



Central Board of Excise & Customs

विधि - वार्ता

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In-house Monthly Newsletter

Editorspeak

As we enter the last month of the Financial Year, the entire focus of the department is on maximizing revenue and all of us are busy with our calculators, burning the mid night lamp to achieve the revenue targets. The budget and budgetary changes have also occupied quite good amount of our time during this month.

We are grateful for the positive responses to Vidhi Varta over the past six months. Your contributions for every issue in the form of articles, news and issues that concern our legal framework are extremely valuable and always welcome.

News

- Hon'ble Finance Minister presented the Union Budget for the year 2013-14 on 28th February 2013.
- The Economic Survey 2012-13, presented by the Finance Minister, Mr P. Chidambaram, in the Lok Sabha predicts that the global economy is also likely to recover in 2013 and various government measures will help in improving the Indian economy's outlook for 2013-14. While India's recent slowdown is partly rooted in external causes, domestic causes are also important.
- In an analysis published by CBDT, about 73888 assesseees have defaulted in payment of self assessment tax to the tune of Rs 3859 crores during the Financial Year 2012-13.
- CBEC has notified the revised ST-3 form for filing the return for the period 1st July 2012 to 30th September 2012 and have extended the date for filing the return to 15th April 2013. (Notification No 1/2013-ST dated 22.02.2013 and Order No 1/2013-ST date 6.03.2013)
- A case was registered against the Commissioner of Customs, (1987 Batch officer of IRS/Customs), JNCH, Mumbai and a private person (Custom House Agent), on a complaint of Rajkot (Gujarat) based Complainant. It was alleged in the complaint that the Commissioner of Customs and the Private person had demanded bribe from the complainant for releasing his container.



Revenue Secretary Shri Sumit Bose and Chairperson, CBEC, Ms. Praveen Mahajan welcoming Shri Parthasarathi Shome, Advisor to the Finance Minister, on the occasion of Central Excise Day, 2013.

Budget and Revenue Targets

The month of February and March are the most crucial months for the revenue officer and each one of us is seen grappling with the terms like “*Budget*”, “*Budget Estimates*”, “*Revenue Targets*”, and “*Revenue Collections*”. These terms are further complicated by the new terms like “*Additional Revenue Mobilization (ARM)*” added to the large list of words already creating a maze for the revenue officers to juggle through. In this article an attempt has been made to understand some of these terms which are so frequently used.

Budget – It is the statement of estimated receipts and expenditure of the Central Government as per its policy for each financial year and placed before the Parliament.

Revenue Budget- It is the statement of estimated revenue receipts and revenue expenditure of the government. Revenue receipts of the government are classified as tax and non tax revenue receipts.

Capital Budget- It is the statement of estimated capital receipts and capital expenditure of the government.

Budget Estimates - are the detailed estimates of receipts and expenditure during the coming financial year.

Revised Estimate - is an estimate of the probable receipts or expenditure for a financial year, framed in the course of that year, with reference to the transactions already recorded and anticipation for the remaining period of the year.

Thus the Budget document as presented at the beginning of the financial year depicts the estimated revenue receipts including the indirect tax receipts for the coming financial year. Estimates of receipts included in the Annual Financial Statement are further analysed in the document “*Receipts Budget*”. The document provides details of tax and non-tax revenue receipts and capital receipts and explains the estimates.

On the basis of these estimated indirect tax receipts, the revenue targets are assigned. As the year progresses and the tax receipts are analyzed and on the basis of the performance of various sectors of economy and the actual collections made, the targets of revenue receipts/tax receipts are also revised.

However, for the revenue officers in the field, another term “*Additional Revenue Mobilization (ARM)*” has been a source of anxiety and apprehension. In fact, additional revenue mobilization is nothing but the additional effort put in by the officers to achieve or surpass the revenue targets. The additional revenue mobilization has a direct link to disposal in the key areas of performance because additional revenue can be mobilized through initiatives in the sphere of anti-evasion, audit, adjudication, finalization of provisional assessments and recovery of the arrears. Thus, when the emphasis is on mobilizing the revenue through all the possible resources, the effort is to be made towards the enhanced performance in the other key areas of work and as the performance in these key areas is improved, the revenue performance automatically gets boosted.



RECENT DECISIONS

HIGH COURT



M/s DEVTA STEEL ROLLING MILLS Vs COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH [2013-TIOL-206-HC-P&H]

The Tribunal on 09.10.2000 allowed the appeal of the assessee. The reference against the said order before this Court was decided on 26.08.2011 vide GCR No. 2 of 2003. When the order was passed by the Tribunal on 09.10.2000, the Revenue had only remedy of seeking reference in terms of the then Section 35-G of the Act from the Tribunal. If the Tribunal does not refer the questions of law for the opinion of this Court, the aggrieved party could invoke jurisdiction of this Court under Section 35-H of the Act. It was in these terms that, the jurisdiction of this Court was invoked by the Revenue against the order dated 09.10.2000 passed by the Tribunal. After the decision of the High Court on the Reference Application, the Tribunal passed an order on 02.01.2013 on an miscellaneous application filed by the Revenue. The Tribunal allowed the application and ordered the appeal to be listed for final disposal on 05.03.2013. The petitioner moved to the High Court against this order of Tribunal for listing the appeal for final disposal stating that the order dated 9.10.2000 of the Tribunal is in terms of Section 35H as it existed then and is not protected.

Disagreeing with the contentions of the petitioner, the High Court observed that the order of the High Court, on such reference sought by the Revenue, is binding on the authorities under the Act, and should be given effect by the authorities concerned



M/s ONGC Vs Commissioner Central Excise, Raigad [2013-TIOL-202-HC-BOM]

ONGC admittedly also produces dutiable final products. The production of those dutiable products is possible only on the continuous supply of crude oil. We, however, clarify that as a manufacturer of both dutiable and exempted goods, the Appellant would be required to comply with the discipline and rigour of rule 6 and would be entitled to take Cenvat credit only on that quantity of input service which is used in the manufacture of the ultimate dutiable product. (For the facts and the order of the tribunal please see the decision of Tribunal in case of the party latter in this section)

Tribunal

Tulip Star Vs Commissioner Of Central Excise, Thane-I [2013-TIOL-480-CESTAT-MUM]

Appellant was directed vide the order dated 2/07/2012 to make a pre-deposit of Rs Rs.19,89,336/- and report compliance on 3/09/2012. On the date of

reporting compliance appeal of the appellant dismissed as he had not complied, but the appellant was allowed liberty to file application for restoration within ten weeks after making pre-deposit. Appellant failed to make the pre-deposit within the prescribed period of ten weeks but deposited the same much later. Since the amount was not deposited within time limit as prescribed by the tribunal, tribunal imposed a cost of Rs 10,000 as pre condition for restoration of appeal.

M/S Gammon India Ltd Vs Commissioner Of Customs (Import), Nhava Sheva [2013-TIOL-471-CESTAT-MUM]

The appellant imported a consignment of "Electronic Sensor Paver Vogetel model super 1800-2 with AB 600-2 TC screed" and claimed exemption under the Notification No 21/2002-Cus dated 1-3-2002. The said exemption was denied on the following two grounds-

- The goods imported were not in accordance with the goods exempted by the said notification at SI No 230.
- The contract was awarded by M/s NHA to GICL and the contract did not mention M/s Gammon as a sub-contractor as envisaged in the said notification.

After considering the submissions, CESTAT held, relying on the Apex Court decision in the case of appellants themselves [2011-TIOL-60-SC-Cus], that- the appellant cannot be considered as a sub-contractor since he has not been named as such in the contract awarded to the consortium by NHA and hence the benefit of the said exemption shall not be available to him.

M/S Jay Travels Vs Commissioner Of Central Excise, Vapi [2013-TIOL-461-CESTAT-AHM]

Issue involved in this case is regarding the non discharge of service tax liability for the period April 2008 to December 2008 within time, despite the fact that the appellant is a service tax registered unit. On perusal of the records, it is seen that the appellant has been collecting the service tax liability from his service recipient for this period, but not depositing the same with the government authorities. The appellant paid the service tax and interest thereof for the period April 2008 to March 2009 only in the month of March 2009 and that also on 27, 30 and 31.3.2009, after the issue of show cause notice on 13th March 2009. Since the appellant has discharged the tax liability and interest due only after the issuance of the show cause notice, he cannot be allowed the benefit of waiver of penalty in terms of Section 73(3) of the Finance act, 1994.

M/S Hem Clearing Agency Vs Commissioner Of Service Tax, Ahmedabad [2013-TIOI-453-CESTAT-AHM]

The appellant had received the Order-in-Appeal on 17.1.2012 but has not filed the appeal within time. The reasoning given by the appellant that they were under bonafide belief and were not aware of the receipt of the order of Commissioner (Appeals) also seems to be incorrect as they have only stated in the application for condonation of delay that the Order-in-Appeal was received on 17.01.2012. As regards the bonafide belief as submitted by the Id. Counsel, we find that the appellant has not produced any evidence in any form regarding the bonafide belief he has entertained, and it is seen that as soon as the Department has started pressuring the appellant for payment of dues as has been confirmed by the Order-in-Appeal on 05.01.2012, the appellant filed an appeal on 18.07.2012. Hence the application for condonation of delay in filing the appeal was dismissed.

M/s ONGC Vs Commissioner Central Excise, Raigad [2013-TIOL-451-CESTAT-MUM]

The appellants also have multi locational units for the manufacture of excisable goods and one such unit of appellants is registered with Central Excise, Mumbai-I Commissionerate. This unit manufactures/produces the exempted excisable goods such as natural gas and crude oil for which M/s ONGC Ltd is registered with the department. The crude oil and natural gas produced from the Oilfield of Mumbai Offshore were supplied to the refineries situated at different location. Oilfields of Mumbai Offshore of the appellants are discharging the Oil Cess leviable under the Oil Industry (Development) Act, 1974 and also discharging the National Calamity Contingent duty (NCCD), Primary Education Cess and Secondary & Higher Education Cess for the crude oil manufactured/produced by the appellants at Mumbai Offshore. They were also availing of the CENVAT credit of the duty paid on various input services which was transferred to them by the Mumbai unit manufacturing the excisable goods.

As per Rule 6(1) of the CENVAT Credit Rule CENVAT Credit shall not be allowed on much quantity of input services which is used in the exempted goods except in the

circumstances specified in Rule 6(2). Under Rule 6(2) if a manufacturer manufactures both exempted goods and dutiable goods and he maintains separate records of input services gone into dutiable goods/exempted goods, the credit in respect of input services gone into dutiable goods will be admissible. In the present case input services are entirely being used in Crude Oil/Natural gas which are exempted from duty. Therefore, in this case credit is not admissible.

As per Rule 7 of the CENVAT Credit Rules, the input service distributor may distribute the CENVAT credit in respect of Service Tax paid on input service to its manufacturing units subject to condition that credit of Service Tax attributable to service used in a unit exclusively engaged in the manufacture of exempted goods shall not be available. Since Mumbai Offshore is exclusively engaged in the manufacture of exempted goods, credit of Service Tax paid on input services cannot be distributed.

Thus the Tribunal confirmed the demand of Rs 40,57,15,829/- against the appellants.

POT POURRI

- ❖ The Circular No 967/1/2013-CX dated 1st January 2013 has been the most legally debated issue before all the High Courts in recent time. Almost all the High Courts have commented and made observations against the said circular. The Punjab and Haryana High Court has stated that the very basis of the Circular is untenable, misconceived, wholly illegal and arbitrary, and has set aside the condition of recovery, if no stay is granted within 30 days, as illegal, arbitrary, unjustified and read down the condition that a stay granted gets automatically vacated after 180 days. After 180 days, the Court wants the Department to move an application before the Tribunal for vacation of stay.

सम्पादक मण्डल

श्रीमती संध्या बालिगा, संरक्षक

सदस्य (एल एण्ड जे) केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड

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श्री के.पी. सिंह, अपर आयुक्त

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