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, 23299206 (T/F)
E-Mail: raccehyd@gmail.com

C.No. IV/16/04/2013-CC-HZ-Tech(P.F-I) **DATE:18.12.2013**

MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE, HYDERABAD ZONE HELD ON 11.12.2013

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 11.12.2013 at 15.00 hrs, at Hyderabad, which was presided over by Shri B.B.Prasad, Chief Commissioner of Customs, Central Excise & Service Tax, Hyderabad Zone, Hyderabad and was attended by the following members :-

1. Shri S.Thirumalai, The Federation of A.P.Chambers of Commerce & Industry (FAPCCI).
2. Shri M.S.V.Krishna, Representative of Medalk Small Scale Entrepreneurs Association and FAPSIA.
3. Shri Ashok Surana, Representative of All India Manufacturers Association.
3. Shri V.Anil Reddy, Representative of Andhra Pradesh Plastic Manufacturers Association.
4. Shri Ch.Sanyasi Rao, Representative Bulk Drug Manufacturers Association.
5. Shri C.S. Narendar, President, Customs House Agents Association.
6. Shri K.Koteswar Rao, Representative of The Institute of Cost Accountants of India
7. Shri Lalith Mohan Chandna, Representative of The Institute of Company Secretaries of India
8. Shri P.Dasarath Reddy, Representative of The Andhra Pradesh Real Estate Developers Association.

2. Following Departmental Officers were also present:-

1. Shri. S.N.Saha, Commissioner, Hyderabad-I Commissionerate
2. Shri. M.K.Singh, Commissioner, Hyderabad-II Commissionerate
3. Shri.B.Ravichandran, Commissioner,Hyderabad-III Commissionerate.
4. Shri.G.V.Krishna Rao, Commissioner, Hyderabad-IV Commissionerate

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

3.1 Points raised by Representative of the All India Manufacturers Association, Hyderabad:

I. POINTS FROM THE INSTITUTE OF COMPANY SCRETARIES OF INDIA

1 Government's policy has been that exported goods must be free from all taxes including excise duty etc. And if any excise duty has been paid on any inputs / finished goods, the same can be claimed as refund. Recently in case of Bajaj Food Ltd – 2013 (295) ELT 275 (Tri.Ah.) the company has exported "final products" which were exempted from duty. Company had purchased inputs on payment of duty. They applied for refund of duties paid on inputs on the ground that final products were exported. The refund was claimed under Rule 6 of Cenvat Credit Rules 2004. Tribunal rejected the refund claim that goods were not exported under `Bond' and since final product are exempted goods, the company is not entitled to claim refund of duty paid on inputs.

Suggestion from Institute:

The law should be amended to say that once goods have been exported, refund of duties paid on inputs must be refunded, irrespective of whether the final goods are exempt are not and whether goods were exported under `Bond' or not.

Reply: Suggestion being a policy matter, no comments can be offered. However, the exporters can consider the option of claiming rebate of duty paid on excisable goods used in the manufacture or processing of goods exported to any country except Bhutan under Rule 18 of Central Excise Rules, 2002 read with Notification no. 21/2004-C.E.(N.T), dated 06.09.2004 as amended. Therefore, there is no need of approaching C.B.E.C to amend Rule 5 of CENVAT Credit Rules, 2004.

2 A company had exported their final products (Sugar Plant) and along with they also `exported' certain "bought out" items like `electric cables' etc which were to be used in connection with installation / commissioning of Sugar Plant exported.

The Hon'ble Supreme Court in case of KCP Ltd – 2013 (295) ELT 353 (SC) has held that credit will not be available on the "bought out" items i.e. Electric cables, exported along with manufactured goods as no activity was done on such items.

Views from Institute:

This judgment also clearly goes against the policy of the Government on Exports. There are hundreds of items which are purchased from market and exported as accessories, parts, spare parts on which no `process' is carried out. For example a car may be exported along with 2 spare tyres / tubes, in such cases, also since goods have been exported (though bought out) the benefit of Cenvat Credit under "input" category should be allowed, even if it requires amendment to the definition of input. Otherwise this judgment will have far reaching adverse effect on exports.

Reply: Suggestion for amendment is a policy matter, no comments can be offered. The exporter may claim Drawback or the manufacturer/exporter can register himself as merchant exporter with maritime commissioner or jurisdictional authorities and obtain the excisable goods (bought out item) under CT-1 certificates issued by the maritime commissioner.

3 Presently "Export" for purpose of excise/customs means physically taking out the goods outside India. In other words, "deemed exports" such as supply to EOU etc (defined in Chapter 8 of Foreign Trade Policy) are not treated export. It is suggested that export should include "Deemed Export" from the point of view of Notification No.8/2003-CE dt.01.03.2003 dealing with S.S.I. exemption.

Some Tribunals have held that value of deemed export will not be counted for Rs.150 lakhs but recently Tribunal in one case (2013) has held that deemed export is not `exports' for Notification 8/2003.

Reply: The word "Deemed Export" is not defined in the provisions laid down for Central Excise. The sl.no. 3 of notification No.8/2003-CE dt.01.03.2003 as amended indicates that for purpose of determining the first clearance upto an aggregate value not exceeding Rupees One Hundred And Fifty Lakh, the clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason shall not be taken into account. Hence, the supply to EOU need not be taken into account for purpose of determining the first clearance upto an aggregate value not exceeding Rupees One Hundred And Fifty Lakh.

4 Notification 8/2003 dealing with clearances for Home Consumption for SSI says that clearances to Bhutan & Nepal will be considered as "Domestic clearances" though goods are being physically exported outside India. Many SSI units are getting notices on this issue. With a view to avoid confusion, it is suggested that export to Nepal & Bhutan should be treated as Exports and value should not be included in Rs.150 lakhs limit. Necessary amendments in Rule 18/19 and Notification No.8/2003 are suggested.

Reply: Suggestion for amendment is a policy matter, no comments can be offered. The Sl.no.5 (G) of notification No.8/2003-CE dt.1.3.03 as amended, specifies that the clearances for home consumption shall include clearances for export to Bhutan and Nepal. Therefore, such clearances shall be included in the computation of value of clearances for determining the first clearance up to an aggregate value not exceeding Rupees One Hundred And Fifty Lakh.

5 Recently Rule 5(A) of Cenvat Credit Rules 2004 was amended to say that if capital goods are sold as scrap / waste, duty should be paid on such scrap value on the basis of Transaction value. From the amended Rule, it appears that duty is required to be paid on sale of such capital goods, irrespective of whether credit of duty paid on such capital goods, was availed as `credit' or not. In other words, even if on capital item is sold after 25 years as waste/scrap, duty should be

paid. Earlier, only on those 'capital goods' on which credit had been availed, were covered under this rule. It appears that there is some mistake in drafting the new rule or it is intentional? Please clarify.

Reply: Rule 3(5A) of CENVAT Credit Rules, 2004 indicates that when the manufacturer avails credit of duty paid on the capital goods then the manufacturer shall pay an amount equal to the duty leviable on transaction value, if it is cleared as waste and scrap.

6 Whenever, final order is passed by Hon'ble CESTAT or Commissioner (Appeals) in favour of the assessee, the "pre-deposit" made becomes automatically payable to the assessee, as concept of unjust enrichment is not applicable in such cases. In other words, the refund should be granted by the department suo-moto as per some Tribunal's observations. However, in practice, the department is insisting on proper application for Refund (Form-R) along with justification as to why unjust enrichment will not apply and they are treating such cases as normal refund claim and amounts are not sanctioned for 2/3 months. Kindly clarify whether the present practice adopted by department is conformity with legal position or not.

Reply: Refund/Return of deposits made under Section 35F of The Central Excise Act, 1944 and Section 129 E of The Customs Act, 1962 may be claimed by a simple or formal request along with attested photocopy of order and challans evidencing the payment of deposit. This should not be treated as refund under Section 11B of The Central Excise Act,1944.

7 Many people wish to write to the department for seeking clarification on many issues relating to excise / service tax but they are not sure whether they will get a proper response or not. Please clarify whether there are any procedure in place by which can be followed by a person. And to when he should address his query and what is time frame within which he can expect a reply. Please clarify.

Reply: The Citizen's Charter stipulates that replies / interim replies are to be furnished within 30 days / 15 days of receipt of any letter from the assessees. Certain issues are also being taken up in the periodical RAC meetings.

8 "Input Service" definition specifically includes certain services, which prima facie has no relationship with manufacture, such as Business Exhibition Services, Legal services, Security Services (There are about 15 services listed there). All the manufacturers are taking credit on such services as definition of "input service" specifically include such "specified services". In other words, industry is of the view is that such specified services need not have any connection with manufacture (or with provision of service) and credit can be taken without any questions raised about its eligibility. However, department seems to take view that even these specified services must be proved to have been used in connection with manufacture. Recently in one case, Tribunal has clarified that "extended definition" need not have any connection with first limb of the definition. Industry wants to know the department's point of view on this.

Reply: To avail CENVAT credit of duty paid on input services, a nexus is to be proved with output service, though, certain services are indicated in the inclusive clause of the definition of "input service".

II POINTS FROM THE INSTITUTE OF COMPANY SCRETARIES OF INDIA RECEIVED AFTER DUE DATE FOR RAC MEETING HELD ON 13.08.2013 AND WERE NOT INCLUDED FOR DISCUSSION

9. Recently, Hon'ble Supreme Court had delivered a historic judgment in case of Fiat India (P) Ltd – 2012 (283) ELT 161 (SC), where in it was held that `value' will be the manufacturing cost in case the sale price is less than the cost of a vehicle. We believe even Chairperson of CBEC has called for meeting on this issue. Industry in Hyderabad would like to know the views of the department on this important issue.

Reply: In pursuance of Hon'ble Supreme Court's judgement in the case of Fiat India Pvt Limited -2012(283)ELT 161(SC), the Board issued Notification No. 14/2013- CE (N.T) dt. 22.11.2013 and also a circular No. 975/09/2013-CX dt. 25.11.2013. The same may be referred to.

10. In some cases, where the ultimately an order is passed in favour of an assessee either by Tribunal or Commissioner (Appeals) Hyderabad, and if in such cases, any `pre-deposit' had been made, the department is insisting on a formal application and also raising the issue of unjust enrichment in such cases, where as our understanding is no formal application is required and there is no question of unjust enrichment in such cases.

Reply: Reply is same as mentioned at point no. 6.

11. Recently Bangalore Tribunal in case of Lee Pharma Ltd, Final Order No.25312 & 25313/2013 dated 01.05.2013, has finally passed, holding that in case of 100% EOU's for DTA sale, there is no requirement of `calculating' Education cess `three times'. Even after this, department seems to be giving show cause notices.

Reply: It is to be checked if the department has accepted the CESTAT order on merits. If yes, then the notices are unwarranted. If appeal has been filed, then protective notices have to be issued.

.

12. It is generally observed that any order which is passed by an authority, does not analyse and discuss all the submissions made in the reply to show cause notice/appeal memorandum, especially on the issue of limitation / time bar, on the ground that when an appeal is being allowed in favour of the party, there is no need to pass any order on time bar issue.
Industry is of the view that any speaking order must discuss all the submissions and pass orders on all the points raised.

Reply: The order passed by the adjudicating authority is a speaking order. There are guidelines that all points should be discussed and decided. All the adjudicating authorities will take note of this.

III POINTS FROM APREDA

13. Effective date of Applicability of Service Tax and sale of flats by a Developer Position of the Law

The service tax has been levied under Section 66 of the erstwhile Finance Act, 1994 as amended on the taxable service defined under section 65(105) ibid. The taxable service definition with respect to sale of residential complex under clause (zzzh) of the said section and (zzq) with respect to commercial complex. Hon'ble High Court of Gauhati in case of Magus Construction Pvt. Ltd., Vs. UOI 2008 (11) S.T.R. 225 (Gau.) held that advance amount given by prospective buyer is against sale consideration of flat/building and not for obtaining service.Later an explanation was added with effect from 01.07.2010 levying the service tax on sale of flats prior to obtaining occupancy certificate. Thereby making the service tax leviable only from 01.07.2010

Clarification by CBEC, New Delhi vide Circular No. 151/2/2012-S.T., dated 10-2-2012 Relevant Extracts

(i) For the period prior to 1-7-2010 : construction service provided by the builder/developer will not be taxable, in terms of Board's Circular No. 108/2/2009-S.T., dated 29-1-2009 [2009 (13) S.T.R. C33].

(ii) For the period after 1-7-2010, construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner

The above clarification is not being considered and in some cases show cause notices have been issued for the period prior to 01.07.2010 also. Developers have been put through great hardship because of the notices in spite of the circulars.

Request from Association

3. Instruction may be issued not to collect service tax from developers for the transactions prior to 01.07.2010 and also to give a trade notice to clarify the same.

Reply: The matter was discussed in detail. This will be further examined by the department and suitable clarification will be issued, if necessary.

14. Effective date of applicability of service tax on construction on the land lord share in the Joint Development Agreement. Position of the Law.

In line with the above submission, vide Circular No. 151/2/2012; service tax is applicable only from 01.07.2010.

The above clarification has not been considered and in some cases Show Cause notices have been issued for the period prior to 01.07.2010 also. Developers have been put through great hardship because of the notices in spite of the circulars.

Request from Association

Instructions may be issued not to collect service tax from developers for the Joint Development Agreement prior to 01.07.2010 and also to give a trade notice to clarify the same.

Reply: Same as at Point No.13.

IV POINT FROM ALL INDIA MANUFACTURERS' ORGANIZATION

15. In today's Global scenario for us to increase our exports, just supplying goods is not enough, we have to make them available to the foreign buyer 'Just in time'. To make this happen it is important that Customs arrange to clear Air Exports 24x6. We give below an instance to illustrate the agony arising out of delay:

Sat 9th Nov – Customs holiday
Sun 10 th Nov – Customs holiday
Tue 12th Nov – Goods cleared for Export

It created a very bad impression about our country and its systems when the buyers realized that at a time when they expect to receive the goods, they are in fact lying at the Hyderabad airport. Such delays occur even when reputed forwarders like Fedex are nominated for the purpose of handling the logistics. This incident is not in isolation, multiple times a year, there are continuous holidays for two or occasionally three days causing such chaos. To make matters worse, officers of the department avail of leaves on days preceding or following such continuous holidays.

If the Bill of Entry or Shipping Bill, remains pending by the end of the day it has been filed, it should become the responsibility of the Customs to clear all such pending files during the first hour of the following day. Lack of staff, their non availability at the desk or inadequacy should never be allowed to be a reason for delay. It may help to monitor and assist at a Senior level when Shipping Bills are not given 'Let Export Order' for more than one day after they have been filed and the Bills of Entry not given 'Out of charge' for more than two days after they have been filed.

Reply: With effect from 01.11.2013, the officers at Air Cargo Complex are working 24x7 for attending imports and exports by Air. With regard to ICD and CFS, the officers are working 06 days a week. So far there have been only few requests for clearances during holidays. Moreover, all efforts are made on working days to avoid delays.

V POINT RAISED BY FAPSIA AND MEDAK SMALL SCALE ENTREPRENUERS ASSOCIATION

16. The department is insisting the assessees to pay service tax on the cost of transportation, though; the said transportation charges are included in the assessable value for payment of duty of excise.

Reply: The assessees are required to pay service tax on the actual cost of transportation under GTA. However, it is suggested that the assessee may bifurcate the value and pay the relevant duties leviable thereon.

17. Clarification is sought for the procedure to be followed for removal of goods from the factory premises to the weigh bridge and back, in case, the said factory does not have any facility for weighment of goods.

Reply: The assessee may approach jurisdictional Dy./Asst. Commissioner for seeking permission regarding weighment of goods outside factory premises before preparing invoices as per the procedure prescribed at Para 11 of Chapter4 of CBEC's Excise Manual of Supplementary Instructions.

18. The meeting concluded with thanks to the Chair.

M Rama Rao 18/12/13

(M.RAMA MOHANA RAO)
DEPUTY COMMISSIONER

To

All the RAC Members through E-mail.

Copy to: The Commissioner, Customs, Central Excise & Service Tax, Hyderabad– I, II, III & IV Commissionerates and Appeals-I & II, Hyderabad with a request to give wide publicity.