by a National Sports Federation or its affiliated federations, where the participating teams or individuals represent any District / State / Zone / Country. (Notification No.1/2014 dt. 10.01.2014)
Government Authority	(a) Government Authority means an Authority / Board / State Legislature set by an Act of Parliament / State Legislature or established by the Government. (b) Government holds atleast 90% or more participation by way of equity or control. (c) Its objective is to carry out any function entrusted to a Municipality under Article 243W of the Constitution.
Returns to be given by SEZ	The SEZ Unit or the Developer shall furnish to the Jurisdictional Superintendent of Central Excise, a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax, by 30 th of the month following the particular quarter. (Notification No.15/2013 dt. 21.11.2013)
Others	
Discharge Certificate under VCES (Voluntary Compliance Encouragement Scheme)	- As per VCES, a declaration shall become conclusive only upon issuance of acknowledgement of discharge. Further, the acknowledgement of discharge in Form VCES-3 shall be issued within 7 working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the Declarant. - Upon payment of the tax dues in full, along with interest, if any, Chief Commissioners are also advised that they should ensure that the discharge Certificate is issued promptly, and not later than the stipulated period of 7 days. [Circular No.176/2/2014-ST dt. 20.01.2014]
Role of Designated Authority under VCES	The Designated Authority should not ask for any other undertaking or declaration beyond what has been prescribed in the Scheme. Declarant would pay a minimum 50% of the tax dues by 31.12.2013. Rest of the payment may be made by 30.6.2014, without any interest, and any amount remaining unpaid on 30.6.2014 shall be paid by 31.12.2014, with interest for the period of delay beyond 30.6.2014. There is no bar to pay these amounts in installments. The Scheme does not envisage investigation by the Designated Authority into the veracity of declaration. Only if the Commissioner has reason to believe that the declaration filed by the Declarant is substantially false, he may, serve notice on the declarant requiring him to show cause why he should not pay, the tax dues not paid or short-paid. (Instruction No. B1/19/2013 dt. 11.12.13)
E-Payment	W.e.f. 01.01.2014, E-payment is compulsory if the total Service Tax paid in the Previous Financial Year is ₹ 1,00,000 or more. Note: Earlier, the limit was ₹ 10,00,000. (Notification No.16/2013 dt. 22.11.13)

Service Tax on Resident Welfare Association (RWA)
Circular No. 175/01/2014-ST, dated 10-1-2014

	Issue	Clarification
1.	In a Residential Complex, monthly contribution collected from Members, is used by the RWA for the purpose of making payments to the third parties, for commonly used services or goods. Example.for providing security service, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of Electricity Bill for the common area and lift, etc.]. Is Service Tax leviable?	Such contributions (meant for sourcing of goods/ services from third party for common use of members) would be liable for service tax subject to a monetary ceiling of ₹ 5,000 p.m. per Member.

	Issue	Clarification
2.	If the contribution of a member/s of a RWA exceeds ₹ 5,000 p.m. how should the Service Tax liability be calculated?	If the monthly contribution per any or some of the members exceeds ₹ 5,000, the entire contribution of those members whose per month contribution exceeds ₹ 5,000 would be ineligible for the exemption. Service Tax would then be leviable on the aggregate amount of monthly contribution of such Members.
3.	Is the Small Service Provider exemption of ₹10,00,000 eligible for RWA?	The Exemption of ₹10,00,000 is available for the aggregate value of services provided by RWA.
4.	Does "Aggregate Value" for the purpose of threshold exemption, include the value of exempt service?	Aggregate Value does not include the value of services which are exempt from Service Tax.
5.	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a "Pure Agent" of its members, is exclusion from value of taxable service?	Expenditure or Costs incurred by a RWA as a Pure agent of the Member, shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.
6.	Is CENVAT Credit available to RWA for payment of Service Tax?	RWA may avail cenvat credit and use the same for payment of Service Tax, as per the CENVAT Credit Rules.

Procedure for Cancellation of Service Tax Registration
(Trade Notice No.18/2013–ST dt. 19.12.2013)

1. Reasons for Surrender / Cancellation:

- (a) Assessee's Turnover is below the threshold limit.
- (b) Change in the constitution of Assessee, e.g. from Partnership to Company or Amalgamation, etc.
- (c) Death of Proprietor.
- (d) Assessee closing down his taxable service business.
- (e) Assessee has centralized registration and hence wants to surrender his other multiple registrations of branches.
- (f) Assessee has shifted its office from the jurisdiction of one Division/Commissionerate to another, and instead of requesting for change in the Location Code and Premises Code of the Assessee, a fresh registration has been taken at the new address.

2. Procedure: All the Assesseees who wish to surrender their Registration Certificates, shall file their application on-line using the ACES module on www.aces.gov.in. The Assessee shall submit signed copy of print out of the application generated by the ACES System to the Jurisdictional Superintendent of "Centralized Surrender Cell" in the concerned Division Office along with the following documents:

- (a) Application Form & Undertaking for Surrender of Service Tax Registration.
- (b) Copies of ST-3 Returns from the date of taking registration till the date of surrender (maximum 6 returns only)
- (c) In case the Assessee has not filed ST-3 Returns for the period mentioned above, then it is not necessary for him to file the fresh return for surrender purpose, if his Taxable Turnover is below the exemption limit. He can apply for waiver of penalty under Rule 7C of STR for non-filing of returns. The fact of non-filing of return should be clearly mentioned in the Undertaking.
- (d) Copies of Profit & Loss Account and Balance Sheet from the date of taking registration to the date of surrender but for a maximum of last 3 financial years only. However, if Balance Sheet, Profit & Loss statement has not been prepared, the Applicant may submit copies of Income Tax Return for the said period. If said Return has also not been filed, then, the applicant should provide some evidence like Bank Statement to satisfy the office about the correctness of reason for surrender.
- (e) Details of Show Cause Notice, pending adjudication, details of confirmed demands, details of cases, audit, etc.
- (f) Other relevant proofs must be given based on the reason for change.

C. Customs

Nature	Provision
Whether smuggled goods can be re-exported from the Customs Area without being released from confiscation?	Facts: Certain goods of the Assessee were seized on account of mis-declaration of particulars of baggage. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods. The Adjudicating authority determined Total Value of seized goods; ordered confiscation of seized goods u/s 111 of the Customs Act, 1962; imposed penalty on the Assessee; confirmed and ordered for recovery of Customs Duty on the goods with interest, and gave an option to pay Redemption Fine. On appeal by the Assessee, the Appellate Authority allowed re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority u/s 129DD of the Customs Act, 1962. Decision: The Government noted that the Passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per sec. 80, when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made u/s 77, the Proper Officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since the passenger neither made true declaration nor requested for detention of goods for re-export, before the Customs Authorities at the time of his arrival at airport, the re-export of said goods could not be allowed u/s 80 of the Customs Act. [Hemal K. Shah 2012 (275) ELT 266 (GOI)]

D. CENVAT Credit Rules, 2004

Topic	Subject / Reference
	Definitions
Treatment of 2 units surrounded by common boundary for CENVAT	Facts of the case: The Assessee had two divisions namely, Textile Division and Plastic Division, situated adjacent to each other on a common ground and surrounded by a common boundary wall. Both the units had separate Central Excise Registrations, but the Assessee, a single entity, had a common PAN under the Income-Tax Act. In order to receive continuous and uninterrupted supply of electricity, the Assessee installed DG Sets/Electricity Generation Plant to be used in the factory of the Textile Division, and it used Furnace Oil as Fuel in the generation of electricity and claimed CENVAT Credit on the same. When the Assessee's other unit required electricity, the Assessee supplied part of the electricity so generated to its other unit. The contention of the Revenue was that the Assessee ought to reverse the credit taken on Furnace Oil used in the generation of electricity and supplied to the other unit. Decision of the case: The High Court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose (Textile Division). However, credit on inputs utilized to produce electricity which was supplied to a Factory registered as a different unit (Plastic Division) would not be allowed. [Sintex Industries Ltd vs CCEX 2013 (287) ELT 261 (Guj.)]
Input Service	Facts: - The Assessee was engaged in the manufacture of medicaments. Since, the medicament could be manufactured only upon approval of the Regulatory Authority after the product undergoes technical testing and analysis, the Assessee availed the services of various technical testing and analysis agencies for testing of clinical samples prior to commencement of commercial production. These samples were manufactured in small trial batches and removed after payment of excise duty. - The assessee availed CENVAT Credit of Service Tax paid by it on such testing services, and also on the Commission paid to Foreign Agents for the sale of such medicaments. - However, the Department alleged that unless goods reached the commercial production stage, CENVAT Credit was not admissible. However, the Department contended that there was a clear distinction between sales promotion and sale, and a Commission Agent is directly concerned with sales rather than sales promotion. - Therefore, Service provided by Commission Agent would not fall within the purview of the main or inclusive part of the definition of Input Service.

Topic	Subject / Reference
	Decision: - The activity of testing and analysis of the trial batches was in relation to the manufacture of final product as unless such trial batches were tested and approval from the regulatory authority was obtained, the final product could not be manufactured. Hence, such Testing Services are considered as Input Services. - As regards the Commission paid to Foreign Agents, the High Court observed that there was nothing on record to indicate that the Foreign Agents were actually involved in any sales promotion activities like advertising which was covered in inclusive part of definition of Input Service. Hence, not covered as Input Service. [CCEx vs Cadila Healthcare Ltd 2013 (30) S.T.R. 3 (Guj.)]
First Stage Dealer	First Stage Dealer includes an Importer who sells goods imported by him under the cover of an Invoice on which CENVAT Credit may be taken, and such Invoice shall include an Invoice issued from his Depot or the Premises of his Consignment Agent. Note: Earlier, the Dealer who purchases from the Importer was considered as First Stage Dealer. However, w.e.f. above amendment, such Dealers are excluded from the definition of First Stage Dealers. (Notification No.18/2013 dt. 31.12.13)
Reversal of Credit	
Reversal of Credit – Rule 3	Due Date of Payment: The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the Manufacturer of goods or the Provider of Output Service, by debiting the CENVAT Credit or otherwise, on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March. Recovery: If the Manufacturer of goods or the Provider of Output Service fails to pay the amount payable under sub –rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT Credit wrongly taken and utilised. [Notification No. 01/2014–CX (NT), dated 08.01.2014]
Reversal of Input Service Credit in case of Remission of Duty	Where on any goods manufactured or produced by an Assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT Credit taken on the inputs or Input Services used in or in relation to the manufacture or production of said goods shall be reversed. Impact: Earlier Rule 3(5C) required only reversal of Input Credit. However, pursuant to the above, even Input Service Credit shall be reversed. [Notification No. 01/2014–CX (NT), dated 08.01.2014]
Input Service Distributor	
Input Service Distributor	Rule 7 Clause (d) has been amended to provide that the credit of service tax attributable to service used by more than one unit shall be distributed pro-rata, on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said period [Notification No 05/2014 – CX., (N.T.), dated 24.02.2014]
Definition of “Relevant Period”	For the purpose of Rule 7, “Relevant period” has been defined as follows – (a) If the Assessee has Turnover in the Financial Year preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year, or (b) If the Assessee does not have Turnover for some or all the units in the preceding financial year, the last quarter for which details of Turnover of all the units are available, previous to the month or quarter for which credit is to be distributed. [Notification No 05/2014 – CX., (N.T.), dated 24.02.2014]
Records and Returns	
Returns u/r 9	Rule 9 has been amended to provide that Registered Importers shall also be required to file periodic returns as may be specified by the Board. [Notification No 9/2014 – CE (NT), dated 28.02.2014] Note: The Board has notified the same form as applicable for First Stage and Second Stage Dealers shall also be filed by Registered Importers on a quarterly basis [Notification No. 11/2014 CE (NT) dated 28.02.2014]

Topic	Subject / Reference
CENTRAL GOVERNMENT's POWERS	
CG's Power to impose restrictions (Rule 12CCC of CER, 2002)	CG's Powers: The Central Government may specify the nature of restrictions including restrictions on utilization of CENVAT Credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by the Chief Commissioner of Central Excise. Restrictions shall be on a manufacturer, first stage and second stage dealer or an exporter. Situation: In case of misuse of CENVAT Credit, evasion of duty or any offences [Notification No.14/2014–CE (NT), dated 21.03.2014]

Rule 5B – Procedures for Refund – Partial Reverse Charge Situation
[Notification No.12/2014–C.E.(N.T.), dated 03.03.2014]

- Applicability:** Refund of the Unutilized CENVAT Credit shall be claimed, if it used for following Output Services (hereinafter referred to as "Partial Reverse Charge Services")

 - Renting of a Motor Vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business,
 - Supply of manpower for any purpose or security services, or
 - Service portion in the execution of a works contract.
- Refund:** Unutilised CENVAT Credit taken on Inputs and Input Services during the half year for Partial Reverse Charge = A – B, where,

$$A = \frac{\text{CENVAT Credit taken on Inputs and Input Services during the half year}}{\text{Total Turnover of Goods and Services in that half year}} \times \text{Turnover of Output Service under Partial Reverse Charge during the half year}$$

B = Service Tax paid by the Service Provider for such Partial Reverse Charge Services during the half year.
- Conditions and Safeguards:**

 - Refund ≤ ST Liability paid or payable by the Service Receiver w.r.t. partial reverse charge.
 - The refund amount claimed shall be debited by the Claimant from his CENVAT Credit account.
 - If amount sanctioned is less than the amount of refund claimed, then the Claimant may take back the credit of the difference between the amount claimed and amount sanctioned.
 - Only one refund shall be claimed for every 6 months under this Notification.
 - The Refund claimed shall be filed after filing the Service Tax Return.
 - No refund shall be admissible for the CENVAT Credit taken on Input or Input Services received before 01.07.2012.
- Procedure for filing the Refund Claim:**

 - The Output service provider shall submit an application in Form A along with all the specified documents to the Jurisdictional AC / DC, before the expiry of 1 year from the due date of filing of return for the half year.
Note: The last date of filing of application in Form A, for the period starting from 1st July 2012 to 30th September 2012, shall be 30th June 2014.
 - In case of more than one return, time limit for of one year shall be calculated from the due date of filing of the Return for the later period.
 - Copies of the Return (s) filed for the half year for which the refund is claimed shall also be submitted while claiming the refund.
 - AC / DC shall satisfy himself of the correctness / completeness of the refund claim. He may call for any document, in case he has reason to believe that information provided is incorrect / insufficient, and further enquiry needs to be caused before the sanction of refund.

Prohibited Activities under CE Rules, & Consequences
[Notification No.16/2014–C.E.(N.T.), dated 21.03.2014]

1. **Applicability:** Only in cases where the duty of Excise or CENVAT Credit alleged to be involved exceeds ₹ 10 Lakhs –
2. **Offences:** If a Manufacturer, First Stage or Second Stage Dealer, or an Exporter including a Merchant Exporter, is prima facie found to be knowingly involved in any of the following –
 - (a) removal of goods without the cover of an Invoice and without payment of duty,
 - (b) removal of goods without declaring the correct value for payment of duty, where a portion of Sale Price, in excess of Invoice Price, is received by him or on his behalf but not accounted for in the books of account,
 - (c) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken,
 - (d) issuing Duty of Excise Invoice without delivery of goods specified in the said Invoice (Note: The Chief Commissioner of Central Excise may order suspension of the registration granted for First Stage or Second Stage Dealer.)
 - (e) claiming of refund or rebate based on the duty of excise paid or taking of CENVAT Credit on Invoice or other documents which a person has reason to believe as not genuine, (Note: The Chief Commissioner of Central Excise may order withdrawal of the self sealing facility for export consignment, and each export consignment shall be examined and sealed by the Jurisdictional Central Excise Officer.)
 - (f) removal of inputs as such on which Cenvat credit has been taken, without paying an amount equal to credit availed on such inputs as per the CENVAT Credit Rules, 2004.
3. **Withdrawal of Facilities:** The Chief Commissioner of Central Excise may order for withdrawal of facilities or impose the restrictions, namely–
 - (a) Payment of ED for each consignment at the time of removal of goods instead of monthly payment.
 - (b) Payment of ED without utilizing the CENVAT Credit
 - (c) Maintenance of movements of the principal inputs on which CENVAT Credit has not been taken.
 - (d) Intimation to the Superintendent regarding the receipt of principal inputs in the factory and making it available for verification upto the period specified in the order,
 - (e) Every removal of goods from factory may be ordered to be under an Invoice which shall be countersigned by the Inspector or Superintendent of Central Excise, before the said goods are removed from the Factory or Warehouse, provided that the person is found to be knowingly involved in committing any of the offences.

Notes:

- (a) The person against whom the order has been passed, may continue to take CENVAT credit, however he would not be able to utilize the credit.
- (b) If the Assessee commits offences for the first time, the restrictions shall apply for a period not more than 6 months and for subsequent offences, restriction shall apply for a period not more than 1 year.
- (c) During the period of suspension, the said Dealer shall not issue any Central Excise Invoice.

E. Common Topics

Section	Provision
	Demand, Recovery, Refund, Drawback
Refund – Doctrine of unjust enrichment	Decision: As recorded by the Adjudicating Authority, the incidence of duty had not been passed over to the purchaser of finished goods. Such finding of the Adjudicating Authority had attained finality, as nobody challenged the said order. Due efforts were made to find out whether amount of duty had been passed over to purchasers, who are either government Companies or Corporations controlled by Government. Even Purchasers had admitted fact that amount of duty paid by Assessee had not been passed over to said purchasers. In other words, the amount of duty had not been recovered from the purchasers. Hence, refund was allowable. [International Conveyors Ltd vs Commissioner of Central Excise & Customs [2014] 43 taxmann.com 75 (SC)]

Section	Provision
Is Assessee required to pay interest in case of voluntary payment of time-barred duty?	Fact: In a case where the Assessee voluntarily pays the duty short paid, recovery of which has become time-barred, can he be required to pay interest on the duty so paid? Observations: The High Court observed that in case the recovery of the unpaid or short paid duty has become time-barred, if the Manufacturer does not pay it voluntarily, it would not be possible for the Department to recover the same. Thus, if he does it voluntarily despite completion of period of limitation, he should not, further be saddled with the liability to pay statutory interest. Decision: The High Court held that the Assessee was not required to pay interest in case of voluntary payment of time-barred duty. [Gujarat Narmada Fertilizers Co. Ltd 2012 (285) E.L.T. 336 (Guj.)]
Extended period where Assessee had sought clarification from wrong authority	Facts: The Assessee imported Furnace Oil and supplied the same to sister unit for generation of electricity, and the sister unit supplied electricity to the Assessee. The Assessee also claimed exemption on import of Furnace Oil under the same Notification as was claimed by its sister unit. As the Assessee was procuring Furnace Oil for captive Power Plant of another unit, it sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the Assessee, and the Assessee claimed the exemption. However, in spite of the clarification from the Development Commissioner, a Show Cause Notice demanding duty was issued on the Assessee more than six months after he had imported furnace oil on behalf of its sister unit. The contention of the Revenue was that the entitlement of duty free import of fuel for its captive power plant lies with the Owner of the captive power plant, and not the consumer of electricity generated from that power plant. Decision: For invoking extended period of limitation, the intention to deliberately default is a mandatory pre-requisite. The assessee had shown bona fide conduct by seeking clarification from the Development Commissioner and in a sense had offered its activities to assessment. Only on receiving a satisfactory reply from the Development Commissioner did the Assessee claim the exemption. Hence, there was no deliberate default, and extended period is not invokable. [Uniworth Textiles Ltd vs CCEx. 2013 (288) ELT 161 (SC)]
Is non-filing of documents despite several opportunities, a sufficient ground for passing a non-speaking order?	Facts: The Adjudicating Authority had disallowed the Refund Claim filed by the Assessee and called for certain additional documents, although similar refund claims filed by the Assessee for the earlier periods had been allowed by the Adjudicating Authority without these additional documents. The Assessee failed to furnish the additional documents despite being given several opportunities to produce the same. The Adjudicating Authority passed an order rejecting the refund claim but failed to record any reason as to why it differed with the earlier decisions. Decision: If the assessee had failed to furnish additional information, it is obligatory on the part of the Adjudicating Authority to record a finding as to why the documents furnished by the Assessee were not sufficient to allow his claim, and why additional documents were necessary, especially when on the basis of similar documents furnished by the Assessee in the past, the claims had been allowed. Thus, the order of the Adjudicating Authority is liable to be set aside. [DBOI Global Service Pvt. Ltd vs UOI 2013 (29) S.T.R. 117 (Bom.)]
Appeals and Revision	
Res Judicata – Not applicable	Explanation: If an appeal has not been filed by the Department following instructions issued for not filing appeal below the monetary limit, no person, being a party in appeal, shall contend that the Department has acquiesced in the decision on the disputed issue by not filing appeal. The decisions/judgments accepted for reasons of monetary limit do not have precedent value. INSTRUCTION [F.NO.390/MISC./163/2010-JC], DATED 12-12-2013
Can the Assessee pay reduced penalty of 25% beyond the time prescribed under section 11AC?	Facts: Penalty u/s 11AC was imposed on the Assessee. The Assessee paid the duty sought to be evaded and interest payable thereon, before the passing of the adjudication order. However, the Assessee did not pay 25% of the penalty imposed u/s 11AC within 30 days from the date of the communication of the order. Instead of paying 25% of the penalty within the stipulated time, the Assessee chose to file an appeal against imposition of penalty u/s 11AC. Point of dispute: The Revenue contended that Tribunal could not permit the Assessee to pay reduced penalty of 25% beyond the time prescribed u/s 11AC. Observations of the Court: The High Court elucidated that when the 25% penalty was required to be paid within 30 days, it would not be open to the Appellate Authority or the Court to direct the assessee to pay 25% penalty beyond the stipulated time period.

Section	Provision
	Decision: The High Court held that Tribunal could not permit the Assessee to pay 25% penalty beyond the time prescribed under the first and second proviso to erstwhile section 11AC [now Sec.11AC(1)(c)]. CCEX. vs Castrol India Ltd 2012 (286) E.L.T. 194 (Bom.)
Pendency of Appeal – Vacation of Stay	Where stay orders have been issued by CESTAT, and the appeal itself not decided within 365 days of such stay order, in terms of Sec.35C(2A) of the Central Excise Act, 1944, such stay orders stand vacated after 365 days, even if the delay due the department [J.P. Transformers – [2013 TIOL 1152 HC ALL (ST)]
Search and Seizure	
Confiscation of Goods and Demand of Excise Duty	In a case where the Assessee has been issued a Show Cause Notice regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN for demand of Excise Duty and Penalty be issued? Observations: The High Court observed that since the subsequent Show Cause Notice only formed prima facie view in regard to allegations, it could not be said to be issued after pre-judging the question involved in the matter. Further, it was held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue SCN for recovery of dues and penalty. Hence, the Adjudicating Authority could not be restrained from proceeding further with the SCN. [Jay Kumar Lohani vs CCEX 2012 (28) S.T.R. 350 (M.P.)]
Confiscation of Vehicle and release thereof	Facts: Assessee removed liquor without payment of State Excise Duty, and hence the relevant vehicle was confiscated. Decision: Transportation of any intoxicant in contravention of provisions of the Act or of any Rule or order made or notification issued or any licence, permit or pass, is punishable and any vehicle used for carrying same, is liable for confiscation. Where anything liable for confiscation is seized or detained, the same shall be produced before the Deputy Commissioner who may order confiscation. No Court shall have jurisdiction to make any order with regard to property used in committing any offence and seized under this Act. [State (NCT of Delhi) vs Narender 42 Taxmann 47 (SC)]
Offences, Penalties and Prosecution	
Penalty – where Assessee acted bona fide and conflicting court decisions	Facts: At the time, when the Appellant started rendering services, there was no Service Tax levy on Rent-a-Cab service. However, Service Tax was imposed on Rent-a-Cab Service subsequently. A Show Cause Notice was issued on the Appellants, proposing to recover Service Tax with applicable penalty and interest, which the Assessee paid and the Assessee had also subsequently paid ST promptly. The issue was only in relation to the imposition of penalty. The Appellant contended that they did not pay Service Tax at the relevant point of time as it being a new levy; they were unaware of legal provisions. Also, there were divergent views of different Benches of Tribunal, which had added to the confusion, and the issue was debatable. Decision: The High Court held that even if the appellants were aware of the levy of service tax and were not paying the amount on the ground of dispute with its Clients regarding liability to pay ST, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis-statement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate ground not to impose the penalty. [Ankleshwar Taluka ONGC Land Losers Travellers Co. OP. vs C.C.E., Surat-II 2013 (29) STR 352 (Guj.)]

Students' Notes