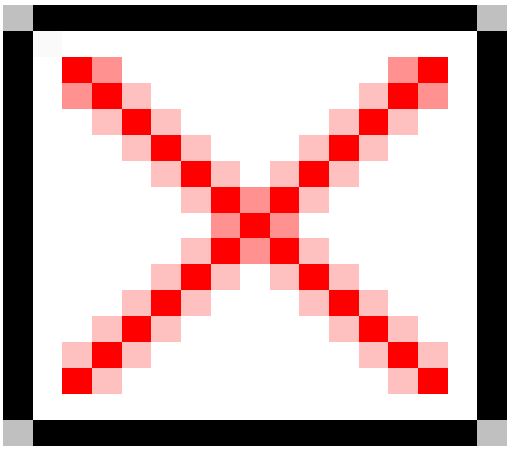
UDAN - Insertion 'inadvertently' Introduces New Condition

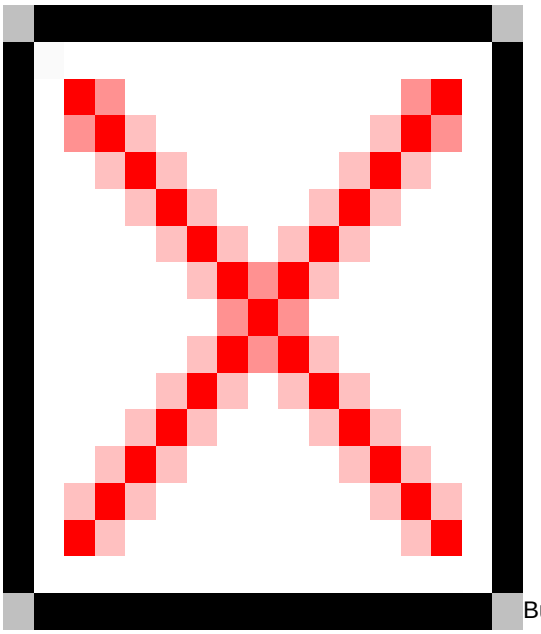


TIOL-DDT 2962

02 11 2016
Wednesday

While granting exemption to air passengers, CBEC by mistake withdraws Cenvat credit on input services for renting of hotels

SNEAKING an entry into a notification is not a tough task. Add a letter to the numeric serial number and ***pronto*** you have got it - the list can be endless. Birds of a feather can certainly be flocked together!



But there can be unforeseen mishaps when such an exercise is conducted without diligence.

The case in question is the offshoot of the latest endeavour of the government - UDAN - ***"Ude Deshka Aam Nagrik"***.

The primary objective of the Regional Connectivity Scheme (RCS) of the Ministry of Civil Aviation is to facilitate/stimulate regional air connectivity by making it affordable. As per the Scheme, an all-inclusive airfare not exceeding Rs.2,500/- per RCS Seat will be applicable. Government has proposed several concessions like no landing and parking charges on RCS flights. Excise Duty at a rate of 2% shall be levied

on Aviation Turbine Fuel (ATF) purchased by Selected Airline Operators from RCS Airports for an initial period of three (3) years from the date of notification of this Scheme. Accordingly, Government has notified the concessional rate of 2% excise duty for ***Aviation Turbine Fuel drawn by operators or cargo operators from the Regional Connectivity Scheme (RCS) airports,*** till 25th day of August 2019. [See **Notification No. 32/2016-CE., Dated: August 26 2016**]

The Scheme also proposes that Service Tax will be levied on 10% of the taxable value (abatement of 90%) of tickets for RCS Seats on an RCS Flight, without any input credit, for an initial period of 1 year from the date of notification of the Scheme by MoCA. Subsequently, this will be reviewed and notified accordingly. Service Tax will be payable by the passengers over and above the specified Airfare Cap. The Service Tax Notification issued is **Notification No.38/2016-Service Tax, Dated: August 30, 2016**

But it is here that the folly arose.

The Service Tax notification amended Notification 26/2012-ST by inserting the following serial number -

Sl.No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
5A.	Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport.	10	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.

Interestingly, before this serial number made an appearance, the serial numbers 5 and 6 read thus -

Sl.No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
5	Transport of passengers by air, with or without accompanied belongings in (i) economy class (ii) other than economy class	40 60	CENVAT credit on inputs and capital goods , used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	**Same as above**

So, after serial number 5A was sneaked into, the entries 5, 5A and 6 look thus -

Sl.No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
5	Transport of passengers by air, with or without accompanied belongings in (i) economy class (ii) other than economy class	40 60	CENVAT credit on inputs and capital goods , used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5A.	Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport.	10	CENVAT credit on inputs, capital goods and input services , used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004 .
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	Same as above

Only a keen eye can notice the major amendment made by the Central Government, ***albeit unwittingly***.

Inasmuch as whereas the condition attached to serial no. 6 above prior to insertion of Serial no. 5A was non-availment of CENVAT credit on Inputs and Capital goods, consequent upon the insertion of Serial no. 5A the **condition has enlarged itself to mandate non-availment of CENVAT credit on Inputs, Capital Goods and Input Services**.

Collateral damage, one may say, but that's unforgiving, to say the least.

If this is what Ease of Doing Business means, then let us get to the bottom of the rankings.

Even before the AamNagrik has taken to the skies, the hospitality sector is already in the pit!

Hopefully, the CBEC realises this gaffe and extinguishes the flames before they spread far and wide.

DDT is thankful to ***CA Anish Goyal*** from ***Surat*** for bringing this to our notice.

Service Tax - Collection of Taxes - State Bank of Patiala is an Agent of RBI, not liable to pay tax -CESTAT Larger Bench

AS per Notification No. 22/2006-ST, ***taxable services provided or to be provided to any person, by the Reserve Bank of India*** were exempted. State Bank of Patiala is a banking company and regulated by the Reserve Bank of India as per the provisions of Banking Regulations Act, 1949; The RBI in exercise of its authority conferred by Section 45 of Reserve Bank of India Act, 1934 appointed the State Bank of Patiala as an agent to receive remittances of taxes on RBI's behalf to credit the same into consolidated fund; for which a commission was paid by RBI; This is sought to be taxed by Revenue authorities.

In the ***Canara Bank*** case - **2012-TIOL-790-CESTAT-AHM**, in identical situation, it was held that:

> ***Since the agent is eligible for the exemption which is available to the principal in terms of the relationship with the principal of the agent and not because of exemption granted specifically to the agent or principal, the appellant is eligible for exemption. If RBI were to undertake the activity there would have been no question of levy of service tax. It was also brought to notice that RBI is not paying service tax. Same functions being carried out by RBI are exempted. Therefore, the benefit of exemption available to RBI would be available to the agent i.e. Canara Bank***.

However, another Bench of the Tribunal in ***State Bank of Patiala*** - **2014-TIOL-1835-CESTAT-DEL** doubted the ***Canara Bank*** decision and referred the issue to a Larger Bench.

The Larger Bench recently held that ***the law as laid down by the Tribunal in the case of Canara Bank is correct exposition of law***.

Please see **Breaking News** for more details.

Classification of rice par-boiling machinery - Long Story

THIS an extract from **DDT 2354 16 05 2014**

NEARLY four years ago, after a detailed examination, the Board had come out with a Circular No. **924/14/2010** -CX dated 19.05.2010 clarifying that ***Rice*** parboiling machinery and drier which are essentially for use in conjunction with the rice mill will merit classification under heading 8437. Admittedly, the Tariff Rate of duty for this heading is Nil.

Incidentally, this clarification was issued pursuant to a representation made by the Rice Mill Machinery Manufacturers Association that the practice so far followed by the department was not to charge excise duty for many years but suddenly it has been soughtto charge duty on these machines by proposing classification under heading 8419.

Now, the Board has had a re-think consequent to a decision dated 15.03.2011 of the CESTAT, Delhi in the case of M/sJyotiSales Corporation **2011-TIOL-1498-CESTAT-DEL** wherein the Bench had after bringing out a subtle distinction in the goods under reference vis-Ã -vis that discussed in the Board Circular dated 19.05.2010 concluded that par-boiling plant and drier plant are rightly classifiable under heading 8419.

So, after more than three years, the CBEC shifts the goalpost and says that rice par-boiling machine and dryer would merit classification under CETH 8419 as per Note 2 to Chapter 84.

The earlier Circular No. **924/14/2010-CX** dated 19.5.2010is ***rescinded*** by the Board and it is directed that classification of rice par-boiling machine and dryer should be made under CETH 8419.

Interestingly, the CBEC also instructs the field formations to take necessary action to protect the revenue interest in respect of ***past clearances***.

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Classification of rice par-boiling machinery - Board Wins with 8419

After two and a half years, a Larger Bench of the CESTAT recently confirmed the classification under Heading 8419. This Larger Bench has been constituted as per the directions of the Supreme Court in Civil Appeal No. 8612/2011 in the case of ***Jyoti Sales Corporation*** . The Apex Court noted that there is a conflict in judicial opinion expressed by two coordinate benches of the Customs, Excise and Service Tax Appellate Tribunal. One line of decisions rendered by the Tribunal holds that par boiling machine and dryer manufactured by the assesses are classifiable under chapter heading 84.37 of Central Excise Tariff while the other line of decisions takes the view that such machines are classifiable under chapter heading 84.19. This Larger Bench of CESTAT has been constituted to resolve this conflict and to decide the appropriate classification of the par boiling machine and dryer.

And the verdict is in favour of Revenue at 8419.

For more details, please see **Breaking News.**

No Interest on delayed refunds of deposits - Customs Clarification

THE JN Customs has clarified that
no interest is payable in respect of refund of deposits (for example security deposits, deposits on project import, etc.).

The Customs Commissioner states that Interest on delayed refunds of duty/ drawback is paid in terms of provisions under Customs Act, 1962 and relevant notifications issued by the Competent Authority from time to time; and there seems to exist a lack of clarity among certain stakeholders that interest is also payable on deposits (for example security deposits, deposits on project import, etc).

He also refers to CBEC Circular No. 59/95 issued vide F.No. 438/7/95 CUS IV, which in para 6 states,

> "***The finalisation of refund claims are to be closely monitored and it may be ensured that these are decided without fail within the period provided. No interest liability should normally lie on the Government. It is further desired that all refund claims in future be settled at the level of Assistant commissioner only (and not by Superintendent/ Appraiser). No interest is payable in respect of deposits (for example deposits for project import, etc.). Pre audit system as well as issue of cheques should be ensured at utmost speed."***

Somehow within the same Ministry, the CBDT is not scared of paying interest on the money held by them, but interest is a bad word in CBEC. Only yesterday, a Chief Commissioner told me that in his zone the time limit (prescribed by him) for refund was 15 days - for one, the assessees are happy and he doesn't need to pay interest. Many officers routinely delay refunds and when it comes to paying interest, avoid it at any cost.

JN Custom House Public Notice No. 144/2016., Dated: October 31 2016

Until Tomorrow with more **DDT**

Have a nice day.

Mail your comments to **vijaywrite@tiol.in**