

CHANGES MADE IN THE CENTRAL EXCISE RULES, 2002:

Rule 21 à Time limit for granting remission of duty has been prescribed:

Rule 21 of the Central Excise Rules, 2002 contains the provision regarding remission of duty.

Sub-rule (2) has been inserted in Rule 21 of the Central Excise Rules, 2002 so as to provide for a time limit of three (3) months [further extendable by 6 months] for granting remission of duty.

CHANGES IN THE CREDIT RULES – TRANSFER OF CENVAT CREDIT: RULE 10

A new sub-rule 4 has been inserted in Rule 10 of the Credit Rules, so as to provide that transfer of Cenvat credit by the jurisdictional Deputy/Assistant Commissioner of Central Excise, shall be allowed within 3 months from the date of receipt of application from the manufacturer or service provider in this regard, subject to the fulfillment of the conditions prescribed under Rule 10(3).

Further, the stated period of 3 months may be extended by the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, for a further period not exceeding 6

CLARIFICATION REGARDING APPLICABILITY OF SECTION 5A OF THE EXCISE ACT IN RESPECT OF INPUTS IMPORTED OR EXPORTED BY EOU

Section 5A of the Excise Act provides that unless specifically provided in a notification, no exemption therein shall apply to excisable goods which are produced or manufactured by an Export Oriented Units (“EOU”) and cleared to the Domestic Tariff Area (“DTA”).

It has been clarified that non-applicability of exemptions under notifications issued under Section 5A is only in respect of excisable goods produced or manufactured by an EOU and cleared to DTA and not in respect of inputs/raw materials procured by them domestically and utilised for production/manufacture of goods which are cleared by them to DTA.

Thus, EOU will also be eligible to import or procure raw materials/inputs at other concessional/Nil rate of Basic Customs Duty (“BCD”), Excise duty/Additional Duty of Customs (“CVD”) or Special Additional Duty (“SAD”), as the case may be, provided they fulfill all conditions for being eligible to such concessional or Nil duty. For these purposes, if an EOU is already registered with the jurisdictional Central Excise Authority, it will not be required to take any fresh registration under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 or the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, as the case may be. Further, there will be no need for an EOU to separately comply with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 for availing the CVD exemption, if the procedure under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 2016 is followed by it for availing exemption / concession from BCD on imports of inputs/raw materials.



CHANGES MADE IN UNION BUDGET 2016-17

CHANGES IN CENTRAL EXCISE RULES

Changes in registration procedure vide Notification 7/2015 C.E. (N.T.) – Dated 01.03.2015 is given as under (w.e.f. 01.03.15):

- Application for registration/cancellation shall be filed ONLY by online method
- PAN No is must for getting registration under Excise except government department
- Temporary Registrant should apply for PAN based registration within 3 month
- Email Id, Mobile Number, details of other government Registration details is compulsorily to be quoted on registration application.
- Once duly completed application form is received online on ACES, registration would be granted within two working days and Registration Certificate will be issued online without any examination of the documents and verification of documents or premises before the grant of registration.
- Registration Certificate issued online is sufficient proof of registration. No need to have hard copy of registration. Signature of issuing authority is not required on online registration certificate.
- Verification of the documents and premises shall be carried out post facto. The applicant shall submit self-attested copy of the prescribed documents at the time of the verification of the premises.
- In case of Change in constitution of assessee amounting to change in PAN number, fresh registration is to be obtained. In other cases, intimation of such changes is to be given with 30 days

Direct dispatch of goods to job worker and dispatch of goods from one job worker to another – Manufactured or imported goods can be sent by supplier manufacturer or importer directly to place of job worker. The invoice issued by supplier manufacturer or importer should contain details of purchaser manufacturer (or purchasing service provider) and job worker. – second and fourth *proviso* to rule 11(2) of Central Excise Rules, inserted w.e.f. 1-3-2015.

If goods are directly sent to a job worker, on the direction of a manufacturer/service provider, the invoice shall state manufacturer/service provider as Buyer and job worker as the consignee and it should provide their details.

The purchasing manufacturer (or purchasing service provider) can avail Cenvat credit as soon as goods are received in the factory of job worker. – rule 4(1) of Cenvat Credit Rules amended w.e.f. 1-3-2015.

Goods purchased by registered dealer can be sent directly to manufacturer – A registered dealer who has purchased goods can instruct manufacturing manufacturer to send goods directly to the ultimate purchaser manufacturer (or purchasing service provider). Details of registered dealer as buyer and buyer manufacturer (or purchasing service provider) receiving the goods shall be shown as consignee third *proviso* to rule 11(2) of Central Excise Rules, inserted w.e.f. 1-3-2015.



If the goods imported by registered Importer and sent directly to buyer's premises, then invoice issued by the importer shall mention that goods are sent directly from the place or port of import to the buyer's premises.

Other provisions of Rule 11 shall also made to be applicable to registered Importer *mutatis mutandis*.

The purchase manufacturer (or purchasing service provider can take Cenvat credit on basis of dealer's invoice – third *proviso* to rule 11(2) of Central Excise Rules, inserted w.e.f. 1-3-2015

[This is Transit Invoice and was earlier allowed by way of CBE & C circular No. 96/7/95-CX dated 13-2-1995].

Authentication of invoice by digital signature – Central Excise Invoice can be authenticated by digital signature. Manual attestation of Invoice copy not required – 1.03.2016 (If printed copy is sent with transporter, it shall be self attested by manufacturer – rule 11(8) of Central Excise Rules inserted w.e.f. 1-3-2015).

Option to maintain records in electronic mode -Rule 10 of CER 2002, has been amended w.e.f. 1-3-2015 to provide for preserving records in electronic mode and every page of such record preserved shall be authenticated by mean of digital signature. The Central Government may specify the conditions and safeguards for preserving digitally signed records.

Rule 10 prescribe Rules for maintenance of Daily Stock Account (DSA). Now facility of maintenance of DSA is provided in electronic forms as well, with a condition that each page of DSA will be authenticated by Digital Signature.

Export means goods should go outside India – *Explanation* to rule 18 of Central Excise Rules has been amended w.e.f. 1-3-2015, to provide that 'export' means goods to be taken outside India or supplied as stores.

Rule 5(1A) of Cenvat Credit Rules as inserted w.e.f. 1-3-2015 also provides that 'export goods' means goods taken outside India.

[It means that if goods are supplied to EOU or SEZ, rebate of excise duty is not available].

Departmental clarification in case of 'place of removal' – CBE&C, vide circular No. 999/6/2015-CX dated 28-2-2015 has clarified as follows –

In case of goods cleared by manufacturer exporter, transfer of property takes place when goods are handed over to shipping line. In that case, port/ICD/CFS will be the place of removal.

In case of export through merchant exporter, normally, property in goods passes to merchant exporter at the factory gate. Hence, that will be normally place of removal. However, in isolated cases, the port/ICD/CFS can be place of removal depending on facts of the case.

Penal Provisions

Levy of Penalty On Late Filing of Returns & Other Specified Excise Statements - (Rule 12 (6) and 17 (5) inserted in Central Excise Rules, 2002, vide notification no. 8/2015 C.E. (N.T.) dated 01.03.2015)

Earlier non filing/late filing of excise returns was subjected to general penalty under rule 27 of C.E.R. 2002, which is punishable with a penalty, which may extend to Rs. 2,000/-

Sub rule 6 has been inserted in rule 12, which penalizes the assesses for failing to file the Excise Returns or Annual Financial Statement or Annual Installed Capacity Statement, as applicable, with due dates as specified, **with an amount calculated at the rate of one hundred rupees per day subject to a maximum of Rs. 20,000/-**

Section 11AC of CEA, 1944 is proposed to be changed with new provision to impose penalty to tackle two situations as below:

1. Evasion of duty or non- payment of duty but without suppression -

a) a penalty not exceeding 10% of the duty determined or Rs.5000 whichever is higher shall be payable;

b) no penalty shall be payable if duty and interest payable thereon under section 11AA is paid **before issue of show cause notice**

or

no penalty shall be payable if duty and interest payable thereon under section 11AA is paid **within 30 days of issue of show cause notice**

c) the penalty will be reduced to 25% provided the 25% of the penalty out of total penalty imposed along with duty and interest is paid within 30 days of the date of communication of such order.

2. Evasion or non- payment with suppression -

a) a penalty equal to the duty so determined shall be payable.

b) for the period beginning with 8th April, 2011 and upto the date of assent to the Finance Bill, 2015, the penalty payable shall be 50% of the duty so determined provided details of transactions of evasion are recorded

c) 15% penalty shall be payable, of the duty determined, if duty and interest payable thereon under section 11AA is paid **within 30 days of issue of show cause notice**

d) the penalty will be reduced to 25% provided the 25% of the penalty out of total penalty imposed along with duty and interest is paid within 30 days of the date of communication of such order.

Appellate Order To Effect Penalty

a. If duty is reduced by way of an order of Tribunal or Appellate authority then, percentage of penalty shall reduce accordingly depending upon the class of evasion as enumerated above i.e. evasion with suppression or evasion without suppression.

b. If duty is increased by way of an order of Tribunal or Appellate authority then, percentage of penalty shall increase accordingly depending upon the class of evasion as enumerated above i.e. evasion with suppression or evasion without suppression.

Further, very important explanations has been added to the proposed Section 11AC

Applicability of New Section 11AC

Explanation I covers the following 3 situations:

Situation 1 – where no show cause notice has been issued before the the date of assent of president to the Finance Bill, 2015, the provisions of to be enacted new Section 11AC of the Finance Act, 2015 shall be applicable.

Situation 2 – where show cause notice has been issued before the the date of assent of president to the Finance Bill, 2015

but

order is not issued before the assent of the president to the Finance Bill 2015 , then provisions of to be enacted new Section 11AC of the Finance Act,2015 shall be applicable .

Provided

such person pays the interest, duty and penalty in terms clause d) of proposed Section 11AC within 30 days from the date on which the Finance Bill, 2015 receives the assent of the President.

Situation 3 – where order **is passed** after the assent of the president to the Finance Bill 2015, then provisions of to be enacted new Section 11AC of the Finance Act, 2015 shall be applicable.

Provided

such person pays the interest, duty and penalty in terms of clause b) or e) of proposed Section 11AC within 30 days from the date of communication of the order.

Explanation II to the proposed Section 11AC is equally important as it explain the word “specified records”

It is pertinent to note that similar explanation already existed, since 2011, in Section 73 of Finance Act, 1994 for service tax as below

Explanation under Section 73 of Finance Act, 1994



For the purposes of this sub-section and section 78, “specified records” means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.;”

With the proposed new Section 11AC, i foresee reduction in disputes at least in those appeals which used to be filed for getting relief in penalty.