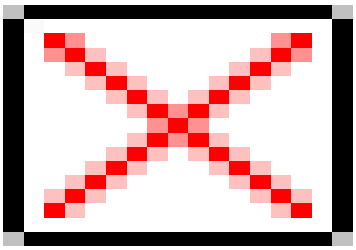
Notification Fiasco - Who is responsible - CBEC Clarifies. No Legal Force for Notifications in CBEC website

 **TIOL-DDT 1942**

14.09.2012
Friday

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PLEASE go to **DDT 1928 - 27.08.2012** -
Notification fiasco - Who is responsible for the confusion? Madam Chairman, will you stop this smuggling in notifications? wherein it was pointed out that Sl. No. 148 (B) of Notification 12/2012 - Cus had a condition ¶5¶ originally and it went missing in CBEC website later. **DDT** had said, ¶
The CBEC has a new Chairman - a dynamic lady. Will she try to put an end to this smuggling of laws by the highest body? It is perfectly human to make a mistake (or even hundreds of them as our Board usually does), but the Board should be mature enough to admit the mistakes and correct them instead of smuggling in corrections and confusing the assessees, publishers, officers and even the judiciary¶.

Now, the Board has clarified the issue. In a letter to us, the Director (TRU) in CBEC informs,

> *With reference to the report captioned, ¶Notification fiasco - Who is responsible for the confusion?¶ dated 27-08-2012 published on your website, I am directed to provide the following clarification:*
>
> *(1) Corrections to the legal text of a notification are invariably made either by way of a corrigendum or an amendment notification - both of which are duly displayed on the CBEC website **(www.cbec.gov.in)***
> *and published in the official gazette. There is no question of ¶smuggling¶ corrections or carrying them out ¶secretly¶ as alleged in the report.*
>
> *(2) In the case of the entry at S.No. 148(B) of notification no. 12/2012-Customs dated 17-03-2012 the correct legal position is that the condition no.5 is applicable. That being so, there is no amendment notification or corrigendum to substitute it with ¶-¶. However owing to a typographical error in the electronic version of the notification (reflecting the updated position as 30-05-2012), the relevant entry under column (6) indicated a ¶-¶ at the time the aforesaid report appeared. **This has now been corrected.***
> ***The copy published on the website is for trade facilitation and does not have any legal force.***

First of all, we are grateful to the Board for this clarification. At least some cobweb of confusion is removed. But it is a great typographical error that in the beginning, in the notification carried in the website, there was this condition and while updating, the condition became a dash¶-¶! Why should anyone tinker with this entry at all? Obviously somebody had changed that ¶5¶ to a ¶-¶, and why should that somebody do that? Anyway, Board is above board and let us leave it as a typographical wonder!

Now, this clarification raises a larger issue - the notifications published in the website have no legal force! So, does the Board want everyone to get a copy of the gazette? And where are gazette copies available? Now, routinely these notifications are downloaded from the department's website and produced before courts and tribunals and are being accepted also. When they have no legal force, what is the use of carrying them in the site? And what is the trade facilitation in carrying a notification with errors? If the notifications carried in the official website are not to be relied upon, why can't the Board carry copies

of the gazette? Will the Board clarify as to where one can get an authentic certified copy of a notification, which will have legal force? Getting a copy of the gazette is almost impossible and so Board should arrange some way by which a legal copy is made available to the public.

We are grateful to the Board for its clarification - a response from the Government is always gratifying.

CBEC TRU Dy. No.FTS - 147255/12 dated: September 13, 2012

Excise Duty on Diesel and Petrol

THE
Cabinet Committee on Political Affairs (CCPA) met yesterday under the chairmanship of the Prime Minister to consider the disturbing situation arising out of projected massive under-recoveries of Rs. 1,87,127 crore for the financial year 2012-13 in the wake of high international crude oil prices and sharp depreciation of Indian Rupee against US Dollar.

The CCPA decided to

1. increase the excise duty on diesel by Rs. 1.50

2. reduce the Excise Duty on Petrol by Rs 5.30 per litre.

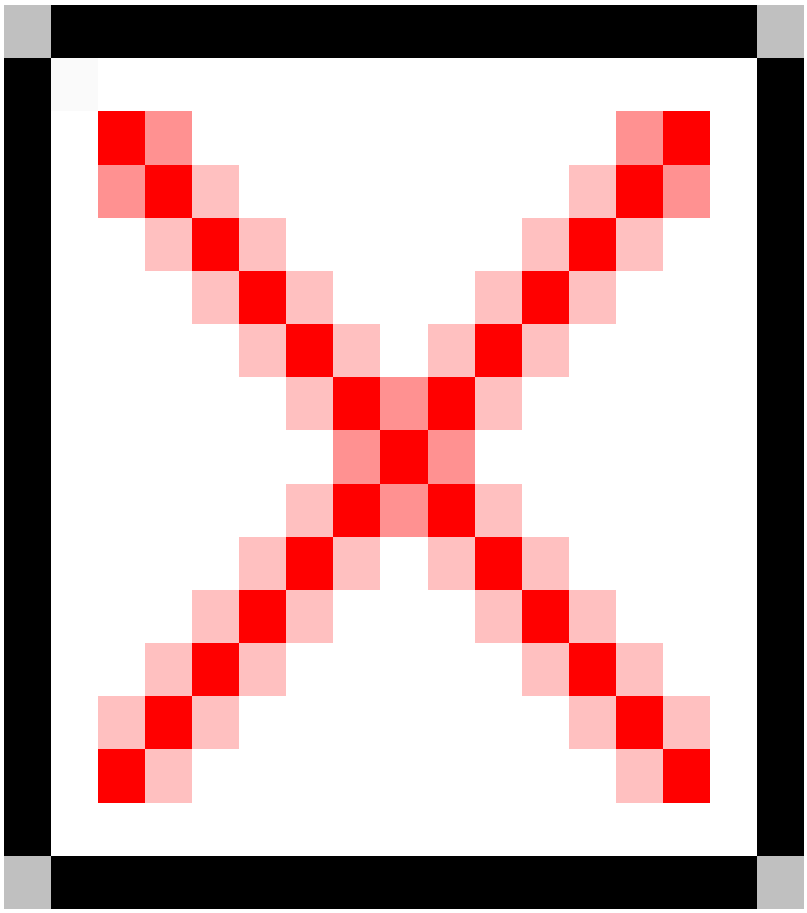
These changes have come into force from 00.00 hrs of today. CBEC is yet to release the notifications. In any case, the notifications published in their website have no legal force!

Indian Currency Circulating Abroad

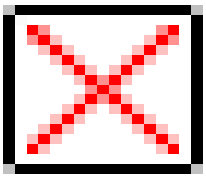
WE
think the humble rupee does not command the glamour of the dollar, but the fact is that a huge amount of Indian Rupees is available abroad. Recently the Mumbai Customs arrested a minor boy trying to smuggle Rs. 72 lakh from Hong Kong to Dubai via Mumbai. Where did he get 72 lakhs of rupees in Hong Kong and what was he planning to do with this money in Dubai?

Obviously, apart from the black money stashed away in foreign banks, there is a lot of Indian currency floating around abroad.

DDT Cartoon



Jurisprudentiol - Monday's cases



Income Tax

Whether notes of accounts can be basis for AO to pass an order u/s 142(2A) for conducting special audit - NO: Delhi HC

THE assessee, Delhi Development Authority, is a statutory body/authority created by the Delhi Development Act, 1957, to promote and secure development of Delhi. The AO issued the direction for special audit in the case of the assessee in respect of each of the AYs for 2003-04 to 2009-10. The grounds for initiation of special audit in most of the years were similar. It was the contention of the petitioner assessee that the order of special audit in respect of 2003-04 formed the basis of the subsequent orders. The assessee had filed these writ petitions against the AO and the Director of Income Tax (Exemptions)/Commissioner of Income Tax (Exemptions) who had given directions or approval for initiation of special audit u/s 142(2A) of the Act.

Service Tax

IPR Services - Agreement provides for requirement of appellant's permission for transfer of technical knowhow by licencee to any other person who wishes to manufacture same product by using process developed by appellant - Appellant has not made a prima facie case for waiver - pre-deposit ordered: CESTAT

THE agreement provides for requirement of appellant's permission for transfer of technical knowhow by the licencee to any other person who wishes to manufacture same product by using the process developed by the appellant herein. This itself would indicate that there is no permanent transfer of intellectual property right to the licencee in the agreement. Be that as it may, the appellant has not made out a prima facie case for complete waiver of pre-deposit of the amounts involved.

Central Excise

Hangers are nothing but packing material in which fabrics have been placed - even if it is held that these are not inputs, since these goods were exported along with man-made fabrics on payment of duty they are rightly entitled for credit - CESTAT

THE appellant is a manufacturer of man-made fabrics. For the purpose of manufacture of these final products, the appellant had imported hangers, sample booklets, etc. containing designs and drawings of the fabrics to be manufactured. The appellant availed CENVAT credit of the additional duty of Customs paid on the said inputs. After manufacture, the appellant exported the goods under a claim for rebate of duty under Rule 18 of the CER, 2002. The department says it is at a loss to understand as to how 'hangers' and 'booklet' could be considered as inputs under the CENVAT Credit Rules.

See our columns Monday for the judgements

Until Monday with more **DDT**

Have a Nice Weekend.

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