

UPDATES – Central Excise February 2009

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Circulars

Circular 882/02/09 CX dated 11.02.2009

This Circular has been issued to resolve the issue pertaining to classification of tea admixture containing rice flour, tapioca, vitamins etc. The doubts that arise are whether the same would be classifiable under Chapter 9 as flavoured tea or as a preparation with a basis of tea under Chapter 21. As per this Circular, the classification would have to be under Chapter 2101.

Circular 883/3/09 CX dated 26.02.2009

This Circular clarifies the treatment under Sugar Cess Act 1982 regarding the manufacturing of pharmaceutical grade sugar and bura sugar where they are manufactured from duty paid sugar. The circular draws attention to Notification SO 102 (E) dated 07.01.2009 whereby the Ministry of Public Distribution and Consumer Affairs has exempted the cess on sugar collected as a duty of excise under Section 3(1) of Sugar Cess Act 1982 on any sugar manufactured from such other sugar on which cess leviable u/s 3(1) of the said Act has already been paid. This exemption is prospective and not retrospective.

Notifications

Notification 3/2009 CE dated 23.02.2009

This notification issued under Section 5A of Central Excise Act 1944, has amended notification 22/2003 CE dated 31.03.2003 to provide for procurement of spares of a value up to 5% of the value of goods specified in serial numbers 1 to 29 of Annexure V of notification 22/2003 CE dated 31.03.2003 without payment of duty where the goods are brought in connection with quarrying of granite by a 100% EOU engaged in processing and manufacture or production of articles of granite for export.

Notification 4/2009 CE dated 24.02.2009

This notification has reduced the basic rate of duty of excise from 10% to 8%. As a result, this notification has amended the following notifications to bring about a change in duty rate with effect from 25.02.2009 –

Notification 3/2006 CE dated 01.03.2006, Notification 4/2006 CE dated 01.03.2006, Notification 5/2006 CE dated 01.03.2006 and Notification 6/2006 CE dated 01.03.2006 apart from Notification 2/2008 CE dated 01.03.2008.

The change is in terms of goods liable at 10% alone and those at a lower rate have been left unchanged.

Case Laws

M/s Hiren Aluminium Limited Mumbai Vs UOI (2009-TIOL-83-HC-MUM-CX)

Facts: - The assessee was a manufacturer of aluminium ingots and had availed cenvat credits on purchase of aluminium stranding wire from a sister concern. The assessable value for discharging duty had been lower than the cost of production and the freight charges recovered was far in excess of the actual freight charges incurred.

Issue: - The department sought to deny the credit on the pretext that materials had not been received from the sister concern and that the goods had also been undervalued. The provisions of Rule 12AA of CCR 2004 were sought to be invoked denying the facility of utilising credits for three months before completion of investigation proceedings.

Decision: - The High Court held that restraining a manufacturer from utilising cenvat credits had serious civil consequences as he was within his rights to avail cenvat credits and utilise the same for paying duty excise on his final products. Interim relief was granted in this case in respect of the department's move to deny credit utilisation for the said period under Rule 12AA of CCR 2004.

M/s Neel Metal Products Limited, Gurgaon Vs CCE Delhi III (2009-TIOL-63-HC-P&H-CX)

Facts: - The assessee is a manufacturer of sheet metal components and blanks and had procured certain inputs from M/s Allied Metal Technologies Faridabad. The activities of the supplier had been found by the department as not amounting to manufacture.

Issue: - The department wanted to deny the credit on inputs procured by the assessee Neel Metal Products Ltd as the activity of the supplier was not manufacture.

Decision: - The Court held that the credit could not be denied to the assessee who was a manufacturer when the activity undertaken by the supplier did not amount to manufacture.

Indo Rama Synthetics (I) Ltd Vs CCE Nagpur (2009-TIOL-310-CESTAT-MUM)

Facts: - The assessee was a manufacturer who was clearing goods to his customer and recovering transportation charges from factory to buyer's place separately. Since the actual cost of transportation was not known at the time of clearance, an average freight amount was charged on the invoice separately. In some cases, the freight collected was more than the actual freight amount paid.

Issue: - The department wanted to deny the benefit of exclusion of transport charges from the assessable value since it was not the actual amount paid to the transporter.

Decision: - The Tribunal held that as long as the transportation charges indicated was the amount collected from the buyer, the same was deductible and not to be included in the assessable value for the purpose of Rule 5 of Valuation Rules 2000.

RDC Concrete India Ltd Vs CCE Belapur (2009-TIOL-207-CESTAT-MUM)

Facts: - The assessee had cleared finished goods (unipaved interlocking concrete blocks) through an interconnected undertaking which had charged a higher sum from the customers for the clearances as compared to the value on which the duty had been paid by the assessee at the time of clearance.

Issue: - The department wanted the assessee to pay duty on the differential value i.e. value charged by the inter connected undertaking and the value on which duty had already been paid by the assessee.

Decision: - The Tribunal held that Rule 10 of Valuation Rules would be applicable only when the entire production is sold to or through an inter connected undertaking. The demand was held to be not sustainable.

Sundaram Textiles Ltd Vs CCE Madurai (2009-TIOL-315-CESTAT-MAD)

Facts: - The assessee had availed credit on finished goods returned by customers u/r 16 of CER 2002 and subsequently their finished goods had enjoyed an exemption at which point of time, the credits on inputs in stock, input in process and input contained in finished goods in stock as on date of exemption had been reversed but not on goods received u/r 16.

Issue: - The department wanted the credit availed u/r 16 of CER 2002 to be reversed

Decision: - The Tribunal held that finished goods received back u/r 16 of CER 2002 could not be regarded as inputs for the purpose of reversal of credits under Cenvat Credit Rules 2004. The demand was held not to be sustainable.

Tata Motors Vs CCE Jamshedpur (2009-TIOL-241-CESTAT-KOL)

Facts: - The assessee gets various components of chassis and motor vehicles manufactured by vendors on the basis of the designs and drawings supplied by them free of

cost. The value of these designs and drawings had not been added to assessable value for the purpose of discharging duty of excise at the vendors' end.

Issue: - The department wanted the vendors to discharge duty of excise on an assessable value which included the cost of designs and drawings.

Decision: - The tribunal held the designs and drawing cost to be liable and the value of the same to be included in the assessable value of the component for the purpose of discharging duty. Since the issue was raised after a considerable period of time had lapsed and there was no suppression, the demand was subject to normal period of limitation.