

Central Excise Updates

Important Notifications and Circulars:

1. **Notification No.15/2009-C.E.(N.T.) dated 10.6.2009:** This amends the Notification No.32/2006-C.E.(N.T.) which imposes restrictions on a manufacturer, first stage or second stage dealer, or an exporter for availing facilities for payment of Cenvat. As per this new notification the assessee maybe required to maintain records of receipt, disposal, consumption and inventory of principal inputs on which Cenvat Credit has not been taken and the assessee maybe required to intimate the Superintendent of Central Excise about the receipt of principal inputs in factory on which Cenvat Credit has or not been taken within the period specified.
2. **Circular No.890/09/2009-Dt 3.6.2009:** Circular No.145/56/1995-CX dated 31.8.1995 withdrawn. The coconut oil packed in small containers sizes upto 200 ml shall be classified under heading 3305 (which covers hair oil also). It is concluded that the coconut oil packed in containers upto 200 ml maybe considered as generally used as hair oil. This would bring uniformity in assessment in respect of coconut oil sold in small containers irrespective of the fact as to whether its use as hair oil is indicated on container/ labels or not.
3. **Circular No.891/11/2009 dated 15.6.2009:** It says that the exemption provide at Sl. No .7 of the Notification No.6/2006-CE is not available to pipe fittings used in pipe which are cleared along with the pipe by units manufacturing pipes and fittings used in pipe network for the supply of drinking water. Sl.No.7 covers Chapter 84 or any other goods including pipes which are chargeable to nil duty and includes "pipes needed for delivery of water from its source to the plant and from there to the storage facility."

Important Case Laws:

1. ***Hindalco Industries Ltd Vs. Commissioner Of Central Excise, Belapur: 2009-TIOL-845-CESTAT-MUM***

Facts: On 16.7.2006 the assessee had sold their excisable goods under four invoices to M/s TTK-LIG Ltd. The total excise duty thereon was Rs.77444. A refund claim was filed for this amount on 3.10.2006. The claim was accompanied by a few documents including a copy of the credit note dated 29.8.2006.

Issues: The department proposed to deny refund of the above amount on the ground that latter had passed on the incidence of such duty to their buyer.

Decision: It was held that the refund claim is liable to be allowed. The goods were sold by the assessee to the buyer on 16.7.2006 under invoices which referred to the relevant purchase order, which showed that the buyer proposed to buy the goods on credit basis. Within the credit period on 30.7.2006 the buyer sent a letter to the assessee declining to accept the burden of duty on the above goods. The refund claim is liable to be allowed.

2. *The Commissioner Of Central Excise , Mumbai-IV Vs. M/s Okasa Ltd:2009-TIOL-312-HC-MUM-CX*

Facts: Respondents are manufacturers under Chapter 30 of the Central Excise Tariff Act, 1985. They filed a declaration stating that plastic dropper supplied with bottle containing drops as input used in or in relation to manufacture of final product, pediatric drops.

Issues: The department objected to this on the ground that these droppers are separately kept in the cartons sealed bottle of the pediatric drops.

Decision: The CEGAT was right in holding that the plastic dropper packed in the pediatric drops and marketed at the factory gate in the condition could be construed to be the input used in relation to the manufacture of final product as laid down in Rule 57A of Central Excise Rules.

3. *M/s Madhu Tax Industries LTD Vs. Commissioner Of Central Excise ,Thane:2009-TIOL-985-CESTAT-MUM*

Facts: The appellants are job worker doing processing of cotton and man made fabrics received from the merchant manufacturers / traders. The value of grey fabrics in the purchase bills of merchant –manufacturers /traders was more than the value of grey fabrics declared by the appellants.

Issues: Show cause notice issued to the appellants demanding differential duty for the period 1996-97 to 1997-98 dated 7.12.2000.

Decision: The appellant had no knowledge of the undervaluation of grey fabrics. Demand is barred by limitation.

4. Commissioner of Central Excise, Aurangabad Vs. Concept Pharmaceuticals Ltd: 2009-TIOL-972-CESTAT-MUM

Facts: The respondent manufactured both dutiable and exempt products using common inputs. They paid 8%of the price of exempted final products.

Issues: Part of the credit taken by assessee was on account of non-common inputs which were used exclusively to manufacture exempted final products.

Decision: The payment of 8% of price of exempted final products has the effect of extinguishing all liabilities of assessee in so far as credit on inputs is concerned.

5. M/s MSPL Gases LTD Vs. Commissioner of Central Excise, Mysore: 2009-TIOL-964-CESTAT-BANG

Facts: The applicants have contracted with M/s SAIL –VISP for setting up a plant for the production of following gases that is oxygen, nitrogen and argon. The applicants are required to pay price for the gases supplied to them and also certain fixed amount per month known as “FIXED FACILITY CHARGES”.

Issues: Whether the fixed facility charges received are includible in the assessable value of gases supplied to M/s SAIL-VISP or not.

Decision: Issue is covered by the decision of the Tribunal in BOC India Vs. CCE, Jamshedpur -2005(183)ELT 475(Tri-Kolkata)=2005-TIOL-190-CESTAT-KOL. The fixed facility charges will not be includible as they are meant only for facilities provided to M/s SAIL and do not influence the price of gases supplied to them.

6. *M/s Glaxo Smithkline Consumer Health Care Ltd, Rajahmundry Vs. The Commissioner of Customs And Central Excise (Appeals), Visakapatnam: 2009-TIOL-971-CESTAT-BANG:*

Facts: The appellants manufactured Horlicks at their factory in bulk. Duty was paid under Rule 8 of the Valuation Rules. The product is sent to packing stations where it is retail packed. Cenvat Credit of duty paid already is taken when the Horlicks is cleared in retail packing. Duty is paid on MRP basis under Section 4A.

Issues: Whether the charges paid by the appellants in terms of their royalty agreement with Smith-Kline-Beecham Asia Pvt Ltd is includible at the bulk stage.

Decision: The royalty charge is based on sales already included in the price fixed for retail sales. The entire exercise is revenue –neutral.

7. *M/s Gokuldas Intimate Wear Pvt Ltd Vs. Commissioner of Central Excise ,Bangalore -II: 2009-TIOL-930-CESTAT-BANG*

Facts: Appellants manufacture ready made garments. They availed CENVAT Credit and cleared the final product on the payment of duty. After the issue of Notification No.30/2004-CE dated 9.7.2004 which exempts certain goods including processed yarns from excise duty thereon. They started availing exemption under the said notification and stopped availing CENVAT Credit.

Issues: Revenue proposed the demand of CENVAT Credit of inputs in stocks not reversed /repaid.

Decision: In the case of M/s HMT and others Vs. Commissioner of Central Excise, Panchakula : 2008-TIOL-1884-CESTAT-DEL-LB it was held that “input credit

legally availed when the final product are dutiable was not to be reversed when the final products are exempted subsequently.” This decided the matter in favour of the assessee.

8. *M/s DCW Ltd Vs. Commissioner of Central Excise, Tirunelveli : 2009-TIOL-942-CESTAT-MAD*

Facts: M/s DCW Ltd availed in 2005-06 50% of duty and the entire education cess paid on capital goods received on the plea that the restriction in the sub-rule applied only to duty of excise and not to education cess.

Issues: Education cess imposed was duty of excise and restriction of Rule 4(2)(a) of CCR applied to education cess as well.

Decision: Held that the restriction envisaged in sub-rule 4 of CCR encompasses also Cenvat Credit of Education Cess admissible to assessee on receipt of capital goods.

9. *M/s Micro Inks Ltd Vs. Commissioner of Central Excise, Daman: 2009-TIOL-854-CESTAT-AHM*

Facts: The applicant-appellant was a DTA availing MODVAT Credit w.e.f. 15.1.2007. They were converted 100% EOU. On the date the appellants was having a balance credit of Rs.10484090.

Issues: Appellant issued a show cause notice that it was not entitled to transfer credit as Rule 10 is not applicable.

Decision: On going through Rule 10, found that there is no exclusion of such transfer on conversion of DTA to 100% EOU.

10. *M/s Olive Healthcare Vs. Commissioner of Central Excise, Daman: 2009-TIOL-873-CESTAT-AHM*

Facts: Plastic crates are used in the factory for the movement of raw materials and final products.

Issues: Whether the MODVAT Credit on the plastic crates used in the factory for the movement for the raw materials and finished products are admissible or not.

Decision: Credit admissible to the appellant.

11. Commissioner of Central Excise ,Trichy Vs. M/s BHEL:2009-TIOL-938-CESTAT-MAD

Facts: Boilers emerged only at site on assembly, erection etc. along with components received from other units of BHEL, imports and those sourced through vendors of BHEL.

Issues: The issue is whether the parts of Boiler cleared by the unit are classifiable as complete Boiler as contended by the assessee or as separate parts of Boiler.

Decision: In arriving at the finding that the impugned clearances had to be classified as boiler cleared in unassembled form, the Commissioner followed the HSN note Part V under Section XVI: ““For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts.” The above note is an authority to classify a complete machine or a machine which has acquired the essential characteristics of a machine under the heading appropriate to the complete machine when cleared in unassembled form in different consignments for convenience of transportation.