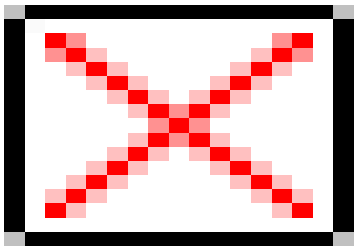
Service Tax - Rice is not an Agricultural produce! CWC (meekly) accepts Revenue Interpretation. Rice to be costlier



TIOL-DDT 2275

20.01.2014
Monday

RECENTLY we had carried an article, **Service Tax - Isn't Rice an Agricultural produce?**
wherein the author referred to the Finance Minister's clarification that â€˜RICE' is not covered under the definition of â€˜agricultural produce' found in Section 65B(5) of the Act. The author had suggested that the Minister for Consumer affairs, Food and Public distribution should allow/direct the Food Corporation of India to challenge the FM's decision before courts of law since the statement of the Hon'ble FM is not the law on the subject.

But the Central Warehousing Corporation which originally raised this doubt has caved in and meekly surrendered to the Finance Minister that rice is after all not an agricultural produce and in any case had they gone to the Court, the wise judges would have ruled that Parliament is free to legislate and there is no bar on declaring that rice is not an ***agricultural produce***
and that coal is food or that steel is edible oil - if Government says rice is not food, it is not food - whether you eat it or not is immaterial. Well, that's how laws are made and interpreted.

Coming back to our rice story, as early as in October 2012, three months after the negative list regime came into existence, the CWC (hereinafter this refers to the Central Warehousing Corporation and not the political CWC) wrote to its officers that pending clarification from the Finance Ministry, the Corporation would continue to treat the Rice stored by Food Corporation of India (FCI) or any other Central or State Government Agency or the Department as an 'Agricultural Produce' and thus exempt from the levy of Service Tax both on its Storage as well as Cargo Handling.

But the clarification came from the FM on 8.11.2013 and the CWC decided that Service Tax has to be collected from all customers including FCI with effect from 01.07.2012 on storage and cargo handling charges (handling and transport of cargo) of Rice. The CWC directed its offices to deposit the Service Tax under the VCES before 27.12.2013. The CWC also directed its officers to pay Service Tax from 01.01.2013 to 30.11.2013 with 18% interest.

So, your rice is going to be costlier because the Finance Ministry thinks that rice is not an agricultural produce. The Finance Ministry officials who interpreted this legality of what rice should be thankful that the ***tea boy who is waiting to become PM***
is not aware of this clarification (yet) - what an effective point it would make in his election speeches!

CWC Circular No 63, Dated: October 11 2012 and CWC Circular No 76, Dated: December 17 2013

Service Tax - What about *construction* of warehouses for storage of rice?

AS
per Sl. No. 14 (d) of the Notification No. 25/2012-Service Tax, dated 20.06.2012, Services by way of construction, erection, commissioning, or installation of original works pertaining to,- post-harvest storage infrastructure for **agricultural produce**
including a cold storages for such purposes; are exempted.

Now is construction of warehouses for storage of rice exempted? Even in this case, the Central Warehousing Corporation (CWC) clarified to its officers that no Service Tax is payable for construction of warehouses meant for storage of agricultural produce.

But now that the Finance Minister has clarified that **Rice**
is not an agricultural produce, CWC has clarified to its offices that now Service Tax is payable. The CWC is so careful that it has clarified that even in cases of construction of warehouses for storage of Agricultural produce where it is not known as to what commodity will be stored therein i.e. wheat, Rice or some other commodity, the construction of such warehouses will be subject to service tax w.e.f. 01.07.2012.

Even in this case, the CWC opted for VCES for the period up to 31.12.2012 and paid Service Tax with interest for the later period.

Imagine - the construction of an airport is exempted, but construction of a warehouse to store rice is not exempted, a hotel room costing less than Rs. 1000 per day is exempted, not a rice godown - your public toilet is exempted not your rice godown!Great Laws indeed!

CWC Circular No 77, Dated: December 23 2013

If you find rice costly, eat the Italian Pizza - Remember the French princess who said, "let them eat cakes", when she was told the peasants had no bread to eat.

Delay in Issuance of TDS certificate Â - CBDT reminds field about commitment to taxpayers

CBDT
has issued instruction to the field formations that the commitment to tax payers as per the Citizens Charter must be scrupulously adhered to by the Assessing Officers.

As per Section 197 of the Income Tax Act, the Assessing Officer is required to give a certificate of no TDS or TDS at less rate in cases where he is satisfied that the total income of the assessee justifies TDS at a lower rate or no deduction at all.

As per the Citizens Charter, the time line prescribed for a decision on application for no deduction of tax or deduction of tax at lower rate is one month.

Instances have been brought to the notice of the Board, about considerable delay in issuing the lower/non deduction certificate under section 197 by the jurisdictional Assessing Officers.

Board says, "
the commitment to tax payers as per the Citizens Charter must be scrupulously adhered to by the Assessing Officers and all applications for lower or no deduction of tax at source filed u/s 197 of the Income-tax Act, 1961 must be disposed of within the stipulated time frame as above."

Board doesn't say it is going to take a serious view if the certificate is not issued within one month. Shouldn't there be some liability/responsibility fixed?

CBDT Instruction No. 1/2014 in F.No.275/03/2014-IT(B), Dated: January 15, 2014

Anti Dumping Duty on Caustic Soda from China - Resurrected

THE present Anti Dumping Duty on caustic soda originating in, or exported from, People's Republic of China was imposed by Notification No. 137/2008 - Cus dated 26.12.2008.

The Notification clearly stated, "***The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Gazette of India."***

So, the anti dumping duty imposed under this notification is not effective from 26.12.2013.

Now, the Government has amended this (dead) notification to extend its validity till 25.12.2014. HOW CAN THEY EXTEND THE LIFE OF A DEAD NOTIFICATION? WHY IS THE BOARD SO CALLOUS? AND WHY DO THEY SHOW SUCH CONTEMPT FOR LEGISLATION?

Notification No.03/2014-Customs (ADD), Dated: January 16, 2014

Anti Dumping Duty on Caustic Soda from Korea - Resurrected

SIMILARLY
the Notification No. 95/2011-Cus dated 3.10.2011, which imposed anti dumping duty on caustic soda originating in, or exported from Korea RP, expired on 25.12.2013.

The Notification clearly stated,
"The anti-dumping duty imposed under this notification shall be effective up to and inclusive of 25th December, 2013."

So, the anti dumping duty imposed under this notification is not effective from 26.12.2013.

Now, the Government has amended this (dead) notification to extend its validity till 25.12.2014.

Notification No.04/2014-Customs (ADD), Dated: January 16, 2014

Anti Dumping Duty on Nonyl Phenol - Re Birth

ANTI
Dumping Duty on â€˜Nonyl Phenol', falling under heading 2907 of the First Schedule to the Customs Tariff Act, originating in, or exported from, the Chinese Taipei was imposed by Notification No. 94/2007-Cus dated 22.08.2007 and had expired on 22.08.2012.

They extended it till 21.08.2013 two days after its expiry, by Notification No. 39/2012 -Cus(ADD) dated 24.08.2012

This expired on 21.08.2013 - the dumping continued. So, now the Government has re-imposed the anti dumping duty for another five years with effect from 16.01.2014. Who pays for the dumping between 22.08.2013 to 15.01.2014?

Notification No.05/2014-Customs (ADD), Dated: January 16, 2014

CENVAT Credit - Centralised ISD?

WE received this mail from a leading manufacturer.

> ***A manufacturer having several manufacturing units has its Head Office in a metro city, Regional Offices in the State Capital and also Branch Offices where he receives many services like Advertisement, Sales Promotion, Event management, Catering etc., and all / some of these services are related to his manufacturing activity directly or indirectly. However, presently there is no provision for taking centralized ISD (Input Service Distributor) registration by the company for distribution of Service Tax credit to the Units of Manufacturers.***
>
> ***In order to avoid multiple ISD registrations, the CBEC should allow Centralised ISD registration whereby the credits, which the manufacturer receives at their HO, Branches, regional Offices, etc. can be taken at a single place and can be distributed as per the Rules. Because if a manufacturer has 50 offices where he receives various services that are in relation to the manufacturing activity, then he has to take 50 ISD registrations, file Returns, face Audits at 50 places, which is ridiculous and avoidable. So why can't we have Centralised ISD registration facility on the lines of centralized registration available for Service Providers?***

Will the Board try to solve this genuine problem?

'Headquarters Allowance' for Group A officers doubled

THE President is pleased to double the 'Headquarters Allowance' admissible to Group A officers posted in the headquarters of Central Government organisations.

DOPT F. No. 4/2/2013-Estt(Pay-II), Dated:January 04, 2014

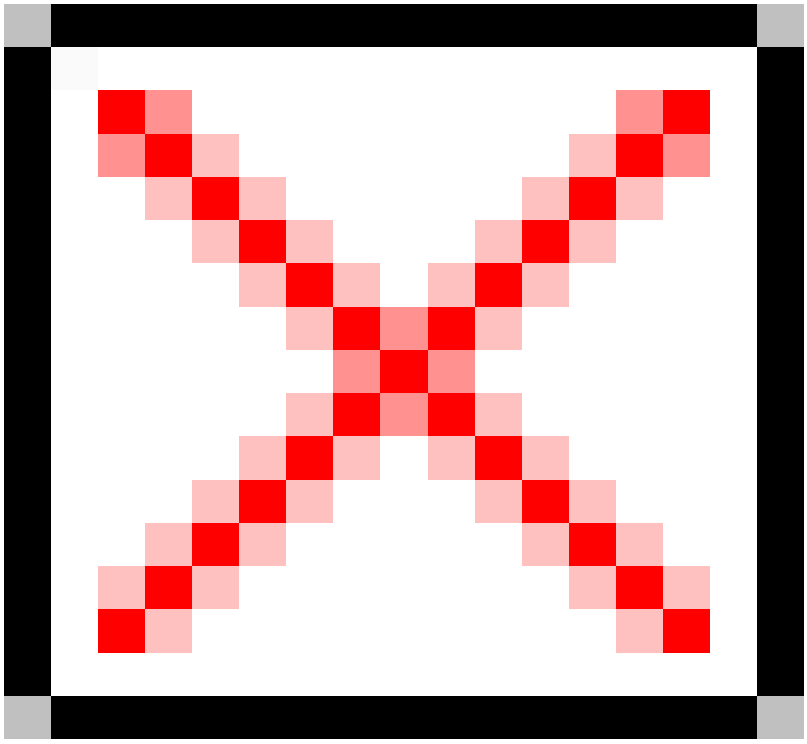
Single Tax attractive but not easy -Jaitley

THE
proposal to replace income tax and excise with a single tax on banking transaction is "attractive" but several questions have to be answered before it is implemented according to BJP leader Arun Jaitley while addressing a Seminar on 'Simplification of Tax Laws in India' organised by the Institute of Chartered Accountants of India.

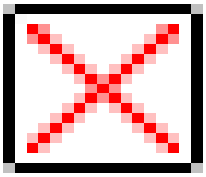
He added,

At present, society is distraught with excessive taxation, complex taxation and Inspector Raj and that's why this proposal looks attractive, but there are many questions in implementation of this.

In the current political scenario, federalism is at centre stage, and when we start collecting taxes at one point, it will be a challenge for the Centre to make states understand that it will lead to increase in tax collection.



Jurisprudentiol **â€“ Tuesday's cases**



Customs

SEZ - Notification for inclusion of additional area in existing SEZ issued after more than one year from the original Notification - Demand of duty on goods cleared from SEZ to additional area before issue of formal Notification to include additional area and confiscation of goods - RIL wins 60 crores case - CESTAT by Majority

IN
the absence of any consultation done by the Revenue with the SEZ authorities and no action taken by the SEZ authorities under the SEZ Act 2005 holding that operations undertaken by the appellants were not 'Authorized Operations', no duty and interest on the goods removed from SEZ to permitted storage area or additional area for construction, can be demanded from the appellants under Section 28 &28AB of Customs Act, 1962. Notification No.S.O.873(E), dt.4.6.2007 will relate back to 19.4.2006 when Notification No.S.O.568(E) was issued.

It can be safely concluded that for any removals of the goods from SEZ area to DTA or within SEZ area under intimation/approval of the appropriate authorities, if not properly accounted for or not brought back within the stipulated period, adequate recovery machinery exists under the SEZ Act. 2005 and SEZ Rules 2006 to recover Customs/ Central Excise dues - Accordingly, if approvals have been given by the SEZ authorities, the operations have to be treated as 'Authorized Operations' defined in Section 2(c) of the SEZ Act 2005. Even if some of the removals/operations undertaken by the appellants are not authorized, but done with the approval/under intimation to the SEZ authorities, then also the power to demand/recover duties of Customs/Central Excise from SEZ, is vested with the authorities created under the SEZ Act 2005 and SEZ Rules 2006.

Income Tax

Whether any *ad hoc*
disallowance of payment made u/s 40A(2)(b) to sister concern is warranted merely on basis that it was run by wife of Director of assessee company - NO: HC

THE assessee, a company, was engaged in the business of development of infrastructure facilities mainly relating to water and sewage treatment on turnkey basis. It had filed return of income for AY 2005-06 declaring total income at Rs. NIL. Notice u/s 143(2) and 142(1) were issued. Assessee claimed deduction u/s 40A(2)(b) of Rs. 1.50 crore paid to the persons specified u/s 40A(2)(b) viz M/s. Pollucon Engineers, the proprietor of which was wife of Shri Anand Vashi, Director of the assessee company with respect to supply of labour for operating and maintenance work. By an office letter, assessee was requested to justify the said claim. The assessee had submitted that the business of the proprietor was looked after with the help of Engineers and other employees. It was submitted that the job was awarded to M/s. Pollucon Engineers after inviting offer from other parties. It was further submitted that since the offer of M/s. Pollucon Engineers was found loweset and favourable, the offer was accepted. That AO was not convinced with the explanation given by the assessee and disallowed 10% payment of Rs. 1.50 crores and added to the total income of the assessee by observing that the assessee had failed to produce any supporting evidence against the claim

THE issues before the Bench are - Whether any adhoc disallowance of payment made u/s 40A(2)(b) to a sister concern is warranted merely on the basis that it was run by the wife of the Director of the assessee company and Whether in such a case there would be a presumption of excessive claim. And the verdict goes against the Revenue.

Service Tax

Appellant, an *IITian*
rendered consultancy services in respect of metal development and received professional fees - such service cannot be termed as Market Research Agency Service - order set aside and appeal allowed: CESTAT

A
SCN was issued to the appellant demanding Service Tax of Rs.45,000/- on the ground that the appellant is engaged in conducting marketing research in relation to steel products, hence are covered under Market Research Agency service. The appellant had not provided any taxable service in respect of market research agency.

See our Columns Tomorrow for the judgements

Until Tomorrow with more DDT

Have a nice day.

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