

CBEC: The law is an ass & cheating the hallmark of Indian bureaucracy-Part 1

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The collection of Excise duty on manufactured goods is the prime responsibility of the Excise department. The department is required to collect duty in respect of each & every removal/goods sold on the basis of Transaction Value, which is defined in the Act of Parliament. The Parliament thought it wise & essential to include the definition of Transaction Value in the Act of the Parliament. The definition of Transaction value clearly states that outward handling i.e. freight & insurance is part of the Transaction Value leaving no room for interpretation. Is it possible that CBEC can claim that the meaning of the words "Outward Handling" is not understood as this is an alien concept! Even If it is accepted that the CBEC has not understood the S 4 (d) of The C. Ex. Act, 1944 or meaning of the words "Outward Handling" then is it not incumbent on the CBEC to seek clarification in the matter as this is one of the basic/central requirements of the law? Why then, the CBEC is simply resorting to challenging/defying the Act of Parliament? If the CBEC has not even understood the S 4 (d) of The C. Ex. Act, 1944 then how can the CBEC ensure that the same is being complied with? Is it not then true that a galaxy sized loophole in the name of interpretation of the S 4 (d) of The C. Ex. Act, 1944 is purposefully created in reference to the Transaction Value by the CBEC so that officials down the line have way to hold assesses to ransom/rent seeking to perpetuate corruption! Why the CBEC should cheat the citizen's of this country. Why the CBEC should stoop so low & even take the Parliament for a ride? In layman's terms, the CBEC says that whether freight & insurance are part of the transaction value is not clearly specified in the Transaction Value definition contained in S 4 (d) of The C. Ex. Act, 1944. Can anyone agree with this stupidity?

The CBEC is out rightly cheating the Indian citizens by distorting the transaction value therefore to get the correct information, RTI application was filed with the CBEC. The RTI application requested the following information:

Quote:

PREAMBLE:

1.Please see S 4 (d) of the Central Excise Act,1944, reads as under:

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods.]

*Emphasis supplied.

Please note that it is pertinent to point out the choice of words in the definition of transaction value wherein it is categorical that transaction value does not include amount of duty of excise, sales tax and other taxes.

On the other hand in terms of inclusion, it says any amount whether payable at the time of the sale or at any other time, including, but not limited to, i.e. the statute makes it absolutely clear that this is illustrative & not exhaustive list. The outward handling finds a mention in the illustrative list contained in the statute leaves no room for any doubt that freight & insurance are part of the transaction value.

Please note that S 4 (d) of the Central Excise Act, 1944 is required to be implemented in each & every removal from the factory therefore it cannot be said that this information is not available. The law is implemented on everyday basis & applicable in respect of each & every removal therefore proper replies need to be given.

Now, please provide the following information:

1. Please let me have the information that whether as per the S 4 (d) of the Central Excise Act, 1944, freight & insurance are included in the transaction value for the purpose of assessment & discharge of duty. If the answer is No then please specify the underlying legal provision.
2. Please let me have the information whether the S 4 (d) of the Central Excise Act, 1944 has been amended/modified/repealed by way of any notification/circular/instruction issued by the CBEC so as to exclude freight & insurance from the transaction value. If yes, please provide specific information such as No. & date of issue of the legal provision.
3. Please let me have the information whether the CBEC can modify/amend/repeal the S 4 (d) of the Central Excise Act, 1944 i.e. Act of Parliament. If the answer is Yes then please specify the underlying legal provision.
4. Please let me have the information whether the field formations are required to include the freight & insurance as per the S 4 (d) of the Central Excise Act, 1944 in the transaction value for the payment of the C. Ex. duty. Are there any exceptions provisioned in the law? If yes, please give specific details thereof.
5. Please let me know whether the CBEC is bound to honour & implement the act of the Parliament viz. S 4 (d) of the Central Excise Act, 1944. If not, then please give the details of any such provision in the law.
6. Please specify if there is any exception in relation to the S 4 (d) of the Central Excise Act, 1944 by way of which freight & insurance is excluded from the transaction value. If the answer is Yes then please specify the underlying legal provision.

Unquote:

Thus from the contents of the RTI Application it is crystal clear that the Act of Parliament carries the definition of the Transaction Value, which is required to be implemented by the CBEC but then what is the reply of the CBEC to the information is not only shocking but disgusting & shameful.

The reply of the CPIO, CBEC reads as under:

Quote:

In the RTI application, certain questions regarding determination of transaction value of goods for the purpose of payment Central Excise Duty have been asked. The questions include the scope & interpretation of S 4 (d) of the Central Excise Act, 2005. The applicant wants to know whether Freight & Insurance are

required to be added to the transaction value. These questions cannot be called "Information" as defined in S 2 (f) of the RTI Act, 2005. Only information available in material form as defined in S 2 (f) of the RTI Act, 2005 can be provided under RTI Act, 2005.

Unquote:

However, any person with common sense will very well understand that reply of the CPIO, CBEC is a blatant attempt to protect rent seeking prevailing in the system for the following reasons:

1. The first query is about S 4 (d) of the C. Ex. Act in relation to the freight & insurance being part of the transaction value or not? The S 4 (d) of the C. Ex. Act clearly states that outward handling is part of the transaction value. Therefore, the Act of the Parliament is crystal clear. Therefore, why is the CPIO trying to cheat the public by saying that information is not available? It is really very shameful & disgusting that at the level of the CBEC, such attempts are made by the CPIO. It is pertinent to point out that the CBEC is obligated in terms of the law to implement the Act of the Parliament & if there is no clarity in S 4 (d) of the C. Ex. Act then it is the bounden duty of the CBEC to seek clarification from the Parliament because otherwise how can the law be implemented. On the other hand if the CBEC does not have clarity than on what basis they have made the subordinate legislation i.e. Rules, Notifications, circulars etc. Is it not a joke that CBEC does not know what is there in the Act of Parliament but then they can vouch that they are implementing the Act of the Parliament. Is the CPIO, CBEC trying to say that the CBEC is not required to implement the S 4 (d) of the C. Ex. Act & that can be done without knowing what the S 4 (d) of the C. Ex. Act means.

Alternatively speaking, freight & insurance referred to as outward handling in the S 4 (d) of the C. Ex. Act is part of the transaction value therefore the CPIO cannot refrain from giving a categorical reply. There is no question of interpretation being involved in this query because transaction value is put to use in case of each & every removal from a manufacturing facility. If the CBEC does not know whether freight & insurance is part of the transaction value for the discharge of duty then how the clearances are permitted by the field formations based on the transaction value! At the very least, the CPIO should understand the implication of what is being given as a reply.

Last but not the least important is the fact that it was categorically brought to the notice of the CPIO about the choice of words used in the Act of the Parliament leaving no room for interpretation of whatsoever nature because outward handling is specifically mentioned as part of the transaction cost. In spite of all this, the CPIO is indulging into mischief & the same is unacceptable. Is the CPIO, CBEC trying to then say that RTI Act is a piece of trash & the complete C. Ex. Act & subordinate legislation is a matter of interpretation therefore no information can be given to the applicant. Can such a poor joke be acceptable?

2. The second query is once again a question of fact & the CPIO cannot deny giving a categorical reply. The query is that whether the S 4 (d) the C. Ex. Act, 1944 is amended/modified/repealed by way of any notification/circular/instruction issued by the CBEC so as to exclude freight & insurance from the transaction value. Now is it not once again a joke that the CPIO refrains from giving a reply. The CPIO has got everything available with the CBEC & therefore required to give the true position that whether any amendment/modification/repeal has been carried out by the CBEC or not by way of any notification/circular/instruction etc. Further, the CPIO is requested to give the details of notification/circular/instruction in case the same has been carried out. Under, these circumstances, how can the CPIO deny the information & harass the applicant for no reason. It is in the regular course of the job & responsibility, the CPIO is required to be aware of the legal provisions & give appropriate replies instead of harassing the applicant. If the CPIO does not have the reply then the CPIO needs to seek the information from the Tax Research Unit (TRU) existing in the CBEC but under any circumstances, the information cannot

be denied. Is the CPIO, CBEC trying to say that without issuing any rule/notification/circular/instruction, the S 4 (d) the C. Ex. Act, 1944 is automatically implemented?

3. The third query is once again a question of fact & the CPIO cannot deny giving a categorical reply. The query is that whether the CBEC can modify/amend/repeal the S 4 (d) of the Central Excise Act, 1944 i.e. Act of Parliament. Any sane person will understand that in terms of the law, authority has to be vested legally to take action therefore the CPIO needs to specify that whether the CBEC is vested with the legal authority to modify/amend/repeal the Act of Parliament. The Act of Parliament bestows authority & responsibility on the CBEC to implement the Central Excise Act, 1944 therefore the implementing authority cannot walk out of the responsibility to specify that what they are implementing in terms of the Act of the Parliament. If there is lack of understanding then they need to obtain clarification from the Parliament in terms of the legal obligation. This information to the CBEC cannot be denied by the Parliament to the CBEC therefore the same cannot be denied to the RTI applicant. This question of fact needs to be replied in respect of the legal provisions & the CPIO cannot refrain from giving the information.

4. The query No. 4 relates to the fact that how are the field formations required to comply with the S 4 (d) of the C. Ex. Act of the C. Ex. Act, 1944 i.e. whether they are required to include the freight & insurance to arrive at the transaction value for the payment of duty. The field formations are required to follow the law laid down by the Parliament/CBEC. The CBEC is the administrative authority controlling the field formations. Therefore, under no circumstances, the CPIO of the CBEC can say that the CBEC does not know what the field formations are required to implement in terms of the S 4 (d) of the C. Ex. Act, 1944. The appellate authority will agree that such mischief to harass the applicant by not giving the appropriate information is unacceptable. Please note that the CBEC is vested with the authority to make the Rules/Notifications & issue Circulars & instructions to comply with the law laid down by the Parliament then under these circumstances, the CBEC cannot walk out of the accountability/responsibility when the information is asked that how the field formations are required to comply with the S 4 (d) of the C. Ex. Act, 1944 because the CBEC is directly responsible & accountable to ensure that. Transaction value concept has to be applied to every removal from the manufacturer's premise therefore there is no way that the CPIO can say that CBEC does not know what the law is.

5. The fifth query is once again a question of fact & the CPIO cannot deny giving a categorical reply. The query is that whether the CBEC is bound to honour the Act of the Parliament. Is the CPIO trying to say that there is no information available that what the hierarchy is & that the Act of the Parliament is unquestionable & needs to be implemented? If the CPIO is not aware of this even then the moot question, which arises is that how can the government continue to employ such officials who do not even know the basics & why such liability be tolerated in the system? Why the CPIO is trying to harass the applicant by adopting an attitude of not giving the information as called for. Is the CPIO not aware of the basic fact that the C. Ex. Act, 1944 is Supreme in terms of the Excise law & the CBEC is bound to honour that by putting in the subordinate rules/notifications in place? Why the CPIO gives an impression that even if the name of the Chairman, CBEC is asked then the reply will be that the information is interpretation & not available. If this is the position at the level of the CPIO, CBEC then sooner or later this country is doomed. This joke then leads to rent seeking because then it means that the assessee should take care of the officials to get favourable orders because nothing appears in a transparent & clear cut manner but everything is subject to interpretation. This effectively means that there is no law but only whimsical interpretation will prevail depending upon what the assessee does for the official concerned.

6. The query No. 6, once again relates to the fact that the S 4 (d) of the C. Ex. Act of the C. Ex. Act, 1944 includes the freight & insurance to arrive at the transaction value for the payment of duty but the CBEC may have come out with certain exceptions giving the operative conditions to implement the law in a rational

manner. All the Rules/Notifications/Circulars/instructions in this regard are in the domain of the CBEC/CPIO therefore the CPIO cannot deny giving the requested information. The idiocy that though the CBEC is the implementer & administrator of the C. Ex. Act, 1944 but no information is available is the most ridiculous reply & that will be clear to any person with little common sense.

Is the CPIO not even able to comprehend that an assessee comes to the CBEC to know what is the transaction value on which the duty is to be paid then is the CBEC bound in terms of the law to give this information to the assessee or not. Can the CBEC walk out of this responsibility/accountability! Then why the CPIO is cracking a joke by posturing that we are the lords & not required to give any information. If the CPIO will not give the information then what is he supposed to be doing? Though law is not a rational code but then CPIO cannot send even the common sense for a toss? Is there a Tax Research Unit in the CBEC? Is there a Member C. Ex. in the CBEC? Is there a Chairman in the CBEC? Is the CPIO trying to say that all these are show pieces & white elephants who owe no responsibility & accountability of whatsoever nature & the bureaucracy just exists to make the life miserable for the ordinary citizens of this country? Is the CBEC trying to say that transaction value is subject to interpretation therefore it offers a fertile ground for rent seeking & clogging the courts with cases so as to drain those assesses who do not agree with the officials of the department. In effect, one officer of the department can include the freight & insurance in the transaction value to pay duty & the other may not because there is no law as such.

If the CBEC cannot say that whether freight & insurance is part of the transaction cost or not & this is to be decided by the Supreme Court then what is the use of the CBEC & why the same should not be closed. Is the CPIO CBEC not aware that the courts in country have stated that "Let the courts decide attitude is unacceptable" & there needs to be transparency & clarity in the law.

Notwithstanding the above submissions, please note that Any public authority shall provide reasons for its administrative or quasi judicial decisions S 4 (1) d) of the RTI Act) & also provide all relevant facts while formulating important policies or announcing the decisions (S 4 (1) c) of the RTI Act. The CBEC Rules/Notification/circular etc. is an administrative decision of the CBEC therefore the CBEC is under obligation to provide the requested information. The transaction value is to be used for the payment of duty in respect of all removals & the CBEC is required to ensure that. The denial of information is therefore absolutely wrong. Is the CPIO oblivious of the guidelines issued by the CVC that there needs to be transparency & clarity in the law so that the users do not suffer?

The CIC has oft repeated that giving information is the rule so as to infuse responsibility & accountability. However, the CPIO does not seem to agree with that principle.

The C. Ex. law contains specific provision to the effect that the instructions may be brought to the notice of the trade by issue of the Public Notice. A Standing Order may also be issued in this behalf for the guidance of the departmental officers. In case of any difficulty, the matter may please be brought to the notice of the Ministry. Therefore it is absolutely clear that the department is responsible for framing the law in a manner that there is absolutely no ambiguity & if the applicant approaches them for clarification then the department is required to provide the same. Then why is the CBEC trying to abdicate the responsibility. Thus any way you look at it, the CPIO, CBEC is legally bound in terms of the law to provide the requisite information.

However, the RTI queries & the reply of the CPIO, CBEC compels me to conclude that the law is an ass & cheating the hallmark of Indian bureaucracy. Under, these circumstances, can this nation progress & be free of corruption ever? The height of stupidity has no limits & duty is collected by the CBEC on transaction without knowing what the transaction value is in respect of all the removals/goods sold by any manufacturing facility in India because the law is an ass & cheating the hallmark of Indian bureaucracy. However, this is not

the end of the story. More will follow.

rajiv.pec@gmail.com