Case Studies

Q : How the credit of duties of excise and service tax can be utilised. Whether there are any restrictions in this regard.

A : Broadly speaking, credit of the duties of excise, paid on inputs and capital goods can be availed by the manufactures of excisable goods. Such credit can be used by such manufactures for the payment of their excise duty liability on the final products.

Credit of the duties of excise, paid on inputs and capital goods can be availed by output service providers. Such credit can be used by such output service providers for payment of their service tax liability on the output services rendered by them.

Credit of service tax paid on input services can be availed by the manufacturers of excisable goods. Such credit can be used by such manufacturers for the payment of their excise duty liability on the final products.

Credit of service tax paid on input services can be availed by output service providers. Such credit can be used by such output service providers for the payment of their service tax liability on the output services rendered by them.

But such utilization is subject to certain restrictions. Credit of the following duties mentioned in Column (1) of the table given below, can be used only for payment of the duties mentioned in column (2) of the table.

Credit of the Duties/Taxes	**Restriction as to utilization**
(1)	**(2)**
AED (TTA)	Can be used only for payment of AED (TTA), If leviable on final products.
NCCD	Can be used only for payment of NCCD, if leviable on final products.
Education Cess on excise duty and service tax.	Can be used only for payment of Education Cess on excise duty (in case of manufacturers) or for payment of Education Cess on service tax (in case of output service providers).
Additional Duty of Customs (CVD) Equivalent to AED (TTA), NCCD or Education cess Cess on Excise Duty	Can be used only for payment of such AED (TTA) or NCCD or Education Cess on final products, respectively.
Additional Duty of excise on Tea and tea waste	Can be used only for payment of such Additional duty of excise on tea and tea waste, if leviable on final products.

Q : The credit available in respect of Education Cess paid on Excise duties and Education Cess paid on service tax is not sufficient to discharge one’s Education Cess liability on excise duty on final products (for manufacturers) or Education Cess liability on service tax. Whether credit of Cenvat BED, SED, AED (GSI) and service tax can be used for payment of such deficiency?

A : Yes. Presently, there are no restrictions as to utilization of these duties, for payment of Education Cess.

Example - A manufacturer of excisable goods has to pay an amount of Rs. 15,000 towards Education Cess on the excise duty payable on the final products manufactured and cleared by him. He has a credit of only Rs. 5000, earned as Education Cess paid on inputs/capital goods/input services. Whether the deficiency of Rs. 10,000 has to be compulsorily paid in cash. If there is sufficient balance in Cenvat credit in respect on Cenvat BED, SED, AED (GSI) and service tax, the deficiency can be adjusted against such credit.

Q : Whether credit availed inputs can be removed outside the factory premises or the premises of the output service provider?

A : If such removal is for the purpose of processing, testing, repair, re-conditioning or any other purpose, they can be removed without reversal of any credit. Such goods have to be received back within 180 days of their removal. If the inputs are required to be removed from the premises of output service provider, for providing the output service, such removal can also be done, without any restriction as to receiving them back within 180 days. For example, if an output service provider under the category of "repairs and maintenance service" avails credit of excise duty paid on the inputs purchased by him for carrying out the service, such inputs can be removed to the place, where the repairs and maintenance service is to be rendered. The restriction of bringing them back, within 180 days, will not apply to such cases.

Q : Whether credit availed capital goods can be removed outside the factory premises or the premises of the output service provider?

A : A manufacturer can remove the credit availed capital goods, for further processing, testing, repair re-conditioning or any other purpose. Such goods shall be received back within 180 days from the date of their removal. But, the restriction of 180 days is not applicable, if the capital goods are in the nature of jigs, fixtures, moulds and dies and they are removed to the premises of job workers for production of goods, on behalf of the manufacturer. An output service provider can also remove the credit availed capital goods, if such removal is for the purpose of rendering the output service. But, such capital goods have to be received back to the premises of the output service provider, within 180 days (which may be extended by another 180 days by the jurisdictional AC/DC, from the date of their removal).

Q : What if such capital goods are not received within 180 days or within the extended period, as the case may be?

A : The credit attributable to such capital goods shall be reversed by the manufacturer/output service provider. Such credit can be availed once again, after receipt of the subject capital goods in the factory of production/premises of output service provider.

Q : Whether it is necessary that credit can be taken, only after making payment against the bill/invoice/challan?

A : There are no such restrictions with regard to availment of credit of duties of excise, as the input/capital goods supplier has to discharge the duty indicated in the invoice, irrespective of the realization of the proceeds.

Credit of service tax on input services, can be availed, only after making payment of the amount indicated in the invoice/bill/challan. This is necessary because, the input service provider will be paying the service tax to the government, only after he realizes the payment, as the payment of service tax is only upon realization. It is in the interest of revenue that credit of service tax credit should not be allowed, unless it is paid at the other end.

Q : Who is an input service distributor.

A : In many cases, various input services will be consumed in the headquarters/administrative offices of manufacturers and output service providers. In such cases, the invoices indicating the payment of service tax will be in the name of such headquarters/administrative offices. A provision has been made for availing credit of such service tax, in the premises where manufacturing activity is undertaken or the premises where the output services are rendered.
Such headquarters/administrative offices are described as input service distributor (ISD). Such ISD can distribute the total amount of service tax paid by it, to various manufacturing premises/various premises rendering the output service.

Q : An ISD has paid a service tax of Rs. 1,00,000, during a particular year. It has three manufacturing premises in three different locations. As the manufacturing premises at location A is short of funds for payment of its excise duty liability, the ISD proposes to transfer the entire amount of service tax credit i.e. Rs. 1,00,000 to location A. Can it do so?

A : Yes. In such case, the other two locations will not get any service tax credit out of the credit of Rs.1,00,000. This would equally apply in respect of all input services, which are common to all the three locations. But, if a particular input service, which is exclusively used only in any one of the premises and if the credit thereof is distributed by the ISD to any other premises, such availment can be questioned on the basic issue of entitlement, as these input services are not at all used by that particular unit, in or in relation to its manufacturing activity.

Q : What should be done, if I am manufacturing both dutiable as well as exempted goods, but my input/input services are common?

A : *Option I* : Do not avail any credit in respect of those quantity of inputs/input services, which are used for the manufacture of such exempted goods. Avail credit only in respect of that quantity of inputs/input services, which are used for the manufacture of dutiable goods.

Option II : Avail credit on all inputs/input services and thereafter pay an amount equal to 10% of the price of the exempted goods, in all other cases.

Q : Assessee is registered as a service provider under the category of repairs and maintenance. Such services are rendered free of cost, if within the warranty period and charged if thereafter. Can the service rendered free of cost be considered as an exempted service so as to attract the mischief in the form of utilisation of credit only to an extent of 20% of my service tax liability?

A : It has to be seen whether the service rendered by you free of cost, can be considered as an exempted service. The term exempted service as defined in the rules, includes services on which no service tax is leviable. As such, the above definition of exempted service would mean all services, which are not specified under Section 66. In the instant case, the service rendered is a taxable service mentioned under Section 66. Assessee is not paying service tax, only due to the fact that the value of taxable service is zero, as the service is rendered free of cost. As such, the restriction contained in Rule 6, as to utilization of credit only to an extent of 20% of your liability is not applicable in this case.

Q : An outdoor caterer is charging service tax for the food provided by him to the assessees employees. Can credit thereof be availed by the assessee?

A : Employees are essential for production and food is essential for the employees. As such the services rendered by the outdoor caterer can be considered as being in relation to manufacturing activity and credit thereof can be availed by the assessee.

Q : Assessee is a job worker producing goods on behalf of the principal. As the job workers my activity is not amounting to manufacture, is he liable for payment of service tax under the category of business auxiliary service. Can he take credit of the excise duties paid on the goods supplied to him, by the principal?

A : If the goods are supplied to job worker under valid documents, he can take credit of the specified duties paid on the goods, as they can very well be considered as inputs, for rendering the output service (production of goods on behalf of client). Moreover, ownership over the goods (inputs/capital goods) is not a condition for claiming Cenvat Credit and credit can be availed, if they satisfy the definition of inputs/capital goods and are duty paid and are supported by valid documents.

Q : What should be done, if I am rendering both taxable services as well as exempted services, but my inputs/input services are common?

A : You can utilize Service Tax credit only to an extent of 20% of your liability. For example, of your service tax liability for a specific period is Rs.10,000 and you have a credit of Rs.4,000, you can utilize the credit only to an extent of Rs.2,000 and the balance liability of Rs.8,000 has to be paid in cash. The remaining credit of Rs.2,000 can be carried forward.

Q : Assessee has a head office and two manufacturing premises. In one manufacturing premises (A), It manufacture only dutiable goods. In another manufacturing premise (B), it manufactures both exempted goods as well as dutiable goods. It pays service tax on input services consumed in the head office. Such input services are common to the two manufacturing premises and cannot be separately identified with any one premises. Whether it is entitled to distribute such service tax, to the manufacturing premises. If so, under what conditions?

A : In such circumstances, a proportion of the service tax which is proposed to be distributed among the manufacturing units, might be in relation to the manufacture of exempted good. Unless such are under the category of 16 services, mentioned, the restriction contained in Rule 6 of the Rules will be applicable.

If the portion of such credit is distributed to the manufacturing premises (B), which manufactures both dutiable as well as exempted goods, such unit will be hit the above said rules. In such case, the unit (B) has to either reverse proportionate credit or pay 10% of the price of the exempted goods, as the case may be, at the time of clearance of the exempted goods.

If the entire service tax paid on such input services is distributed to the manufacturing premises(A), which is not manufacturing any exempted goods, the restriction contained in Rule 6 of the rules, will be attracted or not.

However, it is possible to take another view that on a careful reading of the Rule 6 it reveals that the restriction is with reference to a manufacturer and not with reference to each and every factory. So, even if no portion of such service tax is distributed to the manufacturing premises (B), in as much as credit of service tax, even pertaining to manufacturing of exempted goods (in premises B) has been availed by the “manufacturer” (be it A or B), the restriction would come into play. So, even if the entire service tax is distributed only to premises A, which manufacture only dutiable goods, in as much as portion of such credit is in respect of the input services consumed by B, for manufacture of exempted goods, until B shall be required to either reverse proportionate credit or pay 10% of the price of the exempted goods.

The above view is not free from doubt and different interpretations are also possible.

Q : Assessee has two manufacturing premises, say A and B. While A manufactures only dutiable goods, B manufactures both dutiable as well as exempted goods. The capital goods available in both the premises are commonly insured and the insurance premium is paid by the head office. Some of the machineries available in B, would be used exclusively in the manufacture of exempted goods. The list of insured capital goods attached to the insurance policy would contain the details of all the insured capital goods. In such cases, how the credit of service tax paid on the insurance premium can be availed as credit?

A : The service tax attributable to the premium paid on capital goods, which are exclusively used in the manufacture of exempted goods cannot be availed. The service tax in respect of all other premium can be availed. But the obligation prescribed under Rule 6 reversal of proportionate credit or payment of 10% of the price of the exempted goods, as the case may be will be attracted.

Q : In the above case, let us assume that no credit of service tax has been availed in respect of the capital goods exclusively used in the manufacture of exempted goods in unit B. But the remaining amount of service tax has been distributed by the head office (ISD), only to our unit A, which manufactures only dutiable goods. In as much no credit of service tax on such common input service has been distributed to unit B (which manufactures both dutiable as well as exempted goods), but only to Unit A. which manufactures only dutiable goods, whether the obligation cast under Rule 6 (reversal of proportionate credit or payment of 10% of the price of the exempted goods) will be applicable to unit B?

A : In the instant case, credit of service tax paid on certain input services has been distributed by the ISD to unit A. But, Rule 6 cannot be made applicable to unit A, as it manufactures only dutiable goods. Similarly, Rule 6 cannot be made applicable to unit B also, in as much as no credit in respect of exempted goods has been availed by it. But, the basic issue of entitlement of Unit A, for such credit can be questioned. As far as unit A is concerned, it can take credit of service tax paid only on those input services which are used for manufacture of its dutiable final products. If a portion of the service tax credit availed by it represents those input services, which is utilized towards manufacture of exempted goods in factory B, the entitlement for the same can be questioned by the Superintendent and he may decline to allow the credit.

Q : Assessee is a manufacturing organization. If sells the goods from its factory and insure the goods upto the buyers place. Are they entitled to avail credit of the service tax paid on such insurance premium?

A : The definition of input services refer only to those services availed upto the place of removal. Even the specific services included in its ambit, cover only those services of transportation upto the place of removal. As such, the credit of service tax in respect of the insurance premium for the outward transportation of goods from the factory, which is the place of removal, will not be available.

Q : Assessee is a manufacturer of dutiable goods. It is not rendering any taxable output service but it renders some services which are not mentioned as taxable services under Section 66. . A portion of the credit of service tax availed may pertain to such services. In such case, as to how the provisions of Rule 6 will be applicable?

A : The provisions of Rule 6 will be applicable, only either (a) if a person manufactures both dutiable and exempted goods or (b) renders taxable and exempted services. In case where a person is manufacturing only dutiable goods but renders some exempted services, the provisions of Rule 6 cannot be made applicable.

Let us elaborate, in such cases, though assessee has availed credit of service tax, a portion of which may pertain to rendering of some exempted service, the consequence thereof are not applicable to it. For example, as assessee is not manufacturing only exempted goods, the provisions as to reversal of proportionate credit or payment of 10% of the price of the exempted goods, is not applicable. Similarly, since assessee is not rendering any taxable service, the question utilizing the credit only to an extent of 20% of tax liability, is also not applicable.

But in such situations, if the credit of either excise duties paid on inputs or service tax paid in input services is availed in full, the question of entitlement itself can be questioned by the department. To elaborate, credit of excise duty paid on inputs can be availed only if they are used in the manufacture of dutiable goods or in rendering a taxable service. If the inputs are used for both i.e. manufacture of dutiable goods as well as rendering of an exempted service, that portion of the credit which is attributable to the rendering of exempted service is not at all entitled for availment. Similar would be case if the credit of service tax paid on input services, which are commonly used for manufacture of dutiable goods as well as rendering of exempted services.

Q : What if in the above case, assessee is a manufacturer of exempted goods and rendering taxable service?

A : The provisions of Rule 6 will be applicable only either (a) if a person manufactures both dutiable and exempted goods or (b) renders taxable and exempted services. Cases like (a) persons manufacturing dutiable goods and rendering exempted services; (a) persons manufacturing exempted goods and rendering taxable services are not covered in the said rule. But in such situations, if the credit of either excise duties paid on inputs or service tax paid on input services is availed in full, the question of entitlement itself can be questioned by the department.

For example, if service tax paid on input service, which is common to both manufacture of dutiable goods and exempted service, such portion of service tax, which can be attributed to the rendering of exempted service, may be disallowed on the basis of entitlement itself.

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Special provisions relating to Large tax payer Units

Persons eligible to opt as a large taxpayer[1]

(i) Any person, engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala, or a provider of taxable service, has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application Excise duty / Service tax of more than Rs. 5,00,00,000 in cash or through PLA; or

(ii) Advance tax of more than Rs. 10,00,00,000, under the Income tax Act and is presently assessed to income tax or corporate tax, under the jurisdiction of Chief Commissioner of Income Tax – I, Bangalore.

Rule 12A of CCR- Procedure and facilities for large taxpayer

This Rule shall override all other rules. However, it shall not apply 100% EOU or EHTP or STP units, Units located in the North Easter Region, units in Kutch / Gujarat / Kashmir / Sikkim, or units in Industrial center availing exemption notification.

(i) A large taxpayer may remove inputs, (except motor spirit, commonly known as petrol, HSD, and LSD) or capital goods, as such, on which CENVAT credit has been taken, without payment of excise duty. The large tax payer may continue to avail the CENVAT credit of these items.

(ii) Such goods shall be removed under the cover of a transfer challan or invoice, from any of his registered premises (sender premises) to his other registered premises, other than a premises of a first or second stage dealer (recipient premises), for further use in the manufacture or production of final products in recipient premises.

(iii) The final products are manufactured or produced in the recipient premises, using the said inputs and cleared on payment of appropriate excise duty within a period of six months, from the date of receipt of the inputs in the recipient premises.

(iv) The final products manufactured or produced using the said inputs are exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises.

(v) A large taxpayer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(vi) A large taxpayer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by:

    (a) making an entry for such transfer in the record maintained under Rule 9;

    (b) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry; and

    (c) such recipient premises can take CENVAT credit on the basis of such transfer challan.

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[1] Large taxpayer means a person who, has one or more registered premises under the Central Excise Act or has one or more registered premises for Service tax under and is an assessee under the Income Tax Act, who holds a PAN.

However, such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed for utilization of CENVAT credit against the corresponding duty.

(vii) If the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest. The first recipient premises may take CENVAT credit of the amount paid as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties

(viii) Further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest.

(ix) As per Rule 12BB of the Central Excise Rules if a registered premises of a large taxpayer manufacturing excisable goods has paid to excise duty in excess of duty payable on account of arithmetical error, the said large taxpayer may adjust the excess duty so paid by him, against his duty liability for the subsequent period subject to the limitations prescribed for adjustment of corresponding duty. Such adjustment shall be admissible only if the said registered premises has not passed on the incidence of such excess duty so paid to any other person, and the consignee does not avail credit of such duty.

(x) As per 12BB a large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

1.1. Large tax payer scheme

Large taxpayer means a person who has one or more registered premises under the Central Excise Act, 1944 or has one or more registered premises under Service tax and is an assessee under the Income Tax Act who holds a PAN.

Conditions for eligibility as a Large tax payer

Any person, engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala, or a provider of taxable service, has paid during the financial year 2004-05 or the financial year preceding the year of filing of application:

- Excise duty / Service more than Rs. 500,00,000 in cash or through account current; or
- Advance tax of more than Rs. 10,00,00,000, under the Income Tax Act,

Rule 12 BB of CER read with Rule 12A of CCR - Procedure and facilities for large taxpayer

This rule overrides all the other rules, the following procedure shall apply to a large taxpayer.

(i) A large taxpayer may remove inputs (except motor spirit, commonly known as petrol, high speed diesel and light diesel oil) or capital goods, as such, on which CENVAT credit has been taken, without payment of the amount taken as CENVAT, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of 6 months, from the date of receipt of the inputs in the recipient premises;

(ii) The final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the input goods in the recipient premises.

If the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest.

If such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under Rule 14.

(iii) A large taxpayer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by:

- making an entry for such transfer in the record maintained under rule 9;
- issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry; and

- such recipient premises can take CENVAT credit on the basis of such transfer challan.

(iv) Nothing contained here shall be applicable to a EOU or a unit located in a EHTP or STP.

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

Withdrwal of facility

Central Government has declared that where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following, an officer authorized by the CBEC shall order withdrawal of the facility and impose the under-mentioned restrictions. These provisions shall be applicable only in a case where the duty or CENVAT Credit alleged to be involved in the offences specified is more than Rs.10 lakhs.

Offences specified

(i) removal of goods without the cover of an invoice and without payment of duty;

(ii) 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 by him or on his behalf but not accounted for in the books of account;

(iii) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;

(iv) taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;

(v) issue of excise duty invoice without delivery of goods specified in the said invoice;

(vi) claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine, an officer authorized by the Board may order for withdrawal of facilities or impose certain restrictions as specified in para 2 of this Notification.

Imposition of restrictions

(i) The facility of monthly payment of duties may be withdrawn and the assessee shall be required to pay excise duty for each consignment at the time of removal of goods;

(ii) Payment of duty by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay excise duty without utilising the CENVAT credit. However, the person may continue to take CENVAT credit; however, he would not be able to utilize the credit for payment of duty during the period specified.

(iii) If a person is found to be knowingly involved in committing any one or more type of offences as specified above for the second time or subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector / Superintendent before the said goods are removed from the factory or warehouse.

(iv) If a first stage or second stage dealer is found to be knowingly involved in committing the offence specified above in point (iv) or (v), the registration granted may be suspended for a specified period. During the period of suspension, the said dealer shall not issue any Central Excise Invoice. However, he may continue his business and issue sales invoices without showing excise duty in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

(v) If a merchant exporter is found to be knowingly involved in committing the offence specified above in point (vi), the self sealing facility for export consignment may be withdrawn whereby each export consignment shall be examined and sealed by the jurisdictional CEO. Further, any other facility available to a manufacturer, first stage or second stage dealer or an exporter provided by a circular or an order issued by the Board may also be ordered to be withdrawn for a specified period.

Discussion on the Brand name issue of SSI

As per notification 8/2003 dated 1.3.2003 in case of SSI the first one crore of goods removed in a financial year shall not be charged excise duty, provided that the manufacturer does not claim Cenvat credit. However, the exemption contained in this notification shall not apply to goods bearing a brand name or trade name (whether registered or not) of another person, except in the following cases:

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufac-ture of the said machinery or e quipment or appliances by follow-ing the procedure laid down in the Central Excise Rules, 2001 (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods);

(b) where the specified goods bear a brand name or trade name of:

- (i) the Khadi and Village In-dustries Commission; or
- (ii) a State Khadi and Village Industry Board; or
- (iii) the National Small Indus-tries Corporation; or
- (iv) a State Small Industries Development Corpora-tion; or
- (v) a State Small Industries Corporation.

(c) where the specified goods are manufactured in a factory located in a rural area.

Meaning of Brand Name

'Brand name' or 'Trade name', whether registered or not, is a name or a mark, such as a symbol, a monogram, a label, a signature or an invented word or writing, which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark, with or without any indication of the identity of that person.

Hence, brand name or trade name should be associated with the product. Brand name does not refer to the name of the manufacturer. Rather, it refers to the product known by that name.

Object of SSI exemption

In CCC v Bhalla Enterprises (2004) 173 ELT 225, the apex court has held that the object of the exemption notification is neither to protect the owners of the trademark/trade name nor the customers from being misled.

If a company has used only a house mark then the appellants are not disentitled from eligibility to SSI exemption. In DCI Pharmaceuticals Pvt. Ltd. v Supdt. of Central Excise (2000) 115 ELT 45, it was held that if the small-scale unit manufacturers goods under its own brand name, it will be entitled for SSI exemption even if the distributor's name and logo are printed on the cartons, unless it is shown that the distributor also manufactures the same goods, under the same brand name.

In CCE v Emkay Investments Pvt. Ltd. (SC – 2004) 174 ELT 298, the assessee was using the logo 'MERINO' along with their own brand name 'PELICAN' on plywoods manufactured by them. It has been held that the benefit of SSI exemption is not available even though the product also contains the brand name/trade name/logo of the manufacturer. Exception or exemption provision in a taxing statute should be construed strictly. SSI exemption not deniable for joint ownership of brand name.

The apex court has held in CCE v Bhalla Enterprises (2004) 173 ELT 225 that SSI exemption is not deniable where the assessee uses a brand name that someone else is also equally entitled to use. Additional words with another's brand name – does not make any difference: The apex court held in CCE v Mahaan Diaries (2004) 166 ELT 23 that where the registered trade name of another company, namely 'Mahaan', was printed on pickle packs sold by the respondents with additional words 'taste maker', SSI exemption is not available. Similarly the apex court held in CCE v Rukmani Pakkwell Traders (2004) 165 ELT 481 that SSI exemption is not available when a part of the brand name of another person is used, indicating a connection in the course of trade. It was further held that once a trade name or brand name is used, then mere use of additional words would not enable the party to claim the benefit of the Notification. Where goods manufactured are not traded in that form, SSI exemption cannot be denied.

In CCE v Superex Industries (SC – 2004) 174 ELT 4, the assessee manufactured diesel generating sets. In the process of the manufacture of diesel generating sets, they use certain components manufactured by Kirloskar. The diesel generating sets, manufactured by the assessee, do not bear the name Kirloskar. However, in the invoices issued to purchasers, the generating sets are described as 'Kirloskar Generating Sets'. It was held that SSI exemption is not deniable.

The apex court held in CCE v Vikshara Trading and Investment Pvt. Ltd. (SC – 2003) 157 ELT 4 that trade name need not necessarily be in respect to all goods, unless the registration so requires and it has been further held that it is permissible in law to have the same brand name for a different class of goods owned by a different person.

If the assessee uses a brand name registered outside India, which is owned by a foreign company or a non-resident, even then he is not entitled to SSI exemption since, factually, the position does not change. In Rajdoot Paints Ltd. Vs. C.C.Ex. (2001) 134 ELT 281, the trade name was originally owned by a foreign collaborator but later on it was registered in the name of the SSI unit. The Tribunal held that SSI exemp-tion cannot be denied.

In CCE v Grasim Industries Ltd. (2005) 183 ELT 123, the Supreme Court has held that where the name of holding company was indicated on the product and the holding company was also a manufacturer of cement, the trade name of some other company has been used with the purpose of indicating a connection in the course of trade between the product and that person. It has been further held that the terms 'brand name' or 'trade name' qualified by the words 'that is to say a name or a mark' implies that even an ordinary name or an ordinary mark is sufficient. Even if the name of some other company, is used for indicating a connection between the product and that company, it would be sufficient to deny SSI exemption. The name or writing need not be a brand name or trade name in the sense that it is normally understood. The notification being under the Excise Act, connection must be of such a nature that it reflects an aspect of manufacture and deal with quality of the products.

Therefore, a small-scale unit should ensure that it is not using the brand name of any other person in its product. However, distinction should be made between house mark and trademark. Using the name of the buyer does not disentitle the manufacturer from SSI ex-emption. However, if the name of another person is used for the purpose of establishing a connection between the products manufactured and that other person, the benefits of SSI ex-emption shall not be available. The eligibility to exemption notification should be construed strictly and even the use of another's brand name in part would disentitle the manufacturer from SSI exemption.

Customs – Duty drawback

Duty Drawback rates are fixed by Directorate of Drawback, Department of Revenue, Ministry of Finance, Government of India. The rates are normally revised every year and for the purpose data is collected from the Industry. The types of Duty Drawback rates are :

1. All Industry rate : This rate is fixed by considering average quantity and value of each class of inputs imported or manufactured in India. Average amount of duties paid is considered. These rates are fixed for broad categories of product and are revised every year, considering the impact of the budget.

2. Brand rate : It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special types of product. The manufacturer has to submit application with all details to Directorate of Duty Drawback, New Delhi. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year of the delay was due to abnormal situations. Brand rates are kept valid for one year. Provisional rate may also be fixed and the exporter may get drawback on submission of Bond. The conditions for eligibility for this type of rate is :
   - (i) The rate should not be less than 1% of the FOB value of the products except when the amount of drawback of shipment is more than Rs. 500;
   - (ii) Export value is more than the value of imported material used in them – i.e. there is no negative value addition.

3. Special Brand Rate : All Industry rate is fixed on average basis. Thus a particular manufacturer may find that the actual duty paid on inputs is higher than All Industry Rate fixed for this product. In such case he can apply for fixation of Special Brand Rate, within 30 days from export. The conditions for eligibility for this type of rate is :
   - (i) The All Industry Rate fixed should be less than 80% of the duties paid by him;
   - (ii) The rate should not be less than 1% of the FOB value of the products except when the amount of drawback of shipment is more than Rs. 500;
   - (iii) Export value is more than the value of imported material used in them – i.e. there is no negative value addition.

Project Import

The concept of Project Import has been introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty. The goods are classified under the heading Project Import even though the machinery may actually fall under different headings. Various types of machinery required for initial setup of a unit or substantial expansion are various. Even spare parts, raw materials or consumables upto 10% of value of machinery is allowable as part of Project Import at concessional rate. Some of the eligible projects are : Industrial Plant, Power Project, Mining Project, Other projects as may be notified by the Central Government.

A contract for Project import has to be made to the customs authorities before importation and an application for registration has to be made before clearance of goods from the customs. A cash security of 2% of the CIF value of the imported goods has to be paid at the time of registration.

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