

Drunken Exemption to Alcoholic Beverages

Article written by: -

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Entry 84 of the Union List of the Schedule VII read with clause 1 of Article 246 of the Constitution of India empowers Central Government with exclusive power to make laws in respect of Duties of excise on goods manufactured or produced in India except alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics etc., Thus, the Central Government does not have power to levy Central Excise duty on Alcoholic liquors. So Chapter 22 of the Central Excise Tariff which covers Beverages, Spirits & Vinegar excludes “Alcoholic liquor for human consumption” through Chapter note; leading to conclusion that alcoholic beverages are non excisable goods.

As nothing was leviable under the Central Excise Act in respect of alcoholic beverages; the power in this respect being vested with State, government resorted to Finance Act, 1994 in order to compensate loss of revenue by somehow bringing it under the purview of taxable services. Better to have service tax in lieu of no excise revenue. A beginning step towards this was made by issuing Board Circular 249/1/2006 dated 27.10.2008 **levy of service tax on production of alcoholic beverages on job work basis** thereby clarifying that *if the Contract Bottling Units CBUs undertook complete process of manufacture of alcoholic beverage under the ‘contract bottling arrangement’ as described above then such activity would not fall under the taxable service, namely the BAS. However, in case the activity undertaken by the CBU falls short of the definition of manufacture (such as activity of ‘packing’ or ‘labelling’ alone) then such activity would fall within its ambit and would be charged to service tax.*

Moreover, the Hon’ble M.P. High Court in case of ***Maa Sharda Wine Traders v/s Union of India [2009 (15) S.T.R. 3 (M.P.)]*** has held that the bottling of alcoholic beverages amounts to manufacture and as such the service tax is not applicable. It was held as under:-

Packaging service - Bottling - Manufacture - Bottling of liquor - Whether bottling of liquor amounts to manufacture or only packaging so as to attract Service tax - Statutory definition of packaging activity excluding manufacturing process as defined in Section 2(f) of Central Excise Act, 1944 - Manufacturing process not necessarily includes excisable goods but also includes process incidental or ancillary to completion of manufactured product - Dissection of tender conditions, invoices and pricing by Division Bench decision in 2006 (3) S.T.R. 723 (M.P.) not correct - Bottling is part of manufacturing process - C.B.E. & C. Circular clarifying manufacturing process in respect of bottling and bottling taken out of Service tax net - Statutory stipulation that liquor to be sold in bottles - Packaging and bottling of liquor being covered under manufacture, not liable to Service tax - Section 65(76b) of Finance Act, 1994 - Section 2(f) ibid. [paras 2, 15, 17, 31, 32, 33]

Further, Service tax is levied under Section 66 of the Finance Act, 1994 on taxable service namely ‘business auxiliary services’ specified in sub-clause (zzb) of clause 105 of section 65 of

the Finance Act. BAS basically covers those activities which are in relation to promotion or marketing or sale of goods, customer care service, procurement of goods or services, etc. but job work also comes under its scope because of the amended clause which reads “production or processing of goods for, or on behalf of, the client.

The service tax can be levied only when job work does not amounts to manufacture of goods but if the job work amount to manufacture then the service tax is not payable. Here, the word ‘manufacture’ has been used rather than ‘production or produce’. Produce word has a wider meaning because it covers manufacture, make, create, cause to happen or exist in its scope of meaning.

Earlier there was no condition that to avail exemption or to escape from service tax liability, the process should result in manufacture of excisable goods but through the amendment in the Budget, it was cleared that exemption would be entitled to such process which would result in manufacture of excisable goods. Thus, non excisable goods were kept out of scope of exemption. Alcoholic beverages as non excisable goods remained under the clutches of service tax liability. This was also clarified by TRU letter also. The relevant part of TRU letter read as under:-

“Modification in Business Auxiliary Service (BAS) [section 65(19)]: It may be recalled that production or processing of goods for or on behalf of a client falls within the purview of this service. However, if any such activity amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, the same is excluded from its purview. This exclusion has been modified to state that it would apply only if the activity results in manufacture of ‘excisable goods’. Both the words/phrases i.e. ‘manufacture’ and ‘excisable goods’ would have the same meaning as defined under the Central Excise Act. The impact of this change would be that even if a process of manufacture is undertaken for the client, but the resultant product does not fall under the category of excisable goods, **such as alcoholic beverages**, the service tax would be attracted. Certain other goods which would also fall under BAS on account of the proposed change would be kept outside the tax net by way of exemption notification, to be issued at the appropriate time. This levy came into effect from the date notified by the Government i.e. September 1, 2009.”

Thereafter the budget was passed by Rajya Sabha and Lok Sabha and approval was granted by the president to the budget. Thus, the budget was enacted. The service tax was applicable on job work of non excisable goods from September 1, 2009 though it amounted to manufacture. Thus, the intention of the Government to impose service tax on alcoholic beverages have come true.

But later on the exemption was given to the alcoholic beverages through Notification No. 39/2009-Service Tax dated 23rd September, 2009.

The Notification reads as below:

“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service specified in sub-clause (zzb) of clause 105 of section 65 of the Finance Act, provided by a person (hereinafter called the ‘service provider’) to any other person (hereinafter called the ‘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, dispatches of goods as well as financial transactions relating thereto."

The exemption notification was applicable from 23 Sept. 09 onwards. Thus, the service tax was applicable for the period from 1.09.2009 to 23.09.09, service tax was levied on manufacture or processing of alcoholic beverages.

But the Government did not intend to levy the service tax during this period also and hence the retrospective exemption was given for the period September 1, 2009 to September 22, 2009 through Notification no. 43/2009-Service Tax dated 2nd December, 2009 which reads as below :

“ Whereas the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), on taxable service namely ‘business auxiliary services’ specified in sub-clause (zzb) of clause 105 of section 65 of the Finance Act provided by a person (hereinafter called the ‘service provider’) to any other person (hereinafter called the ‘service receiver’) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, and that such services being a taxable service were liable to service tax under the said sub-clause (zzb) of clause 105 of section 65 of the Finance Act with effect from 1st day of September 2009, which was not being levied according to the said practice during the period commencing from the 1st day of September, 2009 and ending with the 22nd day of September, 2009;

Now, therefore, in exercise of the powers conferred by section 11 C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, the Central government hereby directs that the service tax payable on the said taxable service, namely ‘business auxiliary service’ provided by the service provider to the service receiver, during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of such business auxiliary service provided during the aforesaid period. (F. No. 332/17/2009 – TRU)”

The Exemption Notification no. 39 /2009 has made alcoholic beverages free from service tax liability from 23.9.09 onwards that means before this, they were under the scope of service tax liability along with the other non excisable goods but due to other retrospective exemption notification no. 43/2009, only alcoholic beverages got benefit of exemption. Other non excisable goods are still under the scope of service tax.

The government has not considered all aspects properly while adding the condition that the process should result in manufacture of excisable goods so as to bring non excisable goods under Service Tax net through the amendment. All non excisable goods have come under the ambit of service tax. This amendment had affected all kinds of non excisable goods which was not intended by the government at the time of bringing the amendment. Non excisable goods like handicraft products, electricity, etc. are in the same position because no notification has been there except for alcoholic beverages.

The scenario truly reflects ambiguous functioning of the government. The Government functions like this i.e. amendments are done; notifications are issued etc. without considering outcomes of the same. If the suggestions of all concerned persons were taken before imposition then this valuable time of Parliament, all concerned officers would not have been wasted and rather would have resulted in a more orderly framework of legislation requiring less alteration. Earlier it was done for levy of transport of goods by rail and later on it was done for alcoholic beverages. The Hindi proverb rightly fits for the same “ढाक के तीन पात” or “काता पीता सब कपास हो गया.”

Before parting we can say that as it is truly said that “the name has its own impact”, the same has been proved in the situation given above. The name “ALCOHOL” had left its drunken impact on the Government functioning which resulted in retrospective exemptions on Alcoholic Beverages. The situation connotes that in this complete scenario of introducing the liability of tax and thereafter bringing a retrospective exemption on alcoholic beverages the Government behaved like a drunken men who don’t know what he is doing and what was to be done.

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