



Central Board of Excise & Customs

विधि - वार्ता

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In-house Monthly Newsletter



Editorspeak

It gives me immense joy and satisfaction to present to you the first issue of the second volume of Vidhi Varta. This newsletter has been accepted widely and wholeheartedly by all. I take this opportunity to convey my sincere thanks to everybody for their cooperation and constructive comments and suggestions for making improvements in it.

We thank Sh Sanjay Shrinet Adhl Director DRI for his article on Drug Syndicate. Taking cue from the suggestions made by the readers, Vidhi Varta is now also hosted on the website taxindionline.com. By this process, the information which we intend to disseminate is not only being shared with the Departmental officers but is also available to the trade and other stakeholders. Suggestions and articles/inputs from all are, as always, welcome.

News

- New forms for Central Excise (E.A.-3, E.A.-4, E.A.-5), Customs (C.A.-3, C.A.-4, C.A.-5) and Service Tax (S.T.-5, S.T.-6, S.T.-7) have been notified vide Notification Nos 6/2013-Central Excise (N.T.), 37/2013-Customs (N.T.) and 5/2013-Service Tax, all dated 10.04.2013 respectively for filing the appeals in CESTAT. These forms have been made effective from 1.6 2013.
- Central Government has started the process for filling up the 48 vacant post of Members in the Income Tax Appellate Tribunal
- In order to revive investors' interest in SEZ, the Government announced a package to boost exports through SEZs. The salient features are:
 - ✓ The Minimum Land Area Requirement has been reduced to half-for Multi-product SEZ from 1000 hectares to 500 hectares and for Sector-specific SEZ from the existing 100 hectares to 50 hectares;
 - ✓ To provide greater flexibility in utilizing land tracts falling between 50-450 hectares, it has been decided to introduce a Graded Scale for Minimum Land Criteria which would permit a SEZ an additional sector for each contiguous 50 hectare parcel of land.
 - ✓ Sectoral broad-banding to encompass similar / related areas under the same sector has been introduced;
 - ✓ Additions to pre-existing structures and activities being undertaken after notification would be eligible for duty benefits similar to any other activity in the SEZ;
 - ✓ Now there would be no minimum land requirement for setting up an IT/ITES SEZ. Only the minimum built up area criteria would be required to be met by the SEZ developers (1,00,000 square meters to be applicable for the 7 major cities, other Category B cities 50,000 square meters and for remaining cities only 25,000 square meters);
 - ✓ It has now been decided to permit transfer of ownership of SEZ units, including sale.



An Agreement on Cooperation and Mutual Assistance in Customs Matters was signed on 9 April, 2013 between the Customs Administrations of India and Turkey. The Agreement provides a legal framework for sharing of information and intelligence between the Customs authorities of India and Turkey to help in the proper enforcement of Customs laws and in combating Customs offences. Ms Praveen Mahajan Chairperson, CBEC signed the agreement on behalf of Indian Customs.

Global Party Drug Syndicate busted by DRI -Jaipur

Recent times have seen colossal rise in demand and trafficking of Ketamine as the rave party drug, also popularly known as 'Date Rape Drug' amongst the youth globally. Drug-trafficking is a menace, but its linkage with narco-terrorism, human trafficking and all sorts of organized crime, which is intrinsically linked with money laundering further poses danger not only for India, but also for the other countries. The officers of Directorate of Revenue Intelligence (DRI) Jaipur had detected huge haul of Ketamine from Jaipur and found that a Government servant and his Pharmacist son were involved in drug trafficking and were operating from their residence. The DRI also recovered 100.642 Kgs. of Ketamine along with Indian currency of Rs. 70.50 lakhs, hundreds of identity proofs of other persons and other incriminating documents/goods. The haul worth Rs 10 crores in the international market is one of the biggest seizures made in India and perhaps the biggest ever in Rajasthan.

Investigation conducted in the matter by DRI Jaipur exposed a unique modus operandi, wherein, these drug traffickers were capitalizing the loopholes of the systems in their favour and not only illegally exporting the drugs to USA and Europe (Ketamine is in huge demand there) since 2010 in a concealed

manner through post parcels by declaring the same as 'documents' in the relevant Customs declaration but also receiving the advance payment of drugs sales under Money Transfer Service Scheme through Western Union and Money Gram on others' name whose identity proofs (more than 500 in numbers) were recovered during the search of accused. These identity proofs were collected by one of the accused from the local vendors of different telecom operators and pertained to the persons who had applied for allotment of fresh SIM to these telecom operators.

The Agency also identified 97 post parcels through which the Psychotropic substances were exported in recent past. Out of 97 parcels, 12 parcels were intercepted in India and were found to contain 2620 grams of Ketamine Hydrochloride. Remaining 85 post parcels were either destined or were in transit when the information was passed on to US law Enforcement Authorities.

The investigations of DRI uncovered the whole gambit and money trail of the drugs exported wherein, 1104 transactions were identified against which the accused and his family members had received an amount of Rs. 3,96,53,717.01. The money earned was further invested in real estate and leading a luxurious lifestyle.



RECENT DECISIONS

HIGH COURT



Commissioner Of Central Excise Vs M/S Sigma Corporation India Pvt Ltd [2013-TIOL-323-HC-DEL-Cus]

At the time of admission of appeal, the following question of law was framed for determination of the High Court:

"Whether the Central Excise Officer discharging his duties as a Customs Officer, in the factory premises of the assessee, could be said to be discharging such functions in a 'Customs Area' as defined in Sub-Section 11 of Section 2 of the Customs Act, 1962?"

Since the stuffing work was done in the factory under the supervision of jurisdictional Central Range Officer during working hours only, thus the substantial question of law framed was answered by the High Court in the affirmative. As per Chapter 13 of the CBEC's Customs Manual which deals with "Merchant Overtime Fee" provides that if services are rendered by the Customs Officer at a place which is not his normal place of work or a place beyond the Customs area, overtime is levied even during the normal working hours. Since in the present case none of the conditions is satisfied no MOT will be leviable.



M/s Khatem Fibres Ltd Vs Commissioner Of Central Excise [2013-TIOL-319-HC-ALL-CEX]

The appeal is a statutory right. The appellant has been deprived of his right of the appeal due to a precondition of deposit of 60% of the liability imposed by the order-in-original. While imposing the condition of predeposit, the Tribunal is required to examine prima facie merit of the appeal as well as the condition of the appellant. In the impugned order, the Tribunal found that the appellant company was running under financial loss and his request for rescheduling the payment of loan has been accepted by the banks. Even then the appellant was directed to deposit 60% of the liability which was a substantial amount for the appellant. In the financial circumstances of the company, it was an impossibility for it. In the meantime, the company was also referred to Board of Industrial and Financial Reconstruction treating it as a sick company. The Supreme Court in *Sangfroid Remedies Ltd. v. Union of India*, (1999) 1 SCC 259 allowed full exemption from the liability to

deposit precondition amount in appeal by the company, which was referred to the Board of Industrial and Financial Reconstruction treating it as a sick company.



M/s Musk Tobacco India Pvt Ltd Vs Commissioner Of Central Excise [2013-TIOL-311-HC-ALL-CX]

The CESAT has recorded its finding that there is prima facie suppression of production and clandestine removal. The balance sheets thus will not reflect the true and correct financial position of the company. The Tribunal was lenient enough in directing the appellant to deposit only Rs. 1 crore and waiving the remaining amount of Excise duty and penalty, which together would amount to about Rs. 16 crores. We, therefore, do not find any substantial question of law for consideration and interference in this appeal.



M/s Manjunatha Industries Vs Commissioner Of Central Excise [2013-TIOL-285-HC-KAR-CX]

Under Sub-Rule (1) of Rule 8 of the Central Excise Rules, 2002 if an assessee, failed to pay the duty within the time stipulated i.e. on the 6th day of following month if it is paid electronically through internet banking or on the 5th day of following month in any other case, and a further period of 30 days under Sub-Rule (3A), is disentitled to make use of the Cenvat Credit. In the admitted facts, petitioner defaulted in the payment of duty for the months of December 2010 to May 2011, but did so with interest on 21.5.2011 in a sum of Rs.20,45,600/- towards duty and Rs.84,324/- towards interest and also payment of Rs.10,45,749/- towards duty by utilizing the Cenvat Credit, without disclosing the particulars against which it was paid nor the date of payment.

TRIBUNAL

Commissioner Of Central Excise, Aurangabad Vs Dhnyaneshwar SSK LTD [2013-ELT-641-CESTAT-MUM]

It is a settled position in law that the date of the order means the date of communication of the order and in this case the communication has been completed only on 20/06/2011. In fact from the records of the case it is seen that the order itself has been dispatched only on 13/06/2011 by the registry and therefore, it has to be held that the application has been filed in time.

From the reading of Rule 2(f) and Rule 3 (1) it is clear that input is something which is required in or in relation to the manufacture of final products. If a product is an input then the specific duty paid thereon can be taken as credit for payment of duty on the final product. It is in this context that this Tribunal observed that the molasses cannot be considered as input for manufacture of sugar. There being no dispute on this aspect, the duty paid on molasses can not form part of the credit for the purpose of payment of duty on sugar. In other words the findings of the Tribunal was that the duty paid on molasses can not form part of credit for payment of duty on sugar.

Kansai Nerolac Paints Ltd Vs Commissioner Of Customs (Imports), Mumbai [2013-TIOL-588-CESTAT-MUM]

The duty payable by the appellant has been paid. The excess duty paid was not required to be paid by the appellant. Therefore the same cannot be treated as duty. As held by this Tribunal in the case of *Shankar Ramchandra Auctioneers - 2010 (19) S.T.R. 222 (Tri.-Mum)* wherein it was held that the excess amount paid erroneously as duty which was not required to be paid, there is no bar to return of such amounts. Therefore, the provisions of Section 11B of Central Excise Act, 1944 are not applicable. Relying on the said decision, the Tribunal held that the provisions of Section 11B ibid are not applicable to the facts of this case. Therefore, not filing the refund claim in time cannot be the reason for denying the claim as bar of limitation is not applicable to this case.

Aesthetic Pavers Pvt Ltd Vs CCE, THANE-I [2013-TIOL-607-CESTAT-MUM]

The adjudication order was reviewed by the then Commissioner of Central Excise, Shri Bhikhoo Ram, and thereafter Shri Bhikhoo Ram as Commissioner (Appeals) accepted the appeal filed by the Revenue. In these circumstances, we find merit in the contention of the applicant that the same authority who reviewed the order cannot decide the appeal.

POT POURRI

M/s Sansera Engineering Pvt Ltd Vs DCCE [2013-TIOL-321-HC-KAR-CX], Rittal India Pvt Ltd Vs UoI [2013-TIOL-322-HC-KAR-CX]

The provisions contained in the impugned circular dated 1 January 2013 mandating the initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay, which has remained pending for reasons beyond the control of the assessee. Where, however, an application for stay has remained pending for more than a reasonable period, for reasons having a bearing on the default or the improper conduct of an assessee, recovery proceedings can well be initiated.

M/s Pioneer Spinners Vs CCE, Madurai [2013-TIOL-651-CESTAT-MAD]

The issue whether appeals which were already considered by the Committee on Disputes and a decision taken not to allow either side to pursue further appellate remedies, the matter can be reopened in the light of the decision in the case of *Electronics Corporation of India (supra)*, was decided by the Larger Bench of the Tribunal in *Burn Standard Co. Ltd. Vs. CCE - 2012 (286) ELT 125 (Tri.-LB)* disallowing the restoration of the past cases.

Bharti Airtel Ltd Vs Commissioner Of Service Tax, New Delhi [2013-TIOL-654-CESTAT-Del]

Varied choice and options granted by Appellant, prima facie, demonstrate that the value of calls provided to employees and relatives were less than the market value and unaccounted. Such service provided was at the cost of Revenue. Had the call charges been valued and as per market value and disclosed in the accounts, Revenue would not have been affected. But that was not done by the appellant. Merely creating a fiction of no consideration received by the appellant in respect of the nature of free service provided by it, the appellant appears to have been immensely benefited by reduction of monetary package of remuneration to its eligible employees, their relatives and employees of Bharti Group of companies. Such undisclosed benefit of appellant was at the cost of Revenue. The appellant failed in the course of hearing to satisfy that the value of service were disclosed perquisite to its employees in its account and disclosed to the Income tax Authority.

सम्पादक मण्डल

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श्री मनीष कुमार, अपर आयुक्त
जोनल नोडल अधिकारी

Directorate of Legal Affairs,

4th Floor, Rajendra Bhawan,
Deen Dayal Upadhyay Marg, New Delhi.
Contact Numbers: 011-23219075/76,
Fax: 011-23219073,
e-mail: dlasmc@yahoo.co.in.

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