'CENVAT Roko' by Railways

TIOL-DDT 2021
10.01.2013
Thursday

P G James, a regular contributor of articles to our site has this to say -

Service Tax on transport by rail was introduced with effect from 1 st October 2012.

As per Rule 4A of Service Tax Rules, inter alia every person providing taxable service shall issue an Invoice, a bill or as the case may be a Challan and such Invoice, bill or challan shall be serially numbered and shall contain the following namely:-

(i) the name, address and the registration number of such person

(ii) the name and address of the person receiving taxable service

(iii) the description and value of taxable service provided or agreed to be provided; and

(iv) the service tax payable thereon

As per Rule 9(1)(f) of the CCR, 2004, CENVAT credit shall be taken by the manufacturer or provider of output service on the basis of an Invoice, Bill or Challan issued by a provider of Input service.

Only relaxation to the above provisions is to the Banking and Financial institutions wherein it is provided that Invoice, Bill or Challan shall include any document, by whatever name called, whether or not serially numbered and whether or not containing address of the person receiving taxable services but containing other information in such documents as required under this sub rule.

Railways, being Service Tax registrants are bound by the Service Tax provisions and are not relaxed from issuing a formal Invoice as per Service Tax Rules.

Vide their Rate Circular No 29/2012 dated 28.09.12 (No TCR/1078/2011/2) it has been clarified by the Deputy Director of Railway Board that customers can get credit of Service Tax based on the consolidated Certificate issued by an authorised Officer of Railway. The relevant extract of the Circular is reproduced below:

¶xiii) On any written request from customers, CCM Office will issue a monthly consolidated certificate to be signed by an Officer authorised by CCM and duly countersigned by Dy.CAO/T or officer nominated thereto, for each customer giving details of Service Tax collected from them during the previous month, date-wise and rake-wise with break up of (a) Service Tax, (b) Education Cess, (c) Higher Education Cess and (d) Total Service Tax. This can be used by the customers for getting credit of Service Tax from the concerned Superintendent of Central Excise as due to them¶

It needs mention that the consolidated Certificates are also not being issued at many places due to the reason that details are not obtained from the concerned Rail Terminals.

The first question that comes to mind is ***whether the Railway Board has the power to prescribe a document for taking CENVAT Credit?***

Obviously, even if credits are taken on the basis of such ¶consolidated certificates¶, the CERA and Internal Audit groups are certain to raise objections and which would lead to litigation manifold.

Incidentally, during the MODVAT regime, it was clarified by CBEC that duty payment certificates issued by Public Sector Undertakings are valid documents for availing credit of Excise Duty.

It is, therefore, expected that the CBEC comes out with a clarification on the issue immediately.

The CBEC has already extended its New Year wishes to all the assessees in the form of the draconian Circular No967/01/2013-CX and the above issue is an icing on the cake for the department.

*I am reminded of the following maxim: ¶**Cujusest dare ejusestdisponere**¶ - ¶ He who gives anything can also direct how the gift is to be used.¶*

Let us hope the Government will educate the assessees the manner in which they should go about to avail the CENVAT credit of Service Tax paid by Railways on the freight.

Is this too much that we ask for?

Railway Board Rate Circular No. 29/2012 dated 28.09.2012

Will the Board - CBEC (not Rail Board) Clarify?

Income Tax - Time for Filing ITR V Forms for three years - Extended

DIRECTOR
General of Income Tax (System) has extended the time limit for filing ITR-V forms relating to Income Tax Returns filed electronically (without digital signature Certificate) for

1. A.Y. 2010-11 [Filed during F.Y. 2011-12] and for

2. ITRs of A.Y. 2011-12 [filed on or after 1-4-2011]

till 28th February, 2013.

In respect of returns filed for A.Y. 2012-13 for which ITR-V forms are yet to be received at CPC and time of 120 days has also elapsed, time limit for filing of ITR-V is extended upto 31st March, 2013 or 120 days from the date of uploading of the electronic return data, whichever is later.

This direction is issued to mitigate the hardship and grievance of the tax payers who have been prevented by reasonable causes to file the ITR-V in time.

CBDT Notification No. 1/2013 (under CPR Scheme 2011, Dated: January 07 2013

CBEC's Draconian Circular - All Roads Lead to HC

THE CBEC's draconian recovery Circular No. 967/2013 dated 01.01.2013 **(DDT 2015 - 02.01.2013)**
has spurred Central Excise officers into issuing threatening notices to assessees whose cases are pending in appellate forums. The poor assessees have no option but to rush to the High Courts. Yesterday, nine petitions came up in the Andhra Pradesh High Court seeking:

1. to issue a Writ, Order or direction particularly one in the nature of a WRIT OF CERTIORARI quashing the clarification issued vide Circular No. 967/01/2013-CX dated 01.01.2013.

2. to grant stay of clarification issued vide Circular No.967/01/2013-CX dated 01.01.2013

The High Court has granted interim stay and stayed the recovery of the demand till the appellate authorities decide the stay applications. The High Court also made it clear that the assessee shall be bound by the orders of the appellate authority and the pendency of the writ petition before the High Court would not be a bar against the appellate authorities' order.

The Complexity of Tax Code - Tax Compliance - Largest Industry?

THE Internal Revenue Code (USA) requires the National Taxpayer Advocate to submit a report each year to the Congress and in it, among other things, to identify at least 20 of the most serious problems encountered by taxpayers and to make administrative and legislative recommendations to mitigate those problems.

The National Taxpayer Advocate submitted its report for 2012 yesterday.

The most serious problem facing taxpayers and the IRS — is the complexity of the Internal Revenue Code.

An analysis of IRS data shows that taxpayers and businesses spend 6.1 billion hours a year complying with tax-filing requirements. To place this number in context, it would require more than three million full-time employees to work 6.1 billion hours, making ¶tax compliance¶ one of the largest industries in the United States.

Tax law complexity imposes monetary costs on taxpayers as well. About 59 percent of individual taxpayers pay practitioners to prepare their returns, and another 30 percent use tax software to assist them, with leading software packages costing $50 or more.

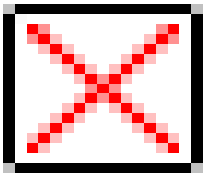
Perhaps most troubling, tax law complexity leads to perverse results. On the one hand, taxpayers who honestly seek to comply with the law often make inadvertent errors, causing them to either overpay their tax or become subject to IRS enforcement action for mistaken underpayments. On the other hand, sophisticated taxpayers often find loopholes that enable them to reduce or eliminate their tax liabilities.

In a survey, 16 percent said they believe the tax laws are fair. Only 12 percent said they believe taxpayers pay their fair share of taxes.

The National Taxpayer Advocate finds this extraordinary lack of public trust in the method by which the government is funded profoundly disturbing.

Shouldn't we also have something like this? We will bring you more US Tax problems in the coming days.

Jurispruden<u>tiol</u> – Friday's cases



Income Tax

Whether when assessee-Trust receives donation vide post-dated cheque encashable in next accounting year and also fact that donor claims such donation only after cheque is honoured, it can still be said that assessee violated provisions of Sec 13(2)(b) - NO: Apex Court

DURING
the relevant accounting year, the assessee had, by way of donation, received two cheques for a sum of Rs.40 lac each from M/s Apollo Tyres Ltd. One of the cheques was dated 22nd April, 2002 and yet it was given in accounting year 2001-2002 i.e. before 31st March, 2002. The said cheque for donation was received by the assessee before 31st March, 2002 but was honoured after 1st April, 2002. In the assessment proceedings, the AO held that with an intention to do undue favour to M/s Apollo Tyres Ltd., the cheque dated 22nd April, 2002, given by way of donation for a sum of Rs.40 lac had been accepted by the assessee and receipt for the said amount was also issued before 31st March, 2002. According to the AO, many of the trustees of the assessee trust were related to the directors of M/s Apollo Tyres Ltd. and so as to give undue advantage under the provisions of Section 80G, the cheque had been accepted before 31st March, 2002 although the cheque was dated 22nd April, 2002. Thus, by accepting a post dated cheque and by giving receipt in the earlier accounting year, the assessee trust had done undue favour.

Central Excise

CENVAT Credit taken on imported cocoa beans - Cocoa shells arising during manufacture cleared without payment of duty - invocation of rule 6(2) of CCR, 2004 for recovery of amount of 5% on ground of availment of CENVAT credit on common inputs is *prima facie* improper as cocoa shells is waste - pre-deposit waived and Stay petition allowed: CESTAT

THE
applicants imported cocoa beans and paid 4% CVD and claimed the credit of CVD paid. During the course of manufacture, cocoa beans are retrieved from the shell and shells are discarded. The applicants are selling the cocoa shells in the open market without payment of duty. The case of the Revenue is that the CENVAT credit is availed on the common inputs and since cocoa shells are cleared without payment the applicants are liable to pay 5% of the value of exempted cocoa shells cleared without payment of duty under Rule 6(2) of CENVAT Credit Rules, 2004.

Service Tax

Maintenance and Repairs by Central Railway of Railway sidings owned by private parties under agreements - Railways are not collecting any statutory fee but are collecting service charges for services rendered - Liable to Service Tax - appellant has not made *prima facie* case in favour for waiver of dues - pre-deposit ordered of Rs.1.62 Crores: CESTAT

THE

appellant is Central Railway. They undertook maintenance and repairs of Railway sidings owned by private parties under agreements entered into with such owners. The revenue was of the view that the activities undertaken by the Railways comes under the taxable service of ¶management, maintenance and repair services¶ as defined under section 65(105)(zzq) of the Finance Act, 1994 read with section 65(64) ibid with effect from 16/06/2005. SCNs were issued demanding service tax of Rs.2.51 Crores & Rs. 74.22 lakhs for the period 2005-06 to 2007-08 and for the period 2010-11 respectively and were confirmed by the CCE, Nagpur along with interest and penalties.

See our Columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a Nice Day

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