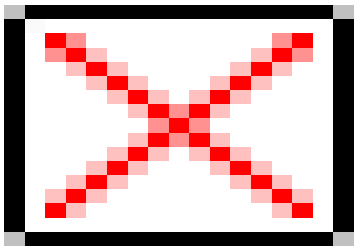
CENVAT Credit on Structural Components of Boiler - CBEC Clarifies - Again

 **TIOL-DDT 1861**

21.05.2012
Monday

Â

Â

BY **Circular No. 964/07/2012-CX dated 02.04.2012**, Board made some very important (and apparently wrong) clarifications.

The issue before the Board was,
¶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.¶

And the Board clarified, *¶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).¶*

But, Board was missing an important point. The classification of the product has to be decided at the manufacturer's end and not at the end where CENVAT Credit is taken.

We had pointed this out in **DDT 1831 - 09.04.2012**, and asked a question whether this clarification would apply to goods 'other than' boilers?

Board now clarifies this question. Board says
¶clarifications have been sought as to whether in view of the said circular, CENVAT Credit will be admissible on structural components used for the support of the Capital Goods". (What are THE Capital Goods?)

And Board clarifies,
¶it is once again reiterated that in terms of the Rule 2(k) of the CENVAT Credit Rules, 2004, while CENVAT Credit is available in respect of parts of Boiler, the same is not admissible in respect of the structural components used for laying of foundation or making of structures for support of capital goods/ Boiler.¶

It is beyond reason, why the Board should create so much confusion by issuing circulars. Can't they just be satisfied with their confusing rules and notifications? Should they complicate matters further by issuing clarifications on which further clarifications have to be issued within less than two months? It is absolutely clear that the one who drafted the clarification (all others up in the line only sign) had no clue as to where classification of goods has to be done and whether the officer at the receiving end had the power to classify the goods received as inputs. No wonder, Board Circulars are not respected and followed in the field.

For every problem, there is a solution, which is simple, elegant and wrong.

Circular No. 966/09/ 2012-CX, Dated: May 18, 2012

Capital Goods from SEZ - Eligible for EPCG Scheme

AS per Para 5.2A of the Foreign Trade Policy,

> *Spares (including refurbished/reconditioned spares), moulds, dies, jigs, fixtures, tools, refractory for initial lining and catalyst for initial charge; for existing plant and machinery (imported earlier, under EPCG or otherwise), shall be allowed to be imported under the EPCG scheme subject to an export obligation equivalent to 50% of the normal export obligation prescribed in para 5.1 and 5.2 above (for import of capital goods), to be fulfilled in 8 years (6 years for zero duty EPCG scheme), reckoned from Authorization issue date. This would however be subject to the condition that the c.i.f. value of import of the above spares etc. will be limited to 10% of the value of plant and machinery imported under the EPCG scheme. In case of plant and machinery not imported under the EPCG scheme, c.i.f. value of import of the spares etc. will be limited to 10% of the book value of the plant and machinery.*

DGFT Policy Circular No. 54 (RE-2010)/2009-14 dated 23.02.2012 clarified,

> ¶*for all types of imported Capital Goods, import of Spares under EPCG Schemes is allowed.*
>
> 3. *Under Para 8.2 (c) of Foreign Trade Policy, Capital Goods can be procured indigenously upon invalidating an EPCG Authorization.* ***However, d***
> ***omestically procured Capital Goods cannot be treated as 'imported Capital Goods' and hence the facility of Para 5.2A of Foreign Trade Policy cannot be allowed for such Capital Goods sourced domestically after invalidating EPCG Authorization.***¶

Now, there is a doubt:

> ¶*whether the Capital Goods sourced from Special Economic Zone (SEZ) would be treated as 'imported goods' and whether spares for such Capital Goods may be imported under the EPCG Scheme – Para 5.2A of FTP*¶.

DGFT Clarifies:

> *Capital Goods sourced from SEZ are treated as 'imported goods'. Hence, EPCG Scheme-under Para 5.2A is available for import of spares for such imported Capital Goods (i.e. sourced from SEZ) with reduced EO. Besides this, EPCG Authorization for "Spares" is also allowed under Para 5.2.*

DGFT Policy Circular No. 65/(RE-2010)/2009-14, Dated: May 18, 2012

Missing TDS Credits and Elusive PAN - CBDT has to answer a lot of questions from Delhi High Court

ANAND Parkash, FCA, wrote a letter to the Delhi High Court, " I am a regular income tax practitioner. I draw the attention of this Hon'ble Court towards the numerous difficulties faced by Income Tax assessees country wide due to the faulty processing of the Income Tax Returns and the TDS deducted at source and request that certain directions be issued by this Hon'ble Court so that lakhs of tax payers are saved from the harassment in filing revised returns/rectification petitions every year. "

> *1. The Income tax assessees filing Income Tax returns, on receipt of intimations u/s 143(1), generally are required to pay huge demands which are created because of mismatch of TDS as claimed in the Income Tax return. This is primarily because of the fact that department gives credit of TDS which stands reflected in their online computer records i.e Form No.26AS.*

2. Whenever any Department/Govt Office/Bank deducts TDS on behalf of the assessee he has to file quarterly statement of TDS deducted, along with PAN of deductee and other details. Even if there is slightest of mismatch in reporting the particulars of deductee, the TDS deducted by the Department will not reflect in the Form 26AS and as such, no credit of TDS will be allowed to the assessee resulting in unnecessary demands and hassles of getting the rectifications done.

3. To get the rectification done, at first the assessee has to request the concerned department to file a revised statement with correct particulars of deductee and only after revised statement is filed, the same will start reflecting in the 26AS and thereafter, the rectification is possible which is a very lengthy procedure. In many cases the concerned department refuses to revise the statement.

4. The department has communicated the demands outstanding for various years in their records to the Central Processing Unit without carrying out the necessary rectifications lying pending at their end and without reconciling their records. Now Central Process Unit while issuing refunds in the later years adjusts demands for earlier years. Sometimes the demands for earlier years may not have been communicated to the assessee. This is totally against the law.

5. The Returns of the assessees who have expired are filed by legal heirs and in case of refund, the same is issued by CPC in the name of dead person only. This causes great harassment to get the same rectified online or through assessing officer.

6. In case of ITR filed in ITR 4S by the assessee CPC is not considering the taxes paid by the assessees even if they are being reflected in Form 26AS. This is some technical problem in their software.

7. Assesses who are filing their Income Tax return u/s 44AD are not obliged to pay any Advance Tax as per the provisions of the Income Tax Act, 1961. But, while processing the Income Tax returns CPC is charging interest u/s 234B, 234-C in all such cases which is causing unnecessary rectification and paper work as the same should not be levied at all.

8. If an assessee has duly paid the taxes due to the Income Tax Department u/s 140-A, but he defaults in filing of return within the prescribed period of time, CPC is still charging interest u/s 234A from the date of payment till the filing of Income Tax Return.

9. During the filing of TDS return by deductor there is possibility of mistake like PAN being incorrectly mentioned, challan No. being incorrect of Assessment Year being wrongly mentioned by the deductor and also that no TDS return has been filed. In this case, TDS of deductee will not be shown in Form 26AS and credit will not be allowed by the Income Tax Department. Whereas there is no fault of deductee anywhere.

10. There is possibility that bank punches the wrong details like TDS No., Challan No. etc. In this case, there will error in processing the TDS return filed by deductor. So, TDS amount will not reflect in Form 26AS (Pan Data) with NSDL and credit will not allow to deductee whereas TDS was deducted by the deductor.

The Delhi High Court took this as a public interest writ petition and issued notice to the CBDT Chairman, Chief Commissioner of Income Tax, Delhi-I and Director General of Income Tax (Systems), along with some of its own questions:

(1) Whether procedure under Section 245 of the Income Tax Act, 1961 is being followed before making adjustment of refunds and whether assessees are being given full details with regard to demands, which are being adjusted.

(2) Whether the Revenue is taking caution and care to communicate rejection of TDS certificates and intimation under Section 143(1) in case any adjustment or modification is made to taxes paid, either as advance tax, self assessment tax or TDS.

(3) Whether and what steps are taken to verify and ascertain that the old demands against which adjustment is being made was communicated to the assessee?

(4) What steps have been taken to ensure that the deductors correctly upload the TDS details/particulars on the Income Tax website?

(5) What is the remedy available to the assessee and can he/she approach the Department in case the deductor fails to correctly upload the particulars in his/her cases?

(6) Whether an assessee can get benefit of TDS deducted or/and paid but not uploaded by the deductor and procedure to claim the said benefit?

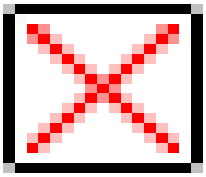
The Court appointed two senior advocates as amicus curiae and they recounted issues like:

The assessees are facing difficulty and harassment as in several cases new PAN card/ numbers are issued, when an application for rectification is filed; when new PAN number is issued, the assessees do not get credit of the taxes paid/deducted under the old PAN number; new addresses are mentioned in the returns, which are uploaded on the Income Tax website. This should be treated as intimation to the Department about change of address. Address is not stated or mentioned on the PAN card. Assessees specially the young middle class do frequently change their city or addresses; Sometimes, the assessees are asked to apply for rectification of PAN details separately even if the new address/details are furnished in the return. They have to submit the old PAN card and, therefore, for months they are without the original PAN card. Assessees now require PAN card for almost everything. This puts them to inconvenience and harassment without any palpable advantage or benefit to the Department.

The High Court wanted the Department's comments on these issues too. The Department is directed to file the affidavit on or before 29th May 2012. Let's see what happens on 30th May 2012 when the case is listed.

See the High Court Order HERE

Jurisprudentiol - Tuesday's cases



Central Excise

Goods supplied against International Competitive Bidding - Prima facie, benefit of Notification 6/2006-CE cannot be denied by invoking the provisions of EXIM policy: CESTAT

A show-cause notice was issued to the applicant in July 2010 demanding duty for the period 2006 to 2007 by denying the benefit of the Notification on the ground that the applicant suppressed the material facts with intent to evade payment of duty. In the show cause notice, the provisions of Import-Export policy were invoked to submit that Jindal Power Ltd. was not entitled for the benefit of Customs Notification no. 21/2002-Cus.

Income Tax

Whether income of a Trust should be applied not only to charitable purposes but also applied in India to such purposes - YES; rules Delhi HC

THE issues before the Bench - Whether the payment of taxes under the VDIS amounts to application of income of the trust to charitable purposes in India; Whether the words “is applied to such purposes in India” appearing in Section 11(1)(a) of the Act only mean that the purposes of the trust should be in India and that the application of the income of the trust need not be in India; Whether when the assessee-trust incurs expenditure on participation in overseas trade fair, such expenditure qualifies as application of income to charitable purposes in India; Whether income of a Trust should be applied not only to charitable purposes but also applied in India to such purposes and Whether the annual subscription fees received by the assessee-trust from its members is taxable under the provision of Section 28(iii) of the Act. And the verdict partly goes in favour of the Revenue.

Service Tax

Providing of space for advertising by way of billboard or on buses comes under purview of service tax with effect from 1.5.2006 after introduction of a separate entry - Strong prima facie case: CESTAT

THE applicants are engaged by the Ministry of Tourism, Government of India to organize media plan of campaigning advertisement of ¶India as Tourist Destination¶ in the print, electronic media and outdoor hoardings outside India. Revenue is of the opinion that the activities undertaken by the applicants in respect of arranging outdoor advertising in the foreign countries are liable to service tax under the category of advertising agency. The period of demand is prior to 1.5.2006.

See our columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a Nice Day
Mail your comments to **vijaywrite@taxindiaonline.com**