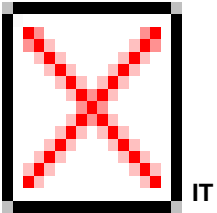


Rules transgress s.30 of the SEZ Act and also misread Customs Act

OCTOBER 20, 2020

By R K Singh



is trite to say that the rules made under an Act are subordinate to that Act and cannot transgress the boundaries of the Act itself. However rules 47 and 48 of the SEZ Rules provide a hard-to-believe example of the transgression of the parent SEZ Act besides misreading the Customs Act.

2. For the ease of reference, rules 47 and 48 of the SEZ Rules and section 30 of the SEZ Act are reproduced below:

S. 30. Domestic clearance by Units

Subject to the conditions specified in the rules made by the Central Government in this behalf,-

a. Any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

b. the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Rule 47. Sales in Domestic Tariff Area -

(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:-

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

Rule 48. Procedure for Sale in Domestic Tariff Area -

(1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or service namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers: Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India.

3. It is evident that section 30 of the SEZ Act only deals with removal of goods by SEZ unit into the domestic tariff area. This section does not even mention services. But the said rules state that the assessment and valuation of the goods and services cleared by SEZ Unit into the domestic tariff area shall be in accordance with the provisions of the Customs Act. Thus the said rules transgress the boundaries of the parent section/Act inasmuch as they cover services also which are beyond the scope of the parent section (S.30 of the SEZ Act). Also the Customs Act (or even the Customs Tariff Act for that matter) does not deal with the services at all and has no provision for charging Customs duty or determining value of the services imported.

In the wake of this major illegality, the internal inconsistency of the wordings of these rules is not being discussed as that is of relatively minor consequence, but just as an illustration of such inconsistency, suffice to point out that sub-rule (2) of rule 48 *inter alia* speaks of valuation of SERVICES cleared into the DTA to be determined in accordance with the provisions of Customs Act as applicable to GOODS imported.

5. In the light of the foregoing, it is imperative that the said illegality is forthwith removed by deleting all references to services in rules 47 and 48 of the SEZ Rules.

[The author is former Member CESTAT and Sr Partner, TLC Legal Advocates. The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)