

Central Excise Updates- July 2009**Notifications and Circulars:**

1. **Notification No.22/2009-CE dated 7.7.2009:** Partial exemption from excise duty has been provided to packaged or canned software so that the duty payable on that portion of the value which represents the consideration for the transfer of the right to use such software, is exempted.
2. **Notification No.18/2009-CE dated 7.7.2009:** This has reduced the excise duty to 14% Ad Valorem on boiling point spirits and Naphtha.
3. **Notification No.14/2009-CE dated 7.7.2009:** As per which Petrol intended for sale with a brand name will attract total excise duty of Rs.14.50 per litre while the total duty applicable to High Speed Diesel intended for sale with a brand name would be Rs 4.75 per litre.
4. **Notification No.13/2009-CE dated 7.7.2009:** Coffee or tea premixes will be subject to nil rate of duty.
5. **Notification No.12/2009-CE dated 7.7.2009:** An optional excise duty exemption to be provided to tops of manmade fibre manufactured from duty paid tow at par with tops manufactured from duty paid staple fibre.
6. **Notification No.9/2009-CE dated 7.7.2009:**Manufacturers of printed laminated rolls bearing the brand name of another person and fulfilling the conditions of the notification would be entitled to full exemption from excise duty for their first clearances of this item (for home consumption) not exceeding Rs.150 lakh during the remaining part of this financial year i.e. 2009-10.
7. **Notification No.8/2009-CE dated 7.7.2009:**H.S.D.oil blended with bio diesels on which the appropriate duties of excise have been paid is exempted from the excise duty thereon.
8. **Notification No.7/2009-CE dated 7.7.2009:** Full exemption has also been provided to EVA compound manufactured on job-work basis
9. **Notification No.16/2009-C.E.(N.T.) dated 7.7.2009:**Under the Cenvat credit Rules 2009 the Cenvat Credit will not be available on items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. In the CENVAT Credit Rules, 2004,

*Updates**Chartered Accountants*

further in rule 3, for sub-rule (5B), the following sub-rule shall be substituted:

If the value of any, (i) input, or (ii) capital goods before being put to use, on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

- 10. Notification No.17/2009-C.E.(N.T.) dated 7.7.2009:** Return of records. - The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made there under, shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice
- 11. Circular No.892/11/09-CX dated 23.7.2009:**Facility of self sealing/self certification is extended for the export of non-excisable agricultural products subject to the condition that these shall be examined at the port of export
- 12. Circular No.893/11/09-CX dated 23.7.2009:**The intermediate supplier can supply the products directly to the port for export by ultimate exporter(holder of Advance authorisation or DFIA).In such cases shipping bill shall be in the name of ultimate exporter with the name of intermediate supplier endorsed on it

Important Case Laws:

1. ***Commissioner of Central Excise, Thane-II Vs. Axion Impex International Ltd Manikgarh Cement: 2009-TIOL-1001-CETAT-MUM:***

Facts: Service tax is paid on mobile phones usage which respondents claim is admissible to be utilized in payment of duty on final products

Issues: Mobile phones are not used for the purpose of providing output service or in relation to manufacture of finished goods

Decision: Mobile phone is used for the purpose connected with manufacture and hence Cenvat Credit of service tax paid on such service is available.

2. *M/s Jindal Stainless Steel Ltd Vs. The Commissioner of Central Excise and Customs, Vishakapatnam: 2009-TIOL-1006-CESTAT-BANG*

Facts: The appellants are engaged in the manufacture of High Carbon Ferro Chrome (HCFC) an excisable commodity. They cleared certain goods to their sister units on cost of production basis.

Issues: DR stated that Cost Accountants certificate need not be accepted as it is and the gratuity, selling and packing expenses, exchange rate, preliminary expenses, interest on loan and charity and donations written off are included by the Commissioner to compute the cost of production

Decision: The values adopted by the appellant appear to be more than the value under CAS 4. The entire exercise is cost neutral as the duty paid by the appellant will be taken as Cenvat Credit by the sister unit.

3. *M/s PML Industries Ltd Vs. Commissioner of Central Excise, Chandigarh: 2009-TIOL-1042-CESTAT-DEL*

Facts: The appellant was an approved 100% EOU for the export of meat.

Issues: It is found that the appellant has not carried out manufacturing activity but provided services of slaughtering and are liable to service tax.

Decision: The incidental activity of slaughter house cannot be disintegrated from the manufacturing activity which is the predominant activity of the appellant. Slaughtering is for the main purpose of manufacture of meat.

4. *M/s Virgo Industries (Engineers)Pvt Ltd Vs. Commissioner of Central Excise,Chennai:2009-TIOL-1070-CESTAT-MAD*

Facts: Virgo manufactures and supplies signages (illuminated signs) under a contract with M/s Indian Oil Corporation Ltd (IOC) and had erected them at retail outlets of IOC in South

Issues: Manufacture of goods done without central excise formalities. Show cause notice issued proposing to recover excise duty due and penalty

Decision: The signages do not emerge as immovable property on assembly or erection. These are excisable goods.

5. Commissioner of Central Excise, Tiruchirapalli Vs. Suja Rubber Industries: 2009-TIOL-1085-CESTAT-MAD

Facts: Adjudicating Authority disallowed the facility of payment of duties by the assessee in installments under Rule 8(1) of Central excise Rules 1944 as delay in payment on three occasions in the financial year

Issues: Revenue appealed against the order of Commissioner (Appeals)

Decision: On one occasion the last day for payment was Sunday so duty was paid next day. The assessee has not defaulted in the payment of duty on more than two occasions so as to warrant the withdrawal of fortnightly payment facility relying on judgement in assessee's favour by the Bombay High Court in Indian Seamless Steel and Alloys Ltd Vs. Union of India 2003(156)ELT 945(BOM)=2003-TIOL-06-HCMUM-CX

6. M/s Ashok Leyland Ltd Vs. CCE, Chennai : 2009-TIOL-1107-CESTAT-MAD

Facts: The appellants cleared motor vehicles chassis during the period July to November '99. It sells at factory gate on payment of duty at different prices charged from dealers, government departments, Defence and DGS &D

Issues: Demand of duty on excess amount charged to the government departments higher than dealer price at time of removal from factory gate

Decision: Demand upheld, extra amount realized to be treated as cum-duty

7. *M/s GMR Industries Ltd Vs. C.C.E. Commissionerate-I, Vishakapatnam: 2009-TIOL-1108-CESTAT-BANG*

Facts: Appellants manufacture sugar and molasses under Chapter Heading No. 1701.31/1701.39 of Central Excise Tariff Act. They have taken Cenvat Credit on MS plates/mill plates, MS angles, MS channels, MS beams and welding electrodes used for the manufacture of storage tanks(capital goods)

Issues: The said inputs are not entitled for Cenvat Credit

Decision: Where the inputs on which the credit is taken are assembled in the factory premises into an immoveable property credit cannot be denied on the ground that immoveable property is non-excisable.

8. *M/s Ibex Gallagher Pvt Ltd Vs. C.C.E., Bangalore: 2009-TIOL-1112-CESTAT-BANG*

Facts: Original authority has held Solar powered electric power fence system as not excisable and liable to duty as it is embedded to the earth and becomes immoveable property

Issues: Matter decided against assessee by Tribunal. The Apex Court remanded the case to decide the question of law on de-novo consideration

Decision: The item is not machine, equipment or appliance but only a system. In view of Boards instruction dt. 15.1.2002 item does not pass the moveability test. Appeal is allowed.

9. *M/s Ballarsha Plywood Vs. CCE & C, Nagpur: 2009-TIOL-1140-CESTAT-MUM*

Facts: Appellant manufactures particle boards. The process generated dust which was sold from factory without duty vide invoices

Issues: SCN termed dust as saw dust and classified it under heading 44.01 of the CETA Schedule and noted that it was exempted during period in dispute. Demanded 8% as Cenvat Credit on common inputs availed in breach of Rule 6 of CCR.

Decision: Prima facie case favours the appellants as when sawing is not a process used to manufacture particle board, dust cannot be called as saw dust so as to bracket it as exempted excisable goods .CESTAT orders stay

10. M/s Kanchi Karpooram Ltd vs. CCE, Chennai: 2009-TIOL-1147-CESTAT-MAD

Facts: Appellants hold that cenvat credit not deniable on inputs in work in progress destroyed in fire accident

Issues: Impunged order confirmed demand of credit relatable to inputs contained in semi-finished goods destroyed in fire accident

Decision: Appeal is allowed.

11. M/s Bharat Petroleum Corporation Ltd vs. CCE &C Kochi Commissionerate:

Facts: Appellants manufacture petroleum products, they supplied naphtha to NTPC 's power plant at Kayamkulam.In terms of Notification No. 06/2002 dt 1.3.2002 as amended naphtha so supplied is exempt from payment of duty. Capacity of it is 350 MW.

Issues: In certificate produced by appellant, capacity of plant is 359.577MW.So the plant to which supplies are made is different

Decision: Objection of revenue is repugnant to common sense. There is only one NTPC power plant at Kayamkulam