

INDIRECT TAXES UPDATE – 138

CENTRAL EXCISE

Process of Adjudication streamlined

Hon'ble Bombay High Court in the case of *Lanvin Synthetics Pvt. Ltd.* in its judgment dated 15.07.2015 quashed the Show Cause Notice dated 13.03.1997 and prohibited the department from passing any adjudication order as the Show Cause Notice was not adjudicated for 17 long years as no records were available. It was held that:

"If law postulates early end to such proceedings and there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department."

Earlier Hon'ble Supreme Court in the case of *Citedal Fine Pharmaceuticals* had held that in the absence of any period of limitation, it is settled law that every authority should exercise the power within a reasonable period.

Thus to streamline the existing process of adjudication CBEC vide *Instruction No. F.No.280/45/2015-CX.8A Dated: September 17, 2015* has provided that all the adjudicating authorities are required to pass adjudication orders within the prescribed time limits.

It has further been provided that possibility of scanning and digitization of all papers connected with adjudication and litigation matters should also be explored.

[*Instruction No. F.No.280/45/2015-CX.8A Dated: September 17, 2015*]

Binding nature of circular and instructions

CBEC vide *Circular No. 1006/13/2015-CX, Dated: September 21, 2015* has clarified the issues regarding the Board Circulars issued and which became contrary to the judgement delivered by Hon'ble Supreme Court later on. Generally, the issue faced is whether the field officers are bound by the existing circulars issued by the board which later became contrary to the judgement of the Supreme Court, during the period of date of judgement and the date on which such circulars are rescinded.

In this regard, reference is made to the judgement of the Hon'ble Supreme Court in case of *M/s Ratan Melting & Wire Industries* dated 14th October 2008 wherein it was held that:

"Circular and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not to a view expressed in a decision of this court or the High Court. Therefore, a circular which is contrary to

the statutory provisions has really no existence in law.

.. to lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by Supreme Court and the binding effect in terms of Article 141 of the Constitution"

Thus, the Circular clarifies that Board Circulars contrary to the judgements of Hon'ble Supreme Court become conflicting to the law and hence should not be followed.

All pending cases on the issue including ones in the Call-Book, which are to be decided after the date of the judgement should be decided in line with the law(s) laid by the Hon'ble Supreme Court or High Court, irrespective of whether the circular has been rescinded or not.

[Circular No. 1006/13/2015-CX, Dated: September 21, 2015]

Conditions and Procedure for EOU exports

CBEC vide Notification No. 20/2015-Central Excise (N.T.), Dated: September 24, 2015 has notified the conditions, safeguards and procedures for an Export Oriented Undertaking (EOU) producing or manufacturing specified goods which are cleared without payment of duty to a Domestic Tariff Area (DTA) unit for the purpose of their export out of India.

Conditions & Procedures:

- EOU is required to furnish a general bond of a sum equal to the duty chargeable on the specified goods to the Jurisdictional AC/DC, with 5% Bank Guarantee or as cash security. After furnishing the bond EOU is permitted to clear goods without payment of duty to DTA manufacturer. However, the EOU shall ensure that the debit in bond account does not exceed the credit available therein at any point of time.
- The specified goods shall be exported within 6 months from the date on which such goods were cleared from EOU or such extended period as may be granted by AC/DC.
- the shipping bill filed by the DTA exporter shall contain the name and I.E. Code of the DTA exporter along with the name and I.E. Code of the EOU as supporting manufacturer.
- The DTA exporter shall apply for export incentives based on the Freight on Board (FOB) value of the consignment exported minus the value of specified goods purchased from EOU.

Export of Goods

- The DTA exporter is required to export specified goods as part of export goods. The shipping bill filed by DTA should also contain name and address of the EOU, details of the specified goods and reference of invoice number under which the said specified goods were received from the EOU.
- The value of the specified goods should not be less than the value of these goods removed by EOU.
- The EOU is required to submit attested photocopy of the shipping bill (EP copy), Customs attested

copy of invoice and self-attested photocopy of bill of lading or air way bill to the jurisdictional Central Excise and Customs Superintendent for verification of export of the specified goods.

- The proof of export is required to be submitted by an EOU within a period of six months from the date of clearance of goods from the EOU.
- The Development Commissioner is required to take into account supply of specified goods for determining discharge of export obligation of EOU.

However, it is important to note that where the specified goods,

- are not received by the DTA Unit or
- are not exported by the DTA exporter within specified time or
- are lost or destroyed by natural causes or by unavoidable accidents or for any other reasons during transport from the place of procurement to the DTA exporter

then the EOU is liable to pay the duty leviable on specified goods along-with interest and penalty, if any, in accordance with the provisions of the Central Excise Act, 1944.

[Notification No. 20/2015-Central Excise (N.T.), Dated: September 24, 2015]

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