

EXCISE CIRCULARS (FROM MARCH 2009 TO DECEMBER 2009)

Circular No. 910/30/2009 – CX

16 December 2009

Subject: 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)

*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)

*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'.*

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.

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.*"

Conclusion: 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.

Circular No. 909/29/09-CX

11 December 2009

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

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.

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.”

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.

Conclusion: 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.

Circular No: 907/27/2009-CX (VERY IMPORTANT)

7th December, 2009

Subject: Clarification on issues related to reversal of cenvat credit on WIP/ finished goods written off in the books of accounts.

References have been received from field formations stating that as per Rule 3(5B) of CENVAT Credit Rules, 2004, if the value of inputs is fully written off, then the manufacture is required to pay an amount equal to cenvat credit taken. However, there is no provision to demand reversal of credit taken on inputs which have gone into manufacture of work in progress (WIP), semi finished goods and finished goods which have also been written off fully in the books of accounts.

Provision in case of finished goods:

As far as finished goods are concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or

Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21.

Conclusion: Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.

Provision in case of WIP:

As regard writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed in above para would apply. However, if the activity carried out on the WIP goods cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable.

Circular No 906/26/2009-CX

3rd December, 2009

Subject: - Circular No. 824/1/2006-CX-Clarification regarding prospective implementation of orders

It has been reported that some of the Commissionerates have taken a view that once an order has been passed on issues like classification/valuation etc., in that case, all subsequent removals must follow the said order even though appeal of the assessee against the said order is pending.

It has further been reported that in case of removal without conforming to the said order, the goods have been seized on the ground that these have been cleared in violation of the order passed by the Adjudicating Authority.

The issue has been examined. It is clarified that the said circular nowhere provided for seizure of goods, which are cleared not in conformity with the adjudication order when the appeal against the said order is pending.

Conclusion: In such cases protective show cause notices should be issued to safeguard the revenue, and seizure of goods only for the aforesaid reason should not be effected.

Circular No. 904/24/09-CX

28th October, 2009.

Subject: - Clarification regarding excisability of Bagasse, Aluminium/Zinc Dross and other such products termed as waste or residue or refuse arising during the course of manufacture.

Excisability of bagasse and similar waste products arising during the course of manufacture has been under dispute for a long period of time. There are number of Tribunal's judgments that being waste, these are not excisable products.

Departmental appeal in respect of excisability of bagasse in one such case i.e Balrampur Chinni Mills Ltd. is reportedly still pending in the Supreme Court. Generally, the courts have been taking a view that the waste or refuse or residue arising during the course of manufacture can-not be treated as excisable goods even if such waste fetches some price in the market. However, all these matters pertain to the period prior to 2008.

In the budget of 2008, the definition of "excisable goods" in clause (d) of Section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Conclusion: It is clarified that with this amendment in Section 2 (d), the bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

Important Note: It is further clarified that in case the rate of duty in respect of such products is Nil in the tariff or they are exempt from duty in terms of any exemption notification, and if Cenvat Credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of Cenvat Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 5% amount.

Circular No. 903/23/2009-CX
20th October, 2009

Subject: - Classification of Textile quilted products like Quilts, Quilted bed spreads, etc. *(Read the conclusion for this, its enough)

Reference has been received from Trade seeking clarification regarding classification of Quilts and Quilted bed spreads. These are ready to use products. The process of manufacture of these products is that between two layers of fabrics, a layer of cotton/synthetic fabric, etc is placed and thereafter, it is stitched and converted into made-ups and articles of bedding. The general practice as per the trade has been to classify the products under chapter 5811. However, practice at some places has been to treat these products as classifiable under chapter 94.

The matter has been examined by the Board. Chapter Heading 5811 reads as follows:

*‘These materials are commonly **used in the manufacture** of quilted garments, bedding or bedspreads, mattress pads , clothing, curtains, place-mats, under pads (silencers) for table linen etc.*

The heading does not cover:

a Plastic sheets quilted, whether by stitching or heat sealing to a padded core (generally Chapter 39);

b Stitches or quilted textile products in which the stitches constitute designs giving them the character of embroidering;

c Made up goods of this Section;

d Articles of bedding or similar furnishing of Chapter 94 padded or internally fitted.

The Heading 9404 covers the final finished products like quilts and other articles of bedding and furnishing. The HS explanatory notes to Chapter 9404 further clarify that the heading covers:

'A. Mattresses supports,

B. Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibers etc or are of cellular rubber or plastics (whether or not covered with woven fabrics, plastics. etc). For example:

(1) Mattresses, including mattresses with a metal frame

(2) Quilts and bedspread (including counterpanes and also quilts for baby - carriages) eiderdowns and duvets (whether of down or any other filling/mattress protectors, bolsters, Pillows/cushions, pouffes, etc)'

Conclusion: Quilts, Quilted bedspread etc are articles of bedding and are covered under the Explanation (B) (2) as mentioned above.

Circular No. 902/22/2009-CX (VERY IMPORTANT)
20th October 2009

Subject: Assessable value in respect of goods manufactured on Job-work- Scope of Rule 10A of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000.

ISSUE: Some manufacturers of Motor Vehicles are getting complete Motor Vehicles manufactured by sending the Chassis of the Motor Vehicles to independent body builders for building the body as per the design/specification of the manufacturer. The practice followed is that the Chassis is transferred to the Body builder on payment of appropriate Central Excise duty on stock transfer basis **and is not sold to them.**

The body builder avails the Cenvat Credit of the duty paid on the chassis and clears the same on payment of duty to the Depot/Sales Office/Distributor of the Motor Vehicle manufacturer.

The duty is discharged by the body builder on the assessable value comprising the value of Chassis and the job charges. The Depot/Sales office of the Motor Vehicle manufacturer sells the vehicles at a higher price than the price on which duty has been paid. Similar practice may be prevailing in respect of other commodities also.

Provision: Rule 10A (ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 stipulates that where the excisable goods are produced or manufactured by a job-worker, on behalf of a principal manufacturer, then in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker, and where the principal manufacturer and buyer of the goods are not related, and the

price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time.

A plain reading of the aforesaid provision of law makes it clear that the assessable value for the purpose of charging Central Excise duty, in the cases where the Job-worker transfer the excisable goods to the Depot/Sale office/Distributor and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place.

Accordingly, after the insertion of Rule 10 A, the practice of discharging the duty on cost construction method by the body builder is not legally correct.

Conclusion: wherever goods are manufactured by a person on job work basis on behalf of a principal, then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10 A of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 subject to fulfilment of the requirements of the said rule.

Circular No. 900/20/2009-CX
6th October, 2009.

Subject: Permission to bring duty-paid packing materials into export warehouse under Rule 20 of Central Excise Rules.

ISSUE: whether the duty paid packing material can be allowed to be brought in the export warehouse used for packing of export goods.

Previous Circular No. 581/18/2001 provided that duty paid goods is not permitted to be brought into the warehouse. It has been stated that packing materials are normally procured in small quantities and the suppliers find it difficult to follow the bond procedure.

Provision: As per the provisions of Rule 20 of the Central Excise Rules, 2002, the goods can be removed from the factory without payment of duty to a warehouse from where the goods are allowed to be exported. The purpose of allowing export warehouse is to facilitate export from the country. It is a fact that number of times packing material in small quantity is required at a short notice and the supplier may not be interested to follow the detailed procedure of removal of goods without payment of duty.

Conclusion: It has been decided that duty paid packing material can be brought into the export warehouse, but exporter would not be allowed to claim export benefit like rebate for the duty paid on the said packing material.

Additional Note: “However, an exporter desirous of bringing duty paid packing material required for packaging of other material in the warehouse, may submit a written request to the jurisdictional AC/DC of the Division, who may grant the permission for a period of one year at a time. The exporter will maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material.”

Circular No. 898/18/09-CX

15th September, 2009.

Sub.:- Benefit of reduced penalty under provisos to Section 11AC- whether also available at appeal stage.

ISSUE: A case has been brought to the notice of the Board wherein a Commissioner (Appeals) had allowed the benefit of proviso to Section 11AC of the Central Excise Act, 1944 to pay penalty at the reduced rate of 25% within 30 days of the communication of the Order in Appeal. Commissioner (Appeals) has read Section 11AC and Section 35 F together to arrive at the aforesaid decision.

Explanation to the provision: The provisions relating to reduction of penalty to 25% are contained in proviso (1) to (4) of Section 11AC. In terms of proviso (1) and (2), a penalty imposed under Section 11AC can be reduced to 25% on fulfillment of following conditions.

(1) Duty determined under Section 11A (2) and interest payable thereon has been paid within 30 days.

(2) The said period of 30 days is calculated from the date of communication of the order passed by a Central Excise Officer determining the duty.

(3) The reduced 25% penalty is also paid within 30 days of the date of communication of the order passed by the Central Excise Officer.

Conclusion: A combined reading of all the provisions, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority. However, if the penalty amount is increased at the appellate stage, in that case the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order. Therefore, the view taken by the Commissioner (Appeal) is not as per the provision of law.

Circular No. 897/17/2009-CX (VERY IMPORTANT)

3rd September, 2009.

Subject: Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization.

ISSUE: High Court of P&H in the case of CCE, Delhi III V/s Maruti Udyog Ltd. [2007(214) ELT173 (P&H)], has **upheld the order of Tribunal** wherein it was held that assessee is not liable to pay interest in the case where credit was only taken and not utilized. The SLP against this order has been dismissed by the Hon'ble Supreme Court.

On the other hand, Rule 14 of The CENVAT Credit Rules, 2004, provides for recovery of credit taken or utilized wrongly with interest. In view of this conflict in legal provisions and the decision of Hon'ble Supreme Court, a clarification has been requested from the Board.

Conclusion: The Supreme Court order under reference is only a decision and not a judgement. Since, the Rule 14 of the CENVAT Credit Rules, 2004, is clear and unambiguous in the position that interest would be recoverable when CENVAT credit is taken or utilized wrongly, it is clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized, in terms of the wordings of the present Rule 14.

Circular No. 895/15/2009-CX

27th August, 2009.

Sub: - Amendment in Section 35G / 35H of Central Excise Act and Section 130 / 130A of Customs Act regarding powers of the High Court to condone delay in filing Appeal / Reference Application. (Two circulars are issued on the same issue in year 2009, but this circular prevails)

Attention is invited to Section 86 & 107 of the Finance Act, 2009 vide which amendment with effect from 1st July, 2003 has been carried out under Section 130 of the Customs Act, 1962 and Section 35G of the Central Excise Act, 1944 respectively to the effect that the High Court may admit an appeal after the expiry of the period of one hundred and eighty days if it is satisfied that there was sufficient cause for not filing appeal within the stipulated period.

Similarly, vide Section 87 & Section 108 of the Finance Act, 2009, amendment has been carried out with effect from 1st July, 1999 under Section 130A of the Customs Act, 1962 and Section 35H of the Central Excise Act, 1944 to the effect that the High Court may admit reference application or permit the filing of memorandum of cross objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not filing the same within that period. The Notes on Clauses to the Finance Bill, 2009 may also be referred to in this regard.

The amendments as above have been brought out in the statute consequent upon the judgement of Larger Bench of the Hon'ble Supreme Court in the case of [Commissioner of Customs & Central Excise Vs. M/s. Hongo India Pvt. Ltd.](#) [2009(236) ELT.417(SC)] wherein it was held that the High Courts have no power to condone the delay in filing the reference application beyond the prescribed period of one hundred and eighty days.

Vide the amendment as above, the High Courts have been assigned the powers to condone the delay in filing of reference applications/appeals. However, the Commissionerates must ensure that appeals are filed within the stipulated period of one hundred and eighty days under all circumstances. The litigation mechanism of the Commissionerates before the High Courts must be closely monitored so that the appeals are filed in time.

This circular is issued in supersession of Board's Circular No. 888/8/2009-CX. dated 21st May, 2009.

Circular No. 893/13/ 2009-CX
23rd July, 2009

Subject: Procedure for direct supply by intermediate supplier to the port for export for export by ultimate supplier.

“Advance Authorization or DFIA for Intermediate Supplies” has been amended. It has been, inter alia, provided that **intermediate supplier can also supply the product(s) directly to the port for export by the ultimate exporter (holder of Advance Authorization or DFIA). In such cases, shipping bill shall be in the name of the ultimate exporter with the name of intermediate supplier endorsed on it.**

In view of these provisions, the following procedure may be followed in case of supply of the products directly to the port of export by the intermediate supplier for export by the ultimate exporter.

The intermediate manufacturer can also remove goods to the port of export without payment of duty under bond. In such cases, the goods should be verified and sealed in the presence of central excise officers, and ARE-1 prepared in this regard should be countersigned by central excise officers.

The ARE-1 shall also show the name and address of ultimate exporter, and the details of permission/ invalidation letter issued by licensing authority. The description, quantity, value, technical specifications, etc., mentioned in the permission / invalidation letter shall be verified by the central excise officer with respect to the goods supplied by the said intermediate supplier.

The Shipping Bill should be prepared in the name of the ultimate exporter with the name of intermediate supplier endorsed on it. However, the reference of ARE-1 of the intermediate manufacturer and permission/invalidation letter issued in favour of intermediate manufacturer should also be mentioned in such a Shipping Bill. .

Circular No. 892 /12/ 2009-CX

23rd July, 2009

Subject: - Export of non-excisable goods under self-sealing and self-certification.

Representations have been received from exporters of non-excisable goods (agricultural products) requesting to extend the facility of self-sealing and self-certification to non-excisable agricultural products. They have requested that this facility would enable them to meet export requirements of the products which expire within a few weeks.

It is seen that Circular No. 31/2002-Cus dated 07/06/2002 had clarified that the exporters can avail of the facility of removal of export goods from the factories on the basis of self-certification and self-sealing, but these shall be examined at the port of export on the basis of examination norms prescribed.

Accordingly, in respect of exports under Free Shipping Bills i.e., where there is no export incentive claimed, there will be no opening/examination of containers done at the port of export except where there is intelligence or information about any misdeclaration, concealment etc.

Conclusion: Accordingly, the facility of self-sealing/self-certification is hereby extended for export of non-excisable agricultural products, subject to the condition that these shall be examined at the port of export, as per the norms prescribed.

Circular No. 890/10/2009-CX

3rd June, 2009

Subject: - Classification of Coconut Oil packed in small containers.

There are two contenting classification. Chapter 15 covers various types of vegetable oil including coconut oil and Chapter 33 covers cosmetics including hair oil.

The disputes have arisen in respect of coconut oil when it is sold in small packs say of 50 ml. or 100 ml. When the Coconut oil is sold in small containers, following indications have been found on containers or labels.

A. 'hair oil'

B. 'edible oil'

C. 'pure coconut oil' or 'coconut oil'

Conclusion: Hence, in view of the amendments/insertion of Chapter Note and Section Note, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under heading 3305, even though few consumers may use it as edible oil.

Coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil. This would bring uniformity in assessment in respect of coconut oil sold in small containers irrespective of the fact as to whether its use as hair oil is indicated on containers/labels or not.

Circular No.889/09/2009-CX

21st May, 2009.

Subject: Imposition of mandatory penalty equal to duty under Section 11AC even though duty is paid before the issue of Show Cause Notice. Supreme Court's judgement dated 12th May, 2009 in the case of U.O.I Vs. Rajasthan Spinning & Weaving Mills and Commissioner of Customs & Central Excise Vs. Lanco Industries Ltd. in Civil Appeal No.3525 of 2009 arising out of S.L.P (Civil) No.4078 of 2008.

The Hon'ble Supreme Court in the case of Union of India Vs. Dharmendra Textile Processors and other enjoined matters 2008 (231) E.L.T. 3 (S.C.) by its pronouncement of the rule has laid the question of applicability of equal penalty under Section 11AC of the Central Excise Act, 1944 at rest. It has categorically opined that the penalty prescribed in Section 11AC is mandatory in nature and it is a civil liability.

After the pronouncement of the said judgement, references have been received in the Board questioning the applicability of the said judgement to the cases where the duty has been paid prior to the issue of Show Cause Notice. In this regard, Hon'ble Supreme Court in the above referred cases (in subject) has been clarified that when the conditions spelled out under Section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of Show Cause Notice.

Circular No: 887/07/2009-CX

11th May, 2009

Sub: Manner of Scrutiny of ER1, ER2 and ER3 returns and returns submitted by Dealers by the proper officer.

Sub rule 3 of Rule 12 of the Central Excise Rules, 2002 provides for scrutiny by the proper officer to ensure correctness of duty assessed by the assessee on the goods removed. The returns would be received by the Superintendent of Central Excise who is the proper officer under sub rule (1) of Rule 12 to scrutinize the return.

As clarified by the earlier instructions, the scrutiny of the return is required to be carried out in two stages, viz., (i) the scrutiny of the return and (ii) scrutiny of assessment.

In the preliminary scrutiny (to be called the 'scrutiny of return'), all returns would be scrutinized as per the checklist given. This would involve checking the correctness of the information furnished the timeliness of payment of duty and the timeliness of filing the return. It would also involve checking the arithmetical accuracy of information contained in the return e.g. duty payment or the break-up of duty paid in cash and through CENVAT credit.

Verification of the correctness of the provisional assessment order in respect of the assessee would also form part of the mandate of preliminary scrutiny. After the

checklist at Annexure-1 has been executed, it should be completed and duly signed by the Superintendent. Wherever any discrepancies/deficiencies are noticed, it shall be the responsibility of the Range Superintendent to take appropriate action including safeguarding the revenue.

In selecting the returns, the jurisdictional Joint/Additional Commissioner should not select returns of those units which are to be mandatorily audited.

Further, once a return of an assessee has been selected, the return of the assessee should not be selected again for the next 12 months.

The Joint/Additional Commissioner should also assign some returns of selected EOUs (ER2 return) and quarterly returns of dealers to the Ranges for scrutiny, selected on the basis of local risk factors.

Scrutiny done as per the checklist along with the observations should be signed by the Divisional Assistant/Deputy Commissioner who should also indicate the action taken on the basis of the scrutiny outcomes.

Circular No: 885/05/ 2009-CX

Date: 30.4.2009

Subject: Monitoring of pendency of appeals – instructions regarding.

The norms of disposal of appeals by Commissioners (Appeals) with effect from 1.4.2009 are as follows:

1. The Commissioner (Appeals) should decide 70 cases per month. However, where the number of appeals pending is less, the disposal of appeals should not be less than 60% of the combined total of the opening balance and the monthly receipt. Efforts shall be made to attain the desired objective i.e the closing balance be always less than the opening balance of the month;
2. It shall be ensured that no case remains pending for more than six months;
3. While taking up the appeals, preference be given to disposal of older cases .

(The following table is not necessary from exam point of view)

The format of the report relating to monitoring of pendency of appeals is partially revised as follows:-

Report for the quarter ending.....

Sl. No	Zone	Name of the Chief Commissioner	Name of Commissioner (Appeals)/ Post/whether Regular/addl	Opening Balance	Cases received	Cases Decided	Closing balance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Age-wise pendency of appeals			
0-3 months	3-6 months	More than six months	Reasons for pendency of more than six months
(9a)	(9b)	(9c)	(9d)

The Chief Commissioners should send the above quarterly report by 10th of the month following the quarter along with a complete analysis of the performance of each Commissioner (Appeals) , vis a vis the norms stipulated as above .

F.No.267141/2009-CX8

07.12.2009

Subject: - Leviability of duty on capital goods cleared after being put into use for over 10 years.

It is clarified that in view of specific provisions under Rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which cenvat credit has been taken, are cleared as waste and scrap, even after a period of 10 years, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable.

F.No.267144/2009-CX 8

25.11.2009

Subject: - Credit of duty under Rule 16 of Central Excise Rules, 2002 on goods brought into the factory.

The Rule 8(2) of the Central Excise Rules, 2002, provides that “the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub rule(1) and the credit of such duty is allowed, as provided by or under any rule”.

This provision explains that the invoice of the returned goods would be a valid document for availing credit and duty is deemed to have been discharged. Regarding availing credit on its own invoice, Rule 16(1) of the Central Excise Rules, 2002, allows the assessee to do so. In any case, the whole procedure is revenue neutral, in the sense as the duty has to be discharged by the 5th of next month.

In view of above, it is clarified that credit on rejected/ returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1) of the Central Excise Rules, 2002.