Setting the Cat amongst the Pigeons

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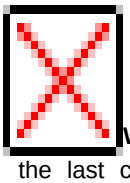 **WITHIN** the last couple of days, the Central Government has issued three amending notifications No. 34 to 36-CE, all dated 17.7.2015.

1. Notification No. 34/2015-CE amends Notification No. 30/2004-CE, dated 9.7.2004 which allowed full exemption to various textile products subject to the condition of non-availment of input credit under the Cenvat Credit Rules, 2004 (CCR for short).

2. Notification No. 35/2015-CE amends Notification No. 1/2011-CE, 1.3.2011, which prescribes of 2% duty on all the Nil duty goods or wholly exempted goods. (I wonder, after payment of 2% duty, why should these goods be continued to referred to as Nil duty goods or Exempt goods).

3. Notification No. 36/2015-CE, amends conditions number 16, 20, 25 and 52A of the jumbo Notification No. 12/2012-CE, dated 17.3.2012.

The burden of song of all these amending notifications is this:

> ***"Provided that the said excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid and no credit of such excise duty or additional duty of customs on inputs 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."***

Prior to the present amendments, the conditions in the parent notifications merely stipulated that no cenvat credit is taken under the CCR on the inputs, input services or capital goods (or combination of one or more or all these, as the case may be). Hitherto, these conditions were required to be complied with the claimant of exemption. Compliance of these conditions did not pose any serious problem in practice, unless the assessee ineptly took impermissible credit and also claimed exemptions.

Now, the amendment specifies two factors:

A. The duties that ought to have been paid on the inputs, or capital goods, or service tax on the input services.

B. It brings in a third party, viz., ***"the Buyer"***
into the condition - First and Second parties being the claimant of exemption and the tax department.

That is, the notifications specify that duties and taxes ought to have been paid, but no credit thereof, taken **by the manufacturer of *such goods*, and not the buyer of *such goods.***

Guided by the first rule of interpretation of statute, ***literal egis***, or literal interpretation, one would understand that ***"such goods"*** address or connotes the immediately preceding reference, viz., inputs. That is, the manufacturer of inputs should not have taken cenvat credit

of CE duty or the Additional Duty of Customs paid on his inputs, if the buyer of the inputs has to claim exemption on his final products.

Of course, there can be no question of the buyer of goods taking the credit of duty paid by the supplier on inputs. If the buyer of the inputs exclusively manufactures exempt goods, he cannot use such credits, even if he were to take. If he also manufactures dutiable goods, he would be hit by Rule 6(3) of the CCR. The bracketed phrase ***"not by the buyer of such goods"*** would become otiose, if any other meaning is sought to be given to it. Who is the buyer in this case? It is reasonable to construe as the ***"buyer of inputs"*** , who is the claimant of the exemption. Because, the buyer of exempted goods cannot in any case, take credit, as no duty would have been paid on such exempted goods.

This may be illustrated thus:

> ***"A, a manufacturer of woollen fabrics, places order on B , the woollen yarn supplier. Yarn supplier uses combed wool or animal hair as input, which is dutiable under CH 51.05 and dyes, which are also dutiable. Under the scheme of the present amendment under discussion, B cannot take credit of duty paid either on the combed wool, or on the dyes, if A has to claim exemption under Notification No. 30/2004-CE."***

This leads to an absurd situation where a manufacturer must be blessed by his supplier, before he can claim a full exemption available to him. If the reference to ***"such goods"*** both within and outside the bracket is taken as reference to excisable goods in respect of which exemption is being claimed, then there was no need for this amendment, as the manufacturer of exempt excisable goods was already forbidden from claiming cenvat credit on the inputs. On the other hand, if the reference to ***"such goods"*** is taken as reference to the duty paid inputs, aforesaid consequence will follow: the supplier of inputs has to forego the input credit, if the customer has to claim this exemption.

I can think of one situation, where this exemption might work. When an EOU clearing the goods to DTA claims exemption from additional duty of customs by invoking Notification No. 30/2004-CE, then such exemption claim could be rejected on the ground that the input procured by the EOU did not suffer either the CE duty or the additional duty of customs. But, is it necessary to make this amendment just to rein in some EOUs, and adversely affect thousands of assessees in the DTA?

But, then the ways of the Government are mysterious. This is one more step towards ***"complification".***

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