

## INDIRECT TAXES UPDATE - 46

### SERVICE TAX

#### Association of dyeing units providing club or association service in relation to specified project exempted

Club or association service provided by an association of dyeing units in relation to the specified project has been exempted from the payment of service tax. The specified project means common facility set-up for treatment and recycling of effluents and solid waste discharged by dyeing units, with financial assistance from the central or state government.

*[Notification No. 42/2011-ST dated 25.07.2011]*

#### Computer Embroidery work carried out on job work is not covered under Business Auxiliary Service (BAS)

In response to a representation seeking clarification on the issue regarding leviability of service tax under Business Auxiliary Service (BAS) on computer embroidery work carried out on job work, the Central Board of Excise and Customs has clarified that embroidery work being a manufacturing activity falling under Chapter heading 5810 of the Central Excise Tariff Act, would not fall under BAS.

The definition of BAS as provided under Section 65 (105)(zzb) read with Section 65 (19) of the Finance Act, 1994, does not include any activity that amounts to manufacture of excisable goods. It also mentions that excisable goods has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 and manufacture has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act 1944.

Once the activity is a manufacturing activity of goods specified under Central Excise Tariff Act, the said activity is not covered in the purview of BAS. When the activity is not a taxable service, the provisions of *Notification No. 8/2005 - ST dated 01.03.2005* cannot be applied. The said notification can be applicable only in cases where the activity of the service provider does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944)

*[Dy. No.2305/Commr(ST)/2011 dated: July 15, 2011]*

### CUSTOMS DUTY

#### Introduction of a Legislative Amendment Bill to amend the Customs Act, 1962 with retrospective effect to validate Show Cause Notices issued for demand of customs

## duty

The Union Cabinet on July 21<sup>st</sup>, 2011 has given its approval for introducing a Legislative Amendment Bill to amend Section 28 of the Customs Act, 1962 to retrospectively recognize specified Customs officers as 'proper officers' for assessment of Customs duty thereby validating large number of Show Cause Notices involving substantial Customs revenue that are otherwise rendered invalid as a consequence of a judgement of the Hon'ble Supreme Court. The Legislative Amendment Bill to amend Section 28 of the Customs Act, 1962 will be introduced in the ensuing Monsoon Session of Parliament.

The proposed amendment of Section 28 of the Customs Act, 1962 (52 of 1962) would safeguard Government revenue involved in Show Cause Notices issued by specified Customs officers viz. officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates. Officers of DRI alone have issued such notices involving Customs duty to the tune of over Rs. 7,500 Crores. Also, tax evaders will not get benefited at the expense of the exchequer on a mere technical ground of jurisdiction. Finally, this would provide certainty in revenue matters by settling pending proceedings before various judicial and quasi-judicial authorities.

Hon'ble Supreme Court vide its order dated 18.02.2011 in the case of *Commissioner of Customs Vs. Sayed Ali & Anr. [C.A. Nos. 4294-4295 of 2002 along with C.A. Nos. 4603-4604 of 2005]* has held that only a Customs officer who has been assigned the specific functions of assessment and re-assessment of Customs duty in the jurisdictional area where the import has been effected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Customs Act, 1962 is competent to issue notice under Section 28 of the said Act. As a result, it is held that the Commissioners of Preventive Wing would not have jurisdiction to issue Show Cause Notice in the instant case since specific function of assessment and re-assessment was not assigned to him. This decision invalidates a large number of Show Cause Notices involving significant revenue thereby warranting remedial measures.

Source: [www.cbec.gov.in](http://www.cbec.gov.in), [www.tiol.com](http://www.tiol.com) and [www.pib.nic.in](http://www.pib.nic.in)

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### **Feedback**

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You can also write to:

Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.)India

Telephone Direct - +91 120 3045 906 Telephone Board - +91 120 3045900 Ext. 906