INTER-STATE COMMERCE & SECTION 4A BLOOMERS

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Section 4A under the Central Excise Act (CEA) and the Service tax are contemporary in many ways. They were born in the same year (1994) and are growing together. Undoubtedly, they are the most stellar benchmarks in the indirect tax administration. They share a rare distinction of contributing the highest revenue to the exchequer as well as bounty of litigations to the tax practitioners. That too, with the auto parts brought under the ambit of Section 4A of CEA, w.e.f 1/6/2006, the impact is boundless. In this piece we are trying to analyze a basic issue on the applicability of Section 4A of CEA.

Before getting into the issue, let us have a cursory glance about Section 4A of CEA. Under Central Excise law, where the goods are assessed to duty based on the value, there are two major types of valuation, namely, Transaction value under Section 4 and RSP based assessment under Section 4A of CEA. (Being insignificant, let us ignore the Tariff value assessment under Section 3). As said earlier, Section 4A is a new-age valuation, whereby, certain specified commodities are assessed to Central Excise duty based on their Retail Sale Price (RSP) after deducting the prescribed abatement. There is also a very important condition attached to the goods assessed under RSP that they shall be assessed to Excise duty based on RSP, only if such goods are required to be affixed with such RSP by either the Standards of Weights and Measures Act, 1976 (SWMA) or Rules made thereunder or by any other Indian law. In other words, if a commodity is not required to be affixed with RSP by the above Acts or Rules, then irrespective of the fact that such goods are notified under Section 4A of CEA, they are not assessed based on RSP, but shall be assessed based on their Transaction value under Section 4 of CEA.

Except the Medicaments of Chapter 30, which are assessed under Section 4A based on the Drugs and Cosmetics Act / Drug Price Control Order, rest of the commodities specified under Section 4A of CEA are assessed based on RSP, only if they are required to be affixed with such RSP, as per the provisions of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (SWMPCR). As per Rule 6 of the SWMPCR, all pre-packed commodities intended for retail sale shall be affixed with a list of declarations, of which, RSP is also one. We all have witnessed a variety of disputes based on the applicability of Section 4A for different kinds of packages, namely, bulk packs, wholesale packs, multi-piece packs, etc and if we proceed to address them, this piece shall be lengthier than the Holy Ramayana.

Having understood the relevant provisions, now let us move on to the crux of the issue. As sated above, any commodity to be assessed under Section 4A of CEA, there shall be a requirement under either the SWMA or under SWMPCR to be affixed with the RSP. As per Rule 1 (3) of the SWMPCR, the entire provisions of SWMPCR are applicable to the commodities in packaged form which are, or are intended or likely to be sold, distributed or delivered or offered or displayed for sale, distribution or delivery or stored for sale or for distribution or delivery, in the course of **inter-State trade and commerce.**

As per Section 2(m) of the SWMA, "inter-State trade or commerce" in relation to any weight or measure or other goods which are bought, sold, supplied, distributed or delivered by weight, measure or number MEANS the purchase, sale, supply, distribution or delivery which (i) occasions the movement of such weight, measure or

other goods from one State to another, or (ii) is effected by a transfer of documents of title to such weights, measure or other goods during its movement from one State to another.

There are two explanations appended to this definition, of which, Explanation II is relevant to the issue. Explanation II of Section 2(m) of SWMA reads as under;

> *"Explanation II: Where the movement of any such weight, measure or other goods commences and terminates in the same State, it shall not be deemed to be a movement of such weight, measure or other goods from one State to another merely by reason of the fact that in the course of such movement it passes through the territory of any other State;"*

From the above, it can be safely concluded that the provisions of SWMPCR are applicable only if there is an inter-State trade and commerce, which means that, **the provisions of SWMPCR are not applicable to the trade and commerce within the State. Thus, if the provisions of SWMPCR are not applicable, automatically, the provisions of Section 4A of CEA will also be not applicable for the goods traded within the State!**

Then every manufacturer of the goods specified under the Section 4A of CEA would do his first sale within the State to avoid the claws of valuation under Section 4A (RSP based) and shall assess their goods under Section 4 of CEA (Transaction value).

If the above interpretation is accepted there may be one bottleneck in it. As stated earlier, the scope of SWMPCR is applicable to the goods which are not only sold, distributed or delivered or offered for sale or displayed for sale in the course of inter-State trade or commerce, **but also the goods which are intended or likely to be** sold, distributed or delivered or offered or displayed for sale, distribution or delivery or stored for sale or for distribution or delivery, in the course of inter-State trade and commerce. That being the case, there may be an interpretation that, as the goods manufactured by the manufacturer are intended and/or likely to be sold throughout India which shall constitute an inter-State trade or commerce, the provisions of SWMPCR and hence the provisions of Section 4A shall apply to such goods. Again it shall only lead to another interpretational warfare! But there are possible commodities like bottled waters which have only sales within the State. Similarly the aerated waters like Coco-cola have their manufacturing plants all over the nation catering to the respective States. At least, in such cases, for the goods which are manufactured and sold within the State, the above interpretation can be resorted and for such goods the valuation under Section 4A of CEA can be avoided. This interpretation may not be the legal intention. It may also not be accepted by the Revenue Admirals. But we are sure that this interpretation shall definitely open another Pandora's Box!

Before Parting...

There are many significant amendments proposed to the SWMPCR vide Notification No.425 (E) Dt. 17.7.06. One of the major amendments proposed to SWMPCR is introduction of Rule 2A, by which the provisions of SWMPCR, henceforth, shall not apply to:

(a) packages of commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg; and

(b) packaged commodities meant for industrial consumers or institutional consumers:

and the term "Institutional consumer" means those consumers who buy packaged commodities directly from the manufacturers/packers for service industry like transportation [including airways, railways], hotel or any other similar service industry and "Industrial Consumer" means those consumers who buy packaged commodities directly from the manufacturers/packers for using the product in their industry for production, etc.'

These amendments shall take effect after the expiry of 180 days from the date of the Notification, **i.e., w.e.f 17/1/2007!**