

India
Tax
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Consumer Business & Retail newsletter

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Industry Updates

Consumer Goods

Consumer goods companies pass cost benefit to consumers

Many consumer goods and services companies have announced price cuts to boost sales after the government reduced excise duty and service tax. Most players have reduced prices of consumer durables and home appliances by 1-2%.

Emami inks Rs. 2,200 crore deal with West Bengal Industrial Development Corporation

The Emami Group has inked a deal with the West Bengal Industrial Development Corporation for setting up a Rs 2,200 crore greenfield pulp and paper manufacturing plant at Kultikri in West Midnapore district of West Bengal.

Retail

Retailers entering into revenue sharing models with real estate partners

With the current downturn taking its toll on retail firms and real estate majors alike, both are planning to enter into 'innovative partnerships' in 2009 to shore up revenues. Retail and realty companies are in discussions on revenue sharing-based rental models, at a time when the former is straddled with diminishing footfalls, and the latter, with sluggish demand in the short term.

Brandhouse Retails to bring in Oviessa

Brandhouse Retails which manages exclusive outlets for S.Kumars Nationwide brands recently announced a joint venture with Italy's 'fast fashion affordable' brand Oviessa. It plans to set up 190 stores in the next five years.

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Trent to launch Zara stores in India

The Tatas (through Trent) announced a 49:51 venture with the Inditex Group of Spain to launch the Zara stores in India. After entering a franchise agreement with the Sislely brand last year, Trent decided to go the joint venture route. It intends opening the first few Zara stores in New Delhi and Mumbai by the beginning of 2010.

M&M launches private labels at Mom & Me

Mahindra & Mahindra has decided to launch its own private label brands at its newly launched Mom & Me stores. It would also be bringing in a host of international brands in infant care and maternity products.

Direct Tax**Case laws**

- Where operations in India are limited only to purchase of goods for export, no part of income can be taxed in India. *Ikea Trading (HongKong) Ltd., In re (AAR)*.
- Expenditure incurred on leasehold improvement is allowable as revenue expenditure. *Amway India Enterprises v. Dy. CIT (Tribunal Delhi Bench)*.
- Payment of royalty for use of trade mark in connection with sourcing, marketing and sale of goods is tax deductible as revenue expenditure where it is clear from the license agreement that trademark, registration, application and goodwill associated with licensor remains exclusive property of the licensor only, and that the assessee (licensee) would not be having any right whatsoever to use the technical knowhow, trademark and any other related information on termination of such agreement. *ACIT v. Sierra Industries Enterprises Pvt Ltd (Tribunal Delhi Bench)*.

Indirect Tax**Service Tax****Notifications / Circulars**

- **Reduction in service tax rate.**

The rate of service tax has been reduced from 12.36% to 10.3% (including education cesses) with effect from 24 February 2009. The reduction in the rate of service tax is applicable to all categories of taxable services. *Notification No. 8/2009-ST dated 24 February 2009*.

- **Export of services – clarification on ‘service used outside India’.**

Various refund claims under Rule 5 of the CENVAT Credit Rules, 2005 have been denied on the ground that one of the conditions under Export of Service

Rules, 2005 ('Export Rules') i.e. 'used outside India' has not been fulfilled by the claimant. In this regards, the Government has clarified key aspects with regard to 'used outside India' under Export Rules in respect of various taxable services. In respect of taxable categories where the criteria under Export Rules is based on the location of service recipient, the Circular clarifies that 'service used outside India' should be interpreted to mean that benefit of the service should accrue outside India for promotion of business of the foreign company. *Circular No. 111/05/2009-ST dated 24 February 2009.*

- **Refund of service tax to exporters.**

The Central Government has amended Notification No. 41/2007-ST dated 6 October 2007 which deals with the refund of service tax to exporters of goods to the following effect:

- The condition of non-availment of drawback of service tax under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been omitted.
- Refund of service tax to commission agent will now be restricted to actual amount of service tax paid or service tax calculated on 10% (earlier 2%) of Free on Board (FOB) value of export goods, whichever is less.
- Exemption has been extended to 'Clearing and Forwarding Agents' Service' received by an exporter and used for export of goods.
- Exporter is now allowed to file refund claim on quarterly basis within six months (earlier 60 days) from the end of the relevant quarter during which the said goods have been exported.
- In case of export of 'Technical Testing and Analysis Service', where testing and analysis of the export goods is statutorily stipulated by domestic rules and not required by the buyer, exporter must furnish copy of such rules along with the claim.

Notification No. 32/2008-ST dated 18 November 2008 & Notification No. 33/2008-ST dated 7 December 2008.

- **Commission paid to Managing Directors / Directors not exigible to service tax.**

The CBEC has clarified that companies making payment to their officials e.g. Managing Directors/Directors under the nomenclature 'Commission' (which is over and above salary and other remuneration) would not be exigible to service tax under 'Business Auxiliary Service' so long as the activities performed by such officials are duties within the framework of the terms of employment. *Circular No. Dy.No.324/Comm (ST)/2008 dated 1 December 2008.*

Case laws

- **Service recipient is liable to pay service tax only from 18 April 2006 on the services rendered outside India.**

The Bombay High Court held that the service tax authorities had no authority to levy service tax on the service recipient in India under reverse charge mechanism prior to 18 April 2006 and it is only after the enactment of Section 66A that the taxable services provided from outside India are taxed in the hands of the Indian residents. *Indian National Shipowners Association vs. Union of India 2008-TIOL-633-HC-MUM-ST.*

Excise

Notifications / Circulars

- **Reduction in Excise duty**

The Central Government has reduced the Excise duty consecutively in two phases:

- Reduction in ad valorem rates of Excise duty w.e.f. 7 December 2008:
Prevailing ad valorem rates of Excise duty viz. 14%, 12% and 8% applicable to all products have been reduced by 4%. Thus, revised rates will be 10%, 8% and 4% respectively with effect from 7 December 2008. However, no change has been made in excise duty rates on petroleum products, tobacco products and items which do not attract duty at ad valorem rates.

In line with the reduction in excise duty rates by 4%, the Central Government has reduced the rate of abatement (calculated as percentage of retail sale price) for goods covered under MRP based assessment.

- Further reduction Excise duty w.e.f. 24 February 2009:

The rate of Excise duty for products attracting 10% duty has been further reduced to 8% with effect from 24 February 2009. There is no reduction in duty rates for goods attracting either 8% or 4%.

Notification Nos. 58/2008-CE dated 7 December 2008, 49/2008-CE (N.T.) dated 24 December 2008 & 4 /2009 – CE dated 24 February 2009.

- **Manufacturer supplying goods to SEZ developer can take credit without restriction.**

Rule 6(6) of CENVAT Rules has been amended to include goods cleared to a developer of SEZ for its authorised operations. The said rule carves out an exception by stating that a manufacturer of taxable and exempt goods shall not be governed by restrictions on credit availment in respect of duty free supplies made to SEZ unit, EOU, STP etc. *Notification No. 50/2008-CE (N.T.) dated 31 December 2008.*

- **SEZ manufacturers not liable to pay Additional Excise Duty (AED), Special Additional Excise Duty (SAED) & National Calamity Contingent Duty (NCCD) on export of goods.**

The CBEC has clarified that AED and SAED levied on motor spirit / high speed diesel and NCCD on certain goods, are not required to be paid for goods exported under bond from a manufacturing unit located in a SEZ. A manufacturer in a SEZ is also entitled to avail of the facility of export under claim for rebate as per Rule 18 of the Central Excise Rules in respect of such duties. *Circular No. 881/01/2009-CE dated 07 January 2009*

- **Clarification regarding reversal of CENVAT credit for trade discounts.**

The CBEC has clarified that proportionate amount of credit is not required to be reversed by the manufacturer where the supplier reduces the price or extends (post sale) trade discounts because:

- the discount is given on the value of inputs and not in respect of the duty paid by the supplier; and
- CENVAT credit scheme allows credit of 'duty paid' and not of 'duty payable' by the manufacturer.

In case duty paid is also reduced by the supplier along with reduction in price, only the reduced excise duty would be available as credit. *Circular No. 877/15/2008-CX dated 17 November 2008*

Case laws

- **Withdrawal of exemption to peripheral activities is prospective in operation.**

The Apex Court has held that Notification No. 1/2008-CE which withdraws the area based exemption to peripheral or incidental activities (packing, labelling etc.) is prospective in operation and will not affect existing units. Section 38A of the Central Excise Act, 1944 saves right accrued to the petitioners under original notification. *Gillette India Limited vs. Union of India 2009-TIOL-41-HC-HP-CX*

- **Rule 6(3)(b) inapplicable where amount equivalent to the CENVAT credit attributable to common inputs used in manufacture of exempted final products is paid prior to removal.**

The Tribunal has held that the provisions of Rule 6(3)(b) of the CENVAT Rules are not applicable when the amount equivalent to the CENVAT credit attributable to the common inputs used in, or in relation to, the manufacture of exempted final products has been paid prior to the removal of exempted final products from the factory. *Nicolas Piramel (India) Ltd. vs. CCE, Thane-I [2008(232) ELT 37 (Tri- LB)]*

- **One to one correlation between the input service and final product not required under Rule 5 of CENVAT Rules for refund of unutilized credit.**

The Tribunal has held that for refund claimed under Rule 5 of the CENVAT Rules there is no requirement of one to one correlation between the input service and the final product. Refund cannot be denied on the ground that input service is of general nature which could be used for several purposes. *Capiq Engineering Pvt. Ltd. vs. CCE 2008-TIOL-1967-CESTAT-AHM*

- **Credit of outward transportation available to manufacturer if ownership in goods transferred at buyer's premises.**

The Tribunal has held that if the excisable goods remain the property of manufacturer and are transported on his own risk up to the premises of the buyer for delivery, the service tax paid on outward transportation would be available to the manufacturer as credit. *Datafield India Pvt. Ltd. vs. CCE, Coimbatore 2009-TIOL-33-CESTAT-MAD*

- **Interest under Section 11AB is payable on the differential duty paid on price escalation.**

In deciding the applicability of interest u/s 11AB on differential paid on account of price escalation, the Tribunal has held that any amount received from the buyer on account of price revision is also part of 'the amount charged as price' and will form part of the transaction value on which duty has to be paid at the time of removal of goods. *Lucas TVS Ltd. Padi, Chennai vs. CCE, Chennai [2008-TIOL-1843-CESTAT-MAD-LB*

Customs

Notifications / Circulars

- **Utilization of duty credit scrip issued under the Export Promotion Scheme (EPS) for import of restricted items.**

Restricted items such as items related to national safety and security; seeds, plants and animals; certain insecticides, pharmaceuticals and chemicals etc., can also now be imported under the duty credit scrip issued under EPS such as Served From India Scheme, Vishesh Krushi and Gram Udyog Yojana Scheme, Target Plus Scheme, Focus Market Scheme, Focus Product Scheme. *Notification No. 15/2009 – Cus, dated 19 February 2009*

- **Exemption to goods imported under Hi-tech Product Export Promotion Scheme (HPEPS).**

Exemption from the payment of customs duty and additional duty of customs has been granted in respect of goods imported against duty credit scrip issued under the HPEPS in accordance with the FTP, subject to fulfilment of certain conditions. The benefit shall be available only in respect of duty credit scrip

issued against export of the products such as Cellular Phones, SIM Cards, Memory Cards, Still Image Video Cameras, Videophones, Point of Sale Terminals. *Notification No. 14/2009 – Cus, dated 19 February 2009*

Case laws

- **Drawback is allowable only if the goods re-exported are the goods which are identified as having been imported into India.**

The Ahmadabad High Court has clarified that drawback is allowable only if the goods re-exported are the goods which are identified as having been imported into India and upon which duty is paid at the time of import. Statute cannot be interpreted to resolve some practical difficulties that may arise in implementation, as that would lead to uncertainty and the interpretation would keep on changing with factual matrix. *Gujarat State Fertilizer Co. Ltd. & Another vs. Union of India & Another 2009-TIOL-37-HC-AHM-CUS*

VAT / CST

Notifications / Circulars / Announcements

- **Electronic application for declaration forms in West Bengal.**

Selective dealers are now required to make electronic application for obtaining way bills, declarations in Form C, Form F and certificates in Form E-I, Form E-II and Form H. The forms so applied shall be physically delivered to the principal place of business of the applicant dealer. A detailed procedure for obtaining such forms has been prescribed. Such selected dealers shall be informed in writing and their names shall be displayed in the Commercial Tax website. *Notification No. 1773-F.T dated 29 December 2008 read with Circular No. 04/2008 dated 29 December 2008*

- **Electronic submission of returns in Delhi.**

With effect from the tax period ending on 31 March 2009, dealers submitting half yearly returns are required to submit the returns electronically within 42 days from the end of the tax period. *Notification No: F.7(7)/Policy-III/VAT/2005-06/662 dated 17 December 2008*

- **Modifications in mode of payment of registration fees and mode of payment of TDS by unregistered employers in Maharashtra.**

Dealers seeking voluntary registration in Maharashtra are now required to pay the prescribed deposit and registration fees by the way of a demand draft drawn on a nationalized bank. Further, unregistered employers deducting tax at source are now required to make the payment of tax so deducted by the way of demand draft drawn on a nationalized bank. Also, the return of tax so deducted is required to be submitted to the newly designated authority only. *Trade Circular No.42 T of 2008 dated 26 December 2008*

- **Submission of copies of certain documents to the bank along with returns/ challans in Maharashtra.**

Registered dealers making payment of various statutory dues under the MVAT Act or the CST Act through the designated banks are now required to attach a copy of the specified documents such as TIN Allotment Letter, e-services Enrolment Acknowledgment, Certificate of Registration, Certificate of Enrolment along with the returns/challans to enable banks to verify their registration details. Further, dealers who were registered under the erstwhile BST Act, but have not obtained registration under the MVAT Act, are required to attach a copy of their Registration Certificate under the BST Act while making payment relating to pre-VAT period. *Circular No.7T of 2009 dated 5 February 2009.*

Case laws

- **Once the assessee is treated as eligible for exemption, benefit cannot be denied if the unit is put in the negative list at a later date.**

The High Court has held that once the assessee is treated as eligible for exemption from sales tax, it cannot be denied the benefit of investment in case the unit is put in the negative list at the later date. *Mahabir Vegetable Oils Pvt. Ltd., Karnal vs. State of Haryana and Others* 2008-VIL-42-HC-P&H

- **Department is bound to follow instruction/ clarification issued by the Commissioner .**

The Allahabad High Court held that the Department is bound by a Circular issued by the Commissioner even if it is not in consonance with the statutes, as long as the Circular is in existence and has not been withdrawn or rescinded. *Shiva Electronics (India) Pvt. Ltd. vs. Commissioner of Trade Tax [(2009) 19 VST 438]*

Foreign Trade Policy

Notifications / Circulars / Public Notice

- **Supplement to the Foreign Trade Policy 2004-09 (FTP).**

Various trade facilitation measures have been announced by the Ministry of Commerce & Industry by introducing amendments to the FTP and the Handbook of Procedures.

- **De-linking of issuance of credit scrip from realisation of export proceeds.**

Duty credit scrip under the Export Promotion Schemes such as Served From India Scheme, Focus Market Scheme, Focus Product Scheme, Hi-tech Product Export Promotion Scheme, Vishesh Krushi and Gram Udyog Yojana Scheme etc. to be issued without waiting for realization of export proceeds subject to the following conditions:

- Submission of proof of realization of export proceeds within the time limits prescribed by the Reserve Bank of India.
- Submission of Bank Guarantee/ Letter of Undertaking in accordance with the procedure to be prescribed.

This provision would be made applicable for applications made on or after 1 April 2009.

- **Duty Entitlement Pass Book (DEPB) Scheme**

Credit under DEPB Scheme to be extended for payment of duty on import of restricted items.

- **Advance Authorisation**

- Export obligation period against advance authorizations to be extended up to 36 months from the present limit of 24 months.
- Intermediate products can be supplied by the domestic manufacturers to the port for export by the ultimate exporter against advance intermediate authorization.
- Requirement of MODVAT/ CENVAT certificate in cases where customs notifications prescribed for payment of countervailing duty dispensed with for advance licenses issued prior to 1 April 2002.

- **Other Important Changes**

- Facility of reimbursement of Additional duty of Excise levied on fuel under the Finance Acts extended to EOUs.
- The threshold limit of export turnover for recognition as Premier Trading House to be reduced from Rs. 10,000 crores to Rs.7,500 crores.
- Procedural requirements relaxed for claiming Deemed Export Benefits.

- **Date of expiry of Foreign Trade Policy (FTP) 2004-09 extended indefinitely.**

It is clarified that the Annual Supplement of the FTP (2008-09) incorporating provisions relating to export and import of goods & services will remain in force from 1 April 2008 'till further amendments'. Prior to this amendment, the date for expiry was 31 March 2009 which has been extended indefinitely on account of general elections. *Notification No. 70/2008 dated 8 December 2008*

- **DEPB scheme to be operative till 31 December 2009.**

The DGFT has stated that the Duty Entitlement Pass Book (DEPB) Scheme which shall continue to be operative till 31 December 2009. *Public Notice No. 125/2008, dated 3 January 2009*

- **Exports of special products / sectors under Focus Product Scheme (FPS) entitled to duty credit scrip of 2.5% of FOB value of exports.**

For exports of special products / sectors, the duty credit scrip under the FPS will be 2.5% of FOB value of exports. Such products/sectors, along with their linked markets, and admissible date of exports will be notified in Hand Book of Procedures. *Notification No. 78/2008, dated 14 January 2009*

- **Computation of entitlement under Chapter 3 of FTP to be on the FOB value of exports inclusive of commissions and discounts.**

The Director General of Foreign Trade (DGFT) has clarified that under the various incentive schemes under Chapter 3 of the FTP 2004-09 (Promotional Measures), the computation of entitlement is to be done on the FOB value of exports inclusive of commissions and discounts, if any. *Policy Circular No. 51/2008, dated 6 January 2009*

- **Restricted items allowed to be imported under Advance Authorization Scheme where inputs always remain under actual user condition.**

The DGFT has clarified that restricted items (unless otherwise specifically mentioned) are allowed to be imported for export production under Advance Authorization Scheme, wherein inputs always remain under actual user condition even after completion of export obligation. *Policy Circular No. 54/2008, dated 9 January 2009*

- **Reduction in amount of composition fee payable on extension of export obligation period.**

The DGFT has amended provision relating to grant of extension in export obligation for the first two years. Request for grant of first extension in export obligation period may be considered on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled export obligation (earlier '2% of total duty saved under authorisation') or an enhancement in export obligation imposed to the extent of 10% of total export obligation imposed under authorization, as the case may be at the choice of exporter, for each year of extension sought. *Public Notice No. 126/2008, dated 6 January 2009*

Special Economic Zone (SEZ)

Amendment in SEZ Rules

- The scope of 'SEZ for multi products' includes SEZ where units may be set up for manufacture of two or more goods/ rendering of two or more services falling into one sector or falling into two or more sectors including trading & warehousing units.

Now the definition of 'SEZ for multi product' has been amended to include SEZ for more than one sector wherein units may be set-up for manufacture of goods or rendering of services falling into two or more sectors or any combination thereof including trading & warehousing units.

- The SEZ Rules grant exemption, drawback and concession of duty/tax on procurements by Developer, Co-developer and contractors appointed by Developer & Co-developer which are used to carry out authorized operations. This benefit is available provided all the documents bear the name of Developer, Co-developer, contractors.

These benefits are now extended to sub-contractors appointed by Developer & Co-developer.

- Developer or Co-developer is permitted to create infrastructure facilities for business or social purposes within the non-processing area. Such infrastructure facilities in the SEZ for business or social purposes are entitled for tax benefits. The amended Rules now provide that the Developer or Co-developer shall strive to provide adequate housing facilities not only for the management & office staff but also for workers of the SEZ units.
- The tax benefits on procurements by a SEZ Unit are not taken away if SEZ Unit imports the goods exported by it which are either found to be defective or damaged by the overseas buyer or the delivery of exported goods have not been taken by the overseas buyer, subject to prescribed conditions.
- The above provision is extended to cover two additional circumstances as mentioned below:
 - After export from SEZ Unit and acceptance of delivery, the payment is not forthcoming from the buyer as per agreed schedule
 - Return of goods by the buyer on account of change in fashion and other market factors
- The SEZ Rules have been amended in line with the recent changes in Foreign Trade Policy to provide that reimbursement of duty in lieu of Drawback or Duty Entitlement Pass Book credit against supply of goods by supplier in Domestic Tariff Area to SEZ Developer shall be admissible even if payment is made in Indian Rupees.
- SEZ Unit is allowed to export goods including gems & jewellery for display or sale in the permitted shops set up abroad or in the show rooms of their distributors or agents provided that unsold items within a period of 180 days from the date of its export are imported within 45 days.

The amended Rules provide that such unsold goods can be imported within 365 days from the date of export.

- The application form for setting up SEZ has been amended to provide additional information about the type and quality of land i.e. waste and barren land, single crop or double crop etc.

F. No. C.2/3/2008-SEZ dated 3 February 2009

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