

INDIRECT TAXES UPDATE -19

SERVICE TAX

New conditions specified for availing exemption from service tax for right to use packaged or canned software

Right to use packaged or canned software manufactured in India, *pre-packed in retail packages for single use* was exempt from service tax subject to certain conditions vide *Notification No. 2/2010 ST dated 27.02.2010*. Similarly, right to use packaged or canned software, *pre-packed in retail packages for single use* imported from outside India was exempt from service tax vide *Notification No. 17/2010 ST dated 27.02.2010*.

The above two notifications have been rescinded and a new notification has been issued providing the exemption to right to use *packaged or canned software* subject to certain new conditions. The new conditions *inter alia* specify that:

- (a) such software manufactured in India/imported from outside India should be valued as per the provisions of section 4A of the Central Excise Act, 1944 for the purpose of payment of excise duty/additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975;
- (b) appropriate excise duties/custom duties including additional duty of customs should be paid in respect of such software manufactured in India/imported from outside India;
- (c) a declaration to the effect that only the retail sale price of such software has been recovered from the customer should be made by the service provider on the invoice relating to such service.

[*Notification No. 51, 52 and 53 ST all dated 21.12.2010*]

Management, maintenance or repair of bridges, tunnels, dams, airports, railways and transport terminals exempted from service tax

Notification No. 24/2009 ST dated 27.07.2009 has been amended so as to extend the exemption hitherto available only in respect of management, maintenance or repair of roads to management, maintenance or repair of bridges, tunnels, dams, airports, railways and transport terminals as well.

[*Notification No. 54/2010 ST dated 21.12.2010*]

Exemption to transport of goods by the Government railways extended till March 2011

Service tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be applicable from April, 2011 instead of January, 2011. Consequently, exemption for transport of notified goods like defence

military equipments, railways equipment /materials, postal mail bags by rail and abatement of 70% of the gross amount charged for transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be effective from April 2011.

[Notification No. 55-57/2010 ST dated 21.12.2010].

Insurance services provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme exempt from service tax

Taxable services in relation to general insurance business provided under the 'Weather Based Crop Insurance Scheme' or the 'Modified National Agricultural Insurance Scheme', approved by the Government of India and Implemented by the Ministry of Agriculture have been exempted from the whole of service tax leviable thereon under section 66 of the Act.

[Notification No. 58/2010 ST dated 21.12.2010].

EXCISE DUTY

Excise duty to be paid on packaged or canned software on the basis of retail sale price with abatement of 15%

Consequent to the changes made in the conditions for availing exemption of service tax in respect of right to use of packaged or canned software, following amendments have been made in excise duty provisions applicable in respect of packaged or canned software:

- (a) *Notification No. 17/2010 CE dated 27.02.2010* providing exemption of excise duty on packaged or canned software has been withdrawn.
- (b) *Notification No. 49/2008-CE (NT) dated 24.12.2008* has been amended to provide for an abatement of 15% of excise duty from retail sale price of packaged or canned software.

[Notification Nos. 35/2010 CE dated 21.12.2010 and 30/2010 CE (NT) dated 21.12.2010]

Exemption available under Notification Nos. 49 and 50/2003 CE both dated 10.06.2003 would continue to be available even when an eligible unit makes any addition/modification in the plant or machinery or produces new products after the cut-off date

Notification Nos. 49/2003-CE & 50/2003- CE both dated 10.06.2003 provide full exemption from excise duties to goods cleared from industrial units in the states of Uttarakhand and Himachal Pradesh for a period of ten years from the date of commencement of commercial production. The exemption is available to new units set up or existing units which have undergone substantial expansion and commence commercial production before the cut-off date, that is, on or before 31.03.2010.

It has been clarified that in the following cases, the benefit of the excise duty exemption would continue to be available to eligible industrial units:

- a) Where a unit starts producing some new products after the cut-off date using plant and machinery installed up to the said cut-off date and without any further addition to the plant and machinery.
- b) Where the installed capacity in a particular unit is upgraded after the cut-off date, so as to increase the efficiency of the machinery by installing ancillary machines or replacement of some parts etc. but in such a way that it does not lead to increase in capacity of production.
- c) Where new dosage forms are manufactured after the cut-off date on the same line of production with the same machinery.
- d) Where a unit manufactures a new product by installing fresh plant, machinery or capital goods after the cut-off date.

However, the period of exemption would remain ten years and would not get extended on account of such modifications or additions under any circumstances.

[Circular No. 939/29/2010 CX dated 22.12.2010]

CUSTOMS DUTY

Withdrawal of exemption of customs duty from packaged or canned software

Consequent to the changes made in the conditions for availing exemption of service tax in respect of right to use of packaged or canned software, *Notification No. 31/2010-Cus. dated 27.02.2010* which provides exemption of customs duty on packaged or canned software has been withdrawn.

[Notification No. 126/2010 Cus. dated 21.12.2010]

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