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C.No. IV/16/35/2015-CC-HZ-Tech **DATE: 19.01.2016**

MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE, HYDERABAD ZONE HELD ON 05.01.2016

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 05.01.2016 at 16.30 hrs, at Hyderabad, which was presided over by Shri. G.V.Krishna Rao, Commissioner , Hyderabad Audit Commissionerate , Hyderabad in the presence of Shri. S.Subramanian, Indirect Tax Ombudsman and was attended by the following members :-

1. Shri. Ashok Surana, representative of the All India Manufacturers Association.
2. Shri. V.S.Sudheer, representative of The Andhra Pradesh Tax Bar Association.
3. Shri. S.Thirumalai, representative of the Federation of A.P.Chambers of Commerce and Industry.
4. Shri. J.Nageswara Rao, representative of the Federation of Andhra Pradesh Small Industries Association.
5. Shri.S.Rajagopalan, Lead Edge Papers.
6. Shri. R.Muralidhar, Advocate.

2) Following Departmental Officers were also present:-

1. Shri M. Srinivas, Commissioner, Hyderabad-I & III Commissionerate, Hyderabad.
2. Shri Sunil Jain, Commissioner, Hyderabad-II Commissionerate.
3. Shri A.R.S.Kumar, Commissioner,Hyderabad-IV Commissionerate.
4. Shri N.Sridhar, Commissioner, Customs Commissionerate.
5. Shri. D.Purushottam , Commissioner ,Service Tax Commissionerate.
6. Shri.L.V.Rao , Additional Commissioner, Hyderabad-I Commissionerate.
7. Shri.M.Murali Krishna, Additional Commissioner, Customs Commissionerate .
8. Shri P.D.Puli, Joint Commissioner, Service Tax Commissionerate, Hyderabad.
9. Shri Dulip Abraham, Assistant Commissioner, CCO, Hyderabad Zone, Hyderabad.
10. Shri M. Raj Kumar Jaiswal, Superintendent, CCO, Hyderabad zone, Hyderabad.

3) The Commissioner, Audit Commissionerate welcomed Indirect Tax Ombudsman and all the members of the RAC. The Commissioner introduced Shri. S. Subramanian to all the members of the RAC and explained that the purpose of his visit is to apprise all the members of the RAC about the Institution of Indirect Tax Ombudsman and the grievance redressal mechanism available under it to the trade.

4) Thereafter, the Indirect Tax Ombudsman distributed printed handouts furnishing details of Indirect Tax Ombudsman, Chennai to all the members and also gave a power point presentation, explaining all the provisions /salient features of the Indirect Tax Ombudsman, and requested all the members to apprise the trade to avail the remedies available under it.

5) After the presentation following Agenda points were taken up for discussion:-

5.1) Points received from Shri. Lalit Mohan Chandna,RAC Member on behalf of Institute of Company Secretaries. As Shri. Lalith Mohan Chandana was not present for discussion, the points were presented by Shri.V.S.Sudheer on his behalf.

Issues relating to Export Oriented Units:

Point No.1- An EOU is engaged in the manufacture of excisable goods. He has to send the inputs to a job worker. As per CBEC various circulars, AC/DC has to give permission for sending the inputs for job work. Can an EOU send the inputs directly from suppliers factory, to the job worker's premises without first bringing into the factory. Please clarify.

Reply: – The Notifications Nos. 52/2003-Cus dt.31.3.2003 and 22/2003-CE dt. 31.3.2003, which provide the facility of bringing inputs/raw materials and capital goods duty free do not provide such facility as requested. An EOU is not like an ordinary Central Excise unit. It is mandatory that the inputs/raw materials and capital goods that are procured duty free are to be re-warehoused and then only can be permitted to be removed outside the bonded premises by the JAC in terms of the above mentioned notifications. *The Board vide Circular No. 54/2004-Cus dt. 13.10.2004 vide para 6 says that "as regards job work, the EOU/EHTP/STP shall not be allowed to send the goods directly to the job worker without bringing the goods to the units (as the goods will then not acquire the status of EOU goods) and will be governed by Board's existing Circulars on this issue relating to EOU/EJHTP/STP".* Hence, an EOU cannot send the inputs directly from supplier's factory, to the job worker's premises without first bringing into the factory.

Point No.2- Generally an EOU has to give Bank Guarantee along with B17 Bond as well as for when goods are being sent for job work. However, as per Board's circular No.54/2004-Cus. Dt.13.10.2004 and Circular No.36/2011-Cus. Dt.12.08.2011, unit will not be required to give bank guarantee where unit has,-

a) Turnover of Rs.5 crores and above.
b) The unit is in existence at least for 3 years etc.

One unit at Hyderabad is in existence as a EOU for more than 5 years. However, this unit was earlier operating from IDA, Gandhinagar, Balanagar area which was rented premises. The management constructed their own factory at Bollaram Industrial Area, (Jinnaram Division, Commissionerate-I) and shifted their Plant & Machinery, Raw materials etc from old unit to New unit, by taking necessary permissions from the department. The present unit has taken a fresh excise registration and it took Customs Bonded Warehouse Licence on 27.10.2014.

The EOU has applied for exemption for execution from Bank guarantee as per the circular. Divisional DC has rejected the application on the ground that they have not completed 3 years in the present unit. EOU is of the view that by merely closing the old unit and shifting to a New location, the earlier period of its existence, cannot be excluded. The unit name and its operations are the same, as were in the earlier place. The old unit is closed. The EOU thinks that as `EOU' they have completed three years of existence. Kindly clarify the correct position.

Reply – As per Circular No. 54/2004-Cus. Dt. 13.10.14 and Circular No. 36/11-Cus dated 12.08.11, exemption from execution of Bank Guarantee is not applicable to EOU's who have not completed 3 yrs in the present jurisdiction where license has been issued. However the member was asked to request the assessee to approach the jurisdictional Commissioner to resolve the issue.

Point No.3- An EOU is purchasing the inputs from `X' company (which is a normal DTA unit) without paying excise duties by giving CT3 Form. The supplier is importing his raw materials and at the time of import, he pays custom duties including Basic Custom duty. EOU which buys the raw material from `X', wants to claim `refund' of basic customs duty (paid by his supplier at the time of import) under duty drawback scheme, since he is exporting his final product, in which the said raw material was used.

Please note that supply from a DTA unit to EOU is `Deemed Export'. EOU unit is of the view that he can claim refund under the `Brand rate' scheme. Please clarify.

Reply – Prima facie, it appears that the EOU is obtaining goods which have been manufactured out of the raw materials imported by the manufacturer. EOU is obtaining goods under CT3 without payment of duty. EOU scheme per se is a scheme where all raw materials/spares/capital goods are allowed to be procured duty free for manufacture of goods to be exported. Hence, in view of the above facts and circumstances, seeking drawback of customs duty paid by his raw material supplier is not permitted.

Merger-Transfer of finished goods:

Point No.4- There are two units A&B. Both are companies under Companies Act, 2013. Both are registered with Excise manufacturing excisable goods. By an order of AP High Court, company `A' is Merged/Amalgamated with `B'. Now `B' is the surviving company. `B' company has taken over all the assets & liabilities of `A' by this merger process. `A' has `finished goods' on the date of merger. A wants to transfer the finished goods to `B' and enter the finished goods stock in RG1 Register of B and will pay duty as and when the same are cleared later on. The excise department is insisting that A company should first pay excise duty on finished goods, before cancellation of excise registration is accepted. Please clarify.

Reply- As per Rule 11 of Central Excise Rules, 2002 no excisable goods shall be removed from a factory or a warehouse except under an Invoice signed by the owner of the factory or his authorized agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory. Hence, the finished goods should be removed on payment of duty.

Issues relating to Exports

Point No.5- A unit is exporting directly and also on CT1 where exporter is the `merchant exporter'. As per excise rules, the unit has to file Annexure 19 monthly return for exports which have been cleared without payment of duty. In case of CT1 clearances, unit is a manufacturer and not the exporter. If goods are not exported, the merchant exporter is liable to pay duty as he has given `Bond' to the department. The question is whether the unit has to declare in Annexure 19 only his exports or he has to also declare the exports made by merchant exporter under CT1. Further, for exports made under CT1 whether `proof of export' has to be submitted or not because export is not done by this unit but by merchant exporter. Please clarify.

Reply – The exporter has to submit Annexure 19 in respect of export of goods along with the relevant documents in terms of Para 13.2 of Chapter VII of the Supplementary Instructions, 2005 read with Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001-CE (NT) dt. 26.06.2001. Since the above Supplementary Instructions are issued under Rule 31 of the Central Excise Rules, 2002, they have to be complied with by any category of Exporter, who exports the goods under Rule 19 without payment of duty.

Hence, the manufacturing unit has to account for all export consignments in the Annexure 19, though some exports might have been done by the Merchant Exporter under CT1, which fall under the category of clearance without payment of duty, and the instructions mentioned supra are to be strictly followed.

If the exports are made under CT.1, the Merchant Exporter will submit the "proof of export" to the Bond accepting authority for re-credit to the Running Bond Account.

Point No.6- As per chapter 7 of Supplementary Instructions dealing with export, read with Notification No.42/2001, the goods shall be exported within 6 months or extended period as AC/DC may allow.

The law does not prescribe any time limit for submission of proof of export. Sometime the export is completed within 6 months time but exporter is not able to submit various documents (proof of export) due to various reasons. In such a situation, department has been issuing letters asking the companies to pay the duty for reasons such as:-

- Proof of export not submitted.
- BRS in respect of exports made not given.

The department is not renewing the LUT because of this.

As submitted above, for submission of Proof of Export, there is no time limit. (Please refer to Tribunal's judgment in case of Clipsal Industries – 2004 (174) ELT 188 (T)). Secondly, proof of export documents does not include Bank Realization Certificate (BRC) as per Government Instructions. In one case of Akzo Nobel India Ltd, Hyderabad, Balanagar, department has issued a letter dt.16.11.2015 demanding duty when proof of export was not submitted. Kindly clarify.

1. Whether proof of export also has to be given within six months?

2. Whether BRC are to be given when exporter has not claimed refund. Further, whether BRC is to be given for Nepal exports as well, where payment comes in Indian rupees?

Industry feels that non-submission of any document is a procedural and duty should not be demanded especially when 'export' of goods is not under dispute. Please clarify.

Reply :

1. As per Chapter 7, Para 13.6 gives an inference that Proof of Exports should be submitted within 6 months from the date of clearance of goods from the factory of production.

2. As per Para 13.2 of Chapter 7 of Supplementary Instructions, the documents prescribed for acceptance of proof of export are:

   i. Monthly statement in Form Annexure 19;
   ii. Original copies of ARE-1 with due certification of export by Customs authorities;
   iii. Other export documents like self- attested photocopy of shipping bill, etc.,
   iv. Self- attested copy of Bill of Lading.

As per Circular No.354/70/97-CX, dt.13.11.1997 (Board's letter F.No. 209/54/97-CX.6), in case TR Copy or Bank Realisation Certficate is not received within 180 days of the clearance for exports, where exports are effect under bond, action for recovery should be taken in terms of Central Excise Rules.

If TR Copy or Bank Realisation Certificate is not received within 160 days of the date of sanction of rebate, action for recovery of rebate shall be initiated well within the limitation period.

Further, in respect of Export to Nepal in Bond against payment in Indian Rupee and in freely convertible currency, the exports shall be subject to the conditions viz., the exporter shall furnish the quadruplicate copy duly endorsed by the Officer of Customs in-charge of land customs alongwith bank certificate of remittances in specified Form from the Reserve Bank of India or an authorized bank in India, showing the full payment for the goods has been duly received in freely convertible currency.

Further, it is informed by jurisdictional Commissioner that in the instant case of M/s Akzo Nobel India Ltd., the duty demand was made by the JRO vide letter dated 16.11.2015 as they have not followed the procedure for submission of proof of export, viz.

i. The assessee failed to submit the Triplicate copy of the ARE 1 with in 24 hours of removal of goods from the factory as per Para 10.1 of Part –II of Chapter 7 of Supplementary instructions.

ii. Assessee did not submit the Annexure -19 monthly statement as required under Para 13 of Part –II of Chapter 7 of Supplementary instructions.

iii. No proof of export was submitted as required.

In absence of any of the above, it was not possible for the JRO to ascertain whether the said exports during the period December 2014 to October 2015 have been made within the stipulated time. Only after issue of the said letter, they have produced the Proof of Export for period from December 2014 onwards, vide letter dated 11.12.2015, wherein it was seen that the exports were made within the stipulated period. It was further informed that LUT in respect of M/s Akzo Nobel Ltd. has since been accepted.

Non-receipt of Refund:

Point No.7- Tribunal in one case of Alkali Metals Ltd, Uppal, Hyderabad allowed the appeal for a refund under Rule 5 of Cenvat Credit Rules. On 03.07.2015 company has filed the necessary application for refund to AC Medchal Division (acknowledged on 06.07.2015). The amount involved is Rs.6,17,086/-. The refund has not been sanctioned till date. Kindly look

into the matter. Further, please clarify whether after Tribunal gives an order, can the department start the verification process all over again or the department has to simply issue a cheque as per order of the Tribunal? In other words, can department reject / modify the order of Tribunal. Please clarify.

Reply : The order of the Tribunal will be implemented *in toto* and the question of rejecting or modifying doesn't arise. The refund claim will be processed as per the provisions of the Notification No. 27/2012-CE(NT) dt 18.06.2012 issued under Rule 5 of Cenvat Credit Rules, 2004 read with section 11B of the Central Excise Act, 1944. The restrictions, if any, as per the said notification would be applied. Further, it is informed by jurisdictional Commissioner that the refund in respect of M/s Alkali Metals Ltd. is being finalized .

Solar exemption:

Point No.8- Government has granted exemption from excise duty to Solar related products vide Notification No.12/2012-CE dated 17.03.2012. Presently, exemption is granted to Solar products under Sl.No.332 & 332A (List No.8) and Sl.No.238 and 238A for Solar Water Heater & System. Few companies at Hyderabad are engaged in manufacture of these items. They seek following clarifications:-

i. List 8 attached to the above notification gives list of 20 items. Some of the entries such as "Solar Cooker", "Solar Lantern", are clear. But there is some confusion regarding entries such as 1) Solar Air Heating System (Sl.no.6) and 2) Solar Power Generating System (Sl.No.10). Obviously, these are excisable goods and hence Government has deemed it fit to grant exemption. Industry wants to know as to what all come under Solar Air Heating System/Solar Power Generating System. A System generally means that various items like Solar Panel, Solar Invertor, Blower, Pump etc are connected or integrated and the whole thing is called a `system'. "System" as such does not find entry in Central Excise Tariff. Tariff will contain entries like machinery, equipment for steaming, drying, heating (chapter 8419). Hence the question is, under what chapter no. the company is to clear a system and whether `system' can be called "excisable goods". Secondly, if a system consist of say 10 items but a manufacturer clears only 8 or 9 items, will he get exemption. Thirdly, sometimes all the individual items are taken to `site' and a system is created at site. The moment a system, say "Solar Water Pumping", is installed it is embedded to earth and hence becomes immovable property. The system thus is not cleared from the `factory' but comes to existence at the site. In such a situation can the company clear all the individual items without payment of duty on the ground that `system' will come into existence at the site of the customer? Further, can such manufacturer procure his inputs without duty or not because his system is not manufactured in the `factory'.

ii) Secondly, the entry 238A of above referred Notification No.12/2012, reads as follows:

"Solar Water Heater and System"

Now the Tariff heading given for this entry is 8419 19, which deals with 'water heater' etc. The meaning of this entry "Solar Water Heater and System", is not clear. Is it one item or two items? Kindly examine and clarify.

Reply – The Chair opined that RAC is a forum constituted at local level to oversee difficulties in procedural aspects and to bring uniformity in implementation of rules and regulations in the field formations and is not a legal body or a policy making body and cannot rule on the matter of tariff classification/ clarify points on issues which are of quasi-judicial nature and pending before various appellate fora. Therefore, the members were requested not to sponsor points on tariff classification and on pending quasi-judicial issues.

5.2 Points received from The Federation of Telangana and Andhra Pradesh Chambers of Commerce and Industry:

Point No.1- Clarification sought with regard to the necessity of any declaration to be obtained from Service Recipient to avail the abatement under the GTA Service.

Pursuant to the changes made with respect to the Abatement Provisions under GTA Service in the Union Budget 2015, a uniform abatement has been provided for transport by rail, road and vessel and Service Tax shall be payable on 30% of the freight (being the value of service of GTA) subject to a uniform condition of non-availment of CENVAT Credit on Inputs, Capital Goods and Input Services by the Service Provider.

For GTA Services the Service Receiver is supposed to pay Service Tax under Reverse Charge Mechanism.

We draw your attention to the Central Board of Excise and Customs circular vide D.O.F.No. 334/15/2014 TRU Letter Dt. 10-07-2014 to the effect that the Service Receiver is not required to establish that Service Provider has not availed Cenvat Credit.

In view of this we request you to kindly clarify whether is there any necessity of declaration to be obtained from service provider by the service recipient to avail the abatement.

Reply– With regard to the necessity of any declaration to be obtained from Service recipient to avail abatement under Service tax, the Central Board of Excise and Customs has clarified vide DOF No.334/15/2014-TRU letter dated 10.07.2014, at point O. 4.1.6 (i) i.e. *"the condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non-availment of credit is required to be satisfied by the service providers only. Service recipients will not be required to establish satisfaction of this condition by the service provider* ". As the board clarified on the above issue, no declaration from the Service recipient is needed.

Point No.2: To allow Accrued and Un-availed amounts of CESS for adjustment of CENVAT

The Govt. of India has abolished CESS (2%), SHED (1%) and other Additional Duties w.e.f. 1-4-2015. The accrued and un-availed amounts in CESS, SHED should be allowed for adjustment in the Basic CENVAT. This being a policy matter may be referred to the Board as it will be a good relief to both the Manufacturers / Dealers.

Reply – As regards the issue of Education Cesses raised the Government of India was conscious of the issue and has already issued a Notification No. 12/2015-CE (N.T) dt. 30.4.2015 and Notification No.22/2015-Central Excise(NT) dated 29th October 2015 amended specifying the instances where Education Cesses can be availed and utilized for payment of Central Excise duty and the said Notification has not provided any leeway for the trade on the utilization of balance of Education Cesses lying in the books of account. Therefore, unutilized credit of education cesses cannot be utilized for payment of Excise duty. As per the said Notification, Rule 3(7)(b) of Cenvat Credit Rules'2004 has been amended allowing utilisation of credit of Education Cess & Secondary & Higher Education Cess for payment of Basic Excise Duty prospectively, i.e., from the date amendment.

Further it was also informed that the said point was also discussed in the Central Excise Tariff Conference held in Chandigarh on 28th & 29th, October, 2015, wherein the Conference has intimated in the Minutes that it was the policy decision to not allow utilization of accumulated credit of Education Cess and Secondary and Higher Education Cess after these Cesses have been phased out and no new liability to pay such Cess arises. Therefore, it was the policy decision to not allow utilization of accumulated credit of Education Cess and Secondary and Higher Education Cess after these Cesses have been phased out and no new liability to pay such Cess arises. In the same analogy, the accrued and unavailed amounts of CESS for adjustment of Cenvat duty is not to be allowed.

Point No.3- Security Service was brought under Reverse Charge basis payment with effect from 1.7.2012 :

Without noticing this change, party has been paying the full Service Tax to the Security Service Agency. The Security Service Agency in turn has been paying the full Service Tax to the Dept. All these are clearly and linked showing that the total dues to the Dept. has been fully paid without any default.

Board had issued **Circular F.No.341/18/2004-TRU(Pt) dt 17.12.2004** in respect of reverse charge ST on GTA, stating that in such cases no proceedings should be initiated against the recipient. The ratio of this Circular equally applies even in respect of other reverse charge based services and it may be clarified that where it is demonstrated that appropriate service tax has been deposited and where the mistake is procedural in nature no further service tax payments on the same amount and in respect of the same transaction need to be made.

Reply – The Board's Instruction issued vide F. No. 341/18/2004-TRU (Pt.) dated 17.12.2004, deals only with issues pertaining to levy of Service Tax in GTA services. The Notification No. 30/2012-S.T., dated 20.06.2012 was issued notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. It is clear from the Notification that the liability of the service provider and service recipient are different and independent of each other and the service recipient shall have to pay service tax which he is obliged to pay under the partial reverse charge mechanism. It may be noted from the provisions that the liability of the two persons is for respective amounts and is not influenced by compliance or the lack of it by the other side. If at all there is excess payment of tax by the service provider, there is a separate refund mechanism available in the Act which can be exercised by him.

The meeting was concluded and the chair thanked Sri. S. Subramanian, Indirect Tax Ombudsman, Chennai for his presence during the meeting and the detailed presentation on the Institution of Indirect Tax Ombudsman and all the members of the Committee.

19.07.16

(DULIP ABRAHAM)
ASSISTANT COMMISSIONER (CCO)

To

1) The Indirect Tax Ombudsman, Chennai,26/1, Mahatma Gandhi Road,Nungambakkam,Chennai, 600 034.

2) All the RAC Members by e-mail.

3) 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.