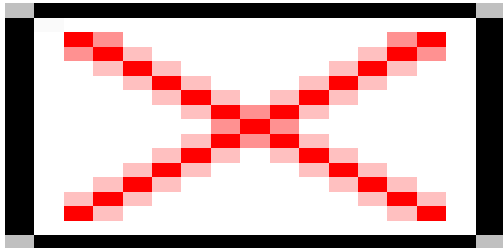


## Procedure of service tax refund/exemption to SEZ- CBEC Instructions



TIOL-DDT 2483

26.11.2014

Wednesday

IT seems certain representations have been received through Ministry of Commerce raising the issue that SEZ unit or developer has to approach two authorities (the SEZ authority and with the Jurisdictional Service Tax authority) for upfront exemption under notification No. 12/2013 dated 01.07.2013.

TRU in the Finance Ministry clarifies that:

1. The procedure prescribed under the notification No. 12/2013 dated 01.07.2013 as amended is for proper accounting and monitoring of benefit availed by SEZ Unit and developer under the exemption.
2. Compliance verification at the service provider's end (in domestic tariff area) would only be feasible if an institutional mechanism for accounting and verification procedure is in place.
3. However, SEZ units and developer may, if they so desire, route their application for issuance of authorization by department through the specified officer of SEZ instead of submitting directly to the department.
4. Similarly SEZ units and developer, may also route quarterly statement in Form A-3 through the specified officer in the SEZ. Notification No. 12/2013 dated 01.07.2013 as amended does not put any restriction in this regard.

TRU says that field formations should not object if such requests/intimations are routed through the specified officer in the SEZ.

[MoF Dept of Revenue TRU Letter in F.No.B1/6/2013-TRU., Dated: November 25, 2014](#)

### *Is TRU above Board?*

#### THE

Tax Research Unit famously known as TRU is supposed to be responsible for legislation and the Union Budget in respect of Indirect Taxes. TRU is headed by a Joint Secretary. Now is TRU under the CBEC? That depends on the persons in the Board and in TRU at any specific point of time. Just yesterday a senior officer was telling me that one trait that officers working in TRU acquire is abundant arrogance, which does not leave them when they take up other jobs or for that matter even after they retire.

The above referred to Instruction/circular/letter was issued by a Technical Officer in the TRU. It nowhere mentions the name of CBEC. The Letter is from the TOTRU, Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India. It is addressed to Commissioners and Chief Commissioners. Not even a copy is marked to the Board. Is the instruction on behalf of the Board or the Government of India?

Anyway these are mysterious layers of Government, which is beyond the comprehension of the ordinary governed .

### ***Delay of 472 days in filing Cross objections - Pay Rs.25,000/- to PM 's Relief Fund***

**THE**

applicant sought condonation of delay of 472 days in filing Cross Objections to the appeal filed by Revenue. The ground is that after receiving the notice from the CESTAT of appeal having been filed by the Revenue, the applicants were in the process of shifting their office to another place and had to change the consultant to file the Cross Objections. They place reliance on the decision in

**Collector, Land Acquisition, Anantnag vs Mst. Katiji** [2002-TIOL-444-SC-LMT](#).

The AR opposes this application and submits that the inordinate delay cannot be condoned in view of the apex court decision in Office of the **Chief Post Master General vs Living Media India Ltd.** [2012-TIOL-123-SC-LMT](#) wherein the appeal filed by Revenue on similar grounds was dismissed; the case law cited by the applicant involves a delay of a short period.

The Bench observed -

*"4. In the case of Living Media (supra) , the hon'ble apex court dismissed the application for condonation of delay on the ground that at each and every stage the departmental officers has not taken any step to proceed with the case therefore the conduct of the departmental officers are found not to be reasonable. In these circumstances the hon'ble apex court came to the conclusion that in the said case delay cannot be condoned. But the general principle as has laid down by the hon'ble apex court is that if the delay has been explained then the delay can be condoned. In this case, although the applicant has tried to explain the reasons for causing the delay which are not found to be satisfactory but in the interest of justice, we are condoning the delay in filing the Cross Objections subject to payment of cost of Rs.25,000/-to be deposited in the Hon'ble Prime Minister's Relief Fund."*

**See** [2014-TIOL-2363-CESTAT-MUM](#)

**But can payment be ordered to PM's Relief Fund? - Please see [DDT 2315](#)**

### ***Mandatory fixed pre-deposit - Appeal forms need amendment***

**THE** new CESTAT appeals forms for Central Excise (E.A.-3, E.A.-4, E.A.-5), Customs (C.A.-3, C.A.-4, C.A.-5) and Service Tax (S.T.-5, S.T.-6, S.T.-7) were notified vide [6/2013-Central Excise \(N.T.\)](#), [37/2013-Customs \(N.T.\)](#) and [5/2013-Service Tax](#) , all dated 10.04.2013 respectively. These forms were made effective from 1.6 2013.

Board while explaining the salient features of the new forms also [clarified](#) that the old forms may continue to be used till 31.08.2013 and that from 01.09.2013 onwards, no appeal shall be filed in the old forms. [DDT 2084](#) & [2085](#) had extensively covered the subject matter.

It seems that the Board was unhappy with the new appeal forms and, therefore, sought feedback and suggestions for further improvement. **That exercise was undertaken by the Director (Judicial Cell) who came out with a [letter](#) addressed to all stakeholders on 16 April, 2014. Please see [DDT 2354](#).**

**Nothing was heard thereafter.**

**In the meanwhile the Union Budget 2014-15 was presented and the Finance Act, 2014 was enacted on 6th August, 2014.**

Notable in the Finance Act, 2014 was substitution of Section 35F of the CEA, 1944/129E of Customs Act, 1962 with new section(s) to prescribe a mandatory fixed pre-deposit of 7.5%/10% of the duty demanded/penalty imposed when appeals are filed before the Commissioner(A)/CESTAT.

It is almost four months now but the appeal forms launched with much fanfare have not accommodated the above change in the legal position as regards pre-deposit.

The forms (EA-3, EA-4, C.A.-3, C.A.-4, S.T.-5 & S.T.-6) still seek the following particulars -

**14. (i) Amount of duty or fine or penalty or interest deposited. If so, inform the amount deposited under each head in the box below. (A copy of the challan under which the deposit is made shall be furnished)**

<b>Duty</b>	<b>Fine</b>	<b>Penalty</b>	<b>Interest</b>
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**(ii) If not, whether any application for dispensing with such deposit has been made?**

The same is the case with the form [EA-1, CA-1] prescribed for filing appeal before the Commissioner (Appeals). See this -

<b>7. Whether duty or penalty or both is deposited; if not whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished).</b>
--

Suffice to say that the forms in relation to appeals/cross-objections filed before the Tribunal as well as those in relation to appeals filed before the Commissioner (Appeals) need to be amended so as to reflect the new dispensation of pre-deposit. The Central Excise (Appeals) Rules, 2001, Customs (Appeals) Rules, 1982 & the Service Tax Rules, 1994 need to be amended without further loss of time.

DDT hopes that along with the feedback and suggestions received in response to the call made by the Director (Judicial) the above requirements too would be incorporated in the appeal forms.

### ***Routing of funds raised abroad***

IT has come to the notice of the RBI that some Indian companies are accessing overseas market for debt funds through overseas holding / associate / subsidiary / group companies. It has also been reported that such borrowings are raised at rates exceeding the ceiling applicable in terms of extant FEMA regulations and that the funds so raised are routed to the Indian companies which accounts for sole/major operations of the group. Different modalities/structures are resorted to for channeling such funds for Indian operations including investment in rupee bonds floated by the Indian company.

The RBI clarifies -

- i. Indian companies or their AD Category - I banks are not allowed to issue any direct or indirect guarantee or create any contingent liability or offer any security in any form for such borrowings by their overseas holding / associate / subsidiary / group companies except for the purposes explicitly permitted in the relevant Regulations.
- ii. Further, funds raised abroad by overseas holding / associate / subsidiary / group companies of Indian companies with support of the Indian companies or their AD Category - I banks as mentioned at (i) above cannot be used in India unless it conforms to the general or specific permission granted under the relevant Regulations.
- iii. Indian companies or their AD Category - I banks using or establishing structures which contravene the above shall render themselves liable for penal action as prescribed under FEMA, 1999.

[Circular 41/RBI, Dated: November 25, 2014](#)

### ***Capacity building and skill up-gradation for officers of new Audit Commissionerates***

## WITH

the Cadre review resulting in an army of officers being promoted as Inspectors, Superintendents and Assistant Commissioners, the Board found it prudent to post almost all of them in the new Service Tax and Audit Commissionerates which have sprung up in all metros & mofussil areas.

Let aside the fact that these officers who have been promoted and are hunting for office chairs and tables and some for cabins and are at a loss to understand their job profile and with nothing much to do, the initiative taken up by Bangalore Service Tax Audit is a welcome one. The Commissionerate tied up with the ADG Audit Bangalore under the auspices of NACEN, Bangalore and decided to educate the officers from Service Tax Audit, Central Excise Audit, LTU Bangalore and Mysore Central Excise Audit about the intricacies of Service Tax, a maze for departmental officers and Advocates/ Consultants alike.

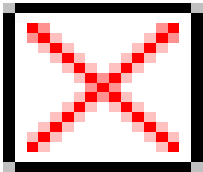
Thoughtful, one may say, for the workshop held two days ago in Bangalore and christened as a capacity building exercise had as many as 125 officers attending the day long training which brought together experts in the department and the Advocates & Consultants alike.

The workshop consisted of four modules covering the role of auditors, issues on input services, Place of Provision of Service Rules and Works Contract Service.

It seems that the officers were thoroughly impressed with what was doled out to them and expressed the hope that such workshops are conducted on a regular basis so that they remain updated.

CBEC should replicate this experiment in all Zones to build a robust work force of effective auditors. Kudos to Nagendra Kumar, ADG Audit and Sudha Koka, Additional Commissioner, Service Tax who designed and implemented this programme.

## *Jurisprudentia* Thursday's cases



### Service Tax

**Rule 4 of Export of Services Rules, 2005 provides for export of service without payment of tax as export of service is not exigible to tax - amount of tax deposited, therefore, has to be considered as deposit - no time limit for refund of deposit as s.11B applies to refund of tax/duty only: CESTAT**

## THE

respondent is registered with department and had exported its services during the period June, 2005 to March, 2006. Pursuant to raising of the invoices and realization of the payments from the consumer of the services, rendered outside India, the respondent deposited Service Tax and thereafter applied for refund on 20.3.2007 for an amount of Rs.1,31,538/- under the provisions of Rule 4 read with Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.4.2005.

The refund claim was rejected mainly on the ground that it is time barred in terms of Section 11B of the Central Excise Act as applicable via s.83 of FA, 1994.

## Income Tax

**Whether Income Tax Department can opt for forum-shopping by way of seeking shifting of an appeal pending before Division Bench to constitution of Special Bench - NO: Bombay HC**

**THE** assessee company is engaged in the business of publishing and printing. It had filed its return for the A.Y 2008-2009 declaring a loss of Rs.19.91crores. However, the AO passed an assessment u/s 143(3) determining the assessee's income at Rs. 272.65 crores. On appeal, the CIT(A) confirmed the order of AO. On further appeal, a Division Bench of the Tribunal granted stay of the demand on the assessee making a payment of Rs.12 crores. The appeal however was being adjourned from time to time. During the pendency of the appeal, the CBDT addressed to the President of the Tribunal seeking constitution of special bench of three or more members u/s 255(3). The President of the Tribunal forwarded the said communication to the Vice President of the Tribunal at Hyderabad. Thereafter, the Vice President of the Tribunal addressed a letter to the members of the Division Bench. Consequent to such communication, the Division Bench seized of the assessee's appeal, heard the parties on the issue of constituting a Special Bench of the Tribunal to hear the assessee's appeal. Subsequently, the

Tribunal held that there was no need to constitute a Special Bench in view of complication of facts and law, or on the ground that it has large revenue impact or that it would have an effect on proceeding before CBI. However, in view of political sensitivity, as a politician was involved, it concluded that the appeal might be heard before an appropriate bench outside the then State of AP, and so recommended to the President of the Tribunal. Consequent to it, the Tribunal finally recommended that the President of the Tribunal may constitute an appropriate bench outside the state of Andhra Pradesh. The President constituted a Special Bench to hear the assessee's appeal at Hyderabad by members who were not stationed in Hyderabad.

The issues before the Bench are - Whether Special Bench u/s 255(3) can be constituted during pendency of an appeal before the Division Bench and whether the power of the ITAT President to constitute a Special Bench on a debatable issue can be exercised at any point of time and in any manner. NO is the HC's answer.

## Customs

**Refund of SAD - Notfn.102/2007-Cus - Since original application for refund was filed within time, though before wrong authority, it cannot be said that application was barred by limitation - Appeals allowed: CESTAT**

**THE** issue is grant of SAD refund under notification no. 102/2007-Cusdt. 14.09.2007.

The appellants filed the claim of refund at ICD, Dadri within a period of one year from the date of payment of SAD. However, the goods were imported at CFS, Mulund and the SAD was paid there. By the time the refund claims were forwarded by Customs authorities at Dadri to the authorities at Mulund, a period of over one year had lapsed from the time of payment of duty to the time of receipt of refund claims at CFS, Mulund.

As the lower authorities had denied the refund on the ground of time bar, the appellant is before the CESTAT and submits that a similar issue had arisen in case of **CCE vs. AIA Engineering Ltd** . in relation to refund of service tax paid on input services used in export of goods under notification no. 41/2007-ST and the Gujarat High Court had in Tax Appeal No. 2266 of 2009, decided on 22.09.2010 held that original application having been filed within time limit though before wrong authority, the claim is not hit by time bar.

**See our Columns Tomorrow for the judgements**

Until Tomorrow with more **DDT**

Have a nice day.

Mail your comments to [vijaywrite@tiol.in](mailto:vijaywrite@tiol.in)