A2Z TAXCORP LLP
NEW DELHI, INDIA

Indirect Tax and Other Laws Communique
25th August, 2014

This bulletin brings to you the highlights of recent updates and important judgments in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

CONTENTS

SERVICE TAX

NOTIFICTIONS/CIRCULARS

- **Religious pilgrimage services provided by specified organizations get exemption from Service tax**

In exercise of the powers conferred by Section 93(1) of the Finance Act, 1994, the CBEC vide its **Notification No. 17/2014-ST dated August 20, 2014** has amended the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 (**"the Mega Exemption Notification"**) by inserting a new Entry No. 5A after Entry No. 5 which reads as under:

"5A. Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral arrangement;"

Further, in Paragraph 2 of the Mega Exemption Notification providing definitions of various terms used therein, after clause (zf), the following clause has been inserted, namely:-

"(zfa) "specified organisation" shall mean,-

(a) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or

(b) 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002 (35 of 2002)"

Thus, consequent to said amendment in the Mega Exemption Notification, only the services provided by Kumaon Mandal Vikas Nigam Limited and Haj Committee in respect of religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India under bilateral agreement will be exempted from Service tax w.e.f 20th August, 2014.

RECENT CASE LAWS

- **Benefit of small service provider exemption notification cannot be denied if Cenvat credit initially availed on input service but reversed later on**

Commissioner of Central Excise, Ludhiana Vs. Cool Collections [2014 (8) TMI 472 - CESTAT NEW DELHI]

Cool Collections (**"the Assessee"**) are registered under Service tax as Consignment agent and Sales agent. The Assessee deposited Service tax of Rs. 19,155/- on the value of taxable services amounting to Rs. 1,87,409/- during the period 2005-06 (**"the period"**). Further, the Assessee had availed Cenvat credit of Service tax paid on telephone service (**"input service"**) during the period. Later on, the Assessee reversed the Cenvat credit so availed on the input service and filed refund claim of the Service tax deposited on the ground that since during the period, the value of their taxable services remained below the monetary limit of Rs. 4 lakhs and they were covered under erstwhile Small Service Provider Exemption Notification No. 6/2005-ST dated March 1, 2005 (**"SSI Exemption Notification"**), this is now replaced by the Notification No. 33/2012-ST dated. June, 20, 2012, exempts taxable services of aggregate value not exceeding Rs. 10 lakhs in any financial year

However, the Adjudicating Authority denied the refund claim on the ground that as per condition no. (ii) of the SSI Exemption Notification, the provider of taxable service should not avail the Cenvat credit of Service tax paid on any input services. As it is apparent from the records that the Assessee had availed the credit on input service, they were not entitled for the benefit of the said Notification.

On appeal, the Commissioner (Appeals) relying upon the decision of the Apex Court in the case of ***Shri Hari Chemical Exports Ltd. Vs. UOI [2006 (193) E.L.T. 257 (S.C.)]*** (**"the Hari Chemical case"**) allowed the refund claim. Being aggrieved by the said order, the Revenue preferred an appeal before the Hon'ble CESTAT, Delhi.

The Hon'ble CESTAT, Delhi also relied upon the Hari Chemical case wherein it was held that ***"only because in his books of accounts entries are made for taking of the credit in terms of one provision of the Rules, the same if ultimately found to be inapplicable and return of the credit is taken effect, we are of the opinion that there cannot be any legal bar in claiming the exemption under another rule"***. Thus, the Hon'ble Tribunal observed that though the Assessee has taken credit on input service during the period but have not utilized the same and have reversed later on, benefit of the SSI Exemption Notification cannot be denied and decided against Revenue.

- **Excess Service tax paid can be adjusted with future Service Tax liability and cannot be denied on the ground of not having centralised registration or can be subjected to monetary limit**

General Manager (CMTS) Vs. Commissioner of Central Excise [2014 (8) TMI 589 - CESTAT NEW DELHI]

General Manager (CMTS) (**"the Appellant"**) are engaged in providing taxable services in the category of telephone services. During scrutiny of their ST-3 Returns for the period October, 2006 to March, 2007, it was found that while paying Service tax for the month of November, 2006 they had adjusted an amount of Rs. 9,13,200/- which was paid in excess earlier and further, in the month of January, 2007, they adjusted an amount of Rs. 4,72,907/- against Education Cess.

The Adjudicating Authority vide its order dated March 20, 2008 confirmed demand of

Service tax and Education Cess amounting to Rs. 3,86,107/- along with interest and penalty and held that only the assessee who provides taxable service from more than one premises or offices and having centralized registration,, can adjust the excess Service tax paid against their future Service tax liability for subsequent period under Rule 6(4A) read with Rule 6(4B) of the Service Tax Rules, 1994 (**"the Service Tax Rules"**). It was further contended that an assessee with centralized registration under Rule 4(2) of the Service Tax Rules can adjust excess payment in one month against the tax liability in other months without any limit and for other assessee, there is a monetary limit of Rs. 1 lakh for such adjustment.

On appeal being filed, the Commissioner (Appeals) upheld the contentions of the Adjudicating Authority and confirmed the demand on the Appellant. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi.

It was held by the Hon'ble CESTAT, Delhi that the excess payment referred to in Rule 6(4A) read with Rule 6(4B) of the Service Tax Rules is like advance payment under Rule 6(1A) thereof for which there cannot be any monetary limit and there is no condition in Rule 6(4A) read with Rule 6(4B) of the Service Tax Rules for availing the adjustment facility, the assessee must have opted for centralized registration.

It was further held by the Hon'ble Tribunal that when an assessee during certain months, for reasons other than interpretation of law, taxability and classification, valuation or applicability of exemption, has paid Service tax in excess of his actual tax liability, the Government cannot retain the excess tax paid by the assessee by refusing its adjustment against his tax liability for future months and such refusal of adjustment would amount to collection of tax without the authority of law which is contrary for the provisions of Article 265 of the Constitution of India.

- **Cenvat Credit of the Service tax wrongly paid under reverse charge is nothing but refund of the erroneously paid Service tax which cannot be denied**

Bajaj Allianz General Insurance Co. Ltd. Vs. Commissioner of Central Excise, Pune-III [2014-TIOL-1540-CESTAT-MUM]

Bajaj Allianz General Insurance Co. Ltd. (**"the Appellant"**) is engaged in the business of providing General insurance service (**"insurance service"**) throughout India. The head office of the Appellant is located at Pune and is centrally registered with the Service Tax Department for discharge of Service tax liability on insurance service. To promote their business, the Appellant had appointed independent insurance auxiliary agents (**"insurance agents"**) providing services to the Appellant taxable under the category of 'Insurance auxiliary services' under Section 65(105)(zl) of the Finance Act, 1994. Since, in terms of Rule 2(1)(d)(iii) of the Service Tax Rules, 1994, the service receiver was liable to pay Service tax on Insurance auxiliary services, the Appellant was duly discharging its Service tax liability as a receiver of service from the insurance agents.

Amongst other places, the Appellant also appointed insurance agents in Jammu & Kashmir (**"J&K"**) for procuring the policies for the clients/ assets located in J&K. Though the said services provided by the insurance agents in J&K were not taxable, the Appellant wrongly discharged the Service tax as a recipient of service and thereafter taken Cenvat credit of the same as input service. During the course of audit, the Department took objection that the Appellant have wrongly availed the Cenvat credit on Service tax paid on Insurance auxiliary services rendered in J&K on the ground that the services are exclusively used in the State of J&K on which no Service tax is liable to be discharged and the Service tax, if at all, paid by the Appellant is not available as Cenvat credit to the Appellant.

Accordingly, the Cenvat credit availed by the Appellant was denied and recovery proceedings were initiated. Being aggrieved, the Appellant preferred an appeal with the Hon'ble CESTAT, Mumbai and submitted that since the services rendered by the insurance agents in J&K were not taxable, Service tax deposited on the same was refundable to the Appellant and accordingly, they have taken credit of the same. The Appellant also relied on the judgment of Hon'ble Apex Court in the case of ***CIT Vs. Mahalakshmi Textile Mills Ltd. [1967 (66) ITR 710 (SC)]*** *(**"Mahalakshmi Textile"**)* and ***Nitco Tiles Ltd. Vs. CCE Mumbai [2007 (220) ELT 827 (Tri. Mum)]*** *(**"Nitco Tiles"**)*.

The Hon'ble CESTAT, Mumbai determined the place of provision of the service rendered by the insurance agents located in J&K and held that the Insurance auxiliary services provided by the insurance agents in the State of J&K were not taxable and therefore, the Appellant was not liable to pay Service tax. Further, the Hon'ble Tribunal relied upon the decisions in the case of Mahalakshmi Textile and Nitco Tiles and held that the Cenvat credit taken by the Appellant is nothing but refund of the Service tax paid by them on the services on which they were not required to pay Service tax and the same cannot be denied.

CENTRAL EXCISE

RECENT CASE LAWS

- **Cenvat credit is available on capital goods even if they are moved out temporarily from the factory**

Commissioner of Central Excise & Service Tax, Daman Vs. Aarti Industries Ltd. [(2014) 47 taxmann.com 148 (Ahmedabad - CESTAT)]

Aarti Industries Limited (**"the Respondent"**) was engaged in the manufacture of Organic and Inorganic chemicals and purchased hydrogen gas cylinders (**"Cylinders"**) to store hydrogen gas for use in the process of manufacture of various chemicals in its factory. The hydrogen gas is procured from various suppliers and in this process the empty Cylinders have to move out from the Respondent's factory frequently for refilling of hydrogen gas. After refilling, these Cylinders are received back in the Respondent's factory and put to use for manufacture of final products.

The Cylinders are installed on hired vehicles and interconnected to form hydrogen cylinder bank for ease of the transportation and use within the factory.

The Respondent took Cenvat credit of the Excise duty paid on Cylinders under the category of "Capital Goods" during the period from October, 2004 to May, 2007.

The Department argued that the Respondent wasn't eligible to avail the Cenvat credit on following grounds:

(a) Capital goods were not installed within factory; and

(b) Procedure under Rule 3(5) Cenvat Credit

Rules, 2004 **("the Credit Rules")** relating to reversal and re-credit was not followed; and

(c) Procedure under Rule 4(5)(a) of the Credit Rules was also not followed.

Accordingly, the Adjudicating Authority disallowed the Cenvat credit to the Respondent and raised demand for recovery of such Cenvat credit along with interest and penalty of equivalent amount under Section 11AC of the Central Excise Act, 1944.

The first Appellate Authority allowed the Respondent's appeal by setting aside the Order of the Adjudicating Authority.

Being aggrieved, the Department filed an appeal before the Hon'ble CESTAT.

The Hon'ble CESTAT observed that Rule 2(a) of the Credit Rules provide that the condition for availing Cenvat credit on capital goods is their use within the factory of the manufacturer of final products. It was held that there was no requirement under the Credit Rules that the capital goods must be installed within the factory of production.

Further, the Hon'ble Tribunal held that temporary to and fro movement of Cylinders for the purpose of refilling of hydrogen gas is covered by Rule 4(5)(a) of the Credit Rules. Furthermore, reversal of credit at time of removal of Cylinders and availment of credit at time of receipt of duly filled Cylinders is a revenue neutral exercise.

However, the Hon'ble CESTAT held that the arguments of the Department pertaining to Rule 4(5)(a) and 3(5) were not sustainable because the same were not invoked in the Show Cause Notice. Hence, Adjudication proceedings and appeal proceedings cannot go beyond scope of show cause notice

- **The Assessee has an option to choose the most beneficial Notification when two Notifications are simultaneously applicable at a time**

Arvind Ltd. Vs. Commissioner of Central Excise, Ahmadabad-III [(2014) 47 taxmann.com 91 (Ahmadabad - CESTAT)]

Arvind Ltd. (**"the Appellant"**) was a composite textile mill engaged in the manufacture of 100% cotton fabrics which were cleared for export as well as for home consumption.

The Appellant was simultaneously availing exemption under Notification No.29/2004-CE-Tariff dated July 9, 2004 (**"the Notification No.29/2004"**) and 30/2004-CE-Tariff dated July 9, 2004 (**"the Notification No.30/2004"**).

Notification No. 29/2004 prescribed concessional rate of duty at the rate of 4% ad valorem unconditionally for 100% cotton fabrics and in this case, the Appellant availed Cenvat credit of duty paid on inputs, capital goods and input services used in the manufacture of 100% cotton fabrics, which were exported.

On the other hand, Notification No. 30/2004 prescribed Nil rate of duty on 100 per cent cotton fabrics subject to the condition that no Cenvat credit of duty paid on inputs shall be availed and the Appellant availed exemption under this Notification also in respect of 100% cotton fabrics cleared for home consumption.

Notification No.29/2004 was amended vide Notification No.58/2008-CE-Tariff dated December 7, 2008 (**"the Notification No. 58/2008"**) and the rate of duty on the said goods was reduced to Nil unconditionally.

Further, a fresh Notification No. 59/2008-CE (**"the Notification No. 59/2008"**) was simultaneously issued on December 7, 2008, which prescribed 4% rate of duty on the said goods without imposing any condition. The Department denied credit on ground that since goods were unconditionally exempted in terms of Notification No. 29/2004, which was mandatory and by virtue of sub-section (1A) of Section 5A of the Central Excise Act, 1944, the Appellant couldn't opt for payment of duty @ 4% on export of 100% cotton Fabrics under Notification No. 59/2008 when the goods were unconditionally exempted from payment of duty under Notification No.29/2004 as amended on December 7, 2008.

Accordingly, the Revenue issued Show Cause Notices for recovery of Cenvat credit availed by the Appellant on the grounds that the Appellant were not eligible for the same in view of the provisions of Rule 6(1) and Rule 6(4) of the Cenvat Credit Rules, 2004 (**"the Credit Rules"**). The Revenue argued that the Appellant was not entitled for Cenvat credit on 100% Cotton Fabrics since it was unconditionally exempt from payment of duty under the Notification No.29/2004 as amended on December 7, 2008. The demand was upheld by the Adjudicating authority and the Commissioner (Appeals). The Appellant filed an appeal before the Hon'ble Tribunal.

The Hon'ble Tribunal held that when two exemption notifications, one granting absolute unconditional exemption to excisable goods and other granting unconditional partial exemption to said goods, are operative simultaneously, it is choice of assessee to opt for that notification which is more beneficial to him and provisions of section 5A(1A) of the Central Excise Act, 1944 would not apply. Further, as per Rule 6(6) of Credit Rules, since said goods (even if considered as exempted) were exported, credit could not be denied.

- **Mere admission before the Settlement Commission couldn't be sole ground to confirm demand in adjudication proceedings against the assessee**

Commissioner Vs. Maruti Fabrics [(2014) 47 taxmann.com 298 (Gujarat)]

In the instant case, Maruti Fabrics (**"the Assessee"**) clandestinely removed certain goods. Thereafter, the Assessee filed an application before the Settlement Commission (**"the SC"**) admitting the clandestine removal of goods. The SC sent back the case to the Adjudicating authority who relied upon the Assessee's admission before the SC and confirmed demand on the ground of clandestine removal. The Assessee filed an appeal before the Hon'ble Tribunal wherein it was held that the Revenue had failed to establish the clandestine clearance of the goods by the Assessee. It was also held that the statements of the Assessee were retracted later.

The Revenue filed an appeal before the Hon'ble Gujarat High Court against the order of the Hon'ble Tribunal and contended that in the application before the SC submitted under Section 32E(1) of the Central Excise Act, 1944 (**"the Excise Act"**), the Assessee specifically admitted the charges as per the Show Cause Notice and duty liability. Therefore, the said admission is required to be considered by the Adjudicating authority to establish the clandestine clearance of the goods by the Assessee.

The Hon'ble High Court held that in terms of sub-section (2) of Section 32L of the Excise Act, whatever is admitted by the Assessee while submitting the application before the SC under Section 32E(1) of the Excise Act, straightway cannot be said to be admission on behalf of the Assessee of accepting the liability.

CUSTOMS

NOTIFICATIONS/CIRCULARS

- **Issuance of guidelines for exemption under Section 25(2) of the Customs Act, 1962**

The Central Board of Excise & Customs (**"the CBEC"**) vide its **Circular No. 09/2014 – Customs dated August 19, 2014 ("the Circular")** has issued Guidelines for considering request for exemption from payment of Customs Duty under circumstances of an exceptional nature to be stated in such order under Section 25(2) of the Customs Act, 1962 (**"the Customs Act"**) and superseded its earlier Circulars bearing Circular no. 49/2003-Customs dated June 10, 2003 and Circular no. 10/2007-Customs dated February 13, 2007.

Exemption will be available as per following guidelines:-

- Imports made by Central/ State Governments, Municipalities, public sector undertakings and autonomous bodies will not be considered for ad-hoc exemption. All such agencies are expected to make budgetary provisions for payment of Customs duty along with the cost of the imported goods. However, an exception could be considered in cases where such agencies are recipients of imported goods as grants from foreign Governments/ foreign organizations.

- Exemptions could also be considered in respect of cases recommended by the Secretary, Ministry of External Affairs for reasons of furthering India's foreign relations. While recommending any such case, Ministry of External Affairs shall state why the exemption is in national interest.

- Cases of re-import of artefacts and memorabilia representing India's historical, cultural and art heritage intended for public exhibition could also be considered for exemption, subject to recommendation for duty exemption by the Secretary, Ministry of Culture, Government of India.

- Cases of import required for treatment of individuals, who are suffering from life threatening diseases, could be considered on case- to -case basis . Such cases will be examined from the point of view of the nature of the medical condition and financial circumstances of the applicant.

- Import of goods meant for relief and rehabilitation of people affected by natural disasters and epidemics could be considered for exemption subject to fulfilling certain conditions.

- Import of medical or surgical instruments and apparatus by charitable hospitals could be considered for exemption of duty subject to certain conditions.

➢ **Revision in Rate of Exchange for valuation of exported or imported goods/ services**

Section 14 of the Customs Act, 1962, provides the rate of exchange (applicable for exported or imported goods), also presently used for Section 67A of the Finance Act, 1994 (**"the Finance Act"**) for calculation of gross value of taxable service, would be the rate, as determined by the CBEC for conversion of foreign currency into Indian currency or vice versa. The CBEC issues Notification from time to time to notify rate of exchange determined by it.

In this context, the CBEC has issued **Notification No. 72/2014-Customs (N.T.) dated August 21, 2014** containing the Rates of Exchange applicable from August 22, 2014.

➢ **Change in Rate of Import duty on certain goods**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the CBEC vide its **Notification No. 26 /2014 – Customs dated August 21, 2014** has amended 3 clauses in its earlier Notification No. 12/2012-Customs, dated the March 17, 2012 which prescribes the rate of duty on import of certain goods. As per the Notification, following changes have taken place:

- The new Standard Rate of Customs Duty on import of Raw Sugar will be 25% as against 15% mentioned in the earlier notification.

- The new Standard Rate of Customs Duty on import of Refined or white sugar will be 25% as against 15% mentioned in the earlier notification.

- The new Standard Rate of Customs Duty on import of Raw sugar if imported by a bulk consumer will be 25% as against 15% mentioned in the earlier notification.

RECENT CASE LAWS

- **The Bill of Entry can be re-assessed even though the goods were no longer under the charge of the Customs authorities**

Reiter India Pvt. Ltd. Vs. Commissioner of Customs (Import) [2014 (8) TMI 318-CESTAT Mumbai]

In the instant case, Reiter India Pvt. Ltd. (**"the Appellant"**) imported a consignment of Textile Machinery parts vide invoice no. 3506445/2000 dated May 10, 2011 valued at 997740.24 CHF vide Bill of Entry no. 3610581 dated May 25, 2011. The Appellant cleared the goods on payment of relevant Customs duties along with interest. Thereafter, the Appellant found that value of one item was shown as 4.04 CHF instead of 0.04 CHF. The Appellant contacted the supplier, who in turn informed the Appellant that they have charged wrong price for the said part due to typographical mistake. On receipt of the goods in factory and on receipt of original Bill of Entry, the Appellant availed Cenvat credit against the said consignment. However, after noticing the error in invoice value, the Appellant immediately reversed the Cenvat credit.

The Appellant paid excess duty of Rs. 1,11,46,682.70 due to error in the invoice for which, they made application before the Dy. Commissioner for reassessment of the Bill of Entry. The application was rejected on the ground that the goods were no longer under customs charge and no documentary evidence was available warranting amendment and reassessment of Bill of entry. The Adjudication order was confirmed by the Commissioner (Appeals). Accordingly, the Appellant filed an appeal before the Hon'ble Mumbai CESTAT.

The Hon'ble Mumbai Tribunal observed that payment of excess duty by the Appellant was not in dispute as the price of the impugned item was 0.04 CHF which was invoiced wrongly by the supplier as 4.04 CHF. The purchase order and the invoice were available at the time of filing the Bill of entry. Therefore, the Hon'ble Tribunal held that as per the CBEC Manual, amendment in Bill of entry shall be allowed although goods have been given out of charge.

Accordingly, the order of the Commissioner (Appeals) was set aside.

- **Refund of excess duty paid on provisional basis won't attract doctrine of unjust enrichment**

Commissioner of Customs, Pune Vs. Atlantic Shipping (P.) Ltd. [(2014) 47 taxmann.com 204 (Mumbai-CESTAT)]

In the instant case, shipping agent of the Atlantic Shipping (P.) Ltd. (**"the Respondent"**) paid the provisionally assessed Customs duty on estimated quantity of bunker fuel to be consumed during the coastal run. On completion of the final assessment, the Respondent filed a refund application as duty had earlier been paid in excess on provisional assessment basis. The Assistant Commissioner observed that for refund of the duty paid on provisional basis, unjust enrichment is not attracted. It was further observed that the refund claim on imported goods on which duty was paid provisionally were used captively. Accordingly, the Assistant Commissioner sanctioned refund of the excess duty paid on provisional basis.

However, the Revenue filed an appeal before the Commissioner (Appeals) on the ground that the provision of unjust enrichment is attracted in the facts and circumstances of the case as the Respondent might have transferred the cost indirectly for the services rendered during the coastal run.

The Commissioner (Appeals) dismissed the appeal of the Revenue on the premise that the duty leviable on Bunker estimated to be consumed during coastal run of the vessel has been recovered by Department on provisional assessment of Bill of Entry in terms of Board's Circular No. 58/97 dated November 6, 1997 (**“the Circular”**).

Similarly, steamer agent is entitled to refund of duty in case of unutilized duty paid in terms of the Circular read with Board's letter F. No. 450/66/2005-Cus-IV dated November 24, 2005. Further, reliance was placed on the ruling of the Hon’ble Ahmedabad Tribunal in the case of ***Commissioner of Customs Vs. Ambica Maritime Ltd. [2007 (220) ELT 887 (Trib - Ahd.)]***, wherein it was held that while vessel

is convened from foreign run to coastal run and Customs duty on ship stores deposited on provisional assessment basis on their estimated consumption during coastal run, the payment was based on estimate. It was held that such payment is not duty but only a deposit or notional amount on which doctrine of unjust enrichment is not applicable as provided under Section 27 read with Section 28D of the Customs Act, 1962.

The Revenue filed an appeal before the Hon’ble Mumbai Tribunal.

The Respondent relied on the Circular and the ruling of the Hon'ble Karnataka High Court in the case of ***Commissioner of Customs Vs. Agrotech Foods Ltd. [2010 (249) ELT 348]*** wherein it was held that on the adjustment of amount paid on provisional basis, doctrine of unjust enrichment is not attracted.

The Hon’ble Tribunal rejected the contention of the Revenue on the ground that if the contention of the Department was agreed to, it would render the entire scheme of provisional assessment meaningless.

- [Issuance of Show Cause Notice is mandatory prior to adjudication of demand]()

<u>Aurobindo Pharma Ltd. Vs. Assistant Commissioner, Customs, Central Excise & Service Tax, Hyderabad [(2014) 47 taxmann.com 303 (Andhra Pradesh)]</u>

In the instant case, the Revenue alleged violation of conditions of duty-free import against Aurobindo Pharma Ltd. (**"the Petitioner"**) and issued demand notice cum adjudication order (**"the Impugned Demand"**) directing the Petitioner to pay Central Excise and Customs duties along with interest in terms of the bond executed by them before the Assistant Commissioner of Customs and Central Excise.

The Petitioner filed a writ petition before the Hon'ble Andhra Pradesh High Court (**"the HC"**) and argued that the Impugned Demand was issued in violation of the principles of natural justice as no Show Cause Notice was issued prior to issue of the Impugned Demand. Further, the Petitioner contended that no opportunity of being heard was granted before adjudication of the amount allegedly due and payable.

The Department contended that hearing was given after taking a decision and this fact is admitted in the Impugned Notice. Further, the Revenue argued that issuance of Show Cause Notice was not required under law in a case of this nature since the issue involved was not covered under Section 28 of the Customs Act, 1962 (**"the Customs Act"**).

The HC held that issuance of Show Cause is a must before adjudication of the duty sought to be levied followed by demand. It was further held that Section 28(1)(a) of the Customs Act is mandatory in character and the very purpose of hearing as mentioned in Section 28(1)(a) of the Customs Act is not fulfilled in this case.

The HC observed that if Revenue's argument that *'in a case of this nature issuance of Show Cause Notice is not required, no hearing is to be given'*, is accepted, then no post decisional hearing is required as there is no provision under law. Furthermore, the HC held that when the intention of the Legislature is to give a Notice before adjudication of the dispute, post decisional hearing does not fulfil the object of issuance of Show Cause Notice.

Accordingly, the HC set aside the Impugned Demand and directed that the matter should be considered afresh.

DVAT

NOTIFICATIONS/CIRCULARS

- **Furnishing of advance information in respect of functions organized in Banquet Halls, Farm houses, Marriage/Party Halls, Hotels and Open Ground etc, in form BE-1 & BE-2**

The Government of Delhi had issued a Notification No. 3(393)VAT/2013/1085-1096 dated February 19, 2013 (**"the Notification"**) directing the owner/ lessee/ custodian of the Banquet Halls, Farm Houses, Marriage/Party Halls, Hotels, Open Ground etc, where programmes are to be organized and where food and/or liquor items are to be supplied and cost of booking exceeds rupees one lakh per programme, they had to get themselves registered through filing form BE-1 and after that, they were required to submit the return in Form BE-2 at least 3 days before first day of a month and for second fortnight by 12th of the month and the said notification

This notification was made effective from the second fortnight of January, 2014.

Now the Government vide its Circular No. 9 of 2014-15 (DVAT) has directed to file the required information in Form BE-1 and BE-2 on timely basis so as to avoid imposition of penalty under section 86 of the DVAT Act, 2004.

NEWS FLASH

- **CBEC to use third-party information to nab tax evaders**

NEW DELHI: India's indirect taxes body, the Central Board of Excise and Customs (CBEC) could start monitoring power consumption and payments towards value added tax in states as it proposes to use information from third-party sources to nab tax evaders.

The plan draws heavily from income tax authorities and hinges on the data shared by power utilities, stock exchanges, banks and Registrar of Companies in their information returns to verify their tax payments.

The government had in this year's budget inserted Section 15A and 15B in the Central Excise Act, seeking more information through returns for all indirect taxes and those failing to furnish it will have to face penalty. Armed with this provision, the CBEC is gearing up to effectively use the deluge of information flow.

"Third-party data can be very handy. The idea is to tap various information sources to tackle tax evasion in a nonintrusive manner," said a finance ministry official, who did not wish to be identified.

Effective use of third-party information by tax authorities had figured in discussions at the recently concluded annual conference of the chief commissioners and director generals of excise, customs and service tax departments.

Service tax authorities have already been provided with remittances received in lieu of import of services and directed to verify with service tax paid.

Third-party information system is used the world over to check evasion. The concept was first introduced in the country by the Central Board of Direct Taxes in the form of annual information returns. Banks, mutual funds, credit card issuers and property registrars are required to report transactions above a certain threshold in the prescribed format. Data is matched with taxpayers' income tax returns to detect any discrepancy in the income declared and tax paid. The information collected is also used to create 360-degree profiles of taxpayers.

Under excise duty norms, it is mandatory for manufacturers to file a statement on installed capacity, details of electricity supply connection including the total number of meters installed and sanctioned electricity load, permanent account number and value added tax registration number.

However, the country has not had a similar structured third-party information system in case of indirect taxes.

The Central Board of Excise and Customs now intends to make better use of IT-based information systems that will help it effectively deal with evasion, especially of service tax. The government had in 2012 detected about a million non-filers or stop filers of service tax, after which it announced an amnesty scheme to encourage evaders to come into the fold.

Experts have welcomed the CBEC's move. "This is a step in the right direction. Internationally tax authorities rely on a large of information sources to verify tax due to them.

The body is also launching an IT-enabled pilot for verification of Cenvat credit claim on the lines of tax deducted at source in case of income tax. This will help the industry in facilitating faster credits as also the department in checking evasion.

The Government has targeted collection of Rs 6.23 lakh crore towards indirect taxes during the current financial year, a growth of 25 per cent over 2013-14. Indirect taxes collections grew just 4.5 per cent in the three months to June, compared to the year-ago period, but June saw a promising 13.5 per cent growth over the corresponding month last year.

- **Gujarat proposal may pose hurdle to Centre's GST Rollout**

The Gujarat Government has asked for the right to collect central sales tax in perpetuity, potentially crippling the rollout of the nationwide Goods and Services Tax (GST).

The proposal comes just days before the Centre and states discuss a model for taxation of interstate movement of goods (IGST).

Gujarat has told the Centre that it should be allowed to deduct the 2 per cent tax levied on all goods that leave state borders to be sold elsewhere. For instance, cars manufactured at Maruti and Tata factories in Sanand, but sold in Delhi.

Currently, the Centre collects this inter-state tax on behalf of all the states and distributes it among them. The GST structure which is being finalised is meant to abolish this origin-based tax for a destination-based tax. To make the switchover easy, all states are supposed to get a compensation amount over the next few years.

But the Gujarat model placed before the empowered committee of state finance ministers puts a spanner in the works as it ensures that the origin-based tax, biased in favour of manufacturing heavy states, will continue in perpetuity.

For instance, it will force a recalculation of the rates for the GST in the bills that are to be placed in the winter session of Parliament. Equally important, if this model is adopted, one more constitution amendment bill will be necessary to redraw the powers of taxation for the Centre and the states.

State Finance Minister Saurabh Patel, in his note, has demanded that Gujarat be allowed to levy the central sales tax at the source. In return, the state will ask the Centre to recalibrate the compensation amount it would have got. Manufacturers will be given credit by the state, independent of the central government’s GST machinery for the sales they make outside the province.

Crucially, the right to phase out the inter-state tax will pass from the Centre to the states under the Gujarat model.

“This is now the biggest obstacle we have on the GST issue. It will entirely damage the model,” a source said. In last year’s budget, the Centre had provided Rs 9,300 crore as compensation to states, though only Rs 1,940 crore was disbursed.

Central government sources said that the proposal, which is totally at variance with the Maharashtra model, has drawn interest from some other manufacturing rich states such as Tamil Nadu, and may force the GST plans back to the drawing board.

- **GST: Centre, States remove stumbling blocks, but differences still persist**

NEW DELHI : India's ambitious plans to

reform the indirect tax regime through a goods and services tax (GST) took a few significant steps forward with the Centre and states agreeing on the details of its structure. GST seeks to replace a multitude of indirect taxes with one, removing barriers to movement of goods and services across state boundaries and turning the country into a single market.

This would improve efficiency, reduce delays and bump up the GDP by 1-2%. The tax, which was to have been rolled out from FY11, is stuck because the Centre has not been able to convince states that they'll be adequately compensated for revenue they lose as levies imposed are scrapped.

On Wednesday, the empowered committee of state finance ministers decided the threshold for the levy of the tax.

"It was decided that Rs 10 lakh in respect of general category of states and Rs 5 lakh for special category and northeastern states," Jammu and Kashmir finance minister Abdul Rahim Rather, who heads the empowered committee on GST, told reporters after a meeting of the panel on Wednesday.

This means GST will be levied on all retailers and service providers with a turnover of more than Rs 10 lakh in general category states and Rs 5 lakh in special category states. This removes a key stumbling block in the finalisation of the GST structure and is expected to speed up the talks on implementation of the tax reform, though significant differences still persist.

GST will replace service tax, excise, state value-added tax and a number of other local levies. The new government has already signaled its intent to take GST forward and has said it will address all concerns of the states.

- **SC Judge, Ex-SEBI chief rap New Companies Act**

The Companies Act, 2013, was made in undue haste and exposes Parliament's lack of expertise in law making, said Supreme Court judge A K Sikri here on Thursday.

He wasn't the only eminent person who criticised the new law, at a book release function. M Damodaran, former Securities and Exchange Board of India (Sebi) chairman, termed it "an excellent piece of badly drafted legislation".

All speakers before him, noted Sikri, agreed that this was a law "made in haste".

Each word in a law should be thoroughly explained, he said. Adding: "Ninety per cent of parliamentarians don't even know what the intricacies of law are. So, where is the will of Parliament?"
"Of course, such a law is not an exception," he said. "One good example has been last

week, one law which has been made. I won't say much about that," implicitly criticising the way the National Judicial Appointments Bill, 2014, was passed in Parliament last week.

On the new Companies Act, Sikri said this was a case where we'd been trying since 1999 to bring a new law. "And, after so much of exercise, what have we got ultimately?...that there is no thinking behind it," he regretted.

He also sounded a word of caution that one should be careful of relying too much on the National Companies Law Tribunal (NCLT), yet to be notified after enactment of the Companies Act. "I dread that there would be so much given to NCLT and whether it can handle it or not," he said.

"Tribunalisation of justice is the order of the day but whether we are delivering on it or not must be debated," he added.

Sikri, also a former head of the Punjab and Haryana High court, also expressed disappointment between the differences over the law between the ministries of finance and corporate affairs.

As for Damodaran, he said laws should be clear and concise, "so that every morning we do not wake up knowing of regulations and laws, each drafted worse than its predecessor, and providing proof of old statement..... that language was given to man to conceal his thought, not express it."

- **RBI tightens rules for lending against share by NBFCs**

The Reserve Bank of India (RBI), on Thursday, tightened the norms for giving loans against shares by non-banking financial companies (NBFCs).

NBFCs lending against collateral of shares have been told to maintain a loan-to-value (LTV) ratio of 50 per cent. They can accept only specified Group 1 securities as collateral for loans of value more than Rs. 5 lakh.

Asset size

All NBFCs with asset size of Rs. 100 crore and above have also been asked to report on-line to stock exchanges information on the shares pledged in their favour by borrowers for availing of loans.

At present, lending against shares by NBFCs is not subject to specific instructions apart from the general prudential regulation applicable to all NBFCs. Lending against shares could be in the normal course where shares are accepted as collateral or as part of their capital market operations. NBFCs lend either by way of pledge of shares in their favour, transfer of shares or by obtaining a power of attorney on the demat accounts of borrowers.

Irrespective of the manner and purpose for which money is lent against shares, default by borrowers can and has in the past lead to offloading of shares in the market by the NBFCs, thereby, creating avoidable volatility in the market, said the RBI.

“Certain other associated areas of concern relate to absence of adequate prior information to the stock exchanges on the shares held as pledge by NBFCs, probable overheating of the market, over-exposure by NBFCs to certain stocks and overleveraging of borrowers,’’ it pointed out.

Though NBFCs, in general, had in place their own internal controls with regard to lending against shares, including a LTV ratio, the RBI said there were anecdotal evidences of volatility in the capital market being the result of offloading of shares by NBFCs.

“It is, therefore, found necessary to introduce a minimum set of guidelines on lending against shares while, at the same time, ensuring that these do not result in unnecessary constraints to the requirements of genuine borrowers,’’ the RBI said.

There were anecdotal evidences of volatility in the capital market being the result of offloading of shares by NBFCs.

- **Disclose Company Board decisions within 15 Minutes-SEBI**

MUMBAI: Market regulator Sebi has proposed that all listed companies should intimate within 15 minutes of closure of the board meetings about decisions on dividends, bonus, fund raising and buyback, among others.

The move is part of Sebi's effort to ensure 'timely and adequate' disclosures by listed companies.

In the discussion paper, the Securities and Exchange Board of India (Sebi) has suggested that all listed firms would have to intimate to the exchanges within 15 minutes of the closure of board of directors meeting about decisions on fund raising proposal, dividends, cash bonuses, buyback of securities.

Among others, listed entities also need to inform about decision on financial results, voluntary delisting, increase in capital by issue of bonus shares through capital-isation, including the date on which such shares would be credited, and re-issue of forfeited securities.

According to the 26-page discussion paper, these proposals have been prepared after reviewing practices in some of the international jurisdictions and after having discussions with various market participants, including bourses and industry representative.

The discussion paper is open for public comments till September 12.

"The quality of disclosures that are currently being made by the listed entities under the existing provisions, also points to the need for detailed rules governing continuous disclosures.

"Continuous, adequate, accurate and timely disclosure of information on an ongoing basis would achieve parity while enabling investors to make informed investment decisions," the discussion paper said.

- **Govt. asks SEBI to relax FPO norms**

The Government has asked market regulator Securities and Exchange Board of India (Sebi) to allow relaxations in rules for follow-on public offerings (FPOs), two people with knowledge of the development have said.

For the 2014-15 disinvestment programme, the Centre intends to give more weight to the FPO route than the offer-for-sale (OFS) route, to ensure better participation from retail investors.

Both FPO and OFS routes are used by listed companies for secondary share sales by promoters. The OFS route is cost- and time-effective, while FPOs are costlier and consume more time, forcing many promoters to opt for the former. Most disinvestments done in the past two financial years have been done through the OFS route. However, the government has received market feedback suggesting retail investors are more likely to participate in issues made through the FPO route, given an advantage on factors like pricing and allocation.

OFS issues only have a floor price, while FPOs give a price band within which investors could bid. The latter offers them more certainty on pricing. The FPO route requires a fixed minimum allocation to retail investors; that is, every investor will receive a certain minimum allocation of shares, if available. OFS issues do not have any such certainty.

"Most disinvestments done through the OFS route have seen little retail participation. The new government wants retail investors to come back to the market. The FPO route is one way of meeting this objective. However, it will only be feasible if Sebi makes some relaxations. We have already initiated a dialogue with Sebi on this," said a senior finance ministry official.

For the current financial year, the government has set an ambitious target of raising around Rs 58,000 crore through disinvestment. Of this, Rs 43,000 crore is expected to come from sale of shares in public-sector undertakings.

Meanwhile, the market regulator is said to have started a dialogue with market participants for possible changes to the FPO framework.

In a significant step, Sebi was considering doing away with the requirement to file offer documents in FPOs, said sources in the know. The regulator is also mulling automatic approvals and fewer disclosures.

Experts believe there is a scope to ease the FPO norms, as it is used by companies that are already listed and have to make adequate disclosures anyway.

"FPO is a secondary offering by an already listed entity, so there is a case for reducing the disclosure requirements and also filing a prospectus," said Prime Database Chairman Prithvi Haldea.

Sebi's primary market advisory committee has been tasked with recommending new measures after market consultations.

The market regulator has made relaxations to the FPO framework in the past as well.

In 2012, it had reduced from Rs 5,000 crore to Rs 3,000 crore the threshold free-float market capitalisation for issuers to access the market through fast-track FPO and rights issues.

Sebi expedites the regulatory process for companies qualifying under the fast-track FPO route. "Sebi can further reduce the threshold for these," said Haldea.

The Government is likely to kick start this year's disinvestment programme with SAIL and Coal India.

The department of disinvestment is also said to have shortlisted other disinvestment candidates like Power Finance Corp, Rural Electrification Corp, SJVN Ltd, National Hydroelectric Power Corporation and MMTC. Last financial year, the Centre had raised only Rs 15,819 crore through disinvestment, against target of Rs 40,000 crore. It had sold shares through the routes of offer for sale, follow-on public offering, block trade and exchange traded fund.

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