BLOOMERS & BLOOPERS

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As usual, this Budget also is a potpourri of both serenity and stupidity. To name a few...

Static Acceleration

Bloomer

Notification 6/2010-CE(NT) dated 27.2.2010, which comes into effect from 1st April 2010, provides for an amendment to the Cenvat Credit Rules, 2004 in Rule 3(5) whereby the depreciation provided for the removal of used capital goods on which cenvat credit has been taken, in relation to computers and computer peripherals, has been given an accelerated depreciation. This accelerated depreciation is inline with the depreciation under Foreign Trade Policy as well as the notifications relating to EOU.

Blooper

We feel, the need of the hour is to allow the benefit of cenvat credit on the computers and computer peripherals, which is presently denied as on office equipment under Rule 2(a)(A)(i) of the Cenvat Credit Rules, 2004, considering the inevitability of the computers in the manufacturing sector even as an office equipment, that too when we are moving towards GST.

XcuSE me

Bloomer

Excise and Customs notifications to the effect excluding the value relating to the "transfer of right to use" has been hithered to excluded with a condition that such software is for "commercial exploitation". Vide Notification 17/2010 CE dated 27.2.2010 and pari materia notification 31/2010 Cus dated 27.2.2010, this condition of "commercial exploitation" has been removed. Parallel amendments has been carried out in respect of information technology service under service tax to offset the impact. Further Notifications 2/2010 ST dated 27.2.2010 and 17/2010 ST dated 27.2.2010 has been issued, whereby, in respect of packaged/canned software, intended for single use, has been exempted from the whole of service tax, provided the manufacturer/importer has paid full excise/customs duties on the whole value of such software including the

value representing transfer of right to use such software. From the above, it could be seen that there are two options available for manufacturer/importer namely, (1) pay the entire customs/excise duties in full and not to pay any service tax by availing the benefit of the aforesaid service tax notification or (2) pay the excise/customs duties only on the residual value after excluding the value representing transfer of right to use of such software and pay service tax on such value representing transfer of right to use of software.

We, or for that matter any buyer, would prefer to buy the software as an IT software on payment of service tax and not as an excisable commodity for the following reasons:

a) If bought as an "IT Service", which would be an "input service", the cenvat credit of service tax paid can be availed in full in the first year itself and will not undergo the rigours of the definition of "capital goods" under rule 2(a) of the Rules, ibid.
b) The restriction of being received and used within the factory wil not apply and usage in any other business premises would not disentitle the cenvat credit.

Blooper

While the choice of the buyer of such software would be to pay service tax on such software, as a manufacturer/importer we are afraid to tow the above line, for the following reason:

1) To submit before two (in)different "taxing" authorities namely excise and service tax.
2) The notification 17/2010 CE dt 27.2.2010 provides for the exemption from the portion of the value representing the consideration paid or payable for transfer of right to use under Section 4 of the Central Excise Act (Similarly, under Section 14 of the Customs Act under notification 31/2010 Cus dated 27.2.2010). To us, arriving at the value of such service portion either under Section 4 of the Excise Act, or under Section 14 of the Customs Act would be nothing sort of adventures of *Indiana Jones*.

Clumsy Clemency

Bloomer

Clause 63 of the Finance Bill proposes to include an explanation to the (in)famous Section 11A(2B) of the Central Excise Act, whereby, it has been declared that no penalty shall be imposed in respect of payment of duty under the said sub section if paid along with the interest.

Blooper

When the section 11A(2B) itself immunes a person who has paid the duty along with interest, from issuance of a show cause notice, what is the necessity for inserting such an explanation?

Pawn Brokers

Bloomer

Clause 68 to 72 of the Finance Bill seeks to amend the relevant provisions of Cenvat Excise Rules / Cenvat Credit Rules, as it existed between 1st September 1996 till 31st March 2008, whereby suitable provisions have been proposed to demand an amount equal to proportionate credit attributable to the inputs/input services used in or in relation to the manufacture of exempted goods. This ascertainment is to be vouched by chartered accountant or a cost accountant. Suitable recovery mechanism has also been provided for. This is a benevolent retrospective amendment by the government accepting the principle laid down by the Hon'ble Supreme Court in the case of M/s Chandrapur Magnet Wires.

Blooper

The above provision carries an interest at the rate of 24% from the due date till the date of payment, when the recovery of cenvat credit on account of fraud, collusion, suppression and wilful misstatement of fact itself warrants interest at the rate of 13% under Rule 14 of CCR read with Section 11AB of the Central Excise Act. Is this a curse in disguise?

White Mischief

Bloomer

In another significant amendment to Rule 4(5B) of CCR, the cenvat credit in respect of jigs, fixtures, moulds and dies hitherto sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications has been proposed to be expanded to include any other manufacturer also, vide notification 6/2010 CE (NT) dated 27.2.2010.

Blooper

A perusal of the said proposed provision appears to exclude the condition that such jigs, fixtures, etc sent to any other manufacturer need not be for the production of goods "on principals behalf". This would lead to an unintended proposition, whereby, a possible mischief of availing cenvat credit on jigs, fixtures, etc and clearance of the same to any tom, dick or harry.

Crack Pack

Bloomer

By Notification 4/2010 CE dated 27.2.2010, the SSI exemption notification 8/2003 CE dated 1.3.2003 is amended to exclude "plastic containers and plastic bottles" from the vice of "brand name" under the said notification.

Blooper

All along, we were under the impression that the exclusion contained under clause 4(e) of the said SSI notification, is for all goods which are in the nature of packing materials and the mention of the goods there under were indicative/inclusive and not exhaustive. This impression is based on common sense and logic that the term "packing materials" is an universal set which includes various sub sets. Now, by this specific addition, the above impression is toppled, whereby only the specified goods under 4(e) would enjoy the immunity. What would be the logic for not excluding the entire gamut of packing materials from the vice of the said notification? Someone please tell us, how a glass bottle is different from a plastic bottle?