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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

NOTIFICATIONS/CIRCULARS

- **Service Tax Department can also conduct Service Tax Audit along with CA or CMA – CBEC clarifies**

Background:

The Hon'ble High Court of Delhi in the case of ***Travelite (India) Vs. Union of India & Ors. [W.P. (C) 3774/2013, C.M. No. 7065/2013]***(**"the Travelite case"**) while holding Rule 5A(2) of the Service Tax Rules, 1994 (**"the Service Tax Rules"**) as ultra vires the provisions of the Finance Act, 1994 (**"the Finance Act"**), clearly held that "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 can be done either by a Chartered Accountant or Cost Accountant only in specified certain circumstances". It was further held that Service Tax Audit as envisaged in Rule 5A (2) of the Service Tax Rules does not have appropriate statutory backing.

Even, the Hon'ble Allahabad High Court in the case of ***ACL Education Centre Pvt. Ltd. & Ors. Vs. Union of India [2014-TIOL-120-HC-ALL-ST]*** has held that the Audit under Service tax is to be conducted by Chartered Accountants/ Cost Accountants only and not by officers of the Department.

Further, the Hon'ble Calcutta High Court in the case of ***SKP Securities Ltd. Vs. DD (RA-IDT) & Ors. [2013-TIOL-38-HC-KOL-ST]*** has also held that no Audit of private assessee can be undertaken by CAG under Rule 5A(2) of the Service Tax Rules.

Thereafter, in the background of the Travelite case, the Central Board of Excise and Customs (**"CBEC"** or **"the Board"**) vide ***Circular No. 986/10/2014-CX dated October 9, 2014*** had clarified that judgment under the Travelite case does not deal with the issue of Audit in the Central Excise. It was further clarified that 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 and Rule 22 of the Central Excise Rules, 2002 for conducting Central Excise Audit.

Recently, the Central Government vide ***Notification No. 23/2014-ST dated December 5, 2014*** (**"Notification No. 23"**) had substituted Rule 5A(2) of the Service Tax Rules, thereby nominating a Chartered Accountant or a Cost Accountant along with an officer authorised by the Commissioner or the Audit Party deputed by the Commissioner or CAG to conduct Service Tax Audit. Further, the time limit of 15 days for making available the requisite documents by the Assessee was dispensed with.

Clarification by the CBEC:

The Board vides ***Circular No. 181/7/2014-ST dated December 10, 2014*** (**"the Circular"**) has tried to remove the mist surrounding the power of the

Departmental officers to conduct Service Tax Audit and had clarified that Rule 5A(2) of the Service Tax Rules, *interalia*, provides for scrutiny of records by an officer authorised by the Commissioner or the Audit Party deputed by the Commissioner or CAG and such scrutiny essentially constitutes Audit by the Audit Party consisting of the Departmental officers.

It has been further clarified that Rule 5A(2) of the Service Tax Rules has appropriate statutory backing for conducting Service Tax Audit by the Departmental officers by virtue of Section 94(2)(k) of the Finance Act as amended by Section 114(J) of the Finance Act, 2014 w.e.f. August 6, 2014 which reads as under:

*"(k) Imposition, on persons liable to pay service tax, for the proper levy and collection of tax, of duty of furnishing information, keeping records and the manner in which such records shall be **verified**."*

Furthermore, it has been clarified that the expression "verified" used in Section 94(2)(k) of the Finance 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.

Therefore, the judgment of the Hon'ble High Court of Delhi in the Travelite case has now been refuted by the Board by way of amendment made under Rule 5A(2) of the Service Tax Rules by virtue of power derived under Section 94(2)(k) of the Finance Act, as the Service Tax Audit can be conducted by the Departmental officers as well.

Our Comments:

Following open questions are not answered in the Circular and requires attention of the Board for the clarification at the earliest:

- Whether the amendment made in Rule 5A(2) of the Service Tax Rules vide Notification No. 23 are effective only w.e.f December 5, 2014 for the Departmental officers to conduct the Service Tax Audit?
- What would be legal fate of Service Tax Audits initiated/ conducted prior to August 6, 2014, can it be declared as void in the light of the Travelite case?

RECENT CASE LAWS

- **Even after amendment made in the definition of 'Input services' w.e.f April 1, 2011, Cenvat credit on Outdoor Catering services used in relation to business activities continues to be eligible when the cost is borne by the Company and not recovered from the employees**

Hindustan Coca Cola Beverages Pvt. Ltd. Vs. Commissioner of Central Excise, Nashik [Order No: A/1479 – 1480/14/SMB/C- IV]

In the instant case, Hindustan Coca Cola Beverages Pvt. Ltd. (**"the Appellant"**) availed Cenvat credit on Outdoor Catering services for the period December, 2011 to December, 2012, which was denied by the Lower Authorities and the Ld. Commissioner (Appeals) on the ground that the definition of Input services given under Rule 2(l) of the Cenvat Credit Rules, 2004 (**"the Credit Rules"**) has been amended w.e.f April 1, 2011 to specifically exclude any Input service used for personal use or consumption by any employee.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai, and relying upon ***Circular D.O.F No. 334/3/2011-TRU dated February 28, 2011*** and ***Circular No. 943/4/2011-CX dated April 29, 2011***, submitted the following:

- Outdoor Catering service is used by the Appellant in relation to carrying out the business of manufacturing of excisable goods;
- Cenvat credit has been claimed only to the extent the cost of such expenses are borne by the Appellant and not recovered from the employees;
- Outdoor Catering services per se is not ineligible Input services but it is not eligible for Cenvat credit only when it is used for personal use or consumption of any employee or a sub-group of employee;
- Deletion of the word 'activities relating to business' from the definition of Input services and adding of specific clauses of inclusion and exclusion is only to make it explicit what was already implicit. Accordingly, all Input services used for business continue to be eligible for Cenvat credit unless excluded specifically.

The Hon'ble CESTAT, Mumbai observed the following:

- Rule 2(l) of the Credit Rules specifically uses the words 'used primarily for personal use or consumption of any employee', which should be given due effect;
- Outdoor Catering services is used by the Appellant in relation to their business activities and the same is used by all employees in general;
- The Government while issuing the Budget clarification or subsequent Circulars has clarified that what is not eligible is the Input services meant for personal use or consumption of any employee or the cost of which is included as part of salary of the employee as a cost to Company basis;

Therefore, on the basis of above, the Hon'ble Tribunal held that since in the instant case, Outdoor Catering services are used by the Appellant in relation to their business activities, cost of which is borne by the Appellant and not by the employees, they are rightly entitled to claim Cenvat credit of the same.

- **Once reasonable cause is established, no penalty is imposable - Section 80 of the Finance Act, 1994 does not provide for**

imposition of reduced quantum of penalty

Commissioner of Central Excise & Customs, Gujarat Vs. V.M. Engg. Works [(2014) 52 taxmann.com 11 (Gujarat)]

V.M. Engg. Works (**"the Assessee"**) made late payment of Service tax, consequent to which a Show Cause Notice was issued to the Assessee proposing to impose penalty for late payment of Service tax under Section 76 of the Finance Act, 1994 (**"the Finance Act"**). The Show Cause Notice was adjudicated whereby the Adjudicating Authority imposed a penalty of Rs. 22,200/- under Section 76 of the Finance Act for late payment of Service tax. Later on, the Ld. Commissioner (Appeals) reduced the amount of penalty of Rs. 22,200/- imposed under Section 76 of the Finance Act to Rs. 8,000/- by invoking Section 80 of the Finance Act.

Being aggrieved, the Revenue preferred an appeal before the Hon'ble CESTAT arguing that penalty cannot be reduced below the minimum specified under Section 76 of the Finance Act but did not succeed. Thereafter, the Revenue filed an appeal before the Hon'ble High Court of Gujarat. The Assessee argued that since Section 80 of the Finance Act was held applicable, entire penalty was liable to be set aside.

The Hon'ble High Court of Gujarat relying upon its decision in the case of ***CCE & C Vs. Port Officer [Tax Appeal No. 1367 of 2009 dated July 8, 2010]*** (**"Port Officer case"**) held that Section 80 of the Finance Act overrides Section 76 thereof and provides that no penalty shall be imposable, if Assessee proves that there was reasonable cause for failure to pay Service tax. Whether a reasonable cause exists or not is primarily a question of fact and onus thereof is on the Assessee but once reasonable cause is established, no penalty is imposable.

The Hon'ble High Court further held that Section 80 of the Finance Act does not provide that even upon establishment of reasonable cause, a reduced quantum of penalty is imposable. Hence, matter was remanded back to the Tribunal for fresh disposal in view of the decision held in the Port Officer case.

- **Extended period is not invocable when penalties were waived off on the ground of interpretational issue being involved**

Sankhla Udyog Vs. Commissioner of Central Excise & Service Tax, Jaipur [(2014) 51 taxmann.com 264 (New Delhi - CESTAT)]

In the instant case, Sankhla Udyog (**"the Appellant"**) was engaged in rendering Repairs and Maintenance Services. A Show Cause Notice was issued to the Appellant by invoking the extended period alleging that there was a difference between the amount shown in their ledger and in the Service Tax Returns (ST-3) on which the Appellant had not paid Service tax and the same was liable to be recovered along with interest and penalty.

The Appellant contended that prior to June 16, 2005, Repair service other than under a Maintenance contract was not liable to Service tax and thereafter, they became eligible for Small Scale Exemption under the erstwhile Notification No. 6/2005-ST dated March 1, 2005 effective from June 16, 2005. Further, the difference between the figures shown in the ledger and in the ST-3 occurred because in the ledger the figures were shown on accrual basis whereas in ST-3 the figures were shown on actual realization basis and that there had been no suppression or wilful mis-statement on their part.

However, the Adjudicating Authority confirmed demand on the Appellant by invoking extended period but waived off penalties under Section 80 of the Finance Act, 1994 (**"the Finance Act"**) on ground that there was interpretation of law involved.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi, *inter alia*, questioning invocation of extended period when penalty was waived off under Section 80 of the Finance Act on the ground of interpretation of law being involved.

The Hon'ble CESTAT, Delhi held that when benefit of Section 80 of Finance Act has been extended for not imposing any penalty, it clearly shows that the ingredients required for invoking extended period are not present in the instant case. Indeed in the entire Adjudication Order there is no word as to how the extended period is invocable. Hence, the extended period is not invocable.

It was further held by the Hon'ble Tribunal that once the Appellant explained the reason for mismatch between the figures of their ledger and in their ST-3 return, a clear finding was required to be given by the Adjudicating Authority instead of brushing it aside on the ground that it was not possible to verify their claim.

Hence, the Adjudicating Order was set aside and matter was remanded back to decide the same afresh but without invoking the extended period.

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

- **Excise duty exemption to goods donated or purchased out of cash donations for Jammu and Kashmir relief**

In exercise of the power conferred under Section 5A of the Central Excise Act, 1944 (**"the Excise Act"**), the Central Government vide the **Notification No. 25/2014-Central Excise (Tariff) dated December 11, 2014** has exempted the goods donated or purchased out of cash donations for the relief and rehabilitation of people affected by the floods in the State of Jammu and Kashmir (**"the State"**) from the duty of Excise leviable thereon under the Excise Act.

Such exemption is subject to the following conditions:

a) That it is certified by the manufacturer of such goods that the goods are intended to be donated for the said Purpose and free of cost;

b) That the goods are sent directly from the factory of the manufacturer or warehouse to the Central Government, or the State, or the relief agencies as approved by the Central Government or the State as the case may be;

c) That the manufacturer produces before the jurisdictional Deputy Commissioner or the Assistant Commissioner of Central Excise, as the case may be, within six months from the date of removal of the goods or within such extended period as the said officer may allow, a certificate from the District Magistrate of the affected area in the State that the said goods have been donated for use of the said purpose.

The Notification shall remain in force up to and inclusive of the March 31, 2015.

RECENT CASE LAWS

- **Cost of insurance would not be part of the assessable value of the goods cleared to the customers from the factory gate when goods were consigned indicating that the consignee is the buyer and the freight is "to pay basis"**

Commissioner of Central Excise, Belapur Vs. Kapoor Glass (I) Pvt. Ltd. [2014 (12) TMI 491 - CESTAT MUMBAI]

Kapoor Glass (I) Pvt. Ltd. (**"the Assessee"**) cleared the goods from the factory to their customers and recovered cost of insurance from them. In the lorry receipts, the freight was on "to pay basis" and the buyer of the goods were shown as the consignee.

The Revenue alleged that since the Assessee has collected the insurance amount from the customers, the place of delivery should be deemed to be the customer's premises and therefore, duty demand was raised on the cost of insurance recovered from the customers.

However, the Commissioner (Appeals) relying upon the Judgment of the Apex Court in the case of ***Escorts JCB Ltd Vs. CCE, Delhi-II [2002 (146) ELT 31 (SC)]***held that duty demand on the cost of insurance incurred by the Assessee is not admissible, in as much as the goods have been delivered at the Assessee's factory gate.

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

The Hon'ble CESTAT, Mumbai after observing that the Department was unable to prove that the factory gate is not the place of removal, held that when the lorry receipts under which the goods were consigned indicate that the consignee is the buyer and the freight is on "to pay basis", duty demand on the cost of insurance incurred by the Assessee is not admissible, in as much as the goods have been delivered at the Assessee's factory gate.

- **Where all the factual facts are available on the records, the Tribunal couldn't remand back the case**

L'Oreal India (Pvt.) Ltd. Vs. Union of India [(2014) 51 taxmann.com 561 (Bombay)]

L'Oreal India (Pvt.) Ltd. (**"the Petitioner"**) was engaged in the manufacture of cosmetic products classified into two categories, namely Technical products cleared to Salon/ Beauty Parlour (**"Technical products"**) and Retail sale products meant for sale to consumers (**"Retail sale products"**). The Petitioner was valuing both the products under Section 4A of the Central Excise Act, 1944 (**"the Excise Act"**), but, the Department argued that Technical products were to be valued as per Section 4 of the Excise Act.

The Adjudicating Authority after considering the reply of the Petitioner dropped the proceedings and held that both the products were to be valued under Section 4A of the Excise Act. Being aggrieved, the Department preferred an appeal before the Hon'ble CESTAT. The Hon'ble CESTAT set aside the Order of the Adjudicating Authority and directed the Adjudicating Authority to pass fresh order on merits regarding valuation of the Technical products and also after considering the issue of limitation.

Being aggrieved, the Petitioner filed a Writ petition before the Hon'ble High Court of Bombay arguing that since the matter was heard on merits before the Hon'ble Tribunal, the Tribunal should have decided the appeal and not remanded the matter back.

The Hon'ble High Court of Bombay relying upon the finding of the Apex Court in the case of ***M.G. Shahani & Co. (Delhi) Ltd. Vs. Collector of C. Excise [1994 (73) ELT 3]*** and after observing that the Tribunal had not remanded the matter seeking any additional facts, held as under:

- If, on materials on record, the Tribunal can analyse evidence and arrive at a factual conclusion, the Tribunal ought not to remand the matter and instead hear the matter and pass order on merits;
- Though dispute related to valuation of Technical products and the Adjudicating Authority held that both products are liable to be assessed under Section 4A of the Excise Act, the Tribunal should have decided appeal with reference to valuation of Technical products;
- It was not proper to set aside Adjudication Order and remand the case for fresh adjudication.

Hence, the Hon'ble High Court allowed the Writ petition and the matter was sent back to the Tribunal for disposal on merits.

- **The Commissioner (Appeals) has no option to adjudicate maintainability of appeal when the Hon'ble High Court**

dismissed the Writ Petition filed on the ground that alternate remedy is available

S. V. Rubber Company (P.) Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad [(2014) 51 taxmann.com 173 (Andhra Pradesh)]

S. V. Rubber Company (P.) Ltd. (**"the Petitioner"**) filed a Writ petition before the Hon'ble High Court of Andhra Pradesh against the Department's recovery notices issued under Section 11 of the Central Excise Act, 1944 (**"the Excise Act"**). The Hon'ble High Court vide Order dated October 7, 2013 dismissed the same on the ground that under Section 35 of the Excise Act an efficacious remedy of appeal is provided which can be pursued by any person aggrieved by any decision passed under the Excise Act. Therefore, without exhausting the alternative remedy of appeal provided under the Excise Act, the Petitioner cannot straight away invoke the jurisdiction of High Court under Article 226 of the Constitution of India.

Accordingly, the Petitioner filed a regular appeal before the Ld. Commissioner. The Ld. Commissioner without deciding the appeal on merit, passed an Order (**"Impugned Order"**) dismissing the appeal with the finding that no appeal lies against notices issued under Section 11 of the Excise Act since it is not an Order as contemplated under Section 35 of the Excise Act. Being aggrieved, the Petitioner again filed a Writ petition before the Hon'ble High Court of Andhra Pradesh.

The Petitioner contended that the Impugned Order is contrary to the observations of the Hon'ble High Court and also a gross breach of quasi-judicial discipline. Further, the decision of the Division Bench of the Court which opined that appeal is alternative remedy was not challenged by the Department. Furthermore, the Commissioner being an authority subordinate to the Court within the meaning of Article 227 of the Constitution of India, has not rendered any decision independently at all rather accepted the opinion of the Department and dismissed the appeal holding the same being non-maintainable.

While, the Department contended that the Commissioner was of the view that statutory provision does not permit such appeal.

The Hon'ble High Court of Andhra Pradesh allowed the Writ petition and restores the appeal filed by the Petitioner with the direction that the appeal needs to be heard and disposed of within a period of two months from the date of communication of this Order and a compliance report is to be submitted to the Registry concerned after expiry of two months.

CUSTOMS

NOTIFICATIONS/CIRCULARS

- **Custom duties exemption to goods imported for Jammu and Kashmir relief**

In the exercise of the power conferred under Section 25 of Customs Act, 1962, the Central Government vide **Notification No. 33/2014-Customs (Tariff) dated December 11, 2014** has exempted all goods falling under the First Schedule to the Customs Tariff Act, 1975 (**"the Tariff Act"**), imported into India intended for donation for the relief and rehabilitation of the people affected by the floods in the State of Jammu and Kashmir (**"the State"**) from whole of the duty as specified under the First Schedule and whole of the additional duty as specified under Section 3 of the Tariff Act.

The exemption is subject to the following conditions:-

a) That it is certified by the importer on the relevant clearance documents that the goods are intended to be donated for the said purpose to the State free of cost;

b) That the said imported goods are sent to the Central Government, the Government of the State; or as the case may be, the relief agencies owned or approved by the Central Government or the Government of the State as the case may be ;

c) That the importer produces before the Deputy Commissioner or the Assistant Commissioner of Customs, as the case may be, within six months from the date of importation of the said goods or within such extended period as the said officer may allow, a certificate from the District Magistrate of the affected area in the State that the said goods have been donated for use for the aforesaid purpose.

The Notification shall remain in force upto and inclusive of the March 31, 2015.

- **Clarification on Adjudication of appraising related cases**

The Central Board of Excise and Customs (**"the Board"**) vide **Circular No. 14/2014 – Customs dated December 11, 2014** has clarified the following matters of the Circular No. 44/2011-Customs dated September 23, 2011:

- The officers of DRI and DGCEI shall not hold the authority as specified under Section 28(8) of the Customs Act, 1962 (**"the Customs Act"**) even though they have been assigned the function of 'proper officers' for the purposes of Section 17 and Section 28 of the Customs Act.

- New posts have been created in the rank of Commissioners of Customs in DRI and DGCEI for adjudication of cases as investigated by DRI and DGCEI.

- The Board has further decided that the specified officers of DRI and DGCEI may attend to work relating to adjudication of case where Show Cause Notices of short levy / non levy of Customs duty have been issued under Section 28 of the Customs Act.

- **Imposition of definitive Anti-Dumping Duty on imports of Clear Float Glass**

The Central Government vide **Notification No. 48/2014–Customs (ADD) dated December 11, 2014** has imposed the definitive Anti-Dumping Duty (**"the ADD"**) on import of Clear Float Glass falling under Heading 7003, 7004, 7005, 7009, 7013, 7015, 7016, 7018, 7019 and 7020 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from Pakistan, Saudi Arabia and United Arab Emirates (UAE).

The ADD imposed shall be effective for a period of five years (unless revoked, superseded or amended earlier) and shall be paid in Indian currency.

Further the said Notification shall not be applicable to Reflective glass and Tinted glass including green glass and transition glass.

- **Imposition of Anti- Dumping Duty on import of Cable Ties**

The Central Government vide **Notification No. 47/2014-Customs (ADD) dated December 9, 2014** has continued the imposition of Anti-Dumping Duty (**"the ADD"**) on import of Cable Ties falling under Heading 3926 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China, and Chinese Taipei.

The ADD imposed under said Notification shall be effective for a period of five years from its date of publication in the Official Gazette and shall be paid in Indian currency.

- **Imposition of Anti-Dumping Duty on import of Sodium Nitrate**

The Central Government vide **Notification No. 46/2014-Customs (ADD) dated December 8, 2014** has continued the imposition of Anti-Dumping Duty (**"the ADD"**), but at revised rates, on import of Sodium Nitrate falling under the tariff item 28341010 of the First Schedule to the Customs Tariff Act, 1975, originating in or exported from the People's Republic of China.

The ADD imposed under said Notification shall be effective up to and inclusive of the August 16, 2016 and shall be paid in Indian currency.

RECENT CASE LAWS

- **Neither the Central Government nor the DGFT have the power to amend the Foreign Trade Policy or withdraw any export benefit with retrospective effect**

Malik Tanning Industries Vs. Union of India And Ors; Kavish Impex Pvt Ltd Vs. Union of India And Ors [2014-TIOL-2197-HC-DEL-CUS]

Malik Tanning Industries and Kavish Impex Pvt. Ltd. (**"the Petitioners"**) exported polyester printed and dyed fabrics (**"impugned goods"**) and therefore were granted an incentive under the Focus Product Scheme (**"FPS"**) by way of Duty Credit Scrips (**"Scrips"**) in terms of paragraph 3.15 of the Foreign Trade Policy 2009-2014 (**"FTP"**). These Scrips were utilized/ sold by the Petitioners. This incentive was granted to the Petitioners as impugned goods exported were considered to be ‘Technical Textiles’, notified under Appendix 37D of the Handbook of Procedures (**“Appendix”**).

Later on, vide Circular No. 42 (RE-2010)/2009-14 dated October 21, 2011 (**“the Impugned Circular”**) issued by the Director General of Foreign Trade (**“DGFT”**), the benefit available under FPS in respect of ‘Technical Textiles’ was curtailed to only 33 items with retrospective effect from April 1, 2011. Inasmuch as the Impugned Circular excluded, with retrospective effect, the products exported by the Petitioners from the definition of ‘Technical Textiles’ and thus rendered the Petitioners ineligible for claiming the incentive under the FPS. Accordingly, the demand letters were raised on the Petitioners. Being aggrieved, the Petitioners filed a Writ petition before the Hon’ble High Court of Delhi raising an issue as to whether the DGFT could issue the Impugned Circular to recall a benefit provided to the Petitioners under the FTP, with retrospective effect.

The Hon’ble High Court of Delhi observed that:

- The policy to grant export incentives by way of the FPS is an integral part of the FTP; the role of DGFT with regard to the same is limited to specifying the procedures to be followed by an importer and exporter for implementing the said scheme and providing any clarification in that regard, where necessary;
- A bare reading of the provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (“**the FTDR Act**”) indicates that a policy cannot be made with retrospective effect. Inasmuch as the expression 'formulate and announce' used in Section 5 of the FTDR Act clearly meant that the power is to be exercised prospectively;
- The power exercised by the Central Government is a power delegated by the Legislation. It is well settled that in absence of an express provision enabling a delegate to make delegated Legislation with retrospective effect, no such power can be inferred;
- By virtue of Section 6(3) of the FTDR Act, DGFT may also exercise such powers as may be specified by an Order made by the Central Government but the said Section expressly excluded the powers, which are to be exercised by the Central Government under Section 5 thereof. Hence DGFT cannot alter or amend with retrospective effect the schemes framed under the FTP;

Therefore, the Hon’ble High Court decided the matter in favour of the Petitioners and held that neither the Central Government, nor the DGFT would have the power to amend the FTP or withdraw any export benefit with retrospective effect. It was further held that since, the Petitioners have already availed incentives under FPS, the effect of the Impugned Circular to recall a vested right would violate Article 300A of the Constitution of India.

- **Assessee is entitled to refund of Anti-Dumping Duty paid provisionally even when the Assessment Order on the Bills of Entry is not challenged**

Circuit Systems India Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva [2014 (12) TMI 21 - CESTAT MUMBAI]

Circuit Systems India Pvt. Ltd. (**"the Appellant"**) imported Glass Epoxy Copper and filed 5 Bills of Entry for the period October 2003 to January 2004 (**"Impugned period"**). During the Impugned period, the Anti-Dumping Duty was payable by the Appellant provisionally in terms of the Notification No. 141/2003 dated September 19, 2003 (**"the Notification"**). Later the Notification was withdrawn; therefore the Anti-Dumping Duty was not leviable on the Appellant.

Consequently, in terms of Rule 21 of the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1975, the Appellant filed refund claim of Anti-Dumping Duty paid by them provisionally, which was allowed by the Adjudicating Authority.

Being aggrieved, the Revenue preferred an Appeal before the Hon'ble Commissioner (Appeals). The Hon'ble Commissioner (Appeals) relying on the decision of the Hon'ble Supreme in case of ***Priya blue Industries [2004 (172) ELT 1455 (SC)]*** rejected the refund claim filed on the ground that the Assessment of Bills of Entry has not been challenged and the Appellant has failed to pass bar of unjust enrichment. Aggrieved by the order of the Hon'ble Commissioner (Appeals), the Appellant preferred an appeal before the Hon'ble Tribunal, Mumbai.

The Hon'ble CESTAT, Mumbai relying on the decision of the Hon'ble High Court of Delhi in case of ***Aman Medical Products Ltd. [2010 (250) ELT 30 (Del)]*** held that as per Section 27(2) of the Customs Act, 1962, the duty borne by the Assessee is refundable without challenging the Assessment Order.

It was further held by the Hon'ble CESTAT, Mumbai that the Appellant has passed the bar of unjust enrichment as the Appellant had produced the Balance Sheet, which shows that the amount of Anti-Dumping Duty paid by them originally is recoverable advance from the customers and has also produced a certificate to the effect that the Anti-Dumping Duty has not formed part of the final product.

Therefore, the Hon'ble Tribunal allowed the appeal in favour of the Appellant and allowed the refund claim filed.

FOREIGN EXCHANGE MANAGEMENT ACT

NOTIFICATIONS /CIRCULARS

- **100% FDI in Railway Infrastructure sector**

The Reserve Bank of India (**"RBI"**) vide **A.P. (DIR Series) Circular No. 47** dated December 8, 2014 has reviewed the policy for Foreign Direct Investment (FDI) for Railways Sector and has now permitted 100% FDI in railway Infrastructure sector under automatic route subject to the conditions stipulated therein.

The Department of Industrial Policy and Promotion (DIPP) has decided to permit FDI in the following activities of the Railway Transport sector:

"Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) High speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signaling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivities to main railway line and (x) Mass Rapid Transport Systems. Further, FDI beyond 49 of the equity of the investee company in sensitive areas from security point of view will be brought before the Cabinet Committee on Security (CCS) for consideration on a case to case basis."

FOREIGN TRADE POLICY

NOTIFICATIONS/CIRCULARS

- **Keeping in abeyance the Notification No. 93 dated September 29, 2014 in respect of item at EXIM Code 1005 Maize (Corn)**

The Directorate General of Foreign Trade (**"DGFT"**) has issued a **Policy Circular No. 14/ (RE-2013)/ 2009-2014 dated December 10, 2014**, in compliance with the interim order passed by the Hon'ble High Court of Andhra Pradesh and Telengana. The Interim orders has been passed by the Hon'ble High Court on abeyance of the Notification No. 93 dated September 29, 2014 (**"Notification No. 93"**) in respect of item at EXIM Code 1005 Maize (Corn). The Notification No. 93 has, inter alia, revised the Import Policy for EXIM Code 1005 - Maize (Corn) (1005 90 00 - Other), removing the item from the "State Trading Enterprises" list to "free".

The Hon'ble High Court further extended the abeyance till December 17, 2014. Thus in compliance with the interim orders passed by the Hon'ble High Court, DGFT suspended the application of Notification No. 93 till December 17, 2014.

- **Amendment in export policy of cotton yarn**

In exercise of the power conferred under Section 5 of Foreign Trade (Development and Regulation) Act 1992, the Central Government has issued **Notification No. 103(RE-2013)/ 2009-14 dated December 8, 2014** making amendments in export policy of cotton yarn. As the effect of the notification, following items do not require any registration with Director

General of Foreign Trade for exemption from Export restriction:

a) Cotton yarn (other than sewing thread), containing 85% or more by weight or cotton not put up for retail sale (bearing Tariff Code No. 5205);

b) Cotton yarn (other than sewing thread), containing less than 85% by weight or cotton not put up for retail sale (bearing Tariff Code No. 5206);

c) Cotton yarn (other than sewing thread), put up for retail sale (bearing Tariff Code No. 5207).

DELHI VALUE ADDED TAX

NOTIFICATIONS/CIRCULARS

- **Appointment of new Assistant Commissioners as SOHA's**

The Government of National Capital Territory of Delhi vide **Circular No. 20 of 2014-15 dated December 9, 2014** has modified earlier Circular No. 18 dated November 24, 2011 and has authorised new Assistant Commissioners as Special Objection Hearing Authority (**"the SOHA"**) in place of the Assistant Commissioners which were earlier assigned as the SOHA'S for hearing the objections with respect to 2A-2B mismatch of 2012-13.

NEWS FLASH

- **Discussion on GST in parliament likely this session: Jaitley**

After a meeting with the Empowered Committee of State Finance Ministers, Finance Minister Arun Jaitley was Friday optimistic about initiating the discussion on the proposed constitutional amendment bill for implementing the Goods and Services Tax (GST) in the ongoing session of parliament.

"This week I'm trying my best to get an agreement with state finance ministers so that we can introduce the discussion on the amendments (on GST Bill) in this session," Jaitley said at an event here. "I am making maximum effort, so that at least in the next session we can have the legislation passed," he added.

Earlier, in a setback to the Government's efforts to reform the indirect tax system, states Thursday rejected the draft Goods and Services Tax (GST) Bill, saying it does not address their concerns on the issues of compensation, entry tax and the tax on petroleum products.

"There is no consensus between the Centre and states on three things - the compensation issue, petrol tax and entry tax. The Empowered Committee is not supporting the bill without these three things," chairman of the committee Abdul Rahim Rather said here after a meeting of the State Finance Ministers.

- **States reject Goods and Services Tax bill, petro tax remains vexed issue**

In a setback to the Centre, States rejected the draft Goods and Services Tax (GST) Bill saying it does not address their concerns, particularly on Entry tax and taxation of Petroleum products.

At a meeting of the Empowered Committee of State Finance Ministers, the Centre's plan to bring petroleum goods under GST regime was opposed. They also objected to the Constitutional Amendment Bill as it does not contain provisions for giving States compensation against any possible loss of revenue after GST roll-out for five years.

"There is no consensus between the Centre and States on these three things (compensation issue, Petrol tax and Entry tax). The Empowered Committee is not supporting the Bill without these three things," Empowered Committee Chairman Abdul Rahim Rather said after a meeting of the State Finance Ministers.

The States want that the Centre to compensate them for any loss of revenue on implementation of the GST for five years and a clause regarding the compensation be included in the Constitution Amendment Bill, Rather said. The State Governments are also keen on keeping the entry tax and petro tax out of the ambit of the GST.

- **Goods and Services Tax scheduled for 2016**

The Government said that broad agreement has been achieved with the States on most of the issues concerning the implementation of Goods and Services Tax (GST) which is scheduled to be rolled out from April 1, 2016. The States, Minister of State for Finance Jayant Sinha said, will be "insulated" from the impact of GST on their revenues and gradually the new tax regime will also cover petroleum and petroleum products.

"The tax rate under GST may be nominal or zero rated for the time being. This has been proposed to insulate the revenues of the States from the impact of GST, with the expectation that in due course, GST will be levied on petroleum and petroleum products," Mr Sinha said in a written reply to Rajya Sabha. To another question, he said Government has assured states of compensation for any revenue losses incurred by them from the date of introduction of GST, for a period of three years.

"There has been broad agreement on most issues related to GST with the States in the recent months and the GST rollout is scheduled on April 1, 2016," Mr Sinha said. The GST will subsume Indirect Taxes like Excise Duty and Service Tax at the central level and VAT and local levies on the states front. The GST Constitutional Amendment Bill, which was introduced in the Lok Sabha in 2011, had lapsed and the NDA Government will be required to come up with a fresh bill.

- **Area-based Excise sops to continue under GST**

The adoption of the Goods and Services Tax (GST) won't lead to untimely withdrawal of the Excise waivers for industries in Jammu and Kashmir, North eastern states, Uttarakhand and Himachal

Pradesh. These sops would continue in some form or the other under then GST regime, until their State-specific deadlines that have already been set expire, told official sources.

However, these duty exemptions will definitely not be extended further. This is because the exemptions could pose difficulties when it comes to taxing manufacturing on the basis of the value added.

The Finance Ministry is looking at how to carry on with the Excise exemptions notified under law till their expiry dates alongside a New Tax Regime that seeks to remove the distortions in the current system.

The Excise Duty break for J&K is set to expire in 2020, and in 2017 for Northeastern States. Any producer who started production before the cut-off date is eligible for the exemption for the next 10 years. This is true for Himachal Pradesh and Uttarakhand, too, where the scheme expired in 2010 and but those he logged in earlier continue to benefit from the tax waivers.

The Government is hoping to roll out GST from April 1, 2016. The Central Government lost about Rs. 18,000 crore by way of area-based Excise Duty exemptions in 2013-14.

- **Experts urge inclusion of e-commerce in GST framework**

India's proposed Goods and Services Tax (GST) system should explicitly cover e-commerce sector and also spell out the tax treatment for cross border international transactions in the digital space, say tax experts. It will be a mistake if India does not seize the current opportunity and explicitly bring e-commerce within the ambit of the proposed GST architecture. There is also a specific need that proposed GST framework cover cross-border (international) movement of goods and services through e-commerce space. Currently, India does not have any specific laws to regulate the e-commerce sector and the various tax laws does not have any enabling provisions to cater to the complex and rapidly evolving e-commerce space.

This may not only alleviate the existing challenges but also bring about significant efficiencies to the e-commerce sector, giving them a much more competitive advantage vis-à-vis brick and mortar stores. One of the principal issues would be the Rules for place of supply of services by the e-commerce players to the vendors under the marketplace model.

- **Indirect tax collections rise 7.1% in April-November 2014**

Indirect tax collections rose marginally by 7.1 per cent in the April-November period to over Rs 3.28 lakh crore, mainly on account of increase in revenue from Service tax and Customs.

However, Excise collection, which is an indication of economic activity, declined by 0.2 per cent during the eight months period to Rs 1,02,762 crore, an official Statement said. Indirect tax collections so far this fiscal have been 52.7 per cent of the budget target of 2014-15, it added.

The Government has budgeted to collect over Rs. 6.24 lakh crore from indirect taxes in the current fiscal, up 20.28 per cent over the collection in 2013-14. Service tax collections increased 11.5 per cent during the eight months ending November to Rs 1,02,592 crore, which amounts to 47.5 per cent of the Budget target.

Mop-up from customs rose 10.2 per cent to over Rs. 1,23,308 crore in April-November period, which is 61.1 per cent of Budget estimates. Total indirect tax collection for November stood at Rs 44,060 crore. During the April-September period of 2014-15, Index of Industrial Production (IIP) rose by 2.8 per cent, as against 0.5 per cent in same period of previous fiscal.

- **Telangana considers levying VAT on e-commerce deliveries as a tax mobilisation measure**

The Telangana Government is weighing options to levy Value-Added Tax (VAT) on deliveries by ecommerce firms in the State, potentially setting off a fresh taxation wrangles between a State and the fast-growing sector.

In neighbouring Karnataka, global ecommerce giant Amazon is already locked in a tax dispute with local tax authorities after they slapped notices on some 100-odd sellers on the company's electronic marketplace who had listed its warehouse as an additional place of business. Officials in Telangana said the thinking behind the move to levy VAT was part of a broader plan to bolster tax revenues and the Government will take a decision on the tax mobilisation measures shortly.

One senior official in newly created State's finance ministry said authorities had noticed a sizeable drop in VAT collections over the last few months, which they think could be because of a surge in e-commerce transactions that were evading VAT payments and a fall in brick-and-mortar format store sales. "A proposal is being considered to conduct large scale searches on all the entities associated with e-commerce portals to see if there are any holes that need to be plugged immediately to help raise collections.

- **New foreign trade policy under consultation: Government**

A new foreign trade policy (FTP) is under consultation and finalisation, Government officials. The policy deals with export and import related activities of the country. Government also announces incentives in the policy to boost exports. "The new FTP is under consultation and finalization" Commerce Nirmala Sitharaman said in a written reply to the Rajya Sabha. The reply assumes significance as exporters are raising concerns over the delay in announcement of the FTP. Eight months of the current fiscal are already over.

Growth rate of India's exports entered the negative zone after a gap of six months, declining 5.04 per cent in October due to a dip in shipments from major sectors such as engineering, pharma and gems and jewellery. Replying to a separate question on special economic zones, the minister said exports from these zones stood at Rs 2.34 lakh crore in April-September this fiscal.

- **Part of CST compensation likely before Budget**

The Centre is planning to give "a portion" of the Central Sales tax (CST) compensation to States before the upcoming Budget, even as it gears up to introduce the Constitution (Amendment) Bill, 2014, for implementing the proposed Goods and Services Tax (GST) in the ongoing Winter session.

A senior official, who refused to be quoted, said that in its attempt to garner the support of states for rolling out the Indirect Tax reform, the ambitious GST, the Centre is willing to give states their pending compensation for phasing out CST. The Centre has to pay Rs 34,000 crore which has accumulated since 2011.

A portion of the CST compensation to the state will be given to them in this fiscal year before the Budget," the official said adding that it will increase the trust between the Centre and states and will iron out a few kinks for introducing the GST from 2016.

Finance minister Arun Jaitley is slated to meet State Finance Ministers later this week where he is expected to make this announcement. The UPA government had made it clear that the CST compensation would be paid only when there was some "light at the end of tunnel (regarding GST implementation)". CST is levied on goods in inter-state trade.

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