Legal Updates in Indirect Taxes (01.11.2011 to 30.04.2012)
(Applicable for November 2012 Exams)

Central Excise Law

Nature	Provision
Rate of Excise Duty	
The Rate of Excise Duty is 12% instead of 10%. The Effective Date of such rate is from 17.03.2012. Hence, students are required to work out all problems involving ED at 12% instead of 10%. **[Notification No.5/2012 dt. 17.03.2012]**	
LEVY AND MANUFACTURE	
Mere Improvement in quality – Not Manufacture	**Facts:** The Manufacturer added polymers and additives to base bitumen to produce Polymer Modified Bitumen (PMB) or Crumbled Rubber Modified Bitumen (CRMB). Whether this process amounts to manufacture or not? **Decision:** Manufacture can take place only when there is transformation of raw materials into a new and different article having distinct identity, characteristic and use. Mere addition of materials to make the product better does not amount to manufacture. **[CCE Vs Osnar Chemical Pvt Ltd 2012–TIOL–03–SC–CX]**
Payment of ED on Non–Excisable goods	Merely because the assessee mistakenly paid excise duty on goods which are not liable for excise duty, it would not make them as excisable goods. Even if the assessee had not claimed any refund of such excess ED, goods would not be categorized as excisable. **[Bonanza Engineering and Chemical Pvt Ltd Vs CCE 2012 – TIOL – 25 – SC – CX]**
CLASSIFICATION OF EXCISBALE GOODS	
Beneficial Interpretation	In case of two specific heads dealing with the same commodity, then classification can be made under the clause that is most beneficial to the assessee. **[CCE Vs Minwool Rock Fibres Ltd 2012 TIOL 18 SC CX]**
VALUATION OF EXCISABLE GOODS	
Accessories supplied by Customer – Free of Cost – Need not be included	**Facts:** The Assessee manufactured the plastic tubes for toothpaste. The caps for such tubes are provided by the customer free of cost. Such caps were fitted to the tubes manufactured before the removal from the factory. The assessee did not include the value of caps while determining ED on the plastic tubes manufactured. Whether such exclusion is correct? **Decision:** The cap supplied by the customer is only an accessory and is not an integral part of the plastic tube supplied. Hence, such cap fitted will be considered only as a bought out item. The cost of bought out item will not be included as part of the assessable value of the manufactured product. Hence, such cost of such caps will not be included for valuation of plastic tubes. Assessee's valuation is correct. **[Essel Propack Ltd Vs CCE 2011 TIOL 112 SC – CX]**
CENTRAL EXCISE PROCEDURES	
Monthly return for SSIs	The following manufacturers have to file monthly returns within 10th from end of the relevant month: (a) Manufacturers claiming exemption based on value of clearances (for eg. SSIs.) (b) Manufacturers of Processed Yarn, Unprocessed Fabrics, Readymade garments. ***Impact:*** *Earlier above manufacturers were required to file only quarterly returns.* **(Notification No.32–CX dt. 30.12.2011)**
Returns Filing	Manufacturers who procure inputs at concessional rate under "The Central Excise (Removal of goods at concessional rate of duty for manufacture of Excisable Goods" shall file their returns on quarterly basis instead of monthly basis. **[Notification No.13/2012 dt. 17.03.2012]**
Powers of CEOs vested with Customs Officers	The Customs Officers are vested with the powers of the Central Excise Officers of the same rank, in relation to processing and granting of Service Tax Refunds in relation to export of goods. **(Notification No.33/2011 – CX (NT) dt. 30.12.2011)**

Nature	Provision
Records to be furnished by assessee	Every Assessee, First Stage and Second Stage Dealers, shall provide the following records to CCE / C&AG / CA / CWA nominated for doing audit: (a) Records maintained by him as per Central Excise Rules (b) Cost Audit Reports u/s 233B of the Companies Act, 1956 (c) Income Tax Audit Report u/s 44AB of the Income Tax Act, 1961 **[Notification No.22/2012 dt. 30.03.2012]**
Person liable in case of Job Work of Jewellery	In case of Job Work on jewellery, only the principal manufacturer shall be liable for registration, payment and all other compliances under the Central Excise Act and the related rules. Further, the jewellery need not contain the brand name or trade name, to be affixed or embossed on them. **[Notification No.8/2012 dt. 17.03.2012]** ***Impact: Earlier, option was given to Job Worker to carry out all compliances under Excise. Such option is now withdrawn implying that only the principal manufacturer has to carry out such procedures.***
INTERPRETATION OF EXEMPTIONS	
Interpretation of Exemption Notification	A provision for Exemption, concession or exception has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be complied with. Substantial Compliance with the conditions is not enough to avail exemption. **[Indian Oil Corporation Limited Vs CCE 2012 TIOL 04 SC – CX]**
Interpretation of Exemption Notification	An exemption notification must be interpreted strictly when the words of the notification are clear, simple and unambiguous. It has to interpreted in the light of the words employed by it and not on any other basis. **[CCE Vs Favourite Industries 2012 – TIOL – 30 – SC – CX]**
EXPORTS	
Exports to Nepal	Exports to Nepal will be subject to the same procedure as exports to other countries. **(Notification No.24/2011 – CX (NT) dt. 05.12.2011)** Exports to Nepal shall be exempt from excise duty by the refund procedure u/r 18 of Central Excise Rules, 2002 or under bond procedure u/r 19 of the rules. In case of refund procedure, the duty amount will be directly credited to the Government of Nepal and not to the Indian Exporters. Further, there is no specific condition that the consideration must be in convertible forex. Hence, exports to Nepal are permissible irrespective the mode of currency received, provided the exports are in accordance with RBI Guidelines. **[Circular No.941/04/2012 – CX dt. 26.03.2012]**

Customs Law

Nature	Provision
BILL OF ENTRY – CUSTOMS PROCEDURES	
Bill of Entry (Electronic Declaration) Rules, 2011	The Central Government has allowed the filing of Bill of Entry through Indian Customs Electronic Data Interchange Gateway (ICEGATE), an e–commerce portal of the CBEC. The Bill of Entry is deemed to be filed and self–assessment of duty is deemed to be completed, if a bill of entry number is generated by ICEGATE for the said declaration. **[Notification No.79/2011 dt. 25.11.2011]**
Shipping Bill (Electronic Declaration) Rules, 2011	The Central Government has allowed the filing of Shipping Bill through Indian Customs Electronic Data Interchange Gateway (ICEGATE), an e–commerce portal of the CBEC. The Shipping Bill is deemed to be filed and self–assessment of duty is deemed to be completed, if a number is generated by ICEGATE for the said declaration. **[Notification No.80/2011 dt. 25.11.2011]**
Conditions for Provisional Assessment of Goods	The Proper Office may assess the goods at provisional duty if following conditions are satisfied – (a) The Importer / Exporter shall execute a bond for the difference between the duty that may be finally assessed and the duty provisionally assessed, along with the surety or security as required. (b) The Bond should contain the undertaking to pay the differential duty or produce the relevant document within the time prescribed by the Proper Officer. (c) He should deposit such sum as the Proper Officer deems fit (not exceeding 20% of Provisional Duty). (d) Violation of the above conditions will be purishable with penalty upto ₹ 15,000 **[Customs (Provisional Duty) Regulations, 2011 – Notfn. No.81/2011– CE dt. 25.11.2011]**

Nature	Provision
Invalid BOE	Bill of Entry is not valid if the importer does not have the educational qualifications of the Customs House Agent. Hence, such BoE is wholly untenable, illegal and without jurisdiction. **[UOI vs Champion Photostat Industrial Corporation 2012–TIOL–32–SC–CUS]**
CLASSIFICATION OF CUSTOMS DUTIES	
Exemption from ACD u/s 3(5)	The Government of India has notified a list of goods which are exempt from ACD u/s 3(5). **[Notification No.21/2012 dt. 17.03.2012]**
Refund of SAD (i.e.) ACD u/s 3(5)	Refund of Special Additional Duty can also be issued based on certificate from CWA / CA / Statutory Auditors. ***Impact: Earlier, only CA's / Statutory Auditor's certificate was permitted*** **[Circular No.01/2012 dt. 05.01.2012]**
Refund of ADD	The Central Government has notified Refund of Anti–Dumping Duty (Paid in excess of actual margin of dumping) Rules, 2012 for granting refund of excess ADD paid by the importer. **(Notification No.5/2012 – Cus (NT) dt. 19.01.2012)**
WAREHOUSING PROCEDURE	
Removal from Warehouses	Duty Credit Scrips under Schemes like SFIS, VKGUY, FMS, FPS, SHIS can be utilized for clearance of goods from Customs Bonded Warehouses, subject to prescribed conditions. **(Circular No.50/2011 – Cus. Dt. 09.11.2011)**

AMENDMENTS IN BAGGAGE RULES, 1998

APPENDIX A – Notification No.21/2012 dt. 17.03.2012

If Passenger's Age is –	Returning after stay abroad of –	Revised Exemption	Original Exemption
$\geq$10 years	> 3 days	Rs.35,000	Rs.25,000
$\geq$10 years	$\leq$ 3 days	Rs.15,000	Rs.12,000

APPENDIX E (Rule 7) – Notification No.77/2011 dt. 14.11.2011

Nature of Tourists	Value and baggage exempt
1. Tourists of **Indian Origin** coming to India, other than tourists of Indian origin coming by land routes as specified in Annexure IV.	• Used personal effects & travel souvenirs if (a) Such goods are for personal use and (b) Such goods, if not consumed in India, are re–exported when the traveller leaves India, • Articles as allowed to be cleared u/r 3 or 4.
2. Tourists of **Foreign Origin, coming to India by air**, **except** those of Pakistani origin coming from Pakistan	• Used personal effects, • Articles (except mentioned in Annexure I) upto value of Rs.8,000 brought for personal use / making gifts / travel souvenirs if carried on the passenger or in his accompanied baggage.
3. Tourists – (i) of Pakistani origin coming from Pakistan other than by land routes, (ii) of Pakistani origin or Foreign Tourists coming by land routes as specified in Annexure IV, (iii) of Indian Origin coming by land routes as specified in Annexure IV.	• Used personal effects • Articles (except mentioned in Annexure I) upto value of Rs.6,000 brought for personal use / making gifts / travel souvenirs if carried on the passenger or in his accompanied baggage.

SERVICE TAX

Nature	Provision
Rate of Service Tax: The ST rate increased to 12% from 10% from FY 2012–2013. Hence, for the November 2012 exams, students are required to apply rate of 10% only.	
SPECIFIC TAXABLE SERVICES	
ST on Transport of goods by rail	Levy of ST on Transport of goods by Railways will commence from 01.04.2012. **(Notification No.49/2011 dt. 31.12.2011)**
Service Tax on Tyre Retreading Service – Liable though it is excisable goods	Manufacture of excisable goods shall be exempt from service tax. Mere mention of a product as part of tariff schedule would not make it out of service tax scope. The process should also be treated as manufacturing process. Hence, even if retreading of tyres is mentioned as part of Central Excise Tariff Schedule, as the process of retreading is not considered as manufacture based on SC decision, such activity shall be liable for Service Tax only. **[Letter No.137/125/2011 – ST dt. 27.02.2012]:**

Nature	Provision
ST on income of Exhibitors / Sub–Distributors / Area – Distributors	Service Tax impact on arrangements between the theatre owner / Exhibitor and also the distributors / Sub–distributors / Area Distributors is discussed below: 1. **Movie exhibited by Theatre Owner or Exhibitor on his Own Account** and not on behalf of distributors – Service Tax is payable under "Copyright Service" on rights temporarily transferred **by Distributor / Sub–Distributor / Producer etc.** 2. **Movie exhibited by Theatre Owner or Exhibitor on behalf of distributors** – Service Tax is payable under "Renting of Immovable Property" or "Business Support Service" on service provided **by theatre owner.** 3. If Theatre Owner, Distributors and Sub–Distributors operate on revenue sharing basis and not as independent persons, then such arrangement will qualify as Joint Venture and hence such Joint Venture as such will be liable for service tax under appropriate head. **(Circular No.148/17/2011 dt. 13.12.2011)**
SERVICE TAX PROCEDURES	
Documents for ST Registration	• Documents to be filed for Registration under ST are: (a) Copy of PAN (b) Proof of Residence (c) Constitution of the Appellant (d) Power of Attorney in favour of Authorised Person(s). • The above documents are to be filed within 15 days from the date of filing application for registration. • The time limit of 7 days shall be counted from the date the application for registration is complete in all respects. **(Order No.2/2011 – Service Tax dt. 13.12.2011)**
Refund of ST on input services	Procedure is discussed as a separate question below.

Procedure for Refund of ST on Input Services used for Export Goods (instead of Q.No.14, Page No.15.6)

1. **Nature of Exemption:** Service Tax Paid u/s 66 or 66A by the exporter on the input services availed by him for export of goods, will be refunded to him.
2. **General Conditions for Refund:**
   (a) Exporter should be registered under Excise Law. If not registered, he should file a declaration to his Jurisdictional AC / DC and obtain Service Tax Code No.
   (b) Such service should be used for Export of Goods.
   (c) Exporter should have actually paid the service tax on the specified services to the service provider.
   (d) Refund of such tax should be claimed only under this notification [i.e. no refund or rebate under any other mode].
   (e) In respect of Service Tax paid as the eligible services, exporter should not claim CENVAT Credit.
   (f) This exemption in not applicable for Units / Developer of SEZ.
3. **Calculation of Refund:** The Refund amount can be calculated and obtained in 2 ways:
   (a) **Method 1:** Refund = Specified % of declared FOB Value (% is specified in the Schedule to Notification)
   (b) **Method 2:** Refund = Amount as determined by the exporter
4. **Specific Conditions for Method I Refund (apart from Pt. No.2):**
   (a) ST refund is calculated by the specified % of FOB Value. Such % is specified for each type of good in the Schedule to the notification.
   (b) Exporter must declare in the Electronic Shipping Bill or Bill of Export that the refund is claimed as a % of FOB Value based on the rates specified in the Schedule.
   (c) Further refund shall not be claimed in respect of specified services under Method 2, even if the ST refund is less than actual ST paid on the input services.
   (d) The amount of refund shall be deposited in a separate Bank Account .
   (e) No Refund if the amount is less than Rs.50
5. **Specific Conditions for Method I Refund (apart from Pt. No.2):**
   (a) **Submission of claim:** The exporter should file a claim for refund of service tax in Form A–1 to AC / DC having jurisdiction over –

Person	Premises
Manufacturing Exporter	Factory of manufacturer or warehouse.
Merchant Exporter (Note)	Registered office / Head Office of the exporter.

   (b) **Time limit:** Within 1 year from the date of export.

(c) **Enclosures to Application:**

Original & Certified by the Exporter	• Original Invoice, bill or Challan or Document in the name of the Exporter showing payment for service and • Payment of Service tax on such service
Certificate from the Exporter	• Self attested copies of shipping bill / bill of exports pertaining to exports • Specified service has been received & • Used for export of goods under the shipping bill number • Service Tax has been paid

(d) **Certification of Enclosures:**

Conditions	**Certification by**
(i) Total amount of Refund is upto 0.25% of the total declared FOB (Free on Board) value of export (ii) Exporter is registered with Export Promotion Council sponsored by the Ministry of Commerce or Ministry of Textiles.	Exporter is a • Proprietorship / Partnership Concern – Certification by Exporter • Limited Company – Certification by the person authorized by the Board of Directors
Amount of Refund Claim is more than 0.25% of the total declared FOB value of Export	Chartered Accountant who audits the annual accounts of the Exporter under Companies Act, 1956 or IT Act, 1961

(e) **Sanction of Refund:** AC / DC will sanction the refund after satisfying himself that
- Claim filed is complete in all respects
- Documents requiring certification have been filed after due certification, and
- Arithmetical accuracy of the claim

(f) **Denial of Refund:** AC / DC of CE has reason to believe that Claim, or Enclosed Documents are not in order or any other reason after recording reasons in writing, take action in accordance with the provisions of the Act.

(g) **Recovery of Refund:** Where Proceeds of Export have not been realized within the time limit prescribed under FEMA, Refund of Service tax already granted shall be recovered.

(h) **Ineligible Cases under Method 2:**
- If the Amount of refund is less than Rs.500
- Services where the ST is payable on reverse charge basis by any person other than the exporter.

6. **Service–wise conditions:** Conditions are prescribed service–wise for claiming refund. Such conditions are explained in **Q.No.16, Page No.15.8.** ***Additional Service introduced by this Notification:*** *Services provided by the airport authority or any other person in any airport in respect of the export of said goods.*

Service Tax on Construction Services – Issues involved [Circular No.151/2/12 dt. 10.02.2012]

1. **Situation I: Tripartite Model** – Parties involved are (a) Land Owner (b) Builder / Developer (c) Contractor. In this case, the land owner transfers the land to the builder who constructs building on it. Out of the constructed flats, some flats are allotted to the land owner in lieu of the transfer of rights and balance flats are sold to outsiders.

<table>
<tr><th colspan="3">Taxability is as under</th></tr>
<tr><td rowspan="3">In the hand of the land owner
ST is not payable as it is sale of rights</td><td colspan="2">In the hand of the builder / developer
ST is payable under construction services on taxable value of such service, provided payment is received in full or part before receipt of completion certificate. Taxability is</td></tr>
<tr><td>For flats allotted to land owner for transfer of rights</td><td>For flats allotted to outsiders</td></tr>
<tr><td>Taxable Value = Gross Amt. charged for similar flats allotted to outsiders (nearest to the time of transfer of land rights from landowner to builder)</td><td>Taxable Value = Gross Amt. charged from customers determined as per valuation rules.</td></tr>
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2. **Situation II: Redevelopment of flats including slum rehabilitation** –

(a) Parties involved are (a) Society owning land / apartments (b) Builder / Developer. In this case, the society / apartment owners permits the builder to reconstruct the flats with same or different carpet area and also (i) constructs additional flats for sale to outsiders (ii) arrange rental accommodation for society members during reconstruction period and (iii) Pay an additional amount for the original owners of the accommodation.

(b) Here, the **taxability** is analysed as under –

In the hand of the builder / developer	
For flats allotted to Society / members	For flats allotted to outsiders
Not taxable since the reconstruction is undertaken by society / members directly engaging a builder / developer.	**Taxable.** Value is based on the Service Tax Valuation Rules, if the consideration is received from service receiver either in full or part before the receipt of completion certificate.

3. **Situation III: Investment Model**

   (a) Parties involved are (a) Investors (b) Builder / Developer. In this case, the investors are given an offer to own a specified area of construction or a flat of specified area along with fixed interest rate, if any. The investors may either exit the project by receipt of specified amount along with interest or re–sell the allotted area to another buyer or he may retain the flat for his own use.

   (b) **Taxability:** In this case, the investment is treated as advance amount received and ST has to be paid on such amount received. In investor exits before or after issue of completion certificate, the builder would eligible to take credit as excess ST, if he refunds the entire money to investors. If he resells the flat, again tax liability will arise

4. **Situation IV: Conversion Model** – An untaxed Construction / Complex may be converted into a building / civil structure to be used for commerce or industry. Such conversion may be taxable if it is brought under the definition of commercial or industrial construction service.

5. **Situation V: If Completion Certificate is waived / not required:** In such case, the equivalent of completion certificate should be considered to treat it as sale / service. Certificate can also be issued by architect / engineer / licensed surveyor.

6. **Situation VI: Build–Operate–Transfer Model (BOT Model):**

   (a) The parties that may be involved are: (i) Government / its Agency (ii) Concessionaire (Builder / Developer) (iii) Independent Contractor (If concessionaire is not in construction) (iv) Users.

   (b) This model can operate as under – The Government / Agency rent out the land to the Concessionaire for commercial exploitation of such land. The Concessionaire may either develop build on his own or appoint an independent contractor to develop building for commercial purposes. The Concessionaire can use / rent out such building to users for a specified period as agreed between him and the Government Agency. Then, the building will vest with the Government.

   (c) **Taxability** is analysed as under:

   - **Government / Its Agency:** Taxable under Renting of Immovable Property Service.
   - **Concessionaire:** Taxable as Renting of Immovable Property Service (if building is let out to users) or as business support service / management, maintenance or repair service / business auxiliary service based on agreement.
   - **Independent Contractor:** Taxable under Commercial or Industrial Construction Service

7. **Situation VII: Joint Development Model:** Land Owner and Builder / Developer may either create a new entity or operate as an incorporated association on partnership / collaboration basis, with mutuality of interest and to share risks. In such case, the new entity shall be considered as a joint venture and assessable as such separately, when flats are sold to outsiders.

Service Tax on Toll Charges for use of roads and related activities – [Circular No.152/3/12 dt. 22.02.2012]

(a) **Toll Charges:** Service Tax is not leviable on Toll Charges paid by users of roads, even if such roads are constructed by a Special Purpose Vehicle created under an agreement between NHAI / State Authority and Concessionaire. Because the toll is a state subject and not yet covered under any taxable service.

(b) **Private Agency for collection of toll charges:** If a private agency is recruited to collect toll charges on behalf of the Special Purpose Vehicle and to share a part of toll collection with the agency, then such share will be taxable in the hands of the private agency under the head "Business Auxiliary Service".

(c) **Renting of vacant land by NHAI to SPV:** Such renting for construction of roads is not taxable as it is exempt under renting of immovable property service.

CENVAT Credit Rules, 2004

Topic	Subject / Reference
DEFINITION OF INPUTS, INPUT SERVICES AND FINAL PRODUCTS	
Definition of Input Services	Input Service excludes General Insurance service in relation to Motor Vehicles, which do not qualify as Capital Goods. **[Notification No.21/2012 dt. 27.03.2012]**

Topic	Subject / Reference
Final Products	"Final Products" excludes goods for which concessional rate of 1% is being availed as per Notification No.21/2012 dt. 27.03.2012 **[Notification No.21/2012 dt. 27.03.2012]**
Goods used in testing of customized product – Inputs	**Facts:** The manufacturer produced a customized packing machine called "Automatic Form Fill and Seal Machines" (called as F&S Machines). These machines are customized according to the requirements of the customers. Such machines are actually sold only on specific testing before the customers and their approval thereof. The question is whether the inputs used for such testing eligible for CENVAT Credit? **Decision:** As the machine is customized as per the customer's needs, the machine is complete only when the customer is satisfied with its performance before removal from the factory. Hence, the product is marketable only to the customer only on customer's approval. Only when a distinct product arises, the process of manufacture is complete. ***The testing process is necessary to make the product marketable to the customer. Hence, it is an integral process of manufacturing process. Consequently, the goods used for such testing are eligible for CENVAT Credit.*** **[Flex Engineering Limited Vs CCE 2012–TIOL–01–SC–CX]**
Structural Components of Boiler – inputs	• Boilers are a combination of various systems such as coal handling system, Coal Feeding System, Draft Air System, Demineralisation Plant etc. These systems consist of many parts including structural components which are essentially the part of the boiler by way of technical specifications. Hence, they are classifiable as parts of boilers and so considered as inputs. • Such components shall not be excluded from the definition of inputs. **[Circular No.964/07/2012 – CX dt. 02.04.2012]**
CONDITIONS FOR AVAILMENT OF CENVAT	
CENVAT Credit against arrears of duty	In case of arrears of duty related to a past period, demanded by the CEO u/s 11A, whether the manufacturer can utilize CENVAT Credit for payment of such arrears, even if such credit accrued to him after the related period? As per CENVAT Credit Rules, 2004, CENVAT Credit as on the last day of the relevant month / quarter shall alone be utilized to make payment of duty for the relevant month / quarter. This payment of duty represents self–assessed duty paid by the manufacturer himself u/r 8 of CER, 2002. However, the above arrears are paid by the manufacturer on specific demand by CEO u/s 11A of the Act and hence is not same as regular self–assessed duty. So, the regular provision relating to CENVAT Credit utilization cannot be applied in this case and later CENVAT Credit can also be claimed. **[Circular No. 962/05/2012 – CX dt. 28.03.2012]**
CENTRAL GOVERNMENT's POWERS	
CG's Power to impose restrictions **(Rule 12AAA of CCR, 2004)**	**CG's Powers:** The Central Government may specify the nature of restrictions relating to utilization of credit and suspension of registration in case of dealer and type of facilities to be withdrawn. **Situation:** If CG is of the opinion that it is necessary to take measures to avoid misuse of the CENVAT Credit. **[Notification No.3/2012 dt. 12.03.2012]**
CG's Power to impose restrictions **(Rule 12CCC of CER, 2002)**	**CG's Powers:** The Central Government may specify the nature of restrictions including suspension of registration in case of dealer and type of facilities to be withdrawn. **Situation:** If CG is of the opinion that it is necessary to take measures to avoid evasion of duty or default in payment of duty. **[Notification No.4/2012 dt. 12.03.2012]**

Prohibited activities and Restrictions to be imposed by CG (Notification No.5/2012 dt. 12.03.2012):

1. **Prohibited Activities under CCR / CER:**
   (a) Removal of goods without an invoice and without payment of duty.
   (b) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received but not accounted for in the books of account.
   (c) Availing CENVAT Credit without the receipt of goods specified in the relevant document.
   (d) Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine.
   (e) Issuing excise duty invoice without delivery of goods specified in the said invoice.
   (f) Claiming refund or rebate based on the ED invoice or other documents which a person has reason to believe as not genuine.
   (g) Removal of inputs as such on which Cenvat credit has been taken, without paying an amount equal to credit availed on such inputs as per CCR, 2004.

2. **Facilities to be withdrawn and Restrictions to be imposed:**
   - (a) The Assessee shall be required to pay ED for each consignment at the time of removal of goods and monthly payment may be withdrawn.
   - (b) The Assessee shall be required to pay ED without utilising the CENVAT credit. [**Note:** He may continue to avail CENVAT Credit].
   - (c) The Assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which Cenvat credit has not been taken;
   - (d) The Assessee may be required to intimate the Superintendent regarding receipt of principal inputs in the factory on which Cenvat credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.
   - (e) If the offence is committed for second or subsequent times, goods may be ordered to be removed from factory under an invoice to be countersigned by the Inspector / Superintendent.
   - (f) If a First Stage or Second Stage Dealer is found to have committed offence specified at clauses (d) or (e) as above, the authorized officer may suspend the registration. During suspension, the said dealer shall not issue any Central Excise Invoice. [**Note:** He may continue his business and issue sales invoices without showing ED in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice].
   - (g) If a merchant exporter is found to have committed offence specified in clause (f) above, the authorized officer may withdraw the self–sealing facility for export consignment and each export consignment shall be examined and sealed by the jurisdictional CEO.
   - (h) If a Manufacturer, First Stage Dealer or Second Stage Dealer or an Exporter does anything specified in clause (f), the authorized officer may withdraw the other facility available to them.

3. **Monetary limit of offence** – The above provisions applicable only if the ED or CENVAT Credit alleged to be involved exceeds Rs.10 Lakhs.

4. **Procedure –**
   - (a) The CCE or Additional Director General of Central Excise Intelligence, after examination of records / evidence, and after satisfying the offence as deliberate, may forward a proposal to the CCCE or Director General of Central Excise Intelligence (DGCEI), to withdraw the facilities and impose restriction during or for such period, within 30 days of the detection of the case.
   - (b) The CCCE or DGCEI shall give an opportunity of being heard to the alleged party.
   - (c) The CCCE or DGCEI shall examine the said proposal and verifying the records may forward the proposal along with his recommendations to the CBEC.
   - (d) An officer authorized by the CBEC shall examine the recommendations received from the CCCE or DGCEI and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative.

Appeals and Revisions

Appeals	
Appeal before SC without CESTAT's order – Not valid	The department filed appeal before Supreme Court without the final order of CESTAT. Such appeal is not valid as the court is not in a position to appreciate the stand of the assessee as well as the department. **[CCE Vs Minimax Industries 2012–TIOL–15–SC–CX]**
No appeal against appellate authority's findings – SC appeal not valid	**Facts:** The Department treated the assessee's process as manufacture and SCN was issued. Adjudicating orders were also passed demanding additional duty. However, the Assessee appealed to CCE(A) stating that the SCNs issued by the adjudicating authority are not valid. The CCE(A) upheld the assessee's claim and dismissed the order on the ground of invalid SCN. Further, CCE(A) also decided that the assessee's process is not a manufacture. The Department did not question the findings of the Commissioner of Central Excise (Appeals). But, it went on appeal against the CCE(A)'s order of invalid SCN. The question is whether the department's appeal is vaild? **Decision:** The Department's appeal to HC and SC is not valid since the department did not question the findings made by CCE(A) that the process is not a manufacture. Hence, as the findings of CCE(A) are not challenged, the revenue's appeal is not valid. **[CCE Vs Tikitar Industries 2012 – TIOL – 20 – SC – CX]**