

Carelessness in drafting notifications

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THE

Central Government has recently issued three Central Excise notifications 34-36/2015 all dated 17 th July, 2015 amending various existing notifications. These notifications amend conditions for availing benefit of exemption from duty. The amended conditions are as below:

"Provided that the said excisable goods are manufactured from inputs or by utilising input services on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) or service tax under section 66 of the Finance Act, 1994 (32 of 1994) has been paid and no credit of such excise duty or additional duty of customs on inputs or service tax on input services has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the CENVAT Credit Rules, 2004."

2. As can be seen from the above, one of the conditions is that the excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act. The question is there any authority under the said Act to levy duty of excise?

3. Article 265 of the Constitution provides that no tax shall be levied without the authority of law. Law means an Act passed by the Parliament which authorizes levy and collection of tax. There is no such provision under the Central Excise Tariff Act, 1985. Section 2 of the said Act states that the rates at which duties of excise shall be levied under the Central Excise Act, 1944 are specified in the First Schedule. In other words duty is leviable under Central Excise Act, 1944 at the rates specified in the said Schedule. Section 3 of the Central Excise Act, 1944 provides for levy of duty at the rates specified in the Schedules of the Central Excise Tariff Act, 1985.

4. From the above analysis of legal provisions, it is crystal clear that the duty of excise is leviable under the Central Excise Act, 1944 and not under the Central Excise Tariff Act, 1985. Hence condition prescribed in the aforesaid notifications, is not legally sustainable.

5 Further the amending notifications mention ***"service tax under section 66 of the Finance Act, 1994 (32 of 1994)"*** This section is not applicable since 1.7.2012. The service tax is levied under Section 66 B.

6. It is settled law that to avail exemption under a notification, the conditions must be strictly satisfied. How can a taxpayer satisfy the conditions which are beyond the four corners of law?

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