

INDIRECT TAXES CASE STUDY

FOR
CA FINAL MAY 2012

COMPILED BY

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Source / Journals Referred:

- ≈ The Chartered Accountant Journal by ICAI.
- ≈ BCAJ (Bombay Chartered Accountant Society) Monthly journal
- ≈ Income tax Review : Monthly journal of The Chamber of Tax Consultants.
- ≈ All India Federation of Tax Practitioners: Monthly Journal.
- ≈ S.T.R. : Service Tax Review.
- ≈ E.L.T. : Excise Law Times.

All the case decisions compiled from above magazines / sources are selected on the basis of their practical applications in the appellate proceedings before various revenue authorities. These cases are pronounced between the periods March 2011 to Dec 2011 specifically applicable for CA FINAL May 2012 term.

We can expect direct question based on these case studies.

Best of Luck.

SERVICE TAX

- ❖ No action will be taken against the assessee, if the department had failed to take action within prescribed time: Amalner Cooperative Bank Ltd vs. CCE (Mumbai CESTAT)

Facts:

The assessee provided banking and other financial services and were holding service tax registration under the said category. However, taking into account the benefit under notification 6/2005, the assessee surrendered the registration certificate to the department as their taxable service provided was below Rs. 4 lakh. The department alleged that the assessee had wrongly availed the benefit under the said notification and was liable to service tax along with penalty as there was willful suppression of facts.

Decision:

Time limit prescribed under law for any action taken to be taken by the department is one year from the date of surrendering the registration certificate. The department cannot question the same subsequently.

- ❖ Commissioner in whose jurisdiction the registered office of the service provider is located, has jurisdiction to issue show cause notices : CCEx vs. Helios Food Additives (p) Ltd. (Mumbai CESTAT)

Facts:

The assessee along with manufacture of food products in the districts of Ratnagiri was also engaged in providing taxable services of renting of immovable properties in Mumbai. The service tax on the same was not paid. The show cause notice demanding service tax of Rs. 2,62,032/- and interest and penalty thereon was issued by Asst Commissioner at Ratnagiri. The assessee's Mumbai office has taken separate registration with service tax authorities much prior to the issuance of the show cause notices.

Decision:

Order confirming the demand of service tax, interest and penalty etc could not be sustained in law because authority at Ratnagiri had no jurisdiction over the Mumbai office of the notice.

- ❖ Demand in terms of retrospective amendment sustainable only if the matter was kept alive at time when original provision was in force: Percot Mills Limited vs. UOI (Kerala HC) (IMP)

Facts:

The assessee, a manufacturer of cotton yarn engaged in the services of transport transporter to transport the manufactured cotton yarn. With the introduction of levy of Service Tax on services rendered by goods transport operators, a question arises as to liability of the customers engaging the services of transporters to pay service tax.

To nullify the SC decision in case of Laghu Udyog Bharat vs UOI, amendment had been made in the act, by whereby the persons engaging the services of the goods services operators were made liable to pay service tax during the period 16-07-1998 to 15-10-1998.

Decision:

High Court observed that “even if a provision is amended retrospective effect, the department can proceed with the demand only if the matter was kept alive at the time when the original provision was in force.

❖ Verification of address of client for the bank by CA is not covered under the business Auxiliary services : Rakesh Porwal & Associates vs CCEX (CESTAT Delhi)

Facts:

The assessee was a CA and was paying service tax on the fees received by him as a CA. The dispute arose as to whether the services rendered by the CA to M/s HDFC for contact point verification of residence and offices of the clients of the banks.

Decision:

The tribunal observed that the verification of the addresses given by the client cannot be considered to be services similar to promoting or marketing the services of the bank or evaluating their prospective customers. Accordingly, it was held that the services provided by the assessee were not considered Business Auxiliary Services.

❖ Tribunal cannot rectify its order in the absence of specific provision in the act : CCEX vs. Fairline Worldwide Express (CESTAT Chennai)

Facts:

The department had filed rectification petition before tribunal by stating that section 74 of the act provided a two year period of limitation for rectification of error by a central excise officer, the same period of limitation should be applied in the case of orders passed by the tribunal also.

Decision:

The tribunal noted that there was no statutory provision for filing application for rectification in case of service tax appeals before the tribunal. In the absence of any express provision, the application was the one without any merit and accordingly dismissed.

❖ Penalty cannot be levied u/s 76 and u/s 78 simultaneously: CCEX vs. Pannu Property dealers (P & H High Court)

Facts:

The assessee was a property dealer and a service provider of taxable service. A show cause notice was issued for failure to file returns and pay service tax on taxable services. The adjudicating authority imposed penalty u/s 76 for non payment of

service tax, u/s 77 for non filing of return, u/s 78 for suppressing the taxable value. The department argued that scope of both section 76 & section 78 are totally different and hence both penalty should be levied simultaneously.

Decision:

After the amendment in the act, penalty u/s 76 and u/s 78 cannot be levied simultaneously under both the sections.

❖ Appeal for waiver of Penalty on the sole ground of financial problem is invalid : Kanoria Sugar & general Mfg Co Ltd vs CCEX (Ahmadabad)

Facts:

Penalty u/s 76 was levied against the assessee in respect of delay in payment of service tax on GTA services. The assessee claimed that the delay in payment of service tax was on account of financial problems. The department claimed that penalty can be waived only if the delay is caused on account of reasons mentioned in section 80, which is not the present case.

Decision:

The tribunal had held that except financial difficulty, no other reasons given by the assessee and accordingly penalty cannot be waived.

❖ CENVAT credit taken for input services prior to registration is allowable : Kanoria Sugar & general Mfg Co Ltd vs CCEX (Ahmadabad)

Facts:

The assessee was provider of software development and support services taxable w.e.f. 16-05-2008. They got registered from 24th July, 2008. The assessee made a claim for refund in respect of tax on input services paid by them. The claim was rejected on the ground that credit cannot be claimed in respect of input services received prior to registration.

Decision:

Since there was no provision in the rules which stated that credit shall not be allowed for the period prior to the registration, the assessee was entitled to refund on such amount paid.

❖ Non Consideration of revised return filed belatedly is not permissible: Ceolric Services vs CCEX (CESTAT Bangalore)

Facts:

The Assessee had filed return under rule 7 and subsequently revised it. Service Tax was demanded and penalty was levied to the assessee. Department had not taken into consideration the revised return as it was filed after a lapse of 11 months and as per rules, the revised return was to be filed within 60 days.

Decision:

Revised return cannot be ignored simply on the ground that the same was filed after the period provided under rule 7B by virtue of section 7C of the service ax rules.

❖ Compensation received on account of foreclosure of loan / rescheduling of loan is not taxable :SIDBI vs. CCEx (CESTAT Delhi)

Facts:

The assessee is engaged in providing banking and financial services. Assessee had collected an amount of Rs. 8,06,059/- on account of premium on prepayment of direct loans from their customers between 01-09-2004 to 31-03-2006. Accordingly service tax of Rs. 82,215/- was levied under banking and financial services by the department. The assessee stated that amount received towards rescheduling of loan and foreclosure of loan is not towards rendering any services and is in fact a case of ending the services.

Decision:

Tribunal had held that foreclosure premium was kind of compensation for possible loss of interest revenue on the loan amount returned by the customers and accordingly not at all taxable.

❖ Service tax is not leviable on Hire Purchase Finance : CCEx vs. Bajaj Auto Finance Ltd. (SC)

The assessee company is engaged in business of providing finance for vehicle purchase. The question before the SC is that whether Hire Purchase finance services will fall under the purview of Service Tax. Hon'ble Court held that there is quite a difference between Hire Purchase agreement and Hire Purchase finance and hence the same will not fall under the purview of Service Tax.

❖ An agent appointed by Airport authority of India for collection of admission charges is considered as provider of airport services and hence liable to service tax: P C paulose Sparkway enterprises vs CCEx (SC) : IMP

Facts:

The assessee entered into a license agreement with the Airport authority of India (AAI) under which they were authorised to collect airport admission ticket charges and were granted space at the Airport. All the expenses to provide such services to passengers and visitors were borne by the assessee. Moreover, the assessee has to bear out taxes etc. Department contended that assessee was responsible to discharge service tax liability whereas the assessee was of the view that AAI, the principal service provider was liable to service tax.

Decision:

The assessee is authorised by the AAI to provide services and therefore, it step into the shoes of the AAI and is liable to pay Service Tax.

❖ CENVAT credit cannot denied to the branch merely because the invoice is in the name of Head Office: Durferrit Asea (p) Ltd vs CCE (Bangalore)

In this case Cenvat credit has been claimed on invoices which were in the nature of head office, which was not registered as Input Service Distributor. The Department denied refund as the service credit was not distributed as per laid down

procedure. The tribunal observed that there is no dispute regarding eligibility to avail CENVAT credit and no suspicions on correctness of the documents. Further records reveal that appellant does not have any other EOU during the period in question. It is held that there is no compulsion to follow the procedure of Rule 7 of CCR, 2004 if appellant is not inclined to do so and does not have more than one manufacturing unit.

❖ Option to exercise the benefit of exemption or vice versa, if exercise once in a financial year then the same cannot be withdrawn during remaining part of the year: S Nagaraj vs. CCE (Chennai)

The assessee in this case has taken registration and paid service tax. Subsequently, they claimed refund of service tax paid erroneously as they were entitled to benefit of exemption under notification 6/2005 available to small service providers. The tribunal had held that one of the clause of the notifications provides that option not to avail if exercised once in a financial year, cannot be withdrawn during remaining part of such year. In the present case, option has been exercised by the assessee and hence exemption is not available.

❖ A procedural lapse could not result in denial of rebate claim. CCE vs. Convergys India (p) Ltd. (P & H)

Facts:

The assessee is engaged in rendering customer care services falling under the category of “Business Auxiliary Services” under the provisions relating to levy of service tax under the Finance Act, 1994. It claimed credit for input services in accordance with Notification No. 12/2005-ST dated 19-4-2005. Claim of the assessee for the rebate was for the period from 19-4-2005 to 30-4-2005 and 1-5-2005 to 31-5-2005. On that basis, refund was also claimed. The original authority rejected the claim of the assessee but the appellate authority i.e. Commissioner (Appeals) upheld the plea of the assessee which has been affirmed by the Tribunal.

The question before the court was that mere delay in filing the declaration before the department would denied the assessee the eligible claim of rebate.

Decision:

The assessee explained the delay by submitting that they had to consider various options and to obtain the management’s approval and as per judgment of the Hon’ble Supreme Court in M/s. Mangalore Chemicals & Fertilizers v. Deputy Commissioner - 1991 (55) E.L.T. 437 (S.C.), the procedural requirement could be condoned for valid reasons particularly when the rebate extended was a new benefit. Accordingly decided in favour of the assessee.

❖ Department cannot grant registration other than the category applied by the assessee for registration. Circulars, which are challenged, but outcome of which is pending, are binding on the department till the time overruled. Karamchand Thapar & Bros vs. UOI (KOL.)

The Assessee applied for registration under business auxiliary services under which he was covered. However, the department had granted the same under clearing and forwarding agent. HC had decided that registration should be

granted under the category of ' Business Auxiliary Category' and the commissioner has no power to grant the registration on his own without receiving any application for registration under that specific category.

Court had further held that circulars are binding on the department. Department can challenge the circular but till the outcome of the said challenge, the same should be binding on the department.

❖ Cenvat credit is not available for input services utilized outside the factory premises : Atul Auto Ltd. vs. CCEx. (Ahd.)

Facts:

The dispute in the present appeal relates to the service tax credit paid by the service provider for the purposes of erection and commissioning of Wind Mills for generation of electricity situated at a distance of about 225 kms. from the assessee's factory. The electricity generated at the said wind mill was being transferred to M/s. Pacchim Gujarat Vidut Corporation Ltd. (PGVCL), which is an independent State Government company. The said company was in turn providing electricity to the assessee and raising bills.

Decision:

It is admitted position that the electricity generated at the wind mill firm unit is not being supplied directly to the appellant, but is transferred to PGVCL, who are further supplying the same to the appellant. It is not necessary that the electricity generated at the wind mill firm is totally being transferred to the appellant. Their consumption can be less or more than the requisite units of electricity. As such, the lower authorities have rightly concluded that the electricity generated at the wind mill is being supplied to PGVCL and the electricity purchased by them from PGVCL is being consumed by them for the manufacture of their goods. It cannot be said that the said wind mill firm unit is a part of the appellant's factory premises so as to allow credit of service tax paid in respect of services utilized at the wind mill firm house.

❖ Penalty u/s 76 cannot be reduced below the minimum limit : CCE vs S J Mehta & Co. (Guj)

Facts:

The assessee paid service tax along with interest after due date of payment. They also filed a belated Service Tax return. Due to the lapses, penalty of Rs. 88,000/- u/s 76 was imposed. The assessee in the appeal get the penalty amount reduced to Rs. 25,000/- , which was also confirmed by the tribunal, against which department moved to HC.

Decision:

High Court had taken a view that on a conjoint reading of section 76 and section 80 of the Act, there exists no discretion to the authority for levying a penalty below the minimum prescribed limit. Following this decision, the order of the tribunal was set aside remanded to ITAT.

❖ Cenvat credit will be allowable on invoices in the name of branch, not registered under the Service Tax Act. : Manipal Advertising Services (p) Ltd. (Bang)

Facts:

The assessee is having Service tax registration and is registered as providers of advertisement services. It appeared assessee had contravened the provisions of Rule 9 of Cenvat Credit Rules, 2004 in as much as they have availed credit during the period 1-4-2005 to 31-5-2005 on the documents which are not addressed to the appellants but addressed to the other premises of the appellants at Bangalore, New Delhi, Chennai etc. Hence a show cause notice dated 26-9-2006 was issued demanding the reversal of such service tax credit, with interest and penalty was sought to be imposed. Adjudicating authority confirmed the demand and imposed penalties and also confirmed payment of interest. Hence this appeal.

Decision:

Tribunal had held that since the assessee had discharged the liability of service tax, the benefit of CENVAT CREDIT could not be denied on the ground that invoices were in the name of branch. Appeal of the assessee allowed.

❖ Procuring Export orders for parent company abroad will be considered as export of services. Lenovo (India) private Ltd. (Bangalore)

Facts:

The assessee had claimed rebate of Rs. 1,00,71,975/- for the Service tax paid on the commissions received for the Business Auxiliary Services provided by them to M/s. Lenovo Singapore Pvt. Ltd., Singapore for the period from April, 2005 to March, 2006 in terms of Rule 5 of the Export of Services Rules, 2005. They were issued a show cause notice proposing to deny the rebate claim as the impugned services were rendered in India and did not amount to export of services. The adjudicating authority in his order rejected the rebate claim on ground that the business auxiliary service is rendered by the appellant by way of promoting sale of the products of M/s. Lenovo, Singapore in India and as such the exemption available in terms of Export of Services Rules, 2005 is not applicable. Against the same assessee is in appeal.

Decision:

The assessee and the parent companies are separate entities and the recipient are located outside India. Court Held that as recipient of service being overseas company, service not delivered in India and the same tantamount to export of services eligible for rebate.

❖ Penalty cannot be reduced below the minimum limit prescribed. CCEx. vs. Custom & Port officer . (Guj)

The issue before the High court is that whether penalty u/s 76 can be reduced below the minimum limit. Section 76 deals with the penalty provisions. Further, section 80 overrides provisions of section 76, 77, 78 & 79 which states that if assessee proves that there is reasonable cause for failure, no penalty can be imposed. The provision does not state that even upon establishment of reasonable cause, reduced quantum of penalty is imposable.

Hence, minimum penalty cannot be reduced further.

CENTRAL EXCISE

❖ Brand Promotion services vis a vis denial of SSI exemption : Fashion Square vs. CCEx (CESTAT Delhi)

Facts:

The assessee was a consignment agent appointed by 'Koutons Retails India Ltd' for the sale and marketing of 'Charlie Outlaw', a brand of readymade garment and not for the Kouton's goods. Department argued that service tax was leviable on the assessee as it provided taxable service of promotion of branded goods and that the taxable services provided by a person under a brand name or trade name, whether registered or not, of another person are expressly disallowed to take advantage of the exemption given to the small services providers under notification no. 6/2005 ST dated 01-03-2005.

Decision:

In the absence of any evidence to show that assessee was promoting or marketing branded goods of M/s Kouton's, it was held that the assessee sold the goods in its outlet as a trader consignment agent. Accordingly, assessee being a small taxpayer was entitled to the exemption benefit under notification no. 6/2005.

❖ Suo moto revision of the annual production capacity by the deputy commissioner is not permissible : Godfrey Philips India Limited vs. UOI (Bombay HC)

Facts:

The assessee was engaged in the manufacture of Pan Masala and liable to pay excise duty on the basis of annual production capacity. The assessee had installed four machines at its factory. In terms of the Pan Masala packaging machines the assessee is required to furnish information pertaining to packing machines and the deputy commissioner is required to pass a determination order after making such enquiry may be necessary. Order there out of four machines had been passed and duty determined. Subsequently, when the information pertaining to the fourth machine was furnished, the deputy commissioner revised all previous order and passed an order with respect to all four machines enhancing the duty liability.

Decision:

The order passed by deputy commissioner was clearly in violation of principle of natural justice as no new evidence had been produced to indicate that commissioner had any fresh new material to revise the production. Accordingly order had been set aside.

❖ Refund of unutilized Cenvat Credit is not permissible as per Law: Steel Strips vs CCE (Ludhiana). (IMP)

Facts:

The assessee applied for refund of unutilized Cenvat Credit at the time, when factory became inoperative and there was no possibility of restarting the process in the factory. It was submitted by the assessee that it was required to make huge deposits in its PLA under coercion and required to pay duty out of such account instead of being allowed to utilize its credit remaining in the Modvat account. The refund was rejected by the department and first appeal was also rejected. The appeal was filed to the tribunal which, had refer the matter to the larger bench of tribunal.

Decision:

Larger Bench of tribunal had held that MODVAT law has codified procedure for adjustments of duty liability against MODVAT account. Unadjusted credit amount is not expressly permitted to be refunded. In the express provision to grant refund, that is difficult to entertain except in the case of export. Hence, the appeal is dismissed.

❖ Input services used outside the factory eligible for CENVAT credit if nexus with manufacture is established : CCEx vs Ultratech Cement Ltd. (MUM)

Facts:

A manufacturer of cement claimed CENVAT credit on repairs and maintenance services of River Pump used for generation of electricity outside the factory premises. Such electricity was used in the manufacturing of final product. CENVAT credit was denied on the basis that services are received outside the factory premises and did not have nexus with the manufacture of final products.

Decision:

The definition of input services does not deny credit if services are utilized outside the factory premises. The nexus in this case with manufacturing of final product is established indirectly. In the case of the appellant for similar issue, the tribunal had allowed CENVAT credit. Input Services used outside the factory premises are eligible.

❖ Physicians sample have to be valued on pro rata basis : CCE vs. Bal Pharma Ltd. (SC) Sept 2010 (Imp)

Mumbai Tribunal in impugned order while relying upon an earlier order of Trinity Pharmaceuticals concluded that as per section 4 of Central Excise Act, Valuation (Central Excise) Physician's samples be valued on pro rata basis. Department had filed an appeal against the said impugned order of the tribunal before the SC. Hon'ble SC had observed that said decision of Trinity Pharma was not challenged by the department. In that view, Hon, ble court had declined to entertained the appeal. In other words, SC had affirmed the view that Physicians sample have to be valued on pro rata basis.

❖ Use of commonly available 'orphan' brand name - not a ground for deny SSI exemption : CCEx vs. Abhishek Pharma Engineers (CESTAT Ahmadabad) (IMP)

Facts:

The assessee was engaged in the manufacture of Pharmaceuticals machinery under the name ' Amba' and 'Ambalica'. It was availing benefit of SSI exemption Department had taken a view that names Amba' and 'Ambalica being used by the assessee are the brand names owned by ' M/s Amba Engineers & M/s Ambalica Engineers and hence the assessee is not entitled to avail the SSI exemption.

The main issue here is that Amba' and 'Ambalica' refer to the specific brand names belonging to same person or are in the form of 'Orphan' brand names which can be used by any person?

Decision:

The brand name 'Amba' & 'Ambalica' is not being used by above mentioned two enterprises as their owner. There are many other units using the said brand name 'Amba'. It is seen that such commonly available brand names without there being any specific owner of the same are usually 'orphan' brand names. They do not belong to any particular brand name owner. As per board circular, use of such brand name will not result in denial of SSI exemption notifications.

❖ Raw Material received from principal Manufacturer sent back after manufacture of intermediate product, Rule 8 for valuation will not be attracted : Advance Surfactants India Ltd vs. CCEx) (IMP)

Facts:

The assessee is a job worker for HUL. It receives Linear Alkyl Benzene from HUL, processes the same to the manufacture linear alkyl Benzene sulphuric acid (LABSA) and clears the same to the factory of HUL after discharging central excise duty on the basis of cost of manufacturing including manufacturing cost, processing charges and profit margin. LABSA received by HUL is captively consumed for manufacture of its final products like soaps and detergents. The departments alleging that the assessee being a job worker were required to value the goods cleared by it as per the provisions of Rule 8 r.w. rule 10A of the central excise valuation, issued a show cause notice, demanding differential duty.

The main issue here is that whether in the factual matrix of the case, provisions of Rule 8 r.w. rule 10A of the central excise valuation would apply for the purpose of determining the value of the goods cleared by the assessee.

Decision:

The provision of Rule 10A can be brought into play when there is situation where excisable goods are produced or manufactured by a job worker on behalf of a person and cleared to the buyer of the principal and or cleared to a depot or consignment agent. The intention of the legislature was to capture tax on the value of the goods when cleared to the ultimate consumers. Further, Rule 8 will come into play only when the goods are used for consumption by the assessee or on his behalf, in the production or manufacture of other articles. It is undisputed that LABSA is a intermediate product required by HUL for further production and therefore provisions of Rule 8 will not come into play.

CUSTOMS

❖ No export duty leviable on goods cleared from DTA to SEZ: Essar Steel Ltd. v. UOI (Guj.):

In case of goods cleared from DTA (Domestic Tariff Area i.e. Non-SEZ area) to SEZ, the said goods are 'deemed to be exported' but only for the limited purpose of allowing export incentives to the seller. The same cannot be deemed to be export for the purpose of levy of export duty.

❖ No export duty leviable on goods cleared from DTA to SEZ: Shyammaraju & Co. (India) (p) Ltd. (Kar)

Facts :

The assessee are either a 'Developer, a 'Co-Developer', an 'Entrepreneur', or an 'existing Unit', as defined under the sub-clauses of Section 2 of the Special Economic Zones Act, 2005 (hereinafter referred to as the 'SEZ Act', for brevity). The SEZ Act, inter alia, provides for the establishment, development and management of Special Economic Zones for the promotion of exports. While notifying an area as a SEZ, the Central Government is guided by the objects enumerated under Section 5 of the SEZ Act, viz., generation of additional economic activity, promotion of exports of goods and services, promotion of investment from domestic and foreign sources, creation of employment opportunities, development of infrastructure facilities and maintenance of the sovereignty and integrity of India including its security and friendly relations with foreign countries.

Section 26 of the SEZ Act provides for duty exemptions, drawbacks and concessions to every 'developer', entrepreneur', 'co-developer' and an 'unit', as defined under the SEZ Act. There is exemption from duty of customs on goods imported into or services provided in a SEZ to carry on the authorised operations and exemptions from customs duty on goods exported from or services provided from a SEZ. Exemption from duty of central excise under the Central Excise Act, 1944 (hereinafter referred to as the '1944 Act' for brevity) or the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the CET Act' for brevity), on goods brought from the 'Domestic Tariff Area' (hereinafter referred to as 'the DTA' for brevity), as defined under the Act, to an SEZ. These exemptions are claimed as per Rule 22 of the Special Economic Zones Rules, 2006 (hereinafter referred to as 'SEZ Rules' for brevity).

By virtue of the Finance Act, 2008, various items were included in the Second Schedule-Export Tariff, to the Customs Tariff Act, 1975, including pig-iron, ferrous products, iron and steel products of various types, so as to introduce tariff rates of duty at 20% ad valorem on all iron and steel items. Simultaneously, on 10-5-2008, the Central Government issued an exemption notification prescribing the effective rates of duty on sixteen items added to the Export Tariff Schedule. Consequently, all Development Commissioners were made aware that "export duty" had been levied on export of steel products and therefore they were to allow supply of steel products to SEZs on submission of a bond and a bank guarantee in case the duty would be finally payable. The notification dated 10-5-2008 was amended by another notification dated 13-6-2008, reducing the rates of exemption and thereby increasing the effective rate of duty.

The effect of the customs notifications issued under Section 25 of the Customs Act, 1962 has been construed as enabling the levy of customs duty on transactions treated as exports. In other words, a domestic manufacturer or supplier of the subject items, is treated as an “exporter” and the purchaser within the SEZ, such as the petitioners, as “importers”.

The assessee contend that the impugned action has the unnatural effect of levying duty of customs on goods which are neither physically moving out of the territory of India by treating them as “export” of goods outside India nor physically moving into India from outside India as “import” of goods. It is also contended that yet another effect of the action of the assessee that goods manufactured in India, which are subject to levy under the Central Excise Tariff Act, are being treated as goods exported outside India and imported into India for levy of customs duty.

Decision:

As seen from definition of “export”. It indicates a supply of goods from DTA to the SEZ unit. But, it does not indicate that such a supply ought to be treated as supply of goods being exported outside the territory of India as is the definition of “export” under the Customs Act. Hence, it is not possible to hold that by a deeming fiction the supply to a SEZ unit from DTA would amount to goods moving out side India. Hence no export duty will be levied on the same.

Friends, In case of any query including Full text of the decisions, please feel free to mail me at bikashbogi@yahoo.co.in. or contact me at +91-9930934403, or post in my blog : bikashbogi.blogspot.com

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Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.
