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C.No. IV/16/35/2015-CC-HZ-Tech

DATE: 30.04.2015

**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE,
HYDERABAD ZONE HELD ON 21.04.2015**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 21.04.2015 at 15.30 hrs, at Hyderabad, which was presided over by Shri. B. Ravichandran, Principal Commissioner, Hyderabad III & Hyderabad I Commissionerate, Hyderabad and was attended by the following members :-

1. Shri. Lalith Mohan Chandna, representative of The Institute of Company Secretaries of India.
2. Shri. Ashok Surana, representative of the All India Manufacturers Association.
3. Shri. R.K. Agarwal, representative of the Bulk drug manufacturers Association.
4. Shri. V.S.Sudheer, representative of The Andhra Pradesh Tax Bar Association.

2. Following Departmental Officers were also present:-

1. Shri. G.V.Krishna Rao, Commissioner, Hyderabad-Audit Commissionerate.
2. Shri. Sunil Jain, Commissioner, Hyderabad-II Commissionerate and Service Tax Commissionerate.
3. Shri. A.R.S.Kumar, Commissioner, Hyderabad-IV Commissionerate.
4. Shri. M.Uma Shankar, Joint Commissioner, CCO, Hyderabad zone.

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

3.1 Point raised by the representative of **ALL INDIA MANUFACTURERS' ORGANIZATION (APSB) –**

1) With effect from 1-3-2015, Excise duty, Primary Education cess & SHE cess have been merged and the consolidated rate has been fixed at 12.5%. Please clarify that credits standing in PE Cess & SHE cess heads as on 1-3-2015 in Cenvat & PLA registers can be used for payment of Central Excise duty at the new rate.

Please also clarify the matter regarding availment and utilization of PE cess and SHE cess being paid on the following:

- Goods dispatched by manufacturer prior to 28th Feb and received by the assessee after 1st March 2015
- Goods received by assessee from first and second stage dealers who continue to charge cess in their invoices in respect of goods received by them from their manufacturer prior to 28 th February 2015.
- Service tax paid on services availed as cess continues to be charged after 1st March 2015.

Reply : Sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004, specifies avallment of CENVAT credit of specified duties for utilization for payment of those specified duties on y. In other words, CENVAT Credit of Education Cess and Secondary & Higher Education Cess shall be utilized only for payment of Education Cess and Secondary & Higher Education Cess, respectively. There is no simultaneous amendment in Sub-Rule 7(b) of Rule 3 of CENVAT Credit Rules ,2004 allowing utilization of Ed .Cess and Secondary and Higher education Cess towards utilization for payment of Excise Duty etc consequent on exemption from levy of Education Cess and Secondary & Higher Education Cess (Cesses) provided w.e.f. 01.03.2015 vide notification nos. 14/2015-CE dated 01.03.2015 & 15/2015-CE dated 01.03.2015. A reference was already made to Board's Office vide letter **C.NO.IV/16/158/2014-CC(HZ) Tech dated 25/03/2015** .The reply of the Board is awaited .

As of now there is no provision for allowing utilization of cenvat credit of education Cess and secondary and Higher education Cess paid on excisable goods except towards utilization for payment of either Education Cess and secondary and Higher education cess respectively on Services rendered by the assessee in terms of proviso to Sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004.

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

INANI SECURITIES LTD :They have paid the Service Tax of Rs. 90,777/- on 28.3-2013 through online bank in their Sister Concern Assessee code i.e AAAC14460MST001 (INANI COMMODITIES & FINANCE LTD) instead of paying in their Assessee Code i.e AAAC14750LST001(INANI SECURITIES LTD).

1. Afterwards they have paid the service tax liability of Inani Securities for the month of March, 2013, under the correct Assessee Code: AAAC14750LST001 under the correct Accounting Head of 0040008 (Stock Broker) and an amount of Rs. 93,732/- along with interest of Rs. 2,869/- was paid on 05.06.2013 vide Challan Sr. No. 01871.
- a) The same was informed vide letter dt: 28.03.2013 to their concerned Group Superintendent. They have informed them in their letter dated:

13.05.2013 to apply for refund on 25.03.2014 which was well within the time and the department knew the same since 28.03.2013.

- b) On 17.05.2.14 they have received a letter from Asst. Commission informed them to file the claim of refund in the name of M/s INANI COMMODITIES & FINANCE LTD.
- c) As informed by them they have once again filed their claim of refund in M/s. INANI COMMODITIES & FINANCE LTD on 21.05.2014 along with all documentary proof.
- d) A personal hearing was given on 17.09.2014, the same was attended by them and informed the concerned officer to refund the amount as per claim.
- e) After that they have received an order saying their clam was rejected as the assessee has not submitted any document in support of claim.

So far they have not received the refund amount of Rs. 90,777/-.

Reply : The said point is received from the said Association .However the representative of the said association nor of the company namely M/s, Inani securities Ltd / M/s. Inani Commodities & Finance Ltd were present. However the point was taken up for discussion. The issue was examined and it is seen that the said refund claim is rejected by the adjudicating authority vide OIO.No. 195/2014 (Service Tax-R) dated 23.09.2014 .Since the refund claim is rejected by the adjudicating authority the department cannot take any further action at this stage. The assessee may prefer an appeal before the appellate authority as per law.

3.3 Points sponsored by Shri. Lalit Mohan Chandra,RAC Member on behalf of Institute of Company Secretaries:

i) Clean Energy Cess:

Many manufacturers are buying locally and importing coal, on which clean energy cess is being collected. For imported coal, the 'cess' is collected as Addl.duty of customs. Cess was imposed vide Finance Act, 2010. Following clarifications are required.

Is credit permissible on the ground that 'cess' is duty of excise, especially when it is collected as duty of excise (CVD) on imported coal.

Some companies have reversed the credit under protest. Later on if credit is allowed by court, will companies then be able to take the credit because of the fact that now credit cannot be taken after 1 year from the date of duty paid document. Please clarify.

Reply : The Clean Energy Cess is leviable under sub-section 3 of Section 83 of Finance Act, 2010 as a duty of excise on coal, lignite etc. from 01.07.2010. Rule 3(1) of Cenvat Credit Rules, 2004 stipulates a manufacturer or a provider of output service to take Cenvat Credit of only certain duties/cess/tax

specified therein. In terms of Rule 3 (vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via) are only eligible to avail cenvat credit. The clauses (i) to (via) do not include *Clean Energy* cess as eligible to avail Cenvat credit. Eligibility of clean energy cess and time period are to be considered as per the provisions of the Cenvat Credit Rules.

Comments on possible future court orders cannot be made. However, as per Cenvat Credit Rules in force credit of duty can be taken within one year of the date of invoice. Hence, if the credit taken initially /for the first time is within one year of the date of invoice then credit which was reversed can be taken subject to eligibility.

ii) Job work : Many manufacturers are giving their inputs / semi-finished goods to various job workers for carrying out certain activities. The activity carried out by a job worker may or may not amount to "manufacture".

Suppose a manufacturer has 5 job workers who are having their small work shop and each job worker may carry out the activity of punching, cutting, folding, painting etc. Under Excise Laws, whether such a manufacturer has to file any declaration with Excise department for all the job workers even though a job worker may not be registered with excise department? Please clarify.

Reply : The issue was discussed at length. Whether the activity under taken for jobwork amounts to manufacture or not is subject to definition of manufacture as defined in Rule 2(f) of Central Excise Act 1944 and relevant Section notes and chapter notes issued under Central Excise Tarriff Act 1985 and it is to be seen on case to case basis. In terms of job work Notification No. 214/86-CE dt. 25.3.1986, the supplier of the raw materials or semi finished goods shall give an undertaking to the Assistant Commissioner of Central Excise having jurisdiction over the factory of the job worker giving the details as mentioned in the said notification. In this case the supplier has to give an undertaking to Assistant Commissioner of Central Excise having jurisdiction over each of the Job worker irrespective of whether the job worker is registered with the department or not.

Then the member sought clarification as to when the goods are cleared for job work Under Rule 4(5) (a) of Cenvat Credit Rules 2004 whether such an undertaking is required to be given to which the Chair observed that the exemption under Notification no. 214/86 is for the goods and that Rule 4(5)(a) of Cenvat Credit Rules allows Cenvat credit even if the inputs and capital goods as such or after being partially processed are sent to job worker for further processing ,testing repair etc and subsequently received back after said processing within 180 days. The requirements of procedure will depend on the nature of exemption/concession claimed by the assessee.

One of the members Shri. Ashok Surana representative of All India manufacturers Organization requested to accept undertaking under Notification no. 214/86 through e-mail to which the Chair explained that the same can be accepted provided digital signature is available . However, the Chair informed that the said undertaking need not be submitted in person but can be sent through post also.

iii) Appeal compliance:

When a person is filing an appeal with Commissioner (Appeal), sometimes a "deficiency memo", is being given to say that court fee stamps have not been affixed to appeal papers or "authorization letter" has not been enclosed or Board Resolution in favour of the person signing the appeal has not been enclosed. It will be better if in the Preamble to the order-in-original, following requirements are clearly stated:-

Court fee stamps are required to affix; the value of stamps; on what documents to be affixed and under which provision of law.

Whether Board Resolution copy is mandatory to be enclosed and if the appellant is Partnership firm or LLP or Proprietorship, what document is required to be enclosed.

Whether name (and the rubber stamp of the appellant company) of the officer signing the appeal has to be mentioned on 'each' page of the appeal papers or is it enough if it is done at one place. A check-list may be given along with order-in-original, which will help the industry to properly comply with the requirements of appeal.

Reply : The issue was discussed at length. The member pointed out that they are receiving deficiency memos from Commissioner (Appeals) office frequently for non-submission of proper documents and not putting signature on each page of paper book and calling for authorization letter from the companies for filing the appeal and requested to resolve the matter by issuing a checklist and to clearly state all the requirements in the preamble to order in originals. After examining the matter the Chair observed that the Preamble contains all the requirements as per the Instructions given from time to time by the Board and may not be altered according to local requirements . With regard to signing of appeal and paper book, the Chair informed that Section 35 (Q) of the Central Excise Act 1944 and The Central Excise (Appeals) Rules 2001 clearly states who has to sign the form of appeal . With regard to value of court fee stamp to be affixed ,the Chair stated that the value of stamps to be affixed is determined as per the relevant state Acts . Since the points placed by the member are procedural aspects the Commissioner (Appeals) C Ex & Cus and Service Tax is directed to prepare a check list indicating all the requirements /documents to be filed along with the appeal/paper book in

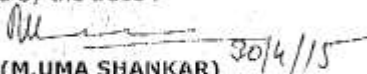
consultation with Chief Commissioner's office and to prominently display the same in the office of the Commissioner (Appeals). The Chair also opined that if needed a trade facility circular will also be issued by the Chief Commissioners office.

3.4) Point No.8 of earlier meeting dated 26.09.2014 : One of the members raised a point that the department is insisting for submission of BRCs in respect of exports under Bond/LUT at the time of renewal of LUT. Further during discussions in the RAC meeting held on 09.02.2015 the members pointed that the Divisions and Ranges are insisting for BRC's even at the time of renewal of LUT also and requested to resolve the issue. In this connection, it was informed that the issue will be resolved in the next meeting.

Reply : At the time of renewal of LUT the assessee is required to submit a statement regarding export of excisable goods without payment of duty in Annexure 63 prescribed by the Board is sufficient. There is no necessity of submission of BRCs at the time of renewal of LUT and directed all the Commissioners to direct their field formations not to insist for submission of BRCs at the time of renewal of LUT.

Shri Lalith Mohan Chandna , representative of Institute of Company Secretaries , also requested to consider renewal of LUTs within a time frame as the renewal is getting badly delayed in some formations to which the Chair accepted and directed all the Commissioners to issue directions to all the field formations under their charge to renew the LUT within four working days of the proper receipt of documents.

At the end of the meeting the Chair stated that there is poor attendance by the members and that even the members sponsoring the points are not attending the RAC and expressed that Regional Advisory Committee is constituted and conducted to resolve local issues and requested all the members to utilize this platform and resolve their issues by attending in full strength so that maximum benefit can be derived by the trade .


(M.UMA SHANKAR)
JOINT COMMISSIONER

To

All the RAC members by e-mail .

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.