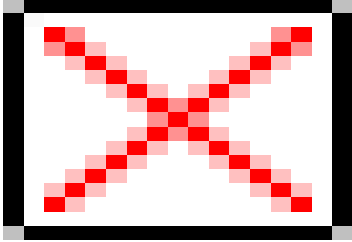


Prohibition of Imports and Exports of Hazardous Waste - CBEC SUPPRESSES a Notification



TIOL-DDT 1831

09.04.2012

Monday

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GOVERNMENT

has prohibited import and export of hazardous wastes specified in Scheduled VI to the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, issued under the Environment (Protection) Act, 1986 (29 of 1986), save as otherwise provided under the said Act and the rules made thereunder ,

The notification reads as, “*In exercise of the powers conferred by sub-section (1) of section 11 of the Customs Act, 1962 (52 of 1962), and **insuppression** of the notification No. 35/2004-CUSTOMS (N.T.), dated 19.3.2004, published in the Gazette of India Part-II, Section 3, Sub-section (ii) vide G.S.R. 201(E) dated 19 th March 2004, except as respect things done or omitted to be done before such **suppression** , the Central Government, being satisfied that it is necessary so to do for the purpose of the protection of human, animal, plant life and health, hereby prohibits import into India and export out of India of hazardous wastes specified in Scheduled VI to the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, issued under the Environment (Protection) Act, 1986 (29 of 1986), save as otherwise provided under the said Act and the rules made thereunder, ”*

An alert Netizen has already asked in our Message Board as to what this **suppression** is all about.

What they meant was **supersession** and it is a typographical error, no doubt. But the moot point is, why nobody checks these errors. **DDT** has been championing the cause of appointing an English teacher in the Board to correct their spellings – but our super babus believe that they are also commanders of language over which they obviously have no command. And this notification ends with a comma!!.

The tragedy with the Board is that the Under Secretary who prepares the notification is the final authority – nobody else reads that notification and so nobody corrects it. This mistake would not have happened if somebody else had also read the notification. An Under-Secretary once told **DDT** that he is scared as he is the Law Maker of India and his bosses have neither the time nor the inclination to read the notifications he prepares.

They should stop all the silly exercises like cadre review and merger of excise and Service Tax and on top priority recruit a few English Teachers from reputed private schools where notebooks are corrected by teachers.

[Notification No. 31/2012-Cus., \(NT.\), Dated: April 4, 2012](#)

Harmonization of Service Tax and Central Excise Registration - Board Invites Comments

IT is proposed to prescribe a common application format for seeking registration under Central Excise as well as Service Tax. Board has released a draft circular and a format for the registration - EST. Board invites comments from their officers and trade to be sent to R. K. Kapur, OSD (Service Tax), CBEC (Telefax. 011-23095387) at kapurrk@hotmail.com

Now they want to introduce a new concept of *person* to include *Hindu Undivided Family*. Will they start issuing notices to every member of the HUF including just born children?

[Draft Circular](#)

[Draft EST registration Form](#)

CESTAT Orders to be dispatched within three days

IT looks as if the new President of CESTAT means business and the cleaning has already begun.

It is now directed that orders received from the President, Vice-President and Members must be dispatched within 3 days from the date of receipt of the order from the Bench. It is further directed that in the event of Party and his Advocate/Appellant/Respondent seeking Copy of the Order, it may be issued by hand after due verification.

Even the CESTAT Registry seems to be in need of an English teacher. Have a look at the Registrar's Circular.

*It has come to notice that orders received from Hon'ble President/Vice-President are not **dispatch** within a reasonable period. Some **time** even for two weeks or three weeks or for months together.*

*It is directed that all **order***

received from Hon'ble President/Vice-President and Hon'ble Members must be dispatched within 3 days from the date of receipt of the order from the Hon'ble Bench.

It is further directed that in the event of Party and his Advocate/Appellant/Respondent seeking Copy of the Order, it may be issued by hand after due verification.

*Copy of the circular is also **forward** the Regional Benches of the Tribunal.*

[CESTAT Circular F.No. 01\)32\)/R/Jud./CESTAT/2012 Dated: April 4, 2012](#)

Structural Components of Boiler and admissibility of CENVAT credit - is such a Circular answer?

A Netizen sent in this piece:

The Central Board of Excise and Customs seems to be on a clarifying mode after the Union Budget. After the Circular no. 960 was issued on 17 th February, 2012, there was a lull and then in the week beginning 26 th March, 2012, Circulars 961, 962, 963 and 964 came to be issued one after the other. Obviously, these Circulars have attempted to clarify issues, which must have been referred to the Board some months ago.

Anyways, coming to the latest [Circular 964/07/2012 dated 02.04.2012](#)

, the Board says that it has been issued since the Trade is seeking clarification on the following issue as reproduced below –

*“Reference has been ~~received~~ **received from Trade***

seeking clarification regarding classification of structural parts/components of Boiler and admissibility of CENVAT credit on these parts/components to the buyers of the Boilers. It has been represented 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.”

Frankly speaking, I did not expect the Board to be so puerile to have given a detailed narrative after examining the classification issue when the fact remains that the CENVAT Credit entitlement is being debated and denied at the buyers' end.

It is a settled law that assessment at the supplier's end cannot be challenged at the end of the consignee (client's end). The following decisions can be referred in this regard –

1. MDS Switchgear Ltd. - [2008-TIOL-245-SC-CX](#)

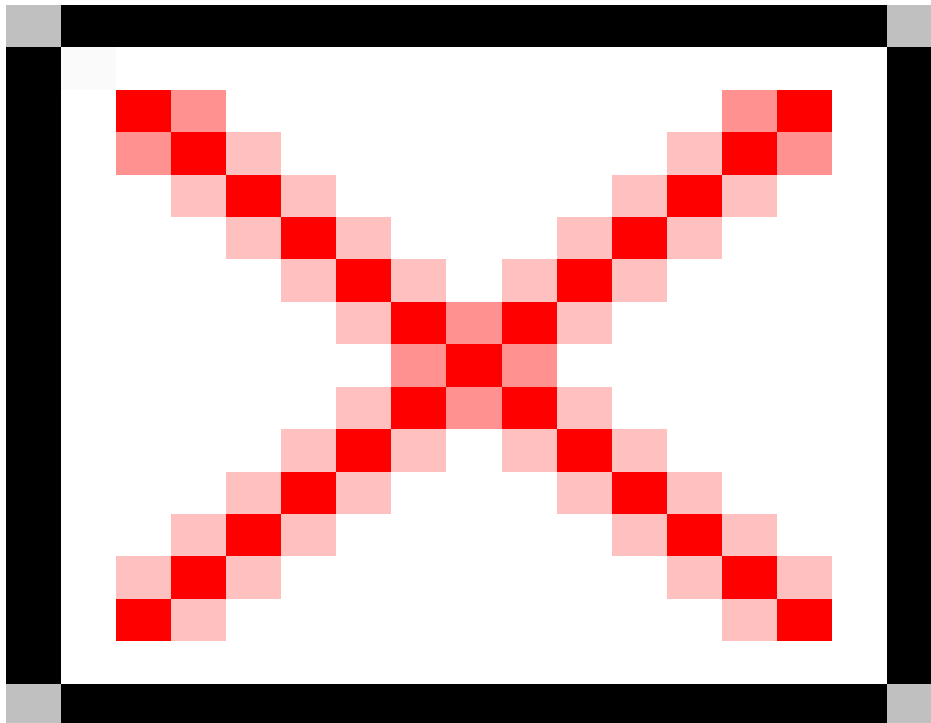
2. U.P. State Sugar Corporation Ltd. vs. CCE, Meerut-I - [2009-TIOL-452 CESTAT-DEL](#)

Probably, the Board is shy to expose the ignorance of its officers at the field level and, therefore, does not address the issue referred in the above manner but exhibits its own naivety.

Anyway, assuming that the Board was right in analysing the classification issue and concluding that structural components are not hit by the exclusion clause in rule 2 (k)(iv)(B)(b) of the CENVAT Credit Rules, 2004, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially part of Boilers, the moot question that crops up is as to whether this clarification can be applied mutatis mutandis to goods “other than” boilers.

This, obviously, would receive a guarded response from the Board, I know for sure.

FM Inaugurates DTRTI Campus in Bangalore - IRS in Good Demand among Services



FINANCE Minister Pranab Mukherjee yesterday inaugurated the new campus of the Direct Taxes Regional Training Institute in Bangalore.

In the function, he said that gone are the days when the most brilliant joined only IAS and IFS. A large number of candidates including MBAs and engineers with excellent academic record are opting for IRS. The campus is a three star certified green campus of the Central Government.

IRS over IAS? The Caste System!

IN [DDT 1759 23.12.2011](#), I wrote about young men leaving IAS for IRS. An angry IRS officer strongly protested,

I was surprised when you wrote -

¶And if you think things are going to be better in future, young men who are selected to join India's premier civil services are leaving IAS and IPS to join the IRS because they presume there is more money in IRS¶

This falsehood was first propagated by India Today around 2 decades back - i.e. 20 batches of Civil Services have joined since then.

Barring one or two Officers, nobody has preferred I.R.S. over I.A.S. And you must remember that around 1000 plus officers have joined I.R.S. in these 20 years. One or Two officers can have personal reasons or choice.

By the way, one or two officers have also preferred I.P.S over I.A.S., purely due to personal reasons or personal choice.

I.P.S. is a different type of Service, with very different job profile. Since 1960s, there have been large number of officers who have not opted for I.P.S. and have opted for I.R.S. and I.A.A.S.

So please note the correct factual position.

And the fact is that the kind of career profile, variety of assignments, perks, absolute supremacy that I.A.S. enjoys in Districts, State Capitals, New Delhi - no other Service can ever come near it.

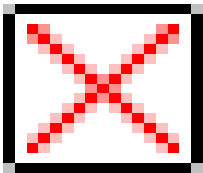
The same officer continued in another mail to **DDT**,

My mail was only conveying the agony of all I.R.S. Officers - or should I say double jeopardy -

* of NOT getting a Civil Services Rank to get into I.A.S. and thereby not being able to join the 'Brahmins' of Civil Services in this lifetime (Civil Services in India too have a caste system as you know - one can only be born into a Service, and after that no amount of sincerity and integrity can change the destiny) :

** then being told by 'India Today' that you chose to be born in a non-brahmin caste as you wanted to take bribes !

Jurispruden^{tiol} – Tuesday's cases



Customs

Overvaluation of CD ROMs exported by Merchant Exporter under DEPB - FOB price of goods exported is within 150% of value of goods declared by manufacturer supplier - As per guidelines of CBEC, no market enquiry requires to be caused if FOB value is not more than 150% of AR 4 value: CESTAT

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appellant is a merchant manufacturer and was engaged in the business of export of dyes, chemicals and polished diamonds. The appellants purchased CD ROMs at a price of Rs.600/- to Rs.615/- per piece and exported through Kandla Port. On an investigation conducted by DRI, show cause notice was issued seeking to re-determine the value of the CD ROMs exported on the ground that the value, which was declared, was excessive.

Income Tax

Whether for purpose of claiming Sec 10A benefits it is necessary for SEZ Unit to undertake some manufacturing within the SEZ - YES, rules ITAT

ASSESSEE

is a pvt. Ltd. company engaged in the business of manufacturing and export of studded diamond and gold jewellery. The assessee filed its return of income declaring total income of Rs. 67,07,218/- and claimed deduction u/s 10A to the extent of Rs. 4,83,99,550/- and deduction u/s 80HHC of Rs. 16,82,502/-. During the course of assessment proceedings, the assessee was focussed on payment of labour charges of Rs. 1,88,71,966/- during the year as against only Rs. 3,30,221/- incurred in the immediately preceding year. The AO, therefore, estimated the ineligible portion of the export turnover relating to job work activities on proportionate basis at 15,15,99,085/- being 44.35% of Rs. 34,18,24,319/- of export turnover was generated from the ineligible activities outside the SEZ. Accordingly, the claim of deduction u/s 10A worked out to Rs. 68,82,598/- was denied on the ground that the same was derived from such activities which were not carried out inside the location.Â

Service Tax

Charges for pipes, measuring equipmentÂ etc, at time of providing new gas connection - Prima facie liable to tax - Pre-deposit ordered: Â CESTAT

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the present case, the customer never has a right of possession since it would never become his own property at all. At any given point of time, the appellant can take re-possession and at no time, the customer would become the owner or can claim right of possession. In the case where an item is rented, the customer has right of possession so long as he keeps paying the rent. In the absence of any payment of rent for the meter and the equipment, there is no consideration in this case for right of possession by the customer and therefore the customer cannot even claim the right of possession also. Prima facie, the conclusion is that the appellants have provided the service and are liable to Service Tax, which has been demanded.

See our columns Tomorrow for the judgements

Until Tomorrow with more DDT

Mail your comments to vijaywrite@taxindiaonline.com