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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.

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SERVICE TAX

RECENT CASE LAWS

➢ **No penalty if there was mass unawareness among service providers about taxability of certain service**

H.M. Singh & Co. Vs. Commissioner of Central Excise, Customs & Service Tax [2014 (49) taxmann.com 417(Allahabad)]

H.M. Singh & Co. (**"the Appellant"**) was served a Show Cause Notice dated September 29, 2010 by the Department demanding Service tax on the ground that during the period from April 2005 to March 2010, the Appellant had received Provident Funds payments relating to manpower supplied by it to the Hindalco Industries Limited, Renukoot (**"service recipient"**) and had not included the same in the assessable value for the purpose of calculation of Service tax.

The Appellant made payment of Service tax along with interest during June 2011 to October 2011. Thereafter, the Department passed an adjudicating order dated November 24, 2011 and levied penalty under Sections 77 and 78 of the Finance Act, 1994 [**"the Finance Act"**] (with option to pay 25% penalty within 30 days) which was further upheld by the Ld. Commissioner (Appeals) and the Hon'ble Tribunal.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble High Court of Allahabad contesting the amount of penalty on the following ground:

- There was no case of fraud, collusion, wilful misstatement or suppression of facts within the meaning of Section 78 of the Finance Act or of a contravention with intent to evade payment of Service tax.

- The Appellant's bona fide intentions are well established from the fact that the alleged amount of Service tax with interest was deposited without waiting for an order of adjudication.

- Nearly two-hundred notices had been issued by the division and Commissionerates at Allahabad on same issue which indicates that there was mass unawareness among the service providers in the stated area which was also noted in an order of the Joint Commissioner (Adjudication), Central Excise, Allahabad dated June 16, 2011.

It was held by the Hon'ble High Court of Allahabad that the Appellant's conduct in paying Service tax even prior to adjudication was relevant factor depicting bona fide intentions of the Appellant.

Further, since there was mass unawareness on the issue involved, as even noted by Department itself, there was no case of fraud, collusion, willful misstatement or suppression of facts within the meaning of Section 78 of the

Finance Act or of a contravention with intent to evade payment of Service tax. Hence, penalty could not be levied.

- **Small Service Provider benefit cannot be denied on the ground that the Assessee has not opted for the same**

Subin Telecom Vs. Commissioner of C. EX., Rajkot [2014 (10) TMI 133 - CESTAT AHMEDABAD]

Subin Telecom (**"the Assessee"**) is engaged in providing services as authorized distributor of products of Vodafone Essar Gujarat Ltd. (**"Vodafone"**) on commission basis since April 2007. Even though the Assessee took registration under Service tax for 'Business Auxiliary Service' on April 26, 2007, they neither paid Service tax nor did they file any return. As soon as the Assessee came to know that the Department has collected the details of distributors from Vodafone, they made payment of Service tax with interest on February 8, 2008. On February 11, 2008, a letter from jurisdictional Central Excise authority was received by the Assessee requiring him to file return and produce records of books of accounts etc., for verification.

Thereafter, proceedings were initiated against the Assessee which culminated into impugned Order-in-Appeals, wherein the demand of Service tax was reduced from Rs. 2,24,106/- to Rs. 1,23,236/- by extending the benefit of erstwhile Small Service Provider Exemption Notification No. 6/2005-ST dated March 1, 2005 (**"the SSI Exemption Notification"**). Further, penalty imposed under Section 78 of Finance Act, 1994 (**"the Finance Act"**) were upheld, while the penalties under Section 76 and 77 of the Finance Act were set aside. Against the said order, the Assessee filed an appeal before the Hon'ble CESTAT, Ahmedabad against imposition of penalty under Section 78 of Finance Act and at the same time, the Revenue preferred an appeal against extension of benefit of the SSI Exemption Notification. The Revenue relied upon the decision in the case of ***L.G. Marwadi Vs. CCE, Pune-III [2010 (19) S.T.R. 279 (Tri.-Mumbai)]*** (**"L.G. Marwadi case"**) to submit that SSI benefit cannot be extended when the Assessee has not opted for the same.

The Hon'ble CESTAT, Ahmedabad held that when the Service tax was paid along with interest even before formal letter of the Department, penalty under Section 78 of the Finance Act is not sustainable.

Regarding the benefit of SSI Exemption Notification, the Hon'ble Tribunal observed that the decision in L.G. Marwadi case cannot be compared to the instant case as in that case the assessee was paying Service tax regularly as per law and was holding registration from 2004. However, in the instant case, the Assessee took registration for the first time in April 2007 but neither paid any Service tax nor filed any return. Service tax was paid only in February 2008, when the liability to pay

Service tax came into the knowledge of the Assessee. Therefore, the Assessee has to be given the benefit of the SSI Exemption Notification.

- **Amount towards Service tax collected from customers and kept in escrow account will not tantamount to Service tax unless the liability is determined**

Sliverline Estates Vs. Commissioner of Service Tax, Bangalore [2014 (10) TMI 98 - CESTAT BANGALORE]

Silverline Estates (**"the Appellant"**) is engaged in the activity of development and construction of residential apartments. The Appellant did not charge and collect Service tax on the activity of development and construction of apartments during the period 2006 to 2009. The apartments were constructed and completion certificate was obtained on August 21, 2009. Since the Appellant had no clarity on liability of Service tax while settling the accounts finally with the buyers of the apartments, they collected certain amount so as to protect the interest of both the buyers as well as the Appellant from any future exposure to Service tax liability. The amount so collected was kept in a separate escrow account.

The Department contented that the collection of amount and depositing the same in bank account amounts to collection of Service tax which should have been paid to the Government as per the provisions of Section 73A of the Finance Act, 1994 (**"the Finance Act"**). Accordingly, the amount of Service tax of Rs. 2,44,17,471/- collected from the buyers and kept in the escrow account was demanded along with interest and penalty. Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Bangalore.

The Hon'ble CESTAT, Bangalore analyzed the meaning of 'escrow account' and held that it is the amount which is kept with a third party and has to be disbursed to a person who is eligible to get the same as and when the issue attains finality. It is only a deposit which is not taken into account of the Appellant and kept in a separate account to ensure safety of money and to ensure disbursement to the ultimate customer. Unless the liability of the Appellant is determined, it cannot be said that the amount in escrow account has been collected as Service tax and the amount should have been paid to the Government in terms of Section 73A of the Finance Act.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

- **Excise officers will continue to conduct Excise audit only as they are empowered to do under the Excise provisions**

In the background of a recent judgment of the Hon'ble Delhi High Court in the case of ***Travelite (India) Vs. Union of India & Ors [W.P. (C) 3774/2013, C.M. No. 7065/2013] [2014-TIOL-1304-HC-DEL-ST],*** wherein it was held that the power to conduct Service tax audit as envisaged in Rule 5A (2) of the Service Tax Rules, 1994 does not have appropriate statutory backing, the Central Board of Excise and Customs (**"CBEC"**) vide **Circular No. 986/10/2014-CX dated October 9, 2014** has clarified that the said judgment does not deal with the issue of audit in the Central Excise. It is further clarified that in Central Excise there is adequate statutory backing for audit by the Central Excise officers by virtue of Section 37(2)(x) of the Central Excise Act, 1944 (**"the Excise Act"**) and Rule 22 of the Central Excise Rules, 2002 (**"the Excise Rules"**).

Section 37(2)(x) of the Excise Act empowers the Central Government to make Rules for verification of records and returns to check the correctness of levy and collection of duty. Section 37(2)(x) of the Excise Act reads as under:

"***Section 37: Power of the Central Government to make rules***

37(2)(x) : *impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;*"

It has been clarified that the expression 'verification' used in Section 37(2)(x) of the Excise Act is of wide import and would include within its scope, audit by the Departmental officers, as the procedure prescribed for audit is essentially a procedure for verification mandated in the statute.

Further, Rule 22 of the Excise Rules provides that the Commissioner may empower an officer or depute an audit party for carrying out scrutiny or verification of records of the assessee. This Rule also obliges an assessee to make available records for such scrutiny. Relevant extract of the Rule 22 of the Excise Rules has been reproduced hereunder for ease of reference:

"***Rule 22: Access to a registered premises***

(1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of…….."

Conclusion: In the light of the Hon'ble Delhi High Court judgment in the Travelite (India) case (supra) and as confirmed by the CBEC vide above stated Circular, "NO Service tax audit can be conducted by the Department and only Special audit within the Statute as mentioned under Section 72A of the Finance Act, 1994 can be done either by a Chartered Accountant or Cost Accountant only in specified certain circumstances."

RECENT CASE LAWS

- **Cenvat credit on outward transportation is allowed when the sales are made on FOR destination basis**

Ultra Tech Cement Ltd. Vs. Commissioner of Central Excise and Service Tax, Rohtak [2014-TIOL-1934-CESTAT-DEL]

Ultra Tech Cement Ltd. (**"the Appellant"**) is a manufacturer of cement, a commodity falling under Chapter 25 of the 1st Schedule of the Central Excise Tariff Act, 1985. The Appellant was disallowed Cenvat credit of Rs. 3,19,79,457/- availed on outward transportation charges paid for transportation of final products from factory to the customer's premises. It was alleged that the Appellant has failed to fulfil the conditions of Section 4 of the Central Excise Act, 1944 (**"the Excise Act"**) regarding 'place of removal' read with Para 8.2 of the Master Circular No. 97/8/2007-ST dated August 23, 2007for establishing sales made on Free on road (**"FOR"**) destination basis. Accordingly, credit of the Service tax paid on the transportation beyond the place of removal would not be admissible to the Appellant.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi pleading that the contract between the Appellant and its customers expressly refers to the FOR basis of the sales which can be established from the following facts:

- That freight charges are included in the assessable value of the final products;
- That Excise duty was discharged on the assessable value, inclusive of freight charges;
- That the transit risk in transportation of the final products is borne by the Appellant;
- That property in the final products passes to the customers on delivery at the customer's premises.

Accordingly, the place of removal under Section 4(3)(c) of the Excise Act was customer's premises and therefore availment of Cenvat credit was legitimate.

The Hon'ble CESTAT, Delhi observed that in ***Ultratech Cement Ltd. Vs. CCE, Raipur [2014-TIOL-478-CESTAT-DEL]***,the Hon'ble Tribunal ruled that only in cases where duty is chargeable at specific rates or at the value determined under Section 4A, and not at ad-valorem rates under Section 4 of the Excise Act, the definition of 'place of removal' as given under Section 4(3)(c) of the Excise Act would not be applicable and as such the 'place of removal' will be the factory gate. This judgment was reversed by the

Chhattisgarh High Court in ***Ultratech Cement Ltd. Vs. CCE, Raipur [2014-TIOL-1437-HC-CHHATTISGARH-CX.]*** wherein the Hon'ble High Court following its earlier decision in ***Lafarge India Ltd. Vs. CCE, Raipur [2014 (307) E.L.T. 7 (Chh.)]*** clearly held that:

- There is no provision in the Excise Actor Rules thereof or in any Circular issued by the Board, that where duty is charged on a specified rate, the place of removal would invariably be the factory gate.
- The place of removal would depend upon the specific transaction in issue and where the removal is pursuant to sales on FOR basis, with the risk in the goods manufactured being borne by the manufacturer till delivery to the customer at its premises and the composite value of sales includes the value of freight involved in delivery at the customer's premises, the place of removal would not be the factory gate, but the customer's premises.

Hence, in the light of the above judgments (supra) along with clear and specific pleadings and the evidence marshaled by the Appellant in support of its contention, it was held that the transactions of the Appellant in the cement manufactured by it was all on FOR sales basis and therefore the Appellant had legitimately availed Cenvat credit on the Service tax paid on the freight charges borne for its FOR sales.

On the above analysis, the impugned order dated April 29, 2013 passed by the learned Commissioner, Central Excise, Rohtak was held unsustainable and was accordingly quashed.

Further, the Hon'ble Tribunal also observed that adjudication and drafting of adjudication orders requires training and incompetent Departmental adjudication ill serves the interests of the State. Apart from accentuating the appellate docket load, such casual orders contribute to faith deficit in the process of Departmental education and imperil the due process of law. The appropriate authorities may consider this pathology writ large in Departmental adjudication.

- **Cenvat credit cannot be denied when the Bills of Entry filed in the name of Head Office are endorsed in favour of the Assessee**

Kanade Anand Udyog Pvt. Ltd. Vs. Commissioner of Central Excise, Thane-I [2014 (10) TMI 122 - CESTAT Mumbai]

Kanade Anand Udyog Pvt. Ltd. (**"the Appellant"**) had imported certain inputs and capital goods. Six Bills of Entry were filed in the name of Head Office of the Appellant and subsequently endorsed in favour of the Appellant. Only in one case the address of the Appellant itself was mentioned in the Bill of Entry. However, lorry receipts clearly showed that the goods were delivered in the premises of the Appellant.

The Department denied Cenvat credit on

inputs and capital goods on the premise that the Bills of Entry were in the name of the Head Office and the Appellant was not eligible to avail the Cenvat credit as per the Cenvat Credit Rules, 2004 (**"the Credit Rules"**).

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai.

The Hon'ble CESTAT, Mumbai held that as per Rule 9 of the Credit Rules, the Appellant is eligible to avail the Cenvat credit on inputs and capital goods when the Bills of Entry and lorry receipts are having endorsements in the name of the Appellant.

- **No denial of Cenvat credit on common inputs/ raw materials used in the manufacturing of final product on job work basis**

CCE, Vadodara - I Vs. Vidya Wires Pvt. Ltd. [2014 (10) TMI 125 - CESTAT Ahmadabad]

Vidya Wires Pvt. Ltd. (**"the Assessee"**) had used common inputs/ raw materials for the manufacture of the final products on job work basis under Notification No. 214/86-CE-Tariff dated March 25, 1986 (**"the Exemption Notification"**) and availed Cenvat credit of the same. The Exemption Notification provides exemption to specified items if manufactured in a factory as a job work and used in the manufacture of final products or cleared as such from the factory of supplier of raw material or semi finished goods.

The Department denied Cenvat credit of the common inputs in terms of Rule 6(2) of the Cenvat Credit Rules, 2004. However, the First Appellate Authority rejected the contentions of the Department and dropped the demand against the Appellant. Being aggrieved, the Department preferred an appeal before the Hon'ble CESTAT, Ahmedabad.

The Hon'ble CESTAT, Ahmedabad relied on the following case laws:

- ***Sterlite Industries (I) Ltd Vs CCE Pune [2005 (183) ELT 353 (Tri-LB)];***
- ***Kinetic Engn. Ltd Vs CCE Pune-II [2007 (208) ELT 526 (Tri-Mum)]***

and held that the Exemption Notification is only providing an exemption to a job worker subject to the condition that duty will be paid on finished goods. It only prescribes a procedure to delay the payment of duty. It was further held that even if a job worker pays duty on the goods manufactured by him, then the same will be eligible as Cenvat credit to the supplier of the raw material making it a totally revenue neutral situation.

Accordingly, order passed by the First Appellate Authority was upheld by the Hon'ble Tribunal.

- **No denial of Cenvat credit on premise that the activity undertaken on the inputs received does not amount to manufacture**

Panchsheel Filters Pvt. Ltd. Vs. CCE, PUNE-I [2014-TIOL-1938-CESTAT-MUM]

Panchsheel Filters Pvt. Ltd. (**"the Appellant"**) purchased non-woven fabrics (**"inputs"**) of viscose/ synthetic fiber. These fabrics are tested for the quality and therefore, these fabrics were cut into the required size and shape and supplied to Trident Enterprises (**"Trident"**). It also purchased non-woven filter fabrics, on which they undertake the process of re-rolling, rejoining, re-measuring and cutting before supply as finished goods.

The Appellant cleared the goods to Trident after payment of Excise duty of Rs. 21,04,555/- on reasonable believe that the said activity amounts to manufacture and accordingly availed Cenvat credit on inputs amounting to Rs. 14,27,138/-.

The Department denied Cenvat credit to the Appellant on the ground that the activity undertaken by the Appellant does not amount to manufacture which was further upheld by the Commissioner (Appeals).

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai.

The Hon'ble CESTAT relied upon the following cases:

- ***Ajinkya Enterprises [2013 (294) ELT 203 (Bom)];***
- ***Creative Enterprises [2009 (235) ELT 785 (Guj)] and affirmed by the Hon'ble Apex Court reported in 2009 (243) ELT A120 (SC);***
- ***Narmada Chematur Pharmaceuticals Ltd. [2005 (179) ELT 276 (SC]);***
- ***Colour Roof (India) Ltd. [2014-TIOL-628-CESTAT-MUM]***

and held that there is no cause for reversal of any Cenvat credit taken inasmuch as the amount of duty paid is more than the Cenvat credit taken. Accordingly, the order confirming the demand was set aside.

CUSTOMS

RECENT CASE LAWS

➢ **As assessment of duty liability has to be done by the Customs, benefit of Exemption Notification cannot be denied merely because the Assessee fails to claim the benefit**

Commissioner of Customs, Kandla Vs. PSL Ltd. [2014-TIOL-1937-CESTAT-MUM]

PSL Ltd.(**"the Assessee"**) is a sub-contractor to contractors such as L&T, Punj Lloyd Ltd. etc., who were awarded contracts by ONGC for lying of pipelines etc., in connection with the oil exploration/exploitation activities undertaken in the Bombay High. The bare pipes (**"raw materials"**) imported by ONGC were supplied to the Assessee for coating and the coated pipes (**"finished goods"**) were supplied back to ONGC through the contractor. The Assessee had undertaken the coating activity in a Customs bonded warehouse.

The Assessee claimed the benefit of Serial No. 215 of the Notification No.21/2002-Customs dated March 1, 2002 (**"the Exemption Notification"**) which provides for exemption on raw materials used in the manufacture of goods supplied for oil exploration/exploitation subject to production of certificate from the Directorate General of Hydrocarbon (**"DGHC"**).

The Department contended that the Assessee did not submit any certificate with respect to finished goods manufactured under bond and thus liable to pay import duty on finished goods at the time of clearance from bond.

The Commissioner of Customs, Kandla rejected the contentions of the Department and observed that along with raw materials, finished goods are also eligible for exemption from Customs duty vides Serial No. 216 of the Exemption Notification. Being aggrieved, the Revenue preferred an appeal to the Hon'ble CESTAT, Mumbai arguing that although exemption was available on finished goods but the same was not claimed by the Assessee. Further, clearing of finished goods from bonded warehouse to another part of India cannot be considered as an export transaction and has to be treated as import.

The Hon'ble CESTAT, Mumbai held that when the raw materials as well as finished goods were used for oil exploration/ exploitation is not in dispute and the certificate issued by DGHC clearly evidences the same, the benefit of the Exemption Notification should be extended to the Assessee notwithstanding the fact that the Assessee has not specifically claimed exemption under Serial No. 216 of the Exemption Notification since assessment of duty liability has to be done by Customs. Hence, the appeal filed by the Department was set aside.

- **Drawback claim once sanctioned after due verification cannot be reopened subsequently without contesting the original assessment**

Commissioner of Customs Vs. Rollwell Forge Ltd. [2014 (9) TMI 796 – [Gujarat High Court]

Rollwell Forge Ltd. (**"the Assessee"**) is engaged in manufacturing and exporting different types of flanges (**"goods"**) and holding Central Excise registration. It also imports certain categories of flanges from different countries, which are not manufactured in its registered unit and re-exporting the same after undertaking certain processes.

On search of the factory premises on November 14, 2006, the Revenue doubted that certain goods which were exported were not the same which were imported, and therefore Show Cause Notice was issued to the Assessee alleging that the Assessee wrongly claimed drawback in terms of Section 74(1) of the Customs Act, 1962 (**"the Customs Act"**) of duty paid on the indigenous goods by declaring such goods as imported goods which have been re-exported. Thereafter, the Adjudicating Authority passed the order in favour of the Revenue. However, the Hon'ble Tribunal rejected the contentions of the Revenue and decided the matter in favour of the Assessee. Being aggrieved, the Revenue filed an appeal before the Hon'ble High Court of Gujarat.

The Hon'ble High Court of Gujarat upheld the order of the Hon'ble Tribunal and held that once having accepted that the identification of the imported goods was duly verified, its subsequent reopening by the Revenue is not sustainable. The Hon'ble High Court observed that the main contest for sanctioning of drawback claim was to the identity of the imported goods, which was established at the time of re-export from the evidence which were before the Authorities. There were examination reports, where the Authorities had compared the weight, size, marks and numbers with respect of bills of entry and concluded beyond doubt that those were the cases of re-export.

It was further held that the export in the instant case are genuine as evident from the fact that the necessary intimation, as was required, was given to the Revenue in relation to the intention to re-export imported goods along with requisite documents.

Hence, the appeal filed by the Revenue was dismissed and it was held that the Drawback claim once sanctioned after due verification cannot be reopened subsequently without contesting the original assessment.

- **Right given under an Exemption Notification cannot be taken away by issue of the Departmental Circulars**

Sivagurunathan Textiles Ltd. Vs. CCE, Chennai – II [2014 (10) TMI 123 - CESTAT CHENNAI]

Sivagurunathan Textiles Ltd. (**"the Assessee"**) filled refund claims of 4% Additional Customs duty (**"SAD"**) by way of credit notes in the respective License/ Scrip of the importers. These refund claims were sanctioned by the Adjudicating Authority as having fulfilled all the conditions of Notification No. 102/2007-Customs dated September 14, 2007 (**"the Exemption Notification"**) and further upheld by the first Appellate Authority vide order dated January 20, 2014 (**"the impugned order"**).

The Revenue filled an appeal against the impugned order on the ground that in terms of Circular Nos. 27/2010-Customs dated August 13, 2010, 10/2012-Customs dated March 29, 2012, 18/2013-Customs dated September 24, 2013 issued by Central Board of Excise and Customs (**"CBEC Circulars"**) and DGFT Public Notice, the time limit for using re-credited DEPB scrip for discharging 4% SAD liability was extended upto September 30, 2013.It was also directed that all applications of 4% SAD paid through DEPB/ reward script should be disposed of by officers by June 30, 2013. Therefore, DEPB scrip could not be used after September 30, 2013 for discharging SAD liability out of re-credited DEPB scrip.

The Assessee filed cross objection in favour of the impugned order contending that all the refund claims were filed before June 30, 2013 and all the conditions specified under the Exemption Notification have been fulfilled. Further, the CBEC Circulars cannot take away the right given by the Exemption Notification.

The Hon'ble CESTAT, Chennai held that a right given under an Exemption Notification cannot be taken away by the issue of Departmental Circulars when all the conditions of such Exemption Notification are fulfilled. It was observed that in the impugned order it is factually stated that the re-credits were given well before September 30, 2013and also there is no condition under the Exemption Notification providing that SAD duty should be initially paid through cash.

- **Benefit of drawback claim cannot be denied merely because the application was filed under Rule 6 instead of Rule 7 of the Drawback Rules, 1995**

Cummins India Ltd. [2014 (10) TMI 155 - Government of India]

Cummins India Ltd. (**"the Assessee"**) exported IC Engines and parts thereof falling under Tariff Heading No. 8408 (**"the impugned goods"**) against advance license. Thereafter, the Assessee filed brand letter application under Rule 6(1)(a) of the Drawback Rules, 1995 (**"the DBK Rules"**) for claiming drawback. Brand rate letters were issued by the jurisdictional Central Excise, Commissionerates, Pune-III. On the basis of said brand rate letters, drawback was sanctioned to the Assessee under Rule 6 of the DBK Rules. Subsequently, it was observed by the Customs that the impugned goods were mentioned in list of items eligible for All Industry Rates (**"AIR"**) of drawback under Rule 3 of the DBK Rules and that even if the Assessee had to file application for brand rate of drawback, they were required to file the same under Rule 7 and not under Rule 6 of the DBK Rules.

Therefore, the Adjudicating Authority confirmed the demand of erroneously sanctioned drawback of Rs. 22,12,56,455/- along with applicable interest. However, the Commissioner (Appeals) decided the case in favour of the Assessee against which the Department filed revision application before the Central Government.

The Central Government disposed off the revision application and made the following observations:

- Though the impugned goods are figuring in AIR Drawback Schedule but the AIR Rate is not applicable in respect of exports made in discharge of export obligation against advance license in terms of Clause (b) of Note 7 of Notification No. 36/2005-

Cus. (N.T.) dated May 2, 2005. Accordingly, the exporter can avail benefit of brand rate of drawback under Rules 6 or Rule 7 of the DBK Rules as clarified by Notification No. 68/2011-Cus.(N.T.) dated September 22, 2011.

- All the conditions to be compiled with for determination of the drawback rate under Rule 6 and Rule 7 of the DBK Rules are the same and therefore, the claim should not be rejected only on the ground that the claim was filed under Rule 6 of the DBK Rules instead of Rule 7 thereof.
- The Commissioner (Appeals) has given detailed finding that the drawback granted to the Assessee was exactly equal to the Customs duties suffered on the inputs imported by the Assessee and which were in turn used in the manufacture of impugned goods exported out of India. The Department has not countered these findings with any valid documentary evidences. Therefore, the brand rates fixed are legally valid.

NEWS FLASH

➢ **Government brings out revised GST Bill, accommodates key demands of states**

The Government has prepared a Revised Constitution Amendment Bill for the Goods and Services tax (GST) that largely accommodates the demands made by States. In a revised Constitution (115thAmendment) Bill, the proposal of dispute settlement authority has been dropped as demanded by the States and it has also been agreed to include a floor rate with bands to allow them the freedom to have a high or low rate.

A key demand of States to keep petrol and alcohol outside the purview of the GST has been met partially. The revised Bill brings in petroleum products within the regime to make the tax structure more business-friendly, but has left alcohol out.

The Cabinet note is being prepared for the Amendment Bill and the Government has set a target of 2016 for the launch of the pan-India indirect tax regime.

➢ **Centre plays hardball, rejects states' riders for rolling out GST**

While the Government is keen to bring the States together for the proposed comprehensive Goods and Services tax (GST) given its economy-wide benefits, it won't yield to the Sates' strategy to use the grand bargain for unreasonable revenue gains and unhindered fiscal freedom. It has also rejected a proposal from all States that the mandate of dispute resolution should not be given to the proposed GST Council, which is meant to have a constitutional role.

The Centre is learnt to have turned down a key demand from mineral-rich, grain-producing and manufacturing states that they must be given a portion of the Centre's revenue from GST on interstate trade to offset their perceived revenue loss to "consumption states" in the GST regime. It has also rejected a proposal from all States that the mandate of dispute resolution should not be given to the proposed GST Council, which is meant to have a constitutional role. These demands were made by respective States as a precondition for their adoption of the superior tax system that would avoid cascading of taxes and reduce the multiplicity of indirect taxes.

While the combined RNR is yet to be determined, it is widely expected to be between 16% and 20%. As per the current thinking, GST on interstate transactions or IGST will be levied at the same rate as the combined RNR (initially, IGST was proposed to be zero-rated). The State component of IGST would go to the importing state, in contrast to the present system of the exporting state getting the proceeds of the central sales tax on cross-border commerce.

- **Centre vetoes Gujarat's idea of retaining 2% of integrated GST**

The Centre has turned down Gujarat's proposal to retain 2% tax on inter-state movement of goods as and when Goods and Services Tax (GST) kicks in. The reason for the rejection is that it would tantamount to collecting the Central Sales Tax in perpetuity. It would not only distort the GST structure but also violate the Constitution. Gujarat is seeking 2% of the integrated GST (IGST), which is levied on inter-state movement of goods and will replace the Central Sales Tax (CST), currently levied on inter-state sales.

Under the Constitution, taxes on inter-state movement of goods and services fall under the purview of Parliament. If States are to be given this power, the Constitution would have to undergo another amendment in addition to that establishing the GST.

According to the Centre's proposal, IGST, which comprises Central GST and State GST, would be collected by the Centre so that the input credit chain is not disrupted. It will then be transferred to the Destination State where the goods are eventually to be consumed.

- **Government may widen SFIS scope to enable exporters trade tax incentives**

The Government is likely to expand the scope of Served from India Scheme (SFIS) by allowing exporters to trade the tax incentives earned by them with a view to encourage services exports. The incentives are in the form of duty credit scrip (certificate) that can be used to pay the Customs duty on imports of capital goods or consumables.

If the incentives are made tradable, exporters from sectors such as education, healthcare, healthcare, consultancy and real estate that do not import much will be able to sell them in.

"We are trying to broaden the scope of SFIS. The issue is that most sectors are not able to utilise the scheme as there are

many conditions attached. Therefore they should be allowed to sell it in the market. It will be a great relief for the exporters," said a Government official.

The five-year foreign trade policy is set to be announced in the next two weeks, with the government likely to set an export target of $650-700 billion by 2019.

At present, duty credit scrips equivalent to 10 per cent of free foreign exchange earned are issued on actual user basis. "Mainly hotels and tour operators take advantage of the scheme right now. But what about the rest? Efforts are on from our side to allow exporters to give it to someone else," said the official, who did not wish to be named. The Government will also make SFIS scrips adjustable against 12 per cent service tax, besides increasing the overall amount of the scheme.

India's services exports stand at about $145 billion, half of the merchandise exports of over $300 billion. The revenue outgo under SFIS was Rs 1,000 crore in 2013-14. Once the scrips become tradeable, the outgo will expand tremendously.

- **Finance ministry refuses to slash Excise duty on branded diesel**

The Finance Ministry has turned down the Petroleum Ministry's proposal to reduce the Excise duty on branded diesel, which is almost Rs. 7 a litre costlier than unbranded or normal diesel. Oil companies through the Petroleum Ministry had sought a reduction in Excise duty to narrow down the price difference. In order to push the sales of branded petrol, Finance Minister Arun Jaitley had reduced the Excise duty levied on them from Rs. 7.50 a litre to Rs. 2.50 a litre in the budget. However, branded diesel was left untouched as the Government was subsidizing diesel at that time.

The Finance ministry is of the view that the request for reduction in Excise duty on branded diesel cannot be acceded to as the high difference in the price is not only due to Excise duty but other factors such as high basic price, dealer's margin etc.

According to the Finance Ministry, Excise duty contributes only Rs. 2.29 per litre to the price difference while other factors are contributing as much as Rs. 4.82 a litre.

- **Registration of Companies declines 50 per cent on compliance norms**

The registration of Companies has declined in the first five months of this Financial Year. Analysts blame it on cumbersome compliance requirements of the new Companies Act, 2013. The number of Companies that were registered in April-August fell to 21,260 from 43,000 a year earlier. The cumulative authorized capital of Companies registered in the first five months also declined to Rs. 7,500 crore from Rs. 20,500 crore.

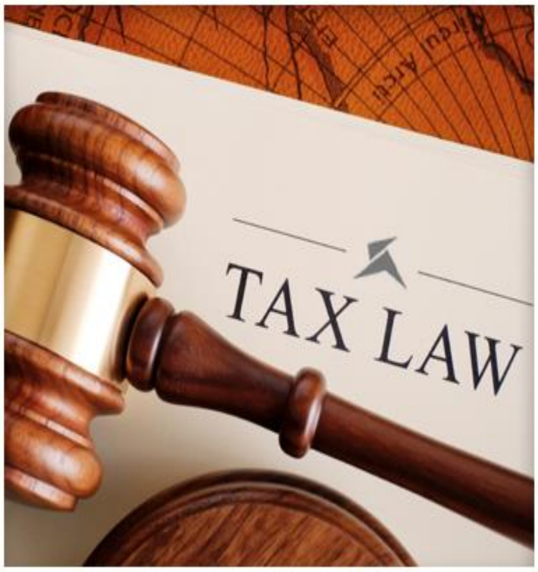
- **Finance Ministry, RBI to unveil new Monetary Policy framework by Feb 1**

The Finance Ministry aims to complete the formalities for implementation of the new Monetary Policy Framework Agreement by February 1. However, the Reserve Bank of India (RBI) will decide the date of implementation. The proposed framework aims at changing in the monetary policy formulation and focuses on inflation control. Traditionally, the monetary policy formulation was under the affair of RBI. But, with the new system, an eight-member Monetary Policy Committee will now take a call on the policy, and the Central bank will then implement it.

The proposed framework is based on the recommendations by Financial Sector Legislative Reforms Commission (**"FSLRC"**) and the Urjit Patel Committee, along with inputs from the Rajan Panel on Financial Sector Reforms. The proposed policy framework has also drawn inspirations from the UK. It also prescribes the proceedings of Monetary Policy Committee to be made public with a time lag and proper attribution.

- **New Foreign Trade Policy likely to be announced on October 20, 2014**

The New five-year Foreign Trade Policy (**"FTP"**) (2014-19) is likely to be announced on October 20. The new FTP is likely to include incentives for domestic value-added products, new rules for Special Economic Zones (**"SEZs"**) and a likely review of free trade agreements (**"FTAs"**) that India had signed with various countries and group of nations. India's exports in the last three years have been hovering around USD 300 billion, and steps are on to boost it further and enhance its contribution in the world trade. All exports and import-related activities are governed by the FTP, mainly aimed at enhancing the country's exports and use trade expansion as an effective instrument of economic growth and employment generation.



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A2Z TAXCORP LLP having professionals from Multi disciplines which provides services under the Indirect Tax Laws, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, Accounting, Auditing, Law, Company Laws, etc.

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