INDIRECT TAX EXPRESS

Fortnightly e-newsletter from m/s DAVA & Associates, Chartered Accountants

FROM THE EDITORIAL TEAM

April, 2015
Volume 11, Issue 2

Cenvat Credit in Transit Sale- Whether Unregistered dealers require to get Registered?

Eligibility of Cenvat credit in respect of transit sale through dealer (whether Registered or unregistered under Central Excise) has become a controversial issue after the Union Budget was presented on 28.02.2015.

The Central Government has issued **Notification No. 08/2015-CE(NT) dated 01-03-2015**, this budget which is effective from the date of issue, has inter alia, inserted the following 3rd proviso in Rule 11(2) of Central Excise Rules, 2002 (CER, 2002) :-

"Provided also that if the goods are directly sent to any person on the direction of the registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and the person as the consignee, and that person shall take CENVAT credit on the basis of the registered dealer's invoice".

This new proviso has created lots of confusion in the minds of dealers as well as buyers who receives goods directly from the manufacturer through unregistered dealers and avail Cenvat credit on the strength of invoice of supplier manufacturer. As the proviso says "*that person shall take CENVAT credit on the basis of the registered dealer's invoice*" views have been expressed in the market that Cenvat credit cannot be availed in case of transit sale, if the intermediate buyer/dealer is not registered under Central Excise. It is also being reported by some unregistered dealers that departmental officials are asking the dealers to get registered under central excise to pass the credit to the buyer manufacturer.

As per rule 9(1) of the Cenvat Credit Rules, invoice issued by a first stage dealer or a second stage dealer is an eligible document for availing cenvat credit. Generally, these registered dealers were required to bring the goods to their godown/warehouse and then despatch the goods to the ultimate buyer. Although as a matter of trade practice sometimes goods were directly dispatched to the ultimate buyer manufacturer from the factory of selling manufacturer and the registered dealer was issuing cenvatable invoice to pass on the credit. Excise officials generally insist on bringing the goods to the godown or warehouse first to pass on the credit. This unnecessary results in harassment to the dealers and significant transportation cost as well.

In our view this new proviso has been inserted to provide a legal backing to an existing trade practice as stated above. The proviso as inserted to rule 11(2) of Central Excise Rules makes it clear that there is no need to bring the goods in the godown/warehouse of the registered dealer and the same can be directly dispatched to the ultimate buyer manufacturer. The registered dealer can issue cenvatable invoice to pass on the credit. It does not mean that all un-registered dealers are also required to take registration as being interpreted in some sections. Hence, this proviso is specific and is limited only to 'registered dealers'.

In case of unregistered dealers, the common practice is that the end user (buyer manufacturer) purchases goods through dealer and not through the original manufacturer. The dealer instructs the original manufacturer of excisable goods to dispatch the goods directly to the end user (buyer manufacturer). Invoice of Manufacturers is in name of dealer as the buyer. Name and address of end user (buyer manufacturer) is shown as consignee in

Inside this issue:

GST NEWS

The long-pending Constitutional Amendment Bill on the Goods and Services Tax (GST), moved in the Lok Sabha amid stiff resistance by several Opposition parties, was to be taken up for consideration and passing on 28th April, 2015, Monday. However, The government on Monday acceded to the Congress-led opposition's demand in Parliament to defer a discussion on the goods and services tax (GST) constitutional amendment bill till after the passage of the finance bill in the Lok Sabha. A press release issued by Parliamentary Affairs Ministry said "the Constitution Amendment Bill in respect of GST would be taken up next week."

IDT NEWS

- The Finance Bill 2015 was tabled in the Lok Sabha on 30th April, 2015, Thursday and was passed later with a voice vote.

- The proposed hike in service tax to 14% will adversely affect the hotel industry, a parliamentary panel has noted asking the Union tourism ministry to take up the issue with finance ministry for seeking relief for the tourism sector. There are various indirect taxes applicable to tourism industry. The additional burden on hotel, restaurant and transportation will discourage the middle class tourists, both domestic and foreign from visiting tourist places, the report said.

-Times of India

QUIZ!!!

1. What is the maximum rate of Interest for delayed payment of Service Tax?

2.Which form is mandatory for claiming exemption by a dealer for stock transfer from one state to another for the purposes other than sale under CST Act, 1956?

3.State whether True or False: - "SSI unit has to pay excise duty on monthly basis."

(Please mail your replies with your name and mail id to **davaidtexpress@gmail.com)**
(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **Rs.10, 000/-**
Reply to Q2 –**Nil**
Reply to Q3– **ARE-1**

Reply given by:
1. CMA Nikhil Mehta, nikhil291189@rediffmail.com
2. Manish Sachdeva, manish619sachdeva@yahoo.in
3. Ramesh Rangani, ramesh.rangani@gmail.com

the invoice. The end user (buyer manufacturers) avails CENVAT credit on the basis of such invoice of original manufacturer. Hence, if an unregistered dealer is doing transit sale, he can continue to issue commercial invoice as earlier, as the proviso is applicable only when the goods are sent to any person on the direction of the registered dealer, which he is not. In case of transit sale where the buyer is an unregistered dealer, the customer/end user can continue to avail cenvat credit on the basis of supplier manufacturer's invoice, as earlier, if the invoice contains its name as consignee as provided in the sub rule 2. The earlier CBEC Circular No 96/7/95-CX dated 13-02-1995 clarifying the credit can be availed on the basis of manufacturer's invoice still appears to be valid in this case.

RECENT NOTIFICATIONS & CIRCULARS

- The Central Government vide **Notification No. 12/2015-CE (NT)** dated **30.04.2015** has amended Cenvat Credit Rules, 2004 to provide manner of utilisation of E. Cess and S.H.E. Cess on inputs, capital goods and input services received on or after 01.03.2015.
- The Central Government vide **Notification No. 13/2015-CE (NT)** dated **30.04.2015** has amended the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.
- CBEC vide Circular No. **1001/8/2015-CX.8 dated 28.04.2015** has issued clarification on rebate of duty on goods cleared from DTA to SEZ.
- The Central Government vide Notification No. 12/2015-ST dated 30.04.2015 has amended entries 26, 26A of Mega Exemption Notification No 25/2012-ST relating to service tax on general insurance and life insurance schemes.
- The last date of submitting VAT return in Form 14/14D/15 for Q.E. 31.03.2015 , form 15R for Y.E. 31.03.2015 and revised return in form 14/14D/15 for Q.E. 30.09.2014 has been extended upto **15.05.2015.**
- The Central Government vide **Notification No. 23/2015-CE**, dated **30.04.2015** withdrawn exemption from duty of excise and additional duty of excise available to Ordnance Factories and Defence PSUs w.e.f **01.06.2015.**
- The Central Government vide **Notification No. 24/2015-CE**, dated **30.04.2015** withdrawn exemption of excise duty available to finishing agents, dye carriers etc. used in the same factory for the manufacture of textiles and has restricted the concessional excise duty of 6% on Hard disk, CD ROM drive, DVD drive or writer, Combo drive, flash memory, microprocessors only to actual users for manufacture of computer.
- The Central Government vide **Notification No. 25/2015-CE**, dated **30.04.2015** has made amendment in Notification No. 16/2010-CE dated 27.02.2010 to change rate of duty under Compounded levy scheme for branded unmanufactured tobacco and chewing tobacco.
- The Central Government, vide **Notification No. 26/2015-CE** dated **30.4.2015**, amended the Notification No. 14/2015-CE dated 01.03.2015 to provide exemption from the whole of the Education Cess leviable thereon under section 93 of the said Finance Act to only those excisable goods which are produced or manufactured by a 100% EOU and brought to any other place in India in accordance with the provisions of Foreign Trade Policy.

CASE UPDATES

1. **M/s. Marketing Times Automobiles Pvt. Ltd. Versus CST, New Delhi [2015 (38) S.T.R 414 (Tri.-Del.)]**

Issue- Whether the delivery of O-I-O to representative of appellant or dispatch by speed post can be deemed to be served on the appellant?

Decision- The Hon'ble CESTAT held that under section 37C of the Central Excise Act, 1994, permitted mode of communication of the adjudication order is registered post with acknowledgement due. And since the order was not dispatched by RPAD, it cannot be deemed to have been served on the appellant. In view of this the court held that both the orders are to be considered received by the appellant when the copies of these orders were made available on the appellant's request and therefore the appeals have to be treated as having been filed in time.

2. **Larsen and Tourbo Limited Vs. Commisioner of Service Tax, Delhi [2015(38) S.T.R. 266 (Tri. - LB)]**

Issue- Whether components of a composite transaction amounting to supply of labour/ rendition of service(s), under a Works Contract ought to be classified only under erstwhile Section 65(105)(zzzza) of the Finance Act, inserted vide the Finance Act, 2007, w.e.f June 1, 2007, or are also comprehended within the ambit of existing taxable services such as Commercial or Industrial Construction Service ("CICS"), Construction of Complex Service ("COCS"), or Erection, Commissioning or Installation Service ("ECIS")?

Decision-. The Five Member Bench of the Hon'ble CESTAT, Delhi by a majority of (3-2) held that Service elements in a composite Works contract (involving transfer of property in goods and rendition of services), where such services are classifiable under CICS, COCS and ECIS are subject to levy of Service tax even prior to insertion of taxable service 'Works Contract' under Section 65(105) (zzzza) of the Finance Act i.e. prior to June 1, 2007.

3. **Balaji Steel Re-Rolling Mills Vs Commissioner Of C. Ex. & Customs, [2014 (310) E.L.T. 209 (S.C.)]**

Issue: - Can CESTAT dismiss an appeal for want of prosecution?

Decision: The Hon'ble Supreme Court held that Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing.

4. **Perfo Chem (I) Pvt. Ltd. Vs Commissioner Of Central Ex., Belapur [2015 (315) E.L.T. 237 (Tri. - Mumbai)]**

Issue: - Revenue had alleged that the activity of packing, labeling etc. undertaken by the appellant on various chemicals does not amount to manufacture and, therefore, appellant should not have availed CENVAT credit on the various inputs that have gone into the labeling undertaken. Whether demand for wrong availment of credit was justifiable when inputs were removed on payment of duty higher than the credit availed?

Decision: The Hon'ble CESTAT, relying on the case of *C.C.E. & C., Vadodara* v. *Narmada Chematur Pharmaceuticals Ltd* held that even if the activity undertaken by the appellant does not amount to manufacture but if the duty liability has been discharged treating the activities as 'manufacture' and such duty payment is equivalent to or more than the credit taken, the same shall amount to non-availment of credit and consequently no reversal of credit is required to be made. It was not in dispute that the appellant discharged duty liability on the activity undertaken by him by treating it as "manufacture" and the payment of duty so made was more than the amount of credit taken on the various inputs. Since the amount of duty paid is more than the credit taken, the same would tantamount to reversal of credit. Therefore, the appellant is not required to make any payments towards credit taken.

FREQUENTLY ASKED QUESTIONS

"The greatest glory in living lies not in ever falling, but in rising every time we fall."

-Ralph Waldo Emerson

Query 1: M/s ABC of Kolkata entered into a 'Sales Agreement' with B in Delhi wherein ABC has proposed to sell the goods on wholesale to B while B to further sell in retail. Goods are supplied by A to its branch in Delhi, from where sales are made to B in Delhi. Whether such transfer liable to tax under CST Act, 1956?

Reply by e-newsletter team: As per **section 3 of CST Act, 1956,** *a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase- (a) occasions the movement of goods from one State to another…"* With a view to find out whether a particular transaction is inter-state sale or not, it is essential to see whether there was movement of goods from one state to another as a result of prior contract of sale or purchase. Since in this case, transfer of stock is a result of prior contract, it is liable to be taxed under CST Act, 1956 as inter-state sale of goods.

Query 2: M/s XYZ manufacture goods which are exempt from excise duty. In the process of manufacturing goods certain wastes/by-products are produced and are sold for a consideration. Whether the by-product would be liable to excise duty?

Reply by e-newsletter team: Waste, parings, and scrap arising in the course of manufacture of exempt goods are fully exempt from duty under Notification No.89/1995-CE dated 18.05.1995. The aforesaid exemption, however, is not available to the unit in which any other excisable goods other than exempted goods are also manufactured. Further, the exemption to wastes would not be available against goods exempted from excise duty based upon the value or quantity of clearance made in a financial year. In case M/s XYZ is able to satisfy the conditions of the aforesaid notification, the wastes produced by them would be exempt from excise duty.

M/s D A V A & ASSOCIATES
(Chartered Accountants)

'Mercantile Building';
Block-B, Room No.-8; 1st Floor,
9, Lal Bazar Street, Kolkata-700001
Office Ph: (033) 22313940/ 40046893
Mobile: +91 9874355518/9433135518
E-mail id: davakolkata@gmail.com
Web: davaassociates.com
Other offices at: Chandrapur, Delhi & Kolkata

Editor

CA Narayan Kr. Agarwal

Editorial Team

Ms Stuti Tibrewal
Ms Richa Keshari
Ms Minakshi Agarwal

In case of any queries/feedback/suggestions, mail to us on davaidtexpress@gmail.com