

CENTRAL EXCISE RULES 2002

Giridhar's

Original notification no 4/2012 dated 01.03.2002

Rule 1. Short title, extent and commencement. -

- (1) These rules may be called the Central Excise (Amendment) Rules, 2015
- (2) They extend to the whole of India
- (3) Save as otherwise provided in these rules, they shall come into force on the 1st day of March, 2015.

Rule 2. Definitions.-

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Central Excise Act, 1944 (1 of 1944);
- (b) "assessment" includes self-assessment of duty made by the assessee and provisional assessment under rule 7;
- (c) "assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person;
- (d) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);
- (e) "duty" means the duty payable under section 3 of the Act;
- (ea) "large tax payer" means a person who, -
 - (i) has one or more registered premises under the Central Excise Act, 1944 (1 of 1944); or
 - (ii) has one or more registered premises under Chapter V of the Finance Act, 1994 (32 of 1994); and is an assessee under the Income-Tax Act, 1961 (43 of 1961), who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.

Notification No. 20/2006 - Central Excise (N.T.) dated 30.09.2006

In exercise of the powers conferred by sub rule (ea) of rule 2 of the Central Excise Rules, 2002 the Central Government hereby notifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer,

2. Conditions.- Any person, engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985, or a provider of taxable service, has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application under para 3(i), -
duties of excise of more than rupees 500 lakhs in cash or through account current; or service tax of more than rupees 500 lakhs in cash or through account current; or advance tax of more than rupees 1000 lakhs, under the Income Tax Act, 1961,
and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of Chief Commissioner of Income-tax, Bangalore-I (other than revenue district of Tumkur), Chief Commissioner of Income- tax, Bangalore -II (other than district of kolar), the Chief Commissioners of Income-tax, Mumbai-I,II,III,IV,V,VI,VII,IX,X,XI,XII,XIII, Central-I, Central-II, Director of Income Tax (International Taxation), Mumbai, the Chief Commissioner of Income-tax, Chennai-I and the Chief Commissioner of Income-tax, Chennai-II.

3. Procedure.-

A large taxpayer who satisfies the conditions mentioned above may file an application form in the format annexed duly completed in all respects to the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the large taxpayer is presently assessed to income tax or corporate tax indicating his willingness to be a large taxpayer.

A person willing to operate as large taxpayer shall furnish details of each of the premises already registered under the Central Excise Act, 1944(1 of 1944) including the premises of first and second stage dealers and each of the premises registered under Chapter V of the Finance Act, 1994 including the premises of input service distributor.

The Chief Commissioner of Central Excise, Large Taxpayer Unit may after due verification of the application form, grant the acceptance in writing.

Existing registrations under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 shall continue. However, in case a new factory or service provider, input credit distributor or first or second stage dealer which becomes liable to be registered, after opting as large taxpayer, the application for such new registration shall be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

- (f) "notification" means the notification published in the Official Gazette;
- (g) "Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);
- (h) "warehouse" means any place or premises registered under rule 9; and
- (i) Words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

Rule 3. Appointment and jurisdiction of Central Excise Officers. -

(1) The Board may, by notification, appoint such person as it thinks fit to be Central Excise Officer to exercise all or any of the powers conferred by or under the Act and these rules.

(2) The Board may, by notification, specify the jurisdiction of a Chief Commissioner of Central Excise, Commissioner of Central Excise or Commissioner of Central Excise (Appeals) for the purposes of the Act and the rules made thereunder.

(3) Any Central Excise Officer may exercise the powers and discharge the duties conferred or imposed by or under the Act or these rules on any other Central Excise Officer who is subordinate to him.

Notification No. 29 /2014-CENTRAL EXCISE (N.T.) w.e.f.15.10.2014

In exercise of the powers conferred by section 37A of the Central Excise Act, 1944, the Central Government hereby delegates the powers of the CBEC under rule 3 of the Central Excise Rules, 2002, to the Principal Chief Commissioner(PCC) of Central Excise or the Chief Commissioner(CC) of Central Excise, to specify within his jurisdiction, the jurisdiction of a Commissioner of Central Excise (Appeals) or a Commissioner of Central Excise (Audit) and the jurisdiction of such Commissioner of Central Excise (Appeals) or Commissioner of Central Excise (Audit) shall be limited to the jurisdiction so specified.

Notification No. 02 / 2015 - Central Excise (N.T.) dated 10.02.2015 (Adjudication of DGCEI cases)

In exercise of the powers conferred by rule 3 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby specifies that the Principal Director General(PDG) or the Director General of Central Excise Intelligence(DGCEI) shall have jurisdiction as Principal Chief Commissioner or Chief Commissioner of Central Excise over the Principal Commissioners of Central Excise or the Commissioners of Central Excise, for exercising the powers of the Central Board of Excise and Customs and for the purposes of assigning the cases for adjudication of show cause notices, delegated *vide* notification number 11/2007 - Central Excise (N.T) dated the 1st March, 2007, published *vide* number G.S.R. 151(E), dated the 1st March, 2007.

Rule 4. Duty payable on removal.-

(1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided:

(1A) Notwithstanding anything contained in sub-rule (1), every person who gets the goods, falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, produced or manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as is provided under these rules, as if such goods have been manufactured by such person:

Provided that where any person had, instead of paying duty, authorised job worker to pay the duty leviable on goods manufactured in his behalf under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he shall be allowed to obtain registration any comply with the provisions of these rules within a period of thirty days from the date of publication of this notification in the Official Gazette."

Explanation.- For the purposes of this sub-rule, the expression "job worker" means a person engaged in manufacture, or undertaking any process on behalf and under the instructions of such person for manufacturing, from any inputs or goods supplied by such person or by any other person authorised by such person so as to complete a part or whole of the process resulting ultimately in the manufacture of goods falling under chapters 61 or 62 or 63 of the First schedule to the Tariff Act, and the term "job work" shall be construed accordingly.";

(2) Notwithstanding anything contained in sub-rule (1), where molasses are produced in a khandsari sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

(3) — [* * *] Omitted

(4) Notwithstanding anything contained in sub-rule (1), Commissioner may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of the manufacturer where the goods are made, permit a manufacturer to store his goods in any other place outside such premises, without payment of duty subject to such conditions as he may specify.

Rule 5. Date for determination of duty and tariff valuation. -

(1) The rate of duty or tariff value applicable to any excisable goods, other than khandsari molasses, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be.

(2) The rate of duty in the case of khandsari molasses, shall be the rate in force on the date of receipt of such molasses in the factory of the procurer of such molasses.

Explanation. - If any excisable goods are used within the factory, 'the date of removal of such goods' shall mean the date on which the goods are issued for such use.

(3) — [* * *] Omitted

Rule 6. Assessment of duty.-

The assessee shall himself assess the duty payable on any excisable goods:

Provided that in case of cigarettes, the Superintendent or Inspector of Central Excise shall assess the duty payable before removal by the assessee.

Rule 7. Provisional assessment.-

(1) Where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in writing giving reasons for payment of duty on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of duty on provisional basis may be allowed, if the assessee executes a bond in the form prescribed **(FORM B-2)** by notification by the Board with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

(3) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall pass order for final assessment, as soon as may be, after the relevant information, as may be required for finalizing the assessment, is available, but within a period not exceeding six months from the date of the communication of the order issued under sub-rule (1):

Provided that the period specified in this sub-rule may, on sufficient cause being shown and the reasons to be recorded in writing, be extended by the Commissioner of Central Excise for a further period not exceeding six months and by the Chief Commissioner of Central Excise for such further period as he may deem fit.

(4) The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3), at the rate (18%) specified by the Central Government by notification issued under section 11AA or ~~section 11AB~~ of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

Is interest payable under rule 7(4) of the Central Excise Rules, 2002, if amount of differential duty is paid in full before final assessment order is passed? (SCL-AUGUST EDITION-2015)

Ceat Limited v. CCE & C 2015 (317) ELT 192 (Bom.)

High Court's Decision: The High Court held that if amount of differential duty is paid in full before the final assessment order is passed, provisions of rule 7(4) will not be applicable and hence, the interest would not be payable.

(5) Where the assessee is entitled to a refund consequent to an order of final assessment under sub-rule (3), then, subject to sub-rule (6), there shall be paid an interest (6%) on such refund as provided under section 11BB of the Act. (w.e.f.01.03.2013)

RTP NOV 2013

Mr. Shubh, a manufacturer was unable to determine the value of excisable goods manufactured by him during the month of Januray, 2013. Therefore, he applied for provisional assessment and paid excise duty provisionally. However, subsequently on finalization of the provisional assessment on 15.03.2013 it was found that Mr. Shubh was entitled to a refund. Mr. Shubh filed the refund application on 20.03.2013.

Mr. Shubh received the refund along with interest on 30.04.2013. Interest on delayed refund was computed from 01.02.2013 till 30.04.2013. Discuss the correctness or otherwise of the manner of computation of interest.

With effect from 01.03.2013, rule 7(5) of the Central Excise Rules, 2002 has been amended vide Notification No. 02/2013 (CE) NT dated 01.03.2013 to provide that the interest on refund arising out of finalization of provisional assessment will be computed in accordance with the provisions of section 11BB of the Central Excise Act, 1944 i.e, interest will be computed from the date immediately after the expiry of three months from the date of receipt of refund application till the date of refund of such duty.

However, prior to 01.03.2013, interest on such refund was computed from the first day of the month succeeding the month for which such refund was determined, till the date of refund.

Since in the above case, the refund application is filed on 20.03.2013, the computation of interest will be governed by the amended provisions. Therefore, no interest will be paid on the refund as the refund is paid before the expiry of three months from the date of refund application (30.04.2013).

(6) Any amount of refund determined under sub-rule (3) shall be credited to the Fund:

Provided that the amount of refund, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

- (a) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person; or
- (b) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person.

Rule 8. Manner of payment. -

(1) The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case:

Provided that in case of goods removed during the month of March, the duty shall be paid by the 31st day of March:

Provided further that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the duty on goods cleared during a quarter of the financial year shall be paid by the 6th day of the month following that quarter, if the duty is paid electronically through internet banking and in any other case, by the 5th day of the month following that quarter, except in case of goods removed during the last

quarter, starting from the 1st day of January and ending on the 31st day of March, for which the duty shall be paid by the 31st day of March.

Explanation.1. - For the purposes of this proviso, it is hereby clarified that an assessee shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees four hundred lakhs.

Explanation.2. - The manner of payment as specified in this proviso shall be available to the assessee for the whole of the financial year.

~~**Provided** also that an assessee, who has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of Cenvat credit in the preceding financial year, shall thereafter, deposit the duty electronically through internet banking.~~

Explanation. - For the purposes of this rule,-

(a) the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date;

(b) if the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which the duty has been paid subject to realization of that cheque.

(1A) Notwithstanding anything contained in sub-rule (1), the duty on the clearances in the month of November, 2015, by an assessee in the State of Tamil Nadu, payable by the 5th or the 6th of the December, 2015, as the case may be, shall be paid by the 20th December, 2015. **(09.12.2015)**

Provided that where an assessee in the State of Gujarat is availing of the exemption under a notification based on the value of clearances in a financial year, the duty on goods cleared during the month of February, 2002 shall be paid by the 31st March, 2002.

Explanation. - For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.

(1B) Every assessee shall electronically pay duty through internet banking : Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise , for reasons to be recorded in writing , allow an assessee payment of duty by any mode other than internet banking .

(2) 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 allowed, as provided by or under any rule.

(3) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification under section 11AA of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(3A) If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent. on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues .

Explanation. - For the purposes of this sub-rule, 'month' means the period between two consecutive due dates for payment of duty specified under sub-rule (1) or the first proviso to sub-rule (1) , as the case may be . ” .

(4) The provisions of section 11 of the Act shall be applicable for recovery of the duty as assessed under rule 6 **and mentioned in the return filed under these rules, the interest under sub-rule (3) and the penalty under sub-rule 3(A)** in the same manner as they are applicable for recovery of any duty or other sums payable to the Central Government.

Explanation. - For the purposes of this rule, the expressions 'duty' or 'duty of excise' shall also include the amount payable in terms of the CENVAT Credit Rules, 2004.

Rule 8A. Manner of payment in respect of specified goods on which excise duty has been imposed with effect from 1st March, 2002. -

(1) Notwithstanding anything contained in rule 8, the duty on the goods, specified in the Annexure to this rule, removed from the factory or the warehouse during the period commencing on and from the 1st March, 2002 and ending with and including the 31st May, 2002, shall be paid by the 15th day of June, 2002.

Explanation. - For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.

(2) 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 allowed, as provided by or under any rule.

(3) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest at the rate specified by the Central Government vide notification issued under section 11AA of the Act on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(4) If the assessee defaults in payment of duty by the 15th day of June, 2002, then, the assessee shall forfeit the facility to pay the dues in instalments as provided under sub-rule (1) of rule 8 for the clearances made after the 1st

day of June, 2002 for a period of two months, commencing on and from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard, or till such date on which the dues are paid, whichever is later, and during this period the assessee shall be required to pay excise duty for each consignment by debiting to the account current and in the event of any failure to do so, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules, shall follow.

Annexure

(1) All goods specified at S. Nos. 9 to 50 of the Table to the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 10/2002-Central Excise, dated the 1st March, 2002 published in the Gazette of India vide number G.S.R. 131 (E), dated the 1st March, 2002, which were exempt from whole of the duty leviable thereon immediately prior to 1st March, 2002 and on which duty has become leviable with effect from 1st March, 2002, at the rate of 4% ad valorem, subject to the conditions specified in that notification or, as the case may be, at the rate of 16% ad valorem.

(2) Granite falling under heading No. 68.07 manufactured by units which would have been eligible for exemption from duty whether in whole or in part under notification No. 8/2001-Central Excise or No. 9/2001-Central Excise, dated the 1st March, 2001, as they existed before 1st March, 2002 and granite falling under heading No. 68.07 manufactured by units which would have been eligible for exemption whether in whole or in part if such exemption had not been withdrawn under Notification No. 8/2002-Central Excise or, as the case may be, under Notification No. 9/2002-Central Excise, both dated the 1st March, 2002.

(3) Woven fabrics of cotton, falling under Chapter 52, when subjected to any one or more of the following processes, namely

- (a) flannelite raising;
- (b) stentering;
- (c) damping on grey and bleached sorts;
- (d) back filling on grey and bleached sorts;
- (e) singeing, that is to say, burning away of knots and loose ends in the fabrics;
- (f) cropping or butta cutting;
- (g) curing or heat setting;
- (h) padding, that is to say, applying starch or fatty material on one or both sides of the fabric; or
- (i) expanding,

if such fabrics are processed in a factory which does not have the facilities (including plant and equipment) for carrying out bleaching, dyeing or printing or any one or more of these processes with the aid of power or steam and such fabrics were exempt from whole of the duties leviable thereon under the First Schedule to the Central Excise Tariff Act, 1985 and the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, immediately prior to 1st March, 2002 and on which duties have become leviable with effect from 1st March, 2002 at the rate of 12% ad valorem.

(4) Woven fabrics of man-made fibres, falling under Chapter 54 or Chapter 55, when subjected to any one or more of the following processes, namely :-

- (a) singeing, that is to say, burning away of knots and loose ends in the fabrics;

- (b) padding, that is to say, application of natural starch to one or both sides of the fabrics;
 - (c) back filling, that is to say, application of starch to one side of the fabrics;
 - (d) cropping, that is to say, cutting away mechanically of loose ends from the fabrics; or
 - (e) the process of blowing (steam pressing) carried out on woven fabrics of acrylic fibre,
- if such fabrics are processed in a factory which does not have the facilities (including plant and equipment) for carrying out bleaching, dyeing or printing or any one or more of these processes with the aid of power or steam, and such fabrics were exempt from whole of the duties leviable thereon under the First Schedule to the Central Excise Tariff Act, 1985 and the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, immediately prior to 1st March, 2002 and on which duties have become leviable with effect from 1st March, 2002, at the rate of 12% ad valorem.

Rule 9 Registration. -

(1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered:

Provided that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No. 2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.

(2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

Notification No. 17/ 2015 - Central Excise (N.T.) dated 08.06.2015
Central Board of Excise and Customs hereby exempts from the operation of said rule, every manufacturing unit engaged in the manufacture of aluminium roofing panels falling under tariff item 7610 90 10 of the First Schedule to the Central Excise Tariff Act, 1985, subject to the conditions that such roofing panels are consumed at the site of manufacture for execution of the project and the manufacturer of such goods has a centralised billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where such centralised billing or accounting is done.
Notification No. 11 /2013 - Central Excise (N.T.) dated 02.08.2013
In exercise of the powers conferred by sub-rule (2) of rule 9 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby exempts from registration under sub-rule (1) of rule 9 of said rules, unregistered premises used solely for affixing a sticker or re-printing or re-labeling or re-packing of pharmaceutical products falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 with lower ceiling price to comply with the notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013 dated the 15 th May, 2013 subject to the conditions specified in the notification no. 22/2013 - Central Excise dated the 29 th July, 2013 exempting the pharmaceutical products from payment of Central Excise duty.
Notification No.14/ 2011 - Central Excise (N.T.) dated 03.06.2011
In exercise of the powers conferred by sub-rule (2) of rule 9 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby exempts from the operation of said rule, every manufacturing unit engaged in the manufacture of recorded smart cards falling under sub-heading 8523 where manufacturer of such goods has a centralized billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where such centralized billing or accounting is done
Notification No.10/2011 - C.E (N.T.), dated 24-03-2011
In exercise of the powers conferred by sub-rule (2) of rule 9 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby exempts from the operation of the said rule, every mine engaged in the production or manufacture of goods falling under chapter heading 2701, 2702, 2703, 2704 and 2706 where the producer or manufacturer of such goods has a centralized billing or accounting system in respect of such goods produced by different mines and opts for registering only the premises or office from where such centralized billing or accounting is done.
Notification No.36/2001-Central Excise (N. T.) dated 26.06.2001+as amended by Notification No. 40/2008 dated 29.09.2008 – subject exempts from the operation of rule 9 (Registration) of the Central Excise Rules, 2002

(2A) hereby declares that where a godown or retail outlet of a Duty Free Shop is appointed or licensed under the provisions of sections 57 or 58 of the Customs Act, 1962, as the case may be, such godown or retail outlet shall be deemed to be registered as warehouse under rule 9 of the Central Excise Rules, 2002. **(w.e.f.23.05.2013)**

(3) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

Notification no 35/2001-central excise (N.T) dated 26.06.2001 as amended by Notification no 7/2015-central excise (N.T) dated 01.03.2015

NOTIFICATION No. 31/2007-CENTRAL EXCISE (N.T.) dated 02.08.2007

Rule 10. Daily stock account(DSA).-

(1) Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

Whether contaminated, under or over filled bottles or badly crowned bottles amount to manufactured finished goods which are required to be entered in R.G.-1 register, and which are exigible to payment of excise duty?(SCL-AUG EDITION-2015)

Amrit Bottlers Private Limited v. CCE 2014 (306) ELT 207 (All.)

High Court's Decision: The Court held that in the instant case, contaminated, under filled, over filled and badly crowned bottles found at the stage of production were not marketable goods. Thus, they were not required to be entered under R.G.-1 register and consequently, no excise duty was payable on them.

Note: - RG-1 register is a daily stock account required to be maintained under rule 10 of the Central Excise Rules, 2002.

(2) The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent.

(3) All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

(4) The records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature. **(w.e.f.01.03.2015)**

(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records. **(w.e.f.01.03.2015) (Notification no 18/2015-CE (N.T) dated 06.07.2015 specified)**

Rule 11. Goods to be removed on invoice. -

(1) No excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorized agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory:

Provided that a manufacturer of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 or readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act may remove the said goods under a proforma invoice signed by him or his authorised agent. The provisions of sub-rules (2) to (5) shall apply to the proforma invoice except that the said invoice shall not contain the details of the duty payable. The manufacturer shall, within five working days from the issuance of the proforma invoice prepare the invoice in terms of this rule after making adjustments in respect of the goods rejected and returned by the buyer. The proforma invoice and the invoice issued in terms of this sub-rule shall have cross reference to each other by way of their serial numbers:

Provided further that the said period of 5 working days, as referred to in the first proviso, may be extended up to a period not exceeding 21 days, inclusive of the said period of 5 working days, by the Commissioner of Central Excise, on receipt of a request from the said manufacturer.

(2) The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon.

Provided that in case of a proprietary concern or a business owned by Hindu Undivided Family, the name of the proprietor or Hindu Undivided Family, as the case may be, shall also be mentioned in the invoice.

Provided further that if goods are directly sent to a job worker on the direction of a manufacturer or the provider of output service, the invoice shall also contain the details of the manufacturer or the provider of output service, as the case may be, as buyer and contain the details of job worker as the consignee: **(w.e.f.01.03.2015)**

Provided also that if the goods are directly sent to any person on the direction of the registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and the person as the consignee, and that person shall take CENVAT credit on the basis of the registered dealer's invoice: **(w.e.f.01.03.2015)**

Provided also that if the goods imported under the cover of a bill of entry are sent directly to buyer's premises, the invoice issued by the importer shall mention that goods are sent directly from the place or port of import to the buyer's premises. **(w.e.f.01.03.2015)**

Clarification regarding Cenvat Credit in transit sale through dealer – circular 1003/10/2015-CX dated 05.05.2015

It is clarified that the purpose of inserting the third and fourth provisos in sub-rule (2) of Rule 11 of CER is to allow an additional facility for direct transport of goods from the manufacturer or the importer to the consignee where the consignee avails Cenvat Credit on the basis of the Cenvatable invoice issued by the registered dealer or the registered importer. This facility obviates the need for the goods to be brought to the premises of the registered importer or the registered dealer for subsequent transport of the goods to the consignee

(3) The invoice shall be prepared in triplicate in the following manner, namely:-

- (i) the original copy being marked as ORIGINAL FOR BUYER;
- (ii) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER;
- (iii) the triplicate copy being marked as TRIPLICATE FOR ASSESSEE.

(4) Only one copy of invoice book shall be in use at a time, unless otherwise allowed by the Assistant Commissioner of Central Excise, or the Deputy Commissioner of Central Excise, as the case may be, in the special facts and circumstances of each case.

~~(5) [***] Omitted~~

(6) Before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction.

(7) The provisions of this rule shall apply mutatis mutandis to goods supplied by **an importer who issues an invoice on which CENVAT credit can be taken, or** a first stage dealer or a second stage dealer:

Provided that in case of the first stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible;

Provided further that in case of the second stage dealer receiving imported goods under an invoice bearing an indication that the credit of additional duty of customs levied on the said goods under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be admissible, the said dealer shall on the resale of such imported goods, indicate on the invoice issued by him that no credit of the additional duty levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

(8) An invoice issued under this rule by a manufacturer may be authenticated by means of a digital signature: Provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self-attested by the manufacturer shall be used for transport of goods.

(9) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee using digitally signed invoice. **(Notification no 18/2015-CE (N.T) dated 06.07.2015 specified**

Explanation. – For the purposes of rule 10 and this rule, the expressions, “authenticate”, “digital signature” and “electronic form” shall have the respective meanings as assigned to them in the Information Technology Act, 2000 (21 of 2000).

Explanation. - For the purposes of this rule, "first stage dealer" and "second stage dealer" shall have the meanings assigned to them in CENVAT Credit Rules, 2004.

Notification no 18/2015-CE (N.T) dated 06.07.2015

1. Every assessee proposing to use digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.

1. (i) Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least fifteen days in advance:-
 1. name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
 2. name of the Certifying Authority;
 3. date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:

Provided that in case of any change in the details submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, complete details shall be submitted afresh within fifteen days of such change.

(ii) Every assessee already using digital signature shall intimate to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise the above details within fifteen days of issue of this notification.

1. Every assessee who opts to maintain records in electronic form and who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.
1. Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.
1. A Central Excise Officer, during an enquiry, investigation or audit, in accordance with the provisions of section 14 of the Central Excise Act, 1944 and has made applicable to Service Tax as per the provisions contained in section 83 of the Finance Act, 1994, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.
1. Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain

RTP NOV 2015

Examine the validity of the following statements with reference to the provisions of Central Excise Rules, 2002:-

A manufacturer cannot authenticate the invoices issued by it by means of a digital signature.

The said statement is not correct. With effect from 01.03.2015, a new sub-rule (8) has been inserted in rule 11 of Central Excise Rules, 2002 vide Notification No. 8/2015 CE (NT) dated 01.03.2015 to provide for authentication of invoices by digital signatures. It has been provided that an invoice issued under this rule by a manufacturer may be authenticated by means of a digital signature.

Rule 12 Filing of return.-

(1) Every assessee shall submit to the Superintendent of Central Excise a monthly return in the form specified **(FORM E.R.1)** by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates:

Provided that an assessee, manufacturing pan masala falling under tariff item 2106 90 20 or pan masala containing tobacco falling under tariff item 2403 99 90, shall also file, along with the return, for the month to which the said return relates, a statement summarizing, -

(a) the purchase invoices for the month with the names and addresses of the suppliers of betel nut, tobacco and packing material along with the quantity of the said goods purchased; and

(b) the sales invoices for the month with the names and addresses of the buyers, description, quantity and value of goods sold by the assessee.

Explanation. - When the goods are not sold from the factory, the address of the premises to which the goods are dispatched from the factory shall also be provided:

Provided further that where an assessee is, -

(a) [* * * *] Omitted

(b) ~~manufacturing processed yarn, unprocessed fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 of First Schedule to the Tariff Act; or~~

(c) ~~manufacturing readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act, which prior to 1st day of April, 2003 were eligible for an exemption under a notification based on value of clearances in a financial year,~~

~~he shall file a quarterly return in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within twenty days after the close of the quarter to which the return relates.~~

Provided further that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board, of production and removal of goods and other relevant particulars within ten days after the close of the quarter to which the return relates.

Explanation 1. - For the purposes of this proviso, it is hereby clarified that an assessee shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees 400 lakhs.

Explanation 2. - The filing of returns as specified in this proviso shall be available to the assessee for the whole of the financial year.

Provided also that, where an assessee is availing the exemption, -

(i) Under the notification No. 1/2011-Central Excise, dated the 1st March 2011; or

(ii) in respect of goods falling under Sl.No.67, 128, 199(I) and 200(I), of notification No. 12/2012-Central Excise, dated the 17th March, 2012; and does not manufacture any other excisable goods other than those specified in the said notifications, he shall file a quarterly return in the form specified by notification by the board, of production and removal of goods and other relevant particulars, within ten days after the close of the quarter to which the return relates.

Provided also that, where an assessee is availing the exemption notification No. 1/2011- Central Excise, dated 1st March, 2011 and does not manufacture any other excisable goods other than those specified in the said notification, he shall file a quarterly return in the **FORM E.R.-8** specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the quarter to which the return relates"

(2) (a) Notwithstanding anything containing in sub-rule (1), every assessee shall submit to the Superintendent of Central Excise, an Annual Financial Information Statement(**AFIS**) for the preceding financial year to which the statement relates in the **FORM E.R.-4** specified by notification by the Board by 30th day of November of the succeeding year.

(b) The Central Government may, by notification, and subject to such conditions or limitations as may be specified in such notification, specify assessee or class of assessee who may not require to submit such an Annual Financial Information Statement.

Notification No.35/ 2004-Central Excise (N.T.) dated 01.11.2004

In exercises of the powers conferred by clause (b) of sub-rule (2) of the rule 12 of the Central Excise Rules, 2002,(hereinafter referred to as the said rules) the Central Government, being satisfied that it is necessary and

expedient in the public interest so to do, hereby exempts from the operation of clause (a) sub-rule(2) of rule 12 of the said rules the assessee who paid duty of excise less than 100 Lakh Rupees from account current during the financial year to which the Annual Financial Information Statement relates.

(2A) (a) every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement **(AICS)** declaring the annual production capacity of the factory for the financial year to which the statement relates in the **FORM E.R.-7** specified by notification by the Board by 30th day of April of the succeeding financial year:

Provided that for the year 2007-08, the said statement shall be furnished by 31st day of October, 2008.

(b) The Central Government may, by notification, and subject to such conditions or limitations as may be specified in such notification, specify assessee or class of assessee who may not require to submit such an Annual Installed Capacity Statement.

(3) The proper officer may on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(4) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(5) Every assessee other than assessee availing the exemption under notification No. 49/2003-Central Excise, dated the 10th June 2003 or notification No. 50/2003-Central Excise, dated the 10th June 2003, shall file electronically the return or the statement, as the case may be, specified **(Form-A shall be used in duplicate)** in this rule."

(6) Where any return or Annual Financial Information Statement or Annual Installed Capacity Statement referred to in this rule is submitted by the assessee after due date as specified for every return or statements, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of 100 rupees per day subject to a Maximum of 20000 rupees for the period of delay in submission of each such return or statement.

(w.e.f.01.03.2015)

(7) The Central Board of Excise and Customs may, by an order extend the period specified in this rule by such period as deemed necessary under the circumstances of special nature to be specified therein **(w.e.f.09.12.2015)**

Rule 12A. Filing of return in respect of specified goods on which excise duty has been imposed on and from the 1st March, 2002. -

Notwithstanding anything contained in rule 12, every assessee shall submit, in respect of goods specified in the Annexure to rule 8A, to the Superintendent of Central Excise a return for the months of March, April and May, 2002, in the form specified by notification by the Board, of production and removal of the said goods and other relevant particulars, by the 10th day of June, 2002.

Rule 12AA. Job work in article of jewellery. -

(1) Notwithstanding anything contained in these rules, every person (not being an export-oriented unit or a unit located in special economic zone) who gets article of 'jewellery falling under heading 7113' the words and figures "jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be" of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Tariff Act), produced or manufactured on his behalf, on job work basis, (hereinafter referred to as "the said person") shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee :

~~Provided that the job worker may, at his option, agree to obtain registration, maintain accounts, pay the duty leviable on such goods, prepare the invoice and comply with the other provisions of these rules and in such a case the provisions of these rules shall not apply to the said person.~~

(2) If the said person desires clearance of excisable goods for home consumption or for exports from the premises of the job worker, he shall pay duty on such excisable goods and prepare an invoice, in the manner referred to in rules 8 and 11 respectively except for mentioning the date and time of removal of goods on such invoice.

(3) The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after completion of job work are intended to be cleared, before the goods are cleared from the premises of the job worker.

Sub: Instructions regarding Detailed Scrutiny of Central Excise Returns

In view of the self-assessment procedure wherein the assessee himself assesses the duty liability, the responsibility of the departmental officers is to scrutinise the assessment made for verification of its correctness. Return scrutiny is the first line of verification carried out as soon as the tax return is submitted by the assessee. A returns scrutiny process consists of two parts viz. preliminary scrutiny and detailed scrutiny. While the preliminary scrutiny system covers all the returns filed online, detailed scrutiny system covers a few returns selected on the basis of identified risk parameters. In exercise of powers conferred under sub-rule (3) of rule 12 of the Central Excise Rules, 2002, Board hereby lays down following guidelines for detailed scrutiny of Central Excise Returns:

- (i) Detailed Scrutiny of Central Excise returns should be conducted regularly by the proper officers in the field following the procedure already prescribed. Detailed scrutiny of a minimum of 2% and maximum of 5% of the total returns received in a month shall be mandatorily performed by the proper officer.
- (ii) Selection of assessee by the Commissionerates for detailed scrutiny shall be based on Risk score and procedure for using it, as forwarded by DG (Audit) vide letter F. No. 381/20/2015 dated 18.05.2015. Chief Commissioners and Commissioners shall also have powers to manually select returns for detailed scrutiny using such criteria as deemed fit to further complement the list of assessee selected on the basis of risk. After selection of units centrally, month-wise detailed scrutiny plan should be laid down by the Commissionerate headquarters for each Range, conveyed to the Range and monitored for compliance.
- (iii) As assessee who has been selected for audit in a given financial year shall not be selected for detailed scrutiny. Further, once the return of an assessee has been selected for detailed scrutiny, the return of the assessee should not be selected again for the next 12 months for detailed scrutiny.
- (iv) Once an assessee has been selected for detailed scrutiny, most recent return filed by that assessee should be used for conducting the detailed scrutiny. During the course of detailed scrutiny of Central Excise returns by proper officer, the documents and records of assessee, where necessary, may be called for verification by proper officer.
- (v) In Composite Ranges where there are both Central Excise and Service Tax assessee, the total number of Central Excise and Service Tax returns to be taken up for detailed scrutiny shall be same as prescribed at para (i) above. The ratio of returns for Service Tax & Central Excise to be scrutinised in a composite range shall be in the ratio of the number of assessee registered as Service Tax and Central Excise assessee respectively. For detailed scrutiny of Service Tax returns, Board's Circular No. 185/4/2015-Service Tax dated 30.06.2015 may be referred.
- (vi) On issues relating to difficulty, if any, in access of returns on ACES, DG (Systems) shall be directly contacted/ appraised by the Chief Commissioner/ Commissioner concerned. Where the problem persists over a long period of time, the same may be brought to the notice of the Board. In the interim, where necessary, printouts of the return may be taken from ACES and detailed scrutiny done manually using the printout.
- (vii) Past circulars/ manuals/ instructions on detailed scrutiny in conflict with above instructions shall stand rescinded to the extent of the conflict.

(4) The job worker shall fill up the particulars of date and time of removal of goods before the clearance of goods and after such clearance the job worker shall intimate to the said person, the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.

(5) The said person may supply or cause to supply to a job worker, the following goods, namely:-

(a) inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2004, without reversal of the credit thereon; or

(b) Goods manufactured in the factory of the said person without payment of duty; under a challan, consignment note or any other document (herein referred to as 'document') with such information as specified in sub-rule (2) of rule 11 of the Central Excise Rules, 2002, duly signed by him or his authorised agent.

(6) The responsibility in respect of accountability of the goods, referred to in sub-rule (5) shall lie on the said person.

(7) Notwithstanding anything contained in these rules, the job worker shall not be required to get himself registered or shall not be required to maintain any record evidencing the processes undertaken for the sole purposes of undertaking job work under these rules unless he has exercised his option in terms of the proviso to sub-rule (1).

(8) The job worker, with or without completing the job work may,-

- (i) return the goods without payment of duty to the said person; or
- (ii) clear the goods for home consumption or for exports; subject to receipt of an invoice from the said person, as mentioned in sub-rule (4).

(9) The job worker shall clear the goods after filling in invoice the time and date of removal and authentication of such details. The rate of duty on such goods shall be the rate in force on date of removal of such goods from the premises of the job worker and no excisable goods shall be removed except under the invoice.

Explanation 1. - For the purpose of this rule, "job worker" means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said person or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of articles of jewellery falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985, and the term "job work" shall be construed accordingly.

~~**Explanation 2.** - For the purposes of this rule, article of jewellery shall mean articles of jewellery on which brand name or trade name is indelibly affixed or embossed on itself.~~

Explanation 3. - For the purposes of this notification, 'brand name or trade name' means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

Explanation 4. - For the removal of doubts, it is hereby clarified that if any goods or part thereof is lost, destroyed, found short at any time before the clearance of articles of jewellery falling under heading 7113 of the First Schedule to the Tariff Act or waste, by-products or like goods arising during the course of manufacture of such goods, the said person shall be liable to pay duty thereon as if such goods were cleared for home consumption.

Rule 12BB. Procedure and facilities for large tax payer. – (w.e.f.30.09.2006)

Notwithstanding anything contained in these rules, the following procedure shall apply to a large tax payer. - (1) A large taxpayer may remove excisable goods, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil (hereinafter referred to as the intermediate goods), without payment of duties of excise, under the cover of a transfer challan or invoice, from any of his registered premises, (hereinafter referred to as the sender premises) where such goods are produced, manufactured or warehoused to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of such other excisable goods (hereinafter referred to as the subject goods) in recipient premises subject to condition that -

(a) the subject goods are manufactured or produced using the said intermediate goods and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the intermediate goods in the recipient premises; or

(b) the subject goods are manufactured or produced using the said intermediate goods and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises, and that any other conditions prescribed by the Commissioner of Central Excise, large tax payer unit in this regard are satisfied.

Explanation 1. - The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

Provided that if the subject goods manufactured or produced using the said intermediate goods are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months, duties of excise payable on such intermediate goods shall be paid by the recipient premises with interest in the manner and rate specified under section 11AA of the Act.

Illustration. - Excise duty is payable on intermediate goods, namely, electronics goods, manufactured by factory A which are removed without payment of duties of excise for use in the manufacture of subject goods, namely, machines, in factory B of the large tax payer. In case such machines are not exported or are removed without payment of duties of excise, then factory B shall pay duties of excise payable on the electronic goods so cleared along with interest:

Provided further that if any duty of excise is payable on such intermediate goods and if the said duty is not payable on such subject goods, the said duty of excise as equivalent to the total amount payable on such intermediate goods along with interest under section 11AA of the Act shall be paid by the recipient premises.

Illustration. - National Calamity Contingent duty is payable on intermediate goods namely, polyester yarn manufactured by factory A. Such yarn is removed without payment of duty of excise for use in the manufacture of subject goods, namely, grey fabrics in factory B of a large tax payer, (on which such National Calamity Contingent duty is not payable), then factory B shall pay an amount equivalent to the National Calamity Contingent duty that would have been payable on the polyester yarn along with interest under section 11AA of the Act.

Explanation 2. - The duty payable under the first and second provisos shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises:

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

Provided also that nothing contained in this sub-rule shall be applicable to a export-oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

Explanation 3. - If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AA respectively of the Act.

(2) Where a registered premises of a large tax payer manufacturing excisable goods has paid to the credit of Central Government any duty of excise in excess of duty of excise payable on account of arithmetical error, the said large tax payer may adjust the excess duty so paid by him, against his duty liability for the subsequent period subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004 :

Provided that such adjustment shall be admissible only if the said registered premises has not passed on the incidence of such excess duty so paid to any other person, and the consignee does not avail credit of such duty under the said CENVAT Credit Rules, 2004.

(3) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, large tax payer unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(4) A large tax payer shall submit the monthly returns, as prescribed under these rules, for each of the registered premises.

(5) A large tax payer, on demand, may be required to make available the financial, production, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.

(6) A large tax payer may, with intimation of at least thirty days in advance, opt out to be a large tax payer from the first day of the following financial year.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large tax payer.

Rule 12C. Maintenance of records and payment of duty by the independent weaver of unprocessed fabrics. -

An independent weaver of unprocessed fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 of the First Schedule to the Tariff Act, may, at his option, authorize another person, on his behalf, to maintain accounts, pay duty, prepare invoice and comply with any of the provisions of these rules except that of rule 9 :

Provided that primary responsibility to comply with the provisions of these rules shall lie with the said independent weaver and in case of short payment or non-payment of duty on such unprocessed fabrics, consequences and penalties shall apply both to the said independent weaver and his authorized agent.

Explanation. - Independent weaver means a weaver who works on his own, purchases the yarn himself and sells the grey fabrics manufactured by him.

12CCC: Power to impose restrictions in certain types of cases.-

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of evasion of duty, nature and type of offences or such other factors as may be relevant, is of the opinion that in order to prevent evasion of, and default in payment of, duty of excise, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, **a registered importer**, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify the nature of restrictions including suspension of registration in case of **an importer or**, a dealer, types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board".

Notification No. 16/2014 - Central Excise (N.T.) Dated 21.03.2014 as amended by No. 10/2015 - Central Excise (N.T.) dated 01.03.2015

12 D. Application of the rules.—

The provisions of these rules shall apply to a person who is liable to pay the duty or duties of excise leviable on goods falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act under sub-rule (1A) of rule 4 as if such goods have been manufactured by him."

Rule 15. Special procedure for payment of duty. -

(1) The Central Government may, by notification, specify the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of such factors as may be relevant to production of such goods and at such rate as may be specified in the said notification, subject to such limitations and conditions, including those relating to interest or penalty, as may be specified in such notification.

(2) The Central Government may also specify by notification the manner of making an application for availing of the special procedure for payment of duty, the abatement, if any that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.

Rule 16. Credit of duty on goods brought to the factory. -

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner.

Rule 16A. Removal of goods for job work, etc. -

Any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

Rule 16B. Special procedure for removal of semi-finished goods for certain purposes. -

The Commissioner of Central Excise may by special order and subject to conditions as may be specified by the Commissioner of Central Excise, permit a manufacturer to remove excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, to some other premises and to bring back such

goods to his factory, without payment of duty, or to some other registered premises and allow these goods to be removed on payment of duty or without payment of duty for export from such other registered premises.

Rule 16C. Special procedure for removal of excisable goods for carrying out certain processes. -

The Commissioner of Central Excise may, by special order and subject to such conditions as may be specified by him, permit a manufacturer to remove excisable goods manufactured in his factory, without payment of duty, for carrying out tests or any other process not amounting to manufacture, to any other premises, whether or not registered, and after carrying out such tests or any such other process may allow, -

(a) Bringing back such goods to the said factory without payment of duty, for subsequent clearance for home consumption or export, as the case may be, or

(b) Removal of such goods from the said other premises, for home consumption on payment of duty leviable thereon or without payment of duty for export, as the case may be:

Provided that this rule shall not apply to the goods known as "prototypes" which are sent out for trial or development test.

Rule 17. Removal of goods by a Hundred per cent. Export-Oriented Undertaking for Domestic Tariff Area(DTA).-

(1) Where any goods are removed from a hundred per cent export-oriented undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8.

(2) The unit shall maintain in the **(FORM AC-1)** specified by notification by the Board appropriate account relating to production, description of goods, quantity removed, and the duty paid.

(3) The unit shall 'electronically' submit a monthly return, in the form specified **(FORM E.R.2)**, by notification, by the Board, to the Superintendent of Central Excise, within ten days from the close of the month to which the return relates, in respect of excisable goods manufactured in, and receipt of inputs and capital goods in, the unit.

Provided that the Central Board of Excise and Customs may, by an order extend the period by such period as deemed necessary under the circumstances of special nature to be specified therein (w.e.f.09.12.2015)

(4) The proper officer may on the basis of information contained in the return filed by the unit under sub-rule (3), and after such further enquiry as he may consider necessary, scrutinise the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(5) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(6) Where the return is submitted under sub-rule (3) by the assessee after the due date as mentioned in that sub-rule, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each return. **(w.e.f.01.03.2015)**

Rule 18. Rebate of duty. -

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation.—~~"Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.~~

Explanation.— For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft." **(w.e.f.01.03.2015)**

Notification No. 19/2004 +20/2004-Central Excise (N.T.) dated 06.09.2004 + circular No 262/96/96-CX dated 06.11.1996.

Notification No.21/2004-Central Excise (N.T.) dated 06.09.2004

Circular No.29 /2006-Customs dated 27.12.2006

Implementation of Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006

1. The existing SEZs, i.e., the ones notified under section 76A of Chapter X A of the Customs Act, 1962 shall be deemed to have been notified under Section 4 of the Act. Supplies from DTA to SEZ shall be exempt from payment of any Central Excise duty under Rule 19 of Central Excise Rules, 2002. Similarly, such supplies shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfillment of conditions laid there under. The provisions relating to exports under Central Excise Act, 1944 and rules made there under may be applied, mutatis-mutandis, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations.

2. The provisions of Regulation 10 of the Special Economic Zone (Custom Procedure) Regulation, 2003 for requirement of issuance of Domestic Procurement Certificate (DPC) have been dispensed with in the SEZ Rules, 2006. Now the procedure for procurements of goods from Domestic Tariff Area to a SEZ Developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006, and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Annexure-I and Annexure-II, under notification no. 42/2001-C.E.(N.T.) dated 26.06.2001 as amended, and furnished by the DTA supplier to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. In the event of non-receipt of proof of export in form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and /or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from the DTA supplier by the jurisdictional Central Excise Officer as is done in the case of non-availability of proof of export for normal export of goods, without payment of Central Excise duty, under Rule 19 of Central Excise Rules, 2002.

3. Clearance of goods at the place of dispatch, i. e., at the factory or warehouse may be, at the option of the exporter (DTA Supplier), either 'under examination and sealing of goods by the Central Excise officer', or, 'under self- sealing and self-examination', as is applicable in the case of export of goods under Rule 18 or 19 of Central Excise Rules, 2002. The manner of disposal of copies of ARE1, monitoring of proof of exports, demand of duty in case of non - submission of proof of exports, etc. shall be the same as is applicable in case of exports made under Rule 18 or Rule 19 of the Central Excise Rules, 2002. The DTA supplier shall ensure the bonafides of the SEZ unit or SEZ developer to whom duty free goods are being supplied. In the event of non-receipt of proof of export due to loss of goods in transit due to theft, illegal diversion or any other reason, or in the event of proof of export being found to be fraudulent, the liability of payment of duty, fine, penalty and interest relating thereto, would lie with the supplier in DTA, in addition to any other liability under any law in force.

Rebate under Rule 18 on clearances made to SEZs –Circular no 06/2010-customs dated 19.03.2010

A view has been put forth that rebate under Rule 18 of the central Excise Rules, 2002 read with Notification 19/2004- CE (NT) dated 06.09.2004 is admissible only when the goods are exported out of India and not when supplies are made to SEZ.

The matter has been examined. The circular No. 29/2006- Cus dated 27.12.2006 was issued after considering all the relevant points and it was clarified that rebate under Rule 18 is admissible when the supplies are made from DTA to SEZ. The Circular also lays down the procedure and the documentation for effecting supply of goods from DTA to SEZ, by modifying the procedure for normal export. Clearance of duty free material for authorised operation in the SEZ is admissible under Section 26 of the SEZ Act, 2005 and procedure under Rule 18 or Rule 19 of the Central Excise Rules is followed to give effect to this provision of the SEZ Act, as envisaged under Rule 30 of the SEZ Rules, 2006.

Therefore, it is viewed that the settled position that rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ does not warrant any change even if Rule 18 does not mention such supplies in clear terms. The field formations are required to follow the circular no. 29/2006 accordingly.

Circular No.1001/8/2015-CX dated 28.04.2015**Clarification on rebate of duty on goods cleared from DTA to SEZ**

It was in view of these provisions that the DGEP vide circulars No. 29/2006-customs dated 27/12/2006 and No. 6/2010 dated 19/03/2010 clarified that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supply of goods made from DTA to SEZ. The position as explained in these circulars does not change after amendments made vide Notification No. 6/2015-CE (NT) and 8/2015-CE (NT) both dated 01.03.2015, since the definition of export, already given in rule 18 of Central Excise Rules, 2002 has only been made more explicit by incorporating the definition of export as given in the Customs Act, 1962. Since SEZ is deemed to be outside the Customs territory of India, any licit clearances of goods to an SEZ from the DTA will continue to be export and therefore be entitled to the benefit of rebate under rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5 of CCR, 2004, as the case may be.

Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available?(SCL-AUG EDITION -2015)

UM Cables Limited v. Union of India 2013 (293) ELT 641 (Bom.)

High Court's Decision: The High Court, therefore, held that a procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the High Court that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

The High Court ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT).

In case of export of goods under rule 18 of the Central Excise Rules, 2002, is it possible to claim rebate of duty paid on excisable goods as well rebate of duty paid on materials used in the manufacture or processing of such goods? (SCL-AUG EDITION -2015)+NOV 2015(16.11.2015)

Rajasthan Textile Mills v. UOI 2013 (298) ELT 183 (Raj.)

High Court's Decision: Under rule 18 of the Central Excise Rules, 2002, grant of rebate of duty paid is available either on excisable goods or on materials used in the manufacture or processing of such goods i.e. On raw material. Thus, it is open to claim the benefit of rebate either on manufactured/finished goods or on raw material, but not on both.

RTP MAY 2015

Soft Textile Mills manufactures M.M. Yarn by using duty paid inputs and clears the same for export on payment of duty. It wants to claim rebate of duty paid by it on inputs as well as of duty paid on finished goods under rule 18 of the Central Excise Rules, 2002.

Rule 18 of the Central Excise Rules, 2002 provides that "where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on materials used in the manufacture or processing of such goods

and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

Soft Textile Mills contends that it is eligible to claim the dual benefit i.e., rebate of duty on both inputs and finished products under rule 18 on account of following reasons:

(i) Word "or" used in rule 18 should be read as "and" as there is a combined Form ARE-2 for claiming the rebate on the manufactured goods as well as rebate on materials used in the manufacture or processing of such goods.

(iii) Since whole of the duty paid on manufactured goods is exempted under rule 19 of the Central Excise Rules, 2002, the assessee opting for rule 18 cannot be put at a disadvantageous situation in the matter of claiming such rebate.

You are required to examine the contention of the Soft Textile Mills with the help of a decided case law, if any.

The issue to be considered in the given problem is that whether rule 18 permits grant of rebate of duty paid on exported finished goods simultaneously with the rebate of duty paid on inputs.

This issue has been dealt by **Rajasthan High Court in the case of Rajasthan Textile Mills v. UOI 2013 (298) E.L.T. 183 (Raj.)**. In the instant case, the High Court made the following significant observations:-

(i) The word “or” is interpreted as ‘and’ only when the literal interpretation of the word produces absurd results. However, in rule 18, if word “or” is taken to be disjunctive, no absurd result occurs, rather the intention manifested in rule 18 can be given full effect to, i.e. to give the benefit admissible on one of the item, either on finished goods or inputs used in the manufacture or processing of such goods.

(ii) Rule 19 provides benefit on the finished goods i.e., any excisable goods can be exported without payment of duty from the factory of producer. However, it does not provide for rebate of duty paid on the materials used in manufacture or processing of such goods. Thus, the intention of rule 19 is to provide benefit on finished goods and not on raw materials.

The procedures & stages in rules 18 and 19 are different. The word ‘or’ used in rule 18 cannot be interpreted as ‘and’ to provide benefit on both, with the aid of different provision of rule 19.

(iii) It is important to note that Notification No. 19/2004 CE (NT) dated 06.09.2004 provides rebate of the whole of the duty paid on all “excisable goods” while Notification No. 21/2004 CE (NT) dated 06.09.2004 provides the rebate of whole of the duty paid on ‘materials’ i.e. inputs used in the manufacture or processing of export goods. Issuance of two different notifications further makes it clear that both the benefits cannot be claimed simultaneously.

(iv) Merely because a combined Form ARE-2 can be used to claim both the benefits, i.e. the rebate on finished goods or on inputs used in manufacture of such goods, it cannot be inferred that the rebate is available on both i.e., finished goods as well as on the inputs.

Based on the above observations, the High Court held that rule 18 of the Central Excise Rules, 2002, allows rebate of duty paid either on excisable goods or on materials used in the manufacture or processing of such goods i.e., on raw material but not on both.

Applying the ratio of the above-mentioned decision to the given situation, it can be concluded that the contention of Soft Textile Mills of claiming rebate of duty paid by it on inputs as well as of duty paid on finished goods, under rule 18 of the Central Excise Rules, 2002, is not valid in law.

Rule 19 Export without payment of duty. -

(1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.

(2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

(3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be specified by notification by the Board.

Notification Number 42/2001-Central Excise (N.T.), dated 26th June, 2001 as amended 24/2010 dated 26.05.2010 +Notification No. 23 /2015-Central Excise (N.T.) dated 30.10.2015+ Circular No.605/42/2001-CX dated 09.07.2011+Circular No.605/42/2001-CX dated 29.11.2001+Circular No. 770 / 3 / 2004 – Cx. dated: 9.1.2004+circular no 928/18/2010-CX dated 28.06.2010.+ Circular No. 1011/18/2015-CX dated 30.10.2015

NOTIFICATION No. 20/2015 -CENTRAL EXCISE (N.T.) dated 24.05.2015

No. 44/2001-Central Excise (N.T.), dated the 26th June, 2001+ notification no. 28/2011-C.E. (N.T.), dated 5th December, 2011+ Notification No. 16/2015 - Central Excise (N.T.)

Notification No.43/2001-Central Excise (N.T.) dated 26.06.2001

Notification No.45/2001-Central Excise (N.T.) dated 26.06.2001

NOTIFICATION No. 31/2007-CENTRAL EXCISE (N.T.) dated 02.08.2007(for FTP 09-14) + NOTIFICATION No. 20/2015 - CENTRAL EXCISE (N.T.) dated 24.09.2015(FOR FTP 2015-20)

Rule 20 Warehousing provisions. -

- (1) The Central Government may by notification, extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty.
- (2) The facility under sub-rule (1) shall be available subject to such conditions, including penalty and interest, limitations, including limitation with respect to the period for which the goods may remain in the warehouse, and safeguards and procedure, including in the matters relating to dispatch, movement, receipt, accountal and disposal of such goods, as may be specified by the Board.
- (3) The responsibility for payment of duty on the goods that are removed from the factory of production to a warehouse or from one warehouse to another warehouse shall be upon the consignee.
- (4) If the goods dispatched for warehousing or re-warehousing are not received in the warehouse, the responsibility for payment of duty shall be upon the consignor.

Notification 46/2001-CE (NT) +circular number 581/18/2001-CX dated 29th June, 2001+Circular 987/11/2014-CX dated 15 October 2014.

Notification No. 07/2013 Central Excise (N.T.) dated 23.05.2013 In exercise of powers conferred by sub-rule (1) of rule 20 of the Central Excise Rules, 2002, the Central Government hereby extends the facility of removal of all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 from the factory of production, intended for storage in a godown or retail outlet of a Duty Free Shop in the Departure Hall or the Arrival Hall, as the case may be, of International Airport, appointed or licensed as "warehouse" under Section 57 or 58 of the Customs Act, 1962, as the case may be, and for sale therefrom, against foreign exchange to passengers going out of India or to the passengers or members of crew arriving from abroad, subject to limitations, conditions and safeguards as may be specified by the Central Board of Excise and Customs in terms of sub-rule (2) of rule 20 of Central Excise Rules, 2002

Rule 21. Remission of duty. -

Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:

Provided that where such duty does not exceed ten thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Superintendent of Central Excise" has been substituted:

Provided further that where such duty exceeds ten thousand rupees but does not exceed one lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted :

Provided also that where such duty exceeds one lakh rupees but does not exceed five lakh rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted.

Rule 22. Access to a registered premises. -

(1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee, **an importer who issues an invoice on which CENVAT credit can be taken**, and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of -

- (i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;
- (ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and
- (iii) all the financial records and statements (including trial balance or its equivalent).

(3) Every assessee, **an importer who issues an invoice on which CENVAT credit can be taken**, and first stage and second stage dealer shall, on demand make available to the officer empowered under sub-rule (1) or the audit party

deputed by the Commissioner or the Comptroller and Auditor- General of India, or a cost accountant or chartered accountant nominated under section 14 A or section 14 AA of the Act,-

(i) the records maintained or prepared by him in terms of sub-rule (2);

(ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956(1 of 1956); and

(iii) the income-tax audit report, if any, under section 44 AB of the Income-tax Act, 1961 (43 of 1961),

for the scrutiny of the officer or the audit party or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be".

Explanation. - For the purposes of this rule, "first stage dealer" and "second stage dealer" shall have the meanings assigned to them in CENVAT Credit Rules, 2004.

Rule 23. Power to stop and search. -

Any Central Excise Officer, may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

Rule 24. Power to detain or seize goods. -

If a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

Rule 24A. Return of records.-

The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made there under, shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice:

Provided that the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

Rule 25. Confiscation and penalty. -

(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse **or an importer who issues an invoice on which CENVAT credit can be taken**, or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notification issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty, then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse **or an importer who issues an invoice on which CENVAT credit can be taken**, or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or ~~rupees 2000~~ **(w.e.f.14.05.2015 5000 rupees**, whichever is greater.

(2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.

RTP MAY 2014 :- M/s Sharda Zarda Makers is engaged in manufacturing zarda with the brand name 'Aanand'. It clandestinely cleared 'Aanand' zarda and stored the same with Balram Trading Co. for further sales. Balram Trading Co. were allegedly the related concerns of M/s Sharda Zarda Makers

The Commissioner of Central Excise has imposed a penalty under rule 25(1)(c) of the Central Excise Rules, 2002 on Balram Trading Co. on the ground that it has engaged in the storage of excisable goods without having applied for the required registration certificate.

Examine with the help of a decided case law whether penalty under rule 25 of the Central Excise Rules, 2002 can be imposed on such firm?

Solution: - The facts of the given case are similar to the case of CCEx. v. Balaji Trading Co. 2013 (290) E.L.T. 200 (Del.) wherein the High Court concurred with the view of Tribunal and held that rule 25(1)(c) would have no application in the present case.

The CESTAT, when the matter was discussed before it, noted that penalty under rule 25 could be imposed only on four categories of persons:-

(a) producer; (b) manufacturer; (c) registered person of a warehouse; or (d) a registered dealer.

These four categories of persons are also mentioned at the end of rule 25, where the liability of penalty has been spelt out. CESTAT, therefore, clarified that penalty under rule 25 can be imposed on such persons only. However, the assessee was neither the producer nor manufacturer of the said zarda. Also, it was neither the registered persons of a warehouse in which the said zarda had been stored nor the registered dealer. Therefore, penalty under rule 25(1)(c) could not be imposed on the assessee.

Applying the ratio of the above-mentioned decision to the case at hand, it can be concluded that penalty under rule 25(1)(c) could not be imposed on Balram Trading Co. for storing the clandestinely removed zarda for further sales.

RTP NOV 2015

Examine the validity of the following statements with reference to the provisions of Central Excise Rules, 2002:-

An importer who issues CENVATable invoices is liable to penalty under rule 25 of Central Excise Rules, 2002 for non-accountal of excisable goods stored in the warehouse.

The said statement is correct. Prior to 01.03.2015, the provisions of rule 25 of Central Excise Rules, 2002 relating to confiscation and penalty for specified contraventions were applicable to a producer, manufacturer, registered person of a warehouse and a registered dealer. However, with effect from 01.03.2015, the scope of applicability of rule 25 has been extended vide Notification No. 8/2015 CE (NT) dated 01.03.2015 to an importer who issues an invoice on which CENVAT credit can be taken. Further, it may be noted that non-accountal of excisable goods stored in the warehouse is a specified contravention under rule 25 of Central Excise Rules, 2002.

Rule 26. Penalty for certain offences. -

(1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.

(2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.

Rule 27. General penalty. -

A breach of these rules shall, where no other penalty is provided herein or in the Act, be punishable with a penalty which may extend to five thousand rupees (Rs.5000) and with confiscation of the goods in respect of which the offence is committed.

Rule 28. Confiscated property to vest in Central Government. -

- (1) When any goods are confiscated under these rules, such thing shall thereupon vest in the Central Government.
- (2) The Central Excise Officer adjudging confiscation shall take and hold possession of the things confiscated, and every Officer of Police, on the requisition of such Central Excise Officer, shall assist him in taking and holding such possession.

Rule 29. Disposal of confiscated goods.-

Confiscated goods in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

Rule 30. Storage charges in respect of goods confiscated and redeemed. -

If the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation, he may be required to pay such storage charges as may be determined by the adjudicating officer.

Rule 31. Power to issue supplementary instructions. -

- (1) The Board or the Chief Commissioner or the Commissioner, may issue written instructions providing for any incidental or supplemental matters, consistent with the provisions of the Act and these rules.

Rule 33. Transitional provision.-

Any notification, circular, instruction, standing order, trade notice or other order issued under the Central Excise (No. 2) Rules, 2001 by the Board, the Chief Commissioner or the Commissioner of Central Excise, and in force as on the 28th day of February, 2002, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.