

Import of Vessels -Customs Procedure to be followed

TIOL-DDT 1454

28.09.2010

Tuesday

BOARD, in a recent instruction, stated,

++ Instances have been brought to notice of the Board that certain ship-owners of Indian flag vessels have imported vessels, which are exempt from payment of duty, without filing Bill of Entry and Import General Manifest (IGM).

++ At the time of their import into India the status of these vessels, which are meant for plying on Indian ports as coastal vessels or as Indian flag foreign going vessels etc., is the same as that of any other class of imported goods.

++ Section 2 (25) defines "imported goods" as any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

++ Further, "goods" has been defined under section 2 (22) as to include, inter alia, vessels, aircrafts and vehicles. Hence, these are subject to the same procedure i.e, filing of IGM, Bill of Entry, payment of duty, if any etc., as is applicable in case of other imported goods.

++ Accordingly, it is instructed that the requirement for filing of these documents should be complied with even in cases, where goods are exempt from payment of any duty. Therefore, the jurisdictional Commissioners should review the situation, and take appropriate action for past cases, including adjudication, if warranted. Further, Chief Commissioners may make a reference to the Board for appointment of a common adjudication authority, if so desired, for these cases.

Now, whenever a ship reaches the Indian shores, a Bill of Entry has to be filed and this should apply to not only ships flying the Indian Flags but foreign ships coming with cargo and going back after a few days-they are also technically ships imported. For example, if I drive a truck from a foreign Country loaded with goods, into India, not only the goods, but the truck is also liable to Customs Duty and procedures. The truck logic applies to ships also. And of course aircrafts too!

Now the Board wants to catch all the offenders and adjudicate the cases-a bonanza for the lawyers and consultants. Ships will be seized, confiscated, redemption fine imposed and cases will travel right up to the Supreme Court.

A ship is not a small packet which you can smuggle in your pocket and they had to invariably land in those ports under the control of the Customs. So if they had gone without following the Customs procedures, it is because of the ignorance of the Customs as much as that of the importers.

Our Customs Officers' knowledge of ships is beyond the seas. Sometime back Customs officers in Mumbai and Kakinada had asked importers of ships to produce 'installation certificate'. In [DDT 1322-19-03-2010](#), we had to ask,

How on earth can a ship be installed? And where on earth are they expecting a ship to be installed-in the Custom House?

DGFT had to request the Customs Authorities not to insist on installation certificates for such floating objects. [

[DGFT Policy Circular No. 26/2009-2014, Dated: March 17, 2010](#)]

A similar issue had arisen in Sri Lanka a few years ago when the Customs wanted to collect duty on the ships carrying goods into Sri Lanka. The Sri Lanka Supreme Court ruled that it cannot hold that a vessel arriving in the ordinary course of navigation carrying goods onboard falls

within the definition of 'imported goods'.

In India also, the case will go to the Supreme Court.

Why should the Government create and promote litigation? After all, the Government does not want to collect any duty-it wants to only adjudicate-means confiscation, redemption fine and Penalty. AND LITIGATION FOR THE NEXT TWENTY YEARS!

[CBEC F.No. 450/79 /2010-Cus.IV Dated : September 23, 2010](#)

FTP - 2009-14 - CBEC Explains

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Annual Supplement to the Foreign Trade Policy (FTP), 2009-2014 and the Handbook of Procedures (Vol.I) have been notified by the DGFT vide notification No. 1(RE-2010) / 2009-2014 dated 23rd August 2010 and Public Notice 1(RE-2010)/2009-14 dated 23rd August 2010 respectively.

The Department of Revenue has since issued [notification Nos.88/2010-Cus, 89/2010-Cus & 90/2010-Cus, 91/2010-Cus, 92/2010-Cus, 93/2010-Cus & 96/2010-Cus](#) to implement the Policy and the Handbook.

The CBEC has in a Circular explained the salient features of the changes.

[CBEC CIRCULAR NO. 38/2010-CUS, Dated : September 27, 2010](#)

CBDT Acquires Administrative Powers - Work of Ad Sections Transferred to HRD Directorate

IN a rare administrative shake-up, the CBDT has acquired all administrative powers under its direct control. The two most powerful Boards in India CBEC and CBDT, responsible for collecting Lakhs of Crores of taxes, work in strange conditions. There is a Revenue Secretary under whom there is the Department of Revenue Head Quarters under an Additional Secretary and there are the two Statutory Boards, CBEC and CBDT, whose Members and Chairmen are Special Secretaries to the Government of India. In the Boards, there are various administrative sections headed by a Joint Secretary, Administration. The staff in the administrative section are from the Central Secretariat and are not strictly under the control of the Board as they belong to a different service.

Now all this is going to change in the CBDT-all the administrative work is transferred to the Directorate of Income Tax, Human Resource Development, to

rationalize and ensure unambiguous functional responsibility. The Directorate has only officers from the Income Tax Department and the Board will have unambiguous

control over them. Some of the subjects transferred to the Directorate are, Processing of Postings and Transfers, Deputation / assignments outside cadre in India and abroad, Promotions to the grade of Joint Commissioner of Income Tax, Commissioner of Income Tax, and Chief Commissioner of Income Tax, Creation of posts ... virtually the entire administration.

This is a giant leap for functional autonomy for the Board and now they should get a Budget and power to spend money.

The Board wants the **concerned**

sections to physically transfer records relating to these functions to the Directorate of HRD. Obviously those sections will be really concerned-that their fiefdom has just been pulled from under their feet.

Why CBEC has not done this?

[CBDT NO. 402/88/12/2010-Comm \(Coord\), Dated : September 08, 2010](#)

Huge Bill From Income Tax to Vodafone?

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Vodafone case was before the Supreme Court yesterday. Who won? Income tax Department is celebrating that they can issue a demand of over Rs. 12,000 Crores to Vodafone within four weeks-but that doesn't mean that Vodafone is going to rush to the bank with a cheque for Rs. 12,000 Crores immediately on getting the demand. They can still challenge it and in any case there is hearing in the Supreme Court again on 25th October.

And Vodafone is happy that its SLP has been admitted, though no stay was granted and the Company still firmly believes that the transaction is not subject to tax in India.

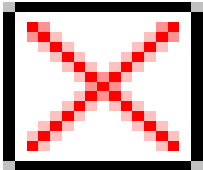
Please visit www.taxindiainternational.com for more details and analyses of the issue.

A good judgement is one in both the parties are equally dissatisfied.

Real Estate in Air - Jet Lite loses Stay Application in Supreme Court

THE CESTAT had in [2010-TIOL-854-CESTAT-DEL](#), ordered a pre-deposit of Rs. 100 Crores. On writ petition, the Delhi High Court in [2010-TIOL-619-HC-DEL-ST](#) reduced the pre deposit to Rs 60 crores and Rs 10 Crores Bank Guarantee. On appeal, the Supreme Court did not grant any relief and asked JET LITE to pay the amounts as directed by the High Court.

Jurispruden**tiol** - Wednesday's



Central Excise

Valuation-Physician sample-To be valued on pro rata basis - Tribunal's earlier Decision not appealed by Revenue-Matter attained finality-Supreme Court

IT is evident from the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai that while holding that samples have to be valued on pro rata basis, the Tribunal has relied on its earlier decision in the case of Sun Pharmaceuticals Industries & Ors. vs. CCE, Surat. Admittedly, the said decision of the Tribunal has not been challenged by the Revenue and as such, has attained finality.

Income Tax

Sec 32(1)(ii) - AO treats various approvals, licences obtained from Govt agencies as intangible assets and allows depreciation - invocation of revisionary powers u/s 263 - merely because AO has not examined claims in details, its order does not become erroneous: ITAT

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issue before the Tribunal is - Whether a host of approvals and grant of licences from Government agencies constitutes goodwill - Whether AO's decision to grant depreciation on such intangible assets is erroneous and calls for invocation of revisionary powers u/s 263 by the CIT. And the verdict goes in favour of the assessee.

Central Excise

Term 'export' used in Rule 5 of CENVAT Credit Rules, 2004 stands for 'physical export' out of country; No refund on accumulated CENVAT Credit on inputs used in or in relation to manufacture of 'pre-fabricated buildings' supplied to SEZ units : CESTAT

RULE 5 of CCR, 2004 - Term 'export' used in Rule 5 of the CENVAT Credit Rules, 2004 stands for 'export', which is 'physical export' out of country, envisaged under the Customs Act - anybody other than SEZ unit can not be allowed to claim any benefit under the SEZ Act/Rules - Respondent cannot be held to be entitled to refund of accumulated **CENVAT Credit** on the inputs used in or in relation to the manufacture of the 'pre-fabricated buildings' supplied by them to the SEZ units-Revenue appeals allowed.

See our columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a nice Day

Mail your comments to vijaywrite@taxindiaonline.com