

### **CLARIFICATION ON MOBILE AND CELLULAR PHONE FOR CVD EXEMPTION UNDER NOTIFICATION NO. 12/2012 OF CENTRAL EXCISE**

Central Board of Excise and Customs on 21st July 2015 has issued a clarification for CVD exemption on Mobile and Cellular phone and has amended the notification no. 12/2012 dated March 17, 2012.

Some of the main facts are:

1. The Hon'ble supreme court, in the case of M/S SRF Ltd. versus Commissioner of Customs, Chennai and M/S ITC Ltd. versus Commissioners of Customs (I&G), New Delhi relating to CVD exemption, has held that the benefit of excise duty exemption (available to final product manufactured by domestic manufacturer, subject to the condition of non availment of CENVAT credit of duty on input or capital goods used by such manufacturer for manufacture of such final product) will also be available to the importer of such final product for the purpose of CVD on the ground that the importer was not availing the credit of duty on inputs or capital goods.
2. The implication of the Hon'ble Supreme Court judgment was that all such final products when imported by manufacturer importer would have attracted concessional excise duty as CVD, while the domestic manufacturer of such final products had to forgo input tax credits to be eligible for such concessional rate. This would put the domestic manufacturers at a disadvantage vis-à-vis imports and would adversely impact the Make in India Policy of the Government.
3. The Judgment of the Hon'ble Supreme Court was examined in CBEC and it was found that there were certain errors apparent on record/interpretational issues and, with the concurrence of the Ld. Attorney General, a Review Petition /Revised Application has been filed against the same.
4. However, keeping in view the adverse implications of the aforesaid judgment on the domestic industry, legal opinion was sought from the Ministry of Law & Justice as to whether pending the aforesaid Review Petition/Revision Application, such conditions in the relevant notifications be suitably amended so as to make the intention abundantly clear (that these conditions are to be satisfied by the manufacturers of such goods and not the buyer/importer of such good).
5. In the above context, apprehensions have been raised about the use of the phrase of appropriate duty. In this regard explanation have been inserted in the explanation so as to clarify that appropriate duty or appropriate additional duty or appropriate service tax of said notification includes nil rate duty or tax or concessional duty or tax whichever or not read with any relevant exemption notification for the time being in force.
6. Therefore be noted that domestically manufactured goods covered under these notifications continue to be exempt from excise duty or subject to concessional rate

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## **MINISTRY ALLOWS FILING OF ‘UNAUDITED’ ACCOUNTS OF FOREIGN SUBSIDIARIES WITH REGISTRAR OF COMPANIES**

The Corporate Affairs Ministry (MCA) has relaxed the norms requiring Indian companies with overseas subsidiaries to file ‘audited’ financial statements of such foreign subsidiaries with the Registrar of Companies (RoC) in India.

After consulting with the CA institute, the Ministry has now clarified that even ‘unaudited’ financial statements of foreign subsidiaries can be filed with the RoC and will be treated as due compliance of Indian company law.

This dispensation will be allowed in case of a foreign subsidiary which is not required to get its financial statements audited as per legal requirements prevalent in the country of its incorporation, and which does not get its financial statements audited.

The Ministry has also clarified that unaudited accounts will need to be translated in English, if the original accounts are not in English.

Moreover, the format of financial statements of foreign subsidiaries should be, as far as possible, in accordance with the Companies Act 2013.

In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such financial statements, the Ministry has said.

Currently, the Indian company law stipulates that a company should, along with its financial statements to be filed with the RoC, attach the financial statements of its subsidiary or subsidiaries that have been incorporated outside India.

The Ministry has also clarified that a company holding a general meeting after giving a shorter notice (as provided under Section 101 of Companies Act 2013) may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

Reacting to the clarifications, professional services firm KPMG said in a note that these indicate that the Ministry is committed to address the practical challenges faced by corporates while implementing the requirements of the Companies Act 2013.

“These clarifications are a step in the right direction and echo the Ministry’s efforts to nurture a supportive regulatory environment”, the KPMG note said.

To check creation of shell companies, SIT has said that SFIO "needs to actively and regularly mine the MCA 21 database for certain red flag indicators".

The agency can prepare a set of indicators based on its own experience and consultation with other law enforcement agencies like CBDT (Central Board of Direct Taxation), ED (Enforcement Directorate) and FIU (Financial Intelligence Unit), the report has said.

"In case after investigation/assessment by CBDT, a case of creating accommodation entries is clearly established, the matter should be referred to SFIO to proceed under relevant

sections of IPC for fraud," it added.

SFIO, which is facing acute staff crunch, had about 75 vacant positions at different levels as of March 23. There are 130 sanctioned posts at the probe agency but actual strength on that date stood at just 55, as per data compiled by the Ministry.

In 2014-15 fiscal, the Ministry had referred as many as 52 cases for investigation to the agency.

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