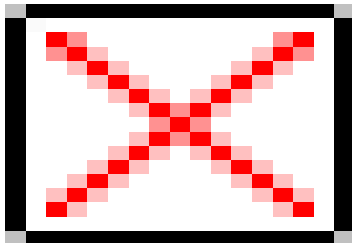


### CENVAT Credit on Structural Components - CBEC Clarifies



TIOL-DDT 1830

04.04.2012

Wednesday

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IT seems that CENVAT credit is being denied to the supporting structural parts of the Boilers at the buyers' end by classifying the same under Chapter 73 as structural parts and not as a part of Boiler. These are not being covered under the definition of inputs under the CENVAT Credit Rules, 2004, on account of exclusion given in rule 2 (k)(iv)(B)(b). This denial is on the ground that these are used for structures for support of Capital goods, without which the Capital goods can function.

Board observes,

¶The Boilers are a combination of various systems such as Coal Handling System, Coal Feeding System, Draft Air System, Demineralization Plant, Boiler Feed Water System, Boiler Tubes, Boiler Drums, Super Heat System, Flue Gases Treatment System and Ash Handling System etc. All these Systems work in tandem to make a modern Boiler. These Systems comprise of many parts including structural components, which are essentially the part of Boiler by way of technical specifications. As per Section Note 4 to the Section XVI of the First Schedule to the Central Excise Tariff Act, 1985, " Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.¶

And Board Clarifies:

¶those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers¶.

This is a beneficial clarification and let us hope the pending disputes would be settled.

[Circular No. 964/07/2012-CX., Dated: April 2, 2012](#)

### FTP - Export of Wheat Products - Validity Extended

#### EXPORT

of wheat products subject to a limit of 6,50,000 tons upto 31.03.2010 was initially permitted on 03.07.2009. The validity period for this permission was extended from time to time. Extension of this validity has expired on 31.03.2012. Now, the validity period is extended till 31.03.2013.

Notification No. 61(RE-2010)/2009-14 dated 20.07.2011, is amended.

- (i) The export is permitted subject to a limit of 6,50,000 tons during the period from 3rd July, 2009 to 31st March, 2013;
- (ii) Exports shall be allowed only from Customs EDI Ports.

**DGFT Notification No. 110/(RE-2010)/2009-2014, Dated: April 2, 2012**

**1% Duty goods - No more entitled for filing quarterly returns**

**ACCORDING** to proviso under Explanation 2 in Rule 12 of the Central Excise Rules, 2002,

Provided also that, where an assessee is availing the exemption notification of the Government of India, Ministry of Finance (Department of Revenue) No. 1/2011- Central Excise, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part-II, section 3, sub-section (i) vide number G.S.R. 116(E) dated the 1st March, 2011 and does not manufacture any other excisable goods other than those specified in the said notification, he shall file a quarterly return in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the quarter to which the return relates.

Now that certain items like coal and fertilizers are covered under Notification No 12/2012 CE, the above proviso requires amendment. Last week they corrected the CENVAT Credit Rules, 2004, but they failed to notice that Central Excise Rules also require a correction.

**Date of Option under rule 6(3A) of CCR, 2004 - whether intimation is required before exercising option?**

A Netizen sent us this mail -

*“Sub-rule 3A of Rule 6 of CENVAT Credit Rules, 2004 is extracted below -*

*(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-*

*(a) **while exercising this option***

*, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-*

*(i) x x x;*

*(ii) **date from which the option under this clause is exercised or proposed to be exercised;***

*The moot question is as to whether this “letter of option” has to be given to the Superintendent before exercising or otherwise. The reason being that the figures to be taken for calculating the “amounts” change if the period varies.*

*The foremost fact is that the “amount” is a provisional amount [excluding the situation mentioned in condition (h) of sub-rule (3A) to rule 6 of CCR, 2004] and in either case needs to be “finalized” and paid by the 30 th of June of the succeeding financial year. Needless to mention, an option once exercised the same has to be continued for the remaining part of the financial year as mandated in Explanation-I to rule 6(3) of the CCR, 2004.*

*In such a situation, when a manufacturer has to exercise the option, why should it be treated as being necessarily **before** exercising the option?*

*The words employed are **while exercising this option**, **date from which the option under this clause is exercised**, **or proposed to be exercised**.*

*To illustrate –*

*In case a manufacturer wishes to exercise the option under sub-rule 3A w.e.f 01.05.2012, he can either –*

*+ intimate the R/S on 01.04.2012 the above*

+ he can exercise the option on 01.05.2012 and intimate the same on any later date to the R/S;

+ he can exercise the option on 01.05.2012 and intimate the same to the R/s on the 01.05.2012 itself.

*I feel that in view of the fact that the sub-rule 3A does not contain the words ¶Such option shall be exercised before effecting his first clearances ¶ as appearing in clause 2(i) of the SSI Notification 8/2003-CE, creating a fuss about the “intimation date” is not called for since the “amount” would in any case be determined finally at the end of the “financial year” and is required to be paid by the 30 th June of the succeeding financial year.*

*I request Netizens to respond.*

### **Vodafone Retro Amendment - Chancellor and CEO Protest**

#### **THE**

British Chancellor of Exchequer George Osborne raised the issue with our FM, Pranab Mukherjee. Osborne said that U.K. investors were anxious following India's proposal to amend the tax law. It seems Osborne was told that neither the U.K. nor other countries such as Australia or China are alien to retrospective amendment of tax laws.

It seems Vodafone CEO Vittorio Colao has written to the Prime Minister, ¶We read disturbing comments in the Indian media from tax officials that they intend to use these provisions to quash the recent Supreme Court judgement and retrospectively require Vodafone to pay Hutchison's tax.¶ He also said in his letter that the amendment would tarnish the image of India as an investment destination.

### **Inflation Across Globe - India Different?**

**ACCORDING** to an OECD report,

*Inflation in advanced economies held steady at 2.8 per cent in February, with a sharp rise in energy prices balanced out by a drop in global food prices.*

Annual consumer inflation was stable in the United States, at 2.9 per cent, and in the Eurozone at 2.7 per cent.

It rose in Germany to 2.3 per cent in February from 2.1 per cent the previous month, stayed flat in France at 2.3 per cent, and fell in Britain to 3.4 per cent from 3.6 per cent.

China's inflation dipped most sharply, to 3.2 per cent in February from 4.5 per cent in January.

Japan, long struggling with deflation, saw a modest 12-month rise in prices of 0.3 per cent in February, up from 0.1 per cent.

**India differed from the global trend with inflation accelerating to 7.6 per cent in February from 5.3 per cent in January.**

### **Transfer Pricing - UN Model Double Taxation Convention - India raises Objections**

**IN** a letter to the UN Department of Economic & Social Affairs, Sanjay Mishra, Joint Secretary (FT&TR) in the CBDT, states,

*In the case of Transfer Pricing, although it is governed by domestic legislation of each country, the OECD countries have agreed on a common transfer pricing guidelines known as OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines). These guidelines on transfer pricing only reflect the agreements amongst Government of those countries that are members of OECD (developed countries) and accordingly tend to take care of interest of only developed countries. The guidelines do not give right of taxation to source countries accordingly eroding taxing rights of developing countries.*

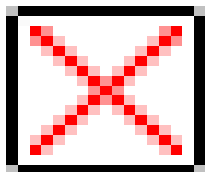
*India requests that the United Nations may consider constituting inter-Governmental Commission (including sub - committees), having representatives from Governments of the developed and developing countries, on various issues relating to International Taxation and Transfer Pricing, to develop guidelines on the basis of consensus amongst Government of all countries, which take care of the interests of the developing countries. Further, in developing such guidelines, the recommendations of the Committee of Experts (1999) that the OECD principles as set out in the OECD Transfer Pricing Guidelines should be followed, must be ignored.*

*OECD Model Tax Convention and OECD Transfer Pricing Guidelines has been developed on the basis of consensus arrived at by the Government of 34 countries (all developed countries). These guidelines only protect the interests of OECD countries, which are parties to such convention. Since the Governments of developing countries are not party to the Guidelines, it is improper to suggest that they represent international agreed guidance knowing fully well that concerns of developing countries have not been taken care of in the OECD Model Convention and OECD Transfer Pricing Guidelines.*

***It is inconceivable as to how a standard developed by Governments of only 34 countries can be accepted by Government of other countries as 'standard' of sharing of revenue on international transactions between source and resident country particularly when it only take care of the interest of developed countries and has seriously restricted the taxing powers of source country.***

[CBDT Letter dated 12.03.2012](#)

Jurispruden**tiol** – Monday's cases



Central Excise

**Appellant manufacturing Aluminium structures and clearing on payment of duty – since no credit has been availed on 'Aluminium structures' prima facie case in favour - Stay petition allowed: CESTAT**

**THE** applicant is clearing aluminium structures on payment of appropriate duty and availing the benefit of credit in respect of inputs used and thereafter the applicant is not availing credit of the duty paid structures when the same were used for providing construction service. In these circumstances, prima facie, the applicant has a strong case in their favour. Therefore, the amount already deposited is sufficient for hearing of the appeal. Pre-deposit of the remaining duty, interest and penalty is waived and recovery of the same is stayed during the pendency of the appeal.

**Income Tax**

**Whether when individual-assessee maintains no books but undertakes huge number of share transactions in a year, inference based on conduct of assessee that it was a case of business profit is legally sustainable - YES, rules ITAT**

**THE** assessee is an individual and derives income from salary, house property and capital gains. In one year the assessee earns capital gains from share transactions relating to 52 companies; and in other years, the transactions are lesser. The assessee being individual maintains no books of account. In this backdrop, the AO formed an opinion that the income declared by the assessee under the head STCG and LTCG was taxable as business income. The CIT(A) allowed the appeal of the assessee in parts.

**FEMA**

**FEMA - Merely because some complaint has been filed by the petitioner with regard to alleged forgery and fabrication is no ground to stay the investigation by the Enforcement Directorate: High Court**

**THE** prayer in this writ petition is for stopping the investigation initiated by the Enforcement Directorate pursuant to a summon dated 27.04.2011 and notice dated 9.5.2011 issued by the 3<sup>rd</sup> respondent.

**See our columns Monday for the judgements**

Until Monday with more **DDT**

It is vacation for Government of India – four days holidays. Have a nice and long weekend.

Mail your comments to [vijaywrite@taxindiaonline.com](mailto:vijaywrite@taxindiaonline.com)