GALAXY OF CLARIFICATIONS & GRANERY OF COFUSIONS

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"For every simplification there is an equal and opposite complication"

- Newton's nightmare on Indian taxes

Though, I am not a student of science, at least I know something about action and reaction. Once the winds of change started in the Customs and Central Excise Department (not to forget the Service Tax!), there has been a windfall of Notifications, clarifications on the Notifications and clarifications on such clarifications! Most of these clarifications are issued by the Central Board of Excise and Customs, New Delhi the apex organization for indirect tax collection of this country and its Tax Research Unit (or TRU as it is popularly known) and, now, with the advent of omnipotent and omnipresent Service Tax, the Director General of Service Tax, Mumbai is also vying with the Board, in issuing these clarifications.

Now, I would like to take the pensive readers, through some of these clarifications, which has created / is creating / will create a havoc.

The Government of India, with an intention to reduce the project cost of the projects intended for supply of drinking water for human or animal consumption has issued an exemption vide Notification No.47/2002-CE, dated 06.09.2002 (now replaced by Notification No.6/2006 CE, dated 01.03.2006). This notification, *inter alia,* allows excise duty exemption for pipes required for obtaining raw water from its source to the Treatment Plant and for supply of treated water to its storage facility.

The CBEC, vide its Circular No.659/50/2002-CX, dated 6.9.2002 has clarified that the said exemption is not available for pipes used from storage to ultimate consumption point. The exact wording of the clarification is as under:

> *"Central Excise duty will also be exempt on pipes required for obtaining untreated (raw) water from its source to the plant, and for supplying the treated (potable drinking water) to the storage place from which it would be further applied for consumption of humans and animals"*

From the above, a reasonable conclusion can be drawn that there is no exemption is available for pipes used for distribution of potable water. Accordingly, the respective Public Health Departments, Municipal Corporations, Water Boards obtained the required (the only prerequisite condition of the Notification) certificates from the District Collector/Authority and, now, the principle and practice of claiming the excise exemption was well settled and established.

And then, the clarification to clarification has come. The Director (TRU), vide his letter inF.No.354/129/2005-TRU, dated 28.10.2005 addressed to all Chief Commissioners of Central Excise and Chief Commissioners of Central Excise & Customs has clarified that ***"Once the treated water is stored, there is no exemption beyond the first storage point".***

Immediately on receipt of the above clarification to clarification, the mighty lion woke-up and started pouncing on the hapless infrastructure companies. In one case, the exemption ends within the Water Treatment Plant (WTP) and the reasoning

extended by the department is that the raw-water is brought to the WTP and stored and after treatment, the potable water is also stored within the WTP and hence the exemption, in terms of clarification to clarification, ends at the first storage point. It is immaterial for the administration that the treated water has to go a very long way till its reaches the consumption point. A pipeline for bringing water to the parched cities and villages has to go sometimes more than 200 KM from the source. No one can plan a straight pipeline, without a couple of intermediate reservoirs/storage tanks for technical reasons, may be due to logistical reasons or even may be for maintaining required residual chlorine levels to make the water fit for human consumption. But, explaining these facts to the department goes like blowing horn in the deaf ears! The stereo recorded reply from the department is "No exemption after the first storage point, if you have any doubt, please refer the clarification to clarification and if you want to proceed, all the pipes, including those pipes which are already laid will be seized". Aggrieved trade has once again approached the Board and the issue is once again before the Board/TRU and everybody is waiting for a clarification to clarification to clarification!

Service Tax liability on the service provided by a Goods Transport Agency has been cast on whoever is paying the freight with effect from 01.01.2005 (may be a new year's gift). Accordingly, all companies, factories so on and so forth have started to pay this liability, which is now popularly known as 'stationery levy' by availing the 75% abatement under Notification No.32/2004-ST, dated 03.12.2004. The eligible organizations are also availing the benefit of CENVAT credit of duty paid on inward and outward transportation charges.

Yes. You guessed it right! There is a clarification from the Director General of Service Tax to all the Chief Commissioners, wherein, it was instructed that the abatement of 75% under Notification No.32/2004-ST is only available to the Goods Transport Agency, but not to the others. And the wildfire of audit objections, show cause notices started, unabated, and even today. Immediately, within a fortnight's time, the DGST issued another letter dated 11.4.2005 withdrawing the earlier clarification and a further clarification in F.NO.V/DGST/43-GTO/02/2005/2745, dated 3rd April, 2006 was also issued clarifying that the first clarification has been withdrawn. No effect at all on the department, which went on issuing notices.

The funnier aspect of the above clarifications is that one more clarification issued by the Board, Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), vide its Circular No.B1/6/2005-TRU, dated 27.7.2005, wherein, it has been very clearly clarified that in the event of freight being paid by the Consignor or Consignee, a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of Notification No. 12/2003-Service Tax, has been availed by them may suffice for the purpose of availment of abatement by the person liable to pay service tax. A plain reading of this clarification will clearly show that the abatement is available for the Consignor or the Consignee, as applicable. Even more interesting is that, another clarification was issued by the Chief Commissioner, Customs and Central Excise, Hyderabad Zone basing on the letter of withdrawal of the DGST, clarifying that the abatement is available to the Consignor or Consignee, as the case may be.

As per sub-section (1) of Section 69 of Chapter V of the Finance Act, 1994, as amended, every person liable to pay the service tax shall within such time and in

such manner and in such form as may be prescribed make an application for registration to the Superintendent of Central Excise and obtain the Registration. Sub-rule (2) of Rule 4 of Service Tax Rules, 1994 reads as:

> *" (2) Where an assessee is providing a taxable service from more than one premises or offices and has centralized billing systems or centralized accounting systems in respect of such service, and such centralized billing or centralized accounting systems are located in one or more offices or premises, he may, at his option, register such premises or offices from where such centralized billing or centralized accounting systems are located."*

Service Providers in the category of Consulting Engineers, Commercial and Industrial Construction Services, Residential Complex Services, Site Preparation Services are the ones who have joyfully welcomed the above provisions. It is quite normal for an Infrastructure Company to have sites all over the country and it is too difficult for them to obtain the Service Tax Registrations at each and every site and pay the Service Tax, when their Corporate Offices/Registered Offices are looking after the aspects of tendering, billing and accounting of money so received in a particular project. Some times a site from where the service is provided may be situated in remote parts and approaching the Service Tax authorities, may be difficult and cumbersome. In fact, a site office is one office, where you will have technocrats, engineers and workers and one among them will also officiate as an accountant helping the Project In charge. This is ground reality. Everybody is happy that Government has understood the ground realities.

As I already said above, every step of a simplification has to end with a complication. Now, if a Service Provider is having sites all over India, then he will submit an application for Centralized Registration with voluminous data/records. For an Infrastructure providing company, it is but natural, they have also to pay Service Tax liability as a Deemed Provider of Service under Goods Transport Agency Services. But, then, according to the DGST mandarins, the law does not permit Centralized Registration for Goods Transport Agency, in as much as sub-rule(2) of rule (4) says that "where an assessee is **providing a taxable service** from more than….." . Now, a Company, having Officers/sites wherein they are providing taxable Services including availment of GTA, can opt for individual registrations, irrespective of the fact that they are having centralized accounting/billing system or opt for centralized registration under the service tax provisions for the services provided by them, except GTA and obtain individual registrations for the limited purpose of GTA at all their sites and pay service tax both at the Corporate/Registered Office and at all the sites. Simple.

Before parting…

What are all these clarifications? Why there should be a clarification at all? Why can't we create a law, which can be (should be) understood by any person? Why a Notification should be couched in a language, which goes above the head of a person? Finally, why can't they give a clarification *in tandem* with the ground realities and when that day will come? (if at all they come!).