



NITYA'S INSIGHT

Issue 2 | Investigations regarding inclusion of value of drawings and designs in assessable value of goods for payment of excise duty

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Dear Reader,

This is to apprise you regarding recent investigations being undertaken by Directorate General of Goods and Services Tax Intelligence ('DGGSTI') on the captioned subject. We have captured the background, legal position and way forward in this regard as under:

Background

It is an industry practice (particularly automotive industry) wherein Original Equipment Manufacturers ('OEMs') provide specification drawings and designs to component manufacturers on free of cost ('FOC') basis. Notably, these drawings and designs are being shared only for providing the specifications or dimensions of the components.

The DGGSTI is conducting investigations on the pretext that the value of such FOC drawings and designs were required to be added in the assessable value of the components for payment of excise duty.

Legal background

Rule 6 read with Explanation 1 to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 ('Excise Valuation Rules') provided that the value of **drawings**, blue prints, technical maps and charts and similar items **used in the production of such goods** shall be added in assessable value. Thus, the usage of drawings in the production of goods is the key condition for adding their value in the assessable value.

The captioned matter had been a subject matter of litigation and debate for quite long. The issue was largely settled by the Tribunal in the case of ***CCE v. Bharat Forge Limited, 2000 (122) ELT 169 (Tri-Mum.)*** ('***Bharat Forge***'). In this case, the Tribunal whilst concluding the issue in favour of the assessee, observed that drawings provided to the assessee merely served as a specification and nothing else. The Tribunal rejected the department's contention that had the drawings not been there, the assessee would have incurred substantial expenditure in development of such drawings. Accordingly, it was held that the value of drawings should not be included in the assessable value. This ratio has also been decided in favour of the assessee in a recent judgement in the case of ***Technoweld Alloys India Private Limited v. CC, 2018 (8) TMI 1165-CESTAT CHENNAI***.

It is notable that there are contrary decisions of the Tribunal in the cases of ***CCE v. Tata Motors, 2009 (237) ELT 147 (Tri-Kol.)*** ('***Tata Motors***') and ***Indo Berolina Industries Private Limited v. CCE, 2015 (330) ELT 739 (Tri-Bom.)***. In these cases, the Tribunal held that the goods were incapable of being manufactured without use of the drawings and designs provided by the customer. Thus, the expenditure attributable to the same is liable to be included in the assessable value. These judgments distinguished ***Bharat Forge*** basis the ground that the said judgment was rendered under the *erstwhile* Central Excise (Valuation) Rules, 1975 wherein there was no specific explanation for inclusion of value of drawings.

It seems that DGGSTI is largely relying on the adverse judgment in the case of ***Tata Motors*** to demand excise duty from the taxpayers.

NITYA's Comments

Rule 6 of the Excise Valuation Rules applies only where the drawings and designs are used in production of goods. In most cases, OEMs share drawings and designs for communicating specification and dimensions of

the product. In these facts, value of drawings and designs should not be included in assessable value of components.

Considering the aggression of DGGSTI, the taxpayers need to prepare well before any discussions with the authorities. The taxpayers need to do detailed fact finding to provide correct and complete information to the authorities. The stating of correct facts is also important considering the likelihood of these investigations getting culminated into show cause notices raising excise duty demands.

It is pertinent to note that the issue being of universal application is expected to travel beyond the automotive industry and may get extended to consumer durable companies as well.

Trust you will find the update useful. In case of any clarifications, please feel free to revert.

Regards,

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