The Malad Chamber of Tax Consultants

MNW/175/2015-17 Total Pages 10 Price ₹ 5/-

37th Year

MCTC Bulletin

Duty • Determination • Dedication.....leads to Success

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Vol. 1, No. 9 *For members & private circulation only* March, 2016

President's Communiqué

Dear Members,

कःकालः कानि मित्राणि को देशः को व्ययागमौ ।
कस्याहं का च मे शक्तिः इति चिन्त्यं मुहुर्मुहुः।।

The "SWOT" analysis suggested by Chanakya.

Prior to any action, we must be alert, consider and worry about these questions:

How is situation around me (i.e. is it favourable or not)? Who are friends? How is the condition in the country? What are things for and against me (or what do I have and what I don't have)? Who am I? What are my strengths? Now, we also have to consider the situation in the world.

We must take note of words of Shri Anupam Kher that with positive thinking ***"Anything can Happen".***

We must congratulate Government of India for ***Excellent*** and ***Successful*** week passed by ***Make in India event***. The Branding of ***Make in India*** is another positive step towards making India progress. The Forex reserves has risen to record high to more than USD 350 billion. Moreover, IMF Chief Christine Lagarde has approved ***India as a Bright Spot*** in the otherwise gloomy world economy. We must feel proud to be Indian.

Merely proud feeling in isolation is not enough. There is a hugh responsibility attached to it. As service provider and advisors to clients we must keep in mind the Brand which **WE** have created collectively.

Likewise, we have been working towards creating or establishing brand image of The MCTC. We are proud to announce that this year we have concluded 25th year of conducting **Public Meeting for Union Budget** with attendance of more than 600 people. I am happy to announce that within 10 days of publishing, all 870 books are exhausted. Moreover, this is the first time we have uploaded the PDF version of the Budget Publication on our website and the same is available for download on RESOURCES option. I admire the Team effort.

When you receive this bulletin, your short busy season of April must have started with VAT Returns, TDS Returns, Service Tax Returns and also Bank Audits. Wish you successful working.

After the busy month of April we must take a break with friends & families. If positive response received, we may arrange half day picnic with family in May 2016.

Once again I invite articles of professional interest from experts.

WISH YOU : HAPPY HOLI, GUDI PADWA, SHRI RAM NAVAMI.

Regards,
Jayprakash M. Tiwari
President

With Regards

≈ TEAM MCTC ≈

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

❑ **TRANSFER PRICING-NOTIFIED TOLERANCE LIMIT U/S. 92C(2) [234TAXMANN (st.) 176]**

The Central Government *vide* Notification No.86/2015 dated 29-10-2015 in exercise of the powers conferred by the third proviso to Section 92C(2) read with Rule 10CA(7) (proviso) of the Income Tax Rules,1962 notifies that where the variation between the arm's length price determined under section 92C and the price of which the international transaction or specified domestic transaction has actuality been undertaken does not exceed, one per cent, of the latter in respect of wholesale trading and three per cent, of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for Assessment Year 2015-16. The circular also gives the definition of "wholesale trading".

❑ **EXTENSION OF DUE DATE FOR FILING OF RETURNS OF INCOME AND AUDIT REPORTS U/S. 44AB-CORRIGENDUM TO ORDER [F. NO. 225/207/2015/ITA-II], dated 1-10-2015**

The CBDT *vide* Order F. No 225/207/2015/ITA-II, dated 29-10-2015, clarifies that the extension of due date of filing of Return of Income is also applicable to requirement to obtain and furnish "Report of Audit "under various provisions of the Act. It is hereby clarified that the "due date" for obtaining and e-filing report of audit under various provisions of the Act pertaining to such Return of income also stands extended till 31-10-2015. This clarification is corrigendum to order dated 1-10-2015 wherein the CBDT has extended the "due date" for e-filing Return of Income from 30th September, 2015 to 31st October,2015 in case of income tax assessee's which are covered by Section 139(1) under Explanation 2(a) of the Income Tax Act.

❑ **FINANCE ACT, 2015 – EXPLANATORY NOTES TO THE PROVISIONS OF THE SAID ACT [235 TAXMANN (st.) 67]**

The CBDT Circular No. 19/2015 dated 27-11-2015 gives amendments at a glance being explanatory notes to the provisions of the Finance Act, 2015. One may referred to above citation for more details.

❑ **DEDUCTION OF TAX AT SOURCE U/S. 192 OF THE INCOME TAX ACT, DURING THE FINANCIAL YEAR 2015-16 [236 TAXMANN (st.) 25]**

The CBDT *vide* Circular No. 20/2015, dated 2-12-2015 contains the rates of deduction of income tax from the payment of income chargeable under the head "Salaries" during the financial year 2015-16 and explains certain related provisions of the Act and Income Tax Rules.

❑ **DEDUCTION U/S. 80P OF THE ACT FROM INCOME OF CO-OPERATIVE SOCIETIES - INTEREST FROM NON-SLR SECURITIES OF BANKS [235 TAXMANN (st.) 6]**

The CBDT *vide* Circular No 18/2015, dated 2-11-2015 has clarified the decision of Board that no appeals will be filed by the department in view of the Supreme Court decision in the case of CIT vs. Nawanshahar Central Co-operative Bank Ltd. 160 Taxmann 48 (SC), wherein the court held that the investment made by banking concern are part of business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profit and Gains of Business and Profession". It also clarifies that though the decision was in the context of co-operative Societies/Banks claiming deduction u/s. 80P(2)(a)(i) of the Income-tax Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

The Board has issued above clarification in view of the fact that field officers are taking a view that, "expenses related to investment in non-SLR securities need to be disallowed u/s. 57(i) of the Act as interest on non-SLR securities is income from other sources.

In light of the Supreme Court's decision in the matter, the Board is of the view that the issue is well settled and accordingly decided that no appeals may henceforth be filed on this ground by the officers of the department and appeals already filed on this ground before Courts/Tribunals may be withdrawn/not pressed upon.

❑❑❑

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

M/s. Ambuja Cement Limited vs. The ITO-TDS, ITA Nos. 648 & 649/Chd/2014, 4th February 2016

TDS deduction necessary even if the payments made form exempt income in the hands of the payee u/ss. 11-12

Facts of the Case:

The assessee entered into an agreement with Himachal Road Transport Corporation ('HRTC') in availing bus services on contract basis. The assessee did not deduct tax u/s. 194C of the Income-tax Act, 1961 while making payment to HRTC in view of the fact and request by HRTC that it was registered as a trust and enjoyed the benefit of exempt income provided u/ss. 11 & 12 of the Income tax Act, 1961.

The ITO (TDS) by order passed u/s. 201(1)/201(1A) treated the assessee as an assessee in default on the ground that registration of HRTC as a trust u/s. 12A is not a pre-condition for non deduction of tax u/s. 194C of the Act.

CIT(A) held in the favour of the department observing that:

The assessee's submissions is contrary to the provisions of Section 190(1) and misplaced, the Section nowhere provides that tax is not deductible at source in case of any exempt income. The provision u/s. 190(1) is that the tax on income shall be payable by deduction at source. It does not say that tax is to be deducted on 'taxable income'. Hence, the company was liable to deduct tax at source from the payments made to HRTC.

ITO vs. Farokh Jal Deboo, ITA No. 4650/Mum/2013, 5th February 2016

Deduction of Long term capital gain u/s. 54 also available for investment in residential house property situation outside India

Facts of the case

The assessee was a non-resident. During assessment for A.Y. 2009-10, the assessee had sold flat at Colaba, Mumbai. The assessee claimed indexed cost of acquisition from 1 April 1981 being property inherited from parents. The assessee also claimed deduction u/s. 54 of the Income-tax Act, 1961 for purchase of residential property in USA.

However, the Assessing Officer (AO) did not agree with the assessee's computation of LTCG as under:

(a) In respect of the assessee's claim for computing the indexed cost of acquisition w.e.f. 01.04.1981, the AO was of the view that since the assessee inherited 50% share on his father's expiry on 11.11.1963, and 50% share on his mother's expiry on 18.10.2006, the indexed cost of acquisition was to be computed in two stages, i.e. financial year 1981-82 for 50% and financial year 2006-07 for 50% of the share of property.

(b) The AO also rejected the claim of exemption under section 54 of the Act on the ground that the investment was in a property situated outside India.

On appeal, CIT(A) allowed indexation adopted by the assessee but denied deduction of long term capital gain u/s. 54.

ITAT held in the favour of the Assessee that:

Both deductions are allowable according to the provisions of the Income-tax Act, 1961 and hence deduction of Long term capital gain u/s. 54 was allowed for investment in residential house outside India in a foreign country.

M/s. Dujodwala Products Ltd. vs. Additional CIT, ITA 1172/Mum/2013, 12th February 2016

Eight years limit for carry forward, set off do not apply to unabsorbed depreciation in view of amended Section 32(2) and CBDT Circular No. 14 of 2001

Facts of the case

The assessee had claimed unabsorbed depreciation of the A.Y. 2000-01 in the return of income of A.Y. 2009-10. The same was denied by the AO on the ground that, in view of the Special Bench decision in the case of *DCIT vs. Times Guarantee Ltd*, reported in [2010] 40 SOT 14 (Mum.), the unabsorbed depreciation claimed for

A.Y. 2000-01 cannot be allowed as 8 years has already elapsed in the assessment year 2008-09.

CIT(A) held in the favour of the assessee that,

In view of the Section 32 as amended by Finance Act, 2001, the CBDT Circular No. 14 of 2001 clarifies that any unabsorbed depreciation available to an assessee on 1st day of April, 2002 (A.Y. 2002-03) will be dealt with in accordance with the provisions of Section 32(2) as amended by Finance Act, 2001 and not by the provisions of Section 32(2) as it stood before the said amendment.

Accordingly the amendment dispenses with the restriction of 8 years for carry-forward and set-off of unabsorbed depreciation from A.Y. 2002-03 and subsequent years.

UPDATES ON SERVICE TAX

Compiled by CA Bhavin Mehta

1. Notification No. 01/2016-Service Tax dated 03.02.2016 – (w.e.f. 01.07.2012)

Amending Notification No. 41/2012-ST {published *vide* G.S.R. 519 (E)} dated 29.06.2012, providing rebate of taxable service that have been used beyond factory or any other place or premises of production or manufacture of final product, for their export.

It is proposed to amend the said Notification No. 41/2012-ST retrospectively w.e.f. 01.07.2012 in proposed Finance Bill.

2. Notification No. 02/2016-Service Tax dated 03.02.2016 – (w.e.f. 3.2.2016)

This Notification amends by insertion of new clause (ba) in paragraph 3, in sub-paragraph (III), after clause (b) in notification No.12/2013 dated 01.07.2013 which pertains to exemption of services by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorized operations.

Now through this amendment the SEZ Unit or the Developer shall be entitled to refund of the Swachh Bharat Cess paid on the specified services on which *ab-initio* exemption is admissible but not claimed and for input services used for SEZ unit and DTA unit, the refund of amount is determined by multiplying total service tax distributed to it in terms of Rule 7 of CCR, 2004 by rate of SBC and dividing by rate of service tax.

3. Notification No. 03/2016-Service Tax dated 03.02.2016 – (w.e.f. 03.02.2016)

The Notification No. 39/2012 dated 20.06.2012 pertains to rebate of whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services used in providing service exported in terms of Rule 6A of the Service Tax Rules,1994. Here definition of service tax & cess for this notification has been amended to include SBC as levied under sub-section (2) of Section 119 of the Finance Act, 2015 (20 of 2015). Therefore refund of SBC would also be entitled to exporter of services in terms of Rule 6A of STR.

4. Notification No. 04/2016-Service Tax dated 15.02.2016 – (w.e.f. 01.04.2016)

This notification is effective from 01.04.2016 and would be applicable to RBI and Electricity distribution and transmission Companies. The information return is required to be furnished annually during every financial year beginning on or after 01.04.2015. The time for furnishing information Return is on or before 31st December of the financial year following the financial year to which the return pertains. This has to be filed electronically to the Directorate General of Systems and Data Management. The notification may be referred for Format of Form AIRF.

5. Notification No. 05/2016-Service Tax dated 17.02.2016 – (w.e.f. 17.02.2016)

In Notification No. 22/2015- ST dated 06.11.2015 it was mentioned in first Proviso that SBC was not leviable on services exempt from service tax by a notification issued under Section 93(1) which is now extended to Section 93(2). Due to amendment, services which are exempted from levy of service tax by special order issued by Central Govt., such services would be exempted from levy of SBC also.

6. Notification No. 06/2016-Service Tax dated 18.02.2016 – (w.e.f. 01.04.2016)

Finance Act, 1994 was amended *vide* Finance Act, 2015 so as to make any service (and not only support services) provided by Government or local authorities to business entities taxable from a date to be notified later. This date has been notified as of 1st April, 2016.

Therefore effective from 01.04.2016 all taxable services provided by Government or a local authority except services of department of post, aircraft or a vessel or transportation of goods or passengers, recipient of service would be liable to pay service tax under RCM.

7. Notification No. 07/2016-Service Tax dated 18.02.2016 – (w.e.f. 01.04.2016)

A new insertion *vide* entry No. 48 is inserted in mega exemption notification by virtue of which services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year would be exempted from levy of service tax.

8. Notification No. 20/2016-Service Tax dated 08.03.2016 – (return for the half year ending 31.03.2016 and thereafter)

Changes made in the ST-3 return form with respect to disclosure of Swachh Bharat Cess. The notification may be referred for detailed information provided by department incorporating columns in ST-3 returns for implications of Swachh Bharat Cess.

GIST OF RECENT JUDGMENTS WITH RESPECT TO SERVICE TAX AND CENTRAL EXCISE

Compiled by CA Bhavin Mehta

1. Question whether there was intention to evade is a question of fact; hence, when Tribunal found that service tax was collected from service recipients but not paid to Government owing to intention to evade, evasion penalty was leviable [IWI Crogenic Vaporization System (India) (P.) Ltd. vs. Commissioner of Central Excise & Service Tax, Vadodara [2016] 66 taxmann.com 115 (Gujarat)]

FACTS

The assessee was collecting service tax but was not paying the same to the Government. The assessee was also not filing periodical returns. On special investigation by department it came to light that the assessee paid service tax with interest thereon prior to the issue of notice from the department. Assessee had not pleaded any case of financial hardship. The Tribunal had passed an order requiring the assessee to pay penalty on the ground that there was evasion of tax.

The assessee challenged the judgment of the Tribunal for levying multiple penalties under Sections 77(1), 77(2) and 78 of the Finance Act, 1994 on the ground that there was no evasion and sought to invoke Section 80 of the Finance Act, 1994.

HELD

The assessee was recovering service tax from service recipients. The assessee was also registered with the Central Excise Department for providing several services including the service on which service tax was required to be paid on reverse charge basis.

Having collected such tax from the service recipients and having been registered in respect of such service, the assessee was required to pay service tax to the Department. The assessee had not filed requisite periodical returns and the fact of non-payment of service tax came to light of the Department only as a result of special investigation. The Tribunal also noted that assessee had not pleaded any case of financial hardship.

Sub-section (1) of Section 78 of the Finance Act, 1994 provides for a penalty on any service tax not paid or not levied or short-levied or short paid or erroneously refunded, by reason of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any of the provisions or the Act and Rules made with intent to evade payment of service tax.

Under the circumstances, the question whether any service tax was not paid on account of fraud, wilful misstatement, collusion, suppression of facts or contravention of the provisions with intention to evade

payment of service tax is essentially a question of fact. On going through the facts the Tribunal came to a conclusion that there was mensrea, hence, there is no question of law involved.

Sub-section (4) of Section 73 provides for as under:-

"Nothing contained in sub-section (3) of Section 73 shall apply to a case where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of—

(a) Fraud; or

(b) Collusion; or

(c) Willful mis-statement; or

(d) Suppression of facts; or

(e) Contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax".

Therefore levying penalty under Section 78 is justifiable as the unpaid service tax was on account of wilful mis-statement or suppression of facts by the assessee, by virtue of sub-section (4) of Section 73, nothing stated in sub-section (3) would apply to such a case.

By virtue of proviso (1) to Section 78, if the tax demand is based on records maintained by the assessee the penalty would be 50% of otherwise imposable. Since such a contention was never raised before the Tribunal and since it is a mixed question of law and facts, the same could not be allowed to be raised before High Court for the first time. However, the appellant is at liberty to file a rectification application before the Tribunal.

Section 77 pertains to penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. Such penalty was imposed on the assessee for non-filing of the returns and for late payment of service tax.

Section 80 of the Act provides that notwithstanding anything contained in Section 76, Section 77 or Section 78, no penalty would be imposable when the assessee proves that there was reasonable cause for the failure to pay the tax. In the present case, assessee could not demonstrate the reasonable cause for not paying the tax and there was no plea of financial hardship, benefit of section 80 cannot be extended.

The Hon'ble High Court of Gujarat decided the issue in favour of the Revenue.

2. CBEC Circulars fixing monetary limits for adjudication are merely administrative; therefore, any order passed by Central Excise Officer is valid as per Section 11A of the Central Excise Act, 1944, even if same is in violation of monetary limits set out in CBEC Circulars. [Commissioner of Central Excise & Service Tax, Pondicherry vs. Ravishankar Industries (P.) Ltd. [2016] 66 taxmann.com 333 (Chennai - CESTAT)]

FACTS

Assessee, a job-worker, manufacturing excisable goods out of raw materials supplied by principal manufacturer and was paying duty on behalf of principal manufacturer.

Assistant Commissioner confirmed demand on ground of under-valuation. Commissioner (Appeals) set aside adjudication on ground that Assistant Commissioner did not have jurisdiction in view of monetary limits/ scope laid down in CBEC Circulars. Revenue filed an appeal against Commissioner (Appeals) order dated 1.7.2004.

HELD

Assessee argued that the issue is not only related to valuation, but also the issue of penalty under Rule 173Q. Contravention of Rules attracted. He submits that the issue does not fall within the jurisdiction of Assistant Commissioner.

The CESTAT was at the conclusion that the Commissioner (Appeals) in his impugned order has passed impugned order without any discussion on merits and set aside the order only on the grounds of jurisdiction. The Assistant Commissioner is competent to decide the valuation issue and demand the differential duty in view of judgment in *Pahwa Chemicals (P.) Ltd. (2005) taxmann.com 778 (SC)*, where the Hon'ble Supreme Court settled the issue setting that CBEC Circulars are merely administrative and any order passed by Central Excise Officer is valid as per Section 11A, even if same is in violation of monetary limits set out in CBEC Circulars and held that the order cannot be set aside for want of jurisdiction.

The Apex Court decision is squarely applicable in the present case. The Hon'ble Punjab and Haryana High Court in the case of *Saraswati Rubber Works (P.) Ltd. 2010 (259) ELT 368 (Punj. & Har.)* had allowed the revenue appeal by relying the Apex Court decision referred above. The same is applicable, as in the present case the issue is on valuation and redetermination of duty and imposition of penalty. Therefore the impugned order setting aside the original order on the jurisdiction is not justified. Accordingly, CESTAT set aside the impugned order and direct the Commissioner (Appeals) to decide the issue on merits.

CESTAT found that the case pertains to the period September 2000 to June 2001 and directed the Commissioner (Appeals) after following the principle of natural justice to decide the appeal within a period of 3 months from the date of the receipt of the order.

The case was decided in favour of the Revenue.

3. Where assessee has paid service tax on full contract price of a works contract and availed credit of inputs and services and there is no revenue loss to department, department cannot seek to deny credit relying upon valuation Rule 2A. ***[Commissioner of Central Excise, Customs & Service Tax, Vapi vs. S.S.V. Jiwani (2016) 66 taxmann.com 329 (Bombay)]***

FACTS

Assessee paid service tax on entire contract/construction price and took credit of inputs and input service. Department argued that assessee had to apply Rule 2A of Valuation Rules, 2006 and accordingly Service tax was payable as per said rule and credit has to be disallowed. After the entire exercise of the adjudicating authority was over and the Tribunal was called upon to do it again, it was then discovered that there was no revenue loss and therefore Tribunal held "on reading of provisions of Rule 2(l) of the CENVAT Credit Rules, 2004 it would indicate that assessee is eligible to avail CENVAT credit of inputs and input services which are used to provide 'output service' which would include 'setting up' of a factory premises". The Hon'ble Ahmedabad Tribunal further went on to state that "We also hold that the discharge of Service Tax liability at full rate by the appellant by applying provisions of Section 67 of the Finance Act, 1994 cannot be called in question by the Revenue". Department challenged the Tribunal order before Hon'ble Bombay High Court.

HELD

It is undisputed that assessee has paid full service tax @ 12.36%. However, Revenue noted that CENVAT Credit has been availed of on **inputs** and Input Services. The assessee claimed that having paid the service tax in full, the input credit can be availed. The Hon'ble High Court of Bombay decided the case in favour of the assesse. It held that when tax liability has been discharged on full contract price and credit has been taken, revenue was not put to loss.

4. Where assessee never filed any reply to notices and not even participated in adjudication hearings, then, no writ would be maintainable against *ex parte* adjudication order after expiry of time-limit for filing appeal to Commissioner (Appeals). ***[Nice Construction vs. Union of India (2016)66 taxmann.com 292 (Gujarat)]***

FACTS

The petitioner was engaged in construction activities. The petitioner was liable to pay service tax on such services provided. The petitioner, however, did not obtain registration under the service tax nor paid such tax. The respondent authorities, therefore, after carrying out investigation, issued a show cause notice dated 25.01.2012 calling upon the petitioner as to why unpaid service tax with interest and penalty be not recovered.

The petitioner filed no reply to such show cause notice. The adjudicating authority also fixed various dates for personal hearing. Despite which, no one appeared for the petitioner before the adjudicating authority. The authority, therefore, finally passed order dated 27.08.2013 confirming the duty demand with interest and penalties.

Statutorily, the Appellate Commissioner had no power to condone any delay beyond a period of 30 days. Admittedly, the petitioner filed such appeal with a delay of 48 days and thus, such appeal was filed 18 days beyond the maximum period, for which commissioner could ignore the delay. The petitioner's appeal, therefore, came to be dismissed only on the ground of non-condonable delay, upon which, the petitioner filed petition before Hon'ble Gujarat High Court in similar circumstances.

HELD

The statute requires and recognises that such appeals are filed promptly, within a period of limitation of 60 days prescribed, and, at any rate, not beyond 30 days thereafter.

The Hon'ble High Court quoting the its earlier decision in the case of *Amitara Industries Ltd. vs. Union of India 2014 (305) ELT 322 (Guj.),* and observed that if an aggrieved person knocks the door of High Court seeking redressal under writ jurisdiction for valid reasons, to obviate extraordinary hardship and injustice such challenge can be entertained even beyond the period of limitation. However, in the present case, quite apart from the petitioner presenting the appeal beyond the period what the Commissioner could condone, had simply not responded to the show cause notice issued by the adjudicating authority. After the receipt of show-cause notice, for months together, petitioner filed no reply. The order of adjudication came to be passed more than a year later. At no point of time, the petitioner either filed a reply or even participated in the adjudicating proceedings. The adjudicating authority has recorded that, several notices for personal hearing were issued under registered A.D., despite which, neither the petitioner nor its authorised representative ever appeared before him.

The Hon'ble High Court went on to observe that "surely, the law does not come to the aid of indolent, tardy or lethargic litigant. The conduct of the petitioner would dissuade the authorities from entertaining these petitions".

The Hon'ble High Court of Gujarat decided the issue in favour of the Revenue.

5. When Net Duty Demand (after adjusting credit) was reduced to NIL, then, since there was no outstanding duty payable, question of payment of Interest and Penalty would not arise. [*Vikash J. Shah vs. Commissioner (Appeals), Coimbatore (2016) 66 taxmann.com 116 (Madras)*]

FACTS

1. The Department demanded duty on mercerised cotton yarn during the period from 01.04.2003 to 01.11.2003.
2. The Tribunal upheld demand of duty but allowed credit and thus, net duty was NIL.
3. After some years, department issued letter demanding interest and penalty.
4. The appellate authority dismissed appeal on ground that letter was not appealable.
5. The assessee argued that since net duty was NIL, i.e., demand was already paid in form of availability of CENVAT credit, interest and penalty cannot be demanded.
6. The assessee also argued that impugned communication was in the nature of an order and was, therefore, appealable.
7. The department argued that interest and penalty are automatic and not discretionary.

HELD

The Hon'ble High Court of Madras held that

1. When the content of the communication was impregnated with missiles (demands), which may at any time, escape and hit against the assessees, then the assessees are entitled to challenge the same, though it is worded as a letter and not as an order.
2. When the input duty credit is allowed, the duty is deemed to have been paid on the original date of payment of duty. When input duty credit is allowed, then there is no question of any liability to pay further duty.
3. In the absence of the department challenging the findings of the Tribunal that there is no jurisdiction to deny CENVAT Credit, the revenue has no case and the department is not at liberty to demand either interest or penalty.
4. When the Central Excise Act, 1944 and the Rules framed thereunder, permit the adjustment of CENVAT Credit, and when the CENVAT Credit is granted, there is no outstanding duty payable and therefore, the question of payment of interest and penalty do not arise.

PHOTOS OF PUBLIC MEETING ON 02.03.2016

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

Form IV (See Rule 8)

MCTC Bulletin

1.	Place of Publication	:	MUMBAI-MAHARASHTRA
2.	Periodicity of its publication	:	Monthly
3.	Printer's Name & Nationality	:	Finesse Graphics & Printers Pvt. Ltd. INDIAN
	Address	:	309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013.
4.	Publisher's Name & Nationality	:	Kishor Vanjara — INDIAN
	Address	:	B/6, Star Manor Apartment, 1st Floor, Anand Road Extn, Malad (W), Mumbai-400 064.
5.	Editor's Name & Nationality	:	Kishor Vanjara — INDIAN
	Address	:	B/6, Star Manor Apartment, 1st Floor, Anand Road Extn, Malad (W), Mumbai-400 064.
6.	Names & Addresses of Individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital	:	N.A.

I, Kishor Vanjara hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 19th March 2016
Place : Mumbai

Kishor Vanjara
Signature of the Publisher

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161
• **Editor : Shri Kishor Vanjara**

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st March, 2016

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