A2Z TAXCORP LLP

Tax and Law Practitioners

This bulletin brings to you the highlights of recent updates and important judgements in the field of indirect taxation along with key inputs from other fields to keep you abreast of all the latest happenings.

Indirect Tax & Other Laws Communique

28th April, 2014

***"Winning comes from the implementation,not from the ideation……."* Jim Rohn.**

SERVICE TAX

RECENT CASE LAWS

- **Refurbishing and repairs of old cars for subsequent sale does not constitute Business Auxiliary Service and not exigible to service tax**

  Sai Service Station Ltd Vs. Commissioner of Central Excise, Customs and Service Tax [2014 (4) TMI 640 - CESTAT BANGALORE]

  The Appellant is an authorized dealer for vehicles manufactured and sold by Maruti Suzuki India Ltd. and are engaged in the activity of servicing and repairing of vehicles. They are also engaged in the business of used or pre-owned vehicles belonging to others. Taking a view that the activity of exchanging old cars of the customers for new cars, amounts to provision of Business Auxiliary Service and the difference between the sale price of the old cars and the purchase price has to be treated as remuneration for providing this service, demand was raised by the Department along with interest and penalty.

  It was held by the Hon'ble CESTAT, Bangalore that purchasing of vehicle for subsequent sale is totally a transaction of purchase and sale of old vehicles. Refurbishing of the vehicle, repair and other activities undertaken by the Appellant when the vehicle was in their possession does not constitute a service being rendered to any person. These activities are undertaken as value addition by them and it is neither for the seller nor the purchaser. It is an activity undertaken to increase the value of the vehicle so that they get the maximum return out of it. Therefore, the transaction does not involve service element.

- **Amendment to Section 83 of the Finance Act, 1994 ("the Finance Act") by making a specific reference to Section 35EE of the Central Excise Act, 1944 ("the Excise Act") does not make any difference to the nature of jurisdiction exercisable by the CESTAT under Section 86 of the Finance Act**

  Glyph International Ltd. Vs. Union of India [2014 (4) TMI 884 - DELHI HIGH COURT]

  The Petitioner made a refund claim in respect of service tax export turnover which was denied by the Department. Aggrieved by an order refusing the refund, it preferred an appeal to the Hon'ble CESTAT under Section 86 of the Finance Act where the Tribunal accepted the Revenue's contention that a specific reference of Section 35EE of the Excise Act under Section 83 of the Finance Act precluded an appeal under Section 86 of the Finance Act, and that the remedy available to the Petitioner was revision by the Central Government.

  The Hon'ble Delhi High Court held that the Parliament always intended that an appellate remedy should be available in respect of refund and rebate claims. The amendment of Section 83 of the Finance Act, in the year 2012 did not make any difference to the nature of jurisdiction exercisable by the CESTAT under Section

86 of the Finance Act and it continued to possess jurisdiction to decide on matters pertaining to rebate and refund. It is a settled position of law that exclusion of jurisdiction of courts and tribunals should be by way of express provisions, or through necessary intendment. Thus, the amendment did not limit the appellate power in any manner whatsoever.

CENTRAL EXCISE

RECENT CASE LAWS

- **No need to file remission application in case of semi-finished goods destroyed in fire accident**

Park Nonwoven Pvt. Ltd. Vs. Commissioner of Central Excise, Rohtak [2014-TIOL-640-CESTAT-DEL]

In the instant case, the Ld. Commissioner (Appeals) denied the remission application filed by the Appellant on the ground that no remission is required for semi-finished goods in as much as Rule 21 of Central Excise Rules, 2002 (**"the CE Rules"**) is applicable for finished excisable goods and in process goods.

The Appellant filed appeal against the order passed by the Commissioner (Appeals).

The Hon'ble CESTAT, Delhi held that since the Appellant is not liable to pay any duty on the semi-finished goods, there is no requirement to file the remission application. Further, no duty demand can be confirmed against the Appellant in respect of semi-finished goods. Accordingly, the Hon'ble Tribunal observed that since the Appellant is not liable to pay any duty on semi-finished goods, the rejection or acceptance of the remission application is ineffective.

- **Where the Department has accepted the duty on final products, Cenvat credit need not be reversed**

Colour Roof (India) Ltd. Vs. Commissioner of Central Excise, Raigad [2014-TIOL-628-CESTAT-MUM]

The Appellant, in the said case, is a manufacturer of colour coated steel coils and sheets and aluminium colour coated coils and sheets. The manufactured goods are dutiable and cleared on payment of excise duty. The Appellant also availed the benefit of Cenvat credit on inputs, input services and capital goods which are used in or in relation to the manufacture of excisable goods.

During the month of March, 2010 there was shortage of iron and steel rolled products and there was an upswing in the prices of MS flat rolled products in sheet form. Accordingly, since the Appellant had available stock of MS/GP in coil form, they converted the said MS/GP coils to size sheets as per customers' specifications by subjecting the same to degreasing, cleaning, de-coiling and cutting to sheet as per size. The Appellant cleared such cut to size sheets on payment of excise duty. Such activity was also done during the month of October, 2010 and January, 2011.

The Department alleged that the activity of de-coiling the sheets, cutting to length, shearing and other activity like de-

greasing, cleaning, etc. did not amount to manufacture and amounted to removal of inputs as such and accordingly the Cenvat credit availed was proposed to be disallowed in terms of Rule 14 of Cenvat Credit Rules, 2004.

The Hon'ble CESTAT, Mumbai placed reliance on the decision in Ajinkya Enterprises [2012-TIOL-578-HC-MUM-CX] wherein it was held that once duty on final products has been accepted by the Department, Cenvat credit availed need not be reversed even if the activity does not amount to manufacture. Accordingly, the contention of the Revenue was rejected and the demand along with penalty was set aside.

CUSTOMS

RECENT CASE LAWS

- **Classification of the goods cannot be decided with reference to the type of importer**

CC (Prev.) Jamnagar Vs. Lucky Steel Industries [2014 (4) TMI 497 - CESTAT AHMEDABAD]

The Respondent in the said case imported 48.57 MT of old and used railway tracks and declared the same as Railway Tracks Scrap (HMS) under the Bill of Entry filed for clearance of the imported goods. They classified the goods under Chapter heading (**"CTH"**) 7204 of the Customs Tariff Act, 1975 (**"the CTA"**). On examination, the goods were found to be used steel rails. The Ld. Adjudicating authority held that the goods imported are re-rollable and HSN notes under CTH 7204 excludes "worn railway lines which are usable as pitorops or may be converted into other articles by re-rolling". Thus, they classified the same under CTH 7302 instead of CTH 7304 of the CTA and held them to be restricted items as per Para 2.17 of the Foreign Trade Policy 2004-2009 (Vol.I), liable to confiscation under Section 111(m) and Section 111(d) of the Customs Act, 1962.

The Hon'ble CESTAT, Ahmedabad, while following the decision of Indo Deutsche Trade Links and Uni Interlinks Vs. Commissioner of Customs (Imports) Chennai [2014 (2) TMI 779 - CESTAT CHENNAI], held that classification of the goods cannot be decided with reference to the type of importer. When there is no evidence on record that the imported goods, declared as re-melting scrap were not meant for re-melting, or was not used for re-melting but was required for re-rolling only, contention of the Department cannot be accepted.

- **Burden of proof that the goods are smuggled in nature is on Revenue when the goods are not notified goods**

Commissioner of Customs (Preventive), Mumbai Vs. Abu Backer [2014 (4) TMI 611 - CESTAT MUMBAI]

In the instant case, the Respondent is a trader in electronic goods. During the course of investigation, some electronic goods were found stored at three different places. The Revenue alleged that these goods are of foreign origin and are smuggled into India without payment of

duty. As the Respondent failed to produce any document to support that the goods were procured by him by paying duty, therefore, these goods were seized and impugned proceedings were initiated.

The Hon'ble CESTAT, Mumbai held that since goods seized in question were not notified goods, the burden of proof that these goods are smuggled in nature is on the Revenue. If the Revenue has failed to produce any cogent evidence that these goods were smuggled into India and were not procured by the Respondent, its contention cannot be accepted.

COMPANY LAW

NOTIFICATIONS/ CIRCULARS

- **Public notice No. MCA21/28/2014-e-Gov dated April 25, 2014**

Ministry of Corporate Affairs (**"MCA"**) has issued a public notice No. MCA21/28/2014-e-Gov dated April 25, 2014 in Newspapers informing all its stakeholders about availability of 46 new e-Forms required under the notified provisions of the Companies Act, 2013 for the purpose of filing with effect from April 28, 2014, 8.00 AM onwards.

These e-Forms includes e-Forms pertaining to incorporation, share capital, charges, management etc., and 17 other e-Forms will be available for filing as an attachment (which shall be physically filled) with general e-Forms.

Others e-Forms pertaining to the Companies Act, 1956 which will be continue to be available for filing are forms related to Annual filing, XBRL, IEPF & refund, FTE etc.

NEWS FLASH

- **Income Tax Department to set up new data centre to check tax evasion**

To fasten the process of identifying tax evaders, the Income Tax department (**"IT Dept"**) has decided to set up a major data centre of such classified information on the lines of the existing two such centres on e-filing and TDS information.

The new office which has been named Centralised Processing Cell-Compliance Management (**"CPC-CM"**) will have its base in the national capital and a dedicated workforce, drawn from the department, will man it.

The Central Board of Direct Taxes (**"CBDT"**) aimed at enabling the IT Dept to use technical data to check cases of non-compliance and non- filers of taxes.

The aim is to basically ensure voluntary compliance by taxpayers through the use of intelligent data at the disposal of the IT department.

To bolster the investigative and enforcement skills of the IT officials, the CPC-CM will have the entire database of the Permanent Account Number (PAN), reports generated by financial snoop agencies and the full assortment of letters and notices issued to non-compliant taxpayers, their replies and the final action in the new centre.

Tax officials have already started issuing polite letters to erring taxpayers as and when they obtain information in this regard and hence to streamline this process the CPC-CM will act as an important tool, the official said.

Through the 'non-filers detecting exercise', which was done in close coordination with the CBDT, the IT Dept collected over Rs 1,900 crore in taxes with more than five lakh returns having been filed under the category in the last financial year.

An estimated 1,50,000 self-assessment tax defaulters were thus detected during the 2013-14 fiscal, the official said.

Source: The Economic Times dated April 25, 2014.

- **RBI to solely decide which loan is an NPA**

The Reserve Bank of India has now become the sole regulator of borrowing and lending in the country.

The Gujarat High Court in a ruling on Thursday took away powers to determine whether asset is NPA or not and the period of non-payment that would make an asset NPA from all regulators except the RBI.

A division bench headed by Chief Justice Bhaskar Bhattacharya has ruled that a 2005 amendment in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (Sarfaesi) Act, 2002 was illegal, unconstitutional and contrary to the object of the Act.

The amendment which defines NPA under Section 2(1)(O) classified different institutions (60 in total) under two groups – those under the purview of the RBI and those regulated by other agencies. A petition moved by a borrower through advocate Vishwas Shah and Masoom Shah had challenged the amendment.

The court observed that for the purpose of enforcing a statute like the Securitisation Act, which deviates from the ordinary laws of the land relating to attachment, sale and recovery of possession of the secured asset, the fate of a borrower cannot be left in the hands of the regulators of those financiers.

With the judgment, RBI can determine classification of NPAs by banks and various types of financial institutions – NBFCs, LIC, state finance companies among others.

At present, banks classify a borrower's (consumer or corporate) account as NPA after continuous non-payment of principal and interest for 90 days and make necessary provision for the same.

However, NBFC, State Finance Companies (SFCs promoted by state governments) and other companies get a different period to determine whether the asset is NPA or not.

Certain Housing Finance Companies, SFCs and Companies like Power Finance Corporation are not under the regulation of RBI for NPA classification, they are governed by respective laws and regulators.

Meanwhile, the High Court in the same judgment has rejected the argument of the petitioner in respect of para 2.1 of the guidelines of the RBI that classify various number of days for various types of banks and financial institutions.

The petitioner has prayed that all borrowers should be treated equally and one should not get less number of days compared with other borrower of NBFC. The court has ruled that the guidelines were dealt with in the 2004 judgment of the apex court.

Source: DNA India dated April 25, 2014

- **ICAI to issue norms on fraud reporting by auditors**

Accounting watchdog the Institute of Chartered Accountants of India (**"ICAI"**) will bring out a guidance note for auditors on detecting corporate fraud. This follows the new Companies Act, 2013 making it mandatory for auditors to report corporate frauds to the Government within a specified time frame.

Under the new Act, if the statutory auditor has sufficient reasons to believe an offence involving fraud is being or has been committed in a company, it has to be reported to the Government within 60 days of coming to know about it.

As such, the accounting regulator will also soon come out with a guidance document for its members on detecting and reporting fraud, said ICAI president K Raghu. It will provide a framework for detection of fraud in a company.

This is for the first time that such responsibility of reporting on frauds directly to the Central government has been given to the statutory auditors.

Source: Business Standard dated April 24, 2014

- **Tax terrorism: Share deals of hundreds of unlisted companies under IT Dept scrutiny**

A recent move by the tax department has flummoxed corporates and businessmen who are calling it 'tax terrorism' - a phrase that has gained currency after it found its way into BJP's manifesto.

Hundreds of closely held firms, many owned by the country's top business houses, have been questioned on the premium collected against the sale of shares.

In notices served a day before the close of the last financial year, the IT office, after collecting data from the Registrar of Companies (**"ROC"**), has told them to justify the premium, failing which the amount would be treated as income and therefore taxed.

A senior tax official said the department was simply following a new rule that came into force from 2012-13. Its intention is to curb money laundering and bogus transactions where the premium an investor pays per share cannot be explained.

But tax practitioners ET spoke to feared the department's sweeping and hurriedly taken decision to beat the March 31

deadline could mean endless hassles for companies.

“First, any such transaction prior to 2012-13 (when the new rule came) should not be taxed, but the department has, nonetheless, gone ahead with a fresh circular. This would be legally challenged. Second, one cannot question transactions simply on the basis of ROC data. There has been no evaluation and there is no evidence that income has escaped assessment.”

Source: The Economic Times dated April 25, 2014.

ABOUT US

A2Z TAXCORP LLP having professionals from Multi disciplines which provides services under the Indirect & Direct Tax Laws, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, Accounting, Auditing, Law, Company Law, etc.

CONTACT

A2Z TAXCORP LLP
Tax and Law Practitioners

Flat No. 34B, Ground Floor, Pocket – 1,
Mayur Vihar Phase-1
Delhi - 110091
Tel: +91 11 22757595/ 42427056

E-mail:info@a2ztaxcorp.com
Web: www.a2ztaxcorp.com

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"Devote yourself to learning something new about your field of mastery every day……" **Albert Einstein**