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C.No. IV/16/40/2017-CC-HZ-Tech **DATE: 24.04.2017**

MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE, HYDERABAD ZONE HELD ON 13.04.2017

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 13.04.2017 at 16.00 hrs at Hyderabad. It was presided over by Shri B.B. Agarwal, Principal Commissioner of Customs, Hyderabad Zone, Hyderabad and was attended by the following members :-

1. Shri Devendra Surana, Managing Director & Chairman of the Federation of Telangana Chamber of Commerce and Industry.
2. Shri V.V. Parsuram, Chairman of the Confederation of Indian Industry (CII), Telangana Economic Affairs Committee.
3. Shri P.S.N.Murthy, Secretary of All India Manufacturers Organisation.
4. Dr. Hanumantha Rao, MC Member of Federation of Telangana Small Scale Industries Association (FETSIA).
5. Shri Tulasi D. Prasad, Chairman of Air Cargo Agents Association of India (ACAAI)
6. Shri P.S. Raj Kumar representative of Customs Brokers Association, Hyderabad.
7. Shri M.S.V. Krishna, Advisor & Former General Secretary of Medak Small Scale Enterpreneurs Association.

2) Following Departmental Officers were also present:-

1. Shri M. Srinivas, Commissioner, Hyderabad-III Commissionerate, Hyderabad.
2. Shri A.R.S. Kumar, Commissioner, Hyderabad-IV & Audit Commissionerates, Hyderabad.
3. Shri D. Purushotham, Commissioner, Service Tax Commissionerate, Hyderabad.
4. Shri B.V.V.T. Prasad Naik, Commissioner Appeals (Service Tax), Hyderabad.
5. Shri M. Uma Shankar, Additional Commissioner, CCO, Hyderabad.
6. Shri M. Murali Krishna, Additional Commissioner, Customs Commissionerate, Hyderabad.
7. Shri P. Narasimha Rao, Joint commissioner, Hyderabad-II Commissionerate, Hyderabad.
8. Shri D. Sai Ramesh, Assistant Commissioner, CCO, Hyderabad Zone, Hyderabad.
9. Shri M.V.S.N. Vamsidhar, Superintendent, CCO, Hyderabad zone, Hyderabad.

3) Principal Commissioner, Customs welcomed all the members/participants of the Regional Advisory Committee (RAC) for the Organized Sector and Small Scale Industries of Hyderabad Zone to the meeting. Before commencing the discussion on the points of agenda, the Principal Commissioner informed that no policy issues should be discussed in the RAC meeting as per Board's Circular No.953/14/2011 dated 12.09.2011 and the functions of RAC is purely advisory in nature intended to resolve procedural difficulties of general nature. Copies of the same were made available to the Members of RAC for information.

Thereupon the following agenda points were taken up for discussion:-

3.1)Issues sponsored byFederation Of Indian Chambers Of Commerce & Industry :

Issue No. 1:- Grace period of import clearance – It was stated that as per Notification No.26/2017 Customs (NT) dated31-03-2017, Bill of Entry must be filed on the day of arrival of the shipment, otherwise the penalty would be applicable as given below.0-3 days from the arrival of the shipment - Rs.5000/- per day andfrom 4th day – Rs.10000/-. Further the customs Duty also must be paid on the day of Assessment of the Goods otherwise interest would be applicable on the Customs duty from the Second day and it was requested to give 3-5 days grace period before penalties as well as interest apply.

Reply: The Principal Commissioner of Customs explained that the time limit for filing the Bill of Entry and charges for late filing have been stipulated under section 46 (3) of the Customs Act, 1962 and the importer has to file the bill of entry before the end of next day following the day (excluding holidays) on which the cargo arrived and not on the same day as pointed out by FICCI. Similarly the provision relating to levy of interest for late payment of duty has also been stipulated under section 47 (2) of the Customs Act, 1962. The said changes are aimed at facilitating the trade in faster clearance of imported cargo and reducing the congestion at the ports as a policy matter. Since the changes made are a matter of policy, no further comments can be offered.

Issue No. 2:- Refund of Non-utilized CENVAT

Refund of Non-utilized CENVAT lying in balance consequent to closure of manufacturing unit.

In modern times of rapid obsolescence lot of units are closing down. Due to SAD on imports, many units have unutilized CENVAT Credit. The Procedure for refund of the same should be made simple on closure of units.

Reply: Principal Commissioner and Commissioner, Hyderabad – III explained that there is no provision in the existing statute for refund of unutilized CENVAT Credit lying in balance on closure of manufacturing unit.

Issue No. 3:- Transition to GST Provision especially for traders

Most of the traders did not have excise license and work only on VAT. All these traders will now come under GST. They have lot of closing inventory of VAT paid material. All these goods would have suffered excise duty at the hand of the manufacturer. However, the traders having no license would be carrying this material only with VAT credit. After 1st July 2017 whenever the trader sells there will be a loss of 12% to 14% because of payment of GST at the higher rate and non availment of excise credit.Transition provision enabling the traders to clear this material for 1-3 months on payment of old VAT rates will be highly appreciated.

Reply: Commissioner, Hyderabad – III explained that as per Chapter XX - Section 140(3) of CGST Bill No.57 of 2017 introduced in Lok Sabha governs the transitional provisions.

It was explained that as per Section 140(3),a registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his

electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Issue No. 4:- Clearance of SAFTA countries scrap material at ICD Hyderabad

Reply: Principal Commissioner of Customs explained that the provisions governing import of metallic waste /scrap are given in para 2.54 of the Handbook of Procedures, 2015-20, as per which - shredded scrap can be imported through all ports subject to certain conditions as mentioned therein, but un-shredded scrap can only be imported (subject to conditions) from the ports mentioned in sub-para (d) (iv).

This was later amended by the DGFT by issue of Public Notice No.38/(2015-2020) dt.06.10.2016 whereby another sub-para (d) (v) was added as per which, inter alia, any ICD can handle clearance of un-shredded metallic scrap provided the same passes through any of the designated sea ports as mentioned in this Public Notice or any new ports to be notified/designated from time to time, where Radiation Portal Monitors and Container Scanner are in operation and the consignment is subject to Risk based scanning /monitoring as per the protocol laid down by customs. Subsequently, Public Notice No. 40/(2015-2020) dt.25.10.2016 and Public Notice No. 63/(2015-2020) dt. 27.03.2017 were also issued by the DGFT. Copies of the same were also provided to the Member for information.

3.2)Issues sponsored by Federation of Telangana Small (MSME) Industries Associations :

Issue No. 5:- One company dispatched the goods on payment of duty to a customer. The customer rejected some quantity say 100.00 kg and returned to the supplier on invoice and also on payment of duty. The company on receipt of goods taken the CENVAT credit on the returned goods. On examination some quantity (20 kg out of 100 kg) can be reconditioned / repaired. Hence the qty (20 kg) after repair / recondition, dispatched to another customer on the transaction value, after payment of duty.

The remaining / balance qty (80 kg) was found useless and not saleable. Hence declared as a scrap and sold to scrap dealer as per transaction value on payment of duty.

In the above 2 cases, it was entered in the R.G.1 / stock register. Kindly confirm the above procedure is correct or any deviation of excise rules.

Reply : Upon query by the Principal Commissioner, the member informed that the commodity under discussion are "Polyethylene Bags". On thorough discussion of the scenario presented by the Member, it was concluded that since goods returned were not subjected to any process amounting to manufacture, the manufacturer shall pay an amount equal to the Cenvat Credit taken in accordance with Rule 16(1) of CentralExcise Rules, 2002.

Issue No. 6:- Kindly clarify whether the order served on company can be treated as a service of order to employee.

Reply: Commissioner, Hyderabad – III informed that the order served on company cannot be treated as a service of order to employee.

Issue No.7:- EOU – DTA clearances made clandestinely whether eligible to exemption under notification no. 125/84 – CE, whether the assessee will be entitled to the benefit under rule 4(5) of the CENVAT credit rules.

Reply : Commissioner, Hyderabad – IV explained that Notification No. 125/84-CE dated 26.05.1984 was rescinded vide Notification no. 24/2003-CE dated 31.03.2003. exempting all excisable goods procured or manufactured in 100% EOU from the whole of the duty leviable under Section 3 of Central Excise Act, 1944. Further, informed that the issue raised has already been clarified by the Larger Bench in the case of Jaipur Golden Transport Co. Pvt. Ltd Vs CCE, Surat [2007(215)ELT 503(Tri.L.B], where in the Larger Bench held that in case goods cleared by 100% EOU and sold in India whether with the permission or without permission of Development of Commissioner, the assessment shall be made under the proviso to Section 3(1) of CE Act, 1944 and exemption Notification No. 125/84-CE shall not be applicable.

Issue No. 8:-What will be threshold amount / monetary limit prescribed for preferring an appeal of the department, against the order of appellate commissioner to the Hon'ble CESTAT.

Reply: Principal Commissioner has explained that the threshold limit is Rs.10,00,000/- (The amount includes duty and penalty) Board Letter F.No.390/Misc/163/2010-JC, dated.17.12.2015, as amended, refers. However, the following category cases, there is no such limit.

a) Where the constitutional validity of the provisions of the Act or Rule is under challenge.
b) Where notification/instruction/order or circular has been held illegal or ultra vires.
c) Where audit objection on the issue involved in a case has been accepted by the department.

Issue No. 9:-Whether the responsibility of the price declared on the package is ensured by the Government / Department or not.

Reply : No, declaration of MRP is governed by Legal Metrology Act, 2009 as amended and is administered by Ministry of Consumer Affairs. However, as a preventive measure, declaration of MRP on the packages and liable for assessment under Section 4A of the Act will be monitored by the department. Any mis-declaration / tampering of MRP after clearance comes to notice of the department, appropriate action will be initiated under the provisions of the Act.

3.3) Issues sponsored by CII, Telangana :

Issue No. 10:- Credit of Service Tax on input Services

The definition of 'input services' under Cenvat Credit Rules has been revised w.e.f 1st April 2011. The new definition of input service remains mostly same as earlier; however, a few major changes by deleting the following terms:

(i) setting up of factory
(ii) activities relating to business

While main portion of the definition of 'input services' i.e. direct or indirect relationship to the manufacture of final products is retained, the removal of above mentioned terms has given ample scope for increase in litigations, wherein the officers of the Department disallow the credit on services relating to business of manufacturing and having indirect relation to the activity of manufacture, even the services which are received by virtue of statutory requirement.

Most of the services received by the business houses are in relation to manufacturing activity. A service cannot be said to be having no relation to business of manufacturing, due to the mere reason of not mentioning such services in the definition or the removal of certain terms as mentioned in previous paragraphs.

Service tax paid on Inward services like maintenance of financials records outside factory, maintenance of employee residential colony and guest house in remote areas, which are related to the business, are sometimes litigated by department as ineligible for Cenvat Credit. In such scenarios, assessee either contest their stand of eligibility of Cenvat Credit by going into litigation against department and end up incurring high litigation expenses or surrender such Cenvat credit to avoid litigation. This defeats the very purpose of allowing Cenvat credit on Input Services under the law.

Recommendation : Modify the definition of 'input service' to allow the credit of service tax paid on all the services received except for the services which have no relationship whatsoever with business of manufacture.

Reply: Principal Commissioner has informed the member that, since issue raised is a matter of policy decision, no further comments can be offered and was also agreed upon by the member.

Issue No. 11:- Service Tax Credit on Railway Freight

Service Tax on transportation of goods by Rail was introduced with effect from 01.10. 2012. As per Rule 4A of Service Tax Rules, inter alia every person providing taxable service shall issue an Invoice, a bill or as the case may be a Challan and such Invoice, bill or challan shall be serially numbered and shall contain the details such as the name, address and the registration number of such person etc. Railways, being Service Tax registrants have been bound by the Service Tax provisions and are not relaxed from issuing a formal Invoice as per Service Tax Rules. However, the Railways continued to issue only Railway Receipts for the goods transported by them.

Vide their Rate Circular No 29/2012 dated 28.09.2012 (No TCR/1078/2011/2) it has been clarified by the Deputy Director of Railway Board that customers can get credit of Service Tax based on the consolidated Certificate issued by an authorised Officer of Railways. However, no corresponding amendment was immediately made by Ministry of Finance in Rule 9 of Cenvat Credit Rules 2004, which deals with the list of eligible

documents for availment of CENVAT. Vide Notification No 26/2014-C.E. (N.T.) dated 27.08.2014, Rule 9 of CCR 2004 has been amended to insert the following clause to include the certificate issued by Railways as an eligible document for the purpose of availing CENVAT - "(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate;"

Manufacturing plants have started availing credit of service tax paid on transportation of coal by Railways. The credit was being availed w.e.f. 01.10.2012 based on the certificates issued by Railways along with the photo copies of Railway Receipts , on the strength of the Circular No 29/2012 dated 28.09.2012 issued by Railway Board. Recently, during Central Excise Revenue Audit (CERA) / Excise Audits , the Departmental Auditors have started raising objections that the certificate issued by Railways Department is a valid document only w.e.f 27.08.2014 and not prior to that . The Department is seeking credit availed information understandably for issuing show cause notices in this regard.

It may be noted that till Rule 9 of CCR Rules was amended w.e.f. 27.08.2014, no such objection was raised by the Jurisdictional Excise Authorities or the Departmental Auditors. The amendment made with good intention seems to be getting diluted on its purpose and opening up the door for unnecessary litigation. The audit objections defeat the very purpose of Cenvat Credit scheme and the aforesaid amendment. Denial of Cenvat credit on the basis of certificates issued by Railway Board would cause severe financial hardship to manufacturers and will be against the initiative of "Ease of doing Business". It may be noted that during the MODVAT regime, it was clarified by CBEC that duty payment certificates issued by Public Sector Undertakings are valid documents for availing credit of Excise Duty.

Recommendation : It is requested that an immediate clarification be issued by Ministry of Finance clarifying that:

- monthly consolidated certificates (service tax certificates) issued by Railways w.e.f. 01.10.2012 to 27.08.2014 would be valid documents for the purpose of availing Cenvat credit; and
- the credit already availed prior to 27.08.2014, on the basis of such certificates, would be valid.

Reply : Principal Commissioner requested the member to submit a documented representation on the subject matter and addressed to Member (Budget) through proper channel and assured that it will be forwarded to Board after examination.

Issue No. 12:- Cenvat credit on Inputs and Input Services used in relation to construction of a factory building or civil structure or laying foundation or making of support structure for plant / equipment

The current definition of inputs and input services under Cenvat Credit Rules 2004, exclude the following from the respective definitions i.e., any goods or services used for

- construction or execution of works contract of a building or a civil structure or a part thereof; or
- laying of foundation or making of structures for support of capital goods,

In capital intensive industries like Pulp, Paper & Paperboards industries construction of plant involves a huge expenditure on civil construction to accommodate heavy machines within the premises, laying equipment foundations for wobble free operation of equipment. Most of the structures made in support of these equipment are

imperative for operation of the equipment/ plant. All these equipment are movable and can be relocated to any other location.

However due to above provisions of Cenvat credit Rules , all the inputs and input services although used in construction factory buildings, equipment foundations or structures for equipment operations , though are in relation to manufacture, are not available for availing Cenvat credit.

Due to non-availability of Cenvat credit, it has greater effect on the growth of capital intensive industries and their financial viability.

Further the above provisions defeat the very purpose of Cenvat credit scheme which intends to allow credit of duty / tax paid on goods and services used for / in the manufacturing of final goods. Value of such final goods includes the cost incurred towards inputs and input services for construction of factory buildings, equipment foundations or structures for equipment operations.

Further there have been unnecessary litigations as to what constitutes the main structure or support structure of equipment.

Recommendation:
To widen the definition of inputs and inputs services to include the inputs and input services used in construction of buildings or civil structures or laying foundations or making of structures for support of the equipment/ plant.

Specific exclusion of inputs and input services used should be restricted to "inputs or input services used in construction of buildings/civil structures as office premises".

Reply: Principal Commissioner has informed the member that, since issue raised is a matter of policy decision, no further comments can be offered and was also agreed upon by the member.

Issue No. 13:- Service tax reverse charge mechanism

In respect of certain specified services, the service recipient is obligated to pay service tax under reverse charge. In respect of few services, both the Service Provider and Service Recipient are required to discharge service tax under joint charge mechanism at the percentage prescribed for respective services.

The different percentages prescribed for different services under joint charge mechanism creates huge administrative burden and monitoring the accurate application of different percentages depending upon the nature of services, is tedious and time consuming.

In certain cases, the Department issues notices to Service Recipient under Section 87 of Finance Act, to recover the service tax dues payable by Service Provider. This creates an additional burden and operational inconvenience on the service recipient who would have already paid the value of service and service tax to Service Provider.

Hon'ble Finance Minister in Union Budget 2015, proposed payment of service tax on manpower supply or security services fully by Service recipient, which was being discharged by both service provider and service recipient under joint charge mechanism. However other services such as works contract service, car hire services etc. still continue under joint charge mechanism.

Recommendation
Joint charge mechanism should be completely abolished for all services and either the provider or recipient of service should be liable to pay 100% of service tax directly to the Department under reverse charge mechanism.

Reply : Principal Commissioner has informed the member that, since issue raised is a matter of policy decision, no further comments can be offered and was also agreed upon by the member.

Issue No. 14:- Cenvat credit on Krishi Kalyan Cess and Swachh Bharat Cess

In the Union Budget 2016, it has been proposed to levy Krishi Kalyan Cess @ 0.5% on all taxable services. Credit of Krishi Kalyan Cess paid on input services has been proposed to be allowed to be used for payment of the proposed cess on the service provided by a service provider. Similar to Krishi Kalyan Cess, Union Budget 2015 had introduced Swachh Bharat Cess on all taxable services @ 0.5%, without any input credit of the cess paid.

The principle of introduction of these cess is being justified for the purposes of financing and promoting initiatives to improve agriculture / financing and promoting Swachh Bharat initiatives or for any other similar purpose. However, it may be noted that the Indian Paper/Paperboard industry has strong backward linkages with the farming community, from whom wood, which is a raw material, is sourced. A large part of this wood is grown in backward marginal / sub-marginal lands, which are potentially unfit for other use. The paper industry, being mainly located in backward areas, has transformed the socio economic conditions of the population residing there. The output of this industry which is predominantly used by the educational, printing and packaging sectors is aligned to the Government's initiatives such as "Sarva Shiksha Abhiyan".

Setting up of projects like paperboards manufacturing facility involves on-site assembly and installation of many types of plant and machinery and services in relation to manufacturing activity. Imposition of additional cess with no Cenvat credit available / with Cenvat credit but without any output liability to avail the same, further increases the cost of projects / production for the industry.

Recommendation
Modify the 'Cenvat credit rules' to allow the credit of Krishi Kalyan Cess / Swachh Bharat Cess paid on input services to be used for payment of the Excise duty by the manufacturers.

Reply : Principal Commissioner has informed the member that, since issue raised is a matter of policy decision, no further comments can be offered and was also agreed upon by the member.

Issue No. 15:- Litigation Issues

The Assesses often get Show cause notices from the department, irrespective of the Tribunal decisions, which is of a matter of concern to the industry.

Recommendation
Whenever there is a decision in Favour of the Assessee at the Tribunal and when the Department has decided not to appeal against that decision, then they should close all the open show cause notices suo-moto.

Reply: PrincipalCommissioner explained that department solemnly follows the principle of judicial discipline. Wherever the tribunal judgment goes in favour of assessee and the

department does not appeal against the order, the department does not issue any notice on the same issue. Further, the department also makes efforts to immediately adjudicate similar SCNs if the matter has attained finality in such judicial fora.

4) The members were also requested to vigorously pursue Migration to GST with their constituent members before dead line. Department has already instituted GST – Seva Kendras in all the offices of the department and requested all the Members of the Trade to avail the facility and Migrate to GST hassle free and our officers are always there to help the Trade and Industry.

5) The meeting was concluded with Principal Commissioner extending thanks to all the members of the Committee. Also requested, the Members to forward their queries well in advance, so that they can be examined and replied in the RAC meetings.

6) This issues with the approval of the Principal Commissioner of Customs, Hyderabad.

24/4/18

(M. Uma Shankar)
Additional Commissioner (CCO)

To

All the RAC Members (by e-mail)

Copy submitted to :

1) The Indirect Tax Ombudsman, Chennai, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai, 600 034 w.r.to letter F.No. ITOM/RAC-Hyderabad/ 2015 dated 08.04.2016.
2) The Principal Commissioner of Customs / Pr. Commissioner of Central Excise & Service Tax , Hyderabad–I ; Commissioner of Central Excise & Service Tax, Hyd - II, III, IV; Commissioner of Service Tax; Commissioner of C. Ex & ST- Audit; Commissioner (Appeals), Customs& Central Excise and Commissioner (Appeals) Service Tax- with a request to give wide publicity.