

Indirect Tax Newsletter

INSIDE THIS ISSUE

- 1 Service Tax
- 2 Central Excise
- 3 Customs and FTP
- 4 VAT

Contents

Notifications/Circulars

Service Tax.....	1
Central Excise	1

Judgments

Service Tax	3
Cenvat Credit.....	5
Central Excise.....	6
Customs.....	6

Notifications / Circulars

Service Tax

Notification
Changes made in ST-3
form for Swachh Bharat
Cess

The Central Government introduced Service tax (Second Amendment) Rules, 2016 to further amend Service Tax Rules, 1994. As per the said amendment in Part B, C, D, G of Form ST-3, columns consequent to introduction of Swachh Bharat Cess have been added. The said amendment will come into force on the date of their publication in Official Gazette.

Notification No. 20/2016-ST dated 08-03-2016

Central Excise

Notification
Effective Date notified for
rules relating to removal
of goods at concessional
duty

The Central Government notified 16.03.2016 as the date from which Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016 will be effective. Further the requirement of submission of security for availing the benefit under Notification No. 20/2016- Central Excise (N.T.) dated 01.03.2016, is being done away with.

Notification No. 22/2016 – CE(NT) dated 15-03-2016

Circular
Valuation of imported Set top boxes under Section 4 of the Central Excise Act, 1944

CBEC clarified that judgement of Hon'ble Tribunal in case of *M/s Bharti Telemedia Ltd. Vs Commissioner of Customs (Import), NhavaSheva* reported as [2016 (331) E.L.T. 138 (Tri.-Mumbai)], wherein it has been held that one of the conditions to be met for CVD to be levied on Retail Sale Price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods, may be followed for assessment of CVD on imported STBs, where the circumstances are identical.

Circular No. 1020/8/2016- CX dated 11-03-2016

Customs

Notification
Effective Date notified for rules relating to removal of goods at concessional duty

The Central Government notified 16.03.2016 as the date from which Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 will be effective. Further the requirement of submission of security for availing the benefit under Notification No. 32/2016-Cus (N.T.) dated 01.03.2016, is being done away with.

Notification No. 39/2016 - Cus (N.T.) dated 15-03-2016

Notification
The India- ASEAN Trade Agreement Rules notified

The CBEC notified The Indian- ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016 with effect from 04.03.2016.

Notification No. 37/2016 - Cus (N.T.) dated 04-03-2016

Circular
Clarification regarding other persons (co-noticees) used in sub-section (2) and sub-section (6) of the section 28 of the Customs Act, 1962

The provision of deeming conclusion of proceedings in Section 28 is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. It has been clarified that only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect.

Circular No. 11/2016-Customs dated 15-03-2016

Circular
Dispensing of Customs Baggage Declaration Form for domestic passengers

The domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage declaration form.

Circular No. 08/2016- Customs dated 08-03-2016

Circular
Clarification with regard to classification of Wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver

Wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver were classifiable under CTH 8525 50 50. In the Finance Bill, 2016 this tariff line has been omitted. Tariff heading 8518 inter-alia covers all kinds of microphones including Wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver. Therefore, consequent to deletion of tariff line 8525 50 50, it is clarified that all microphones including Wireless microphone sets/systems consisting of one or more wireless microphones and a wireless receiver are classifiable under tariff item 8518 10 00.

Circular No. 09/2016- Customs dated 11-03-2016

Circular
Withdrawal of restriction on denomination of Indian Currency Note carried on Foreign going vessels

As per revised guidelines issued by RBI, no restrictions are prescribed on denomination of Indian currency, carried by an Indian traveller or Captain of a Ship. In the light of the revised RBI guidelines, Board has decided to withdraw the restriction on denomination of Indian currency imposed vide earlier Circular No. 51/1999 dated 12.08.1999

Circular No. 7/2016- Customs dated 07-03-2016.

Judgments

Service Tax

A show cause notice is not an order amenable to be challenged under the Writ Jurisdiction of the High Court under Article 226 of the Constitution of India

In this case, the Show Cause Notice dated 15.10.2015 was issued to the Petitioner in which it was alleged that the petitioner was liable for payment of service tax while they contended that they were service recipients. The Petitioner moved the High Court asking the court to set aside the SCN citing the ratio laid down by the Apex Court in *Union of India v. Vicco Laboratories* 2007(218) ELT 647 (SC) in which it held that where a show cause notice is issued either without jurisdiction or in an abuse of process of law, the writ court would not hesitate to interfere even at stage of issuance of show cause notice. The Court dismissed the petition and held that the SCN is not an order passed by the first respondent and that the Petitioner should file their explanation and produce necessary documents to substantiate their case so that the Respondent is in a position to decide the matter in accordance with law.

Lanco Tanjore Power Company Ltd. (Formerly Known As Aban Power Company Ltd.) Versus Commissioner Of Service Tax-II 2016 (3) TMI-628 - Madras High Court

The *ejusdem generis* principle would not confine the meaning of “process” as given in Section 65(105) (108) Finance Act, 1994 only to physical or chemical

In this case, it was held that certification (by the appellant) of any organization would require undertaking physical process of inspecting their processes, equipment/ tools, if any, required for conducting such processes and this activity clearly falls within the ambit of *technical inspection and certification agency service*, defined in Section 65(105)(108)/(109)(zzi) *ibid*.

Quality Council of India Versus CC, New Delhi 2016 (3) TMI 404 - CESTAT NEW DELHI

Representational services provided by C.A. before the various authorities was an activity covered under the Notification No. 25/2006 dated 13/7/2006

In this case, the applicant provided services in the capacity of a firm of Chartered Accountants to recipients located outside India. The Revenue alleged that the applicant was engaged in the activity of *Management Consultancy Service*. The Tribunal held that the appellant rendered representational services on behalf of their client by appearing before the various Authorities to defend the service recipient and this activity was covered under the Notification No. 25/2006 dated 13/7/2006 and therefore the applicant is not liable to pay service tax.

M/S BSR& Co. Versus CCE & CST (Adj.) , New Delhi 2016 (3) TMI 576 - CESTAT New Delhi

Tribunal has no power to review its own order

In this case, Appellant filed rectification of mistake (ROM) application on 9.10.2015 against the Tribunal's Final Order dated 17/3/2015. They pleaded that the finding that appellants had not paid the tax may be corrected and mistake be rectified and penalty under Section 78, Finance Act, 1994 be waived. The Tribunal dismissed the ROM application and held that there isn't any apparent mistake on the face of record for which rectification is sought and that Appellants seeking to set aside penalty would amount to review of the order. It reiterated that it has no power to review its own order as has been held by various High Courts and the Hon'ble apex Court in the case of *CCE Belapur Mumbai Vs RDC Concrete (India) P. Ltd.- 2011 (270) ELT 625 (SC)*.

Coral Crest Builders Versus Commissioner of Central Excise, Coimbatore 2016 (3) TMI 577 - CESTAT CHENNAI

CA and Legal services qualify as legitimate input services for authorized operation of SEZ.

In this case Tribunal allowed refund on input services of Company Secretary, Chartered Accountant, Security, Legal Consultancy, ITS and GTA used for acquisition of land by SEZ Developers as these were considered as services used for authorized operation of SEZ.

AMRL Hitech City Ltd. Versus Commissioner of Central Excise & ST Tirunelveli 2016 (3) TMI 673 - CESTAT CHENNAI

Mere agreement of sale does not create any interest in the property till the execution of sale deed, thus no service till then

In this case, the Appellants were registered with the Department for providing *construction service* and entered into a joint venture with the land owners. As per the agreement the Appellants were to bear the construction expenses in lieu of which they got share of ownership of 50% of the total construction area. The Revenue demanded service tax for the 50% of the complex assigned to the land owners. The Tribunal set aside the order of the Revenue and held that the execution of sale deed transfers the ownership of their property to the ultimate owner hence, any services provided by seller till the execution of such sale deed will be in the nature of self-service with no liability to service tax. It further held that in the present case there is nothing on record to indicate that there is a service provider and recipient relationship before such transfer of constructed building to the possession of land owner.

M/ Bairathi Developers Pvt. Ltd. Versus CCE, Jaipur 2016 (3) TMI 715 - CESTAT NEW DELHI

CENVAT CREDIT

Infrastructure Companies are not eligible for credit of duty on towers and cabins if they are providing telecommunication service as output service.

In this case the question was whether appellants are entitled to avail CENVAT credit on telecom towers, shelters and parts for remittance of service tax on the taxable services of "*Business Auxiliary Service*" (BAS) or "*Support Services of Business or Commerce*" (BSS) as the case may be, to telecom service providers. The Tribunal upheld the decision of the Bombay High Court in *Bhart iAirtel Ltd. vs. CCE, Pune - III* reported in 2014 (35) S.T.R. 865 (Bom.) which held the above to be immovable property. It further held that consequences of the application of the above High Court's rulings, would not be the same for both passive and active infrastructure providers, whether of "BAS" or "BSS" in one case and "telecom service" in the other.

M/s Tower Vision India Pvt Ltd Versus Commissioner of Service Tax 2016 (3) TMI 165 - CESTAT NEW DELHI (LB)

Drawback benefit available on re-export of defective inputs imported earlier

In this case the Tribunal held that if the inputs which have been imported have been re-exported on quality consideration to the foreign based suppliers, then the benefit of drawback for re-export is available under Section 74. Reliance on *M/s. KCP Ltd. Versus Commissioner of Central Excise, Chennai - 2013 (9) TMI 98 - SUPREME COURT* is misplaced as the facts in that case were on an entirely different footing. In that case the objection of the department for denial of credit was on account of non-use of the inputs while in the instant case the imported inputs were directly used and found to be defective.

M/s. MRF Ltd. Versus Central Excise and Service Tax 2016 (3) TMI 439 - CESTAT CHENNAI

CENTRAL EXCISE

Revenue cannot charge duty on value addition outside the factory of clearance on account of certain processes not amounting to manufacture

In this case, the Appellant was manufacturing jeeps and selling them after getting bullet proofing done. They were paying excise duty on the value of jeeps only as bullet proofing was done after removal of jeeps from factory. The question of law raised in the Supreme Court was whether the value addition made to the base vehicle viz. 'the Jeep', by way of bullet proofing, has to be added while arriving at transaction value for the purpose of excise duty. It upheld the order of the Tribunal (2013-TIOL-169-CESTAT-MUM) which had held that in such circumstances, the cost of bullet proofing could not be added to arrive at the transaction value.

Commissioner Of Central Excise & Customs Vs M/S Mahindra & Mahindra Ltd 2016-TIOL-29-SC-CX

Imposition of equivalent penalty under Section 11AC is not justified if Assessee was acting under bonafide belief

In this case the Appellants were supplying goods(with MRP) free to their distributors but did not pay the duty on such free supplied goods on the ground that this was 'quantity discount' relying upon the decision of the CESTAT Bangalore in the case of *Vinayaka Mosquito Coil Mfg. Co. Vs CCE Bangalore - 2004 (174) ELT 107 (Tri-Bang)*. Revenue issued SCNs demanding duty along with interest and imposed equal amount of penalty under Section 11AC of the Central Excise Act, 1944. The Tribunal held that as the issue at hand was under dispute at the time of non-payment of duty and was finally settled only later by the decision of the Larger Bench in the case of *Indica Laboratories Pvt. Ltd 2007 (213) ELT 20 (Tri-Ahmd)*, imposition of equivalent penalty under Section 11AC is not justified as Appellant were acting on bonafide belief.

M/s Saga Laboratories And M/s Elite Phama Pvt. Ltd. Versus Commissioner, C. Ex. & S. Tax, 2016 (3) TMI 400 - CESTAT AHMEDABAD

CUSTOMS

Principles of Natural justice can be read into a provision, unless applicability of such principles is expressly or impliedly excluded

In this case Respondents were Custom Brokers under the jurisdiction of Chennai Customs Zone. The Appellants prohibited the Respondents from working in any section of the Customs Commissionerate and Customs station Under Regulation 23 of the Customs Brokers Licensing Regulations, 2013, under which the Commissioner of Customs can prohibit any custom broker from working in any section or sections and there is no need to issue any show-cause notice and conduct an enquiry. The Court held that principles of natural justice still apply as these have not been excluded from Regulation 23. The Court thus set aside the prohibition order passed and remanded the matter back to the Appellants to proceed in accordance with law after giving show- cause notice to the Respondent.

The Commissioner of Customs and Ors. Versus M/s. Daniel and Samuel Logistics Pvt. Ltd. 2016 (3) TMI 609 - MADRAS HIGH COURT

The DGFT under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992 has the power to review individual cases decided by adjudicating authorities which are also subject matter of appeals

In this case the Petitioner contended that the DGFT has no jurisdiction to decide the review applications filed at the instance of DRI under Section 16 of the Foreign Trade (Development and Regulation) Act, 1992. The Court held that Section 16 confers very wide powers of review upon the Director General. It dismissed the petition stating that the DGFT has full power to deal with an application filed by DRI and this power can be exercised either suo motu or "otherwise".

Pan Parag India Ltd., Kothari Product Ltd. Versus Director General of Foreign Trade & Another 2016 (3) TMI 660 - DELHI HIGH COURT

Writ Petition is filed in public law remedy and the remedy under Article 226 of the Constitution cannot be invoked for resolution of a private law dispute

In this case the Petitioner was an off dock Container Freight Station, which provided facilities for storing Containers. The Petitioner sought the permission of the 1st respondent to auction the goods. The 1st Respondent denied the auction stating that the 2nd Respondent had paid the Customs duty and hence the goods cannot be included in the Lot for fresh auction. The Court dismissed the Writ on Merits and held that the Petitioner cannot invoke Article 226 of the Constitution seeking a direction against the 1st respondent and that once the customs duty was realized, the goods cannot be included in the Lot for fresh auction.

M/s. APM Terminals India Private Limited Versus The Assistant Commissioner of Customs (Un-cleared Cargo Cell) ; M/s. Devmata Exim Pvt. Ltd., M/s. Nexus Electro Steel Limited, 2016 (3) TMI 611 - MADRAS HIGH COURT

Associated Entities

Corporate India Advisors LLP

ARX Bizness Advisors LLP

Arihant Advisers

MUMBAI

Sanjay Lunia

sanjay@cia-llp.com

Rohit Shah

Rohit@cia-llp.com

Phone: 022- 26830329

DELHI

Rohini Aggarawal

rohini@cia-llp.com

Vipin Jain

Vipin@cia-llp.com

Karuna Sharma

karuna@arxadvisors.in

Phone: 011-45502880

About CIA

CIA is an indirect tax specialist firm. CIA is run by eminent professionals having a niche experience in all realms of indirect taxes in leading multinational consulting firms. The services comprises of Service tax, Central Excise, Foreign Trade Policy, Customs, Value Added Tax, Central Sales Tax, Anti-dumping / Subsidy Measures and Goods and Services Tax. CIA has Wide spectrum of network on PAN India basis and provides best value for money proposition. CIA leverages upon its strong knowledge base, research and professionals with distinguished background

For Private Circulation Only

CIA does not assume any responsibility for the information given under the document. While every effort has made to avoid errors or omissions in this publication, it is suggested that to avoid any doubt the reader should cross-check all the facts, law and contents of the publication with original Government publication or notification or judgment. CIA neither accepts nor assumes any responsibility or liability for any act undertaken by any reader of this publication in whatsoever manner.