



Bangalore Chamber of Industry and Commerce

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Taxation (Excise)

Circular No.135

30.12.2009

All Members

Dear Sirs,

We enclose herewith the following Circulars issued by the Government of India, Commissioner of Central Excise, Bangalore for your reference and record.

1. Circular No. 909/29/09-CX, F.No. 6/4/2009-DS (CX.1 & 4), dated 11th December 2009, F.No. 6/44/2000-CX1 - Inclusion of After Sale Service and Pre-delivery Inspection Charges in the assessable value.
2. Circular No. 910/30/2009 – CX, F No 6/3/2009-DS (CX 1 & 4), dated 16th December 2009 - Clarification regarding labelling and repacking etc. amounting to manufacture.

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

Circular No. 909/29/09-CX, F.No. 6/4/2009-DS (CX.1 & 4), dated 11th December 2009, F.No. 6/44/2000-CX1

Inclusion of After Sale Service and Pre-delivery Inspection Charges in the assessable value.

Please refer to the Minutes of the Conference of Chief Commissioners at Shillong on 30th and 31st October 2009 with regard to the issue mentioned above at point No 2.9.

2. On this issue, the Board has vide point No 7 in circular No. 643/34/2002-CX dated 1-7-2002 clarified as follows:

What about the cost of after sales service charges and pre delivery inspection (PDI) charges, incurred by the dealer during the warranty period ?	Since these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value.
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3. **The tribunal** in the case of Maruti Udyog Limited [2004 (170) E.L.T. 245 (Tri. - Del.)] held that these charges are not includible in the assessable value as these do not accrue to the manufacturer. But recently, the Tribunal has in the case of Maruti Udyog Ltd, [2009 (238) ELT 186 (T-Del)] doubted the correctness of its earlier decision referred to above, and referred the following question for consideration by a Larger Bench.

“Whether the charges towards pre-delivery inspection and after-sale-services received by dealers from buyers of the cars are to be included in the assessable value of cars in the light of the definition of ‘transaction value’ given in Section 4(3)(d) of the Central Excise Act.”

4. Further, the Supreme Court has in the case of Grasim Industries (C.A. No.3159/2004), referred the question as to whether the concept of transaction value under new Section 4 has made any material departure from deemed normal price concept of erstwhile Section 4(1)(a) of the Act for consideration of the Larger Bench.

5. In view of the above decisions referring the matter to larger bench, the conference was of the view that in this matter show cause notices should be issued demanding duty on the value of these activities, and transferred to Call Book pending the decision of Larger Bench on the issue.

6. The view expressed in the Chief Commissioners Conference has been accepted by the Board and accordingly you may direct the officers in your jurisdiction to continue issuing show cause notice and transfer them to call book, pending the decision of larger bench on the issue.

**Sd/-
Madan Mohan
Under Secretary (CX.1)**

Circular No. 910/30/2009 – CX, F No 6/3/2009-DS (CX 1 & 4), dated 16th December 2009

Clarification regarding labelling and repacking etc. amounting to manufacture.

It has been brought to the notice of Board that certain dealers are receiving liquid chemicals in bulk in containers and offloading the same at the dealers’ premises or godown into drums of 200ltrs for subsequent marketing of these materials to customers. Doubts have been raised as to whether such activity would amount to manufacture in terms of Chapter Note 10 to Chapter 29. As the said Chapter Note has been amended in 2008 budget, it has been contested that the said activity is covered by the present wordings of the Chapter note. The relevant portions of the chapter note reads as under:

Before Amendment (1.03.2008)

10. In relation to products of this Chapter, labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to ‘manufacture’.

After amendment (1.03.2008)

10. In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to ‘manufacture’.

2. Whether an operation amounts to repacking from bulk packs to retail packs or not, is a question to be decided on facts. However before examining the implication of the substitution of word 'and' by 'or', it is necessary to examine whether the activity itself is covered by term repacking from bulk packs to retail packs. Hence the first issue which needs to be decided is whether the "container/ lorry tanker" can be considered as bulk pack.

3. Tribunal has in the case of Ammonia Supply Co. [2001 (131) ELT 626 (T)], held that "As per Note quoted above, labelling or re-labelling of the container should take place at a time when the goods are packed from bulk packs to retail packs. The assessee was not getting Ammonia in bulk packs. They were getting it in tankers. Ammonia gas brought in tankers can never be termed as brought in bulk packs. So the assessee was not repacking the goods from bulk packs to retail packs. Accordingly the activity undertaken by the assessee in filling the smaller container from bulk container namely tankers can never fall within the fiction of manufacture as envisaged by Note 10 quoted above."

4. Therefore the tankers cannot be termed as bulk packs and therefore the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10.

**Sd/-
Madan Mohan
Under Secretary (CX 1)**

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