Flash on Taxability of Packaged or Canned Software

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Central Board of Excise & Customs ('CBEC') has come out with the series of notifications regarding the applicability of indirect taxes in relation to packaged or canned software *(Refer notifications no. 126/2010-Cus-21.12.2010, 30/2010-CX-21.12.2010, 35/2001-CX-21.12.2010, 51/2010-S.T.-21.12.2010, 52/2010-S.T.-21.12.2010 and 53/2010-S.T.-21.12.2010)*. These notifications have altered the present basis of levying excise duty from transaction value under Section 4 of Central Excise Act, 1944 ('CEA') to MRP under Section 4A of CEA.

In light of these notifications, packaged or canned software will be exempt from levy of service tax provided an assessee has paid appropriate duties of customs and duties of excise (in accordance with Section 4A of CEA with a prescribed abatement of 15%) at time of import or manufacture respectively.

Accordingly, the position regarding applicability of taxes has been clarified as far as the software meant for retail sales are concerned. However, in cases where the packaged or canned software is either not covered under the Standard Weights and Measurement (PC) Rules, 1977 or where the value of right to use software is not known at the time of import or manufacture, there is a potential exposure of dual taxation. Thus, in these circumstances the underlying fact pattern needs to be analyzed in greater detail and necessary precautions need to take to arrive at the appropriate base for levying the respective taxes and duties.

Conclusion

The Government intended to treat the packaged or canned software on media as goods for levying federal duties. However, certain specific aspects (as highlighted above) need to be analysed in greater detail with respect to each transaction to avoid the risk of double taxation.

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