A flight in unknown: Error in notification goes unnoticed - Service Tax Exemption Issued under Wrong Section

TIOL-DDT 1476
28.10.2010
Thursday

Notification No. 26/2010 – Service Tax Dated June 22, 2010 reads as:

IN exercise of the powers conferred by **clause (aa) of sub-section (2) of section 94** of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services referred to in clause (zzzo) of sub-section (105) of section 65 of Finance Act, 1994 from so much of service tax as is in excess of,-

(a) ten percent of the gross value of the ticket or rupees one hundred per journey, whichever is less, for passengers travelling in any class, within India;

(b) ten percent of the gross value of the ticket or rupees five hundred per journey, whichever is less, for passengers embarking in India for an international journey in economy class:

Provided that this exemption shall not apply xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Now, if you look at **clause (aa) of sub-section (2) of section 94** of the Finance Act, 1994, you will find that this clause vests the Central Government with the power to make Rules for the determination of amount and value of taxable service under Section 67 of the Finance Act. This particular clause was inserted in Section 94 in the year 2006 by the Finance Act, 2006 w.e.f 18-04-2006 for the purpose of issuing Service Tax (Determination of Value) Rules, 2006 [Valuation Rules]. It is to be noted that all the amendments to the Valuation Rules have been effected by issuing a Notification under clause (aa) of sub-section (2) of Section 94 of the Finance Act.

Therefore, the correct provision under which the Notification for granting exemption from service tax to the passengers would have been Section 93(1) of the Finance Act, under which exemption from whole or part of service tax can be granted by way of a Notification. All this while, this technical error in the Notification has been happily ignored.

It is really unfortunate that the CBEC does not know under which Section of the Act, an exemption notification has to be issued and this is the Government which is ready to pounce on the assessee for the most insignificant mistakes. The Board is full of wise men and it may not be that they are ignorant – this is a case of sheer negligence. Some Under Secretary must have copied the phrase from an earlier notification and pasted it here and it must have gone right up to the top of the pyramid with nobody ever bothering to read it or finding out whether the provisions are correct. It is certainly a 'copy and paste' mistake but these mistakes should not be tolerated at the highest levels!

People across the Globe will read your notifications and laugh at your ignorance!!!

Will CBEC make a correction before some Tribunal Bench holds the notification as invalid as issued under a wrong Section of the ACT?

[**DDT** gratefully acknowledges the contribution of Nithyananda Shetty and Divya Pahwa, Senior Manager and Assistant Manager, respectively of Deloitte Touche , who brought this lapse to our notice.]

ACES – Still a Nightmare?

IT
was only yesterday that we made some good remarks about the managers of the ACES and we find that actual users and Departmental Officers have a lot of problems which need to be solved urgently.

Even with regard to the notification referred to above, Nityananda and Divya point out that the ST-3 return in ACES does not recognise Service Tax rates of Rs. 100/- and Rs. 500/- as fixed by Notification No. 26/2010. So the Airlines are not able to file their returns. There is a similar problem regarding Research and Development Cess.

Why does this happen? Simple – Stupid Ego!!!. The one who makes the law – the notifications, thinks he is the ultimate authority and once he issues a notification, he expects the rest of the world to follow it as the GOSPEL. They have only contempt for the officers working in other sections. And this contempt is mutual. The officers who work in the electronic sections do not bother to read the notifications and update their software accordingly.

The result – ultimately the assessee suffers!

Guidelines for Development of Special Economic Zones (SEZs)

THE Commerce Department with the approval of the Minister, yesterday released the Guidelines for Development of Special Economic Zones (SEZs).

India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced in the EPZ format, a Special Economic Zones (SEZs) Policy was announced in April 2000. The policy intended to make SEZs an engine for economic growth. SEZs in India functioned from 1.11.2000 to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes.

To instill confidence in investors and signal the Government's commitment to a stable SEZ policy regime, a comprehensive Special Economic Zone legislation was enacted June 2005, which came into effect on 10th February, 2006. The response to the Scheme has been overwhelming. In short span of about three years since SEZ Act and Rules were notified in February, 2006, formal approvals have been granted for setting up of 578 SEZs out of which 340 have been notified. Out of the total employment provided to 4,18,129 persons in SEZs as a whole 2,83,425 persons is incremental employment generated after February, 2006 when the SEZ Act has come into force. Physical exports from the SEZs have increased from Rs.66,638 crore in 2007-08 to Rs.99,689 crore in 2008-09, registering a growth of 50%. There has been overall growth of export of 620% over past five years (2003-04).

Keeping in view the fact that a number of approved Special Economic Zones are at various stages of implementation and based on experience gained so far, formulation of certain broad guidelines to govern the development of SEZs has been considered appropriate to ensure environmentally sustainable well planned development of the SEZs.

The Government has issued guidelines on:

++ Site Identification, Land Acquisition and R&R:

++ Role of State Government

++ Physical Infrastructure

++ Priority to Small Scale Units in SEZ

++ Industrial Township

Department of Commerce (SEZ Division) Instruction No. 65 Dated October 27, 2010

Guidelines on Energy Conversation in Special Economic Zones (SEZs)

THE
Commerce Department has issued guidelines for Energy Conversation in SEZs. SEZs are special enclaves aimed at creating world class infrastructure and the Commerce Ministry wants them to follow the guidelines on

++ Optimization of Use of Energy

++ Power Utilization:

++ Water Efficiency

++ Waste Management

++ Plantation

++ Site Preservation and Restoration

++ Local Internal Transportation

++ Materials

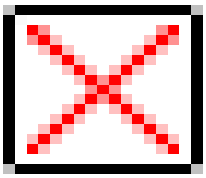
++ Indoor Air Quality in Individual Buildings

++ IT Infrastructure

++ SEZ Green Guidelines Compliance and Certification Process

Department of Commerce (SEZ Division) Instruction No. 66 Dated October 27, 2010

Jurisprudentiol – Friday's cases



central Excise

CENVAT Credit - Capital Goods - parts, accessories/spares of CPP fall within ambit of 'capital goods' - Maruti Suzuki Ltd (2009-TIOL-94-SC-CX) distinguished - High Court

The definition of capital goods under Section 57-Q is very wide. Capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances. parts, accessories/spares of CPP installed in the factory premises would fall within the ambit of ¶capital goods¶ as contemplated under Rule 57-Q as user of electricity in the production of sponge iron is an integral part of manufacturing process. Therefore, CENVAT credit on parts, accessories/spares cannot be denied to the assessee on the ground that substantial portion of the electricity generated from CPP has been wheeled out to its sister concern at Raisen through MPEB Grid, and principles of law laid down in the judgment of the Supreme Court in Maruti Suzuki Ltd . (2009-TIOL-94-SC-CX) Â are not applicable in the facts of the present case as assessee is not claiming any CENVAT credit on inputs used for generation of electricity in CPP.

Income Tax

Exemption - Whether provisions of Ss 11(4)(A) and 11(4) are complementary to each other and Sec 11(4) cannot be said to restrict power u/s 11(4) of Act - Revenue's appeal partly allowed: ITAT

THE issue before the Tribunal is - Whether the provisions of section 11(4)(A) and 11(4) of the Act are complementary to each other and section 11(4)(A) cannot be said to restrict the power u/s 11(4) of the Act. Tribunal has partly allowed the Revenue's appeal.

Service Tax

Security service utilized in residential colony situated outside factory premises is not an Input Service: CESTAT

The services provided for the residential colony are welfare of the residence of the colony. Accordingly, the input service credit is denied.

See our columns tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a nice day.

Mail your comments to **vijaywrite@taxindiaonline.com**