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The Institute of Cost Accountants of India

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INDIAN ECONOMY

News

India receives $32.87 bn FDI in October-September

India received $32.87 billion foreign direct investment (FDI) during October 2014 to September this year, Parliament was informed. The sectors, which attracted FDI during the period include computer software and hardware, services sector, trading, automobile, construction activities, chemicals, power, pharmaceuticals, industrial machinery and food processing. In the defence and railway related components, the country received only $0.08 million (Rs 0.48 crore) and $23.2 million (Rs 146.65 crore) FDI during the October-September period.

Read more at: http://articles.economictimes.indiatimes.com/2015-11-30/news/68661659_1_retail-trading-fdi-india-campaign

Oct exports drop 17.5 pct year-on-year - govt

India's merchandise exports shrank 17.53 percent in October from a year ago to $21.35 billion, government data showed. The trade deficit marginally narrowed to $9.77 billion last month from $10.48 billion in September, the data released by the Ministry of Commerce and Industry showed.Imports fell 21.15 percent from a year earlier to $31.12 billion, the data showed.

Source: Reuters, dated: Nov 16, 2015

Wholesale prices drop for 12th straight month in October

India's wholesale prices dropped for a 12th straight month in October, falling an annual 3.81 percent mainly due to easing fuel prices, government data showed.

Source: Reuters, dated: Nov 16, 2015

Oct services industry PMI at 8-mth high on boost from new business

India's services industry expanded at its fastest pace in eight months in October as new business rose with discounting probably stoking demand, a survey showed.

Source: Reuters, dated: Nov 04, 2015

India's Sept infrastructure output up 3.2 pct from year ago, fastest growth in 4 months

India's infrastructure output grew at its fastest pace in four months to 3.2 percent in September from a year ago, mainly driven by higher production of electricity and fertilisers, government data showed.

Source: Reuters, dated: Nov 02, 2015

India's manufacturing growth slumps to a 25-month low in November

India's manufacturing growth slumped to a 25-month low in November due to a combination of lower demand, higher input costs and softening output, a private survey showed. The Nikkei Manufacturing Purchasing Managers' Index declined to 50.3 in November from 50.7 in October, data released showed. The index fell for the fourth consecutive month in November. A reading above 50 on this survey-based index denotes expansion. The data comes a day after the central statistics office released the GDP data for the quarter to September showed a marked 9.3% increase in manufacturing during the period.

Source: http://articles.economictimes.indiatimes.com/2015-12-02/news/68717425_1_manufacturing-growth-november-pmi-gdp-data

India's GDP grows at 7.4% in Q2 of FY16; manufacturing grows at robust 9.3%

India's economy picked up pace in the second quarter of the current fiscal, comfortably outpacing China in the same quarter, but the stronger growth has dampened hopes of a rate cut when the Reserve Bank of India reviews its monetary policy. India's GDP rose 7.4 % in the second quarter of 2015-16, in line with expectations but faster than the 7% growth recorded in the preceding three-months. China's GDP rose 6.9% in the same quarter. The high growth was driven by a robust 9.3% rise in gross value added (GVA) in the manufacturing sector. Despite a poor monsoon, agricultural sector did better than expected with a 2.2% rise in GVA versus 2.1% YoY. The GDP growth had declined to 7% in April-June quarter from 7.5% in the previous quarter raising concerns that the recovery was not shaping well. RBI is expected to maintain interest rates after consumer inflation rose to 5% in October and the strong manufacturing growth numbers.

Read more at: http://articles.economictimes.indiatimes.com/2015-11-30/news/68661613_1_gdp-growth-lakh-crore-central-statistics-office

Private sector firms' PAT fell 9.9% in Q2 FY16: RBI

Country's private sector companies saw a dip of 9.9 per cent in profit after tax for the second quarter of this fiscal, compared to 25.6 per cent growth in the year-ago period, RBI data showed. In the first quarter, there was a contraction in the net profit at -9.5 per cent. "Among the sectors, services (other than IT) recorded

a contraction in net profits," RBI said in the data released on the performance of non-financial private firms during the second quarter of FY16. The data is based on the abridged financial results of 2,711 listed non-government non-financial companies. During the quarter, aggregate sales contracted further primarily due to a sharp contraction of 37.2 per cent in the sales of petroleum products industry group. Sales in the manufacturing sector also contracted by 7.8 per cent.

Read more at: http://articles.economictimes.indiatimes.com/2015-12-03/news/68741731_1_manufacturing-sector-net-profit-cent

➲ **Government announces 3% interest subsidy to boost exports**

Concerned over continuous decline in exports, government announced 3 per cent interest subsidy scheme for exporters which will have a financial implication of about Rs 2,700 crore. The decision to help boost overseas shipments was taken at a meeting of Cabinet Committee on Economic Affairs headed by Prime Minister Narendra Modi. The CCEA has given its approval for "Interest Equalisation Scheme (earlier called Interest Subvention Scheme) on Pre and Post Shipment Rupee Export Credit with effect from 1st April, 2015 for five years", an official statement said. The rate of interest equalisation would be 3 per cent, it said, adding that it will be evaluated after three years. Financial implication of the proposed scheme is estimated to be in the range of Rs 2,500 crore to Rs 2,700 crore per year, it said. However, it added that the actual implication would depend on the level of exports and the claims filed by the exporters with the banks. Funds worth Rs 1,625 crore in the non-plan head of account are available under Demand of Grants for 2015 - 2016 and would be made available to the Reserve Bank, it said. The scheme would be available to all exports of Micro, Small and Medium Enterprises (MSME) and 416 tariff lines. But it would not be available to merchant exporters.

Read more at: http://articles.economictimes.indiatimes.com/2015-11-18/news/68382617_1_exports-cent-interest-subsidy-scheme-trade-deficit

BANKING

Notifications / Circulars

➲ **Risk Management & Inter-Bank Dealings: Relaxation of facilities for residents for hedging of foreign currency borrowings**

With a view to facilitating hedging of long term foreign currency borrowings by residents, it has been decided to permit them to enter in to FCY-INR swaps with Multilateral or International Financial Institutions (MFI/IFI) in which Government of India is a shareholding member subject to the following terms and conditions:

(i) Such swap transactions shall be undertaken by the MFI / IFI concerned on a back-to-back basis with an AD Category-I bank in India.

(ii) AD Category-I banks shall face, for the purpose of the swap, only those Multilateral Financial Institutions (MFIs) and International Financial Institutions (IFIs) in which Government of India is a shareholding member.

(iii) The FCY-INR swaps shall have a minimum tenor of three years. All other operational guidelines, terms and conditions relating to FCY-INR swaps as laid down in A.P. (DIR Series) Circular No. 32 dated December 28, 2010, as amended from time to time, shall apply, mutatis mutandis.

(iv) In the event of a default by the resident borrower on its swap obligations, the MFI / IFI concerned shall bring in foreign currency funds to meet its corresponding liabilities to the counterparty AD Cat-I bank in India.

(v) AD Category-I bank shall report the FCY-INR swaps transactions entered into with the MFIs / IFIs on a back-to-back basis to CCIL reporting platform, including details of the foreign currency borrower, in terms of Reserve Bank circular no. FMD.MSRG.No. 94/02.05.002/2013-14 dated December 4, 2013 on the reporting platform for OTC Foreign Exchange and Interest Rate Derivatives.

Source: Notification No. RBI/2015-16/232 [A.P. (DIR Series) Circular No. 28] dated: November 5, 2015

➲ **Software Export – Filing of bulk SOFTEX-further liberalisation**

In order to provide benefits to small exporters also, it has been decided to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification. The SOFTEX form is given at Annex I. Since the SOFTEX data from STPI/SEZ is being transmitted in electronic format to RBI, the exporters are required to submit the SOFTEX form in duplicate as per the revised procedure. STPI/SEZ will retain one copy and handover the duplicate copy to the exporters after due certification.

Source: Notification No. RBI/2015-16/231 [A.P. (DIR Series) Circular No.27] dated: November 05, 2015

Read more at: https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10113

➲ **Internet Banking Facility for Customers of Cooperative Banks**

State Cooperative Banks (StCBs) and District Central Cooperative

Banks (DCCBs) so far have not been allowed to provide internet banking facilities to their customers. As some of the StCBs/ DCCBs have requested for permission to offer Internet Banking facility, it has been decided to allow StCBs and DCCBs to extend the facility of internet banking to their customers. Accordingly, the guidelines issued to the UCBs were reviewed and uniform guidelines for all the cooperative banks are now issued in supersession of previous guidelines issued to UCBs in the matter. The revised guidelines applicable to all the cooperative banks are as follows:
(i) Internet Banking (View only) facility
(ii) Internet Banking with Transactional facility

All licensed StCBs, DCCBs and UCBs which have implemented CBS and have also migrated to Internet Protocol Version 6 (IPv6) and fulfilling the following criteria may offer Internet Banking with transactional facility to their customers with prior approval of RBI:
• CRAR of not less than 10 per cent.
• Net worth is Rs.50 crore or more as on March 31 of the immediate preceding financial years.
• Gross NPAs less than 7 % and Net NPAs not more than 3%
• The bank should have made a net profit in the immediate preceding financial year and overall, should have made net profit at least in three out of the preceding four financial years.
• It should not have defaulted in maintenance of CRR/SLR during the immediate preceding financial year.
• It has sound internal control system with at least two professional directors on the Board.
• The bank has a track record of regulatory compliance and no monetary penalty has been imposed on the bank for violation of RBI directives/guidelines during the two financial years, preceding the year in which the application is made. StCBs, DCCBs and UCBs fulfilling the above-mentioned criteria will be allowed to extend Internet Banking with transactional facility provided they comply with the guidelines prescribed in Annex I and II to this circular.

For this purpose, the intending StCB, DCCB and UCB shall submit an application to the concerned Regional Office of RBI (through NABARD in case of StCB/DCCB) with the following documents:
• A copy of the Board approved policy on internet banking along with a certificate from an independent auditor (CISA qualified) that the IT and IS policy requirements prescribed in RBI guidelines have been adhered to.
• An undertaking to inform RBI about any material change in the services/products offered by them.
• The business plan, cost and benefit analysis, operational arrangements like technology adopted, business partners, third party service providers and systems and control procedures that the bank proposes to adopt for managing risks.

Read more at: https://rbi.org.in/Scripts/NotificationUser.aspx-?Id=10111&Mode=0

➲ **Gold Monetization Scheme, 2015 - Interest Rate**

Central Government has fixed the rate of interest on Medium and Long Term Government Deposit (MLTGD) under the GMS vide Notification No. RBI/2015-16/220 [DBR.IBD. BC.53/23.67.003/2015-16] dated: November 3, 2015 as follows:
i. On medium term deposit – 2.25% p.a.
ii. On long term deposit – 2.50% p.a.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10103&Mode=0

➲ **External Commercial Borrowings (ECB) Policy – Revised framework**

A revised ECB framework based on the following overarching principles has been finalised:
(i) A more liberal approach, with fewer restrictions on end uses, higher allin-cost ceiling, etc. for long term foreign currency borrowings as the extended term makes repayments more sustainable and also minimizes roll-over risks for the borrower;
(ii) A more liberal regime for INR denominated ECBs where the currency risk is borne by the lender;
(iii) Expansion of the list of overseas lenders to include long-term lenders, such as, Insurance Companies, Pension Funds, Sovereign Wealth Funds;
(iv) Only a small negative list of end-use restrictions applicable in case of long-term ECB and INR denominated ECB;
(v) Alignment of the list of infrastructure entities eligible for ECB with the Harmonised List of the Government of India.

Read the full notification at: https://www.rbi.org.in/Scripts/NotificationUser. aspx?Id=10153&Mode=0

➲ **Online Returns to be submitted by NBFCs- Revised**

RBI has decided to rationalize the returns' to be submitted online through COSMOS as below:

• Change in periodicity of NDSI-500cr and ALM-1 returns from monthly to quarterly
• Discontinuation of NBS- 6 return as the same information is received through NBS-1 return.

Source: Notification No. RBI/2014-15/246 [DNBS (PD). CC.No.03/03.02.02/2015-16] dated: November 26, 2015

➲ **Sovereign Gold Bonds, 2015-16 - Operational Guidelines**

Operational guidelines with regard to this scheme are given below:

1. **Application**: Application forms from investors will be received at branches during normal banking hours from November 5 to 20, 2015. Relevant additional details may be obtained from the applicants, where necessary.

2. **Joint holding and nomination**: Multiple joint holders and nominees (of first holder) are permitted. Necessary details may be obtained from the applicants as per practice.

3. **Interest on application money**: Applicants will be paid interest at prevailing savings bank rate from the date of realization of payment to the settlement date, ie. the period for which they are out of funds. In case the applicant's bank account is not with the receiving bank, the interest has to be credited by electronic fund transfer to the account details provided by the applicant.

4. **Cancellation**: Cancellation of application is permitted till the closure of the issue, i.e., November 20, 2015. Part cancellation of submitted request for purchase of gold bonds is not permitted. No interest on application money needs to be paid if the application is cancelled.

5. **Lien marking**: As the bonds are government securities, lien marking, etc. will be as per the extant legal provisions of Government Securities Act, 2006 and rules framed there under.

6. **Agency arrangement**: Scheduled commercial banks may engage NBFCs, NSC agents and others to collect application forms on their behalf. Banks may enter into arrangements or tie-ups with such entities.

7. **Processing through RBI's e-kuber system**: Sovereign Gold Bonds will be available for subscription at the branches of scheduled commercial banks and designated post offices through RBI's e-kuber system. The e-kuber system can be accessed either through Infinet or Internet. The receiving offices need to enter the data or carry out bulk upload for the subscriptions received by them. An immediate confirmation will be provided to them for receipt of application. In addition, a confirmation scroll will be provided for file uploads to enable the receiving offices to update their database. On the date of allotment, ie., November 26, 2015, Holding Certificates will be generated for all the subscriptions. The receiving offices can download the same and take printouts. The Holding Certificates will also be sent through e-mail to the investors who have provided their email address.

Read more at: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10104&Mode=0

➲ **RBI allows foreign currency-rupee swap transactions**

The Reserve Bank of India (RBI) allowed residents having a longterm foreign currency liability to enter into foreign currency-rupee swaps with multilateral or international financial institutions (MFI/IFI) in which the government of India is a shareholding member, subject to certain conditions. RBI said that such swap transactions could be undertaken by the MFI/IFI concerned on a back-to-back basis with an authorized dealers (AD) Category-I bank in India.

Read more at: https://in.news.yahoo.com/rbi-allows-foreign-currency-rupee-224600191.html

INCOME TAX

Notifications / Circulars

➲ **Interest from Non-SLR securities of Banks**

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed u/s 57(i) of the Act as interest on non-SLR securities is income from other sources." Clause (id) of sub-section (1) of Section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if, the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession" . The matter has been examined in light of the judicial decisions on this issue. In the case of ClT Vs Nawanshahar Central Cooperative Bank Ltd. [2007] 160 TAXMAN 48(SC), the Apex Court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession". Even though the abovementioned decision was in the context of co-operative societies / Banks claiming deduction under section 80P (2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 appl ies. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, ifany, on this ground before Courts/Tribunals may be withdrawn / not pressed upon.

Source: Circular No. 18/2015 [F.N 0.2 79/Misc./140/20 IS/IT J] dated: 2nd November, 2015

Case Laws

➲ **No denial of Sec. 80-IA relief just because power is captively consumedby assessee in its business**

IT : Benefit under section 80-IA cannot be denied to assessee, merely because power generated by its power undertaking was consumed at home or by other business of assessee and was not sold to outsiders

IT : Assessee's power generating unit could not as such claim any benefit under section 80-IA computed on basis of rates chargeable by distribution licensee from consumer and such benefit could only be claimed on basis of rates fixed by Tariff

Regulation Commission for sale of electricity by generating companies.

Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Power generation) - Assessment year 2002-03 - Whether premise for claiming benefit according to clause (iv) of sub-section (4) of section 80-IA is setting up of an undertaking for generation of power during specified period; if such condition is satisfied, deduction under section 80-IA cannot be denied to assessee merely because power generated by assessee is in its entirety consumed by other business of assessee and is not sold to outsiders - Held, yes [In favour of assessee]

Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Computation of deduction) - Assessment year 2002-03 - Assessee, engaged in manufacture of paperboard, installed power generating plant for purpose of supplying uninterrupted power to its manufacturing plant - Entire production of such plant was supplied to paperboard manufacturing unit - While computing deduction under section 80-IA, assessee took rate at which electricity was supplied to it by Andhra Pradesh Electricity Board - Whether there is Tariff Regulatory Commission which fixes both rates for sale and purchase of electricity by distribution licensee and, therefore, assessee's generating unit could not as such claim any benefit under section 80-IA computed on basis of rates chargeable by distribution licensee from consumer and benefit could only be claimed on basis of rates fixed by Tariff Regulation Commission for sale of electricity by generating companies - Held, yes [In favour of revenue]

Source: Case Law: High Court of Calcutta, Commissioner of Income-tax, Kolkata - III v. ITC Ltd.

➲ **Failure of assessee to prove that NR-agent has no PE in India leads to disallowance of commission for TDS default**

In absence of any material on record as to whether non-resident agents appointed by assessee rendered services abroad and they had no business connection in India, question regarding assessee's obligation of deduction of tax at source on payment of sales commission to them was to be disposed afresh.

Section 9, read with section 40(a)(i) of the Income-tax Act, 1961 - Income - Deemed to accrue or arise in India (Business income) - Assessment year 2011-12 - In course of assessment, Assessing Officer noticed that assessee had made payment of sales commission to non-resident agents - Since assessee did not deduct tax at source while making said payments, Assessing Officer disallowed same by invoking provisions of section 40(a)(i) - Commissioner (Appeals) deleted said disallowance - Whether since assessee had not established that non-resident had rendered services abroad and there was no business connection in India by producing relevant records, nature of services rendered by non-resident agents could not be determined - Held, yes - Whether, therefore, impugned order was to be set aside and, matter was to be remanded back for disposal afresh - Held, yes. [Matter remanded]

FACTS

- In the course of assessment, the Assessing Officer noticed that assessee had made payment of sales commission to non-resident agents. Since assessee did not deduct tax at source while making said payments, the Assessing Officer disallowed same by invoking provisions of section 40(a)(ia).
- The Commissioner (Appeals) deleted the disallowance made by Assessing Officer.
- On revenue's appeal:

HELD

- Section 40(a)(i) makes it clear that the disallowance shall be made in case of any payment made which is chargeable under this Act and is payable outside India or in India to a non-resident not being a company or to a foreign company on which tax is deductible at source. Therefore, the first condition required to be fulfilled is the payment must be chargeable under the Act, thereafter the question of deduction of tax will arise.
- Section 195(1) also prescribes that tax has to be deducted while making payment to non-resident which is chargeable under the provisions of the Act. Therefore, the condition precedent for deduction of tax is that income must be chargeable under the provisions of the Act. In the facts of the present case, the assessee has not produced the agreement entered into by the assessee with foreign agents to show that they were appointed to act as commission agents outside India in their respective countries.
- As seen from the orders of the lower authorities, the assessee has not discharged the burden cast upon it to show the nature of services rendered by non-resident agent. If there are services rendered by non-residents, who have no permanent establishment in India or have any business connection in India, by virtue of which the payment of commission accrued or arose in India then, it is exempted, if the assessee is able to prove that the services were rendered by those non-residents abroad.
- In the present case, the assessee had not established that the non-resident had rendered services abroad and there was no business connection in India by producing relevant records, viz., either agreement entered into by the assessee with them or correspondence took between the parties. Without examining these details, one is not in a position to decide the nature of services rendered by the non-resident agent.
- Therefore, it is appropriate to remit the entire issue back to the file of the Assessing Officer with direction to the assessee to prove that it was sales commission towards procurement of orders from abroad.
- In the result, the appeal of the revenue is allowed for statistical purposes.

Source: In the ITAT Chennai Bench 'A', Assistant Commissioner of Income-tax, Corporate Circle-2 (1), Chennai v. Euro Leder Fashions Ltd.

CENTRAL EXCISE

Notifications / Circulars

➲ CBEC further amend Notification No. 12/2012-Central Excise, dated 17.03.2012 so as prescribe the Basic Excise Duty (BED), with effect from 07.11.2015, on the following products at the rates indicated are: (i) Unbranded petrol from Rs.5.46 per litre to Rs. 7.06 per litre; (ii) Branded petrol from Rs. 6.64 per litre to Rs. 8.24 per litre; (iii) Unbranded diesel from Rs.4.26 per litre to Rs. 4.66 per litre; and (iv) Branded diesel from Rs.6.62 per litre to Rs. 7.02 per litre vide *Notification No. 43/2015-CE, dt. 06-11-2015*.

Read more at: http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2015/cx-tarr2015/ce43-2015

➲ CBEC amended notification No. 12/2012-CE dated 17.3.2012 so as to provide exemption from excise duty on all raw material and parts for use in manufacture of certain specified ships/vessels subject to actual user condition and also removing the requirement of manufacturing of ships/vessels in a custom bonded warehouse under the provisions of Section 65 of the Customs Act, 1962 for availing duty benefits vide Notification No. 44/2015-CE, dt. 24- 11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2015/cx-tarr2015/ce44-2015

➲ CBEC amended notification no. 22/2003-CE dated 31-03-2003 so as to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from basic customs duty and central excise/CV duty vide Notification No. 45/2015-CE, dt. 24-11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2015/cx-tarr2015/ce45-2015

Case Laws

➲ **'Ultratech' gets excise duty exemption on clinker captively consumed for manufacture of cement**

Where assessee, a manufacturer of cement [final product], also manufactured clinker (intermediate product) and consumed same in same factory for manufacture of cement and during period 2004 to 2011 it cleared cement to SEZ units/developers without payment of duty, assessee was eligible for exemption from excise duty on clinker.

Section 5A of the Central Excise Act, 1944 read with rule 19 of the Central Excise Rules, 2002, rule 2(d) of the Cenvat Credit Rules, 2001 and rule 30 of the Special Economic Zones Rules, 2006 - Exemption from excise duty - In respect of specified goods - Period 2004 to 2011 - Assessee was engaged in business of manufacture of cement [final product] - It also manufactured clinker [intermediate product] and consumed same in same factory captively for manufacture of cement - During period 2004 to 2011, it cleared cement to SEZ units/developers without payment of duty - It claimed that clinker consumed for manufacture of cement was eligible for exemption under Notification No. 67/95-CE, dated 16-3-1995 - Adjudicating Authority denied benefit of notification and demanded excise duty on clinker - Whether Adjudicating Authority was not justified in his view - Held, yes - Whether assessee was eligible for exemption from excise duty under above notification on clinker captively consumed for manufacture of cement - Held, yes

FACTS

- The assessee was engaged in the business of manufacture of cement [final product]. It also manufactured clinker [intermediate product] and consumed same in the same factory captively for manufacture of cement. During the period 2004 to 2011, it cleared cement to SEZ units/developers without payment of duty. It claimed that the clinker used in the manufacture of cement cleared to SEZ without payment of duty was eligible for benefit under Exemption Notification No. 67/95-CE, dated 16-3-1995.

- The Adjudicating Authority denied the benefit of above notification and demanded excise duty on the clinker manufactured and consumed within the factory. He denied the benefit on three counts:

(a) the notification dated 16-3-1995 did not contain a clause for clearance of goods to SEZ,

(b) the finished goods cleared to SEZ were exempted as per the proviso to the notification, and

(c) sub-clause (vi) of proviso to notification clearly says subject to the fulfillment of the obligations by the manufacturer of both dutiable and exempted products under rule 6 of the Central Excise Rules, 2001.

- On appeal to Tribunal:

HELD

Whether clinker manufactured by assessee used in manufacture of cement cleared to SEZ without payment of duty was eligible for benefit under Notification No. 67/95-CE, dated 16-3-1995 or not:

- Clause II of the Notification No. 67/95-CE, dated 16-3-1995 exempts the goods specified in Col. 1 of the table (referred to as inputs) manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in Col. 2 of the table. Clinker classifiable under Chapter Heading 2502 10 is covered under Column 1 of the table as input

and cement classifiable under Chapter Heading 2502 09 is covered under Column 2 of the table as final product. Therefore, there is no dispute that both inputs and final products are specified in the table of the notification. The assessee manufactured clinker and captively consumed for manufacture of cement and cleared the cement without payment of duty to SEZ units/developers. Certain demand relates to the period prior to the enactment of the SEZ Act, i.e., 10-2-2006. The main contention of the assessee is that the goods cleared to the SEZ unit/developers are not exempted from excise duty but cleared without payment of duty by following the requisite procedures set out in the SEZ Act and the SEZ Rules read with the Central Excise Rules. The revenue, on the other hand, contended that goods supplied to SEZ are exempted and duty was demanded on the clinker used in the manufacture of cement which is cleared to SEZ units/developers.

- The Principal Bench of the Tribunal in the case of Surya Roshni Ltd. v. CCE 2012 (285) ELT 518 has categorically discussed the meaning of exempted goods defined in rule 2(d) of the Cenvat Credit Rules and held that the goods supplied to the SEZ units/developers are neither chargeable to nilrate of duty nor the goods are exempted from payment of duty by any exemption notification issued under rule 5A. This decision is squarely applicable to the facts of the instant case.
- Sub-clause (vi) of the proviso to Notification No. 67/95-CE is an exception clause, where a manufacturer of dutiable and exempted goods is eligible if he discharges the obligation prescribed in rule 6 of the Cenvat Credit Rules, 2001. There is no definition of exempted goods in the Central Excise Act except rule 2(d) of the Cenvat Credit Rules. When the words exempted goods used in the said notification, it only means 'final products exempted under the the Central Excise Act read with the Central Excise Rules or any notification issued thereunder'.
- The revenue contended that section 26(1)(c) of the SEZ Act clearly exempts the goods supplied by the DTA to SEZ units/developers and this should be considered while construing the proviso to Notification No. 67/95-CE. This proposition of the revenue is not acceptable. The word used in the proviso to Notification No. 67/95-CE is dutiable and exempted final products in relation to the Cenvat credit Rules, 2001. The Cenvat credit Rules is to enable availment of Cenvat credit of excise duty or any other duties specified under the Central Excise Act or the Customs Act or under the Finance Act. In the instant case, the final product cement is an excisable commodity falling under Chapter 25 of CETA, which is dutiable. There is no exemption of excise duty on cement. Therefore, the final product cement cleared to SEZ units/developers is not exempted goods under any notification issued under rule 5A of the Central Excise Act.
- If the revenue's contention is to be taken that the goods cleared to the SEZ units are exempted, then the question of following the procedures stipulated under SEZ Act and under rule 19 of the Central Excise Rules does not arise.
- The record reveals that the assessee had duly followed the procedures prescribed under rule 19 of the Central Excise Rules and executed bond before the excise authorities and cleared the goods without payment of duty. If the goods are fully exempted, the question of following the procedure under ARE-1 and execution of bond does not arise. Accordingly the cement cleared to SEZ unit/developers is not exempted goods. It is cleared without payment of duty by following the procedures and conditions stipulated in both the SEZ Act and rule 19 of the Central Excise Rules. Therefore, the clinker used captively for manufacture of cement cleared to SEZ is covered under Notification No. 67/95.

Whether supplies to SEZ is to be treated as export or not:

- The Circular No. 1001/8/2015, Cx.8, dated 28-4-2015 has clarified the issue with regard to granting of rebate of duty on goods cleared from DTA to SEZ. This circular summarizes the contents of all previous Board's circulars and considered various provisions of the SEZ Act and the SEZ Rules and categorically clarified that supply of goods from DTA to SEZ units/developers constitutes exports.
- In view of the specific clarification in the circular dated 28-4-2015, the revenue cannot plead that the supplies to SEZ unit is not an export.
- In view of the above circular dated 28-4-2015 and as per objectives of the SEZ Act, the goods supplied to SEZ unit/developer constitute an export. No duty can be levied on the clinker used in the manufacture of cement, as the finished goods are supplied to SEZ units/developers without payment of duty by following procedures of rule 19 of the Central Excise Rules and rule 30 of the SEZ Rules.

Whether exception provided under clause (vi) of proviso to Notification No. 67/95 refers only to Cenvat Credit Rules, 2001 or not

- The Cenvat Credit Rules, 2001 has been amended by Cenvat Credit Rules, 2002 and further amended by Cenvat Credit Rules, 2004. Merely for the reason that the Notification No. 67/95 referring to Cenvat Credit Rules, 2001 and not Cenvat Credit Rules, 2004 cannot be a valid reason to deny the exemption under clause (vi) of the proviso to the notification.

Whether clause (i) of proviso to Notification No. 67/95 provides exception only for clearance to FTZ and not for SEZ:

- It is contended by the revenue that the very purpose of the non inclusion of SEZ units in Notification No. 67/95 is to make it apply only to FTZ units and not to SEZ. One is unable to accept the department's view for the reasons that during the relevant period there were no SEZ units in operation and if the revenue's view is to be taken, no clearance would be made to FTZ after the enactment of SEZ Act with effect from 10-2-2006. Once the SEZ Act came into effect from 10-2-2006 all the units functioning as FTZ were declared as SEZ units. The Notification No. 4/2003-CE, dated 30-3-2003 was issued to convert various FTZs into SEZs.

- Further as per the Notes Explaining Clause 106 of the Finance Bill, 2007, after enactment of SEZ Act, FTZs have become redundant and hence it seeks to amend sub-section (1) of section 3 of the Central Excise Act.
- By virtue of the amendment in sub-section (1) of section 3, the word FTZ was omitted and substituted with the word SEZ. Therefore, the revenue's plea that the goods supplied to SEZ is not covered under clause (i) of the proviso to the notification is not acceptable. When the Board already amended rule 6(5)(ii) of Cenvat Credit Rules, 2001 to include supplies to SEZ, clause (i) of the proviso to Notification No. 67/95 should also been amended accordingly to replace the word FTZ to SEZ. Therefore, one is unable to accept the revenue's plea that clause (i) of proviso to the Notification No. 67/95 is intentionally kept and meant only to FTZ and not SEZ.

- Demanding duty on the intermediate product is otherwise also hit by revenue neutrality, as the assessee is otherwise entitled to avail the cenvat credit of the duty, if any paid on clinker. Alternatively, if a manufacturer avails exemption on intermediate product under Notification No. 67/95-CE and chooses to pay duty on the cement when cleared to SEZ unit/developer, the duty paid on final product will be fully available to him as refund/ rebate. Thus on both counts the issue is purely revenue neutral. It is not the intention of the Government to demand duty on the intermediate product having considered that the supplies to SEZ are exports. Therefore, the demand of duty on the intermediate product clinker used in manufacture of cement supplied to SEZ units/developers is clearly revenue neutral as the assessee could have claimed refund or availed cenvat credit. Demand of duty on intermediate products will only increase scriptory work with no benefit to the revenue.

- In view of the aforesaid, the assessee is eligible for exemption from excise duty under above Notification No. 67/95-CE on clinker captively consumed for manufacture of cement cleared to SEZ units/developers without payment of duty for both the periods, i.e. prior to introduction of SEZ Act and after the introduction of SEZ Act.

Source: Case Law: CESTAT, Chennai Bench, Ultratech Cements Ltd. v. Commissioner of Central Excise & Service Tax

➲ **Assessee hadn't taken a wrong credit if it had paid duty on exempted goods when dept. didn't clarify about exemption**

Where assessee asks department to clarify applicability of exemption and in absence of clarification, proceeds with payment of duty along with benefit of Cenvat credit, then, assessee cannot be said to have 'wrongly taken' credit; hence, even if said goods are later clarified to be exempted and assessee is made to reverse credit, assessee is not liable to pay interest on reversed Cenvat credit.

Section 11AA of the Central Excise Act, 1944, read with rules 6 and 14 of the Cenvat Credit Rules, 2004 - Interest - On delayed payment of duty/tax - Assessee-PSU was manufacturing pistols, missiles, etc. for Ministry of Defence - In March 2010, assessee sought clarification from department whether goods were exempt under Notification 63/95 - In absence of clarification, assessee took Cenvat credit and paid duty on final products - On getting clarification in April 2011 that goods were exempt, assessee reversed entire credit - Department demanded interest on wrongly taken credit - Tribunal held that : (a) assessee had right to ask for clarification from department, (b) in absence of clarification, assessee's act in paying duty and taking credit cannot be said to be 'wrong'; (c) therefore, credit was not 'wrongly taken or utilized' and hence, there can be no interest under rule 14 - HELD : Findings of fact of Tribunal were not perverse - Hence, appeal was dismissed. [In favour of assessee]

Circulars and Notifications : Notification No.63/95-CE, dated 16-3-1995

Case Law: High Court of Andhra Pradesh, Commissioner of Customs, Central Excise & Service Tax v. Bharat Dynamics Ltd.

➲ **Credit can't be denied if capital goods are removed from factory due to paucity of space after intimating the dept.**

Where manufacturer had intimated department about shifting of machines to rented premises near factory and submitted proper documents and no job work was done, Cenvat credit could not be denied.

Rule 5 of the Cenvat Credit Rules, 2004 - Cenvat Credit - Refund of - Appellant, engaged in manufacture of HDPE woven bags, was availing credit on same - Appellant shifted machines to another premises near factory - Machines were returned within 180 days - Movement of machines as well as semi-finished material from factory and finished material from rented premises were done by creating challans - Shifting was done only due to paucity of space - No job work was done - Commissioner (Appeals) corroborated that appellant had taken semi-finished goods outside factory premises for completion of manufacturing process due to shortage of space in factory and finishing work of stitching and packing was being done by appellant without hiring or engaging other person for doing work and, thus, no job worker was involved - Whether since there was no suppression of facts on part of appellant as he intimated department about removal of machine and submitted proper document, Cenvat credit could not be denied to appellant - Held, yes [In favour of assessee]

FACTS

- The appellant were engaged in the manufacture of HDPE woven bags and availed Cenvat Credit on the same.
- A show cause notice was issued alleging that appellant had

wrongly availed Cenvat Credit on capital goods, i.e., hydraulic bale press machine as the same was used by the appellant in another premises for short time besides being used in its factory. The Adjudicating Authority denied the Cenvat Credit.

- On appeal, the Commissioner (Appeals) upheld the same.
- On second appeal before the Tribunal:

HELD

- The appellant shifted the machine to another premises near to the factory and returned the same within 180 days. The movement of machine as well as semi-finished material from the factory and finished material from the rented premises are by challans. According to the appellant, the shifting was done only due to paucity of space, and that no job work was done. The appellant submitted that the movement of goods on challans were done as for job work though no job work was done. The Commissioner (Appeals) has discussed that the appellant has taken semi-finished goods outside their factory premises for completion of manufacturing process due to shortage of space in the factory, and the finishing work of stitching and packing is being done by the appellant without hiring or engaging another person for doing the work. That as no job worker is involved the provisions of rule (5) of Cenvat Credit Rules do not apply.
- The machine was removed from the factory to a nearby premises for finishing of the manufacturing process. Department does not have a case, that the movement of machine or that of semi-finished goods or finished goods were suppressed. According to the appellant they described it as job work as there was no other procedure prescribed. But that everything was done under challans. The fact that machine was used in a premises near to the factory is not disputed. So also it was used for connected process of manufacture. The process in these premises was carried out by the appellant themselves. The machine was used by appellants for the production of final products. Thus the activity of appellants in using the machine (capital goods) can be said to be part of its manufacturing activities of final products in its registered factory premises. There is no justification for denying credit.
- The fact that there is no suppression of facts on the part of the appellant as he intimated the department about removal of machine by proper documents, the Cenvat credit cannot be denied to the appellant.

Source: CESTAT, New Delhi BencH, Primo Pick N Pack Ltd. v. Commissioner of Central Excise & Service Tax, Bhopal

➲ **Event management services availed by advertising agency to procure advertising space in shows, etc. organized by such event managers, is eligible for input service credit in hands of such advertising agency**

Rule 2(1) of the Cenvat Credit Rules, 2004 - Cenvat Credit - Input service - Event Management Services - Period 2008-09 to 2010-11 - Assessee, an advertising agency, took input service credit of event management services - Assessee submitted that : (a) event management concerns conduct events likes shows, exhibitions etc for displaying exhibiting various consumer goods, (b) assessee obtained space for advertisement in such shows, exhibitions etc. by availing service of event management concerns and therefore, same was input service used for providing output service - HELD : Event management services availed by assessee is related to output service of providing advertisement services and eligible for credit - Denial of credit on ground that assessee was not registered for event management services is too flimsy and feeble - Hence, credit was allowed. [In favour of assessee]

Section 80, read with sections 76, 77 and 78 of the Finance Act, 1994 - Penalty - Not to be imposed in certain cases - Assessee, an advertising agency, paid service tax on commission taking 15 per cent as commission amount - Since, in eighteen cases, commission was higher than 15 per cent, assessee paid differential service tax on differential commission prior to issuance of notice and argued that same occurred by mistake, as normally commission was 15 per cent - HELD : Assessee has put forward a plausible explanation for failure to pay service tax - In view of reasonable cause for said failure, penalties were waived under section 80. [In favour of assessee]

Ms. Asmita A. Nayak and Ranjeet Ranjan, Advocates for the Appellant. S. Nunthuk, AR for the Respondent.

Source: CESTAT, New Delhi Bench, Shakun Advertising (P.) Ltd. v. Commissioner of Central Excise & Service Tax, Jaipur

CUSTOMS

Notifications / Circulars

➲ **All Industry Rates of Duty Drawback and other Duty Drawback related changes**

The revised All Industry Rates (AIR) of Duty Drawback has been notified vide Notification No. 110/2015-Customs (N.T.), dated 16.11.2015 which comes into force on 23.11.2015. These AIRs broadly take into account certain broad average parameters including, inter alia, prevailing prices of inputs, input output norms, share of imports in input consumption, the rates of central excise and customs duties, the factoring of incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, factoring incidence of duty on HSD/furnace oil, value of export goods, etc. Changes are highlighted below :

(a) The composite rates have been increased in many cases like frozen shrimps/ prawns (chp 3, 16), perfumed agarbatti (chp 33), finished/ lining leather (chp 41), leather hand bags/ wallet/ belts (chp 42), industrial gloves (chp 42), certain MMF yarn/ fabric (chp 54, 55), readymade garment made of cotton, wool & cotton

with lycra (chp 61, 62), made-ups of cotton/ MMF (chp 63), hand tools (chp 82), etc.
(b)Separate entries have been provided in the Drawback Schedule for Accelerated Freeze Dried (AFD) shrimps, lobster/crab, pasteurize tinned chilled crab meat (chp 3, 16), fish oil (chp 15), fish meal (chp 23), potassium chlorate (chp 28), leather carpets (chp 42), polypropylene mats (chp 46), cotton yarn of 100 or more counts (chp 52), belting fabrics (chp 54), filtration fabric made of polyester filament yarn/ polypropylene filament yarn/ polybutylene terephthalate (chp 54), suits, jackets & trousers (chp 61 & chp 62)- by trifurcating existing single entry, protective industrial wear made of aramid fibre/ modacrylic fibre/ cotton fibre (chp 62), glass art-ware/ handicrafts with silver coating (chp 70), aluminium conductor steel reinforced (chp 76), turbo charger (chp 84), tractor parts (chp 87), self-loading or self-unloading trailers and semi-trailers of a type used for agricultural purposes (chp 87), leg guards (chp 95).
(c) Rate has been provided for granulated slag (chp 26) and the description under heading 6802 has been reworded with respect to constituent material for tiles, handicrafts, etc.
(d) Certain products earlier having only customs rates, have been provided with composite rates. These include bicycle tyres (chp 40), bicycle tubes (chp 40), woven fabrics of other vegetable textile fibres/ woven fabrics of paper yarn (chp 53), headgear (chp 65), umbrellas/walking sticks etc. (chp 66), artificial flowers etc. (chp 67), acrylic blankets (chp 63).
(e) Iron and steel (chp 72 from heading 7207 onwards), articles of iron and steel (chp 73), tools and parts of base metal (chp 82), miscellaneous articles made from steel (chp 83), machinery and appliances (chp 84), electrical machinery (chp 85), rolling stock (chp 86) and ships (chp 89) have been provided with increased customs rate of 2%, with certain exceptions.
(f) Composite rates for wooden art ware (chp 44), papier mache (chp 48), yarn/ fabric/ garment of silk (chp 50, 61, 62), certain MMF yarn/ fabric (chp 54, 55), carpets (chp 57), brass artware/ articles (chp 74), certain sports goods (chp 95) etc. see a reduction.
(g) AIR has been fixed as Rs. 209.3/gm for gold jewellery /parts and Rs. 2790/kg for silver jewellery /articles.
(h) Rates on remaining of the erstwhile DEPB items are being aligned with residuary rates, except where higher rates were due.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-circulars/cs-circulars-2015/circ29-2015cs
Source: Circular No. 29/2015-Customs dated 16th November, 2015

➲ CBEC further amends Notification No 12/2012 -Customs dated 17.03.2012 so as to withdraw the TRQ of 15,000 MT for total imports of white butter, butter oil and anhydrous milk fat(AMF) at Nil import duty by omitting the said entry(S.No.9) vide Notification No. 52/2015-Cus,dt. 20-11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs52-2015

➲ CBEC amends Notification No. 10/2008 – Customs, dated 15th January 2008, so as to deepen the tariff concessions in respect of specified goods under the Comprehensive Economic Co-operation Agreement (CECA) between India and Singapore, when imported from Singapore vide Notification No. 53/2015-Cus,dt. 23-11-2015.
Read more at: http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs53-2015.pdf

➲ CBEC further amends Notification No. 12/2012-Customs dated 17.3.2012 so as to provide exemption from custom duties on all raw material and parts for use in manufacture of certain specified ships/vessels subject to actual user condition and also removing the requirement of manufacturing of ships/vessels in a custom bonded warehouse under the provisions of Section 65 of the Customs Act, 1962 for availing duty benefits vide Notification No. 54/2015-Cus,dt. 24-11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs54-2015

➲ CBEC amended notification No. 52/2003-Customs dated 31-03-2003 so as to enable EOUs to become eligible for duty exemption on raw materials/parts consumed in manufacture of certain specified ships/vessels and cleared to DTA, even if such ships/vessels are exempt from basic customs duty and central excise/CV duty vide Notification No. 55/2015-Cus,dt. 24-11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-tarr2015/cs55-2015

➲ Fixation of Tariff Value Notification amending Notification No. 36/2001–Customs (N.T.), dated the 3rd August, 2001 vide Notification No. 135/2015-Cus (NT),dt. 30.11.2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt135-2015

➲ CBEC imposed definitive anti-dumping duty on Carbon Black used in rubber Applications, originating in or exported from China PR and Russia for a period of five years vide Notification No. 54/2015-Cus (ADD), dt. 18-11-2015.

Read more at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-add2015/csadd54-2015

➲ **Central Government amends the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, namely Customs, Central Excise Duties and Service Tax Drawback (Second Amendment) Rules, 2015**

In the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995,-

(i) in rule 3, in sub-rule (1), in the second proviso, clause (v) shall be omitted;
(ii) in rule 6, sub-rule (4) shall be omitted;
(iii) in rule 7, -
(a) in sub-rule (3), -
• for the words, Where the manufacturer or exporter desires that he may be granted drawback provisionally, the words, Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the manufacturer or exporter desires that he may be granted further drawback provisionally shall be substituted;
• for the words applications made under that rule and the grant of provisional drawback, the words applications made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be substituted.

Source: Notification No. 109/2015-CUSTOMS (N. T.) dated: 16th November, 2015

Read more at: www.cbec.gov.in/htdocs-cbec/customs/cs-act/otifications/notfns-2015/cs-nt2015/csnt109-2015

➲ **Rate of exchange of conversion of the foreign currency with effect from 20th November, 2015**

Central Board of Excise & Customs determines the rate of exchange of conversion of the foreign currencies with effect from 20th November, 2015 relating to imported and export goods vide Notification No. 112/2015 - Customs (N.T.), 19th November, 2015.

Read the exchange rates at: http://www.cbec.gov.in/htdocs-cbec/customs/cs-act/notifications/notfns-2015/cs-nt2015/csnt112-2015

Case Laws

➲ **Imports made by assessee, himself, at another port may be regarded as identical goods for custom valuation**

In case of undervaluation of goods imported at Chennai port, imports of same goods made by assessee himself at Mumbai port may be regarded as 'identical/similar goods' and may be used to determine customs value of imports at Chennai.

Section 14 of the Customs Act, 1962 - Valuation of Imported Goods - Transaction Value - General - Assessee, having factory at Daman, made imports at Mumbai as well as Chennai - Chennai authorities alleged undervaluation on ground that same goods were imported at Mumbai port at higher value; and, accordingly, valued Chennai imports based on value of Mumbai imports - Assessee explained that imports at Chennai port were defective and without supplier's warranty and therefore, of lower price - HELD : To show that Chennai imports were defective/inferior and without warranty, assessee did not furnish contract in respect of Mumbai and Chennai imports for comparison - Mere photographs of goods could not be relied upon for comparison - Further, assessee could not substantiate why imports were made at Chennai despite factory being at Daman (near to Mumbai) - Therefore, department was right in valuing Chennai imports based on Mumbai imports in terms of Rule 8, read with Rules 5 and 6 of Valuation Rules, 1988 because Mumbai imports were identical/similar goods - Hence, demand was confirmed.[In favour of revenue]

Source: Case Law: Supreme Court of India, Commissioner of Customs (Sea), Chennai v. National Lamination Industries

➲ **Refund of capacity based excise duty can be claimed even if factory was closed for one day**

In context of capacity based excise duty, there is difference between 'temporary non-production for 15 days or more' and 'closure of factory'; in case of 'closure of factory' for even 6 days, assessee cannot be made liable to pay duty and if duty has already been paid, same is liable to be refunded back to assessee

Section 3A of the Central Excise Act, 1944, read with rules 10 and 16 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 - Charge/levy - Excise duty based on production capacity - Vide Notification dated 4-2-2011, government completely banned use of plastic pouches for packing of Pan Masala and Gutkha - Assessee applied for closure of factory and machines were sealed on 10-2-2011 - On 17-2-2011, Supreme Court clarified that ban would be effective from 1-3-2011 - Assessee applied for de-sealing and machines were de-sealed on 17-2-2011 - Owing to closure of factory during 11-2-2011 to 16-2-2011, assessee applied for refund of duty pertaining to 6 days - Department denied refund arguing 'abatement is allowed only if factory does not produce goods for 15 days or more' - HELD : Assessee's request for closure of factory owing to complete ban falls under first proviso to section 3A(2), read with rule 16 and therefore, there can be no duty for period of closure - It is not a case of non-production/abatement owing to temporary closure falling under rule 10 - Mere fact that factory had reopened subsequently on decision of Supreme Court cannot be used to deny benefit of 'closure of factory' - Hence, assessee was eligible for refund under rule 16. [In favour of assessee]
Circulars and Notifications : Notification No. 29/2008-CE(NT), dated 1-7-2008, Notification S.O.S. No. 249 (E) dated 4-2-2011

FACTS
- On complete ban on use of plastic pouches for packing of Pan Masala and Gutkha vide Notification dated 4-2-2011, assessee applied for sealing of machines, as they closed down their factory.
- Machines were sealed on 10-2-2011.
- On 17-2-2011, Supreme Court clarified that said notification would be effective from 1-3-2011.
- Accordingly, assessee applied for de-sealing and machines were

de-sealed on 17-2-2011.

- Owing to closure of factory during 11-2-2011 to 16-2-2011 (6 days), assessee applied for refund of duty pertaining to said period.
- Department denied refund on ground that abatement is allowed only if factory does not produce goods for 15 days or more.
- Assessee argued that there is difference between non-production for 15 days or more covered by proviso to section 3A(3) and closure of factory covered by first proviso to section 3A(2) and this case was covered by first proviso to section 3A(2) and therefore, closure of factory for mere 6 days is also eligible for pro rata benefit.

HELD

- Pan Masala (Packing Machine Capacity Determination & Collection of Duty) Rules, 2008 was framed in exercise of powers conferred by sub-sections (2) and (3) of section 3A of the Central Excise Act, 1944. It is clear from sub-section (1) of section 3A of the said Act that legislature introduced the provisions of section 3A to safeguard the interest of revenue to the extent of evasion of duty in regard to such notified goods, having regard to the nature of the process of manufacture or production of excisable goods. In terms of sub-section (2) of section 3A, the Central Government may issue notification to frame the rules for determination of annual capacity of production of the factory, to specify the factor relevant to the production of such goods, which is deemed to be produced by use of such factor and to provide for determination of the production capacity of the factory, in which such goods are produced on the basis of such factor. Sub-section (3) of section 3A is a charging section that the duty of excise on notified goods shall be levied, at such rate, on such factor relevant to the production, as specified by notification issued by the Central Government and collected in such manner as may be prescribed. Proviso to sub-section (3) of section 3A extended the benefit of abatement of duty in respect of non-production of goods during any continuous period of 15 days or more.
- On perusal of the Rules 2008, it is noted that as per rule 4, the relevant factor to the production of notified goods, shall be number of packing machines in the factory of the manufacturer. Rule 6 of the said rules envisages the determination of annual capacity of production, insofar as a manufacturer of notified goods shall declare the number of packing machines available in their factory in detail in the prescribed Form as mentioned therein to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, who shall, after making such enquiry as may be necessary including physical verification, approve declaration and determine and pass such order concerning annual capacity of production. Rule 8 of the said rules provides alteration in number of operating packing machines. Second Proviso to rule 8 states that in case of non-working of any installed packing machines during the month for any reason whatsoever, the same shall be deemed to be operating packing machines for the month. Duty payable for a particular month, as per rule 7 of the said rules, shall be calculated by application of the appropriate rate of duty specified in the notification, to the number of operating packing machines in the factory.
- Rule 9 of rules 2008 is a machinery provision, manner of payment of duty and interest. The monthly duty shall be paid by the 5th day of the same month and intimation shall be filed to the jurisdictional Superintendent of Central Excise before 10th day of the same month. 4th proviso to rule 9 provides that in case a manufacturer permanently discontinues manufacturing of goods of existing retail sale price or commences manufacturing of goods of a new retail sale price during the month, the monthly duty payable shall be re-calculated on pro rata basis and in case, the amount of duty so re-calculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by 20th of the following month. Proviso to sub-section (3) of section 3A had extended the benefit of abatement of duty, corresponding to rule 10 of the said rules 2008.
- Rule 16 of the said rules stipulates despite anything contained in these rules, where a manufacturer permanently ceases to work in respect of all the machines installed in the factory and who has filed an intimation for surrender of registration with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, for this purpose, the duty payable by him for the month shall be re-calculated on pro rata basis and if there is any excess payment, it shall be refunded to a manufacturer by 20th day of the following month.
- On reading of 4th proviso to rule 9 and rule 16 of Rules 2008, it is clear that there are provisions for refund of excess payment of duty in certain cases and the contention of the revenue that there is no provision for refund of duty, cannot be accepted.
- There is a distinction between the rule 10 and rule 16 of the said rules. The claim of abatement under rule 10 will apply, in case a factory did not produce the notified goods during any continuous period of 15 days or more and followed the procedure as mentioned therein. On the other hand, rule 16, starts with the words 'Notwithstanding anything contained in these rules', make it clear that nevertheless all the provisions in rules 2008 when a manufacturer permanently ceases to work in respect of all the machines installed in the factory and filed an intimation for surrender of registration with the Deputy Commissioner of Central Excise, the monthly duty payable shall be recalculated on pro rata basis and the excess amount paid by them shall be refunded. The expressions a manufacturer permanently ceases to work in respect of all the machines installed in the factory in rule 16 have wide amplitude. This should be read with the broad and comprehensive meaning to cover the situation, other than rule 10 of non-production of goods for temporary period. To sum up, rule 10 extended abatement in case of non-production of goods for certain period. But, rule 16 would apply in case, a manufacturer closed down his factory in respect of all the machines installed in the factory.
- The other aspect is that the use of words operating packing machine in rules 5, 6(3), 7 and 8 would indicate it that the duty for a particular month shall be payable on the basis of number of

packing machines operating in the factory. Second Proviso to rule 8 stipulates that in case of non-working of any installed packing machine, for any reason whatsoever, the same shall be deemed to be operating packing machine for the month. The benefit under rule 10 would be extended in case non-working of all operating packing machines for certain period. But, in case a manufacturer cease to work permanently and all the machines were sealed by the Superintendent of Central Excise on the basis of intimation given by them, resulting to none of the packing machines would be operating and the duty if any paid, should be refunded.

- In the present case, it is revealed from the letter dated 8-2-2011 of the assessee, as referred above, that the assessees had given intimation to the Assistant Commissioner of Central Excise that they closed down their factory due to the notification issued by the Ministry of Environment & Forest, Government of India, banning the use of plastic pouches with immediate effect. There is no dispute that the Superintendent of Central Excise was acted upon on the basis of intimation by letter dated 8-2-2011 and sealed the machine on 10-2-2011. Thus, on 10-2-2011, the assessee closed down their factory. The intimation given by the assessee to the Assistant Commissioner of Central Excise by letter dated 8-12-2011 would show that the assessee permanently ceases to work in respect of all the machines installed in the factory and it would be followed for surrender of registration. Incidentally, by order dated 17-2-2011, the Supreme Court directed that the ban will be effective from 1-3-2011. As per the direction of Supreme Court, the assessee re-opened the factory on 17-2-2011. The jurisdictional Superintendent of Central Excise, de-sealed the machines. In such a peculiar facts and circumstances of the case, the refund claim filed by the assessee would come within the purview of rule 16 of rules 2008.
- The Authorised Representative for the revenue, during the course of hearing, submitted that the assessee re-opened the factory on 17-2-2011 and therefore, it cannot be treated as permanently ceases to work. They have also not surrendered registration. It is difficult to accept the contention of the Authorised Representative for the revenue, as the assessee re-opened the factory and therefore, they are not eligible for refund of duty. There is no provision in rules 2008 that after declaring permanently ceases to work, the manufacturer would not be entitled to re-open his factory. Rule 16 would cover the situation, where a manufacturer filed an intimation to the Deputy Commissioner of Central Excise intimating permanently ceases to work for surrender of registration. There is no bar on re-opening of the factory in rules 2008, which is a subsequent event. Further, the assessee in its letter dated 8-2-2011 categorically stated that they were giving intimation of closure of the factory as required under the rules, would be implied surrender of registration. It is already observed that in the present case, taking into account of order of Supreme Court, notification of Ministry of Environment and Forest, and the letter dated 8-2-2011 of the assessee to close down their factory and further consequence of surrender of registration may not be followed due to subsequent order dated 17-2-2011 of Supreme Court, the assessee should not be penalized by rejecting the refund claims, for the reason, they had re-opened the factory and such reading of the said provision, would be totally unjust, improper and against all cannons of natural justice and fair play. So, in such peculiar facts and circumstances of the case, the assessee is entitled to refund of the duty for closing down of their factory.
- The appeal filed by the assessee is allowed.

Source: CESTAT, Ahmedabad Bench, Dhariwal Industries Ltd. v. Commissioner, Central Excise & Service Tax, Vadodara-I

SERVICE TAX

Notifications / Circulars

➲ Swachh Bharat Cess

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government exempted all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5 percent. of the value of taxable services:Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994. This notification shall come into force from the 15th day of November, 2015.

Source: Notification No. 22/2015-Service Tax dated: 6th November, 2015

Read more at: http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2015/st22-2015

➲ Composition rate for Swachh Bharat Cess as applicable to ST under sub-rules 7, 7A, 7B, 7C of rule 6 of STR, 1994

The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015,

and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

Source: Notification No. 25/2015-Service Tax dated: 12th November, 2015
Read more at: http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2015/st25-2015

➲ **Failure to pay ST, penalty is to levied on the total amount of service tax determined by Central Excise Officer**

For computing reduced penalty of 25 per cent in section 78, 'service tax assessed or determined under section 73(2)' is taken, which shall include both : (a) sums paid prior to issuance of notice and appropriated in adjudication order; as well as (b) further sums confirmed as payable in adjudication order

Section 78, read with section 73, of the Finance Act, 1994 - Penalty - For evasion of duty/tax - Out of service tax of Rs. 4.3 lakhs, assessee paid Rs. 3.3 lakhs prior to issuance of notice and balance Rs. 1 lakhs with interest and penalty of Rs. 25,000 (25 per cent of Rs. 1 lakh) within 30 days from adjudication order - Assessee claimed closure of proceedings - Department argued that penalty would be Rs. 1,07,500 (25 per cent of entire Rs. 4.3 lakh) and must have been paid within 30 days - Assessee argued that, for computing 25 per cent penalty, service tax paid prior to issuance of notice would be excluded - HELD : Even amount paid before issuance of notice is assessed or determined vide adjudication order and appropriated towards sum payable - Demand determined by Central Excise Officer was Rs. 4.3 lakhs and Rs. 3.3 lakhs paid prior to issuance of notice was appropriated - Hence, for computing 25 per cent penalty, service tax assessed or determined under section 73(2) viz. Rs. 4.3 lakhs would be taken - Hence, penalty demanded by department was affirmed. [In favour of revenue]
Section 78 of the Finance Act, 1994, read with section 11AC of the Central Excise Act, 1944 and section 114A of the Customs Act, 1962 - Penalty - For evasion of duty/tax - Where assessee had earlier taken registration and later surrendered on ground that his gross receipts were less than registration limit and later, it would found that receipts were, in fact, much higher, assessee was guilty of intention to evade tax - Assessee cannot plead bona fide belief or mistaken belief, as he was aware of provisions of law and despite receipts being in excess of registration/exemption limit, he did not pay service tax.

Source: Case Law: CESTAT, Allahabad Bench, Amit Pandey Physics Classes v. Commissioner of Central Excise & Service Tax, Kanpur

➲ **Uplinking of own TV channels to satellite is taxable under broadcasting services**

Section 65(16), read with section 65(104c) of the Finance Act, 1994 - Taxable services - Broadcasting Services - Stay Order - Under permission from Broadcasting Ministry, assessee was uplinking its own TV channels and earning 'allotment of airtime and uplink income', which was booked as 'broadcasting income' in Profit & Loss Account - Department demanded service tax under Broadcasting services - Assessee argued that, as per Circular dated 9-7-2001, uplinking of programme to satellite is done through BSNL or other earth stations located in India/abroad and uplinking agencies are not broadcasting agencies; therefore, assessee's activity could be taxed only under Business Support Services from 1-5-2006 - HELD : Since assessee was uplinking its own TV channels and had earned 'airtime and uplinking charges', same was prima facie taxable under Broadcasting services - Pre-deposit was ordered in part. [In favour of revenue]

Section 73, of the Finance Act, 1994, read with section 11A, of the Central Excise Act, 1944 and Section 28 of the Customs Act, 1962 - Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Invocation of Extended Period of Limitation - Stay Order - Where audit party, during their visit, could detect collection of broadcasting charges only after examining records, prima facie, there was suppression and extended period was invocable. [In favour of revenue]

Section 37B, of the Central Excise Act, 1944, read with section 83, of the Finance Act, 1994 and section 151A of the Customs Act, 1962 - Circulars/Instructions to Departmental Officers - Stay Order - Assessee claimed that notice was served by affixing outside office premises on Sunday which is not a valid service under section 37C - HELD : Section 37C(l)(b) provides that if order cannot be served in manner provided in clause (a), it shall be served by affixing a copy thereof to some conspicuous part of factory or office premises - Hence, service of notice was, prima facie, valid. [In favour of revenue]

Circulars and Notifications : Circular, dated 9-7-2001

N. Viswanathan, Advocate for the Appellant. Ms. Indira Sisupal, AC (AR) for the Respondent.

Source: Case Law: CESTAT, Chennai Bench, Coxswain Technologies Ltd. v. Commissioner of Service Tax, Chennai

➲ **Abatement on construction services available even if free supplies of material not included in gross amount**

Service Tax : Construction work of shops for local authority, which were to be allotted to unemployed people under a state sponsored scheme, is liable to service tax;
Service Tax : In case of construction services, abatement cannot be denied even if free supplies of materials by service recipient were not included in gross amount

Section 65(25b), read with section 65(30a) of the Finance Act, 1994 - Taxable services - Commercial or Industrial Construction Services - Assessee carried out construction work of shops for local authority, which were to be allotted to unemployed people under a state sponsored scheme - Department denied abatement to assessee on ground that free supplies of materials by service recipient being local authority were not included in gross amount - HELD : In view of judgment in Bhayana Builders (P.) Ltd. v. CCE [2013] 42 GST 76/38 taxmann.com 221 (New Delhi), abatement could not be denied even if free supplies of materials by service recipient were not included in gross amount - Moreover, Commissioner (Appeals) found, as a matter of fact, that there were no free supplies - Hence, abatement was allowed. [In favour of assessee]

Section 80, read with sections 76, 77 and 78 of the Finance Act, 1994 - Penalty - Not to be imposed in certain cases - Assessee carried out construction work of shops for local authority, which were to be allotted to unemployed people under a state sponsored scheme - Assessee did not pay service tax thereon and claimed that it was under bona fide belief that service tax was not leviable on work carried out for local Government and hence, penalties were to be waived - Commissioner (Appeals) waived penalty on ground that issue was of interpretation of law and assessee had entertained bona fide belief - HELD : In view of small amount involved and since Revenue could not counter basis of conclusion of Commissioner (Appeals), waiver of penalty was upheld. [In favour of assessee]

Circulars and Notifications : Notification No. 15/2004-ST, Notification No. 1/2006-ST

Source: Case Law: CESTAT, New Delhi Bench, Commissioner of Central Excise & Service Tax, Raipur v. Arora Construction

SEBI

Notifications / Circulars

➲ **Format for quarterly holding pattern, disclosure norms for corporate governance report and manner for compliance with two-way fungibility of Indian Depository Receipts (IDRs)**

In terms of sub regulation (1) of Regulation 69 of Securities and Exchange Board of India (Listing Obligations and Disclosure requirements) Regulations, 2015 ("Listing Regulations"), listed entity shall file with the stock exchange the Indian Depository Receipt (IDR) holding pattern on a quarterly basis within fifteen days of end of the quarter in the format specified by SEBI. Further, sub regulation (1) of regulation 72 of Listing Regulations requires the listed entity to comply with the corporate governance provisions as applicable in its home country and other jurisdictions in which its equity shares are listed and sub regulation (2) of regulation 72 requires such a listed entity to submit to the stock exchange, a comparative analysis of the corporate governance provisions that are applicable in its home country and in the other jurisdictions in which its equity shares are listed along with the compliance of the same vis-à-vis the corporate governance requirements applicable under regulation 17 to regulation 27, to other listed entities.

Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446701154442.pdf

➲ **Format for Business Responsibility Report (BRR)**

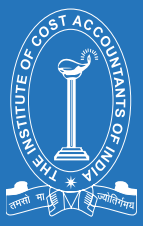
Pursuant to notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), Circular dated August 13, 2012 was rescinded. As per clause (f) of sub regulation (2) of regulation 34 of Listing Regulations, the annual report shall contain a business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board. Accordingly, listed entities shall be guided by the format as per Annexure I. Certain key principles to assess the fulfillment of listed entities and a description of the core elements under these principles are detailed at Annexure II. Those listed entities which have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines but only furnish the same to their stakeholders along with the details of the framework under which their BR Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.

Source: Circular - CIR/CFD/CMD/10/2015, November 04, 2015

Read the annexures at: http://www.nseindia.com/content/equities/SEBI_Circ_0411201502.pdf

➲ **Streamlining the Process of Public Issue of Equity Shares and Convertibles vide Circular CIR/CFD/POLICYCELL/11/2015 November 10, 2015**

As a part of the continuing endeavor to streamline the process of public issue of equity shares and convertibles, it has been decided, in consultation with the market participants -
(i) to reduce the time taken for listing after the closure of issue to 6 working days as against the present requirement of 12 working days, and (ii) to broad-base the reach of investors by substantially enhancing the points for submission of applications.
In this regard, necessary amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 have already been notified.
Read more at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1447148033366.pdf



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata 700 016
Tel: +91 33 2252 1031/1034/1035/1492
Fax: +91 33 2252 7993/1026/1723
Email Id: cma.ebulletin@icmai.in

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road,
New Delhi – 110 003
Tel: +91-11-24622156/57/58, 24618645
Fax: +91-11-43583642

OFFICE OF RESEARCH & JOURNAL
CMA Bhawan, 4th Floor
84, Harish Mukherjee Road
Kolkata 700 025, India
Board: +91-33-2454 0086/87/0184
Fax: +91-33-2454 0063