

SOS from SSI
(P. Dwarakanath, Inspector of Central Excise)

Deviyon aur sajjano, Welcome back to Kaun Banega Karodpathi theen. Before me Mr. X is in the hot seat and he is one question away from Theen Karod rupiya. It is a historic occasion and our friend Mr. X, who is a Tax Expert, has crossed all hurdles and reached this stage. OK, Mr. X how are you feeling and please remember that you have reached a stage, where no person has tread before you and you have still one more help-line, that is Audience Poll is available and also please remember that you can leave the game and be satisfied with whatever you have won.

Mr. X : Sir, thank you and I am very nervous and at the same time excited to face the final challenge.

Mr.BB: OK, lets go. Computer Mahashay Mr. X is ready for the final question and here it is " How many times the Notification bearing No.175/86-CE, dated 1.3.1986 issued by the Ministry of Finance, Department of Revenue has been amended and what is its present avatar".

Mr.X : I quit.

Mr.BB: You don't even try to use the Audience Poll?

Mr.X : No use, I am aware of it and Thank you very much Sir.

Well, most of you are aware that there will never be any such situation. But, honestly speaking, how many of us are aware about the number of amendments that have been made to Notification NO.175/86-CE, dated 1.3.1986? It is like a river with so many turns and in its present avathar it is known as Notification No.8/2003-CE, having taken a "U" turn during the Union Budget 2005-06.

When the country attained Swaraj, some of the important questions before the then leadership is whether priority should be given to Agriculture or Industry. Furthering this dilemma is if Industry, which in any eventuality, they have to give, which Industry - Core Sector? Large and Medium Scale? Or Small Scale Sector? Initially, under the leadership of Pandit Nehru, we have opted for some of the biggest Agricultural Projects and Mega Industrial Units.

With the advent of seventies, the fallacy of not developing Medium scale and small scale Industry came out like a meteor and dazzled everybody, which has paved the way to various schemes, programmes to boost the small scale sector. One of the outcomes of these programmes is Notification No.175/86-CE, dated 1.3.1986 also popularly known as SSI Notification. At the same time, the Union Government has also introduced a revolutionary scheme called "Modified value added Tax" or "MODVAT", which in latter days, has become the bread, butter and cream of a host of Advocates and Tax Consultants. The Hon'ble Finance Minister, while introducing the new scheme for SSI Sector has submitted before the Parliament "*In respect of Small Scale Industry, the objective of reform is to ensure that the scheme of concessions is a ladder and not a lid. That is to say, such concessions should facilitate and encourage healthy growth of the small-scale units and prevent unnecessary fragmentation and bifurcation of units. With this end in view, I propose to introduce a New Scheme of Excise Concessions for small scale units*".

A noble idea for a noble cause. But, let us see how far the Government is able to really cater to the needs of the SSI Sector and how far the SSI Sector raised to the expectations of the Government.

There used to be different duty structures upto Rs.75 lakhs of value of clearances and after that full rate of duty and the facility is not available to a Unit, which crosses Rs.1.5 Crore turnover in a financial year. The unit can opt for Nil rate of duty and no Modvat credit or

Modvat credit and concessional rate of duty. There used to be a sop called Deemed credit, i.e., even if an SSI unit clears the goods at concessional rate of duty, the recipient unit can avail the credit of duty at full rate, as if full rate of duty was discharged. All the steps/sops were given to give a platform for the units under SSI to strengthen themselves and grow and by growing, it was believed that there will be an all-round development of the industry as well as society.

In order to create a peaceful environment for the entrepreneurs under SSI bandwagon, instructions such as no officer can visit an SSI unit without the explicit permission of the jurisdictional Assistant Commissioner of Central Excise, that an SSI unit can submit their excise return once in a quarter and duty payment is also deferred by ten more days etc. These steps by the Department, have, I am sure, gave a great fillip to the SSI sector.

Over a period of nearly twenty years, Notification No.175/86-CE, metamorphised taking a turn here and a turn there, like the ever flowing Ganges leaving mighty Himalayas (the intention of the government) and passing through the plains and taking everything into its stride. Slowly, but surely, these benefits have been increased and before the Union Budget 2004-05, they reached a stage where everyone was looking anxiously, with a small amount of glee towards the Finance Ministry for some more benefits. These expectations, have also multiplied with the assurances given by the Ministry that all steps will be taken to encourage industry under the umbrella of small scale sector.

Then, two Tsunamis hit the industries under SSI sector. One being the MRP based valuation on Pharmaceutical industries and the second being rescinding of Notification No.9/2003-CE, dated 1.3.2003.

Manufacturing dutiable finished goods under the aegis of Job-work basis is the greatest boon, not only to SSI sector, but also, I can emphatically add to MNCs/large pharma/biscuit units of this country. The aspect of valuation under this, has long back decided by the Hon'ble Supreme Court of India in the case of M/s. Ujagar Prints, now reverently known as a historical land mark of revenue collections. A number of large and medium industries, started depending on units under SSI sector for manufacture of their products under job work basis, which will not only help them in cutting their production costs drastically, but also allow them to put all their industrial hassles to complete rest. For example, by following the Apex Court's decision, now one has to simply calculate the cost of the raw materials, cost of packing materials and job work charges including job worker's profit and low behold you have your assessable value on which the CE duty liability is discharged, irrespective of the fact that the same is sold under an MRP, which can be some times 600 times more than your assessable value.

And then, by way of amendment to Section 4 of the Central Excise Act, 1944, a new Section 4A has been introduced and the new concept of MRP based valuation came into existence. One by one products are included in this ever-growing list and the first causality is the SSI units in the Biscuit industry. However, by virtue of reducing the duty on this particular product and by extending credit on Vanaspathy and by allowing credit accrued on AED to be used for discharging BED etc. this was absorbed by the Industry of both varieties. Then the real Tsunami struck, one fine day, Government brought P or P Medicaments under Chapter 30 of the Tariff under MRP based valuation and rescinded Notification No.9/2003-CE.

What is the effect ?

In pharma sector, the market in India is so huge, all the MNCs and giant pharma units cannot cover even a quarter of it and even this quarter is mainly Metro, urban and semi-urban. There is a gigantic untapped, unknown and to great extent uncared rural market consisting of semi-literate and illiterate masses. Like every human being they are also susceptible to ill health and these masses consume the highest number of regular medicines. Here, the units under the SSI and Loan Licensees swung into action by using Job work valuation or by opting for payment of 9.6% of CE duty and availing full CENVAT credit started manufacturing and marketing of general medicines, not any life saving drugs, mind

you. Since, the post manufacturing expenses are extremely high in this particular sector involving stockiest, wholesalers, super stockiest so and so forth and since, few worried about the ultimate consumer the MRPs are always on the highest side, most of the time higher than the MNC/big pharma unit prices.

Everyone is having a field day and then the MRP Tsunami struck with vengeance to plug the revenue leak. Then Notification No.9/2003-CE was rescinded, leaving scores of SSI entrepreneurs to their own problems. There are industries, which have genuinely used this particular Notification with proper care and made systematic and continuous progress and by taking away this facility, all their tax planning, growth planning etc., have shattered. There is a school of thought, which argues that encouragement of Industry does not mean that spoon feeding or go on giving sops to the industry and at some point of time this Notification needs to be rescinded. In such an eventuality, we should also argue for abolishing CVD on imported goods, after all the same is levied for creating level play grounds for Indian industry.

While steps to plug the known revenue leaks are highly laudable and which will infact encourage the real growth of Industry, the step taken by rescinding Notification No.9/2003-CE is a real dampener to the ever growing SSI industry sector.

Now, again we are in the month of Budget and like those characters in the movie Lagaan who will for ever looking towards the sky for the monsoon clouds, the entire SSI sector is looking towards Hasthina with hope for clouds full of benefits. The rumor mill is in full swing and some say the Rs.100 lac slab will go up to Rs.300 lacs, there will be an intermediatery duty structure of 8%, abatement in pharma will go upto 60% so on and so forth.

But, the need of the hour is nothing but total and honest retrospection by the mandarins of the Finance Ministry on the exemptions/benefits that are being extended to SSI Sector, by looking hard and deep in to all the aspects and coming out with answers as to how all these Notifications have helped the Industry and how, without yielding to probable revenue leaks, new, if not bold steps, can be initiated to really encourage real growth in the SSI Sector.