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**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY
COMMITTEE, HYDERABAD ZONE HELD ON 29.09.2015**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 29.09.2015 at 15.30 hrs, at Hyderabad, which was presided over by Ms. R. Shakuntala, Chief Commissioner and was attended by the following members :-

1. Shri. Lalith Mohan Chandna, representative of The Institute of Company Secretaries of India.
 2. Shri. Ashok Surana, representative of the All India Manufacturers Association.
 3. Shri. S.Thirumalai, representative of the Federation of A.P.Chambers of Commerce and Industry.
 4. Shri. V.S.Sudheer, representative of The Andhra Pradesh Tax Bar Association.
2. Following Departmental Officers were also present:-
1. Shri M. Srinivas, Commissioner, Hyderabad-I & III Commissionerate, Hyderabad.
 2. Shri Sunil Jain, Commissioner, Hyderabad-II Commissionerate and Service Tax Commissionerate.
 3. Shri A.R.S.Kumar, Commissioner, Hyderabad-IV Commissionerate.
 4. Shri Ashok, Commissioner, Appeals (Customs, Central Excise & Service Tax), Hyderabad.
 5. Shri N. Sridhar, Commissioner, Customs Commissionerate, Hyderabad.
 6. Shri M. Uma Shankar, Additional Commissioner, CCO, Hyderabad zone.
 7. Ms. Sudha Koka, Additional Commissioner, Hyderabad-I Commissionerate, Hyderabad.
 8. Shri Anand Kumar, Additional Commissioner, Service Tax Commissionerate, Hyderabad.
 9. Shri M. Murali Krishna, Additional Commissioner, Customs Commissionerate, Hyderabad.
 10. Shri D. Sai Ramesh, Assistant Commissioner, CCO, Hyderabad Zone, Hyderabad.
 11. Shri M. Raj Kumar Jaiswal, Superintendent, CCO, Hyderabad zone, Hyderabad.

3. The Chief Commissioner welcomed all the members of the RAC. Thereafter the following Agenda points were taken up for discussion:-

3.1 Points sponsored by Shri. Lalit Mohan Chandna, RAC Member on behalf of Institute of Company Secretaries:

Point no. (i): Notification No.12/2012-CE dated 17.03.2012 (Serial No.332) exempts non-conventional energy devices, listed in List 8 from duty. Similarly parts consumed within the factory of production are exempt by serial No.332A. However, if a manufacturer of excisable goods (covered under List 8) wants to buy "parts" (without duty) required to manufacture his "final product", he can do so by following the procedure laid down in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 (as per condition No.2 of Sl.no.332A). However, can a manufacturer, who manufactures only "parts" (of goods listed at List 8), procure his "inputs" without payment of duty. In other words, can such manufacturer claim the benefit of duty exemption under sl.no.332A by following the procedure given in the above referred Rules. Please clarify.

Reply- Exemption under above said Notifications is not applicable to the inputs used for the manufacture of parts. Manufacturer who manufactures only "Parts (of goods listed in List 8), cannot procure his "Inputs" without payment of duty as the entry No. 332A of Notification No. 12/2012 CE dt. 17.03.2012 is applicable only to the Parts consumed within the factory of production for the manufacture of goods specified in LIST 8, subject to fulfillment of condition No. 2 of Notification No. 12/2012 CE dt. 17.03.2012 i.e., "Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed".

From the above, it appears that exemption under the above said Notifications is not applicable to the inputs used for the manufacture of parts of the exempted goods as mentioned above.

Point no. (ii): Few manufacturers supply the goods to DRDL, BDL, HAL etc without payment of duty under Notification No.10/97-CE dated 01.03.1997 and No.64/95-CE dated 16.03.1995. Do these manufacturers who supply goods to Defence (or for Research purposes) under above notification require "Registration" under Central Excise or whether they are exempt under Notification No.36/2001-CE(NT) dt.26.06.2001. Please clarify.

Reply- Under the Central Excise Law (Notification No.36/2001-CE (NT) dated 26.06.2001, no Registration is required to be taken by a manufacturer who manufactures excisable goods which are totally exempt from payment of duty under any general Notification and which are chargeable to 'Nil' rate

of duty; and up to the threshold limit stipulated under a Notification based on the Value of Clearances (up to Rs.90 lakhs in a financial year).

In case the assessee is exclusively manufacturing and clearing the goods under exemption notification subject to fulfillment of conditions specified in that notification and makes a declaration in the specified form annexed to the notification no. 36/2001-CE(NT) while claiming exemption under this notification, then the assessee need not take Central Excise registration.

Point no. (iii): Whenever a unit wants to surrender his registration due to any reason such as closure of the factory, or shifting to some other place, or company being taken over by some other person, department always refuses to accept the cancellation on the grounds that:-

- (a) Cases are pending against the company.
- (b) Audit has not taken place till the date of 'closure'.

There appears to be no clear cut instructions on this issue. In one case, the unit was vacated and it was handed over back to the owner, and when the new person has gone to the department to apply for new registration, the department is raising the above objections. It is our submission that suppose a case is pending in Supreme Court, it may take over 5 years for SC to decide the issue. Does it mean that a person has to wait for 5 years and go on filing 'Nil' return. Further, there are no. of decisions of Hon'ble Tribunal where it has been held that registration cannot be refused because earlier person had some arrears etc. Following are the relevant case laws:

1. PMS Exports - 2012 (285) ELT 82
2. Jagdish Enterprises - 2014 (306) ELT 381
3. Keshardeep Pressing - 2014 (303) ELT 88
4. Surat Metallics - 2014 (306) ELT 558 (HC)

Kindly clarify the position and issue a Trade Notice etc which will benefit the industry.

Reply- In terms of notification no. 35/2001-CE(NT) dt. 26.06.2001 as amended by notification no. 7/2015-CE(NT) in cases where there are no dues pending recovery from the assessee the application for de-registration can be approved. In cases where demands are pending against the assessee application for de-registration cannot be approved.

In case there are cases where Department has filed an appeal before any Appellate Forum, it is necessary to obtain the details of Addresses and Bank Accounts of the Directors/Partners/Proprietor to enable the Department to pursue recovery proceedings, if any liability attains finality in future. Further indemnity bond may also be taken at the time of De-Registration. There is no other legal provision stipulated for grant of any exemption/relaxation of the Statutory Procedure in this Regard.

In cases where audit has not taken place till the date of closure, the jurisdictional officer should immediately send a proposal for conducting audit to the Audit Commissionerate.

Point no. (iv): Department has been demanding interest at rates of 18%, 24% and 30% on service tax issues, when ever any notice is being given after 01.10.2014 when new interest rates were introduced. The industry view is that since new interest rates are penal in nature, the revised rates are applicable 'only' for demands for the period on or after 01.10.2014.

In case of Priyadarshini Cements – 2008 (224) ELT 429 (Tri. Bng.) it has been held that rate of interest prevailing at the "time of default", is applicable. This issue was taken to High Court of AP, where Hon'ble High Court has confirmed the view of Tribunal in 2012 (292) ELT 30 (AP). Since we come under jurisdiction of AP High Court, it is the submission of the industry that department may clarify on this issue.

Reply- As per Notification No.12/2014 dated 11.07.2014 which is effective from 01.10.2014, the rates of interest as applicable are furnished hereunder.

S.No.	Period of delay	Rate of simple interest
1.	Up to six months	18 per cent.
2.	More than six months and up to one year	18 per cent. for the first six months of delay and 24 per cent for the delay beyond six months.
3.	More than one year	18 per cent. for the first six months of delay; 24 per cent for the period beyond six months up to one year and 30 per cent for any delay beyond one year.

It is opined that any notification issued will always be prospective unless it is specifically mentioned so.

Further the CBEC has vide DOF No.334/15/202014-TRU dated 10-07-2014 clarified the applicability of the said rate of interest with an illustration. The illustration being followed for arriving at the appropriate interest in the case of delay of payments is;

"As an illustration, assume a case where service tax became due, say, on the 6th of July, 2012 and the assessee pays the dues on 6th of December, 2014. In such a case, the interest to be charged would be as below:

(i) 18% simple interest upto September, 30th, 2014.

(ii) For the period from 1st October, 2014 to 6th December, 2014, the rate of interest will be 30% since the period of delay is beyond one year.

As specified in the proviso to section 75, three per cent concession on the applicable rate of interest will continue to be available to the small service providers."

Point no. (v): Recently, in case of Mettur Thermal Power Station - 2015-TIOL-1948-HC-MAD, it has been held by Madras High Court that "coal ash" is not excisable as same is not a manufactured item. Department has been taking a view that all the goods which are "sold" for a consideration are excisable. In the light of this latest judgment, industry wants to know the department's view on the excise duty on "coal ash" and other similar items.

Reply- Explanation attached to Section 2(D) of the Central Excise Act, 1994 which defines excisable goods, goods includes any article, material or substance which is capable of being brought and sold for a consideration and such goods shall be deemed to be marketable. Therefore, Central Excise duty is being levied and collected on "Coal Ash" arising during the course of manufacture of excisable commodities and sold for a commercial consideration. Further, it appears that the case law cited in this regard has not yet attained a legal finality.

Point no. (vi): Circular issued by CBEC No.860/18/2007 dt.22.11.2007, on self sealing of export consignments, clearly says that in case of free shipping bills, sealing "shall" not be done by Excise Officer. Also circular No.892/12/09-Cx. Dt.23.07.2009 says that there will be no opening / examination of export consignment at the port.

It is being observed that many exporters are still being told (especially at Vizag Port) that department will be sealing all the consignments, especially if goods are going in a container. Please clarify the following points in this connection.

- (a) The circular states that "free shipping bills", where no "export benefits" are being sought. The circular does not define the "export benefits". Hence, industry wants to know whether schemes like DFIA, Advance Authorization are to be treated as incentives or not? What according to department will be treated as "export benefits".
- (b) Secondly, above circular specifically state in Para 3 that "excise officer shall not attend to request for sealing." In view of this clear prohibition and mandatory self sealing, please clarify whether sealing being done by officers is correct or not.

Reply- As per CBEC Circular No. 860/18/07 dt. 22.11.07 regarding self sealing of export consignments, it is very clearly stated that in case of Free Shipping Bills, sealing shall not be done by Excise Officers. Hence, it is opined that where there are some benefits sought as export incentives, the question of filing free shipping bill in such cases does not arise.

It is further submitted that as there are clear instructions in respect of free Shipping Bills, self sealing of export consignments is to be done and the Range Officers are not required to seal the export consignments.

However, as the issue pertains to Vizag port, the Member is requested to take up the matter with Chief Commissioner, Vizag Zone.

3.2. Points for RAC meeting sponsored by Smt. Swathi, Administrative Officer/ Shri. Ashok Surana on behalf of All India Manufacturers' Organization :

Point no. (i) : With the unexpected and severe global economic crisis, our country needs to implement 'Make in India' mission like it is an emergency situation. To improve ease and enhance speed of doing business, the department may consider:

- Gathering, monitoring and publishing on website average time taken for clearance of exports and imports at Air Cargo and ICD/CFS. This could also help in gradual speeding up of the clearance process.
- Appointing at Customs gateways as facilitators - retired officers of department who have handled such work speedily and skillfully.

Reply- In respect of part (a) this Commissionerate has already conducted 'Time Release Study' in respect of Import consignments in respect of ICD-Sanathnagar and Air Cargo Complex, Hyderabad. The results of the said study are being published in the website of the Commissionerate viz. www.hyderabadcustoms.nic.in. The similar study on Export consignments is under way and as soon as the same is completed, the results of the same shall also be published in the said website.

In respect of Part (b) of Point No. (7), regarding appointing retired officers of Department as facilitators at Customs Gateways, it is to submit that since this is a policy matter, this office has no comments to offer.

3.3 Points for RAC meeting sponsored by Smt. N.V.S. Lakshmi, Asst. Director/ Shri. S. Thirumalai , The Federation of Telangana and Andhra Pradesh Chambers of Commerce and Industry:

Point no. (i): RCC Laboratories India Private Limited : Hyderabad

RCC Laboratories India (RCC) is a Contract Research Organization offering the services in safety and efficacy testing for Pharmaceutical, Agrochemical, Medical Device, Cosmetic and Biotech industries. RCC is accredited by Indian GLP authorities to conduct research services adhering to OECD GUIDELINES of good laboratory practices.

Category of Service : SCIENTIFIC AND TECHNICAL CONSULTANCY SERVICES.

Nature of Services:

RCC was providing service to Domestic and foreign clients. RCC Provides the service to foreign clients will treat the same as Export Services. As per section 6A of Service Tax Act, RCC fulfills the condition of export services.

As per Rule 6A of Service Tax Rules, 1994, provision of any service provided or agreed to be provided shall be treated as Export of Service if following conditions are satisfied:-

1. The provider of taxable service is located in taxable territory. - yes
2. The recipient of service is located outside India. Yes
3. The service is not a service specified in the negative list [Section 66D]. No
4. the place of provision of the service is outside India. Rule (4a)
5. the payment for such service has been received by the provider of service in convertible foreign exchange. YES
6. the provider & recipient are not merely establishments of a distinct person. YES.

Query :

RCC importing goods for testing on animals and the goods have no commercial value. So many of our competitors are not paying service tax on export services.

Kindly clarify whether we should pay service tax on Export service or exempted from Tax ?

Reply- . To treat the service as export of services in terms of Rule 6(A) of the Service Tax Rules 1994, one of the conditions is that the place of the provision of the service should be outside India. If the business carried out by the unit is rendered within India, then under the purview of Rule 4(A) of the place of Provision of Service Rules, 2012 it appears that the Service Provider is liable to pay Service Tax as the goods are physically made available in India by the Service Receiver abroad.

However, the Commissioner of Service Tax, Service Tax Commissionerate has stated that in order to address the issue, copies of agreements are required to examine the nature of service provided and whether to treat the service as export of services in terms of Rule 6(A) of the Service Tax Rules 1994. Therefore Shri. S.Thirumalai, representative of the Federation of A.P.Chambers of Commerce and Industry was asked to request the concerned service provider to submit a detailed representation along with copies of the contract to the Service Tax Commissionerate in order to examine their case.

Point no. (ii): Unconditional availment of CENVAT Credit by GTA Service Recipient:

Pursuant to the changes made with respect to the Abatement Provisions under GTA Service in the Union Budget 2015, vide Notification No. 8/2015 - Service Tax dt. 1-3-2015 w.e.f. 1.4.2015 a uniform abatement has been provided for transport by rail, road and vessel and Service Tax shall be payable on 30% of the freight (being the value of service of GTA) subject to a uniform condition of non-availment of CENVAT Credit on inputs, capital goods and input services by the service provider. Hence it is necessary to obtain certificate from the service provider (GTA) that he has not availed any CENVAT Credit as aforesaid.

For the service receiver to obtain declaration from the Service Provider in each and every transaction would cause lot of inconvenience and difficulty.

We therefore request the Department to kindly recommend to the Board to amend the CENVAT Credit Rules, 2004 by deleting the GTA Service from the scope of Output Service in the CENVAT Credit Scheme so that Recipient of GTA Service paying Service Tax under reverse charge method is no more required to prove non-availment of CENVAT Credit by GTA Service Provider.

Reply - With regard to unconditional availment of CENVAT Credit by Service recipient, the Central Board of Excise and Customs has clarified (vide D.O.F.No. 334/15/2014-TRU letter dated 10.07.2014) that the service receiver is not required to establish that service provider has not availed Cenvat Credit. As the Board has already clarified on the above issue, the question of referring again to CBEC does not arise.

The meeting concluded with the chairperson thanking all the members for their participation.


(M. UMA SHANKAR) 20/10/15
ADDITIONAL COMMISSIONER (CCO)

To
All the RAC Members through email.

Copy submitted to the Commissioner of Customs, Central Excise & Service Tax, Hyderabad- I, II, III & IV, Audit, Service Tax and Customs Commissionerates, and Appeals- Central Excise & Customs and Service Tax, Hyderabad with a request to give wide publicity and for compliance of the directions given against relevant points.

Copy submitted to the Under Secretary (CX-9), CBEC, New Delhi.