

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NO.1 WILLIAMS ROAD, CONTONMENT, TRICHIRAPPALLI-620 001.

Trade Notice No.18/2006

Dated : 05-07-2006

Sub: Minutes of the meeting of the RAC held on 4-7-2006

The Regional Advisory Committee meeting of Trichy Central Excise Commissionerate for Organised, SSI and Service Tax Sectors was held on 4.7.2006 at 11.30 AM at Head Quarters Office, Trichy. Shri. Parminder Singh, Commissioner of Central Excise, Trichy presided over the meeting.

2. The following members of the Trade attended the meeting.

| Sl.No. | NAME OF THE RAC MEMBER S/SHRI. | ASSOCIATION / UNIT REPRESENTED |
|--------|--------------------------------|---|
| 01 | N.Ramaprasad | EID Parry (I) Ltd, Pugalur. |
| 02 | R. Saravanaperumal | Madras Cements Ltd., Dalavoi |
| 03 | M.Balraj | Handloom Export Cloth Manufacturerers Association, Karur. |
| 04 | S.Punnamoorthy | BHEL., Small Scale Industries Association, Trichy. |
| 05 | V.Alagappan | ICAI, Trichy. |
| 06 | G. Thirumurugan | Trichy Road Transport Association, Trichy. |
| 07 | T.R. Sundarajaran | Perambalur Sugar Mills Ltd., |
| 08 | Y.K.Raja Mohideen | Nataraj Ceramics, Dalmiapuram. |

3. Shri. V. Parthiban, representing Tamil Nadu Chewing Tobacco Mfrs. Association, Shri. C. Basker, representing Karur Industrial Estate Entrepreneurs Association and R.M.Bhairavan, representing Karaikal Industries Forum have intimated their inability to attend the meeting.

4. The following Departmental Officers were present.

S/Shri.

- i) Pappu Elango, Additional Commissioner (P & V), Headquarters, Trichy
- ii) M.G. Thamizhvalavan, Joint Commissioner (Tech), Headquarters, Trichy
- iii) P.A.Vijay, Assistant Commissioner (Tech.), Headquarters, Trichy.
- iv) A. Rajendran, Assistant Commissioner, Trichy-I Division.
- v) V.P.Veluswamy, Assistant Commissioner, Trichy-II Division.

5. At the outset, the Chairman welcomed all. The following points relating to Central Excise and Service Tax were taken up for discussion.

Central Excise:

Points 1 raised by The India Cements Ltd. and Madras Cements Ltd., Dalavoi.

As per Rule 30 of SEZ Rules, 2006, a Domestic Tariff Area supplier supplying goods to a Unit or Developer in SEZ should clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate under the cover of ARE-1 referred to in Notification No. 40/2001 – CE(N.T) dated 26.06.2001. Doubts arise whether the provisions of Rule 19 of Central Excise Rules, 2002, relating to exports can be read in conjunction with Rule 30 of Special Economic Zone, 2006.

We are manufacturers, duly registered with Central Excise. In this context the following points may be clarified:-

- (i) Whether we should execute Bond or Letter of Undertaking?
- (ii) Whether execution of separate Letter of undertaking for supply to each SEZ is required?
- (iii) Whether the time limit for filing the copy of ARE-1 forms to the concerned jurisdictional officer of the Central Excise is 45 days under SEZ Rules, 2006 or 6 months under Rule 19 of Central Excise Rules, 2002 ?

Reply: As LUT was introduced in lieu of Bond to facilitate exports and the assessee is eligible to opt for LUT instead of bond for other exports, execution of LUT is sufficient. Separate LUT for clearance to each SEZ is not required. As regards time limit for filing copy of ARE-1, as per Rule 30 of SEZ Rules 2006, 45 days is the time limit for filing endorsed copy of ARE-1. When goods are sent to SEZ availing special benefits, the time limit prescribed under these Rules prevail over Rule 19 of Central Excise Rules 2002.

Point 2 raised by the India Cements Ltd. and Madras Cements Ltd., Dalavoi.

Under Notification No. 67/1995 - CE dated 16.03.1995, goods falling under First Schedule of the Central Excise Tariff Act, 1985, [other than light diesel oil, HSD oil and motor spirit, commodity known as petrol], manufactured in a factory and used within the factory of production in or in relation to the manufacture of final products, are exempted. This exemption is not available when the final products are exempted. However this condition is relaxed in respect of the final products supplied to :-

- (a) a unit in free trade zone
- (b) a 100% EOU
- (c) a Software technology park
- (d) a Electronic Hardware Technology park supplies under Notification No. 108/1995.

In our case, the clinker is exempted under Notification No. 67/95 CE dated 16.03.1995 as the same is an input in the manufacture of Cement. Even though Cement is exempted under Notification No. 58/2003, we are of the view that the exemption for clinker (input) is not deniable because the supply of Cement (final product) to a SEZ is considered as deemed export.

Reply: This issue has been referred by the Chief Commissioner, Coimbatore to the Board. Clarification will be given on receipt of instructions from the Board.

Point 3 raised by Madras Cements Ltd., Dalavoi, Perambalur.

We are exporting Cement under Notification No. 42/2001 – CE (N.T) dated 26.06.2001 by executing Letter of Undertaking (Form UT-1) with the Assistant Commissioner. On account of some exigency, in a few cases, we divert the Export Cement to the domestic market after paying appropriate duty along with the interest. The rate of interest for the said clearance is 24% per annum, whereas interest payable under Section 11 AB for delay in payment of duty is only 13%. The anomaly may be regularized with prospective effect.

Reply: The issue will be taken up with the Board.

Service Tax :

Point 1 raised by M/s.The India Cements Ltd. Dalavoi.

Point 1: The term “input service” as defined under Rule 2(l) of Cenvat Credit Rules 2004, is any service used by the manufacturer either directly or indirectly, in or in relation to manufacture and clearance of final products **from place of removal** and includes services *interalia*, inward transportation of inputs or capital goods and outward transportation **upto place of removal .**

Reply : Input service means, used in or in relation to manufacture of final products and clearances of the goods from the place of removal. It is pertinent to note that whatever inputs service is used till clearances of goods from the place of removal is eligible for taking input service credit. The input services used upto clearance of goods from place of removal such as Handling of cargo and loading and unloading of goods etc. are eligible for taking input service credit. The definition of input service as defined in Sec.2 (1) of Cenvat Credit Rules can not be extended beyond the place of removal (such as factory gate, depot). The service rendered beyond place of removal i.e. for onward transportation of goods has to be treated as an output service and the service tax paid on freight for onward transportation of goods cannot be taken as input service credit.

Point 2 raised by M/s Perambalur Sugar Mills Ltd., Perambalur.

Cane transportation charges from the ryots beyond 10 kms are borne by the assesseees by way transport subsidy which could not be construed as “freight” for payment of Service Tax. The vehicles used for cane transportation are purely for agricultural purpose and not commercial purpose therefore are exempted from various Governmental taxes as per instructions of Tamil Nadu Govt. Therefore, it may be clarified whether Service Tax under GTA Services is leviable for such freight paid on the transportation of Sugar Cane.

Reply :

The liability to pay Service Tax lies with the person who pays or liable to pay freight vide Rule 2(d)(v) of Service Tax Rules,2004. As the assesseees is a sugar factory governed by the Factories Act,1948 and they are paying freight for transportation of cane, they have to pay Service Tax. There is no specific exemption in law for subsidies.

Section 65 (105) defines taxable service by goods transport agency to a customer by a goods transport agency in relation to transport of goods by road in a goods carriage. (goods carriage meaning assigned in Motor Vehicles Act) Further the act says “goods transport agency” means any “commercial concern”. However commercial concern is not defined in the Act, in the absence of which any business for consideration has to be taken as “commercial concern”. Though the assessee contends that the vehicles are agricultural vehicles and

exempted from State Government taxes, these are not specifically excluded from Service Tax law.

Moreover, the other Sugar factories in this Jurisdiction viz., M/s Arignar Anna Sugar Mills Ltd, Kurungulam , M/s Thiru Arooran Sugars, M/s Ambiga Sugars, are paying Service tax for cane transportation charges too. It is pertinent to mention that M/s Perambalur Sugar Mills and M/s AASM , Kurungulam are under the same management of TASCO of State Government. As such, the contention of the assessee is not acceptable.

6. No further points were raised. The Chairman thanked the gathering and concluded the meeting.

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Sd./xxxx
(M.G.THAMIZHVALAVAN)
JOINT COMMISSIONER (TECH).

To
As per mailing list II & III.

Copy submitted to: The Chief Commissioner of Central Excise, Coimbatore.

Copy to:- The Under Secretary, CBEC, CX-9 section, North Block, New Delhi.