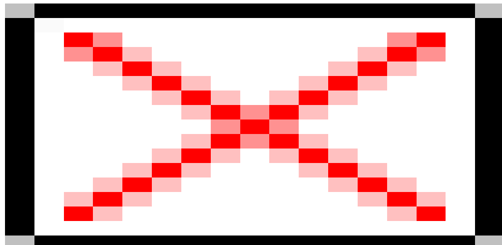
Service Tax - Certificate Issued by Railways to be valid document for taking credit



TIOL-DDT 2425

28.08.2014

Thursday

SERVICE

Tax on 'Service provided in relation to transport of goods by rail' came into effect from 01.10.2012. What is the document based on which credit can be taken by the recipient of this service? The Railways issue what they call RRs for the goods booked with them. Is this RR a valid document?

The Railway Board in a Circular issued on 28.09.2012 directed that:

> ***On any written request from customers, CCM Office will issue a monthly consolidated certificate to be signed by an Officer authorized 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 breakup 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.***

So, the Railways had decided more than two years ago that the certificate issued by an officer in CCM office will be a valid document for taking CENVAT credit. The Railway Circular was precise and covered all the issues with abundant clarity. That's why they are able to run thousands of trains.

Now the CBEC has amended the CENVAT Credit Rules to include this certificate as one of the documents for taking credit.

A new clause ***"fa"*** has been inserted in Rule 9(1) as follows:

> ***"(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or"***

Is this amendment clarificatory and so retrospectively valid? Another bout of litigation?

Also please see **'CENVAT Roko' by Railways** in DDT 2021

NOTIFICATION NO. 26/2014 - Central Excise (N.T.), Dated: August 27, 2014

Service Tax - Finance Act 2014 - TRU explains Changes

THE

Joint Secretary TRU in a letter addressed to the CCs, DGs and Commissioners has explained the changes brought about as a consequence of the enactment of the Finance Bill 2014 on 6.8.2014.

He clarifies that the explanations in respect of changes discussed are not exhaustive and the text of the relevant statutory provisions and the wordings of the notifications should be read carefully to implement the law.

He has expressed his thanks to officers in field formations who have shared their ideas and views with TRU.

A **concerned** Netizen asks, ***"***
Why is the TRU Chief silent on the important issue of interest on service tax? Is he not aware of the Chairperson's statement?"

TRUD.O.F. No. 334/15/2014-TRU, Dated: August 25, 2014

Frivolous Appeals - Strictures against Revenue

IN a recent judgement in an Income Tax Appeal, the Bombay High Court came down heavily on the Revenue. The High Court observed,

It is unfortunate that the Revenue files Appeals year after year pertaining to the same Assessee and raising the same issues and questions which have been raised earlier duly considered and have not been answered in favour of the Revenue by this Court.

This is one more instance of the Revenue urging before this Court that firstly a film production unit or a Company is not an industrial undertaking within the meaning of section 80 IB of the Income Tax Act 1961.

We find that when the Tribunal passed an order in the case of very Assessee, and which order could not be successfully assailed by the Revenue, then, instead of following and applying it and maintaining and upholding the rule of consistency, the authorities disobey the same. The Tribunal's order and in the case of very Assessee have during prior Assessment Years considered identical questions and issues. We do not see how the Revenue can repeatedly bring matters before this Court and on same issues in successive years when it has not been able to succeed in its earlier endeavour. This tendency will have to be curbed because factual matters are being reopened by such repeated exercises and we strongly disapprove the same.

When the parties have dealt with each other, for number of years and knowing fully well what the issues are, then, the least that is expected from the Department or the Revenue is that it will abide by the Tribunal's orders and grant the deduction in accordance therewith. More so, when the Tribunals' orders are challenged in this Court but the challenge fails, the very contention raised before the Tribunal but not accepted is sought to be raised. We do not see how a Court of law, that too the highest Court, can be called upon to undertake an exercise to convince the Revenue that what it is urging before it is not tenable either in law or in facts. It is not the function of this Court to persuade the authorities. They must accept the claims or deductions as in the present case and follow the Tribunal's orders on factual issues. That would uphold rule of consistency and certainty. We find that extreme arguments are canvassed so as to take a chance and try to unsettle the settled matters and things. This tendency has to be curbed and we must come down heavily on parties to curb it, may it be the Revenue.

Appointment of Ministers with Criminal Record - SC not to interfere - Leaves it to Prime Minister

THIS is a writ petition filed in 2005 against the appointment of certain ministers to the Council of Ministers of Union of India despite their involvement in serious and heinous crimes. The Supreme Court delivered its judgement yesterday.

The Constitutional Bench observed,

A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law.

Criminalisation of politics is an anathema to the sacredness of democracy.

Criminality and corruption go hand in hand. From the date the Constitution was adopted, i.e., 26th January, 1950, a Red Letter Day in the history of India, the nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tenets of the rule of law .

Leaving the burden to the prime Minister, the Supreme Court observed,

In a controlled Constitution like ours, the Prime Minister is expected to act with constitutional responsibility as a consequence of which the cherished values of democracy and established norms of good governance get condignly fructified. The framers of the Constitution left many a thing unwritten by reposing immense trust in the Prime Minister. The scheme of the Constitution suggests that there has to be an emergence of constitutional governance which would gradually grow to give rise to constitutional renaissance.

It is worthy to note that the Council of Ministers has the collective responsibility to sustain the integrity and purity of the constitutional structure. That is why the Prime Minister enjoys a great magnitude of constitutional power. Therefore, the responsibility is more, regard being had to the instillation of trust, a constitutional one. It is also expected that the Prime Minster should act in the interest of the national polity of the nation-state. He has to bear in mind that unwarranted elements or persons who are facing charge in certain category of offences may thwart or hinder the canons of constitutional morality or principles of good governance and eventually diminish the constitutional trust.

Keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister.
Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less.

Agreeing with the above judgement, Justice Madan Lokur in a separate judgement observed,
the burden of appointing a suitable person as a Minister in the Central Government lies entirely on the shoulders of the Prime Minister and may eminently be left to his or her good sense. This is what our Constitution makers intended.

In another separate judgement, Justice Kurian observed,

No doubt, it is not for the court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the constitutional prerogative of those functionaries who are called upon to preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951.

See 2014-TIOL-70-SC-MISC-CB

Competition Commission of India imposes a fine of Rs. 2544 crore on 14 car manufacturers

THE Competition Commission of India (CCI) has imposed a fine of Rs. 2544 crore on 14 car manufacturers. One man's complaint to the Commission that car manufactures were following anti-competitive practices by restricting the sale of spare parts, resulted in this huge fine.

He alleged, that even the technological information, diagnostic tools and software programs required to maintain, service and repair the technologically advanced automobiles were not freely available to the independent repair workshops. The repair, maintenance and servicing of such automobiles could only be carried out at the workshops or service stations of the authorized dealers.

He further alleged that:

The restriction on the availability of genuine spare parts and the technical information/know-how required to effectively repair, maintain or service the automobiles is not a localized phenomenon.

The car manufacturers and their respective dealers, as a matter of policy, refuse to supply genuine spare parts and technological equipment for providing maintenance and repair services in the open market and in the hands of the independent repairers.

The car manufacturers by restricting the sale and supply of the genuine spare parts, diagnostic tools/equipment, technical information required to maintain, service and repair the automobiles manufactured, have effectively created a monopoly over the supply of such genuine spare parts and repair/maintenance services and, consequently, have indirectly determined the prices of the spare parts and the repair and maintenance services.

The cost of getting a car repaired in an independent workshop is cheaper by 35-50% as compared to the authorized service centers.

The prices charged for the genuine spare parts and for repair and maintenance services by the authorized dealers of the Car manufacturers are even higher than what they charge in other markets in Europe. The Informant has alleged that such practices which allow the Car manufacturers to charge arbitrary and high prices result in significant increase in the maintenance cost to car owners.

The components and parts used in the manufacture of their respective brand of automobiles are often sourced from independent original equipment suppliers ("OESsâ€•) and other suppliers who are restrained by the manufacturers from selling the parts/components in the open market. Such restriction on the ability of the OESs to sell the spare parts/components further limits the access of such spare parts/components in the open market, thereby, allowing the manufacturers to create a monopoly-like situation wherein they become the sole supplier of the spare parts/components of their respective brand of automobiles. Such restrictions allow the manufacturers to influence and determine the price of the spare parts/components used to repair and maintain the respective brands of automobiles.

The Commission ordered:

i) The parties are hereby directed to immediately cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act.

ii) Car manufacturers are directed to put in place an effective system to make the spare parts and diagnostic tools easily available through an efficient network.

iii) Car manufacturers are directed to allow OESs to sell spare parts in the open market without any restriction, including on prices. OESs will be allowed to sell the spare parts under their own brand name, if they so wish. Where the Car manufacturers hold intellectual property rights on some parts, they may charge royalty/fees through contracts carefully drafted to ensure that they are not in violation of the Competition Act, 2002.

iv) Car manufacturers will place no restrictions or impediments on the operation of independent repairers/garages.

v) The Car manufacturers may develop and operate appropriate systems for training of independent repairer/garages, and also facilitate easy availability of diagnostic tools. Appropriate arrangements may also be considered for providing technical support and training certificates on payment basis.

vi) The Car manufacturers may also work for standardization of an increasing number of parts in such a manner that they can be used across different brands, like tyres, batteries etc. at present, which would result in reduction of prices and also give more choice to consumers as well as repairers/service providers.

vii) Car manufacturers are directed not to impose a blanket condition that warranties would be cancelled if the consumer avails of services of any independent repairer. While necessary safeguards may be put in place from safety and liability point of view, Car manufacturers may cancel the warranty only to the extent that damage has been caused because of faulty repair work outside their authorized network and circumstances clearly justify such action.

viii) Car manufacturers are directed to make available in public domain, and also host on their websites, information regarding the spare parts, their MRPs, arrangements for availability over the counter, and details of matching quality alternatives, maintenance costs, provisions regarding warranty including those mentioned above, and any such other information which may be relevant for full exercise of consumer choice and facilitate fair competition in the market.

The Commission imposed the following penalties: (Rs. In Crores)

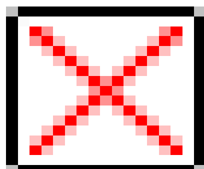
1.	Honda Siel	78.47	Â	8.	Mahindra & Mahindra Mahindra	292.25
2.	Volkswagen India	3.25	Â	9.	Maruti Suzuki	471.14
3.	Fiat India Automobiles	29.98	Â	10.	Mercedes- Benz	23.08
4.	BMW India	20.41	Â	11.	Nissan motors	1.63
5.	Ford India	39.78	Â	12.	Skoda Auto India	46.39
6.	General Motors	84.58	Â	13.	Tata Motors	1346.46
7.	Hindustan Motors	13.85	Â	14.	Toyota Kirloskar	93.38

Now where will the battery of lawyers go? An appeal against this order lies to the Competition Appellate Tribunal. This appellate tribunal has the unique distinction of having no chairman and no members.

Incidentally, yesterday the Supreme Court rejected the real estate developer DLF's plea to stay the Competition Appellate Tribunal's order upholding the penalty imposed by the Competition Commission of India for unfair trade practices. The Supreme Court has asked the company to deposit the penalty amount of Rs.630 crore within three months. Out of this Rs.50 crores has to be paid within three weeks.

It seems that in the days to come the Competition Commission would have more clout than all Revenue departments put together.

Jurisprudentiol â€“ Friday's cases



Central Excise

Benefit of exemption under Notification No 4/2006 CE is *prima facie* not admissible for cement used for construction work within factory premises - pre-deposit ordered - CESTAT

THE applicants are engaged in the manufacture of cement falling under Chapter 25 of Central Excise Tariff Act, 1985. The duty on cement is payable on specific rate of duty. The Notification No.4/2006-CE dated 01.03.2006 as amended from time to time had extended concessional rate of duty in respect of various commodities. In the present case, the applicant supplied cement free of cost for construction work within the applicant's factory premises. The applicant claimed benefit of exemption under Notification No. 4/2006-CE (supra). The adjudicating authority denied the benefit of the said notification and confirmed the demand of duty of Rs. 15,80,436/- on the basis of tariff rate of duty.

Income Tax

Whether when first appellate authority has simply directed the AO to pass speaking order before charging interest, such an order can be construed as restrictions being imposed on AO from levying interest under particular Section - NO: Delhi HC

THE assessee is a company engaged in the business of financial consultancy. It had filed its return declaring loss for the A.Y 1988-89. The assessee had claimed this amount after deducting amount of Rs. 1,82,69,610 which was declared as income during A.Ys 1986-87 and 1987-88. During the course of assessment proceedings, the assessee requested that entire declared income should be taxed in the A.Y 1988-89 and no portion of the said income be assessed in the A.Y 1986-87 and 1987-88. The assessee also requested that taxes paid on 17th August, 1987, to be treated as payment of advance tax for the A.Y 1988-89. The AO however, referred to the assessment orders for the A.Y 1986-87 and 1987-88 and held that the consultancy fee/commission was taxable in the said years, but Rs. 1,82,69,610 was treated as assessee's income in the A.Y 1988-89 on protective basis. Accordingly, the AO had directed for charging of interest u/s 201 and 217.

The issue before the Bench is - Whether when the first appellate authority has simply directed the AO to pass speaking order before charging interest, such an order can be construed as restrictions being imposed on the AO from levying interest under particular Section. NO is the answer.

Customs

Old & Used Propping pipes used for construction service are to be treated as capital goods and as per para 2.17 of the FTP second hand capital goods are freely importable: CESTAT

THE

appellant imported â€˜old and used pipes' declared as "old and used Prop Pep 20-300" and classified them under CTH 7308 4000. The classification was accepted but it was the view of the lower authorities that since the Pipes are â€˜Old & used' they are not covered as capital goods as defined in para 9.12 of Foreign Trade Policy and hence not freely importable as per para 2.17 of FTP 2004-09.

As the appellant could not produce the licence for importation of the goods, the same were held liable for confiscation and allowed to be redeemed on payment of Redemption Fine and penalty.

See our Columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a nice day.

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