

SHREE GURU KRIPA'S INSTITUTE OF MANAGEMENT

Gyaan Smrithi - e_newsletter of Gurukripa

Updates in Indirect Taxes – May 2013 Series

A. Customs Law

1. UOI Vs Adani Wilmar Ltd (2013) TIOL 16 (SC) CUS

GOI Vs Gujarat Ambuja Exports Ltd (2013) TIOL 15 (SC) CUS

Decision: Education Cess would be leviable ONLY on such portion of customs duty as is not exempt under the DEPB scheme and not on the full amount of duty.

Reasoning: DEPB Scheme is in the nature of exemption and is similar to Advance Licence Scheme. The argument that such scheme only allows credit of DEPB Scrips and not exemption of the duty liability is invalid.

2. Uniworth Textiles Ltd Vs CCE (2013) TIOL (SC) CUS

Decision: Mere non-payment of duties is not equivalent to collusion or willful misstatement or suppression of facts. Burden of proof of proving mala fide conduct of the assessee under Section 28 of the Customs Act lies with the Revenue.

Decision: All Acts of the assessee cannot be said to be with malafide intention. The Revenue has to prove that such acts are carried with a specific intention to evade duty.

B. Service Tax

3. Delhi Chit Fund Association vs Union of India [2013] 32 taxmann.com 332 (Delhi)

Decision: In a chit business, the subscription is tendered in any one of the forms of 'money' as defined in section 65B(33). Hence it is out of the purview of the definition of Service u/s 65B(44) and would not be subject to Service Tax. The Notification No 26/2012 w.e.f. 01.07.2012, which specifies the taxable value of the Service is also quashed.

Reasoning: The said transaction is a transaction in money. So considered, the transaction would fall within the exclusion part of the definition of 'service' as being merely a transaction in money. The services rendered by the foreman of the chit business for which a separate consideration is charged, can also not be considered an activity of the nature explained in the Explanation 2 to the said section 65b(44), and hence would be out of the clutches of the definition. There can be no levy of service tax on the footing that the services of a foreman of a chit business constitute a taxable service.

Comment: This decision of the High Court is in consonance with the earlier decision of the Andhra Pradesh High Court in the case of *A P Federation of Chit Funds vs UOI 2009 13 STR 350*, under the erstwhile provisions of the Finance Act, 1994.