



**OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE & SERVICE TAX, HYDERABAD ZONE,
L.B. STADIUM ROAD : BASHEERBAGH : HYDERABAD – 500 004.**

Ph. (040) 23232028 Fax: 040-23230974

E-Mail: ccehyd@gmail.com

C.No. IV/16/43/2016-CC-HZ-Tech

DATE: 12.04.2016

**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY
COMMITTEE, HYDERABAD ZONE HELD ON 12.04.2016**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 12.04.2016 at 15.30 hrs, at Hyderabad, which was presided over by Ms. R. Shakuntala, Chief Commissioner, Hyderabad Zone, Hyderabad and was attended by the following members :-

1. Shri. Ashok Surana, representative of the All India Manufacturers Association.
2. Shri. S.Thirumalai, representative of the Federation of Telangana and A.P.Chambers of Commerce and Industry.
3. Shri. J.Nageswara Rao, representative of the Federation of Andhra Pradesh Small Industries Association.
4. Shri. Lalith Mohan Chandna, representative of The Institute of Company Secretaries of India.
5. Shri. K.K.Rao, representative of the Institute of Cost Accountants of India.

2) Following Departmental Officers were also present:-

1. Shri. G.V.Krishna Rao, Commissioner, Hyderabad Audit Commissionerate, Hyderabad.
2. Shri. M. Srinivas, Commissioner, Hyderabad-I & III Commissionerate, Hyderabad.
3. Shri Sunil Jain, Commissioner, Hyderabad-II Commissionerate.
4. Shri A.R.S.Kumar, Commissioner, Hyderabad-IV Commissionerate.
5. Shri. D.Purushottam, Commissioner, Service Tax Commissionerate.
6. Shri. Anand Kumar, Additional Commissioner, Service Tax Commissionerate.
7. Shri Dulip Abraham, Assistant Commissioner, CCO, Hyderabad Zone, Hyderabad.
8. Shri M. Raj Kumar Jaiswal, Superintendent, CCO, Hyderabad zone, Hyderabad.

3) The Chief Commissioner welcomed all the members of the RAC. The following Agenda points were taken up for discussion:-

3.1) Points received from Shri. Lalit Mohan Chandna, RAC Member on behalf of Institute of Company Secretaries.

Point 1. Board circular F.No.96/85/2015 dated 07.12.2015 has communicated minutes of meeting of Chief Commissioners held on 28/29th October, 2015.

One of the issues discussed at the said meeting was on the duty on waste and scrap. The conference decided that henceforth waste & scrap are to be treated as "non excisable goods". In view of this decision, Industry wants confirmation on (a) Since waste and scrap sold are "non excisable goods", no excise duty will be payable (b) that for the purpose of Rule 6 (3) the value of clearances of waste and scrap will be treated as "exempted goods".

Further during the meeting Shri Chandana advocated that no excise duty is required to be paid on waste and scrap in view of the clarification given by the Tarriff Conference.

Reply : The said point was discussed at length . It is seen from the Minutes of the Tarriff Conference circulated vide Board's letter F.No.96/85/2015 dated 07.12.2015 that a point as at no. B-29 was raised by the Meerut Zone for discussion and decision on an issue that Baggage, press mud in sugar factory and Zinc and aluminium ash/ dross in non-ferrous metal industry have been held as non-excisable by the Hon'ble Supreme Court in the case of M/s. DSCL Sugar Limited & Aluminium Company Limited .As such it was recommended that a provision similar to the one that existed in the erstwhile Modvat Scheme may be provided in the Cenvat Credit Rules 2004 to treat waste / scrap produced from inputs on which Cenvat credit has been availed as 'deemed manufactured products' so that appropriate duty / credit may be recovered from the assessee and litigations avoided .

In response there to the conference noted that Hon'ble Supreme Court in the case of M/s. DSCL Sugar Limited has held that Sections 2(d) and 2(f) of the Central Excise Act, 1944 have to be satisfied conjunctively for imposition of Excise duty under Section 3 of the Act. The period involved in the case was subsequent to 10th May, 2008, i.e. the date when an explanation was added to Section 2(d) of Central Excise Act, 1944.

Therefore, goods which are not manufactured would not be chargeable to Central Excise duty even after amendment in Section 2(d). However, rule 6(1) of the Cenvat Credit Rules, 2004 has been amended vide notification no. 6/2015-C.E (N.T) dated 1.3.2015, providing that for the purposes of Rule 6 of the CENVAT Credit Rules, 2004, non-excisable goods shall be considered / treated as exempted goods. Therefore, input and input services credit relatable to manufacture of such non-excisable goods would need to be reversed by the assessee in the same way as it is required to be reversed for the exempted goods. Non-excisable goods and exempted goods are required to be treated in the same manner w.e.f. 1.3.2015 under Rule 6 of the CENVAT Credit Rules, 2004.

Therefore it was made clear that the said clarification was specifically issued with reference to the waste/scrap which are not manufactured / produced from inputs on which Cenvat credit was taken and cannot be generalized to all the types of waste and scrap. Further it was also made clear that the excisability of waste and scarp depends on nature of waste and scrap and is to be decided on a case to case basis.

Point 2. Generally when a show cause notice is issued to any company, the notice relies upon certain documents which are stated at the end of the notice. But copies of such relied upon are not enclosed to the notice. The assessee has to request and it leads to delay. It is requested that if possible "relied upon documents" should be enclosed to the show cause notice at the time of giving the notice. Secondly, 'Annexures' showing calculation of duty etc which are supposed to be enclosed to notices are also not enclosed. Kindly ensure that all the 'relied upon documents as well as Annexures' are given along with the notices.

Reply : All relied upon documents and annexures to the Show Cause Notices are an integral part of the notice and are necessarily to be handed over to the noticee along with SCN itself. Therefore all the Commissioners are directed to ensure that the Annexures to the show cause notice and copies of the documents relied upon therein are supplied to the assessee at the time of service of the show cause notice itself under proper acknowledgment. Further the Chief Commissioner directed Additional Commissioner (CCO) to issue a circular for strict compliance.

Point 3. A company pays the whole amount and service tax to the canteen operator in a factory and later on company recovers 20% from the employees / workers. Is company is required to pay service tax on such amounts recovered from the employees / workers.

Reply: The member was requested to give specific details. In response, the member stated that there is no such issue on hand but sought clarification whether in such cases any service tax liability arises. The Chief Commissioner replied that the liability of service tax is to be decided based on agreements/Contracts entered between the employer and employee and how the said amounts are accounted for and treated in their books of accounts. As such, the Chief Commissioner requested the member to provide specific information along with copies of agreements to facilitate examination of the matter.

Point 4. Many a time, orders are not passed by the officers even after personal hearings have been conducted for over six months. The department may give suitable instructions to pass the orders within one month of the date of hearing.

Reply - There are instructions in force to pass orders within thirty days from the date of conducting personal hearing for compliance by the officers. Specific instances of not passing orders six months after the date of personal hearing can be brought to the notice of the concerned Commissioner/Chief Commissioner. However the Commissioners have been

directed to instruct all the adjudicating authorities to pass orders within 30 days from the date of personal hearing.

Point 5. Some times assessee pays duty / service tax under a wrong code or he pays 12.5% under excise code and does not pay cess separately. In such cases, what should an assessee do to rectify such mistake? Should he file a revised return or does it amount to short payment of cess etc. Please clarify.

Reply : The assessee has to necessarily pay the duty/cess, be it of Central Excise or Service Tax, under the correct Accounting Code, as there is no specific provision in the Central Excise Act/Finance Act/Rules for such adjustment. However, if any error is discovered after payment, the Principal Chief Controller of Accounts, CBEC, New Delhi vide their Office Memorandum dt. 27.05.2009 regarding misclassification of accounting codes, has prescribed the course of action to be taken before the accounts of any financial year are closed, for correction of accounts classification, after getting approval from the Commissioner, if the amount involved is less than Rs. 50 lakhs, and Headquarters approval (Zonal CC) if the amount involved is above Rs. 50 lakhs in each case, provided the total amount of the challan is not changed due to the rectification of accounts codes.

3.2) Points for RAC meeting sponsored by Federation of Telangana and A.P.Chambers of Commerce and Industry (FTAPCCI).

Point 1) Clarification regarding Excise Duty and claiming Rebate under Rule 18 of Central Excise Rule :

We, **Biscuit ,Wafers & Confectionery Manufacturers Association** , on behalf of our members who are manufacturing under the CET 1905 3100 / 1905 90 20 are subjected to valuation under Section 4 A of the Central Excise Act 1944 which required the manufacturers to pay the Excise duty based on the MRP (RSP) less the abetment declared from time to time . We wish to write to your honour in relation to the captioned subject.

2. The Manufacturers of Biscuits are exporting by paying Excise duty and claiming Rebate under Rule 18 of Central Excise Rules 2002. So far the Dept, has been granting the Rebate however, an order has been passed by the Revision Authority (GOI) in the case of **M/s. Parle Products Pvt. Ltd. [Final order no. 128 -130/2013 Cx dated 14.02.2013 - reported in 2014 (312) ELT 905 (GOI) decided on 14.2.2013** wherein it was held that the exporter is not eligible to claim the Rebate as the goods are exempted .

3. In the case of **M/s. Parle Products Pvt Ltd [Final order no. 128 - 130/2013 Cx dated 14.02.2013 - reported in 2014 (312) ELT 905 (GOI) decided on 14.2.2013**, the assessee had paid the Excise duty on the biscuits cleared for exports since the exemption as per notification 3/2006 CE dated 01/03/2006 as amended by notification 22/2007 CE dated : 03/05/2007 (Sr. No.18A) Which is based on Retail Sale Price(RSP) printed on packages ,was not applicable to Biscuits meant for export out of India.

4. The decision in this case has been arrived at by the RA based on the fact that the Cenvat Credit on the biscuits have been denied by way of Order in

Original by the Adjudicating authority [Please refer to Para 10.3 of the Order]. Based on this, the RA has given a finding that, as the goods are exempted absolutely in terms of Section 5A of the Central Excise Act 1944 , the exporter is not eligible to take the Cenvat . Consequently, the Rebate claim is also liable to be rejected.

5. This Order of RA has been passed without any proper arguments adduced either by the appellant or by the respondent. In fact, the Order admits that the goods which are exported are not governed by Section 4A provision. Once Section 4 A provisions are not applicable, the question of applying the exemption Notification does not arise.

6. The exemption Notification specifically mentions that biscuits with RSP (MRP) of Rs.100/- per kg or less would be exempted also specifying as to how the exemption is to be arrived at in respect of packages of less than 1 kg by giving an example. This clearly establishes that only those goods which are bound to have MRP printed on them in terms of Legal Metrology Act / Rules are covered under this exemption. It is an admitted fact in the Revision Order itself that the goods meant for exports do not require any MRP to be printed on their packages.

7. This issue of applicability of this Notification and eligibility of cenvat credit is no more *res integra*. In the case of **Modi Bakers Vs CCE Thane [2014 (309) ELT 547 (Tri-Mum) decided on 23.5.2014]**, on identical issue of biscuits exported by them , the Tribunal has held that as Section 4 A valuation is not applicable for exports, **the exemption Notification No.22/2007 has been held as inapplicable for such exports. Consequently, it has been held that the exporter can take the cenvat credit.**

8. That subsequent to the Modi Bakers case cited supra, further Appeals on identical matters in respect of other Biscuit Manufacturers have also been decided in their favour vide **CESTAT Final Order Nos.A/1065-1069/15/EB dated 7.4.2015 by CESTAT Mumbai.**

9. Now from these decisions of Tribunal, which is subsequent to the Parle case, it gets clarified the exemption Notification is not applicable in case of exports and consequently they are eligible for cenvat credit. Therefore, the case law of Modi Bakers is squarely applicable to the facts of our case.

10. We are also given to understand that no further Appeals have been preferred against these CESTAT Orders and hence the issue has reached finality.

11. In any view of the matter, the core issue to be decided is as to whether the conditional exemption granted under the Notification specifically mentioning the outer limit of the MRP [**which is applicable only for domestic market**], can be applied in respect of exports. The Tribunal has considered the same and held as not applicable.

12. The Tribunals also have been consistently holding that in case of exports, the provisions of erstwhile Standards of Weights & Measurement Act / Rules provisions [presently Legal Metrology Act / Rules], do not

require MRP to be printed in the packages, and accordingly when such goods are exported, they would be subjected to Section 4 valuation only.

2006 (193) E.L.T. 331 (Tri. - Del.)
GILLETTE INDIA LTD. Vs CCE JAIPUR
2008 (230) E.L.T. 143 (Tri. - Bang.)
INDO NISSIN FOODS LTD. Vs CCE BANGALORE-I

13. On the other hand, the GOI was only considering the rebate claim filed by the exporter. As a matter of fact GOI had no jurisdiction to consider the valuation aspect. In the case of **COMBITIC GLOBAL CAPLET PVT. LTD. [2014 (314) E.L.T. 918 (G.O.I.)]**, the RA, after going through the case and hearing the arguments, held as under:

14. In view of above discussions, Government is of opinion that major issue involved in this case is determination of value of excisable goods exported which does not fall within the jurisdiction of this authority and hence, the issue is required to be agitated before proper legal forum, i.e. Tribunal if the applicant department deemed fit to do so. The admissibility of rebate claim in dispute will depend on the decision in valuation issue since the impugned orders do not point out any violation of governing statutory provisions of rebate claim as stipulated under Rule 13 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. However, the original authority will process the disputed rebate claim as per decision of Hon'ble Tribunal in the valuation issue. The revision application is thus not maintainable before this authority for want of jurisdiction in terms of Section 35EE read with 35(B)(1) proviso of Central Excise Act, 1944.

In the present case also the core issue to be decided is as to whether Section 4 A or Section 4 valuation is to be adopted. Hence, the competent authority is the Tribunal, which has held so in several decisions, which have reached finality.

15. In view of the foregoing, we request your good self to clarify to the jurisdictional Divisions that for biscuits meant for export, there is no bar on the manufacturers claiming the Cenvat Credit on inputs / capital goods & services and consequently claiming rebate of duty paid on export goods.

Reply : The Chief Commissioner stated that a reference has already been made by the Zone to the Member (Central Excise), CBEC vide letter in C. No. IV/16/153/15—CC(HZ) Tech dt. 22.01.16. The Board is yet to clarify in the matter.

Point No. 2) M/s. Ravi Foods Pvt. Ltd, Hyderabad :

M/s. Ravi Foods Pvt. Ltd is one of the leading Manufacturer – Exporters of Biscuits from India to various countries. Export earnings in terms of Foreign Exchange are more than Rs. 240 crores per annum.

We wish to bring the below mentioned difficulties being faced by us in respect of the Exports made under DFIA Scheme

a) Specific Inputs: The major difficulty is about non-mentioning of the Specific inputs in the shipping bills at the time of exports. As per Notification PN.31 dated 1.08.13, Specific inputs that have been actually used in the export product shall be mentioned in the shipping bill. Accordingly when we have presented the declaration of the actual inputs used in the export product along with other documents viz., invoice, packing list, ARE 1... etc, the Customs authorities had denied to accept the declaration with specific inputs stating that the specific input cannot be mentioned in the shipping bill as the software does not allow to do so. It is evident from the letter issued by the customs authority stated 9.04.15.

When the said shipping bills were submitted to the Joint Director General of Foreign Trade (JDGFT) authorities for issuance of the export obligation discharge certificate (EODC), the same has been rejected duly stating that the name of the specific input that were used in the export product are not reflecting in the shipping bill, hence the request for EODC is rejected. Accordingly, all our duty free import authorisations (DFIA) under which we have exported our products between the period from 1.08.13 till 30.06.15 have been rejected and not returned to us. Due to this misconceived approach of the authorities we have been made to suffer for such a long period. In this regard, we request your kind intervention to appraise the factual position to the authorities concerned for a speedy redressal of our grievance.

b) Practical Difficulties: The condition of a declaration in the shipping bill with the specific inputs used in the export product is hampering the exports as biscuits manufactured and exported to various buyers in different countries is not of the same specification. The Foreign Buyers indicate the specifications and the specifications vary from order to order and from the buyer to buyer. It is therefore, practically impossible to keep stock of the inputs for varied specifications unless the condition of specific declaration in the shipping bills is removed. The authorities may look into the practical difficulties of the exporters and take remedial measures.

We humbly pray that the above submissions may kindly be considered sympathetically and to address the concerned authorities to expedite the disposal of pending application with a positive approach.

Reply :- Since the issue pertains to the Joint Director General of Foreign Trade (JDGFT) it was requested to approach them for clarification in the matter. Further the Chief Commissioner requested the member to submit detailed representation to this office to further examine the issue and forward the same to DGFT with specific recommendations.

Point No. 3 : M/s Vijayneha Polymers Pvt. Ltd. : Service Tax on ocean freight - Hard days for importers?

And

Point for RAC meeting sponsored by Telangana and Andhra Plastic Manufacturers Association .

In this Finance Bill, Service tax is proposed to be levied on the transportation of goods by a vessel from outside India up to the customs

station of clearance in India. The proposal perhaps has far reaching consequences to the importers who basically bear the freight charges either collected by shipping lines, forwarders etc. or pay to exporter situated outside India (prepaid charge). In both the situations, importer has to include the freight (ocean freight) in the CIF value of imported goods and pay the customs duty thereon. The effective date of levy of this service tax is 01.06.2016.

At present, service tax on such ocean freight is placed under negative list and, therefore, no service tax was payable on such freight element. Consequent upon the omission from the negative list, the person liable for payment of service tax would be the recipient of service in India; under Reverse Charge Mechanism.

Para 4.1(C) of the D.O letter F.No. 334/8/2016 -TRU dated 29-02-2016, clarifies the new levy as under:-

"The entry in the Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance [section 66D (p)(ii)] is proposed to be omitted with effect from 1.06.2016. Clause 146 of Finance Bill 2016 may please be seen in this regard. However such services by an aircraft will continue to be exempted by way of exemption notification [Not. No. 25/2012-ST, as amended by notification No. 09/2016-ST dated 1st March, 2016 refers]. The domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. Consequential amendments are being made in Cenvat Credit Rules, 2004 [Not. No. 23/2004-CE (N.T.), as amended by Sl Nos. 2(b) and 5(h) of notification No. 13/2016-C.E. (N.T.) dated refers.] (Clause 146 of the Bill refers)"

Thus, it is amply clear that the service tax has to be paid by a business entity located in India who receives services of transportation of goods in vessel from outside India. Although it is clarified that customs duty is not payable on the service tax amount, yet basic issue remains un-resolved as to how the value of taxable service will be determined in case where the transportation charges are pre-paid. In such cases, there may be situation when neither the agent nor the importer will be aware of the freight amount so as to determine the value of taxable services since the freight charges are paid by the exporter abroad. The same situation arises in case of outward freight paid by the entities in domestic "Door-step Delivery". In case of domestic home delivery unlike prepaid imports, the freight charges paid to transporters are available and, therefore, taxed at the hands of hiring entities. Contrary to this in case of "GHAR-POCH" (in Marathi meaning -

Home Delivery of goods) by the exporters such freight actually paid or payable will not be ascertainable.

In this situation it is likely that the business entities who receive services of transportation of goods in vessels coming from outside India will face harrowing times unless specific modalities for determining value of taxable services are laid down.

Reply : The Chief Commissioner explained that actual Ocean freight is always available and hence there will not be any problem in payment of service tax. In the case of ocean freight charges prepaid by the exporter abroad it was opined that the actual ocean freight paid can be ascertained directly from the exporter abroad or can also be ascertained from the shipping liners. Further it was mentioned that since the service tax is required to be paid by 6th of the following month and by 31st march for the month of March there would be sufficient time to ascertain the same and pay service tax .

Notwithstanding the aforesaid issues, the Chair expressed disappointment at the poor attendance by the members as the Regional Advisory Committee is constituted and conducted to resolve local issues. The members present were requested to convey to all the other members to attend and utilize this platform to resolve their issues.

The meeting was concluded and the chair thanked all the members of the Committee.

This issues with the approval of Chief Commissioner.


(M.UMA SHANKAR) 28/4/16
ADDITIONAL COMMISSIONER (CCO)

To

- 1) All the RAC Members by e-mail.

Copy submitted to :

- 1) The Indirect Tax Ombudsman, Chennai, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai, 600 034 wrt letter F. No. ITOM/RAC-Hyderabad/2015 dated 08.04.2016.
- 2) Copy submitted to the Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I, II, III, IV, Audit, Service Tax and Customs Commissionerates, and Appeals- Central Excise & Customs and Service Tax, Hyderabad with a request to give wide publicity and for compliance of the directions given against relevant points.