

Retrospective – Not always retrograde

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The retrospective amendments in taxation arena are often carried out either to correct the past mistakes or to overcome the effect of judicial pronouncements in favour of the trade. But this budget has made certain retrospective amendments which are assessee friendly.

Taxable Services provided to SEZ units are exempted from payment of service tax by virtue of different notifications during different period. Hence, these would constitute "exempted services" for the purpose of Rule 6 of the Cenvat Credit Rules, 2004 requiring reversal of credit / payment of 5 % (now amended as 6 %) on their value. But such services were immuned from the applicability of Rule 6, by way of insertion of sub rule 6A in rule 6 of CCR, 2004, with effect from 01.03.2011 vide Notification 3/2011 CE NT Dated 01.03.2011. Now, this rule has been given retrospective effect from 10.02.2006.

What is the sanctity for 10.02.2006?

Similarly, when excisable goods are cleared to SEZ units, the same was protected from the applicability of sub rules (1), (2) (3) and (4) of Rule 6, vide sub rule (6) thereof. But similar protection was not available if the goods are cleared to SEZ developers. But such protection for clearances to developers was introduced with effect from 31.12.2008 vide Notification 50/2008 CE NT Dated 31.12.2008. This amendment could have also been given retrospective effect. (But the Hon'ble Tribunal has held such amendment as retrospective in the case of Sujana Metal Products Ltd Vs CCE – 2011 (273) ELT 112.

Association formed by dyeing units for setting up and running of common effluent treatment plants were being issued with demands of service tax demands under club or association service. Notification 42/2011 ST Dated 25.07.2011, which provided for exemption from such levy, has been given retrospective effect from 16.06.2005.

While construction of roads is not covered under commercial or industrial construction service or works contract service, maintenance of such roads would be taxable under maintenance and repair services. Similarly, while construction of Government buildings is not covered under commercial or industrial construction service or works contract service, maintenance of such Government buildings would be taxable under maintenance and repair services. Notification 24/2009 ST Dated 27.07.2009 has been issued to provide for exemption for maintenance and repair of roads with effect from such date. Now, this exemption has been given retrospective effect from 16.06.2005. Similarly, maintenance and repair of Government buildings is also given retrospective effect from 16.06.2005 till negative list of services comes into effect.

A blunder was committed in Budget 2011 by placing parts, components and assemblies of certain motor vehicles and dumpers, etc. under the non-existent Third Schedule to the Central Excise Tariff Act instead of placing them under the Third Schedule to the Central Excise Act. This has now been corrected retrospectively.

Before parting...

All these positive retrospective amendments have been overshadowed by the retrospective amendment to overcome the effect of SC decision in Vodafone case!