TAX CONNECT

TWELFTH ISSUE NOVEMBER 2014

Friends

With this Bulletin we are celebrating the First anniversary of "Tax Connect"! It gives us a sense of contentment and achievement to continue to add value in your professional sphere with our monthly bulletin.

Further, propelled by the overwhelming response to our 1st Certificate course on Indirect Taxes, we as a part of the Bengal Chamber Of Commerce are pleased to announce the 2nd batch of Certificate course on Indirect Taxes in Nov-Dec'2014. The details are made available on the last page of this bulletin.

October has been a month of extension of due dates of returns of Service Tax & West Bengal Commercial Taxes. Hence we all get some more time for filing our Indirect Tax returns.

On the Service Tax front, there has been a significant restructuring of the Service Tax department. Now Service Tax Zone in Kolkata is headed by the Chief Commissioner of ST Kolkata, under whom Principal Commissioner of ST-I, and Commissioner of ST-II, along with Commissioner of ST (Audit) shall function. **Assessees are advised to take a note of their New Division and Range Codes.**

In the West Bengal Commercial Taxes Arena, to the relief of assessees and even the assessing authorities, **the CCT has extended the date of special audit** to earlier of five months from the date of initiation of special audit or by 30th November, 2014.

In Income Tax, in a decision in favor of the assessee, **The Delhi High Court has held w.r.t. Section 147 that the A.O. must specifically indicate reasons (and not just have reason to believe) as to which material fact was not disclosed** by the assessee in the course of its original assessment.

Before signing off, may we reiterate that we shall be available for your queries on any issue 24x7 on our mail id or over a **telecon.**

DUE DATE	COMPLIANCES
06-Nov-14	**Online Payment** of Service Tax for the month of Oct.,2014 (Mandatory as per Finance Budget, 2014)
07-Nov-14	Payment of TDS/TCS
07-Nov-14	Submission of Form No. 15G, 15H and 27C received in October to IT Commissioner
10-Nov-14	West Bengal Sales Tax TDS Payment for the month of Oct.,2014
10-Nov-14	ER1, ER2, ER6 Return for Oct.,2014
14-Nov-14	EXTENDED DATE OF FILING SERVICE TAX RETURN FOR THE PERIOD APR.-SEPT.,2014
15-Nov-14	Issue of Quarterly TDS/TCS Certificate for the quarter Jul-Sept, 2014 for Govt. deductors
15-Nov-14	Provident Fund e-Payment for Oct.,2014
15-Nov-14	EXTENDED DATE FOR FILING WEST BENGAL VAT, CST AND ENTRY TAX RETURN FOR THE QUARTER ENDING SEPT.,2014
21-Nov-14	Payment of ESI for the month of Oct.,2014
21-Nov-14	West Bengal VAT/CST/ Entry Tax/ Professional Tax Payment for the month of Oct., 2014
25-Nov-14	West Bengal Sales Tax TDS Certificate Issue for the month of Oct.,2014
30-Nov-14	TAX AUDIT REPORT UNDER INCOME TAX [FORM 3CD/3CA/3CB] AND AUDIT REPORT U/S 92E [FORM 3CEB]
30-Nov-14	EXTENDED DATE OF ITR FILING FOR ASSESSEES WHO ARE REQUIRED TO FURNISH TAX AUDIT REPORT [ITR 4, 5 & 6]
30-Nov-14	**Filing of Wealth Tax Return (Tax Audit Applicable) [Form No. BB]**
30-Nov-14	**ITR Filing for assesses where Transfer Pricing Provisions are applicable [ITR 4, 5 & 6]**
30-Nov-14	**Annual Return by units paying duty more than Rs.1 crore (CENVAT+PLA) [Form ER-4]**

Truly Yours

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CENTRAL TAXES

SERVICE TAX

NOTIFICATIONS & CIRCULARS

LEVY OF SERVICE TAX ON ACTIVITIES INVOLVED IN RELATION TO INWARD REMITTANCES FROM ABROAD TO BENEFICIARIES IN INDIA THROUGH MTSOs

The CBEC vide **Circular No. 180/06/2014 dated 14th October, 2014 superceded Circular No. 163/14/2012–ST, dated 10th July, 2012 and** issued the following clarifications on whether service tax is leviable on commission/fee amount charged by agents who fall in the category of intermediaries:

- No service tax is payable on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it is not covered under the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
- An Indian Bank or other entity that acts as an agent to an MTSO in relation to money transfer, receives commission or fees. Since the service involves remittance to a beneficiary in India, the entity/bank falls under the category of intermediary as defined in Rule 2(f) of the Place of Provision of Service Rules, 2012.
- Services provided by an agent located in India (in taxable territory) to MTSOs located outside India is also liable to service tax because as per Rule 9 (c) of the Place of Provision of Service Rules, 2012, the place of provision of service is the location of service provider.
- Service tax is payable on the value of intermediary service received by the agent from the MTSO.
- Also, if the agent charges separate amount to a person located in the taxable territory, then service tax is payable on the amount charged separately.
- As per Service Tax (Determination of Value) Rules, service tax is applicable where a service has been provided by way of currency conversion by a bank/entity located in the taxable territory of India to the recipient of remittance in India, since any activity of money changing comprises an independent taxable activity. However service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
- Sub-agents who provide services to Indian Bank/entity located in the taxable territory in relation to money transfer also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

COURT DECISIONS

HIGH COURT DECISIONS

SERVICE RECEIVER WILL NOT HAVE TO PAY TAX WHERE SERVICE IS PROVIDED BY ENTITIES OUTSIDE INDIA

In the case of **Commissioner of Customs and Central Excise Noida vs. M/s. Mosar Bear India Ltd., Noida, the Hon'ble Allahabad High Court** held that where it appears that service tax is liable and to be paid by service provider, however, the service provider is a non-resident or a person located outside India, then the service recipient shall be liable to pay service tax w.e.f. 18th April, 2006 after coming into effect of Section 66A of the Finance Act, 1994.

CENVAT CREDIT ON GOODS TRANSPORT AGENCY SERVICE IS NOT ALLOWED WHERE THE ASSESSEE HAS NOT TREATED THE GTA SERVICES AS A PART OF THE INPUT SERVICE

In the case of **Lafarge India Ltd vs. Commissioner Of Central Excise, Raipur, the Hon'ble Chhattisgarh High Court** held that an assessee is only entitled to claim CENVAT Credit on service tax paid for the Goods Transportation Agency service, provided amount paid was integral part of the price of the goods. Here the amount paid for the GTA service was not integral part of the price of the goods.

PENALTY NOT APPLICABLE WHERE ASSESSEE HAS AVAILED THE BENEFIT OF AMNESTY SCHEME AND THE TAX LIABILITY IS DETERMINED

In the case of **The Commissioner Of Service Tax vs. M/S Airtime Enterprises, the Hon'ble Karnataka High Court** held that if the assessee has availed the benefit of Amnesty Scheme and paid duty and interest, he is not liable to pay any penalty or interest u/s 76 and 77 of the Act.

CESTAT DECISIONS

SERVICE TAX NOT LEVIABLE ON THE SUCCESSOR OF A PERSON WHO IS DEAD

In the case of **BHH Securities Ltd. vs. Commissioner of Service Tax, Mumbai, the Hon'ble CESTAT, Mumbai** held that service tax could not have been taken from the successor of a person who is dead.

SERVICE TAX LIABILITY AND INTEREST ONCE DISCHARGED BEFORE ISSUANCE OF SHOW CAUSE NOTICE IS NOT LIABLE FOR PENALTY U/S 76 OF THE FINANCE ACT, 1994

In the case of **Bipco Industries (Tools) Pvt. Ltd. vs. Commissiner of Central Excise & Service Tax, Daman, the Hon'ble CESTAT, Ahmedabad** held that if the service tax and interest has been paid before issue of any show cause notice, no penalty can be imposed u/s 76 of Finance Act, 1994.

IMMUNITY FROM IMPOSITION OF PENALTY U/S 78 OF THE FINANCE ACT, 1994

In the case of **Cobra Instalaciones Y. Servicios SA. vs. Commissioner of Central Excise, Nashik, the Hon'ble CESTAT, Mumbai** held that since the appellant has not received 100% of the services provided by them but service tax liability on accrual basis along with interest has been paid, the appellant should be made immune from any penalty u/s 78 of Finance Act, 1994.

SERVICE TAX DEPOSITED IN THE WRONG CODE SHOULD BE ADJUSTED IN THE ASSESSEE'S REGISTERED CODE

In the case of **Commissioner of Central Excise & Service Tax, Bhopal vs. K.K. Kedia the Hon'ble CESTAT, New Delhi** held that if the respondent has deposited the service tax in a wrong code then such mistake should be rectified on the part of the respondent and the amount so deposited should be adjusted in the assessee's registered code.

RECOVERY OF CENVAT CREDIT WHERE DEMAND FOR RECOVERY OF CENVAT CREDIT CANNOT BE RAISED AGAINST THE INPUT SERVICE DISTRIBUTOR

In the case of **Indian Oil Corporation Ltd. vs. Commissioner of Central Excise, Delhi-II, the Hon'ble CESTAT, New Delhi** held that where the demand for recovery of Cenvat Credit cannot be raised against the Input Service Distributor under Rule 14 of the Cenvat Credit Rules, 2004 and where Cenvat Credit is wrongly availed and utilized, the same should be recovered from the manufacturer or provider of output services.

CENVAT CREDIT ON INPUT SERVICES TAKEN IN RELATION TO MANUFACTURE OF MEDICAMENTS

In the case of **Bal Pharma Ltd. vs. Commissiner of Central Excise, Customs & Service Tax, Bangalore-I, the Hon'ble CESTAT, Bangalore** held that in respect of exports, the place of removal is port and therefore the services cannot be said to have been obtained after the removal of the goods. Moreover, it is also not correct to say that credit of duty paid on all services received after removal of the goods are not eligible. Since certain services taken in relation to manugacturing of medicaments are covered under the definition of 'Input Services', assessee is eligible for the credit of the duty paid.

PROCEDURAL IRREGULARITY IN CASE ASSESSEE IS NOT GIVEN A CHANCE OF SUBMISSION ON NEW FACTS EMERGING FROM VERIFICATION/INVESTIGATION

In the case of **Lancet Pharma Pvt Ltd. vs. Commissioner of Service Tax, Mumbai, the Hon'ble CESTAT, Mumbai** held that while the department had an opportunity to verify all information / statements furnished by the appellant and made demand based on audit of records, a copy of the verification report should have been provided to the appellant to make their submission. Since no communication has been made to the appellant with respect to the verification report as a result of which there would be a procedural irregularity leading to violation of principles of natural justice. Matter remanded back.

MANUFACTURER OF TEXTILES DOES NOT FALL WITHIN THE PURVIEW OF TAXABLE SERVICE OF SCIENTIFIC AND TECHNICAL CONSULTANCY

In the case of **Commissioner of Service Tax, Mumbai vs. Just Textiles Ltd., the Hon'ble CESTAT, Mumbai** held that the appellant herein is a manufacturer of textiles and not a science or technology institution or Organisation. Scientific or technical consultancy means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organization, to any person, in one or more disciplines of science or technology. Thus, the service rendered by the respondent in this case does not fall within the purview of taxable service.

SERVICE TAX DISCHARGED BY WAY OF UTILIZATION OF CENVAT CREDIT PAID ON TELECAST FEE

In the case of **M/s. San Media Ltd. vs. Commissioner of Service Tax, Chennai, the Hon'ble CESTAT, Chennai** held that the calculation made by the appellant with reference to the demand raised in the show-cause notice is discharged by utilisation of the CENVAT Credit, paid on the Telecast Fee under Video Tape Production Service. The appellant had filed revised ST-3 returns availing the CENVAT Credit which tallied with the demand raised in the show cause notice.

CENTRAL EXCISE

NOTIFICATIONS, CIRCULARS & INSTRUCTIONS

CBEC CLARIFIES ON AUDIT BY OFFICERS OF CENTRAL EXCISE

The CBEC vide **Circular No. 986/10/2014-CX dated 9th October, 2014** hereby clarified the powers of a Central Excise officer to conduct audit, in the background of a recent judgment of **Hon'ble High Court of Delhi dated 04.08.2014 in case of M/s Travelite (India) vs. UOI and Others** wherein the Hon'ble Delhi High Court has held that the powers to conduct audit as envisaged in rule 5A (2) of the Service Tax Rules, 1994, does not have appropriate statutory backing and therefore quashed the rule. However **in Central Excise, there is adequate statutory backing for audit by the Central Excise Officers. The statutory provisions relevant for audit are Section 37(2)(x) and Rule 22 of the Central Excise Rules, 2002. The circular thus states that the Central Excise officers shall continue to conduct audit as provided in the law.**

GEOGRAPHICAL JURISDICTION OF COMMISSIONERATES ALONG WITH DIVISIONS AND RANGE UNDER EACH COMMISSIONERATE WITHIN KOLKATA ZONE (CENTRAL EXCISE AND SERVICE TAX)

The office of Chief Commissioner Central Excise and Service Tax, Kolkata vide **Central Excise Trade Notice No.- 01/2014 dated 29th September, 2014** hereby specified the geographical jurisdiction of Commissionerates along with Divisions and Ranges under each Commissionerates within Kolkata Zone (Central Excise and Service Tax) post the cadre restructuring done by the CBEC **in the Annexure 'A' to 'L' to this Trade Notice.** The newly constructed Commissionerate and the Divisions/Ranges with their specific locations has come into effect from 15th October, 2014.

CLARIFICATION REGARDING DETERMINATION OF PLACE OF REMOVAL

The CBEC vide **Circular No. 988/12/2014-CX dated 20th October, 2014 hereby gave clarification on the determination of place of removal.** It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. **The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.**

INTRODUCTION OF MONTHLY PERFORMANCE REPORT REPLACING FURNISHING OF MULTIPLE REPORTS BY THE FIELD FORMATIONS

The CBEC vide **Instructions: F.No. 296/127/2013-CX-9 dated 10th October, 2014** hereby approved **development of MIS which over a period of time,** would eliminate unreasonable and overburdened reporting.

- The MIS will be implemented in a phased manner, which is briefly stated below:

Stage	Manner of Implementation
1st	Online / Web-uploading of information in pre-defined formats
2nd	Digital recording of critical events.
3rd	Integration of modules and process automation.

- The current FMR, MMR, MTRs and other adhoc reports prescribed from time to time would be **replaced by the Monthly Performance Reports (MPRs).** The MPRs are divided into six parts, as mentioned below, and each part contains various Annexures:

Parts	Report regarding
1	Revenue / Drawback / Refunds / Rebates
2	Anti - Evasion (CE & ST) / Anti-Smuggling (Customs)
3	Audit (Central Excise / Service Tax / OSPCA / PCA)
4	Adjudication, Provisional Assessment, Pendency of Refunds Rebates, Bonds/ BG etc
5	Litigation (Court Cases and Appeals)
6	Arrears Recovery

All reports in the new formats would have to be uploaded by the 15th of the following month. The new formats of MPRs will be effective from December, 2014 and the first report in new format would have to be sent by 15th January 2015. The further instructions are referred in the above Instructi

COURT DECISIONS

CESTAT DECISIONS

DENIAL OF REFUND CLAIM OF UNUTILIZED CENVAT CREDIT ON CLOSURE OF FACTORY

In the case of **Phoenix Industries Pvt. Ltd. vs. Commissioner of Central Excise, Raigad, the Hon'ble CESTAT, Mumbai** held that the basis of determining the refund amount is the export clearances of the final products as mentioned in the appendix to the Notification No. 5/2006 dated 14th March, 2006. Rule 5 clearly states that refund of unutilized CENVAT Credit shall be allowed subject to such safeguards, conditions and limitations as may be specified by the Central Government by above mentioned Notification. **Since conditions under Rule 5 are not fulfilled in such cases of closure of factory, refund of unutilized CENVAT Credit is not provided under the statute.**

REVERSAL OF CREDIT TAKEN WHERE DUTY EXEMPTION AND BENEFITS OF CENVAT CREDIT AVAILED SIMULTANEOUSLY

In the case of **Commissioner of Central Excise, Mumbai vs. Indorama Synthetics (I) Ltd., the Hon'ble CESTAT, Mumbai** held that **simultaneous availment of duty exemption and benefit of CENVAT Credit militates against the very object of NCCD levy and would lead to huge leakages in revenue.** Therefore, **assessee is liable to reverse the credit taken along with interest** thereon as correctly held in the adjudicating authority's order. However, since the issue relates to interpretation of law, imposition of penalty is not warranted.

AVAILABILITY OF CENVAT CREDIT ON FURNACE OIL USED IN THE MANUFACTURE OF JOB WORK GOODS THAT ARE CLEARED WITHOUT PAYMENT OF DUTY

In the case of **Commissioner Of Central Excise, Mumbai-ii vs. M/s Venkatesh Steel Ind. Ltd., the Hon'ble CESTAT, Mumbai** held that **if the job worker has taken any input credit on furnace oil which has been used in the job work goods and same has been cleared without payment of duty but the principal manufacturer has paid the duty on the final product, in that case CENVAT Credit on furnace oil is available to the job worker.**

cUSTOMS

NOTIFICATIONS & CIRCULARS

EXTENSION OF TIME PERIOD FOR FURNISHING THE UTILIZATION CERTIFICATE FROM AC/DC

The Ministry of Finance vide **Notification No. 30/2014-Customs dated 20th October, 2014** hereby made **an amendment in the Annexure, in clause (b) of the condition number 100 to the Notification No. 12/2012-Customs dated 17th March, 2012 extending the time period for furnishing the utilization certificate from the jurisdictional AC/DC of Central Excise from 6 months to 12 months.**

CLARIFICATION REGARDING IMPORT OF PESTICIDES

The Ministry of Finance vide **Circular No. 10/2014-Customs dated 17th October, 2014** hereby clarified with reference to **Board Circular No. 07/2014-Customs dated 7th April, 2014** on compliance of Order of Hon'ble High Court of Gujarat regarding import of formulations into India. **It is, accordingly, clarified that the technical grade/ material shall not be insisted upon with each imported consignment of formulation once such technical grade/ material has been supplied for the purpose of analysis and scrutiny prior to the registration.** Further, each consignment of formulation which is imported should be verified and tested so that it matches with the technical grade material regarding specification and quality.

INCOME TAX

COURT DECISIONS

HIGH COURT DECISIONS

1. With reference to **Section 147** of the Income Tax Act, 1961, where the assessee has failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax, **A.O. must specifically indicate the reasons as to which material fact was not disclosed by the assessee in the course of its original assessment.** Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period. *[Global Signal Cables (I) Pvt. Ltd. vs. DCIT (Delhi High Court)]*

2. In the context to the spirit of the provisions of **Section 245** of the Income Tax Act, 1961, **assessee must be given an opportunity of being heard before the adjustment of refund is made.** Before invoking the power u/s 245, the officer is expected:
   - to give an intimation in writing to the assessee to whom the refund is due informing him of the action proposed to be taken under the section.
   - to make the adjustment simultaneously.

   [The Oriental Insurance Co. Ltd. vs. DCIT & Another (Delhi High Court)]

3. By virtue of provisions of **Section 275(1A)** of the Income Tax Act, 1961, **where the assessee has succeeded before the Tribunal against the order of assessment, the revenue where required to delete the penalty and refund the amount of penalty.** Further, by virtue of **Section 244(A)(1)(b)** of the Income Tax Act, 1961, the

revenue shall pay interest on the amount of penalty to be refunded. *[Shanti Enterprise vs. ACIT & One (Gujarat High Court)]*

4. **Benefits of deduction u/s 80HHC cannot be claimed on the total income before allowing deduction of the unabsorbed losses, unabsorbed investment allowance and unabsorbed depreciation u/s 72 of the Income Tax Act, 1961.** [Following the decision in Commissioner of Income-Tax vs. Shirke Construction Equipment Limited [2007 (5) TMI 194 - SUPREME Court] *[ACIT vs. Nirma Ltd. (Gujarat High Court)]*

ITAT DECISIONS

1. **Filing of confirmation of suppliers with PAN and TIN number are not sufficient to prove the purchases are genuine if they are not supported by other facts including delivery of goods & presence of suppliers. The same shall be considered as bogus purchase.** *[Arun Kumar Varshney vs. ITO (ITAT Jaipur)]*

2. Both delivery based transaction in shares and derivative transactions are non-speculative as far as section 43(5) of the Income Tax Act, 1961 is concerned. However, both will have same treatment as regards application of the Explanation to Section 73 of the Income Tax Act, 1961 is concerned, which creates a deeming fiction. Hence, **delivery based share trading loss is to be treated as deemed speculative loss. Further, the provisions of Rule 8D(2)(ii) and 8D(2)(iii) of the Income Tax Rules, 1962 will not be attracted to dividend earned from shares held as stock in trade.** However, the provision of Section 14A of the Income Tax Act, 1961 are indeed attracted whether or not the shares are held as stock in trade or as investments. *[DCIT vs. M/s. Baljit Securities Private Limited (ITAT Kolkata)]*

3. The A.O. has to examine the disallowance made by the assessee by having regard to the accounts of the assessee and only thereafter, the A.O., if he is not satisfied with the correctness of the claim, shall determine the disallowance to be made u/s 14A of the Income Tax Act in accordance Rule 8D. In short, **no disallowance u/s 14A read with Rule 8D shall be made if accounts are not examined by the A.O. Further, consent fees paid to SEBI is not penalty for infraction of law.** *[ITO vs. Reliance Share & Stock Brokers (P) Ltd. (ITAT Mumbai)]*

4. Where the payments made by the assessee company were in the nature of simple payments for chartering ships on hire for doing the business outside India, then the payments do not satisfy the test laid down in Section 9 of the Income Tax Act, 1961 and the payments do not take the character of any sum chargeable to tax under this Act. By virtue of the same, there cannot be a case that income is deemed to accrue or arise in India as a result of hire payments made by the assessee-company to foreign ships. **In short, charter hire payment is not assessable as royalty. There is no obligation to deduct TDS u/s 195 and no disallowance u/s 40(a)(i) can be made.** *[Mathewsons Exports & Imports vs. ACIT (ITAT Cochin)]*

WEST BENGAL TAXES

VAT

CLARIFICATION REGARDING COMPLETION OF SPECIAL AUDIT U/S 43 OF THE WBVAT ACT, 2003 FOR THT F.Y. 2011-2012

The Commissioner of Commercial Taxes, West Bengal vide **Office Order 911CT/PRO No. 3C/PRO/2012 dated 14th October, 2014** hereby conveyed that in view of intervening Puja holidays and other compelling assignments, the Charge Officers were unable to complete the special audit within the prescribed time. Accordingly, **Assessing Authorities are directed to complete the special audit within five months from the date of initiation of special audit or by 30th November, 2014, whichever is earlier.** Further, in rare cases, if further time beyond this period is required, **written permission may be sought from the Commissioner with specific reasons to increase the time limit beyond 30th November, 2014.**

AMENDMENT TO THE COMPANIES ACT, 2013

Contributions made by corporates towards the Narendra Modi-led government's two key initiatives—the Swachh Bharat and Clean Ganga schemes, will now be considered as social welfare spending work. Hence, contributions to the Swachh Bharat Kosh and the Clean Ganga Fund would come under the Corporate Social Responsibility framework.

QUERY & REPLY

QUERY:

Our company manufactures excisable goods and sells it to a customer (say X) and pays excise duty. X, on receiving the goods, rejects a part of the excisable goods. How to account for sales return in excise, i.e. can excise duty once paid on goods, later on removed from factory, be refunded?

Our company resells the returned goods after processing the same. What happens when goods are resold?

Name and Address Withheld

REPLY

Legal Content:

As per Rule 16(1) of Central Excise Rules, 2002, any goods on which duty had been paid at the time of removal are brought back to any factory for being re-made, refined, re-conditioned **or for any other reason**, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs and utilize this credit. This CENVAT Credit is eligible for refund as per the CENVAT Credit Rules 2004.

Under Rule 16(2) of Central Excise Rules, 2002, it is cleared that duty paid goods received should be subject to process, if process undertaken on the goods does not amount to manufacture, the manufacturer has no choice other than to pay an amount equivalent to the CENVAT Credit availed. On the other hand, if the process amounts to manufacture, the manufacturer shall pay duty at the rate applicable on the date of removal.

Explanation: The amount paid under this sub-rule shall be allowed as CENVAT Credit as if it was a duty paid by a manufacturer who removes the goods

In other words, CENVAT Credit can be claimed whether the process on the goods amounts to manufacture or not. However, when removing the goods as such without further processing, the entire CENVAT Credit claimed earlier has to be reversed.

Opinion:

In the given case, it is clear that the returned goods are rejected and returned. Hence the amount of excise duty paid on removal of goods can be claimed as CENVAT Credit.
Further on removal of goods as such, the entire CENVAT credit so availed has to be reversed.

It is also advised to maintain separate register and documents of credit availed on rejection of goods and track their removal to substantiate and avoid dispute at a later stage.

Certificate Course on Indirect Taxes November – December, 2014

The Bengal Chamber of Commerce and Industry
Royal Exchange, 6 Netaji Subhas Road, Kolkata 700001

2nd batch on Certificate Course on Indirect Taxes in November December, 2014.

After the Success of the First Batch of Certificate Course on Indirect Taxes, The Indirect Taxes Committee of The Bengal Chamber of Commerce and Industry is organizing its 2nd batch on Certificate Course on Indirect Taxes in November - December, 2014.

The Tentative dates and time are as follows :

Dates	Day	Time
November:		
28th November, 2014	Friday	3:00 pm – 7:00 pm
29th November, 2014	Saturday	10.00 am – 4:30 pm
December:		
5th December, 2014	Friday	3:00 pm – 7:00 pm
6th December, 2014	Saturday	10.00 am – 4:30 pm
12th December, 2014	Friday	3:00 pm – 7:00 pm
13th December, 2014	Saturday	10.00 am – 4:30 pm
19th December, 2014	Friday	3:00 pm – 7:00 pm
20th December, 2014	Saturday	10.00 am – 4:30 pm
27th December, 2014	Saturday	10.00 am – 4:30 pm

Topics to be covered in 9 Days Classes on Indirect Taxes:

- Central Excise;
- Customs;
- Service Tax;
- CENVAT Credit Rules (both Central Excise/ Service Tax);
- VAT;
- FTP;
- Duty Draw back; and etc.

Under the overall guidance of Mr. Timir Baran Chatterjee, Chairperson – Indirect Taxes Committee, BCC&I and Senior Executive Vice President & Company Secretary DIC India Limited.

For more information & nominations please contact:

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