INDIRECT TAXATION

CA - FINAL

IMPORTANT TOPICS

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By

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CCE VS. BLOW PLAST LTD. (2009) 236 ELT 631 (DEL.)

Facts : Blow Plast Ltd. (BPL) is engaged in procuring the duty paid Office Furniture System / Work Stations (OFS / WS) from the supplier and erecting and installing them at site of customers, from whom it has procured the orders. After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready-made furniture system and work stations manufactured by independent manufactures / suppliers are superimposed. Thereafter, based on the clients' specifications, orders are placed upon the manufacturer of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and project code.

Issue : The assessee contends that they are only marketing OFS / WS. However, the Revenue alleges that BPL is liable to pay duty as the said activity amounts to manufacture.

Held : The Tribunal arrived at the conclusion that since the supplier had cleared the complete set of elements required for the work station in a knocked down condition, it could not be said that the supplier had manufactured the parts and not the complete system. The High Court while affirming the Tribunal's order held that the same product as known to the trade could not be manufactured twice over. Consequently, nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Act. What the assessee received was complete OFS / WS and what it left on its clients' sites was also complete OFS / WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

LAMINA INTERNATIONAL V. CCEX., BANGALORE 2009 (239) E.L.T. 232 (KAR.)

Whether the assessee can be considered as manufacturer if it gets its products manufactured through its sister concern which is also situated in same premises?

M/s Lamina International (LI), engaged in export of goods, got manufactured the products from M/s. Lamina Suspension Products Limited (LSPL) on job work basis. Revenue contended that since the documents furnished by the appellant clearly showed that the goods in question were manufactured by the assessee through LSPL; appellant could not be considered as a manufacturer. In this regard, the appellant replied that both the appellant and LSPL were housed in one premise and both the units were under the control and supervision of the appellant (assessee).

The High Court noted that the assessee was apparently a creation of LSPL and both the units were one and the same i.e. they were sister concerns. Considering the word 'manufacturer' (as defined under section 2(f) of the Act) which includes any person engaged in the production or manufacture on his own account, the Court observed that the manufacturer-LSPL was manufacturing the goods on behalf of the appellant and the appellant was having a full control and supervision over the activities of LSPL.

High Court also referred to the cases of ***Commissioner of Sales Tax v. Sukh Deo AIR 1969 SC 499 and Modi Rubber Ltd. v. Union of India 1997 (19) RLT 479 (Del.)***,wherein it was held that manufacturer is a person by whom or at whose direction and control the articles or materials are made. Considering the definition under section 2(f) and the case laws referred above, the

High Court answered the question of law framed in the appeal in favour of the assessee. Hence, the appellant was held as the manufacturer of the goods.

JAI BHAGWAN OIL AND FLOUR MILLS V. UOI 2009 (239) E.L.T. 401 (S.C.)

Whether production of mustard oil and oil cake from mustard seeds amounts to manufacture?

The Apex Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity / raw material involved in the manufacture.

When mustard seeds were subjected to the process of extraction whereby mustard oil and oil cake were produced, the process involved manufacture of mustard oil as also the manufacture of oil cake. It was certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. Oil cake was a distinct and different entity from mustard seeds and it had a separate name, character and use different from mustard seed. Oil cake was not a waste to be thrown away, but was a valuable product with a distinct name, character, use and marketability. So, oil cake was a finished product and not a by-product and the said process amounted to manufacture.

BATA INDIA LTD. V. CCE 2010 (252) ELT 492 (SC)

Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?

The Apex Court observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The question is not whether there is a hypothetical possibility of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known. The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold. Theory and practice will not go together when one examine the marketability of a product.

The Supreme Court further ruled that the burden to show that the product is marketed or capable of being bought or sold is entirely on the Revenue. Revenue, in the given case, had not produced any material before the Tribunal to show that the product was either been marketed or capable of being marketed, but expressed its opinion unsupported by any relevant materials.

Note: The above judgment is in conformity with the explanation to section 2(d) of the Central Excise Act, 1944 inserted by the Finance Act, 2008.

CCE V. SOLID & CORRECT ENGINEERING WORKS AND ORS 2010 (252) ELT 481 (SC)

Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?

The asseseee was engaged in the manufacture of asphalt batch mix and drum mix / hot mix plant by assembling and installing its parts and components. The Court observed that as per the assessee, the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.

The Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

CCE V. SONY MUSIC ENTERTAINMENT (I) (P) LTD. 2010 (249) E.L.T. 341 (BOM.)

Does the activity of packing imported compact discs in a jewel box along with inlay card amount to manufacture under section 2(f) of the Central Excise Act, 1944 ?

The appellant imported recorded audio and video discs in boxes of 50 and packed each individual disc in transparent plastic cases known as jewel boxes. An inlay card containing the details of the content of the compact disc was also placed in the jewel box. The whole thing was then shrink wrapped and sold in wholesale. The Department contended that the said process amounted to manufacture.

The High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the Tribunal rightly concluded that the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.

OTHER IMPORTANT TOPICS

1. Scope of Central Excise Act
2. Ratan Melting & Wire Industries - Judgement
3. Definitions : (i) factory (ii) wholesale dealer
4. Special Provisions relating to duty payable by EOU
5. Goods Carrying 'Nil' Rate of duty
6. Relevance of Conditions of Marketability & Moveability under Central Excise after amendment in the definition of 'excisable goods' or leviability of excise duty on waste or scrap
7. Concept & Scope of Manufacture including deemed manufacture

CLASSIFICATION

CCEX., JAIPUR V. MEWAR BARTAN NIRMAN UDYOG 2008 (231) ELT 27 (SC)

Whether the rules of interpretation applicable to the cases of classification under the Excise Tariff are also applicable to interpretation of exemption notification?

The Apex Court clarified that it is well settled position in law that exemption notification has to be read strictly. A notification of exemption has to be interpreted in terms of its language. Where the language is plain and clear, effect must be given to it.

While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the Excise Tariff. Tariff items in certain cases are required to be interpreted in cases of classification disputes in terms of HSN, which is the basis of the Tariff. The rules of interpretation applicable to the cases of classification under the Tariff cannot be applied to interpretation of exemption notification.

CCEX., V. CHAMPDANY INDUSTRIES LIMITED 2009 (241) E.L.T. 481 (S.C.)

Whether the carpet, in which jute is predominant by weight, but the surface is entirely of polypropylene, should be classified as jute carpet or polypropylene carpet?

The assessee was engaged in the manufacture of the carpets in which jute predominated by weight over every other single textile material. However, Revenue contended that the same should be classified as polypropylene carpet.

In this regard, the Apex Court considered the following points:-

(i) Relying on Note 1 to Chapter 57, Revenue argued that the surface of the carpet being entirely of polypropylene, the same should be classified as polypropylene carpet. The Supreme Court viewed that role of Chapter Note is limited to decide whether the goods in question are "carpets and other textile floor coverings" for the purposes of Chapter 57 or not. Once the goods are carpets and falling under Chapter 57, the role of Chapter Note 1 comes to an end.

Further referring to the relevant statutory provisions laid down in Section Notes 2(A) and 14(A) of Section XI, the Apex Court held since the impugned goods admittedly fell under Chapter 57 and consisted of more than two textile materials, it had to be classified on the basis of that textile material which predominated by weight over any other single textile material. As, in the goods in question, jute admittedly predominated by weight over each other single textile material, the said carpet could only be classified as jute carpets and nothing else. The contrary interpretation given by the Revenue was incorrect.

(ii) Relying on the concept of essentiality test, Revenue argued that as the exposed surface of the carpet was polypropylene fiber and not jute, these goods could not be classified as jute carpets. The Court held the said argument of the Revenue to be erroneous because it was against the principle of predominance test.

(iii) Learned counsel for the Revenue further argued that the common parlance test should be applied for classifying the carpets and the carpets, to the common man, would not appear to be jute carpet but polypropylene carpet. The Supreme Court observed that it is already established principle that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts, the common parlance test can be accepted only if any term or expression is not properly defined in the Act. Therefore, going by the aforesaid principle, the Court held that common parlance test did not have any application here.

(iv) Learned counsel for the Revenue argued that for the purpose of classification in this case, rule 3 of the 'Rules for the Interpretation of the First Schedule to the Central Excise Tariff Act, 1985' should be applied. Applying the said rule, Revenue wanted to classify the carpets under the residuary sub-heading 5702.90 of Heading 57.02 - "others". In this regard, the Apex Court observed that Revenue's stand in this case was contrary to the decision of Supreme Court in HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208, wherein it was held that rule 3(a) of the Interpretative Rules provides that if the goods are covered by a specific heading, the same cannot be classified under the residuary heading at all.

Apart from that, the Court noted that the point of rule 3, which had been argued by the learned counsel for the Revenue, was not part of its case in the show-cause notice. It is well settled that in Court, Revenue cannot argue a case not made out in its show-cause notice.

In the light of the above discussion, the Apex Court pronounced that the said carpets shall be classified as jute carpets and note as polypropylene carpet.

Note :

1. ***The Note 1 to Chapter 57 of the Excise Tariff is reproduced as below:-***

   "For the purposes of this Chapter, the term 'carpets and other textile floor coverings' means floor coverings in which textile materials serve as the exposed surface of the article when in use and includes article having the characteristics of textile floor coverings but intended for use for other purposes."

2. *Section Notes 2(A) and 14(A) of Section XI of the Central Excise Tariff Act, 1985 is set out as follows:-*

   "2(A) Goods classifiable in Chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over any other single textile material."

   "14(A) Products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under Note 2 to this section for the classification of a product of Chapters 50 to 55 or of heading 5809 consisting of the same textile materials.

Dagar Ltd. manufactures coconut oil and sells them in packings of 50 ml or 100 ml. The packing of the oil specifies it to be 'pure coconut oil'. Majority of the consumers use the said coconut oil as hair oil. Dagar Ltd. classifies the coconut oil as 'vegetable oil' under Chapter 15 of the Central Excise Tariff. However, the Department contends that coconut oil manufactured by Dagar Ltd. is meant for sale as 'hair oil'; therefore, it should be classified as 'hair oil' under Chapter 33.

Explain whether the contention of the Department is correct in law?

Ans. The Department's contention is correct. ***Circular No. 890/10/2009 CX dated 03.06.2009*** has been issued in respect of classification of coconut oil sold in small packs say of 50 ml or 100 ml. When the coconut oil is sold in small containers, following indications are found on containers or labels:

A. 'hair oil'

B. 'edible oil'

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

When 'hair oil' is printed on the container/label, it is classified as 'hair oil' under chapter 33. Further, the coconut oil falling under the other two categories ('edible oil', 'pure coconut oil' or 'coconut oil') should also be classified as 'hair oil' under Chapter 33 as they are meant for sale as 'hair oil'.

The circular explains that Chapter Note 2 of Chapter 33 prescribes a condition that Heading No.3305 (which covers hair oil also) applies to products **put up in packing of a kind sold by retail for such use.** Thus, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305.

Further, Section Note 2 to Section VI also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority. However, if the same coconut oil is packed in say 1 litre or 2 litre packages, which are generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.

Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.

Amiga Tank and Manufacturing Company (ATMC), a manufacturer of storage tank, wrongly classified the said product under Chapter Heading 73.09 by taking it to be the storage of general use. Later on, it realized that since storage tank concerned was actively used for manufacturing activity of the plant and was an integral part of the manufacturing process, therefore, it ought to be classified under Chapter Heading 84.19. So, he claimed the correct classification under Chapter Heading 84.19.

Adjudicating Authority disallowed the assessee's claim of CENVAT credit, in respect of the input/capital goods used for the construction of storage tank, by taking the classification of the product under Chapter 73. Its primary contention was that classification once opted by the manufacturer could not be altered subsequently. Examine the validity of the proposed action of Adjudicating Authority, with reference to a decided case law, if any.

Ans. The question, as to whether an erroneous claim to a particular classification made earlier precludes the assessee from making claim for correct classification subsequently, has been decided by **Rajasthan High Court** in case of ***Guljag Industries Ltd. v. Union of India 2008 (224) ELT 38***. In this case, learned counsel for appellant contended that earlier claim to a particular classification by the manufacturer did not stop him from claiming correct classification under different head by pointing out that the classification earlier claimed was erroneous.

Rajasthan High Court held that the assessee's contention was justified. Erroneous claim made by the assessee earlier did not preclude him from subsequently making a claim for correct classification.

Hence, in view of above pronouncement, the proposed action of Adjudicating Authority is not valid. ATMC is entitled to alter the earlier classification and claim the classification of the said product under Chapter heading 84.

Note - The headings cited in the case law mentioned above may not co-relate with the headings of the present Excise Tariff as this case relates to an earlier point of time.

Some of the products manufactured by the assessee - Rehmaan Research Lab Pvt. Ltd (RRLPL) were under consideration. As per the assessee, the products under consideration were ayurvedic medicines covered under the Central Excise Tariff – Chapter-30 chargeable to duty at the rate of 10% advalorem. However, the Department contended that these products were classifiable under Chapter 33 – Cosmetic or toilet preparations, essential oils etc. - of the Tariff. Therefore, the said products would invite the duty at the rate of 40% advalorem.

Department applying the common parlance test raised the plea that these products were cosmetics such as skin beautification creams, lotions, moisturisers, shampoos, etc., and sold to the hotels, beauty parlours etc. It relied on the literature published by M/s. RRLPL on the Skin Care Naturals thereby suggesting that the use of biotique products would make the skin beautiful and would help the user retain the bloom of youth. It was also submitted by the Revenue that these products were treated as cosmetic products by the customers.

Do you think that Department's plea is valid in law?

Ans. No, the Department's plea is not valid in law. The facts of the given case are similar to the case of **CCEx., Delhi v. Ishaan Research Lab Private Ltd. 2008 (230) ELT 7** wherein the **Apex Court** held that the said products would invite the duty as "ayurvedic medicines" at the rate of 10% advalorem and not at the rate of 40% advalorem as claimed by the Revenue since all these products were produced under the Drugs License issued under the Drugs and Cosmetics Act, 1940. Further, label of the product specified the medicinal properties of the product and there was a specific claim that this was not a cosmetic product.

The Supreme Court clarified that the common parlance test is not "be all and end all" of the matter. Merely because the product could be put to cosmetic use, that would not by itself make it a cosmetic product provided there was a rightful claim made that it was an ayurvedic product on the factual basis, and it contained the medicinal ayurvedic medicament.

OTHER IMPORTANT TOPICS

1. Emergency Power u/s 3 of Central Excise Tariff Act
2. Power to Amend First Schedule & Second Schedule – Section 5
3. Rule – 3 of Interpretative Rules

VALUATION UNDER CENTRAL EXCISE

CCEX., CHANDIGARH V. BHARTI TELECOM LTD. 2008 (226) ELT 3 (S.C.)

How will assessable vale of goods sold to related person at or about the same price at which it is sold to non-related parties be ascertained?

The assessee, Bharti telecom Ltd. (BTL), sold 75% of its product - electronic push button telephones - to Department of Telecommunications (DOT) and Mahanagar Telephone Nigam Limited (MTNL) and remaining 25% in the open market through Siemens Telecom Limited (STL). STL was a joint venture company of BTL and STL. According to Revenue, BTL and STL were related persons having mutuality of interest. And BTL sold its product to STL at a far less price than the price at which STL sold it in the whole sale market. So, the Revenue's contention was that assessable value in this case was the price at which STL sold the product in open market while as per assessee, assessable value was the price at which BTL sold the product to STL.

The Apex Court observed that BTL sold the goods to STL at or about the same price at which it sold the goods to DOT and MTNL. Therefore, it held that even if STL was taken to be a related person to BTL (though the Court did not hold so); it had not influenced the price at which the goods were sold by BTL to STL. Under the circumstances, transaction value should be taken to be the assessable value.

VALUE NEAREST TO TIME OF REMOVAL IF GOODS NOT SOLD : RULE – 4

Rule 4 provides that if goods are not sold at the time of removal, then the value will be based on the value of such goods sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments. This rule applies when price at the time of removal is not available as the goods are not sold by the assessee at the time of removal. Thus, this rule should apply in case of removal of free samples or supply under warranty claims. In case of removal of samples or free replacement under warranty claim, duty will be payable on price of identical goods sold by assessee near about the time of removal of the samples.

Department vide ***Circular No. 813/10/2005 dated 25.04.2005*** has clarified that in case of samples distributed free, valuation should be done on the basis of Rule 4 i.e. valuation should be done on the basis of value of identical goods cleared at or around the same time.

Following the above Circular, CESTAT in its majority decision in the case of ***M/s Cadila Pharmaceuticals Ltd. Vs Commissioner of Central Excise Ahmedabad II, reported at 2008 (232) ELT 0245 (Tri.-LB),*** has held that even after the pharmaceutical products have been notified for MRP assessment under Section 4A of the Central Excise Act, the assessment of free physician samples of these products , is appropriately required to be done under Rule 4 of the valuation rules by taking into consideration the deemed value under Section 4A(1) notwithstanding the non availability of normal price under Section 4(1)(a) of the Act, ibid. Accordingly, the value for payment of excise duty for physician sample would be the value determined under Section 4A for the similar goods (subject to adjustment for size & pack etc.)

Therefore, the Board has clarified vide its ***Circular No. 915/05/2010 dated 19.02.2010*** that the aforesaid decision of CESTAT would, mutatis mutandis, be applicable in respect of free samples of other products which are under MRP assessment. Accordingly, it is clarified that valuation of Samples which are distributed free as part of marketing strategy, or as gifts or donations, shall be determined, in terms of Rule 4, whether the final products are assessed under MRP based assessment or otherwise.

WHERE PLACE OF DELIVERY IS DIFFERENT FROM PLACE OF REMOVAL : RULE - 5

When Manufacturer/Transporter charges cost of transportation for outward journey and return of empty vehicles

CBEC vide Circular No. 827/4/2006 dated 12.04.2006 has clarified that if the assessee recovers an amount from the buyer for transportation cost for outward journey upto point of delivery and return therefrom, the cost of return journey of the empty vehicle from the place of delivery, will not be allowed as deduction, as only cost of transportation from place of removal upto place of delivery is allowable as deduction as per Rule 5. Further, the manufacturer /transporter should specifically mention in his invoice that the transportation charges do not include the cost of transportation for the return journey. Otherwise, the deduction of transportation charges will not be admissible.

However, as the Courts and Tribunal took a different view in the case of DCW Ltd. v. CCE (2007) 217 ELT 541 (Mad) and Haldia Petrochemicals Limited Vs Commissioner of Central Excise Haldia (2009) 233 E.L.T. 344 (Tri. – Kolkata), the Board has withdrawn the above clarification and further clarified that cost of return fare of vehicles is not required to be added for determining value - Circular No. 923/13/2010-CX dated 19.05.2010.

In DCW Ltd. case, Tribunal has held that "where onward freight was not includible in the assessable value of the excisable goods, there was no question of return freight being included

in the assessable value, whether or not the return freight was mentioned in the relevant invoices."

RULE 10A - PROBLEM

Henna Export Corporation gets its product manufactured on job work basis from Meltex Ltd. - an independent processor. The details of the transaction are as follows:-

Particulars	***Amount(Rs.)***
Cost of material sent to job worker for processing	2,500
Processor charges (including Rs.700 as processing charges and Rs.500 as his profit)	1,200
Transport charges for receiving goods at the premises of the processor	100

After processing, goods are sold by Henna Export Corporation at Rs.5,800 from the premises of Meltex Ltd. You are required determine the assessable value of the goods under section 4 of the Central Excise Act.

Ans.

As per rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are produced or manufactured by a jobworker, on behalf of a person (hereinafter referred to as principal manufacturer) and the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer. Hence, in the instant case, the assessable value of the goods shall be Rs.5,800.

OTHER IMPORTANT TOPICS

1. Cum Duty Price
2. Section 3A – Duty based on Production Capacity
3. Definitions of Section 4
4. Practical Question of Valuation – Inclusion / Exclusions
5. Rule – 10A Job Worker
6. Captive Consumption – Rule 8
7. MRP Valuation – Practical Question

SMALL SCALE INDUSTRIES

EXEMPTION TO MANUFACTURERS OF BRANDED GOODS

Packing Material Etc. – where the specified goods are in the nature of packing materials namely printed cartons, of paper or paper board, metal containers, HDPE woven, sacks, adhesive tapes, stickers, PP caps, crown corks, metals, plastic bags, ***printed laminated rolls, plastic containers and plastic bottles.***

However, in respect of plastic containers and plastic bottles, the exemption under this notification shall apply only where such plastic containers or plastic bottles are meant for use as packing materials by the person whose brand name such goods bear. [Amended by Finance Act, 2010, w.e.f. 27.02.2010]

CCEX., JAIPUR V. ELECTRO MECHANICAL ENGG. CORPN. 2008 (229) E.L.T. 321 (S.C.)

Whether two or more units can be clubbed together simply for the reason that they have common employees or have adjoining premises?

Contention of the Department: The Revenue contended that the assessee, M/s EMEC, had floated two front units, viz., M/s Cold Steel Corporation and M/s Super Steel Corporation in order to fraudulently avail the benefit of SSI exemption under Notification No. - 8/2003 – C.E., which exempted the clearances of specified goods from the payment of duty and concessional duty in the case of certain SSI units. The Revenue further contended that since the assessee had deliberately and willfully suppressed the facts regarding its relationship with M/s Cold Steel Corporation and M/s Super Steel Corporation, hence, the SSI exemption available under the aforementioned notification should be denied to them.

Contention of the Assessee: The assessee replied that all the three units were in existence and were independent of each other. Each of the units was separately registered and there was no flow back of money from one unit to another and that they had not suppressed the facts from the Department. The proprietor of M/s EMEC was the partner in the other two firms which were undertaking their business independently.

Judgement of Apex Court: The Apex Court upheld the Tribunal's decision who, relying upon the judgment of Rajasthan High Court in case of ***Renu Tandon v. Union of India – 1993 (66) E.L.T. 375***, had decided that merely because there were some common employees, the value of the clearances of two units could not be clubbed unless there was evidence to prove that there was mutuality of business interest and the units were having financial flow back. The Apex Court agreed with the finding recorded by the Tribunal that there was no deliberate or willful suppression of any material facts by the respondent from the Department.

Further, there was no evidence on record to prove that there was mutuality of business interest or there was flow back of funds from one unit to another. Hence, SC arrived at the conclusion that the clearances of two units could not be clubbed and the SSI exemption available under the aforementioned notification should not be denied to them.

CCEX V. SUPERIOR PRODUCTS [2008] (SC)

Facts of the Case: M/s. Super Products is a partnership firm. This Partnership firm started producing pet bottles from 1997. M/s. Superior Pet Pvt. Ltd. started production of the same goods from the next year i.e. 1998. Both the units were being managed by one of the common director. On this background deparment contended that both the units to be of the same manufacturer & their turnover required to be clubbed for determining SSI exemption.

Department's Contention: clearance of both the units should be clubbed together as both the units had common Directors and that one person was looking after the affairs of both the units

Second unit was created only to get the loan and did not have even complete machinery in its premises to manufacture the final product.

Assessee's Contention: Both the manufacturing units are -

- separate entities in law as well as in their operation.
- separate capital, separate accounts, separate machinery, separate premises and separate work force.

There is no financial accommodation between the two, leave alone flow of funds from one to another and each unit bears its loss or enjoys its profit.

Decision: both manufacturing units have separate capital, premises, machinery and labour. Both are carrying out separate operations. The commonality of share holders and Partners and a common manager do not destroy the separateness of the two units. That they are manufacturing the same product or that one unit purchases a material from the other on commercial terms also do not go against their separate identity as manufacturers' consequent denial of exemption to the units is not sustainable

OTHER IMPORTANT TOPICS

1. **Practical Question**
2. **Goods bearing brand name of others but eligible for exemption**
3. **Clubbing of Clearances**

GENERAL PROCEDURE

MANNER OF PAYMENT [RULE – 8]

Goods have to be cleared from factory or warehouse, under an Invoice. Duty is payable on monthly basis. Duty can be paid through current account (PLA) and / or CENVAT credit. Duty is payable on ***monthly basis*** by the following dates –

Manufacturer	Last Date for Payment of Duty	Last Date for E-Payment of Duty
Units except units eligible for SSI exemption	5th of month following end of month	6th of month following end of month
Units eligible for SSI Exemption	***5th of month following that Quarter [Amended by Finance Act, 2010, w.e.f. 01.04.2010]***	***6th of month following that Quarter [Amended by Finance Act, 2010, w.e.f. 01.04.2010]]***

- Duty in respect of clearances in the month of March is payable by ***31st March*** only and not in the following month. ***Further, in case of SSI the duty in respect of clearance in the last quarter of the year is payable by 31st March only.***
- If the tax is paid electronically, the same should be paid by **8 p.m.** on the due date. If the same is paid later than 8 p.m. on due date, it shall be deemed to have been paid on the next day.
- 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. However, it is sufficient if cheque is deposited with Bank on or before due date, even if cheque is realised later, provided that cheque is realised when presented by collecting Bank.
- An assessee, who paid duty of ***Rs. 10 lakhs or more including the amount of duty paid by utilisation of CENVAT Credit in the preceding financial year,*** shall deposit the duty electronically through internet banking. ***[Amended by Notification No. 04/2010-CE(N.T.) dated 20-02-2010]***
- ***It must be noted that an assessee shall be eligible for SSI Exemption, 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 [i.e. Notification No. 8/2003], did not exceed Rs. 400 lakhs. In other words, even an eligible assessee does not***

opt for SSI exemption, he shall pay tax quarterly.

- ***Further, the manner of payment in respect of units eligible for SSI exemption, as specified above (i.e. quarterly payment) shall be available to the assessee for whole financial year.***

PERIODIC RETURNS RULE-12

Form of Return	Description	Who is required to file	Time limit for filing return
ER-3 [Proviso to Rule 12(1) of CER]	***Quarterly Return by units eligible for SSI Exemption***	***Assessees eligible for SSI concession***	***10th of following quarter [Amended by Finance Act, 2010, w.e.f. 01.04.2010]***

Details of different types of return forms are as follows -

ER – 1 : As per Rule 12 of Central Excise Rules a monthly return, is to be submitted to Superintendent of Central Excise of production and removal of goods, by 10th of the following month in form ER -1. [Rule 12(1)]

<u>E-filing of Returns:</u> Where an assessee has paid total duty of <u>rupees ten lakh or more</u> including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the monthly or quarterly return, as the case may be, electronically. [Amended w.e.f. 01.04.2010]

ER – 3 : The following persons are required to submit return in ER – 3 on quarterly basis within 10 days from the close of quarter -

(i) ***Unit eligible for SSI concession*** on basis of annual turnover.

(ii) Textile units in textile sector manufacturing yarn, unprocessed fabrics and readymade garments falling under Chapter 50, 51, 52, 53, 54, 55, 58, 60, 61 or 62

However, it must be noted that the Units availing area based exemption in Uttrakhand and Himachal Pradesh are required to submit return in ER – 3 on quarterly basis ***within 20 days*** from the close of quarter. [Rule 12(1)]

It must be noted that an assessee shall be eligible for SSI Exemption, 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 [i.e. Notification No. 8/2003], did not exceed Rs. 400 lakhs. In other words, even an eligible assessee does not opt for SSI exemption, he shall file the returns quarterly.

Further, the manner of filing of returns in respect of units eligible for SSI exemption, as specified above (i.e. quarterly filing) shall be available to the assessee for whole financial year.

<u>E-filing of Returns:</u> Where an assessee has paid total duty of <u>rupees ten lakh or more</u> including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the monthly or quarterly return, as the case may be, electronically. [Amended w.e.f. 01.04.2010]

ER – 7 : Annual Installed Capacity Statement

- The Central Government may exempt any assessee or class of assessees from furnishing ER – 7. ***In exercise of these powers, the Central Government has exempted the assessees, from the submission of the Annual Installed Capacity Statement, who manufacture the following goods, namely,-***

  (i) biris, manufactured without the aid of machines falling under tariff item 2403 10 31

  (ii) matches manufactured without the aid of power falling under heading 3605

  (iii) reinforced cement concrete pipes falling under heading 6810 [Notification No. 26/2009]

INVOICE – [RULE 11]

~~**Pre-authentication of Invoice** - Each foil of the Invoice shall be pre-authenticated by the assessee - by owner, working partner, Managing Director or Secretary or any person duly authorised for this purpose, before being brought into use. **[Rule 11(5)].** The company, owner or working partner can authorise any person to authenticate the Invoice. Copy of letter of authority should be submitted to Range Office~~. ***[This Sub-Rule (5) has been omitted by Finance Act, 2010, w.e.f. 01.04.2010]***

RETURN OF DUTY PAID GOODS – [RULE-16]

Credit of Duty under Rule 16 of Central Excise Rules, 2002 on Goods brought into the Factory: Instruction F.No.267144/2009-CX 8, dated 25.11.2009

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

This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged.

Regarding availing credit on its own invoice, Rule 16(1) of the Central Excise Rules, 2002, allows the assessee to do so. In any case, the whole procedure is revenue neutral, in the sense as the duty has to be discharged by the 5th of next month.

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

For example, if goods are sold on 16.08.2010, on which duty is payable of Rs. 10,000/-. The due date of payment of this duty is 5th September, 2010. However, these goods have been returned on 25.08.2010. In this case, as per above clarification, the manufacturer can avail the credit of Rs. 10,000/- (on returned goods) against the payment of duty of Rs. 10,000.

GUPTA METAL SHEETS V. CCE 2008 (232) ELT 796 (TRI. - LB)

Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002?

The Large Bench of the Tribunal ruled that as per rule 21 of the Central Excise Rules, 2002; loss must be attributable to any natural cause or unavoidable accident. It clarified that the term 'loss' cannot be understood in the limited sense of 'loss to the manufacturer', but it has to be understood as being unavailable for consumption in the market. However, in case of theft or dacoity, the goods are not 'lost' or 'destroyed'; they rather enter the market for consumption, although illegally, after being removed from the approved premises or the place of storage.

'Natural cause' refers to some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. The act of forcibly removing the goods by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause.

Considering the definitions of 'theft' and 'robbery' in the Indian Penal Code, the Tribunal inferred that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause. The Tribunal opined that theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution, they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'.

In view of the above, the Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 21 of the Central Excise Rules, 2002 and the goods lost in theft or dacoity would not be eligible for remission. The issue was thus answered in the negative i.e. in favour of the Revenue and against the assessee.

UOI V. HINDUSTAN ZINC LIMITED 2009 (233) E.L.T. 61 (RAJ.)

Is remission of duty possible in case of loss occurring due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted?

Facts of the Case: The assessee was engaged in the manufacture of lead and zinc concentrates. At the time of carrying out the physical stock taking, some difference was found between the physically verified stock and the stock as per the books.

Contention of Assessee: According to the assessee, this difference was due to de-bagging, shifting of concentrates, seepage of rain water, storage and loading on trucks, accounting method adopted. The assessee applied for the remission of the duty under rule 21 of the Central Excise Rules, 2002.

Contention of the Department: Revenue contended that the shortage could have been avoided or minimized by the assessee, as these were neither due to natural causes, nor due to unavoidable accident. Thus, the prayer for remission was declined.

Decision of High Court: The Rajasthan High Court held that the expressions "natural causes" and "unavoidable accident" were required to be given, reasonable and liberal meaning, lest the provisions of rule 21, so far as they relate to admissibility of remission, on these two grounds, would be rendered altogether ineffective.

The Court noted that if the contention of Revenue was accepted, no loss or destruction would fall in either of these clauses because in either case, grounds may be projected, on the anvil of requirement of appropriate storage, or safety measures, and so on and so forth. Even in cases of "unavoidable accident", it could always be contended that the accident could have been avoided by taking recourse of one or more measures.

Thus, a bit liberal rather more practical approach was required to be taken in the matter. The aspect of satisfaction under rule 21 was essentially a subjective satisfaction of authority concerned and in the instant case; the Tribunal independently recorded its satisfaction about the loss, or destruction having been sustained by the assessee under the circumstances as covered by rule 21. Therefore, merely on the basis of method of accounting of physical stock, the remission of duty could not be denied.

OTHER IMPORTANT TOPICS

1. Provisional Assessment – Rule – 7
2. Validity of Registration Certificate – Rule – 9
3. Procedure relating to Invoice – Rule – 11
4. Procedure for Removal of Goods by 100% EOU – Rule – 17
5. Return of Duty paid Goods – Rule – 16
6. Rule – 16A / 16B / 16C
7. Remission of Duty – Rule 21
8. Penalties
9. Payment of Duty under Protest
10. Power of Adjudication / Adjudicating Authority Section 2(a) / 33 / 11A / 33A
11. Meaning, Procedure and Facilities to LTU
12. Withdrawal of Facilities on Misusing Facilities – Rule 12CC of Central Excise Rules and 12AA of CCR, 2004

CHAPTER – 4 CENVAT CREDIT RULES

CCEX., MUMBAI V. OKASA LTD. 2009 (241) E.L.T. 359 (BOM.)

Can the plastic dropper supplied along with pediatric drops be considered as an input used in or in relation to manufacture of final product (pediatric drops)?

Facts of the Case - The assessee were engaged in the manufacture of pharmaceutical product-pediatric drops. They contended that the plastic droppers supplied with the bottle containing drops were inputs used in or in relation to manufacture of final product namely Novamox pediatric drops. However, the Revenue argued that these droppers were separately kept in the cartons along with the sealed bottle of the pediatric drop. These droppers were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

Decision: The High Court agreed with the contention of the assessee that for purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper had to be affixed on the bottle containing the drug. Further, as the droppers were necessary packaging material for marketing of the drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words “packaging material”. The Tribunal, while allowing the appeal in the instant case, had relied upon the decision taken in ***Heal Well Pharmaceutical v. Collector 1994 (Tribunal)*** wherein it was held that where dropper was provided in the carton along with bottle containing the drug, it amounted to manufacture and the manufacturer was entitled to credit of duty paid on such product being input of the firm product.

Considering the all the facts, circumstances and the legal position, the High Court, upholding the Tribunal’s decision, held that the plastic dropper packed in the pediatric drops and marketed at the factory gate should be construed to be an input used in or in relation to the manufacture of the final product.

COCA COLA INDIA PVT. LTD VS. COMMISSIONER OF CENTRAL EXCISE

Facts of the Case:

The taxpayer manufactured raw material (concentrates for beverages) required for manufacture of carbonated beverages. Carbonated beverages are manufactured by other manufacturers. To promote sale of its own products that is concentrates for beverages, taxpayer advertised the end product that is carbonated beverages. The taxpayer claimed CENVAT credit for service tax paid in relation to advertisement of beverages, which required its products. Thus, by promoting sale of the end product - beverages, the taxpayer created and maintained market of its own product. This is because sale of concentrates, and other revenue of taxpayer depended on sale of beverages in which concentrates are used.

Decision of Tribunal : No CENVAT shall be allowed.

Question: Whether advertisement of end products in which product of taxpayer is uses as raw material or intermediate products that is concentrates for beverages is entitled to avail input credits of the service tax paid on advertising and sales promotion expenses relating to the finished or end products manufactured by certain other companies (in this case carbonated beverages) which were sold under brands which were owned by the taxpayer?

The first part of the definition clause in Rule 2(l) covers a service provider and a manufacturer. Clause (i) relates to a provider of output service who can avail credit of the service-tax paid on input services used by the service provider for providing output service. Clause (ii) covers manufacturer who use the input service directly or indirectly, in or in relation to the manufacture of final products. The inclusive part of the definition which follows clause (i) and (ii) has the effect of enlarging the scope of input services in respect of which the credit can be availed by either the service provider or the manufacturer, notwithstanding that such input services may not be covered by clause (i) and (ii).

The expressions ***'means' , 'includes', 'activities relating to business' and 'such as'*** are important to decide the matter therefore the court considered many Supreme Court decisions on interpretation on such expressions taking view that the word ***'means'*** was used to denote that what followed thereafter was intended to speak exhaustively and no meaning other than that which was put in the definition could be assigned thereto. And that the word ***'includes'*** when used in the definition, the legislature did not intend to restrict the definition but to expand it and the items expressly included are illustrative and not exhaustive. In other words, use of word includes is intended to make the definition of wide amplitude. The expression ***'activities relating to business'*** has also been considered in expansive manner.

The Court also held that ***'activities in relation to business'*** would cover all conceivable activities that were directly or indirectly related to the functioning of the business and not merely manufacturing. Accordingly the High Court arrived at a clear finding that the definition of ***'input services'*** would have wider amplitude.

The definition of input service, can be effectively divided into the following five categories, in so far as a manufacturer is concerned:

(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products.

(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal.

(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal;

Each limb of the definition of input service can be considered as an independent benefit or concession or exemption. If an assessee can satisfy any one of the limbs of the above benefit, exemption or concession, then credit of the input service would be available. This would be so even if the assessee does not satisfy other limb/limbs of the above definition. To illustrate, input services used in relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal.

As per Rule 2 of Cenvat Credit rules, 2004 it would be clear that it is only those input services up to the point of outward transportation in respect of which credit can be utilized. Advertisement and or marketing in the instant case is not connected with the manufacture of concentrates but with the sale of aerated water manufactured out of the concentrates by the bottlers and not appellant. As such this will not be covered by the definition input services whether directly or indirectly or in relation to the manufacture of final products. In the instant case, the advertisement for aerated water cannot be considered as an advertisement for concentrates. They are therefore, not covered by the 2nd part of the definition of input services.

What follows from the above discussion is that the credit is availed on the tax paid on the input service, which is advertisement and not on the contents of the advertisement. Thus it is not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product. The manufacturer thereby can avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. This test will also apply in the case of sales promotion.

The Hon'ble Judge held that Service tax therefore, paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. Thus it is not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising, as long as the manufacturer can demonstrate that the advertisement services availed have an effect of or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product.

BANCO PRODUCTS (INDIA) LTD. V. CCEX., VADODARA-I 2009 (235) ELT 636 (TRI-LB)

Whether CENVAT credit is admissible on plastic crates as inputs/capital goods?

The appellant was using plastic crates as a material handling device within their factory premises. Such plastic crates were used for internal transportation of the raw material from stores to processing machine, semi-finished goods from one machine to other machine and finished goods to their storage area. The appellant contended that the plastic crates were eligible capital goods for the purposes of CENVAT credit and alternatively as input.

The Tribunal first analyzed the definition of "accessories to the main machine" in order to decide whether plastic crates got covered in the definition of the capital goods as per rule 2(a)(A)(iii) of the CENVAT Credit Rules, 2004. After meticulous consideration of various relevant judgments, the Tribunal observed that the only criteria for an object to be held as an accessory is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine.

The plastic crates in question were used for transportation of the raw material to the processing machine and all the finished goods from the machine to storage area. If instead of using plastic crates manual transportation of the inputs or semi-finished goods had been opted for, practically, it would have hampered the continuous working of the machine on account of delays in the delivery of the raw material / semi-finished goods etc. Hence, viewed and judged in the light of the interpretation of the term "accessory" by various Courts, the Tribunal concluded that the plastic crates could be held as accessory. Hence, plastic crates would be eligible for CENVAT credit as ***capital goods.***

While dealing with the expression "in the manufacture of the goods" in the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004, the Apex Court, in the case of ***Collr. of C.E. v. M/s. Rajasthan State Chemical Works 1991,*** had observed that the said expression encompassed all processes which were directly related to the actual production. The process of handling / lifting / pumping / transfer / transportation of the raw material was also a process in relation to manufacture, if integrally connected with further operation leading to manufacture of the goods.

By applying the ratio as enacted by the Supreme Court to the issue in dispute, the Tribunal held that process started with the issuance of the inputs from the stores and their further transportation to the production platform was only a part of the process of manufacture integrally related to the final production. In absence of the delivery of the raw material to the manufacturing platform, the process could not start. Such delivery of the goods included transportation of the goods by plastic crates. Similarly, finished products were required to be stored in a bonded store room. The plastic crates were again used for such transportation. Hence, the Tribunal opined that the plastic crates ***would also be eligible for CENVAT credit as input.***

ITEMS USED IN CERAMIC TILES INDUSTRY - WHETHER CAPITAL GOODS OR INPUT - CIRCULAR NO. 920/10/2010-CX

Question : Whether the items, namely, alumina balls/ ceramic pebbles which are grinding media used in ball mills in the Ceramic Tile Industry should be treated as capital goods or input under the provisions of CENVAT Credit Rules. On the other items too, namely, bolting cloth/ screens/ silicon cylinders which carry designs and which are fitted on the machines used for printing of design over the surface of the tiles, doubts have arisen as to whether these should be considered as capital goods or inputs. Further, the Classification of these items as capital goods or inputs is also relevant because a concessional rate of excise duty is available to a tile manufacturer subject to the condition that no cenvat credit on inputs used in the manufacture of ceramic tiles is taken.

Ans. The issue has been examined. It has been reported that alumina balls/ ceramic pebbles are essential to run the ball mill in the ceramic tile factory and the ball mill cannot function without the grinding media. Therefore, alumina balls/ ceramic pebbles which are grinding media should be considered as component/ part of the machines to be classified as capital goods for cenvat credit purposes. Similarly, bolting cloth/ screens/silicon cylinders which carry designs and which are fitted on the machines used for printing of designs are also essential for operating of the machines. Therefore, these items would also be considered as capital goods for the purpose of CENVAT Credit Rules, being part/ component of the machines.

RESTRICTIONS ON UTILISATION OF CREDIT OF SOME DUTIES – RULE -3

- **Restriction on use of credit of other duties in case of payment of certain duties**

  (iii) Credit of any other duty shall not be utilized for payment of the Clean Energy Cess Leviable u/s 83 of the Finance Act, 2010 – Notification No. 26/2010 dated – 29.06.2010

REVERSAL OF CENVAT CREDIT IN RESPECT OF OBSOLETE GOODS WRITTEN OFF [RULE 3(5B)]

If inputs are written of ***fully*** or provision is made in the books of account to write off ***fully***, then the manufacturer ***or service provider*** is required to pay an 'amount' equal to Cenvat credit taken in respect of such inputs. If these are subsequently used in manufacture of final products ***or provision of taxable services***, the manufacturer or ***the output service provider*** can take Cenvat credit of amount which was paid earlier. ***[Scope extended to Service Provider also by Notification No. 16/2009 dated 07.07.2009]***

REVERSAL OF CENVAT CREDIT ON INPUTS IF FINISHED GOODS /WIP WRITTEN OFF IN ACCOUNTS – CIRCULAR NO. 907/27/2009- CX., DATED 7.12.2009

Input written off fully : Rule 3(5B) of the CENVAT Credit Rules, 2004, provides that if the ***value of any input*** on which cenvat credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input.

Finished Goods written off: As far as finished goods in concerned, it is stated that excise duty is chargeable on the activity of manufacture or production. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21.

Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. ***Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be required to reverse the credit on the inputs used, if duty has been remitted on finished goods.***

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

CENVAT CREDIT ON CAPITAL GOODS TO SSI – AMENDMENT BY FINANCE ACT, 2010

In order to provide, a further facility to SSI units eligible for availing benefit under Notification No. 8/2003-CE, CENVAT Credit Rules has been amended to provide that CENVAT Credit in respect of capital goods received by such assessee ***shall be allowed for the whole of the duty paid on such capital goods in the same financial year instead of two installments.***

Further, this facility shall be available to all eligible units even if such eligible unit opts not to avail of the SSI exemption.

CENVAT CREDIT ON CAPITAL GOODS AFTER USE – RULE 3(5)

Removal of Capital Goods (Other than Computers, etc.) After Use [Second Proviso to Rule 3(5)]

If capital goods (other than computers, etc.) are removed after use (but not as waste or scrap or as such), the manufacturer or output service provider shall pay an 'amount' equal to Cenvat credit taken on the said capital goods, reduced by ***2.5% for each quarter of a year or part thereof <u>from the date of taking the Cenvat credit</u>***.

Removal of Capital Goods being Computer and Computer Peripherals After Use [Third Proviso to Rule 3(5)] [Inserted by Finance Act, 2010]

Further the CENVAT Credit Rules, 2004 has ***been amended by Finance Act, 2010*** to provide accelerate depreciation in the case of ***computer and computer peripherals*** cleared after use at the following rates instead of fixed 2.5% for each quarter:

For each quarter of first year	***@ 10%***
For each quarter of second year	***@ 8%***
For each quarter in the third year	***@ 5%***
For each quarter in the fourth and fifth year	***@ 1%***

REMOVAL OF CAPITAL GOODS AS SCRAP & WASTE [RULE 3(5A)]

If capital goods are removed as scarp, the ***manufacturer*** (only) shall pay an 'amount' equal to the duty payable on transaction value. In other words, an amount equal to duty on scrap or waste value should be paid.

It is clarified that in view of specific provisions under Rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which cenvat credit has been taken, are cleared as waste and scrap, even after a period of 10 years, an amount equal to the duty leviable on the transaction value for such capital goods cleared as waste and scrap, would be payable – <u>Instruction F.No.267141/2009-CX8</u>

REVERSAL OF CENVAT CREDIT IN RESPECT OF OBSOLETE GOODS WRITTEN OFF [RULE 3(5B)]

If capital goods before being put to use, are written of ***fully*** or provision is made in the books of account to write off ***fully***, then the manufacturer ***or service provider*** is required to pay an 'amount' equal to CENVAT credit taken in respect of such capital goods. If these are subsequently used in manufacture of final products ***or provision of taxable services***, manufacturer or ***the output service provider*** can take CENVAT credit of amount which was paid earlier. ***[Scope extended to Service Provider also by Notification No. 16/2009 dated 07.07.2009]***

CAPITAL GOODS SENT TO THE JOB-WORKER [RULE 4(5)(A) & (B]

Rule 4(5)(b) provides that CENVAT credit shall also be allowed in respect of moulds, dies, jigs and fixtures sent by manufacturer of final products to –

- ***another manufacturer for the production of goods; or [Inserted by Notification No. 6/2010; dated 27.02.2010]***
- a job worker for production of goods on behalf of and

according to his specifications.

SPECIAL PROVISION FOR CENVAT CREDIT FOR EOUs/STP/EHTP SECOND PROVISO TO RULE 3(7)(A)]

Computation of CENVAT Credit available on Goods acquired from EOU/EHTP/STP

The CENVAT credit in respect of inputs and capital goods cleared ***on or after the 7th September, 2009*** from an Export-Oriented Undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid excise duty leviable u/s 3 (after exemptions, if any) and Education Cess and Secondary and Higher Education Cess shall be the aggregate of –

a) ***that portion of excise duty, as is equivalent to -***
   i) ***the additional duty leviable u/s 3(1) of the Customs Tariff Act, which is equal to the duty of excise u/s 3(1)(a) of the Excise Act;***
   ii) ***the additional duty leviable u/s 3(5) of the Customs Tariff Act; and***

b) ***the Education Cess and the Secondary and Higher Education Cess paid by such undertaking on such duties. [Second Proviso – Inserted by Notification No. 22/2009, dated 7th September, 2009]***

For Example –

If assessable value of goods is Rs. 1,00,000, Basic Custom Duty = 10%, Basic Excise Duty = 14%, Education Cess 2%, Secondary & Higher Education Cess is 1%. Calculate – (i) Duty payable by EOU on clearance to DTA (ii) CENVAT Credit to such DTA Unit

Assessable Value	1,00,000.00
Basic Custom Duty @ 5% [10% x 50%] [Exemption]	5000.00
Sub Total	**1,05,000.00**
CVD i.e. Additional Duty of Customs equal to excise duty rate @ 14.42%	15,141.00

Sub-Total	**1,20,141.00**
Education Cess @ 2% [on 5,000+15,141]	402.82
SAH Education Cess @ 1% [on 5,000+15,141]	201.41
Sub-Total	**1,20,745.23**
Special CVD u/s 3(5) @ 4%	00.00
Total Value After Duty	1,20,745.23
Excise Duty equal to Custom Duty u/s 3(1) of Central Excise Act, 1944	**20,745.23**
Add: Education Cess & SHEC Cess	**622.36**
Total Excise Duty to be Paid	**21367.59**

Availability of CENVAT Credit to DTA Unit

Additional Duty Paid u/s 3(1) of CTA	:	Rs. 15,141/-
Additional Duty Paid u/s 3(5) of CTA	:	Rs. Nil
Education Cess	:	Rs. 622.36
Total CENVAT Credit Available	**:**	**Rs. 15,763.36/-**

NON REVERSAL OF CENVAT CREDIT IN CERTAIN CASES SECTION: 5B

(1) Section 5B provides that where an assessee has paid duty of excise on a final product and has been allowed credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but ***subsequently the process of making the said product is held by the court as not chargeable to excise duty***, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification.

(2) However, the order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him.

(3) Further, the Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.

(4) ***Circular No. 911 /01 /2010-CX dated 14.01.2010 -*** **According to Section 5B , where an assessee, who has paid excise duty on a product under the belief that the same is excisable, but subsequently the process of making the said product, is held by the Court as not amounting to manufacture, in such cases, the Central Government may issue an order for non-reversal of such credit in past cases. The CBEC has issued the following instructions in this respect -**

- **In cases where the process undertaken by an assessee indisputably does not amount to manufacture, the department should inform the assessee about the correct legal position and advise him not to pay duty and not to avail credit on inputs.**
- **If the assessee has already paid duty, and in a situation where there is no manufacture as held by the Courts subsequently, and facts of the case are covered by the provisions of Section 5B of the Central Excise Act, 1944, the assessee is at liberty to approach the Central Govt. for issue of appropriate notification for regularization of the Cenvat credit availed.**

EXCEPTION TO THE PROVISIONS OF PAYMENT OF 'AMOUNT'

Supply to EOU/SEZ, export of goods, deemed exports or gold manufacture [Rule 6(6)]

(g) All goods which are exempt from the duties of customs leviable under the First Schedule to the Custom Tariff Act, 1975 and the additional duty leviable u/s 3(1) of Customs Tariff when imported into India and are supplied –

a) against international Competitive Bidding; or

b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

c) to a power project awarded to a developer through tariff based competitive bidding. [Inserted by Finance Act, 2010, w.e.f. 27.02.2010]

CLARIFICATION REGARDING EXCISABILITY OF BAGASSE, ALUMINIUM/ZINC DROSS AND OTHER SUCH PRODUCTS TERMED AS WASTE OR RESIDUE OR REFUSE ARISING DURING THE COURSE OF MANUFACTURE – CIRCULAR NO. 904/24/09-CX DATED 28.10.2009

With the amendment in ***Section 2(d) (i.e. excisable goods),*** the bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

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

RECOVERY OF CENVAT CREDIT WRONGLY AVAILED OR UTILISED RULE: 14

(1) If the CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same shall be payable along with interest and provisions of sections 11A and 11AB of Central Excise Act and sections 73 and 75 of Finance Act, 1994 (in respect of service tax) shall apply *mutatis mutandis* for effecting such recoveries.

Section 11A of CEA and Section 73 of Finance Act provides for recovery of duty and service tax respectively. Section 11AB of CEA and Section 75 of Finance Act, 1994 provides for recovery of interest for delayed payment.

(2) Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization

a) ***CCE, Delhi vs. Maruti Udyog Ltd. [2007] 214 ELT 173 (P&H)***

Assessee is not liable to pay interest in the case where credit was only taken and not utilized.

[High Court upheld the order of Tribunal. SLP filed by the department against the order of High Court has been dismissed by the Supreme Court]

b) Clarification by CBEC - *Circular NO. 897/17/2009-CX*

"It is seen that the Tribunal decision and the High Court judgement referred to above, was delivered in the context of erstwhile Rule 57I of the Central Excise Rules, 1944 and that the Supreme Court order under reference is only a decision and not a judgement. Since, the Rule14 of the CENVAT Credit Rules, 2004, is clear and unambiguous in the position that interest would be recoverable when CENVAT credit is taken ***or*** utilized wrongly, it is clarified that the interest shall be recoverable when credit has been wrongly taken, even if it has not been utilized, in terms of the wordings of the present Rule 14."

CONFISCATION AND PENALTY FOR CONTRAVENTION OF PROVISIONS: RULE: 15

(1) ***Wrongful utilisation of CENVAT credit on inputs, input services and capital goods [Rule 15(1)]***

If any person takes or utilises CENVAT credit wrongly or in contravention of any of the provisions of CENVAT Credit Rules in respect of inputs, input services and capital goods, then the penalty shall be –

(i) Confiscation of ***goods*** *plus*

(ii) Monetary penalty not exceeding the duty or services tax on such excisable goods or services in respect of which contravention has been committed or ***Rs. 2000, whichever is higher.***

(2) ***Penalty in case of fraud etc. [Rule 15(2)/(3)]***

Where credit has been taken wrongly or utilised wrongly on inputs, input service and capital goods on account of fraud, wilful miss-statement, collusion or suppression of facts, or contravention of any provision of Act or rules, with intent to evade duty, penalty provisions of Section 11AC of Central Excise Act or Section 78 of Finance Act, 1994, as the case may be, shall also apply in this case.

[Under 11AC of CEA, there is mandatory penalty equal to duty evaded. This penalty is reduced to 25% if amount along with 25% penalty is paid within 30 days from receipt of order. Under section 78 of Finance Act, there is mandatory minimum penalty equal to service tax evaded, but penalty upto twice the amount of tax evaded can be imposed. This penalty is reduced to 25% if amount along with 25% penalty is paid within 30 days from receipt of order.]

(3) ***Principles of Natural Justice***

The order under the above sub-rules shall be issued by the Central Excise Officer following the principles of natural justice.

[Rule 15 has been amended by the Finance Act, 2010]

Triveni Texturisers purchased inputs from Khaitani Industries and availed the CENVAT credit of the entire excise duty paid by Khaitani Industries as reflected in the invoice. Subsequently, Khaitani Industries gave certain amount of discount for the reason of the bulk purchases made by Triveni Texturisers during the period. This trade discount was given by issuing credit notes for the basic price. Department contends that Triveni Texturisers is not entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and should reverse the credit proportionately.

Discuss whether the contention of the Revenue is justifiable.

Ans. No, the contention of the Revenue is not justifiable in law. In ***ACS Hydraulics Pvt. Ltd. v. CCE 2008 (227) ELT 425 (Tri.)***, the Tribunal held that there was no loss to the Revenue as far as the payment of duty was concerned by the supplier of the goods on the proper correct assessable value. Therefore, the Department could not direct the appellant to reverse the credit or to disallow the credit as the supplier had paid the duty and taken credit which was equivalent to duty shown in the invoice issued by the supplier.

Besides, Circular No. 877/15/2008-CX dated 17.11.2008 has also clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice, would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

In view of the above discussion, it can be concluded that Triveni Texturisers is entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and need not reverse the credit proportionately.

ASHOK KUMAR H. FULWADHYA V. UOI 2010 (251) E.L.T. 336 (BOM.)

Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?

It was held that words "any person" used in rule 15(1) of CENVAT Credit Rules, 2004 clearly indicate that the person who has availed CENVAT credit shall only be the person liable to the penalty. The Court observed that, in the instant case, CENVAT credit had been availed by the company and the penalty under rule rule 15(1) was imposable only on the person who had availed CENVAT credit [company in the given case], who was a manufacturer. The petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit.

Adecco Corporation Limited (ACL) was a manufacturer of polypropylene bags. It shifted its factory located at Kalyanpuri to Greater Kailash. ACL transferred a quantity of 20,000 kg of inputs (plastic granules) and one capital good i.e. automatic bag machine to the new site. These were the only available inputs and capital goods with ACL at the time of transfer. The inputs, capital goods and the balance of unutilized CENVAT credit were duly received and accounted for in the registers of the new unit.

The said balance of unutilized CENVAT credit transferred was Rs 6,00,000. However, the CENVAT credit corresponding to inputs and capital goods transferred to the new site amounted to Rs. 4,50,000 only. The Department raised the plea that assessee was entitled to transfer only Rs 4,50,000 of CENVAT credit and not the entire balance of unutilised credit of Rs. 6,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law.

Ans. The facts of the given case are similar to the case of ***CCE, Pondicherry v. CESTAT 2008 (230) ELT 209 (Mad.).*** In this case, Madras High Court decided that rule 10 of the CENVAT Credit Rules, 2004 did not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory, but permitted the assessee to transfer the entire balance of unutilised CENVAT credit along with inputs and capital goods in stock at the factory to the new location provided the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy

Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

Thus, requirement of rule 10 of the CENVAT Credit Rules, 2004 had been fulfilled by the assessee. Hence, he could avail the CENVAT credit transferred by him.

Thus, in the given question, Adecco Corporation Limited (ACL) can avail the entire balance of unutilized CENVAT credit of Rs.6,00,000 available with him.

Note – Relevant portion of rule 10 of CENVAT Credit Rules, 2004 reads as follows:-

If a manufacturer of the final products shifts his factory to another site, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred factory. Such transfer of the CENVAT credit shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

Whether input services distributor can also opt for any of the options provided under rule 6(3) of CENVAT Credit Rules, 2004?

Circular no. 868/6/2008 – CX dated 09.05.2008 clarified that as an input service distributor does not provide any service, and is like a trader, the question of availing either of the options provided under rule 6(3) of CENVAT Credit Rules, 2004 would not arise.

CCUS & EX., RAIGAD V. FIBRE FOILS LTD. 2009 (241) E.L.T. 201 (BOM.)

Whether Tribunal is empowered to reduce penalty imposable under rule 15(2) of the CENVAT Credit Rules, 2004?

The Bombay High Court noted that from the plain or literal reading of the said sub-rule, it would be clear that the language used is "shall". Hence, the Court pronounced that undoubtedly, the language is mandatory and there is no discretion vested in the authorities in the matter of imposition of penalty. The penalty had to be imposed by the A.O. based on the material available and not on the defence which the assessee might have taken. Hence, the Court held that the penalty has to be equal to the amount of duty which is payable and not less than that.

REPRO INDIA LTD. V. UOI 2009 (235) ELT 614 (BOM.)

Is Department justified in levying 5% on the sale price of the printed books in terms of rule 6(3)(b) of the CENVAT Credit Rules, 2004 even though the final product is exported?

The petitioner manufactured both dutiable (packaged software and stationery books) and exempted final product (printed books). The printed books were entirely exported by the petitioners. The petitioner had taken the credit on inputs used in the manufacture of dutiable as well as exempted final products by virtue of rule 6(6)(v) of the CENVAT Credit Rules, 2004. Department directed the assessee to pay the 5% of the sale price of the printed books even though they were exported. According to the Revenue, since the printed books were exempted goods/goods chargeable to nil rate of duty, they could not be allowed to be cleared by giving bond under rule 19 of the Central Excise Rules, 2002 and the petitioner has to follow the ARE-2 procedure for claiming refund of the duty on the exempted goods.

However, the High Court observed that if the exempted goods are exported outside India, the provisions of rule 6(6)(v) of the CENVAT Credit Rules, 2004 are applicable.

Therefore, the bar provided under rule 6(1) and the liability created under rule 6(3)(b) are not attracted. The Department was not justified in levying 10% on the sale price of the printed books in terms of rule 6(3)(b). It was only in the event that the petitioner did not export the printed books and did not maintain the account as contemplated by rule 6(2), the petitioner would be required to pay 5% on the sale price of the printed books not so exported.

The High Court held that considering the language of rule 6(6)(v) of the said rules, the petitioner was entitled to avail CENVAT credit in respect of the inputs used in the manufacture of the final products being exported irrespective of the fact that the final product was otherwise exempt.

The Court clarified that the intent behind the Government enacting special scheme was to ensure that the duty was not levied even on inputs going into the export products.

The intention was to ensure that only goods were exported and not the taxes. If the inputs of an export commodity were subject to excise duty, the Indian manufacturer would have become internationally uncompetitive. Therefore, rule 6(6) has been consciously and expressly enacted with the specific objective to ensure that duty is not levied on the inputs going to the export products.

Hence, levy of 10% on the value of the exported goods under rule 6(3)(b) on the footing that the printed books were exempt was completely incorrect.

Note:

Rule 6(6)(v) of the CENVAT Credit Rules, 2004 reads as follows:-

The provisions of sub-rules (1), (2), (3) and (4) of rule 6 of the aforesaid rules shall not be applicable in case the excisable goods removed without payment of duty are cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.

GREEN ALLOYS PVT. LTD. V. UOI 2009 (235) ELT 405 (P & H)

Whether inputs can be confiscated under rule 15 of the CENVAT Credit Rules, 2004 on the ground of non-accountal of inputs in the records maintained in computer?

The High Court held that the procedure for seizure had to be reasonable and fair. There had to be some basis for continuing to detain the goods. In the instant case, it could not be held that there was a clear case for confiscation only on the ground that the seized goods had been found to be entered in the stock register, but not in the excel sheet in the computer.

There was nothing to show that in respect of such goods, there had been wrongful availment of CENVAT credit. Revenue sought to draw the presumption of wrongful availment of CENVAT credit on the ground that there was little value addition to the finished product over and above the value of the raw material. However, the High Court held it to be a debatable issue. Therefore, the Court held that there was not a strong prima facie case for confiscation of goods which would justify continued detention of goods.

NO CENVAT CREDIT IF FINAL PRODUCT /SERVICE IS EXEPMT RULE – 6

(1) CENVAT credit is not available if inputs or input services are used for manufacture of exempted goods or provision of exempted services. As per Rule 6(1) of CENVAT Credit Rules, CENVAT credit is not admissible on such quantity of input or input service which is used in manufacture of ***exempted goods or provision of exempted services.***

(2) Partial Manufacture / Provision of Exempted Products / Services

CENVAT credit of inputs and input services not available if final product / output service is exempt from excise duty / service tax. In case of manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempted services), it may happen that same inputs / input services are used partly for manufacture of dutiable goods / taxable services and partly for exempted goods / services.

In such cases, the manufacturer / service provider has the following three options **–**

(i) Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods / exempted output services. **[Rule 6(2)]**

(ii) Pay amount equal to ***5% [w.e.f. 07.07.2009] (earlier 10%)*** of value of exempted goods (if he is 'manufacturer') and /or 6***% [w.e.f. 07.07.2009] (8% earlier)*** of value of exempted services (if he is service provider) if he does not maintain separate inventory and records – **[Rule 6(3)(i)]**

(iii) Pay an amount equal to proportionate CENVAT credit attributable to exempted final product / exempted output services – **[Rule 6(3)(ii)]**

OTHER IMPORTANTS

1. ***Definition of Input – Inclusion or Exclusion***
2. ***Definition of Exempted goods/Exempted Services/Final Products***
3. ***Personal Ledger Account***
4. ***Input Service Distributor – Rule 2(m)/Rule 7/Rule 7A***
5. ***FSD/SSD***
6. ***Principle Inputs***
7. ***Practical Question – on Rule – 6***
8. ***Refund of Cenvat – Rule 5***

EXPORT PROCEDURE

Rule 18 – Applicable for supplies made from DTA to SEZ - Circular No. 6/2010-Cus. Dated 19-03.2010

Earlier it was clarified by the CBEC that rebate under Rule 18 is admissible when the supplies are made from DTA to SEZ. That 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.

OTHER IMPORTANTS

1. Export Warehousing
2. Procedure in respect of exported goods subsequently re-imported and returned to the factory
3. Rule – 19

Some Useful & Quick Tips

- **Always remember that IPCC/PCC examination requires only working knowledge of a CA Course but the CA Final examination requires an expert knowledge..**
- **At least 2-3 months requires hard study….**
- **Spend 14 -15 hours in a day**
- **Try to rotate the subjects – 3 to 4 subjects per day**
- **In answer sheet try to write Conclusion first**
- **Underline main points**
- **Give only to the point answer**
- **5 marks question only one page maximum**
- **Give your consideration on main points**
- **Try to go in examination hall only when 5 minutes left**
- **Reach at examination centre before at least 15 minutes**
- **Leave study at least before 45 to 60 minutes**
- **Do not study on the way to examination hall**
- **Do not study at examination centre**
- **Do not carry any book to examination centre**
- **Do not discuss any question /answer before examination**
- **Do not discuss paper after examination**
- **Do not waste your time after examination of one paper**
- **Make all your resource ready in advance, your pens, scale, writing pad, pencil, calculator, a file to keep your question papers after the exams, water bottle, carry bag etc at least one day before.**
- **Stay for 3 hours in the exam hall.**
- **Do not do first question in practical papers in starting**
- **Do easy questions first**
- **Start every new question with new page**
- **Write short and sweet**
- **Do best preparation for 1st paper**
- **Do not let the 'carry forward effect'. That is, if you do not do well in one paper, you should not let that affect your studies and exams of other papers.**
- **In the exams, write the formulas, format, steps, assumptions, notes, working notes clearly.**
- **One day before exams do not study new topic but revise what you have already learn.**
- **Make exams pattern**
- **Analysis the importance of chapter, topic, question**
- **Make proper use of suggested answers especially before exams**
- **Try to make notes as well as possible**

- **Always try to clear your doubts**
- **Be confident**
- **Be at home, whole time, at least in last 2 months**
- **Have a break after each 1.30 to 2 hours**
- **Do not read continuously one subject**
- **Have a practical subject after a theory subject**
- **Do not sleep more than 6 hours**
- **Try to sleep in one time in a day**
- **If some person torches you then stop talking with him.**
- **Have patience and do systematic study**
- **Use the same calculator before and during the exams**
- **Read less as you can read on examination day**
- **Plan for every hour for examination day**
- **Plan for every subject /topic for examination day**
- **Plan for how you will deal with paper**
- **Plan from where you will start you answers**
- **Plan how you will write your solutions/Answers**
- **Ready for hard and typical papers**
- **Do not jealous with any one**
- **Try to learn with others**

Bonus Marks - Stop using Internet and checking E-mails.

My best wishes to you for your mega success

CA Ravi Mansaka