



Government of India

MONTHLY AUDIT BULLETIN – APRIL, 2013

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Customs & Central Excise
Central Revenue Building,
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New Delhi-110109**

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CENTRAL EXCISE

- (1) **GIST OF THE OBJECTION : Suppression of actual value of Captively Consumed goods**
COMMISSIONERATE : Central Excise Commissionerate, Lucknow
CONTRAVENTION OF
PROVISION :

The assessee is engaged in the manufacture of Special Denatured Sprit (SDS) (Tariff Heading-22072000) alongwith other dutiable and non-dutiable goods. The assessee has transferred the entire production of SDS to his own unit at Kashipur (Uttaranchal) for further use in the manufacture of goods in that unit. The Central Excise duty payable on such goods so transferred to one's own unit is required to be calculated on the value arrived as per provisions of Rule 8 of Central Excise (Valuation of goods) Rules' 2000. Board's Circular No. 643/32/2002-CE dated 01.07.2002 states that such goods would be valued at the rate of 110% of cost of production under Rule 8. The Board's Circular No. 692/08/2003-CE dated 13.02.2003 has further clarified that cost of production of captively consumed goods will be done strictly in accordance with CAS-4 issued by the ICWAI.

The actual value of such captively consumed goods was ascertained on the basis of Cost Audit Report and cost sheets which indicated huge difference between the actual assessable value of such captively consumed goods and value of goods declared to the Department. The total evasion of duty amounted to Rs. 4.51 crores.

- (2) **GIST OF THE OBJECTION : Willful Wrong classification and non - payment of duty on Bio Fertilizers**
COMMISSIONERATE : Central Excise Commissionerate, Chennai I
CONTRAVENTION OF
PROVISION :

The assessee is engaged in the manufacture of Pharmaceutical products falling under Chapter 30 of the Central Excise Tariff and Bio fertilizers falling under chapter 31 of the Central Excise Tariff.

The assessee has been manufacturing and clearing Bio fertilizers under brand names such as 'Ecotoxinal', 'Ecotrax', 'Ecogen' and 'Bloomax' etc. and has been clearing the above bio fertilizers without payment of duty, classifying the same under heading 3101 of the Central Excise

Tariff, which carries 'Nil' rate (tariff rate) of duty. Further, the above bio fertilizers were cleared as a 2 Kg. pack or 5 Kg. pack only.

The assessee had paid duty @1% on the clearances of the above Bio fertilizers from March, 2011 to March, 2012 classifying the said Bio Fertilizers under sub heading 31010099 , however, stopped paying duty on the above bio fertilizers from 1.4.2012.

As per sub heading 31051000 of the Central Excise Tariff ' the goods of the Chapter(viz. Chapter 31) in tablets or similar forms **or in packages of a gross weight not exceeding 10 Kg'** are covered by the above sub heading 31051000. The above bio fertilizers, as they are cleared as 2 Kg. or 5 Kg. packs, are, therefore, classifiable under sub heading 31051000. The above sub heading 31051000 carries the Tariff rate of 12% duty. However, the effective rate of duty on 'all goods used as fertilizers', which were earlier fully exempt from duty upto 28.2.2011, is 1% with effect from 1.3.2011 (vide entry No.40 of Notification No.1/2011-CE dt.1.3.2011/entry No.128 of Notification No.12/2012-CE dt.17.3.2012).

The value of the above Bio fertilizers cleared from 1.4.2012 to 30.11.2012 is Rs. 1,86,6,407/- and the duty payable thereon amounted to Rs. 1,92,264/-.

- (3) **GIST OF THE OBJECTION : Erroneous availment of Cenvat Credit before the 'Out of Charge' certification was issued by Customs Authorities**
COMMISSIONERATE : Central Excise Commissionerate, Bhavnagar
CONTRAVENTION OF PROVISION :

The assessee is engaged in ship breaking and deals in material obtained from ship breaking activities falling under Chapter 72 to 83. The assessee had availed Cenvat Credit of Rs.4,62,79,253/- (CVD) and had utilized Rs.1,31,23,881/- out of that for payment of Central Excise duty for the month of July-2012. The bill of entry in respect of old and used imported ship was given 'out of charge' certification by Customs Authorities on 02.08.2012. Therefore the assessee was liable to avail the Cenvat Credit on 02.08.2012 only.

As per the Cenvat Credit Rules, 2004, the Cenvat accumulated upto the last day of the month can be utilized for payment of duty of that particular month, and in assessee's books of accounts, the opening balance of Cenvat Credit was NIL in July 2012. The Out of Charge certification given by the Customs is a permission to break the ship for breaking the Radio Sets .

The process for import of ship for dismantling requires filing of Bill of Entry before the Customs, who would provisionally assess the same for payment of Customs Duty thereon. After such payment of Customs Duty, the importer applies for NOC from Customs which in turn is presented to the Maritime Board which permits the ship to be beached at the plot of the Ship Breaker. The Customs authorities then after would break the Radio Sets, etc. under proper Panchnama and issue the 'Out of Charge' Certification. While applying for the NOC from Customs,

the importer of the ship gives an undertaking that no one would board the ship till the Out of Charge is given.

In the instant case, the assessee had no authority to board the ship and hence could not construe the ship to be 'input received'. Moreover the ship had been beached outside the plot and could have been officially brought on the plot only after the 'out of charge' certification had been issued. Therefore, the assessee was not entitled to avail Cenvat Credit. The duty liability for the same amounted i.e. Rs.1,31,23,881/- .

- (4) **GIST OF THE OBJECTION: Irregular availment of Cenvat Credit on steel scrap imported Free of duty.**
COMMISSIONERATE : Central Excise Commissionerate, Bhubaneswar I
CONTRAVENTION OF PROVISION :

The assessee imported steel scrap free of duty under DEEC scheme, and the total duty foregone amounted Rs. 69.30 lakhs. However, the assessee segregated the CVD and SAD components of total duty foregone and took Cenvat Credit of Rs. 59.84 lakhs. Thus, the assessee took cenvat credit of a duty that was never paid. The total tax liability amounted to Rs. 59,84,000/-

- (6) **GIST OF THE OBJECTION : Credit availed twice on the same Bill of Entry, Ex-Bond Bill of Entry and warehousing bill of entry etc.**
COMMISSIONERATE : Central Excise Commissionerate, Bangalore I
CONTRAVENTION OF PROVISION :

The assessee had taken cenvat credit in respect of certain Bills of Entry before March,2012 and the same has been once again taken during the same month , resulting in double credit on the same Bills of Entry. The same modus had been applied and credit had been taken on the Bill of Entry for warehouse filed for deposit of the imported goods in the customs bonded warehouse situated in their factory after the goods were cleared under Ex-Bond Bill of Entry for home consumption. In the case of foreign supplier's invoices, the credit has been taken without mentioning the number of the Bill of Entry. All these activities have resulted in credit being availed twice for the same goods. The inadmissible credit amounted to Rs.9,50,53,416/-.

- (7) **GIST OF THE OBJECTION : Wrong classification adopted for the purpose of claiming duty drawback**
COMMISSIONERATE : Central Excise Commissionerate, Bangalore II
CONTRAVENTION OF

PROVISION : **Section 4A of the Central Excise Act 1944; Notification No.7/2012-CE (NT), dated 17.03.2012; Rule 2(k) & Section 4A read with Rule 3(b) of Legal Metrology packaged Commodities Rules, 2011**

The assessee has been claiming duty drawback @10.3% for the year 10-11 & 9.3% for the year 11-12 on Flexible Intermediate Bulk Containers(FIBC) which were exported, certifying that no Cenvat credit was availed. Thus, there was a gross misdeclaration in the customs documents. The assessee has violated the provisions in two ways as follows:

- (i) **Simultaneous availment of Cenvat credit under Cenvat Credit Rules,2004 and duty drawback under Section 75 of Customs Act,1962:** The assessee on receipt of the raw materials into the factory availed the Cenvat credit and utilised the same for payment of duty on clearances made. The assessee reversed the Cenvat credit proportionate in the duty drawback claimed on the last day of the month. However, claimed higher rate of duty drawback under column “Drawback when Cenvat facility has not been availed”. Drawback when Cenvat facility has not been availed refers to the total drawback (Customs, Central Excise and Service Tax component put together). In the instant case the assessee reversed only Cenvat credit and not service tax component availed on inward freight incurred on the receipt of inputs into the factory.
- (ii) **Wrong classification:** Flexible Intermediate Bulk Containers (FIBC) is classified by the assessee under 630502 of drawback schedule, whereas the same is rightly classifiable under Chapter 39 of the drawback schedule. This issue has been clarified by the Board vide its circular No. 42/2011.Cus dated 22.09.2011 that FIBCs which are made of manmade material would be classifiable under drawback tariff item 630502. The total evasion amounted to Rs.1,71,53,064/-

(8) GIST OF THE OBJECTION : Non-payment of Excise duty against clearance of PSC Poles

COMMISSIONERATE : **Central Excise Commissionerate, Patna**
CONTRAVENTION OF
PROVISION :

The assessee, in addition to manufacture of pre-stressed concrete (PSC) Sleepers, Sleeper of all types, is also engaged in manufacture of PSC Poles falling under Central Excise Chapter Sub-Heading No 68109990 of the Central Excise Tariff Act,1985 in the same premises. The assessee had another unit having separate registration number wherefrom these PSC Poles were manufactured. They are availing benefit of S.S.I exemption provided under Notification No - 8/2003-CE dated-01 03.2003, as amended. The benefit of S.S.I Exemption shall not be extended as both the Companies were having common staff for accounting, marketing & supervision and two of the Directors were also common. Raw materials like cement and HTS used in production of both the factory were also common. As per Board's Circular No.172/6/96-CX dated 06.02.1996 issued from F.No 346/5/96-TRU (SSI exemption amendment to Notification No 1/93 Scope of), a manufacturer does not have an option to pay excise duty at the normal rate in respect of one unit and simultaneously claim exemption under Notification No 1/93-CE in respect of other unit. This means, when manufacturer exercises the option for payment of duty at the normal rate it shall

be with respect to clearance made by him from his entire factory. Therefore clearance of both the units need to be clubbed for the purpose of payment of Excise duty. Accordingly, the total Central Excise duty of Rs. 18,46,769.00 is recoverable.

SERVICE TAX

(10) GIST OF THE OBJECTION: Wrong availment of Cenvat Credit on Car Insurances & health Insurance

COMMISSIONERATE : Central Excise Commissionerate, Panchkula

CONTRAVENTION OF PROVISION :

The assessee had been paying insurance premium on the company cars and taking Cenvat Credit on the service tax involved on the same. As the cars are not used in or in relation to the manufacture of excisable goods or providing of any taxable service, the insurance service in respect of these cars does not qualify as an input service within the meaning given under section 2(1) of the Cenvat Credit Rules, 2004. The assessee was also found to be taking the credit on health insurance which is again inadmissible to them and hence, they were not entitled to take Cenvat Credit of the service tax involved on such premium.

(11) GIST OF THE OBJECTION: Non payment of Service Tax on services' rendered under 'Free Coupons'

(12) COMMISSIONERATE : Central Excise Commissionerate, Rohtak

CONTRAVENTION OF PROVISION :

The assessee is registered with the department under the category of 'Servicing of Motor Vehicles' The assessee had not deposited the service tax on the amount received on account of free services rendered by way of issue of 'Free Coupons' made to customers during the warranty period, for repair of new vehicle. The Service Tax amounting to Rs. 1,99,623/- along with interest of Rs. 11847/- had been recovered.

(12) GIST OF THE OBJECTION : Wrong availment of Input Service Credit prior to registration during which only exempted services provided

COMMISSIONERATE : Central Excise Commissionerate, Noida

CONTRAVENTION OF PROVISION :

The assessee had obtained a registration in Service Tax in September 2011 but had availed Credit of input service prior to the registration which included credit attributable to setting up process. Since prior to registration, they have rendered exempted services only & credit so availed has not been used for providing any taxable service, they were not eligible for input service credit. Moreover, input service credit attributable to setting-up process has been excluded from definition of "Input Service" w.e.f. 01.04.2011. Therefore, they are not eligible for input service credit of Rs. 1,59,66,738/- on this account. Further, the assessee had availed CENVAT Credit of Additional Customs Duty paid on imported goods under sub-section (5) of Section 3 of the Customs Tariff Act. According to Proviso to Rule 3(1) (viii) of CENVAT Credit Rules, 2004, a provider of output service is not eligible to take credit of such additional duty. Therefore, the cenvat credit so availed was not allowable. The total service tax liability amounted to Rs. 33,95,459/- .

(13) GIST OF THE OBJECTION: Irregular availment of Cenvat credit of Input Services in respect of trading of Carbon Credits

COMMISSIONERATE : LTU Commissionerate, Chennai

CONTRAVENTION OF PROVISION :

The taxpayer has earned Carbon Credit points- which is normally on account of various green initiatives, use of renewable energy sources etc. The Carbon Credits so earned was in excess of the required trading level. The assessee had sold Carbon Credits earned by them through another agency which had charged 50% of the amount earned as service charges and had paid service tax for the same. The assessee had taken credit of that service tax. As the services provided by another agency is that of trading of carbon credit points and not related to either manufacture or provision of output services, the same did not qualify for credit under Rule 2(1) of CCR'04. The total tax liability amounted to Rs. 9,65,159/-.

**(14) GIST OF THE OBJECTION: Nonpayment of Service Tax on ‘Exclusive Rights’ income
COMMISSIONERATE : Service Tax Commissionerate, Ahmedabad
CONTRAVENTION OF
PROVISION :**

The assessee is registered for the Mandap Keeper Service, Health Club Service, Renting of Immovable Property Service and Business Auxiliary Service & Membership of Club Service. The service provider had received exclusive right income from the decorators who had been given the exclusive rights to decorate the club. Since the assessee had given exclusive right to the said decorator, the hall hirer is left with two options i.e. either to organize a function without a decorator or to avail the services of that particular decorator who has the exclusive rights of decoration in that hall.. This is nothing but marketing or promotion of the business of that decorator falling under the ambit of the definition of “Business Auxiliary Service” under Section 65(19) of the Finance Act, 1994 and liable to Service Tax. The exclusive right income falls under the category of Business Auxiliary Service under Section 65(19) of Finance Act, 1994 and liable to tax. The service tax liability amounted to Rs. 7,21,000/- .

**(15) GIST OF THE OBJECTION : Misclassification of Taxable Service and Non-payment of
Service Tax .
COMMISSIONERATE : Central Excise Commissionerate, Surat-I
CONTRAVENTION OF
PROVISION :**

The assessee is engaged in providing Renting of Immovable Property, Supply of Tangible goods Services. The assessee had rented out their Ready Mix Concrete Plant along with Machinery, JCB, Pumps, Transit mixture Machine, alongwith required manpower. The said vehicles were used to carry Ready mix Concrete from manufacturing site to various construction sites. Payments received for such supply was not included in their Total income. Thus there was a short declaration of their taxable income. The essential and predominant nature of such services falls under the purview of Supply of Tangible Goods.

The total tax liability amounted to Rs.1,08,73,174/-.

**(16) GIST OF THE OBJECTION: Non-payment of Service Tax on Corporate Allocation cost
COMMISSIONERATE : Central Excise Commissionerate, Hyderabad I
CONTRAVENTION OF
PROVISION :**

The assessee had made a payment of Rs. 37.53 lakhs to their holding company in Germany , during the period from July 2011 to September 2012 , which was described as ‘Corporate Cost Allocation Charges’. This ‘allocation’ was on account of training provided by the holding company to their engineers. The Service tax liability amounted to Rs.4.34 lakhs.

- (17) **GIST OF THE OBJECTION:** **Non-payment of Service Tax as per ‘Point of Taxation Rules.**
- (18) **COMMISSIONERATE : Service Tax Commissionerate, Hyderabad III**
CONTRAVENTION OF
PROVISION :

The assessee is providing ‘Supply of Tangible goods’ service. The had been paying service tax based on the service amounts realized, even after introduction of Point of Taxation Rules, 2011. For the services provided or billed up to 30.06.2011, the tax payer had an option to pay service tax either under point of taxation Rules, 2011 or on realization basis. As against the Service Tax of Rs. 92.09 lakhs payable for the said period, the tax payer paid Rs.74.69 lakhs. On being pointed out by the audit, the tax payer paid the differential tax amount of Rs. 17.40 lakhs along with interest of Rs. 3.29 lakhs and penalty of Rs 2.31 lakhs under Section 73 (4A) of the Finance Act, 1994.

- (19) **GIST OF THE OBJECTION: Non-Payment of Service Tax on Lease Rent received**
COMMISSIONERATE : Service Tax Commissionerate, Bangalore
CONTRAVENTION OF
PROVISION :

The assessee had leased out vacant land and received a rental income for the same. This Lease Rent was payable, in advance, at the beginning of each year and had to be paid within 60 days of the beginning of each year, with the lease rent being prorated for part of the year. The assessee had not discharged Service Tax on the lease rent amount attributable to the months from July, 2010 to December, 2010.

The taxable service of Renting of Immovable Property has been defined under the Finance Act,1994, as follows:

“renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the Course or furtherance of business or commerce-----“

Therefore, it is clear that the lease rent collected for the year 2010 is prorated for all the months of the year 2010 and the collected amount was for the service to be provided (agreed to be provided) for the months of year 2010. Since the service tax liability for the land leased out has to be discharge from July, 2010. The rent so collected amounts to Rs.6,35,33,780/- and the prorated amount for the period July,2010 to December,2010 comes to Rs.3,17,66,680/- and the service tax amounts to Rs.31,71,989/-

**(20) GIST OF THE OBJECTION: Non-Payment of service tax on ‘Road Laying’ Services
COMMISSIONERATE : Service Tax Commissionerate, Bangalore
CONTRAVENTION OF
PROVISION :**

The assessee had shown an income of Rs.18,99,77,663/- received for providing Road Laying Services to another company, which was merged with the assessee company. The merger scheme was approved by their share holders and by the High Court of Karnataka. The financial merging of accounts was done on 31.03.2011. The said income by the nature of road laying amounts to exempted service and therefore the assessee is liable to pay 5% of the value of exempted service. The total service tax liability amounts to Rs.94,98,883/- .

**(21) GIST OF THE OBJECTION: Non payment of Service Tax on Construction Services –
Preferential Location and Development
COMMISSIONERATE : Service Tax Commissionerate, Kolkata
CONTRAVENTION OF
PROVISION :**

The assessee is engaged in the construction of HIG (high income group) multi-storied structures by the name & style of "Elite" . The assessee had realized a total amount of Rs.4,74,46,845 over and above the base price of "Elite" apartments which tantamounts to providing preferential location to the clients against extra cost . The payment of such extra price by the buyers over and above the basic price depending upon the more advantageous location / position in a housing complex is a common practice in the real estate industry. Construction Services -Preferential Location and Development were made taxable in the Finance Act, 2010 effective from 01/07/2010. Vide Sec 65(105)(zzzzu) of the Finance Act,1994 the said

'taxable service' has been defined as "any service provided or to be provided to a buyer, by a builder of a Residential Complex..., for providing preferential location or development of such complex." "Explanation — For the purpose of this sub-clause, 'preferential location' means any location having extra advantage which attracts extra payment over and above the basic sale price".

The assessee was found to have treated this amount as advances received towards 'flat and parking space' and discharged S.Tax liability after availing abatement of 75%. The assessee is, therefore, liable to pay differential amount of Service Tax (incl. Cess) to the tune of 2.39,82,024.00 along with interest and penalty.

OSPCA

(22) GIST OF THE OBJECTION: Improper assessment of imported goods
COMMISSIONERATE : LTU Commissinerate, Bangalore
CONTRAVENTION OF
PROVISION :

The assessee had not adopted the correct value for assessment and had paid duty on the value of the original import invoice (i.e. CIF + 2% of CIF value) and not on the HSS contract price of the last buyer. In many cases, the actual contract price paid on HSS basis is more than the loaded HSS price and on which customs duty should have been paid. Circular no.32/2004 Customs dated 11.05.2004 clarifies that the actual high sea sales/ contract price paid by the last buyer would construe the transaction value under Rule 4 of Customs Valuation Rules, 1988. Since the actual contract price paid by the last buyer is higher than the CIF value + 2%, it has resulted in short payment of Customs duty by the assessee. Such short payment worked out to Rs.9,01,081/- for imports made during the period April,2011 to Sep,2012.