SIGNIFICANT NOTIFICATIONS / CIRCULARS ISSUED DURING THE PERIOD 16TH Dec, 2013 TO 15TH Jan, 2014

A. SERVICE TAX

1. Clarification on Levy of service tax on services provided by RWA

Notification No. 25/2012- ST dated 20.06.2012 clause no. 28(c) provides for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

CBEC has issued a Circular No. 175/01/2014- ST dated 10.1.2014, which has clarified certain doubts regarding the scope of the present exemption extended to RWAs under the negative list approach as below :

Doubt-1

(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable?
(ii) If the contribution of a member/s of a RWA exceeds five thousand rupees per month, how should the service tax liability be calculated?

Clarification

Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members. However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members.

Doubt-2

(i)Is threshold exemption under notification No. 33/2012-ST available to RWA?
(ii)Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?

Clarification

Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding 10 lacs rupees in any financial year is exempted from service tax. As per the definition of 'aggregate value' provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax.

Doubt-3

If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST ?

Clarification

In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.

Doubt-4

Is CENVAT credit available to RWA for payment of service tax?

Clarification

RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

[Circular No. 175 /01 /2014 - ST dated 10.1.2014]

2. **Exemption for Sponsorship of Sporting events extended even if participating team represent the Country**

Services by way of sponsorship of sporting events organised by a national sports federation, or its affiliated federations were exempt if participating teams or individuals represent any district, state or zone. The aforesaid exemption has been extended even if participating teams or individuals represent the Country.

[Notification No. 1/2014 ST dated 10.1.2014]

B. CENVAT CREDIT RULES

1. **Amendment in definition of "first stage dealer" as defined under Rule 2(ij) and Rule 9 of the CCR, 2004**

CBEC has amended rule 2(ij) to make an importer issuing Cenvatable invoice as a "First Stage Dealer". Registration for such first stage dealers has been made mandatory by amending rule 9 of the Central Excise Rules, 2002.

[Notification No. 17 and 18 /2013-CX., (N.T.), Dated: 31.12.2013]

2. **Amendment to Rule 3**

Rule 3, sub rule 5(c) of CCR, provides that where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central

Excise Rules, 2002, the CENVAT credit taken on inputs used in the manufacture or production of said goods shall be reversed.

The aforesaid provision has been amended. Now, even the CENVAT credit on input services used in or in relation to the manufacture or production of said remitted goods is required to be reversed.

Further, an explanation has been inserted after sub-rule 5(C) which clarifies that the amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Also, the earlier explanation which provided for the recovery of cenvat credit taken by the manufacturer of goods or the provider of output services under sub-rules (5), (5A) and (5B) in the manner as provided in rule 14, has been amended. Now if the manufacturer of goods or the provider of output services fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C) , it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.

[Notification 1/2014-CX dated 08.01.2014]

C. EXCISE

1. Availability of excise duty exemption to the units which have already availed of exemption under New Industrial Policy for another 10 years by way of 2nd substantial expansion in the State of Jammu & Kashmir

In pursuance of the New Industrial Policy and other concessions for the State of J&K announced by the Department of Industrial Policy and Promotion (DIPP) in June 2002, it has been clarified that an existing unit, which has availed of excise duty exemption under notification No.56/2002-CE & 57/2002-CE, both dated 14.11.2002 by way of substantial expansion for a period of 10 years from the date of commencement of commercial production, can avail of excise duty exemption under notification No.1/2010-CE, dated 06.02.2010 again by way of second substantial expansion so long as it satisfies the conditions stipulated under notification No.1/2010-CE, dated 06.02.2010.

It has also been clarified that *Notification No.1/2010-CE dated 06.02.2010* does not specifically provide any cut-off date (sunset clause) for setting up of new units or for units undertaking substantial expansion.

[Circular No. 977/01/2014-CX, Dated: 03.01.2014]

2. Non Levy of the Education Cess and the Secondary and Higher Education Cess on other cesses

It is clarified that the Education Cess and the Secondary and Higher Education Cess are not to be calculated on cesses which are levied under Acts administered by Department/Ministries other than Ministry of Finance (Department of Revenue) but are only collected by the Department of Revenue in terms of those Acts.

[Circular No. 978/2/2014-CX, Dated: 7.1.2014]

3. **Clarification on implementation of decision of Hon'ble Supreme Court in case of goods sold at a price below the Cost**

In the case of *M/s Fiat India Ltd (2012-TIOL-58-SC-CX) or 2012 (283) E.L.T 161 (S.C.)* the Hon'ble SC held that in case the goods were sold at a price substantially lower than the cost of the manufacture to achieve market penetration, the transaction value declared under section 4 may be rejected.

CBEC has issued a *Circular No. 979/03/2014-CX dated 15.01.2014*, to clarify the following :

Whether transaction value which is below manufacturing cost and profit can be rejected in all the cases?

It has been clarified that, transaction value can not be rejected merely on sale of goods below the manufacturing cost and profit. In the paragraph 50 of the aforesaid judgment Hon'ble SC held that a manufacture may sell goods at a price lower than the cost of manufacture and profit and yet declared value can be considered as transaction value:

- When the company want to switch over its business
- Where a manufacturer has goods which could not be sold within a reasonable time

The Hon'ble Court has further held that aforesaid examples are not exhaustive.

Identification of Cases where ratio of the judgment would apply?

It has been clarified that due care may be taken at the level of the Commissioner to see whether the case at hand is similar to the facts and circumstances of the FIAT case.Only where a decision to investigate a case has been taken at the level of the Commissioner and it is considered necessary in the interest of investigation, steps such as ordering Cost Audit of the Unit or summoning of the Costing data should be undertaken.

It has been further clarified that calculation of manufacturing cost may be carried out using CAS-4 standards duly certified by a Chartered or Cost Accountant.

Period of Application of aforesaid judgment :

It has been clarified that periods in respect of matters pertaining prior to the date of the judgment ie. 29.08.2012, the normal period of limitation will apply.

However, for periods after the date of the judgment, ie. 29.08.2012 onwards, if there is a sale in the circumstances similar to the case of M/s FIAT, then extended period of limitation may apply considering willful misstatement of the assessable value.

[Circular No. 979/03/2014-CX dated 15.01.2014]

D. Customs

1. Clarification on exemption from Special Additional duty of Customs (SAD) on goods cleared from SEZ / FTWZ into the DTA

Notification No. 45/2005-Customs, dated 16.05.2005 exempts goods cleared from SEZ / FTWZ and brought into DTA from levy of SAD if goods sold in DTA, are **NOT** exempted from VAT/ sales tax.

It is clarified that the benefit of SAD exemption on goods cleared from the SEZ / FTWZ unit into DTA unit on stock transfer basis for self-consumption i.e. otherwise than for sale as such, is not available under notification No.45/2005-Customs, dated 16.05.2005. In such cases, SAD would be leviable.

[Circular No. 44/2013-Cus, Dated: 30.12.2013]

The text of the above notifications/ circular is available at www.cbec.gov.in