CENTRAL EXCISE MANUAL

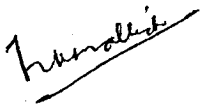
PREFACE

Central Board of Excise & Customs (CBEC) had issued Excise Manual of Supplementary Instructions earlier on 1st September, 2001. Since then many changes have occurred in Central Excise Rules and notifications issued under the rules and procedures. Consequently, the need was felt to update the earlier Manual. This updated version updated till 31.3.2005 is being released by the CBEC for the benefit of trade, industry and the Central Excise field formations. An effort has been made to present all procedures relating to Central Excise in a simple and easy to comprehend manner.

The contents shall be treated as Supplementary Instructions of the Board in supersession of all instructions that existed prior to publication of this revised Manual on identical issues. There are certain instructions in the Manual, which are in nature of 'supplementary instructions' under the provisions of rule 31 of the Central Excise Rules, 2002. They have to be given due cognizance. Some of the Central Excise procedures, which existed at the relevant time, have been retained in the manual for the sake of reference. Wherever felt necessary legal provisions relating to Central Excise have been amplified for easy understanding and interpretation. Various clarifications issued by the Board since 1st September, 2001 have also been incorporated in the Manual. New areas like Authority for Advance Rulings for Customs and Central Excise have been incorporated. The users of this manual are requested to refer to the original Rules, Notifications and instructions referred to in this manual.

If the readers finds any instructions in this Manual, which are contrary to provisions of the Central Excise Act, 1944 and the rules (including notifications issued there under) made there under, it is clarified that the provisions of the said Act and the rules (including notifications issued there under) shall prevail.

I would suggest the readers to forward their comments on this Manual, including their suggestions for improvements.



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New Delhi.

17th May, 2005

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CHAPTER 1

Part-I

INTRODUCTION

1. Scope of this Manual

1.1 These instructions are supplemental to, and should be read in conjunction with the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules'). Only the general provisions and procedures applicable to the 'Manufactured Products' have been incorporated in this Manual. These instructions are applicable throughout India and should not be departed from, without the previous approval of the Commissioner, who will, where necessary, obtain Board's sanction for the deviations.

1.2 The Commissioner, the Chief Commissioner or Board, under Rule 31 of the said Rules are empowered to issue written instructions providing for any supplemental matters arising out of the said Rules. Such instructions may, where the Commissioner considers absolutely essential, permit temporary deviation from the standing instructions. However, such instructions should be at once communicated to the Board and unless of purely local interest, they will normally, if approved, be subsequently incorporated in this Manual. Additional/Joint Commissioners, Deputy/ Assistant Commissioner and Superintendent of Central Excise will be primarily responsible in their jurisdiction for the proper observance of the procedures and checks prescribed in this Manual, and the other instructions of the Board. They should refer any doubtful point for clarification to their immediate superior.

2. Publishing of Manual and amendments

2.1 The Manual will be published by way of placing it on Web-site www.cbec.gov.in and www.finmin.nic.in, and also by printing hard copies /making CDs by the Directorate of Publication and Publicity. This Manual will be made available for the trade and industry at such price as may be fixed from time to time by the Directorate. Amendments and additions to this Manual will be based upon the instructions issued by the Board and will be carried on, as far as possible, every year, in the month of September.

Part-II

An Overview of Central Excise

1. Brief history and developments

1.1 Central Excise duty is an indirect tax levied on goods manufactured in India. The tax is administered by the Central Government under the authority of Entry 84 of the Union List (List 1) under Seventh Schedule read with Article 246 of the Constitution of India.

1.2 The Central Excise duty is levied in terms of the Central Excise Act, 1944 and the rates of duty, *ad valorem* or specific, are prescribed under the Schedule I and II of the Central Excise Tariff Act, 1985. The taxable event under the Central Excise law is 'manufacture' and the liability of Central Excise duty arises as soon as the goods are manufactured. The Central Excise Officers are also entrusted to collect other types of duties levied under Additional Duties (Goods of Special Importance) Act, Additional Duties (Textiles and Textiles Articles) Act, and Cess etc.

1.3 Till 1969, there was physical control system wherein each clearance of manufactured goods from the factory was done under the supervision of the Central Excise Officers. Introduction of Self-Removal procedure was a watershed in the excise procedures. Now, the assessees were allowed to quantify the duty on the basis of approved classification list and the price list and clear the goods on payment of appropriate duty.

1.4 In 1994, the gate pass system gave way to the invoice-based system, and all clearances are now effected on manufacturer's own invoice. Another major change was brought about in 1996, when the Self-Assessment system was introduced. This system is continuing at the present time. The assessee himself assesses his Tax Return and the Department scrutinizes it or conducts selective audit to ascertain correctness of the duty payment. Even the classification and value of the goods have to be merely declared by the assessee instead of obtaining approval of the same from the Department.

1.5 The earlier system of fortnightly payment of duty introduced in 2000 has been replaced by monthly payment of duty with effect from 01.03.2003 vide notification No.12/2003-CE (NT) dated 1.3.2003 (for details refer to Chapter 3 of this Manual).

1.6 Central Excise Rules, 2002 introduced vide Notification No.4/2002-CE (NT) dated 1.3.2002; superseded the earlier Central Excise (No.2) Rules, 2001. Other rules have also been notified namely, CENVAT Credit Rules, 2004, Central Excise (Appeal) Rules, 2001 etc. With the introduction of the new rules, several changes have been effected in the procedures. The new procedures are simplified. There are less numbers of rules, only 37, in all, as compared to 234 earlier. Classification declaration and Price declarations have also been dispensed with, the CENVAT Declaration having been earlier dispensed with in the year 2000 itself.

1.7 Budget day restrictions were removed with effect from 12.2.2003 vide Notification No. 6/2003-CE (NT) dated 11.2.2003, which omitted Rule 32 of Central Excise Rule, 2002. (Circular No.691/7/2003-CX dated 11.2.2003).

1.8 In 2003, special procedure was introduced for textile and textile articles including independent weavers of unprocessed fabrics. For details, Chapter 12 of Central Excise Manual may be referred to. However, these provisions are no longer applicable.

2. Administration of Central Excise

2.1 The Central Excise law is administered by the Central Board of Excise and Customs (CBEC or Board) through its field offices, the Central Excise Commissionerates. For this purpose, the country is divided into 23 Zones and a Chief Commissioner of Central Excise heads each Zone. There are total 93 Commissionerates in these Zones headed by Commissioner of Central Excise. Divisions and Ranges are the subsequent formations, headed by Deputy/ Assistant Commissioners of Central Excise and Superintendents of Central Excise, respectively.

2.2 For enforcing the Central Excise law and collection of Central Excise duty the following types of procedures are being followed by the Central Excise Department:

(5) To make e-mail an effective mode of communication between the Department and the public, e-mail connectivity should be provided to all offices in the field formations and properly maintained and wide publicity of the e-mail address should also be given.

3.5 For Small Scale Industry the concept of Tax Clinics has been introduced w.e.f. 1.9.2003 with a view to provide assistance and guidance to small manufacturers in complying with the law. Each Central Excise Division will have one tax clinic for small-scale manufacturers. The said clinic is a step towards educating the small scale manufacturers about their legal responsibilities, guiding them in their conduct of tax administration and breaking the communication wall if any, between the small scale manufacturers and tax administrators. (Circular No.735/51/2003-CX dated 07.08.2003).

CHAPTER-2

REGISTRATION

1. Introduction

1.1 For the administration of the Central Excise Act, 1944 and the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') manufacturers' of excisable goods or any person who deals with excisable goods with some exceptions, are required to get the premises registered with the Central Excise Department before commencing business.

2. Legal Provisions:

2.1 As per **SECTION 6** of the Central Excise Act, 1944- any prescribed person who is engaged in –

(a) The production or manufacture or any process of production or manufacture of any specified goods included in the (the First Schedule and the Second Schedule) to the Central Excise Tariff Act, 1985(5 of 1986) or
(b) The wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any specified goods included in (the First Schedule and the Second Schedule) to the Central Excise Tariff Act, 1985 (5 of 1986),

shall get himself registered with the proper officer in such manner as may be prescribed.

2.2. For all practical purposes, the legal provisions contained in rule 9 of the Central Excise Rules, 2002 govern the scheme of registration. This rule is reproduced below:

> **Registration** – (1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered;
>
> Provided that a registration obtained under rule 174 of the Central Excise Rules, 1944 or rule 9 of the Central Excise (No.2) Rules, 2001 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.
>
> (2) The Board may by notification and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

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

3 . Persons Requiring Registration:

3.1 In accordance with Rule 9 of the said Rules the following category of persons are required to register with jurisdictional Central Excise Officer in the Divisional Office having jurisdiction over his place of business/factory:

(i) Every manufacturer of excisable goods (including Central/State Government undertakings or undertakings owned or controlled by autonomous corporations) on which excise duty is leviable.
(ii) First and second stage dealers (including manufacturer's depots and importers) desiring to issue Cenvatable invoices.
(iii) Persons holding warehouses for storing non-duty paid goods.
(iv) Persons who obtain excisable goods for availing end use based exemption.
(v) Exporter-manufacturers under rebate/bond procedure; and Export Oriented Units, which have interaction with the domestic economy (through DTA sales or procurement of duty free inputs).
(vi) Persons who get yarns, fabrics, readymade garments etc. manufactured on job work under Rule 12B. (not required now)

3.2 Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as:

(1) Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.

(2) Large number of raw materials are common and received /proposed to be received commonly for both /all the premises.
(3) Common electricity supplies.

(4) There is common labour/work force.

(5) Common administration/work management.

(6) Common sales tax registration and assessment

(7) Common Income Tax assessment

(8) Any other factor as may be indicative of inter-linkage of the manufacturing processes.

This is not an exhaustive list of indicators nor is each indicator necessary in each case. The Commissioner has to decide the issue case by case.

3.3 Separate Registration is required for each depot, godown etc. However, in the case of liquid and gaseous products, availability of godown before grant of registration should not be insisted upon.

3.4 Registration Certificate may be granted to minors provided they have legal guardians, i.e. natural guardians or guardians appointed by the Court, as the case may be, to conduct business on their behalf.

4. Exemption from Registration:

4.1 The Central Board of Excise and Customs (CBEC), by Notification No.36/2001-CE (NT) dated 26.6.2001 as amended has exempted specified categories of persons /premises from obtaining registration. The exemption applies to the following:

(i) Person who manufacture the excisable goods, which are chargeable to nil rate of excise duty or are fully exempt from duty by a notification.

(ii) SSI manufacturers having annual turn over below the specified exemption limit. However, such units will be required to give a declaration (Annexure-1) once the value of their clearances reaches the specified limit which is Rs. 40 Lakhs presently.

(iii) In respect of ready-made garments, the job-worker need not get registered if the principal manufacturer undertakes to discharge the duty liability.

(iv) Persons manufacturing excisable goods by following the warehousing procedure under the Customs Act, 1962 subject to the following conditions: -

(a) The said excisable goods and any intermediary or by-products including the waste and refuse arising during the process of manufacture of the said goods under the Customs Bond are either destroyed or exported out of the country to the

satisfaction of the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, in-charge of the Customs Bonded Warehouse;

(b) The manufacturer shall file a declaration in the specified form annexed in triplicate for claiming exemption under this notification;

(c) no drawback or rebate of duty of excise paid on the raw materials or components used in the manufacture of the said goods, shall be admissible.

(v) The person who carries on wholesale trade or deals in excisable goods (except first and second stage dealer, as defined in Cenvat Credit Rules, 2002 and the depots of a registered manufacturer);

(vi) A Hundred per cent Export Oriented Undertaking, licensed or appointed, as the case may be, under the provisions of the Customs Act, 1962 other than having dealings with DTA.

(vii) Persons who use excisable goods for any purpose other than for processing or manufacture of goods availing benefit of concessional duty exemption notification.

4.2 The Drugs and Cosmetics Rule, 1945 recognises the concept of loan licence in the manufacture of P or P medicines. As a result, the system of accepting the said concept is still prevalent under excise law. In such cases the procedure prescribed under Notification No.36/2001-CE(NT) dated 26/6/2001 has to be followed. The principal manufacturer who has undertaken to comply with the procedural formalities will have to maintain separate accounts in respect of goods manufactured on his own account and goods manufactured on behalf of the loan licensee. However, the principal manufacturer has to aggregate the clearances made by him together with clearances made on behalf of the loan licensees with regard to eligibility as well as exemption limit. In other words, the clearances made on behalf of the loan licensee have to be clubbed with that of the principal manufacturer (by the manufacturer from one or more factories and from the factory by one or more manufacturers).

5. Board has prescribed a new procedure from 1.10.2002. The salient features of the new Registration process are detailed as follows: -

5.1 **Important changes in the Registration procedure**

(i) The new Registration process has been implemented in respect of all new registrants with effect from 1.10.2002.

(ii) Application for Registration should be submitted to the jurisdictional Divisional Office and Registration shall be done at Divisions instead of Ranges.

(iii) Registration Certificate shall be issued under the signature of the Divisional Officer, i.e. Deputy/Assistant Commissioner.

(iv) Registration Process would be carried out on computer through system called System for Allotment of Central Excise Registration (SACER) by feeding the d493/59/99-CX.6 into Central Server accessing http.//sermon.nic.in/sacer.html which shall automatically generate 15-digit PAN based Registration Number or a Temporary Registration Number in case registrant does not have PAN.

(v) Registration of EOUs which have inter-linkage with domestic economy through procurement and/or sale of goods will be done on identical pattern as in case of other Central Excise assesses with few changes. This has been introduced with effect from 1.10.2002 vide Notification No.31/2002-C.E. (N.T.), dated 17.9.2002, which amends Notification No.36/2001-C.E. (N.T.) dated 26.6.2001. Other EOUs which have no inter-linkage with the domestic tariff area shall continue to be treated as deemed registered and need not obtain the 15 digit PAN-based Registration Number.

(vi) In the Port Towns, the EOU units located therein are administratively under the charge of the officers of Customs vide Board's Circular No.72/2000-Cus. dated 31.8.2000. Accordingly, for the purpose of Registration process and for handling the matters relating to the provisions of Central Excise law including the filing of Returns prescribed there under, the officers of Customs have been designated as officers of Central Excise vide Notification No.32/2002-C.E.(N.T.), dated 17.9.2002 .

(vii) It has been envisaged that all new registrants not having PAN (including small-scale Biri and Match Units) will be allotted a system generated 15 digit Temporary Registration Number with effect from 1.10.2002. This would eventually get converted to a regular 15 digit PAN Based Registration Number.

5.2 Important changes in Format of Application for Registration

(i) The Format of Application for Registration has been revised vide Notification No. 30/2002 C.E.(N.T.), dated 17.9.2002 which amends Notification No.35/2001-C.E. (N.T.), dated 26.6.2001, and has become applicable from 1.10.2002. With effect from 1.10.2002, the new Form provides for both obtaining Registration as well as for carrying out amendments, if any, in the information supplied after completion of Registration. For this purpose, option boxes are provided for new Registration or amendments. In case the Application Form is used to carry out amendments to the

information given earlier, the registrant must furnish his Registration Number so that the system can recall the earlier Application Form to carry out the desired amendment(s).

(ii) An assessee may have different legal names i.e. one appearing in PAN and other under the name and style in which he carries on his business from the registered premises. Therefore an additional field for providing 'the name as appearing in PAN' is provided in the Application Form.

(iii) New fields have been provided for information regarding constitution of assessee, property holding rights (like ownership, lease etc.), estimated investment in land, plant and machinery, assessee's banks account numbers and identifier numbers issued by other Government agencies (Customs, DGFT, Sales Tax etc.).

(iv) Fields like 'Name of the Registrant', addresses, telephone number, fax number, boundaries of premises to be registered, major excisable goods to be manufactured etc. have been modified keeping in mind the requirements of Computer system.

(v) In cases of Proprietorship concerns or those having no authorized persons the details of the Registrant have been added to the relevant field.

(vi) The name of the Registrant/authorized Person figures in the Declaration annexed to the Application Form. In case of any change, it would be necessary to obtain another Declaration reflecting the change and effective date.

(vii) Changes have been made in the format for Grant of acknowledgement of the Application, which is to be given in the event, the Registration Certificate is not delivered on the spot at the time of the receipt of the Application Form.

(viii) Separate Document Locator Code has been Dispensed with since the new Registration process envisages on the spot grant of Registration Number which will operate as the reference number.

5.3 Components of 15 digit based Registration Number

(i) The PAN based Registration Number is Alphanumeric. The first part is the 10-Character (alphanumeric) Permanent Account Number (PAN) issued by Income Tax authorities to the person (includes a legal person) to whom the Registration No. is allotted.

(ii) The second part comprises of a fixed 2-Character alpha-code indicating the category of the Registrant, which will be as follows:

(1) Central Excise manufacturers: XM
(Including registered warehouses).

(2) Registered Dealers: XD

(iii) The third part is a 3-Character numericcode-001, 002, 003...etc. In case, a manufacturer registered with the Central Excise Department, has only one factory/ dealers's premise/warehouse, the last 3 characters will be "001". If there are more than one factories/warehouses/dealer's premises of such a person having common PAN for all such factories / warehouses / Dealer's premises, the last 3 character of the Registration Number would be "001, 002, 003...etc.

Examples of 15 digits PAN based Registration Number:

(a) Where the registrant has only one factory:
New Registration Number will be –
PAN+XM+001
Suppose PAN is ABCDE1234H, the New Registration Number will be
ABCDE1234HXM 001.

(b) Where the registrant has more than one factory, say 3 factories, having PAN as aforesaid, then the New Registration Number will be:
ABCDE1234HXM001
ABCDE1234HXM002
ABCDE1234HXM003

(c) Where the registrant has one factory and is also registered as dealer, having PAN as aforesaid, then the New Registration Number will be:

ABCDE1234HXM 001 (for Manufacturer)
ABCDE1234HXD 001 (for Dealer)

(iv) Where the Registrant is not having PAN (including small Scale Beedi/Match manufacturers) the system will itself generate a Temporary 15 digit PAN based Registration Number. Similar Temporary Number will be generated automatically (from

1.10.2002) for the assesses who may be having PAN but who have so far not applied for or obtained 15 digit PAN Based Registration Number. An example of the Temporary Number is:

TEMPXXXXXXXM001 (for Manufacturer)
TEMPXXXXXXXD001 (for Dealer)

5.4 Procedure for application for Central Excise Registration and grant of Registration Certificate

(i) With effect form 1.10.2002 every person requiring Registration with the Central Excise (except EOUs located in Port Towns) shall apply in the proper Form, complete in all respects, in duplicate along with a self-attested copy of PAN (letter/card issued by the Income Tax Department), to the Jurisdictional Deputy/ Assistant Commissioner of Central Excise. The instructions relating to filling up of Application for Registration may be gone through carefully before filling up the Form. The Divisional/Range officers shall provide necessary support to the assessee, as may be required for completing the Form.

(ii) On receipt of Application the nominated officer (Inspector) shall scrutinize the same and if found in order, it shall be fed in the Divisional Office into the SACER by accessing the website http://sermon.nic.in/sacer.html. In this regard, the Directorate of Systems has circulated a manual on SACER, a soft copy of which is also available on the site itself, which will detail the fields and explain how these are to be completed.

(iii) In case the Application is not found in order or is incomplete, the nominated Officer will advise the Registrant of the deficiencies and ensure its completion before it is sent for being entered into SACER. Suitable entry will be made of the action taken in the record to be maintained for the purpose.

(iv) On completion of the data entry, the system would Automatically generate a Registration Certificate bearing the 15 digit Registration Number, which will be delivered to the assessee on the spot. As seen, normal time taken to complete the data entry of a application for Registration is 30 minutes and it would be possible to hand over the Registration Certificate immediately upon completion of the data entry.

(v) In the event the Registrant is not in possession of the PAN and has applied for the same, he shall be required to furnish a copy of the said Application. This would be used by the Divisional/Range Office to pursue the grant of PAN and subsequent conversion of the Temporary Registration Number into a 15 digit PAN based Registration Number.

(vi) In the event, it is not possible to hand over the Registration Certificate immediately at the time of receipt of the Application for any reason such as either Registrant or Deputy/Assistant Commissioner is not available or there is a technical difficulty, then the acknowledgement of the Application will be given to the assessee on the spot. Later, the Registration Certificate shall either be sent to the assessee by Registered Post or handed over personally to him next working day, as per his choice to be indicated upon the Application Form.

(vii) After grant of Registration Certificate, the disposal of the copies of the Application Form shall be, as follows:

(a) Original copy will be retained by the Divisional Office for record along with the copy of Registration Certificate issued.
(b) Duplicate copy along with a copy of Registration Certificate will be sent to the concerned Range Office for post facto verification.

(viii) The Registration Number can be used for removals, duty payments and other requirements of the Central Excise Act, 1944 and rules made there under.

(ix) Once Registration is granted, it has a permanent status, unless it is suspended or revoked by the appropriate authority in accordance with law or is surrendered by Registrant.

5.5 New Central Excise Registration Procedure for Powerloom weavers/Hand Processors/Dealers of Yarns and Fabrics/Manufacturers of Ready Made Garments.

A simpler application Form was introduced exclusively for Registration of Power loom Weavers/Hand Processors/Dealers of Yarns and Fabrics/Manufacturers of Ready Made Garments who were required to pay duty or follow Central Excise procedures on account of changes in the Finance Act, 2003-04. The new Form was notified vide notification No.38/2003-CE (NT) dated 22nd April, 2003 (Annexure-2). In comparison to the existing Registration application Form, this format seeks information only about the registrant. The

Registration Form-IA, shall be used for the new registrants in the textile and textile articles sector only. It is also prescribed that the Registration Form may be handed over by the trade and industry Associations in the Commissionerate headquarters where these may be processed by a special cell. Finally, the verification of the premises was not required to be conducted at this juncture for grant of Registration.

Vide Circular No. 760/76/2003-CX dated 3.11.2003, new Central Excise Registration procedure for manufactures of hand rolled cheroot of tobacco under sub-Heading No.2402.00 of Central Excise Tariff Act , 1985 has been provided. The applications for Registration of the members can be collected by the Associations and handed over at the Divisional headquarters where the Registration would be issued. As a measure of trade facilitation, a simpler application form exclusively for hand rolled cheroot of tobacco manufacturers has been notified vide notification No. 81/2003-Central Excise (N.T.) dated 3rd November 2003. In comparison to the existing Registration application Form, this format seeks information of paramount importance only from the registrant. The Registration Form-1B, as notified now, shall be used for the new registrants in the manufacture of hand rolled cheroots of tobacco only.

In these categories, those who are already registered need not apply afresh. Further, the normal procedure of grant of PAN based Registration is not to be strictly adhered to while granting Registration to the new registrants in manufacture of hand rolled cheroots of tobacco and in textile sector as detailed above. In other words, Registration should be given in the absence of PAN, if not available.

5.6 Procedure for application for Central Excise Registration and allotment of Registration Number for EOUs and EPZ units

(i) EOU and EPZ units which have inter-linkage with Domestic tariff area through procurement and/or sale of goods are required to obtain Registration with effect from 1.10.2002. Other EOUs and EPZ units would continue to be treated as deemed registered with the Central Excise authorities.

(ii) EOUs within the Municipal Limits of port-cities/town are Administratively under the officers of Customs who have been designated as Officers of Central Excise for purpose of legal requirements under Central Excise provisions. Accordingly, the EOUs in port-cities/towns shall file their Application Form for Central Excise Registration with the concerned Deputy/Assistant Commissioner of Customs. It is the responsibility of the Deputy/Assistant Commissioners to have the data entered into

SACER and to issue the Registration Certificate by following the procedure described supra.

(iii) EOUs located in other than port towns/cities are administratively under the Central Excise Commissionerates. Hence, it shall be the responsibility of the jurisdictional Divisional Officer to grant the Registration to such units. For this purpose the same process would be followed, as indicated in paragraph 5.4 above.

5.7 Verification

(i) There shall be a post-registration verification of the premises for which Registration is sought, by the Range Officer within 5 working days of the receipt of Duplicate Copy of Application for Registration along with a copy of Registration Certificate. The Range Officer along with the Sector Officer shall verify the declared address and premises. If found in order, he will certify the correctness thereof on the Duplicate copy of the Application for Registration and append his dated signature thereon. A Copy thereof will be sent to the Divisional Office for Record. The name of the officer doing the verification and the date of verification shall also be entered into the system.

(ii) If any deviations or variations are noticed during the Verification, the same should be got corrected. Any major discrepancy, such as fake address, non –existence of any Factory etc. shall be reported in writing to the Divisional Officer within 3 working days and action shall be initiated by the Divisional Officer to revoke the Registration after providing reasonable opportunity to the Registrant to explain his case.

(iii) EOUs are also granted a customs private bonded warehouse licence. Accordingly, the concerned Officer must at the stage of grant of this licence also carry out the verification required from the point of view of Central Excise Registration, if required, so as to avoid repeat visit to the unit. Hence, it is envisaged that in case of EOUs, there would be no necessity of post facto verification.

(iv) If the EOU is exempt from obtaining the Customs private Bonded warehouse licence but requires Central Excise Registration then post verification may be done as envisaged in (i) above.

5.8 Records

(i) Divisional Office or the Office of the Deputy/Assistant Commissioner of Customs, as the case may be, shall maintain a suitable record of the action taken on receipt of Application for Registration which is incomplete or not in order.

(ii) Divisional Office will maintain a record of Verification Reports received from the Range Office along with the Original copy of the Application Form. Office of Deputy/Assistant Commissioner of Customs will maintain similar record.

(iii) Range Office will maintain suitable record of Registration granted including details of the Application Form and the Registration Certificate.

(iv) Records at Divisional Office/Office of Deputy/Assistant Commissioner of Customs and Range Office shall specifically include details of verification of premises and name and designation of Officers who verified it with his remarks thereon.

(v) The Divisional Office/Office of Deputy/Assistant Commissioner of Customs and Range Office should have readily available record of Temporary Registration Numbers with details of steps taken to convert them to 15 digit PAN based Registration Numbers.

(vi) The Divisional office/Office of Deputy/Assistant Commissioner of Customs and Range Office should have readily available complete list of all Registered units under their charge.

5.10 Procedure for existing Registrants

(i) The existing Registrants shall be required to furnish the Details as per the new Format of Application to their jurisdictional Deputy/Assistant Commissioners within 3 months from 1.10.2002. It shall be the responsibility of the concerned Deputy/Assistant Commissioners to ensure that the data available at SACER pertaining to all Registrants in their respective jurisdiction is complete.

(ii) All existing EOUs which are so far treated as Deemed Registered but are required to obtain Registration with effect from 1.10.2002

shall furnish the details as per the New Format of Application to their jurisdictional Deputy/ Assistant Commissioners/Development Commissioner for inclusion in the SACER data base.

5.11 Procedure for Amendment of the information

(i) The new Form of Application shall be used for carrying out Amendments to the information provided earlier by the assessee for obtaining Registration. Suitable entries will be made in the database upon receipt of such amended information.

(ii) Change in information in respect of the name and address of the Registrant would require a change in the details entered on the Registration Certificate itself. Hence, in such situation a fresh Registration Certificate bearing the earlier allotted 15 digit PAN based Registration Number will be issued to the assessee after surrender of the earlier issued Registration Certificate. The procedure followed would be the same as in place for issue of fresh Registration Certificate except that no verification is necessary in case there is no change in address or premise.

6. **Conditions, safeguards and procedures for registration:**

The Central Board of Excise & Customs has specified certain conditions, safeguards and procedures for registration of a person by Notification under Central Excise Rule 9 in specified cases:

(1) **Application for registration:** Every person specified under sub-rule (1) of Rule 9, unless exempted from doing so by the Board under sub-rule (2) of rule 9, shall get himself registered with the [jurisdictional Deputy or Assistant Commissioner of Central Excise] by applying in the form specified in [Annexure-3and Annexure- 2];

(2) Registration of different premises of the same registered person : If the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

[Provided that if such person manufacturers or carries on trade in goods falling under Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 or 63 of the First Schedule to the Central Excise Tariff Act, 1985 (1 of 1986), and has more than one premises requiring registration; he may obtain a single registration for all such premises, which fall within the jurisdiction of one Commissioner of Central Excise subject to condition that the such person, while making application in terms of clause (1) of this notification, declares the details of all such premises in the form specified in Annexure 3].

(3) **Registration Certificate and Number**: Registration Certificate in the form specified in Annexure-4 containing registration

number shall be granted within seven days of the receipt of the duly complete application.

(4) **Transfer of Business** : Where a registered person transfers his business to another person, the transferee shall get himself registered afresh.

(5) **Change in the constitution** : Where a registered person is a firm or a company or association of persons, any change in the constitution of firm, company or association, shall be intimated to the jurisdictional Central Excise Officer within thirty days of such change.

(6) **De-registration** : Every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form specified in Annexure-III and depositing his registration certificate with the Superintendent of Central Excise.

(7) **Revocation or suspension of registration**: A registration certificate granted under this rule may be revoked or suspended by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, if the holder of such certificate or any person in his employment, is found to have committed breach of any of the provisions of the Act or the rules made there under or has been convicted of an offence under Section 161, read with Section 109 or with Section 116 of the Indian Penal Code (45 of 1860).

[Authority – Notification No.35/2001-C.E.(N.T.), dated 26.6.2001as amended by Notification No.65/2001-C.E.(N.T.), dated 17.10.2001; No. 30/2002-C.E.(N.T.), dated 17.9.2002; No. 29/2003-C.E.(N.T.); dated 1.4.2003 and No. 38/2003-C.E. (N.T.), dated 22.4.2003.]

Chapter-3

ASSESSMENT, CLASSIFICATION, VALUATION, PROVISIONAL ASSESSMENT, MANNER OF DUTY PAYMENT, ACCOUNT CURRENT, SCRUTINY

Part-I

Assessment

1. Assessment Defined

1.1 The expressions 'assessment' and 'assessee' have been defined in the Central Excise Rules, 2002 (hereinafter referred to as the said Rules). "Assessment" includes self-assessment of duty made by the assessee and provisional assessment under rule 7 of the said Rules. "Assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person.

1.2 Normally, duty is payable on removal of goods. Rule 4 of the said Rules provides that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 of the said Rules or under any other law. No excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.

1.3 Omitted 24/2003 (N.T.)

1.3 There is an exception with respect to duty payment on molasses. Where molasses are produced in a khandsari sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

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

1.4 For the purposes of the said rule 4, excisable goods manufactured in a factory and utilized, as such or after subjecting to any process, for the manufacture of any other commodity, in such factory shall be

deemed to have been removed from such factory immediately before such utilization.

2. Major ingredients of assessment

2.1 Before each removal, whether outside the factory of manufacture or production or for captive consumption, duty has to be assessed on the excisable goods. The main ingredients of assessment are:

(i) Classification and rate of duty: For determining the rate of duty, classification is prerequisite. Classification means the appropriate classification code which is applicable to the excisable goods in question under the First Schedule to Central Excise Tariff Act, 1985 (5 of 1986). There are Section Notes and Chapter Notes, in the Tariff for guidance in determining the appropriate classification. In case of difficulties, there are "Interpretative Rules" in the said Act. There are large number of judicial pronouncements concerning classification, which have to be applied in relevant case. The said Tariff also prescribes the 'Tariff Rate of duty'. Some commodities may be subject to 'special duty of excise' prescribed under the Second Schedule to Central Excise Tariff Act, 1985. Thus, a reference to the Second Schedule to Central Excise Tariff Act, 1985 should also be made to verify whether the goods are covered there. However, duty chargeable is the 'effective rate'. Thus, if any exemption is available to any commodity, the same may be ascertained and the applicable rate of duty should be determined. If such exemption is subject to certain conditions, it shall be necessary to follow those conditions. Goods may also be subjected to duty under some other Acts such as Additional Duty of Excise (Goods of Special Importance) Act, 1957 or certain Cess which are required to be collected by the excise department. The manufacturer or owner of goods in a warehouse is liable to pay all such applicable duties on removal of excisable goods.

(ii) Valuation: Where rate of duty is dependent on value of the goods (*ad valorem duty*), value has to be determined in accordance with the provisions of Central Excise Act, 1944, as follows:

(i) Value under section 4

(ii) Value based on retail sale price under section 4A, if applicable

(iii) Tariff value fixed under Section 3, if applicable

(iii) Quantity Removed: Where duty is on value, the total value is determined by multiplying unit value with the total quantity. The unit quantity of goods are also required in cases where duty is charged at specific rate.

3. **Self Assessment** (Rule 6)

3.1 As per rule 6 of the said Rules, a Central Excise assessee is himself (self-assessment) required to determine duty liability at the time of removal of excisable goods and discharge the same. In other words, the assessee should apply correct classification and value (where duty is *ad valorem*) on the quantities being removed by him and indicate the same in the invoice (except assessee manufacturing cigarettes, in which case the Superintendent or Inspector of Central Excise has to assess the duty payable before removal by the assessee).

3.2 Assessee is also required to check the return (in the prescribed format under form E.R.-1 and form E.R.-2) for the month for production and removal of goods and other relevant particulars including CENVAT credit for a month and submits to the Range Office having jurisdiction over his factory within ten days of the succeeding month.

3.3 The following persons are permitted to file their returns on quarterly basis. Manufacturers

(a) availing exemption notification based on value of clearances in a financial year, or
(b) Manufacturing processed yarns or unprocessed fabrics falling under Chapter 50-55, 58 or 60, or
(c) Manufacturing ready made garments falling under chapter 61 or 62 who were eligible for exemption prior to 1.4.2003 based on value of clearances in a financial year

Their returns (in the prescribed format under form E.R.-3) have to be filed in the following frequency: -

Return for the quarter (for months)	By 20th day of the month
First quarter – April, May, June	July
Second quarter – July, August, September	October
Third quarter –October, November, December	January

Fourth quarter – January, February, March	April

4. Date for determination of rate of duty and tariff value

4.1 Date for determination of rate of duty and tariff value is prescribed in rule 5 of the Central Excise Rules, 2002. The provision is as follows:

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

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

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

4.3 Omitted Notification No.24/2003 (N.T.)

Part-II

CLASSIFICATION

1. Introduction

1.1 The Central Excise duty (CENVAT) is chargeable at the rates specified in the schedule to the Central Excise Tariff Act, 1985. The said schedule is divided into 20 sections and 96 Chapters. There are no Chapters with numbers 1,6,10,12 and 77. As such effectively there are 91 Chapters. Each Chapter is further divided into headings and sub-headings. In order to determine the applicable rate of duty in respect of a particular item, the positioning of that item under a particular head or sub-head is essential. The positioning of an item in the appropriate heading/sub-heading is called classification. The classification of an item is generally decided as per the commercial or trade parlance. However a deviation from this principle is made when the trade meaning or commercial nomenclature does not fit into the scheme of the statute.

2. Interpretative Rules for classification.

2.1 The Central Excise Tariff Act, 1985 incorporates five Rules of interpretation, which together provide necessary guidelines for classification of various products under the schedule. As regards the Interpretative Rules, the classification is to be first tested in the light of Rule 1. Only when it is not possible to resolve the issue by applying this Rule, recourse is taken to Rules 2,3 & 4 in seriatim. The provision of the individual Rule is as follows:

'Rule 1 declares that Section & Chapter titles are for ease of reference only. For legal purposes, the classification of goods are to be determined according to the terms of the headings and relevant Section or Chapter Notes. Assistance from subsequent provisions of the Interpretative Rules are to be sought only if the Section or Chapter notes do not otherwise require.

Rule 2(a):-This rule provides for classification of an article referred to in a heading, even if that article is incomplete or unfinished, or is presented in an unassembled or disassembled form. An important condition to be satisfied for classification in this manner is that in its incomplete or unfinished state, the article has the essential character of the complete of finished article. Some of the important aspects which are relevant in this regard are functional aspect, physical aspect and the degree of completion of the product.

Rule2(b):-This rule relates to mixture or combination of materials or substances, and goods consisting of two or more materials or substances. According to this rule headings in which there is a reference to a material or substance also apply to that material or

substance mixed or combined with other materials or substances. This rule does not apply where specific provisions exist in the headings or the sections or chapter notes excluding such classification.

Rule 3 : This rule lays down three steps for classifying the goods which are, prima facie, classifiable under several headings including mixtures or combinations. The sequential order of the steps contemplated are -

(a) most specific description;
(b) essential character; and
(c) heading which occurs last in numerical order;

This rule applies when goods are prima facie classifiable under two or more headings.

In the first step, {Rule 3(a)} the general guidelines are that a description by name is more specific than the description by character and a description which identifies the goods clearly and precisely is more specific than the one which is less complete.

The second step [Rule 3 (b)] relates only to mixtures, composite goods consisting of different materials or components and goods put up in sets. This rule finds applicability if rule 3(a) does not help. In all such cases the goods are to be classified as if they consist of material or component which gives them their essential character.

When goods cannot be classified with reference to Rules 3(a) and 3(b), they are to be classified in terms of Rule 3(c)- in the heading which occurs last in numerical order among those which equally merit consideration. This is a fall back provision for resolving the matter when no heading can be regarded as providing a more specific description than the others and when it is not possible to identify the material or component which gives the concerned goods their essential character.

Rule-4:-When goods cannot be classified in accordance with rules 1,2, & 3, then they are to be classified in a heading of a product, which is most akin to the goods in question. Kinship can, of course, depend on many factors such as description, character, purpose etc.

Rule-5:-This rule postulates that the classification of any product under a sub-heading is to be contemplated after the product concerned has been properly classified under its proper four digit Chapter heading. The classification in the sub-heading of a heading is determined mutatis mutandis in accordance with the principles applicable to classification in the four digit headings.

3. Powers of the C.B.E.C. to issue orders of classification of goods.

3.1 Section 37B of the Central Excise Act, 1944 empowers the Central Board of Excise & Customs to issue orders, instructions and directions, for the purpose of uniformity in the classification of goods or with respect to the levy of excise duties on such goods.

Part III

Valuation

1. Value under the Central Excise Act, 1944

1.1 Value of the excisable goods has to be necessarily determined when the rate of duty is on ad-valorem basis. Accordingly, under the Central Excise Act, 1944 the following values are relevant for assessment of duty. Transaction value is the most commonly adopted method.

(i) Transaction value under Section 4.

(ii) Value determined on basis of maximum Retail Sale Price as per Section 4A, if applicable to a given commodity.

(iii) Tariff value under Section 3, if applicable.

2. Transaction Value

2.1 Section 4 of the Central Excise Act, as substituted by section 94 of the Finance Act, 2000 (No.10 of 2000),came into force from the 1st day of July, 2000. This section contains the provision for determining the Transaction value of the goods for purpose of assessment of duty.

2.2 For applicability of transaction value in a given case, for assessment purposes, certain essential requirements should be satisfied. If any one of the said requirements is not satisfied, then the transaction value shall not be the assessable value and value in such case has to be arrived at under the valuation rules notified for the purpose. The essential *conditions for application* of a Transaction value are:

(i) The goods are sold by an assessee for delivery at the time of place of removal. The term "place of removal" has been defined basically to mean a factory or a warehouse, and will include a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearances from the factory.

(ii) The assessee and the buyer of the goods are not related; and

(iii) The price is the sole consideration for the sale.

2.3. The system of valuation, that was prevalent before 1.7.2000 was essentially based on the concept of 'Normal Wholesale Price', even though sales were effected at varying prices to different buyers or class of buyers from factory gate or Depots etc. The new Sec.4 introduced with effect from 1.7.2000 makes a fundamental departure from this system.

2.4 The new section 4 essentially seeks to accept different transaction values which may be charged by the assessee to different customers, for assessment purposes so long as these are based upon purely commercial consideration where buyer and the seller have no relationship and price is the sole consideration for sale. Thus, it enables valuation of goods for excise purposes on value charged as per commercial practices rather than looking for a notionally determined value.

2.5 Transaction value would include any amount which is paid or payable by the buyer to or on behalf of the assessee, on account of the factum of sale of goods. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not to be included in the transaction value. The law recognizes such payment to be part of the transaction value, that is assessable value for those particular transactions.

(1) As per the new Sec.4, transaction value shall include the following receipts / recoveries or charges, incurred or provided for in connection with the manufacturing, marketing, selling of the excisable goods::

(a) Advertising or publicity;
(b) Marketing and selling organization expenses;
(c) Storage;
(d) Outward handling;
(e) Servicing, warranty;
(f) Commission or
(g) Any other matter.

The above list is not exhaustive and whatever elements which enrich the value of the goods before their marketing and were held by Hon'ble Supreme Court to be includible in "value" under the erstwhile section 4 would continue to form part of section 4 value even under new section 4 definition.

(2) Thus if in addition to the amount charged as price from the buyer, the assessee recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value. Where the assessee includes all their costs incurred in relation to manufacture and marketing while fixing price payable for the goods and bills and collects an all inclusive price –as happens in most cases where sales are to independent customers on commercial consideration - the transaction price will generally be the assessable value. However, where the amount charged by an assessee does not reflect the true intrinsic value of goods marketed and total value split up into various elements like special packing charges, warranty charges, service charges etc. it has to be ensured that duty is paid on correct value. The following guidelines in this regard with reference to various receipts / recoveries in connection with the sale are issued:

(i) Packing charges:

Packing charges shall form part of the assessable value as it is a charge in connection with production and sale of the goods, recovered from the buyer. Under the erstwhile Sec.4, inclusion of cost of packing in the value was related to the nature of packing such as primary or secondary etc. Such issues are not relevant in the new Sec.4 and any charges recovered for packing, whether ordinary or special is includible in the transaction value if the same is not included in the price of the goods.

In the case of reusable containers (glass bottles, crates etc.), normally the cost is amortized and included in the cost of the product itself. Therefore, the same is not required to be included in the value of the product unless it is found that the cost of reusable container has not been amortised and included in the value of the product.

However, rental charges or cost of maintenance of reusable metal containers like gas cylinders etc. are to be included in the value since the amount has been charged by reason of, or in connection with the sale of goods.

Similarly, cost of containers supplied by the buyer will be included in the transaction value of the goods, as the price will not be the sole consideration of the sale and the valuation would be governed by Rule 6 of the Valuation Rules, 2000.

(ii) Warranty charges will form part of the transaction value irrespective of whether the warranty is optional or mandatory.

(iii) Interest for delayed payments is a normal practice in industry. Interest under a financing arrangement entered between the assessee and the buyer relating to the purchase of excisable goods shall not be regarded as part of the assessable value provided that:

(a) the interest charges are clearly distinguished from the price actually paid or payable for the goods;
(b) the financing arrangement is made in writing; and
(c) where required, assessee demonstrates that such goods are actually sold at the price declared as the price actually paid or payable.

(iv) Discount of any type or description given on any normal price payable for any transaction will not form part of the transaction value for the goods, e.g. quantity discount for goods purchased or cash discount for the prompt payment etc. will therefore not form part of the transaction value. However, it is important to establish that the discount has actually been passed on to the buyer of the goods. The differential

discounts extended as per commercial considerations on different transactions to unrelated buyers if extended *is also permissible* and different actual prices paid or payable for various transactions are to be accepted. Where the assessee claims that the discount of any description for a transaction is not readily known but would be known only subsequently – as for example, year end discount – the assessment for such transactions may be made on a provisional basis. However, the assessee has to disclose the intention of allowing such discount to the department and make a request for provisional assessment.

(v)Taxes and duties:

The definition of transaction value mentions that whatever amount is actually paid or actually payable to the Government or the relevant statutory authority by way of excise, sales tax and other taxes, such amount shall be excluded from the transaction value. If any excise duty or other tax is paid at a concessional rate for a particular transaction, the amount of excise duty or tax actually paid at the concessional rate shall only be allowed to be deducted from price.

As per Board's Circular No.2/94-CX.1 dt.11.1.94 (F.No.6/20/94-CX.1) the sales tax set-off available in respect of inputs is to be ignored while computing the sales tax payable. The Circular dt.11th Jan.1994 was based on the definition of 'duty of excise payable' given in Explanation to the erstwhile Sec.4(4)(d)(ii). The new sec.4 does not incorporate any such Explanation. The "transaction value" will exclude the sales tax actually paid or payable on the goods. Thus, for example, if the effective sales tax on cum-duty price of Rs.100 is 4% and the assessee is eligible for set-off of sales tax of, say, Rs.10 paid/suffered on the inputs, the actual sales tax paid/payable would be Rs.40-10 = Rs.30 and this will be the amount permissible as deduction from the "transaction value" and not Rs.40/-.

State Governments permit deferment of payment of Sales tax for particular period as an incentive. Sales tax is deductible from the wholesale price for determination of assessable value for levy of Central Excise duty even though it may not be deposited immediately with the State Government. Where sales tax is so retained by the assessee, the interest on the money retained, need not be treated as additional consideration in terms of Rule 6 of Central Excise (Valuation) Rules, 2000. As per Rule 5 of the earlier Valuation Rules, 1975 & Rule 6 of Central Excise Valuation {Determination of price of Excisable goods} Rules, 2000, "Additional consideration" should flow directly or indirectly from the buyer to the seller. Therefore interest earned, on deferred sales tax by the manufacturer is not a benefit extended by the buyer to the seller but is an incentive, accruing in pursuance of State Government policy and hence cannot be treated as "additional

*consideration" under the Central Excise Valuation Rules. (**Circular No 679/70 /2002-CX** 4th December, 2002*

The total amount received by a manufacturer will be deemed to be the price-cum-duty and the assessable value should be determined accordingly subject to exclusion of sales tax or other taxes. Similar will be the position when additional considerations are received. (Finance Act, 2003)

(vi) **Erection, installation and commissioning charges**:

If the final product is not excisable, the question of including these charges in the assessable value of the product does not arise. As for example, since a Steel Plant, as a whole, is an immovable property and therefore not excisable, no duty would be payable on the cost of erection, installation and commissioning of the steel plant. Similarly, if a machine is cleared from a factory on payment of appropriate duty and later on taken to the premises of the buyer for installation/erection and commissioning into an immovable property, no further duty would be payable. On the other hand if parts/components of a generator are brought to a site and the generator erected/installed and commissioned at the site then, the generator being an excisable commodity, the cost of erection, installation and commissioning charges would be included in its assessable value. In other words if the expenditure on erection, installation and commissioning has been incurred to bring into existence any excisable goods, these charges would be included in the assessable value of the goods. If these costs are incurred to bring into existence some immovable property, they will not be included in the assessable value of such resultant property.[Refer Board's 37B Order No 58/1/2002 – CX dt 15.1.2002]

2.6 *Prior to Budget 2003, the term "place of removal" was defined in the same manner as was defined in the erstwhile section 4 prior to its amendment in 1996 i.e. the factory or warehouse. The definition has since been amended to include the depot, premises of consignment agent and any other place to which the goods are removed before sale. In this connection, the Board had issued an order under Sec. 37B (No. 59/1/2003-CX. Dated 3.3.2003) clarifying the position.*

2.7 *However, 'time of removal' in case of excisable goods removed from the place of removal is deemed to be the time of clearance of such goods from the 'factory'. If, therefore, the assessable value is with reference to delivery at the 'time and place of removal', transaction value will be the assessable value.*

3. Valuation Rules

3.1 In those cases where any of the three requirements mentioned in para 2 above is missing, ***(i.e. sale for delivery at the time and place of removal, assessee and buyer are not related and price is the sole consideration)*** the assessable value shall be determined on the basis of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 notified under Section 4(1)(b) by notification No. 45/2000-CE (NT), dated 30.6.2000.

3.2 Salient features of the new valuation rules are mentioned below:

(i) *If the assessee and the buyer are not related persons and the price is also the sole consideration for sale but only the delivery of goods is made by the assessee at a place other than the factory/warehouse, the provisions of Rule 5 shall apply. In such cases, the assessable value shall be the "transaction value" without the addition of the cost of transportation from the place of removal (factory/warehouse/depot etc.) upto the place of delivery. For the period prior to 1.3.2003, exclusion of cost of transportation is allowed only for the actual cost of transportation and only if the assessee has shown the same separately in the invoice. After 1.3.2003, 'cost of transportation' includes-*

1. *the actual cost of transportation; and*
2. *where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.*

Thus, 'cost of transportation' can be excluded even where freight is averaged and also there is no condition that the 'cost of transportation' should be shown separately in the invoice. However exclusion of the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be permissible. The cost of transportation will include the cost of insurance also during the transportation of the goods.

(ii) *If the goods are not sold at the factory gate or at the warehouse but they are transferred by the assessee to his depots or consignment agents or any other place for sale, the assessable value in such case for the goods cleared from factory/warehouse shall be the 'normal transaction value' of such goods at the depot, etc. at or about the same time on which the goods as being valued are removed from the factory or warehouse* ***(Rule 7)****. The expression "Normal transaction value" as defined in the valuation rules basically means the transaction value at which the greatest aggregate quantity of goods from the depots etc. are sold at or about the time of removal of the goods being cleared from the factory/warehouse. The time period for ascertaining the 'normal transaction value' of the 'greatest aggregate quantity' should*

be taken as the whole day and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers. If, however, the identical goods are not sold by the assessee from depot/consignment agent's place on the date of removal from the factory/warehouse, the nearest date on which such goods were sold or would be sold shall be taken into account. In either case if there are series of sales at or about the same time, the normal transaction value for sale to independent buyers will have to be determined and taken as basis for valuation of goods at the time of removal from factory/warehouse.

It follows from the Valuation Rules that in such categories of cases also if the price charged is with reference to delivery at a place other than the depot, etc. then the actual cost of transportation will not be taken to be a part of the transaction value and exclusion of such cost allowed on similar lines as discussed earlier, when sales are effected from factory gate/warehouse.

(iii) In cases where price is not the sole consideration for the sale, but the other requirements of clause (a) of sub-section (1) of section 4 of the Central Excise Act are satisfied, the value shall be determined in accordance with the provisions of **Rule 6** of the valuation rules. This provides for adding to the transaction value the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. Such additional consideration would include the money value of goods and services provided free or at reduced cost by or on behalf of the buyer to the assessee. The 'goods and services' whose value is to be added to the value includes materials including packing materials, components, moulds, tools, dies, drawings, engineering, development, art work, plans and sketches etc.

However, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advances will be added to value unless it is evidenced that the advance has influenced the fixation of sale price by way of charging a lesser price from or offering a special discount to the buyer who has made the advance deposit. An Explanation has been added in the rule from 1.3.2003 only to remove any doubts with respect to its scope.

Advertisement and publicity charges borne by the dealers/buyers are to be included in the assessable value. Even where the dealings are on principal to principal basis but there is an agreement either written or oral that the buyer will incur certain expenditure for advertising the goods of the assessee, the cost of such advertisement and publicity will be added to the price of the goods to determine the assessable value. In such cases since price would not be sole consideration for sale, the transaction value would be covered by Rule 6 of the Valuation Rules

Court judgments delivered on this issue under the earlier Section 4, or the Rules made there under, will not apply w.e.f. 1.7.2000, in view of the definition of "transaction value"

However, where the brand name/copyright owner gets his goods manufactured from outside (on job-work or otherwise), the expenditure incurred by the brand name/copyright owner on advertisement and publicity charges, in respect of the said goods, will not be added to the assessable value, as such expenditure is not incurred on behalf of the manufacturer (assessee). [Also refer Board's Circular 619/10/2002 CX dt 19.2.2002]]

After sales service and pre delivery inspection (PDI) charges

After sales service and pre delivery inspection (PDI) are services provided free by the dealer on behalf of the assessee and the cost towards this is included in the dealer's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value after 1.7.2000, as the judgements of the Apex Court to the contrary were issued in the context of the erstwhile Sec.4 and the Valuation Rules, 1975. The value of these charges are however not includible for transactions relating to the period before 1.7.2000. ***(Board's Circular No.681/72/2002-CX dated 12.12.2002 &)***

(iv)The value of goods which are consumed by the assessee or on his behalf in the manufacture of other articles will be on cost construction method only ***(Rule 8).*** *The assessable value of captively consumed goods will be taken at 110% (substituted by 60/2003 (N.T.) 5.10.2003 – prior to that it was 115%) of the cost of manufacture of goods even if identical or comparable goods are manufactured and sold by the same assessee as there have been disputes in adopting values of comparable goods. The concept of deemed profit for notional purposes has also been done away with and a margin of 10% by way of profit etc. is prescribed in the rule itself for ease of assessment of goods used for captive consumption. The cost of production of captively consumed goods will be done strictly in accordance with CAS- 4. Copies of CAS-4 may be obtained from the local Chapter of ICWAI.* ***(Auth: Circular No. 692/08/2003-CX.dated 13.2.2003).***

Where goods are transferred to a sister unit or another unit of the same company valuation will be done as per the proviso to rule 9.

Valuation of Samples: *Since the goods are not sold section 4(1)(a) will not apply and recourse will have to be taken to the Valuation Rules. No specific rule covers such a contingency. Except rule 8 all the other*

rules cover contingencies where sale is involved in some form or the other. Therefore, the residuary rule 11 will have to be adopted along with the spirit of rule 8. In other words, the assessable value would be 110% of the 'cost of production or manufacture' of the goods.

(v)Where goods are sold through related persons, the transaction value is not applicable and the assessable value shall be the value at which the related person sells the goods ***(Rule 9).*** *If the related person does not sell the goods but uses them in manufacture of other articles, the value shall be 110% of the cost of production. For the purposes of Rule 9, related person means:*

1. *relatives;*
2. *buyer is a relative and distributor of the assessee or sub-distributor of such distributor or*
3. *persons having interest, directly or indirectly, in the business of each other.*

Similarly, where goods are sold through an inter-connected undertaking, the value at which the goods are sold by such inter-connected undertaking shall be the assessable value ***(Rule 10).*** *However, for such valuation the inter-connected undertaking should also be related in any of the manner described above (Rule 9). If such relationship is absent, 'Transaction value' shall be the basis of valuation for sales through inter-connected undertakings*

For the purposes of valuation, 'inter-connected undertakings' shall have the meaning assigned to it in clause (g) of Sec.2 of the 'Monopolies & Restrictive Trade Practices Act, 1969' and 'relative' shall have the meaning assigned to in clause (41) of Sec.2 of the Companies Act, 1956. The relevant extracts of the two Acts are reproduced herein :

* As per Monopolies & Restrictive Trade Practices Act, 1969 (Extracts) the "Inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely :-

(i) if one owns or controls the other;
(ii) where the undertakings are owned by firms, if such firms have one or more common partners;
(iii) where the undertakings are owned by bodies corporate, -

(a) if one body corporate manages the other body corporate,

or

(b) if one body corporate is a subsidiary of the other body corporate, or

(c) if the bodies corporate are under the same management, or

(d) if one body corporate exercises control over the other body corporate in any other manner;]

(iv) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, -

(a) hold, directly or indirectly not less than fifty per cent of the shares, whether preference or equity, of the body corporate; or

(b) exercise control, directly, or indirectly, whether as director or otherwise, over the body corporate.

(v) one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;

(vi)if the undertaking are owned or controlled by the same person of the same group;

(vii)if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the forgoing sub-clauses.

Explanation I.- For the purpose of this Act, two bodies corporate shall be deemed to be under the same management, -

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group ; or

(ii) if the managing director or manger of one such body corporate is there managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-third of the equity shares in the other or controls the composition of not less than one-third of the total membership of the board of directors of the other; or

(iv) if one or more directors or one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management constituted, whether independently or together with relatives of such directors of the employees of the first mentioned body corporate one fourth of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding, whether by themselves or together with their relatives not less than , one fourth of the equity shares in one such body

corporate also hold, whether by themselves oar together with their relatives not less than, one-fourth of the equity shares in the other ;

(vi) if the same body corporate or bodies corporate belonging to a group holding, whether independently or along with its or their subsidiary or not less than one-fourth of the equity shares in one body corporate, also hold not less than, one fourth of the equity shares in the other; or

(vii) if not less than, one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individual whether independently or together with his relatives or the same body corporate, whether independently or together with its subsidiaries; or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II. – If a group exercises control over a body corporate, that body corporate and every other body corporate, which is constituent of, or controlled by, the group shall be deemed to be under the same management.

Explanation III. – If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first-mentioned bodies corporate.

Explanation IV. – In determining whether or not two or more bodies corporate are under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

Illustration

Undertaking B is inter-connected with undertaking A and undertaking C is inter-connected with undertaking B. Undertaking C is inter-connected with undertaking A; if undertaking D is inter-connected with undertaking C, undertaking D will be inter-connected with undertaking B and consequently with undertaking A; and so on.

** As per Companies Act, 1956 (Extracts [Act No. 1 of 1956] the Meaning of "relative".- A person shall be deemed to be a relative of other if, and only if, -

(a) they are members of a Hindu Undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner as indicated in the following list.

List of Relatives

1. Father	2. Mother (including step-mother)
3. Sons (including step-son)	4. Son's wife
5. Daughter (including step-daughter)	6. Father's father
7. Father's mother	8. Mother's mother
9. Mother's father	10. Son's son
11. Son's son's wife	12. Son's daughter
13. Son's daughter's husband	14. Daughter's husband
15. Daughter's son	16. Daughter's son's wife
17. Daughter's daughter	18. Daughter's daughter's husband
19. Brother (including step-brother)	20. Brother's wife
21. Sister (including step-sister)	22. Sister's husband

Where goods are sold partly to related persons and partly to independent buyers, there is no specific rule covering such a contingency. Transaction value in respect of sales to unrelated buyers cannot be adopted for sales to related buyers since as per section 4(1) transaction value is to be determined for each removal. For sales to unrelated buyers valuation will be done as per section 4(1)(a) and for sale of the same goods to related buyers recourse will have to be taken to the residuary rule 11 read with rule 9 (or 10). Rule 9 cannot be applied in such cases directly since it covers only those cases where all the sales are to be related to buyers only.

3.3. Some important circulars issued on Valuation covering specific situations are reproduced for reference:

(i) Valuation of goods manufactured on job-work basis: **(Circular No.619/10/2002-CX** 19th February, 2002)

Under the provisions of the earlier section 4 and the Rules made thereunder this matter has been finally decided by the Apex Court in the case of Ujagar Prints Ltd [1989(039)ELT0493(SC)] and the case of Pawan Biscuits Co. Pvt Ltd [2000(120)ELT0024(SC)]. It was clearly held that in respect of goods manufactured on job-work basis, assessable value would be the job charges (including the profit of the job-worker if not already included in the job-charges) plus the cost of the materials used in the manufacture of the item (including the cost of the materials supplied free of cost to the job-worker). **The assessable value in such cases will not include the profit or the expenses (like advertisement and publicity, overheads etc) incurred by the buyer (or the supplier of the raw materials), where the dealing between the two are on principal to principal basis.** The mere fact that the buyer is supplying some raw materials free of cost to the job-worker, will not be sufficient ground to contend that the dealings between the two are not at arms length. Goods manufactured on job-work were earlier assessed under the residuary Rule 7 of the erstwhile valuation Rules of 1975 read with rule 6(b) read with the Apex Court decisions referred to above.

Under the new valuation provisions, introduced with effect from 1.7.2000, there is no departure from the principles laid down by the Apex Court in the above two decisions, in respect of goods manufactured on job-work basis. In other words goods manufactured on job-work basis after 1.7.2000 will continue to be valued in the same manner as they were being valued before 1.7.2000. **Since the buyer (raw-material supplier) supplies some items free of cost, price is not the sole consideration for the transaction between the copyright owner and the job-worker. Therefore, after 1.7.2000, in respect of goods manufactured on job-work basis, valuation would be governed by Rule 11 of the new valuation Rules of 2000 read with rule 6 read with the above two decisions of the Apex Court.**

As for example, problems have been reported in the case of recorded CD(Compact Disc) manufactured on job-work basis. The practice in most cases in the CD industry is that a music or a film company acquires the copyright of some songs or movie on payment of a lump sum amount of royalty to the artiste/producer and sends the master copy of the musical score or movie either in the form of a digital audio tape (DAT) or a cinematograph reel or a CD to a job-worker for making CDs on payment of job charges. The job worker is provided, in most cases, the inlay cards, jackets and the jewel box (plastic cover) to pack the CDs and return the same to the copyright owner. The copyright owner then sells the CDs in the wholesale market through its dealers, distributors or consignment agents. The copyright is perpetual in nature and the copyright owner can give repeat orders to the job worker. Thus even if the cost of obtaining the copyright is known, problems arise in apportioning this cost to the CDs manufactured on job work because it is not possible to ascertain the number of CDs which would get manufactured

over a period of time (which may extend to even 20 or 30 years). Further, the copyright acquired covers audio cassettes also.

The expenses incurred by the copyright owner towards advertisements and overheads cannot be included in the assessable value of the CDs since the job worker (manufacturer) has no connection with these expenses and these costs are not incurred at the instance or on behalf of the manufacturer (job-worker). Since the job-worker receives some items free of cost from the copyright owner, price is not the sole consideration for the transaction between the copyright owner and the job-worker. Therefore, resort will have to be taken to the Central Excise Valuation Rules. No specific rule covers such a contingency. Resort will therefore have to be taken to rule 11 of the valuation rules read with rule 6, read with the Apex Court decisions cited above. The money value of the additional consideration will have to be added to the job-charges. The cost elements which have to be included are the cost of the items supplied free by the music company to the job worker, namely inlay cards, jackets, jewel boxes and the **DAT/disc**.

The DAT/discs contains the original recorded music/movie. Its cost would include the royalty amount paid/payable by the music company for acquiring exclusive rights for the music/movie and the cost incurred in getting the original score recorded in a studio (if this has been incurred by the copyright owner). In such cases the most reasonable method would be to ascertain the royalty amount and studio hire charges contained in the **wholesale price of the CDs** at which the copy right owner sells, to its dealers, at arms length. This could be done by determining **the royalty amount plus the studio hire charges as a percentage of the net sale value (gross sale minus central excise duty element)** of the music company or copyright owner **in respect of the recorded media**. In case the company also sells audio cassettes of the same music, there would be no need to break up the sale value for CD's and cassettes separately for determining the percentage since the royalty amount would cover rights for both. The figures of net sales and royalty payments are normally available in the balance sheets of these companies. This percentage will be used to determine the element of royalty cost attributable to each CD. Duty will have to be paid by the job-worker on the royalty amount also. As an illustration, if the ratio of the royalty amount plus studio hire charges, to net sales of a music company is, say, 9.41% and the whole sale price of a recorded CD of the music company is, say, Rs 100/- and the job-charges charged by the job-worker is Rs 25/-, then the value on which duty will have to be paid by the job-worker would be Rs 25 + 9.41% of Rs 100 = Rs 25 + Rs 9.41= Rs 34.41. **In case the music company has also supplied to the job worker, free of cost, inlay cards, jackets, jewel box or any other material/input, their cost should also be added to the job-charges**. If the job worker has purchased some raw materials (e.g. poly carbonate) or inputs, their value will also be added.

For this it will be necessary for the music company to supply to the job-worker the data relating to royalty payment and the wholesale price of each CD, the cost of the inlay cards, jacket, jewel box and other material supplied free of

cost. Since net sales value and total royalty payment for the **current year** will not be available with the music company, duty should be determined on the basis of figures **for the previous year**. Till the figures for the previous year are provided assessments should be done provisionally. Assessments should be finalized immediately after the figures for the **previous year** are made available.

Care should be taken to ascertain the correct amount of expenditure involved in a year on royalty/copyright. Some companies **capitalize** part of this amount and the expenditure may also be reflected under the head "assets". In that case **depreciation** taken/shown during the relevant year under this head would be added to the expenditure incurred on royalty/copyright during the said year. Some companies sell part of their acquired copyrights to other companies and the income on this may be shown under the head license fees. In that case total expenditure on royalty/copyright during a year would be the gross amount spent under this head in a year minus the amount received for sale of part of the rights during the same year.

(ii) Circular No. 644/35/2002-CX 12th July, 2002.

Doubts have been raised regarding the valuation of computer systems sold along with software. The software can be of two types. One is the 'systems software' or 'operating software' which is designed to control the operation of the computer system. The other software is the application software which is developed for specified applications only. There is also a third category of software, called the "firm software" or "basic software" which is generally burnt into the hardware itself. The "basic software" enables a computer to read into itself from peripheral devices and includes vocabulary of basic instructions such as add, subtract, increment, document, etc. So far as the period prior to 1.7.2000 is concerned, the Supreme Court has clearly held, in the case of PSI Data System Ltd. Vs. CCE [1997(89)ELT3(SC)] that the value of computers under heading 84.71 of the Central Excise Tariff, will not include the value of the software supplied, in the form of floppies, discs, tapes, along with the computer. The question whether the software etched on the hard disc of the computer would form a part of the assessable value of the Computer or not, was not decided by the Apex Court in this case since this aspect had already been accepted by the appellants i.e. PSI Data Systems Ltd. (reference paras 2 & 11 of the judgment). However, by implication it can be said that the Supreme Court approved the inclusion of the etched software in the value of the computer system (the Head Notes of this judgment brought out in the above citation does not bring out the gist of the judgment correctly as the Head Notes make an assertion which is not found anywhere in the judgment, that the cost of firm software etched into the computer is also not includible in the value of the computer). It may be noted that in para 3 of the judgment, the Apex Court has clarified that the term 'software' used in the judgment refers to tangible software only in the nature of discs, floppies and CD Roms. The Apex Court did not discuss cases where computers were cleared loaded with any software, other than "firm software." As per Central Excise Law, valuation of

goods is to be done in the form in which it is cleared. It, therefore, emerges that for the period prior to 1.7.2000 computer systems will be valued by including the value of the software already etched or burnt or loaded on the hard disc of the system. No distinction should be made between an 'operating software' or an 'application software' in this regard. If the computer is sold loaded with a software, the value of the software will be included in the value of the computer. Any floppy, disc or tape containing any software supplied along with the computer system will, however, be assessed separately. The introduction of the "transaction value" concept w.e.f. 1.7.2000 does not effect this basic principle. In other words, for the period 1.7.2000 onwards also the same system of valuation of computer system is to be adopted so far as inclusion (or exclusion) of software is concerned.

(iii) Circular No. 671/62/2002-CX. Dated 9.10.2002:

It is clarified that 'Dharmada' collected by the assessee from the buyers is includible in the assessable value of the goods.

It is observed that assessees charge and collect sales tax from their buyers at rates notified by the State Government for different commodities. For manufacture of excisable goods, assessees procure raw materials, in some States, by paying sales tax/purchase tax on them (in some States, like New Delhi, raw materials are purchased against forms ST-1/ST-35 without paying any tax). While depositing sales tax with the Sales Tax Department (on a monthly or quarterly basis), the assessee deposits only the net amount of sales tax after deducting set-off/rebate admissible, either in full or in part, on the sales tax/purchase tax paid on the raw materials during the said month/quarter. The sales tax set-off in such cases, therefore, does not work like the central excise set-off notifications where one-to-one relationship is to be established between the finished product and the raw materials and the assessee is allowed to charge only the net central excise duty from the buyer in the invoice. The difference between the set-off operating in respect of central excise duty and that for sales tax can be best illustrated through an example. If the sales tax on a product 'A' of value Rs.100/- is, say, 5% and the set off available in respect of the purchase tax/sales tax paid on inputs going into the manufacture of the product is, say, Rs.1/-, then the sales tax law permits the assessee to recover sales tax of Rs.5/- . But, while paying to the sales tax department he deposits an amount of Rs.5-1= Rs 4 only. On the central excise side, under similar circumstances, the central excise duty payable would have been Rs.5-1 =Rs 4, in view of the set-off notification, and the assessee would recover an amount of Rs 4 only from the buyer as Central excise duty. Thus, it is seen that the set-off scheme in respect of sales tax operates in these cases somewhat like the CENVAT scheme which does not have the effect of changing the rate of duty payable on the finished product.

Therefore, since the set-off scheme of sales tax does not change the rate of sales tax payable/chargeable on the finished goods, the set-off is not to be taken into account for calculating the amount of sales tax permissible as abatement for arriving at the assessable value u/s 4. In other words **only that**

amount of sales tax will be permissible as deduction under section 4 as is equal to the amount legally permissible under the local sales tax laws to be charged/billed from the customer/buyer.

In case some States require the set-off to be adjusted consignment-wise, (on the lines of set-off notifications on the central excise side) the net sales tax (i.e. the amount permissible to be billed) will only be eligible for abatement.

4. Valuation of Petroleum Products

4.1. Omitted

5. Tariff Value

5.1 For certain items the Government may fix a tariff value as per provisions of Section 3(2) of the Central Excise Act, 1944. In such *cases the assessment of duty shall be on the basis of the tariff value.* As on date Tariff Value has been fixed for Pan Masala (Ch.2106) in retail packages (not exceeding two grams, two grams to four grams and four grams to ten grams) vide Notification No.16/98-CE (NT) dated 2.6.98, as amended and for Articles of apparel falling under sub-heading No.6101.00 or 6201.00 vide Notification No.20/2001-CE (NT) dated 30.4.2001, as amended.

5.2. (Clarification issued on **Levy of excise duty on readymade garments on the basis of Retail Sale Price (RSP)** *vide* **Circular No.737/53/2003-CX.** 19th August, 2003)

Doubts have been raised as to whether readymade garments should be assessed to duty on the basis of RSP or on the basis of transaction value. The provisions of Section 4A do no apply to the readymade garments, as they have not been notified under that section. But under notification No. 20/2001-C.E. (N.T.) dated 30.4.2001, tariff value (at the rate of 60% of the retail sale price declared or required to be declared) was fixed on readymade garments and other articles of apparel. Vide Board's letter F. No. B.3/4/2003, dated 01.04.2003, it was clarified that for valuation, the provision of section 4 i.e. transaction value, would apply in case the RSP is not required to be declared and is not declared. Section 39 of the Standards of Weights & Measures Act, 1976 applies to commodities, which are cleared, sold, distributed etc. in packed condition. In terms of Rule 1 (l) of the Standards of Weights & Measures (Package Commodity) Rules, 1977, a 'pre-packaged commodity' means a commodity, which, without the purchaser being present, is placed in a package so that the quantity of goods contained therein, has a pre-determined value and such value cannot be altered without opening the package. Further, in terms of the said Rules, the

term 'package' is to be construed as package containing such pre-packed commodity. Therefore, only when such pre-packed commodities are sold in retail packages, the provisions of Standards of Weights & Measures Act and rules regarding declaration of the retail sale price (and consequently valuation of the goods based on such RSP) arises. Many a times garments are cleared in bulk where the manufacturer neither packs the same nor declares the retail sale price therein. Such garments are ultimately displayed in the retailer's outlets, which may or may not attach a price tag thereto. Some times the dealer/retailer packs, re-packs, labels or re-labels the goods, which may result in such goods fall within the purview of Standards of Weights and Measures (Packaged Commodity) Rules. However, in such cases central excise valuation is not important, as such activities undertaken on duty paid goods are fully exempt vide notification No. 38/2003-CE dated 30.04.2003. Thus, it is clear that in such cases, the manufacturer of the garments is under no legal obligations to declare the retail sale price while clearing the garments from his factory in bulk and in unpacked condition.

6. Value on basis of Maximum Retail Sale Price

6.1 The value is based on maximum retail sale price in terms of Section 4A of the Central Excise Act, 1944. This is applicable to notified commodities. The notification issued in this regard indicates the extent of abatement to be allowed for arriving at the assessable value for determination of amount of duty. Where any goods specified under notification issued under Section 4A are excisable goods and the manufacturer-

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in Section 4A(1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purpose of Section 4 A .

"Retail Sale Price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight , transport charges, commission payment to dealers, and all charges towards advertisement, delivery , packing , forwarding and the like and the price is sole

consideration for the sale. In case the retail sale price is shown on the package excluding any taxes, local or otherwise the retail price shall be construed accordingly.

Where on the package of any excisable goods more than one retail sale price is declared , the maximum of such retail sale price shall be deemed to be the retail sale price declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price,

Where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

6.2 Certain Clarifications regarding Section 4A of the Central Excise Act.

(a) In respect of commodities notified under Section 4A of the Central Excise Act, 1944 goods are sold only against refundable deposits or against deposit of an empty bottle, container or jar. As for example in the case of sale of soft drinks the soft drink bottle is being sold at the printed MRP only if the buyer leaves some cash deposit for safe return of the bottle or he deposits before hand an empty bottle of the particular brand. Similar cases have been reported in respect of sale of mineral water. In such instances, it can be said that the MRP is not the sole consideration for sale and, therefore, the cash value of the additional consideration (the cash deposit or deposit of the empty bottle) has to be added to the MRP and the assessable value re-determined for payment of duty. If the cost of reusable containers (glass bottles, crates, etc) is amortised and included in the cost of the product itself, the question of adding any further amount towards this account does not arise, except where audit of accounts reveals that the cost of the reusable container has not been amortised and included in the value of product. Clarification issued vide Serial No.4 of Board's Circular No.643/34/2002-CX dated 1.7.2002 will apply to goods assessed under Section 4A also. **Circular No. 697/13/2003-CX** 27th February, 2003

(b) *In cases where the* MRP *on a retail package* is scored out, (even if it remains visible) and another MRP printed on the package, it could not be said that the package has two MRPs printed on it, since the scored out MRP could not be considered as an MRP either by the seller or by the consumer. Hence the scored out MRP is to be ignored. **Circular No 673/64/2002-CX.** 28th Oct, 2002

(c) For valuing *multi-piece packages consisting of 2 or more consumer items of the same kind, with MRP printed both on the individual items and the multi-pack* it is clarified that :-

(I) if the individual items comprising the multi-pack have clear markings that they are not to be sold separately or are packed in such a way that they cannot be sold separately, then the MRP indicated on the multi-pack would be considered for payment of duty u/s. 4A.

(II) if the individual items do not contain any such inscription (that they are not be sold separately) and are capable of being sold separately at the MRP printed on the individual pieces, then the aggregate of the MRP's of the pieces comprising the multi-pack would be considered for payment of duty on the multi-pack under section 4A. This clause will apply to only those multi-packs where the MRPs, both on the multi-pack and each of the individual items comprising the multi-pack, are clearly visible (e.g. soaps, powders, tooth pastes etc.). Only then can Explanation 2 (a) to section 4A apply.

(III) if the individual items have MRP's printed on them but are scored out, then the MRP printed on the multi-pack will be taken for purposes of valuation under section 4A.

(IV) if an individual item is supplied free in the multi-pack and has no MRP printed on it, the MRP printed on the multi-pack will be taken for purposes of valuation under section 4A.

"Multi-piece package" has been defined in Rule 2(j) of "The Standards of Weights and Measures (Packaged Commodities) Rules, 1977". Rule 17 of the said Rules mentions the additional declaration required to be made on multi-piece packages. **Circular No 673/64/2002-CX.** 28th Oct, 2002

(d) *There are instances where commodities notified under Sec.4A are* partly sold with the retail price printed on the packages and partly sold without printing the retail prices on the other packages. Some of the situations, where MRP cannot be printed on the notified item, are mentioned below:

1. Bulk Supplies for personal as well as industrial use
2. Supplies in bulk against contracts to DGS&D, Govt. Departments., restaurants/hotels etc
3. Supplies to canteen stores depots (CSD) of the defense services
4. Items supplied free with another consumer items as marketing strategy. Example, one soap free with one box of Detergent.
5. Items supplied free as marketing strategy or for gauging the market response. Example physician samples, bubble gums etc.
6. Items meant for export, etc.

Sec.4A of the Central Excise Act, 1944 is applicable in respect of those cases only where the manufacturer is **legally obliged** to print the MRP on the packages of the goods, under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made there under or any other law for the time being in force.

In respect of **telephones** falling under heading 85.17 and notified u/s 4A, the manufacturers also make bulk supplies of telephone instruments to the Department of Telecommunication (DOT) and the MTNL, who in turn provide these instruments, on rental basis, to the telephone subscribers. The ownership of the telephone instruments remains with the telephone Department and there is, therefore, no retail sale involved. The manufacturers also sell the instruments in the open market on which MRP is printed. The issue, therefore, was how to value the telephone sets which were sold by the manufacturer in bulk to the telephone department The matter was referred to the Ministry of Law, who have opined that valuation of telephone instruments supplied in bulk to telephone department will be done as per sec.4 of the C.E. Act, 1944 and the instruments sold in the market, with printed MRP, would be assessed u/s 4A of the Act. The Ministry has accepted the opinion of the Law Ministry.

The basic issue, therefore, is to determine the circumstances in which sec.4A of the C.E. Act can be applied. The wording of Sec.4A(1) makes it very clear that it will apply only to such goods "..... in relation to which it is required, under the provisions of the Standards of Weights and Measures Act,1976, or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods....". In other words, if there is no statutory requirement under the provisions of Weights and Measures Act to declare the retail sale price on the packages, Sec.4A will not apply. As for example, in respect of bulk sale of ice-cream to hotels/restaurants which are not meant for retail sales as such, the provisions of the Weights and Measures Act will not apply. Chapter V of the Weights & Measures (Packaged Commodity) Rules, 1977 mentions the instances where MRP is not required to be printed on the packages. Thus, in these cases valuation will have to be done under sec.4 of the C.E. Act, 1944.

A somewhat similar issue was examined by the Board earlier vide letter **F.No.341/64/97-TRU dt.11.8.97**. This clarification was issued in the context of certain assessees printing MRP on packages even where there was no statutory requirement to do so under the Standards of Weights & Measures Act, 1976. It was clarified that in such cases duty will be charged u/s.4 of C.E. Act, 1944 and not u/s.4A (the clarification dt.11.8.97 did not, however, specifically mention whether the disputed goods were notified u/s.4A or not and whether it covered only non-notified goods).

In respect of all goods (whether notified u/s.4A or not) which are not statutorily required to print/declare the retail sale price on the packages under the provisions of the Standards of Weight & Measures Act, 1976, or the rules made there under or any other law for the time being in force, valuation will be done u/s.4 of the C.E. Act, 1944 (or under section 3(2) of the Central Excise Act,1944, if tariff values have been fixed for the commodity). Thus, there could be instances where the same notified commodity would be partly assessed on the basis of MRP u/s.4A and partly on the basis of normal price (prior to 1.7.2000) or transaction value (from 1.7.2000), u/s.4 of the C.E. Act, 1944.

The Standards of Weights & Measures Act, 1976, and the rules made there under, are administered by the State Governments. Instances of dispute could arise between the department and the assessee as to whether, in respect of a particular commodity/transaction, the assessee is exempted from declaring the retail price or not. In case of such doubt a clarification may be obtained from the concerned Department (generally the **Metrology Department**) of the State Government.

if an assessee does not declare or print the retail sale price in respect of a notified commodity, which it is statutorily required to do under the provisions of the Weights & Measures Act, or any other law for the time being in force, the goods, on removal, will be liable to confiscation u/s. 4A(4) of the C.E. Act, 1944.

Circular No. 625 /16 /2002 – CX dated 28th February, 2002

Part IV

PROVISIONAL ASSESSMENT

1. Introduction

1.1 Provisional assessment is resorted to in the event the duty can not be determined at the point of clearance of the goods.

2. Guidelines and procedure for provisional assessment:

2.1 Wherever an assessee finds that final assessment is not possible, (in situations mentioned in rule 7 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules) he will make a detailed request in writing to the Divisional Deputy/Assistant Commissioner of Central Excise, indicating:-

(a) Specific grounds/reasons, and the documents or information, for want of which final assessment cannot be made.
(b) Period for which provisional assessment is required.
(c) The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment.
(d) Undertakes to appear before the Assistant/Deputy Commissioner of Central Excise within 7 days or such date fixed by him, and furnish all relevant information and documents within the time specified by the Assistant/Deputy Commissioner of Central Excise in his order, so as to enable the proper officer to finalise the provisional assessment.

2.2 On receipt of the request, the Deputy/Assistant Commissioner of Central Excise will examine it, if necessary, in consultation with the concerned Range Officer, to ascertain whether provisional assessment is necessary at all. If the reasons/ grounds are not sufficient, he may ask the assessee to appear before him on an appointed day and time, and if he is satisfied that provisional assessment is not necessary, he may pass a reasoned order rejecting the same and also ordering the rate of duty or the value, to be applied by the assessee.

2.3 Where the Deputy/Assistant Commissioner of Central Excise is satisfied with the genuineness of the assessee's request, he will issue a specific order directing provisional assessment clearly stating:-

(a) the grounds on which Provisional Assessment has been ordered.

(b) the rate and /or value, as the case may be, at which duty has to be provisionally paid.

(c) the amount of differential duty for which bond is to be executed covering the period, if any, during which assessee paid duty

provisionally under the deeming provisions, after applying the rate and/ or value specified in (b) above.

(d) The amount of security or surety as may be fixed by Assistant/ Deputy Commissioner keeping in view the instructions issued by the Board from time to time.

2.4 The assessee is required to mark the E.R.-1/E.R.-2/E.R.-3 (monthly/quarterly return)and documents covered under Provisional Assessment as "PROVISIONALLY ASSESSED" vide Order No..... dated ....." . There is a declaration in E.R.-1/E.R.-2/E.R.-3 wherein the assessee has to mention that the goods under 'provisional assessment'.

2.5 Notwithstanding 'self-assessment', all cases of provisional assessment have to be finalised by the Deputy/Assistant Commissioner of Central Excise, within a maximum period of 6 months. All the cases where provisional assessment cannot be finalised within 6 months must be submitted to Commissioner with the request letter of the assessee (through Deputy/Assistant Commissioner of Central Excise) indicating the reasons for non-finalisation and amount of differential duty for future clearances, before the expiry of the above-said period. If the Commissioner is satisfied with the reasons, he may extend the period, or otherwise direct the method to be adopted for finalisation of the assessment. For extending the period beyond one year from the date of provisional assessment, the request letter of the assessee should be put up to the Chief Commissioner in the same manner through Commissioner with his comments. The time limit of finalising the provisional assessment shall be applicable even to cases ordered for provisional assessment prior to 1st July, 2001.

2.6 Finalisation of provisional assessment means finalisation of an issue/ground and thereafter finalisation of each E.R.-1/E.R.-2/E.R.-3. The amount will be communicated to the assessee at the earliest. The amount of each differential duty shall be paid along with interest at the rate specified by the Central Government by Notification Issued under Section 11AA or 11AB of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

2.7 If the assessee is in a position to ascertain the duty himself, he may pay the duty on his own at the earliest and in that case he will not have to incur interest on account of time taken by the Department to finalise assessment and communicate the amount.

2.8 Where any refund becomes due to the assessee, order shall be passed for such refund, but disbursement shall be subject to further verification about incidence of such duty. The assessee will be required to submit proof to the Assistant/deputy Commissioner of Central Excise that the duty incidence was borne by him (assessee). If the assessee fails to produce such proof/evidence, the Assistant/Deputy Commissioner of Central Excise will pass an order for depositing the amount in Consumer Welfare Fund in the

prescribed manner. Otherwise, the refund shall be give along with interest at the rate specified by the Central Government by Notification Issued under Section 11BB of the Act from the first day of the month succeeding the month for which such refund is determined, till the date of refund.

2.9 Though it is incumbent upon the assessee to ensure that the bond amount and corresponding securities are sufficient, the Divisional as well as the Range Officer will also keep a strict vigil on such cases with the help of 'Provisional Assessment Register'.

2.10 The Assistant/Deputy Commissioner of Central Excise will be held responsible to ensure that bonds for proper amount i.e., equal to the difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed are taken, in case of general bonds and that these are backed by proper (25%) security/ bank guarantee of the bond amount.

2.11 The format of bond for provisional assessment has been specified in Notification No. 56/2001-Central Excise (N.T.) dated 3.7.2001 (Annexure-5).

3. Initiation of Provisional Assessment by Department

3.1 Rule 7 of the said Rules does not provide for the Department, suo moto, issuing directions for resorting to provisional assessment. Therefore, when the Central Excise Officers, during scrutiny or otherwise, find that self-assessment is not in order the assessee may be asked for all necessary document, records or other information for issue of duty demand for differential duty, if any, after conducting inquiry. Where the assessee fails to provide the records or information and Department is unable to issue demand, 'Best Judgment' method may be used to raise demand based on collateral evidences. The burden will be on the assessee to provide information for appropriate re-determination of duty, if any.

4. Application of new provisions

4.1 The provisions of Provisional Assessment relating to interest clause and statutory time limit are prospective. In other words, these provisions shall be applicable only to those cases of provisional assessment, which are ordered on or after 1st July, 2001.

5. Use of Provisional Assessment Monitoring Systems (PAMS) Software

5.1 A software has been developed for monitoring of Provisional Assessment cases namely, Provisional Assessment Monitoring Systems (PAMS) which operates on a central server to be accessed by the officer authorize in this behalf. This software was launched on 8th November, 2002 and the Directorate General of Systems has also communicated the procedure to use this software to all Commissionerates and Divisions. This

software is designed to capture the details of new Provisional Assessment cases. Simultaneously it was requested by DG (Systems) that the details of all pending provisional assessments should also be entered on the system so that a proper monitoring system can be evolved.

5.2 No provisional assessment shall be permitted by any officer without entering the required details on the system and generating the unique identifier number through the system. Once the requisite details are entered in the system, it shall generate a unique identification number and a draft sanction letter. This draft sanction letter generated by the system may be taken as a reference and suitable amendments if needed, may be made by the field officer. However, whenever amendments are made, intimation thereof detailing the nature of amendment may be sent to ADG (Systems), South Zone, Chennai. It is reiterated that in all sanction letters, the unique identifier number generated by the system should be quoted invariably.

(Circular No. 715/31/2003-CX. Dated 19.05.2003)

Part V

Manner of payment of duty and Account Current

1. Manner of payment of duty

1.1 Rule 8 of the said Rules provides that duty relating to removals during a month can be discharged within five days of the following month. In case of a manufacturer availing an exemption based on value of clearances during a financial year, the duty for a month may be discharged by fifteenth day of the succeeding month except that for month of March, the duty has to be discharged by 31st March in both the circumstances.

If the assessee fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with an interest @ 2% per month or Rs.1000/- per day, whichever is higher, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:

However, the total amount of interest payable shall not exceed the amount of duty which has not been paid by due date.

Where such duty and interest are not paid within a period of one month from the due date, the consequences and the penalties as provided in Rule 8 shall follow.

After the completion of one month, the amount of duty outstanding and the interest payable thereon will be treated as 'recoverable arrears of revenue' and all permissible action under the law including the action under Sec.11 of the Central Excise Act, 1944 and under Sec.142 of the Customs Act, 1962 shall be taken.

On the issue of availment of credit by the user-manufacturer, action against the consignee to reverse /recover the CENVAT credit availed of in such cases need not be resorted to as long as the bonafide nature of the consignee's transactions is not in dispute.

In order to ensure **proper monitoring of such recoveries** and taking up time bound action against the defaulters, Range Supdts. should be asked to maintain a separate register and identify and record the cases of default, immediately on receipt of E.R.-1/E.R.-2/E.R.-3 returns. The Divisional Deputy/Assistant Commissioner should check the registers regularly minimum once in two months period.

(Circular NO. 766/82/2003-CX. Dated 15.12.2003)

1.2 National Calamity Contingent Duty (NCCD) on Crude Petroleum Oil should be charged only on the total quantity of Crude Petroleum Oil produced and supplied from the oil field to the refineries.

(Circular No. 769/2/2003-CX. Dated 09.01.2004)

1.3 The duty can be discharged by debiting an account current (also referred to as Personal Ledger Account [PLA]) and debiting the CENVAT Credit Account maintained by the assessee under the provisions of CENVAT Credit Rules, 2002.

1.4 No format for CENVAT Credit Account has been specified. The assessee has to maintain this account in his own format. This account is a credit-debit account wherein the admissible credit in respect of inputs and capital goods received by the assessee in his factory is taken and debit is made for payment of any duty.

1.5 In account current [Personal Ledger Account], credit is taken by depositing money in the banks on T.R.6 Challans. The guidelines regarding account current are mentioned in subsequent paragraphs.

2. Account current and procedures relating thereto

2.1 Omitted (Circular No.662/53/2002-Cx. Dated 17.9.2002. Common no. for registration adopted, no need of ECC no. now.)

2.2 The manufacturer working under the procedure shall maintain an account current (Personal Ledger Account) in the Form specified in Annexure-6.

2.3 Each credit and debit entry should be made on separate lines and assigned a running serial number for the financial year.

2.4 The account current must be prepared in triplicate by writing with indelible pencil and using double-sided carbon - original and duplicate copies of the account current should be detached by the manufacturers and sent to the Central Excise Officer in charge along with the monthly/quarterly periodical return in form E.R.-1/E.R.-2/E.R.-3.

3. Credit and debit in account current

3.1 The assessee may make credit in the account current by making cash payment into the Treasury/or Authorised Bank. If allowed by the Commissioner, In exceptional cases, such as sudden strike in bank, natural calamity, riot etc., the credit can be taken after sending by Registered A.D. post or by a messenger a cheque for the requisite amount to the Chief Accounts Officer of the Commissionerate, provided procedure specified in this regard are followed.

3.2 Deposit into the Treasury of the authorised bank should be made in a Challan in form TR 6 under the correct Head of Account. The Assessee's Registration number No. should also be indicated in the challans. A copy of each Treasury Challan bearing Treasury/Bank seal and the signature of the authorised officer of the Treasury/Bank which is received back from the Treasury/Bank in token of having made the deposit, should be sent by the assessee to the Central Excise Office along with the monthly periodical return in form E.R.1/E.R.2/E.R.3

3.3 There is an 'Explanation' to sub-rule (1) of rule 8 that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date. It is being interpreted that it refers to deposit of duty amount by the focal point banks into the account of Government. This is not the intention. Once the assessee has deposited a cheque in the bank designated by the Central Board of Excise and Customs, the date of presentation of the cheque shall be deemed to I be the date on which the duty has been paid subject to realisation of the cheque.

3.4 No restriction exists with regard to any minimum amount, which should necessarily remain in balance to the credit of an assessee in his PLA. With the monthly payment system, there should be enough credit at the time of payment of duty for the month.

3.5 Mutilations or erasures of entries once made in the PLA are not allowed. If any correction becomes necessary, the original entry should be neatly scored out and attested by the assessee or his authorised agent.

4. Payment of rents, fines or penalties

4.1 In case where miscellaneous dues like rents, fines or penalties are to be paid by the holder of account current he may be advised to make payments of such accounts directly into the authorised bank under Challan in form T R 6 supported by order of demand, if any. Such challans need not be counter-signed by the Departmental Officer but should indicate the particulars of penalties, rent etc, deposited. If, however, the account holder desires that such miscellaneous dues should also be paid through an account current, he may be permitted to open a separate account current for this purpose under the group minor head "E-Miscellaneous-1 Miscellaneous".

5. Account Code Directory

5.1 Regarding the Account Code Directory for the purpose of computerisation, separate instructions have been issued by the Principal Chief Controller of Accounts C.B.E.C., which may be referred to.

6. Procedure for deposit of Central Excise duties during bank strikes, natural calamities etc.,

6.1 This procedure is to be followed only when all the banks nominated to collect revenues within a Commissionerate are unable to transact business, due to strike of banks or sudden closure of banks due to riots, imposition of curfew or natural calamities such as flood, cyclones, etc.

6.2 Normally in all cases of closure of bank business due to strike by bank employees, the Public gets advance intimation either through the press, or otherwise. In all such cases, the assessees should make advance arrangements to deposit money into the banks and keep sufficient amounts in their account current [PLA] so that they do not face any difficulty in the clearance of the goods during the period of the strike.

6.3 In cases, where the strike of bank employees is without notice, or where the strike called for after due notice is prolonged beyond a reasonable time (say over 3-4 days) or where there is sudden closure of banks due to riots, imposition of curfew or natural calamities such as flood, cyclones, etc., the Commissioner may adopt the procedure specified hereinafter in partial relaxation of the provisions contained in the "Manual for collection of Revenue and payment of refunds etc.(hereinafter referred to as 'Manual')" only for the duration of the strike or the sudden closures: -

6.4 The Commissioners should issue a Trade Notice stating that during the days of the closure of bank business due to such strikes (specifying the dates wherever possible), the assessees can send their cheques by registered post, acknowledgement due (R.P.A.D.) or special messenger, with the TR-6 challans (in quadruplicate) duly filled in, to the Chief Accounts Officers of the Commissionerates, with a clear declaration that they have sufficient balance in their bank account.

(i) They should be advised to send a copy of the letter forwarding the cheque, to the concerned Range Officer also.

(ii) On the strength of a cheque so sent, they may take credit in the account current.

(iii) On receipt of the cheque in his office, the Chief Accounts Officer will immediately intimate the concerned Range Officer about the name of the assessee, the number and date of the cheque and its amount.

(iv) Immediately after the strike is over, all such cheques should be deposited by the Chief Accounts Officer into the Focal Point Bank/State Bank of India at the Headquarters or Reserve Bank of India, as the case may be, through TR-6 challans (in quadruplicate) according to the procedure prescribed in the Manual.

(v) The Chief Accounts Officer will send the Duplicate/Triplicate copies of the receipted challans to the assessees and the quadruplicate copy to the R.Os. concerned to enable them to exercise necessary checks and prepare the monthly statement of revenue.

(vi) Bank commission or collection charges, if any, chargeable by the banks should be debited in the account current of the assessees by the Chief Accounts Officer under intimation to them as also the R.Os.

(vii) If any of the cheques sent by the assessees are dishonoured, the Commissioners shall take appropriate penal action as prescribed under the rules.

(viii) The Chief Accounts Officer should maintain a suitable record in regard to receipt and disposal of such cheques.

7. Payment by cheque when not permitted

For removal of doubts and to ensure uniformity of application of the procedure it is clarified that the payment of duty/other dues through cheques should not be permitted in the following cases: -

(i) If there is a strike in or closures of only one nominated bank of the Commissionerate and the assessee still remains in a position to deposit money in the other nominated banks or Departmental Treasury (wherever they exist) – unless the assessees' bank is the only nominated bank in the Commissionerate.

(ii) In the case of declared Bank holidays because such holidays are known well in advance.

(iii) Where the Public has been given advance intimation of a strike, unless the strike is unduly prolonged (say over 3-4 days).

(iv) Where Bank employees adopt "go-slow" tactics.

Part- VI

SCRUTINY OF ASSESSMENT

1. Introduction

1.1 In view of the self-assessment procedure wherein the assessee himself assesses the duty liability, the responsibility of the departmental officers is to scrutinise the assessment made for verification of its correctness. In this connection, the instructions issued from time to time may be referred to.

2. Scrutiny of Assessment

2.1 The Central Excise Officers having jurisdiction over the factory/premises of the assessee is responsible for the scrutiny of returns. For this purpose, the said officer(s) may require the relevant documents. Though *most of* the statutory records have been dispensed with, the assessee is required to maintain private records containing all requisite information as required by different rules and also provide a list of all records maintained by him to the Range Office. The Officer responsible for scrutiny of return may require the invoices issued by the assessee, Daily Stock Account, Cenvat Account, cash ledgers, Ledger of all receipts and payments and the source documents etc. It shall be compulsory for the assessee to provide the necessary records upon receiving the "Requisition Letter' from the Range Officer or other superior officers. He shall hand over the records under proper acknowledgement and receive them back under proper acknowledgement too. The Officer scrutinizing return may require presence of the assessee or his authorised person at mutually convenient time, for seeking certain information relating to the records.

2.2 The Superintendent of Central Excise in-charge of the Range Office, with assistance of the Inspectors in-charge of the factory of an assessee, will scrutinise all the returns. They shall, in selected cases, call all connecting documents including invoices and the records and scrutinise the correctness of assessment.

2.3 The Deputy/Assistant Commissioner of Central Excise will scrutinise the returns of the units, which pay duty-exceeding rupees one crore but less than Rs.5 crores from PLA per annum every six months. They shall requisition all connected documents including invoices and the records and scrutinise the correctness of assessment.

2.4 The Additional/Joint Commissioner of Central Excise will scrutinise the returns of the units which pay duty Rs. 5 crores or more from PLA per annum every six months. They shall requisition all connected documents including invoices and the records and scrutinise the correctness of assessment.

Chapter-4
INVOICE SYSTEM

1. Introduction

1.1 An invoice is the document under cover of which the excisable goods are to be cleared by the manufacturer. This is also the document which indicates the assessment of the goods to duty. No excisable goods can be cleared except under an invoice. The invoice is the manufacturer's own document. As per rule 11(2) of the Central Excise Rules, 2002, an invoice should necessarily contain the registration number, name of the consignee, description, classification, time and date of removal, mode of transport, vehicle number (if any), rate of duty, quantity and value of goods and the duty payable thereon.

2. Removals only on invoice

2.1 Rule 11 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules) provides that no excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorised agent.

2.2 In respect of cigarettes, each invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory. If the factory is in operation for all 24 hours, the officers are rotated/posted for 24 hours. They check the operations of the assessee as per instructions, mutatis mutandis, contained in the Commodity Manual for Cigarettes.

[1]2.3 A manufacturer of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 or readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act may remove the said goods under a proforma invoice signed by him or his authorised agent. The provisions of sub-rules (2) to (5) of Rule 11 shall apply to the proforma invoice except that the said invoice shall not contain the details of the duty payable. The manufacturer shall, within five

working days from the issuance of the proforma invoice, prepare the invoice in terms of this rule after making adjustments in respect of the goods rejected and returned by the buyer. The proforma invoice and the invoice issued in terms of this sub-rule shall have cross reference to each other by way of their serial numbers.

[2]2.4 The said period of five working days, may be extended upto a period not exceeding twenty-one days, inclusive of the said period of five working days, by the Commissioner of Central Excise, on receipt of a request from the said manufacturer.

3. Serially numbering of invoice

[3]3.1 The invoice shall be serially numbered and shall contain the registration number, name of consignee, mode of transport and vehicle number (if any) description, classification, time and date of removal, mode of transport, vehicle number, if any, rate of duty, quantity and value of goods and the duty payable thereon. The serial number shall commence from 1st April every year [beginning of a financial year].

3.2 The serial number can be given at the time of printing or by using franking machine. But when the invoice book is authenticated in the manner specified in sub-rule (5) of rule 11, each foil of the invoice book should contain serial number before being brought into use. Hand written serial number shall not be accepted.

3.3 In case of computer-generated invoice, the serial number may be allowed to be generated and printed by computer at the time of preparation of invoice ONLY IF the software is such that computer automatically generates the number and same number cannot be generated more than once. For this purpose, the Central Excise Officers may check the system/software from time to time.

4. Number of Invoice copies

4.1 The invoice shall be prepared in triplicate in the following manner, namely:-

(i) The original copy being marked as ORIGINAL FOR BUYER;

(ii) The duplicate copy being marked as DUPLICATE FOR TRANSPORTER;

(iii) The triplicate copy being marked as TRIPLICATE FOR ASSESSEE.

4.2 The above requirement is mainly for Central Excise purposes. However, the assessee may make extra copies of invoice for his other requirements. But such copies shall be prominently marked "NOT FOR CENVAT PURPOSES'.

5. Number of Invoice book

5.1 The sub-rule (4) of rule 11 of the said Rules provides that only one invoice book shall be in use at a time, unless otherwise allowed by the Deputy/Assistant Commissioner of Central Excise in the special facts and circumstances of each case.

5.2 The Board has decided that where assessee requires two different invoice books for the purposes of removals for home-consumption, and removals for export, they may do so by intimating the jurisdictional Deputy/Assistant Commissioner of Central Excise.

5.3 Wherever an assessee is allowed to maintain more than one invoice book, he should be asked to maintain different numerical serial numbers for the different sets.

5.4 In case of running stationary used in computers, the bound book shall not be insisted upon provided the stationary is pre-printed with distinctive names and marks of the assessee. After the invoices are prepared, the triplicate copy shall be retained in bound-book form. Where invoices are to be type written, the leaves

have to be first taken out from the book for typing. In such cases also, the triplicate copy shall be retained in bound-book form.

6. Authentication of Invoices

6.1 The Sub rule (5) of rule 11 of the said Rules provides that the owner or working partner or Managing Director or Company Secretary or any person duly authorised for this purpose shall authenticate each foil of the invoice book, before being brought into use. Copy of the letter of authority should be submitted to the Range office.

7. Intimation of serial numbers

7.1 Sub rule (6) of rule 11 of the said Rule provides that before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction over the factory of the assessee. This can be done in writing by post/e-mail/fax/hand delivery or any other similar means.

8. First stage dealer or second stage dealer

[4]8.1 The provisions of the rule 11 of the said Rules shall apply mutatis mutandis to goods supplied by a first stage dealer or a second stage dealer. The term First Stage dealer and Second Stage dealer shall have the meaning assigned to them in the Cenvat Credit Rules, 2002.

(a) "first stage dealer" means a dealer who purchases the goods directly from,-

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

(b) "Second stage dealer" means a dealer who purchases the goods from a first stage dealer;

[5]8. 2 Sub rule (3) of rule 7 of the Cenvat Credit Rules, 2002 provides that the credit of the duty on inputs and capital goods purchased from a first stage or second stage dealer shall be allowed only if the said dealer has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which the duty was paid by the manufacturer of such goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him..

[5]8.3 While the maintenance of proper records by the first stage or second stage dealers has been the requirement of the Central Excise Law, the pre-authentication of invoices issued by second stage dealers/ dealers of imported goods by Central Excise officers has not been provided for.

9. Rounding off of duty in invoice

9.1 The amount of duty being shown in invoices issued under rule 11 of the said Rules should be rounded off to the nearest rupee as provided under Section 37D of the Central Excise Act, 1944 and the duty amount so rounded off should be indicated in words as well as in figures.

10. Preparation of invoices when goods are despatched because of their size thorugh more than one vehicle

10.1 Considering the difficulties faced by the manufacturers in documentation where a consignment of capital goods like heavy machinery, etc. which are first assembled by the manufacturer and are later disassembled only for the

convenience of transport is loaded in more than one vehicle and carried separately or at intervals, the following procedure should be followed :-

i) The manufacturer will intimate, on case to case basis, his option to avail this special procedure in writing for the complete machinery sought to be cleared in a number of individual part consignments after first being assembled, to the jurisdictional Deputy/Assistant Commissioner of Central Excise with a copy to the jurisdictional Superintendent of Central Excise along with the description of such machinery/equipment giving its tariff classification and list of components of such machinery/equipment in dis-assembled form and its value and an undertaking in the following format :-

I / We _____ hereby undertake that only those components of a 'complete machinery' in terms of rule 2(a) of the interpretative rules to CETA which have first been assembled and constitute complete machinery falling under a single heading or sub-heading, and which are later dis-assembled only for the convenience of transport shall be cleared under this procedure on payment of entire duty as per the classification of such machinery / equipment and no 'parts' not satisfying this criterion shall be transported with such components unless appropriate Central Excise duty as prescribed for 'parts' under the Central Excise Tariff Act, 1985 is paid.

Date:
Place:
(Authorised Signatory)

These intimations shall be given at least 48 hours prior to the removal on any working day.

ii) Though separate verification need not necessarily be made for each and every consignment, before the removal of the first consignment, the Deputy/Assistant Commissioner should verify

that the various part consignments are indeed constituents of the complete machinery which has been first assembled.

iii) A separate invoice shall be made out in respect of each conveyance on which the part consignment is loaded.

iv) The manufacturer will pay the entire duty on the first such invoice (hereinafter referred to as "Parent invoice") on the basis of entire value of the machinery unit/equipment. This parent invoice shall be prepared quoting all vehicle numbers, total value/duty of the consignment. An inventory shall be annexed to the invoice giving detailed item-wise description as loaded in different vehicles.

v) The details of removals and duty payment shall be entered in Daily Stock Account.

vi) Photocopy of the duplicate copy of the parent invoice duly attested by the authorised signatory of the Company shall accompany each conveyance.

vii) CENVAT credit, if any, shall be taken only on receipt of parent invoice and the entire consignment.

viii) Where the part consignments travelling in a convoy or separately do not constitute " complete machinery" falling under a single heading or sub-heading, each such consignment will be classified on merits, say, as 'parts' and also a separate invoice showing the separate value arrived at under Section 4 of Central Excise Act, 1944 and the duty amount, must accompany each such consignment.

11. Weighment of goods outside factory before preparing invoices

11.1 In certain cases, due to non-availability of weighbridges inside the factory, goods have to be loaded in vehicle and weighed outside the factory. The permission may be granted by Deputy/Assistant Commissioner, considering the exceptional nature of goods, for a period of one year at a time. A pre-printed serially numbered Challan may be prescribed, which will be authenticated in

advance by the Superintendent or Inspector of the jurisdictional Range Office. The assessee will also maintain a record of such outward and inward movements, indicating date and time. Weighment should be done at the weighbridge nearest to the factory. The challan numbers shall be quoted on invoice. The Superintendent or inspector of the jurisdictional Range office will verify the challans and weighment slips randomly, at least once every month. If nothing adverse comes to notice, the permission may be renewed. Assessee should, however, be advised to install their own weighbridge inside the factory.

12. Cancellation of invoices

12.1 When an assessee is compelled to cancel an invoice, the following actions should be taken:-

(i) Intimation of a cancelled invoice should be sent to the range Superintendent on the same date, whenever possible. However, in case of exceptional circumstances beyond the control of assessee should this not be possible, the intimation should be sent on the next working day;

(ii) Along with the intimation of the cancelled invoice sent to the range Superintendent the original copy of the cancelled invoice should also be sent.

(iii) Triplicate copy of the cancelled invoice may be retained by the assessee in the invoice book so that the same can be produced whenever required by audit parties, preventive parties and other visiting officers.

PART II

TRANSHIPMENT

1. Procedure of Transhipment of goods en route final destination

1.1 The transhipment of goods from one vehicle to other vehicle(s) en route the destination(s) can be of two categories :-

(a) Where the entire quantity is transshipped from one vehicle to another vehicle, which may be on account of –

(i) Breakdowns;

(ii) Non-availability of inter-state transport permit.

(b) Where the consignment originally cleared on an invoice issued under Rule 11, is required to be split up en route for transport by different vehicle on account of –

(i) breakdown of the original vehicle and non-availability of the substitute vehicle of the appropriate capacity, or

(ii) requirement of splitting up of the consignment and loading in vehicle other than the vehicle on which goods were cleared from the factory, or

(iii) part consignment/package(s) misplaced during transshipment, but recovered later on.

1.2 Regarding category (a) and (b), the owner of goods or his agent or the person in charge of the vehicle, at the material time, acting as his agent, shall make a suitable endorsement at the back of the transport's copy of the invoice accompanying the consignment indicating the date and time of breakdown of the vehicle and the registration number of the new vehicle in which the consignment is re-loaded,

1.3 In cases of splitting up and transhipment on account of any other reason, including pre-determined distribution of goods from an intermediate point, the assessee should prepare separate invoice for each lot. At the intermediate point, the owner of goods or his agent or the person in charge of the original vehicle shall endorse the registration number of new vehicle. Upon receipt of goods in the factory, the assessee shall confirm by endorsing on the invoice that the goods were received in the factory in the specified vehicle.

PART-III

SPECIAL PROCEDURE FOR REMOVAL OF LIQUID GASES PASS-OUT SYSTEM

1. Special procedure

1.1. Removal of liquid gases will be permitted in a tanker from the factory of the manufacturer on provisional determination of Central Excise duty liability and provisional entry in Daily Stock Account maintained under rule 10 of the Central Excise Rules, *2002* (hereinafter referred to as the said Rules), at the time of clearance from the factory. The invoice under rule 11 of the said Rules will be allowed to be prepared afterwards and the duty will be discharged under the provisions of rule 8 of the said Rules, subject to the observance of the following procedure :-

(a) The assessee shall submit a written request to the Assistant/ Deputy Commissioner of Central Excise having jurisdiction over the factory alongwith an undertaking that he shall abide by all conditions and restrictions as may be specified, for permitting the Pass-Out System for removal of Liquid Gases.

(b) The liquid gases shall be removed in the tanker under the Pass-out document as per duly filled in proforma at Annexure-7.

(c) The pass-out document shall indicate, inter alia, the description, net quantity of goods being despatched (gross weight minus tare weight of tanker), and duty liability on such net quantity.

(d) This net quantity and duty leviable thereon (provisional) shall be provisionally entered/recorded in the Daily Stock Account at the time of clearance from the factory. For the sake of clarity it is mentioned that such "provisional calculation of duty and provisional entry should not be construed as "Provisional assessment under rule 7 of the Rules".

(e) The pass out document shall be made out in triplicate by using double-side carbon paper.

(f) All pass-out documents shall bear printed serial numbers and shall be pre-authenticated by the Inspector of Central Excise having jurisdiction over the factory before they are put to use.

(g) The original and duplicate copy of the aforesaid document will accompany the goods to the destination. The assessees shall retain the Triplicate copy.

2.1 The quantity delivered to or received by each customer shall be recorded on original and duplicate copies of each pass-out document under the customer's signature.

2.2 On completion of deliveries, the quantity actually delivered, the quantity actually returned in tanker and the quantum of loss, if any, shall be duly recorded in the Daily Stock Account. The provisional entry relating to quantity of removal and the duty liability shall be converted into final entry in Daily Stock Account immediately after the return of the tanker (after a single trip/transportation) or latest by next morning.

2.3 After return of the tanker, customer-wise invoice/Application for Removal may be prepared based on the quantity actually delivered. Central Excise duty where payable shall be determined and paid by the assessee in terms of rule 8 on the total quantity of the non-exempted liquid gases delivered to the customer and on the quantity of transit loss and other losses, if any.

2.4 In case both non-exempted and exempted deliveries are effected from the same tanker, the respective invoice/clearance document raised subsequently must indicate the nature of each delivery very distinctly.

2.5 In case of transit and/or other losses, the assessee shall be liable to pay Central Excise duty on the quantity of such losses as determined at the highest

effective rate prevailing on the date of the consignment. The assessee shall give a written undertaking in this regard, on each copy of Pass-out document covering the goods.

2.6 All invoices/ clearance documents shall be dated as per the date of despatch of the consignment and cross-reference shall be maintained in the pass-out document.

2.7. The original copy of the Pass-out document showing particulars of the quantity despatched, quantity delivered to the individual consignees/customers. Final entry No./date in Daily Stock Account including quantity returned and accounted for therein, shall be handed over to the Sector Officer immediately after the return of the lorry tanker and the final accountal. The consignor factory should obtain an acknowledgement for the submission of the original Pass-out document. The assessee shall retain the duplicate copy of the completed Pass-out document for his record.

2.8 Before filling the tanker for the next supply/clearance, the quantity of the goods already contained therein (left over undelivered goods of the previous supply) should be re-ascertained and any difference between the quantity returned from the previous clearance and the quantity re-ascertained as above shall be treated as storage loss within the factory on which the assessee shall be liable to pay duty. Such differential quantity and the particular duty thereon should be recorded in the appropriate column of Daily Stock Account.

PART IV

[6]Procedure for accountal of petroleum products movement through pipelines without payment of duty

The procedure of Accountal of Petroleum Products movements through pipelines without payment of duty is governed by instructions of Board vide letter 20/1/66-CX III dated 12.5.66 as amended by letter F.No. 11A/14/70-CX8 dated 7.6.71.

2. As per these instructions, the consignment wise ARE-3(Annexure-8) is generated at the refinery end and the re conciliation is carried out annually. At the end of the year, the quantities of 'line fill' and 'intermix' are determined and the account of dispatch through the pipeline and receipts at various installations is submitted. The gain and/or loss are determined after considering the quantities of 'line fill' and 'intermix'.

3. The system of consignment wise generation of ARE-3 is causing disputes in getting the warehousing certificates within the prescribed period of 90 days as it is not possible in the pipe line movement to identify the destination at the time of dispatch of petroleum products from refinery due to the pumping of the product continuously to multiple tap off points.

4. The Board in consultation with the oil companies prescribed the following procedure effective from 1.10.2002 :

(a) The refineries can generate one ARE-3 on quarterly basis for one product for one destination at the end of each quarter within fifteen days of the end of the quarter. In other words, if 'N' no. of the petroleum products are sent to 'N' no. of destinations, in each quarter there shall be N x N ARE-3 at the refinery end in each quarter. (It is felt that at the end of the quarter, the refinery

should be able to know the destination product-wise).

(b) The receiving Commissionerate at the tapping off points can issue the re-warehousing certificate ARE-3 wise as per the receipt at their end. These re-warehousing certificates should be acceptable to jurisdictional Central Excise Officer at refinery end in the first instance, though provisionally.

(c) At the end of the year, when annual pipeline accountal takes place in the oil companies, the reconciliation can be carried out by way of a statement to be submitted by oil companies having refineries showing the actual quantity dispatched, the quantity re-warehoused and the gain and loss in respect of each product and each destination.

(d) The annual account should be submitted by the oil companies within 60 days from the end of the financial year which should be certified by a firm of practicing Chartered Accountants. The necessary assessment order may be issued within 60 days of the receipt of the annual account.

(e) The requirement of D-3 intimation and consignment-wise AR-3A/Annexure-A/ARE-3 may be dispensed with.

(f) The limit of transit loss to be condoned shall be 0.25 percent as per the existing guidelines.

(g) Wherever the imported and indigenous products are involved, the annual reconciliation statement should give the details separately for the purpose of reconciliation.

(h) Wherever shortages occur, the assessment may ordinarily be carried out on the basis of highest value and highest rate of duty applicable for the particular product during the quarter/ period under consideration unless the assessee establishes that the shortages relate to a particular batch for which the value and rate of duty is not in dispute.

5. The above procedure shall be applicable to new as well as existing pipelines. It may be seen that for the purpose of filing ER-1, the quantity cleared

without payment of duty is required to be mentioned which should be available with the refineries in terms of total quantity dispatched without payment of duty.

6. The duty demand for the shortage assignable to a particular quarter can be raised at the end of the quarter. For all other shortages not assignable to a particular period, demands may be raised if necessary, at the end of the year when the annual reconciliation statement is available. Regarding the limit of condonation of losses, it may be emphasized that this is the maximum limit to which the losses can be condoned. If it is felt that there is improper accountal of the goods or the condonation which is claimed by the assessee is not supported by the documents, action to safeguard the interest of the revenue should be taken.

[It may be seen that some of these instructions may not hold good in view of withdrawal of warehousing provisions to specified petroleum products w.e.f 6.9.2004.]

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1. Inserted vide M.F & C.A (D.R.) Notification No. 24 /2003 – Central Excise (N.T.) Dt. 25th March, 2003
2. Inserted vide M.F & C.A (D.R.) Notification No. 48/2003 - Central Excise (N.T.) 17th May, 2003.
3. Substituted w.e.f. 1.4.2003 by M.F & C.A (D.R) Notification No.17/2003 C.E (N.T) dt. 13.3.2003.
4. Central Excise Rules, 2002.
5. Board's Circular No.689/5/2003-CX dt. 14.1.2003(From F.No. 267/ 67/2002-CX-8
6. Board's Circular No.663/54/2002-CX. dated 23.9.2003.

Chapter-5

CENVAT CREDIT

1. Introduction

1.1 CENVAT Credit Rules, 2004 (hereinafter referred to the 'CENVAT Credit Rules') have been notified vide Notification No.23/2004-CE (N.T.) dated 10th September, 2004 as separate set of rules.

1.2 A beginning has been made to introduce the concept of allowing credit of duty paid on inputs and capital goods and service tax paid on input services used for the manufacture of final products and providing out put services.

1.3 These rules have introduced simplified CENVAT provisions and procedures for allowing credit of duty paid on specified inputs, capital goods and input services used in or in relation to the manufacture of specified final products, whether directly or indirectly and whether contained in the final product or not (inputs) and used (capital goods) in the factory of the manufacture of the final product. Similarly, the credit of duty paid on specified inputs, capital goods and input services used for providing output services have been allowed. The credit of duty so allowed can be utilized for payment of duty leviable on the final product subject to the conditions laid down in the rules.

2. Definitions

2.1.1 Certain definitions have been incorporated in rule 2 of the Credit Rules itself. The definition of 'capital goods' is comprehensive. It includes components, spares and accessories as also other capital goods like moulds and dies, refractories and refractory materials, etc. It has been clarified that the components, spares and accessories may fall under any Chapter but they should be components, spares or accessories of capital goods. Storage tanks were added to the list of capital goods w.e.f 1.3.2001.

2.1.2 Credit of duty paid on motor vehicles has been allowed for the services like Tour operators where it is a part of the process of providing output services.

2.2.1 Input

Rule 2 (k) of Credit Rules defines "input" as under :

"input" means all goods, except [light diesel oil]*, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

* applicable w.e.f. 1.3.2003

Similarly, inputs for input services have been defined as all goods except light diesel oil, high speed diesel oil and motor spirit and motor vehicles used for providing any output services.

Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever. Further, inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer.

2.2.2 Input Service

Rule 2(l) defines 'input service' as any service

(i) used by a provider of taxable service for providing an output service; or

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

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

2.2.3 Capital goods

Rule 2 (a) of CENVAT Credit Rules defines capital goods as under :

"Capital Goods" means:-

(A) the following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

2.2.4 Exempted goods and Exempted Services

Rule 2 (d) of CENVAT Credit Rules defines 'exempted goods' as under :-

"exempted goods" means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty. Similarly, 'exempted services' have been defined as per rule 2(e) of CENVAT Credit rules as,

"exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.

2.2.5 Final Products

Rule 2 (h) of CENVAT Credit Rules defines final products as under :-

"final products means excisable goods manufactured or produced from input, or using input service.*

* Matches have been brought under CENVAT scheme w.e.f. 9.7.2004.

2.2.6. Input Service Distributor

As per rule 2(m), Input service distributor has been defined as,-

"Input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. .

2.3 Types of duty of which credit can be taken

Rule 3 of the CENVAT Credit Rules specifies the type of duties in respect of which credit can be taken. These duties are –

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi);

(viia) the additional duty leviable under section 3(5) of Customs Tariff Act, 1975{ Refer clause 72 of Finance Bill, 2005}

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; and

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004),

(xi) the additional duty of excise leviable under clause 85 of Finance Bill, 2005.

Further, the Explanation in rule 3(1) specifically clarifies that credit of additional duty paid under section 3 of the Customs Tariff Act, 1975 on goods falling under Customs Tariff heading No.98.01 (Project Imports) would be available.

This rule also provides for the manner of utilization of credit in different situations. Sub-rule (5) provides that when inputs or capital goods on which the CENVAT credit has been taken are removed as such from the factory or premises of provider of output service , an amount equal to the credit availed is to be paid. However, such amount on inputs and capital goods is not required to be paid when the inputs and capital goods are removed outside the premises of the provider of output service for providing output service and capital goods are received back in the premises within 180 days or within such period as extended by jurisdictional DC/AC.

2.4 Utilisation of credit

2.4.1 The CENVAT credit may be utilized for payment of :-

a) any duty of excise on any final products; or

b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or

e) service tax on any output service.

2.4.2 Restrictions on utilization of Credit

There are certain restrictions on utilization of Cenvat credit of different duties. The credit of AED (TTA), NCCD, Additional Duty of Excise on Tea , Education Cess and additional duty of excise levied under clause 85 of Finance Bill, 2005 can only be utilized only for the payment of such duties. Vide section 88 of Finance (No. 2) Act, 2004, it has been provided that the credit of AED (GSI) paid on or after 1.4.2000 shall be allowed to be utilized for the payment of any

other duty. However, prior to this, the duty credit of AED(GSI) if taken can be utilized only for the payment of AED(GSI) as per relevant provisions applicable at that time. Finance Bill, 2005 has made certain changes in clause 88 of Finance (No. 2) Act, 2004 to provide for recovery of AED(GSI) paid before 1st April, 2000 and wrongly availed for payment of Cenvat duty and interest thereon. The scheme also provides for payment of aforesaid amount in 36 equated monthly instalments. {for further details, clause 124 of Finance Bill, 2005 may be referred to.} It has however, been provided that the credit of the Education Cess on excisable goods and the Education Cess on taxable services can be utilized either for payment of the Education Cess on excisable goods or for the payment of the Education Cess on taxable services.

The credit of additional duty leviable under sub-section (5) of section 3 of Customs tariff Act, 1975 cannot be utilized for payment of service tax on any output service. Further, the credit of any other duty cannot be utilized for the payment of duty levied under clause 85 of Finance Bill, 2005. {refer Notification No. 13/2005-CE(NT) dated 1.3.2005}

There is no restriction on utilization of credit of duties other than mentioned above.

Conditions for allowing CENVAT CREDIT

2.5 Rule 4 of the CENVAT Credit Rules provides for different conditions for allowing CENVAT credit in different situations for inputs and capital goods. The conditions for allowing CENVAT credit are :

(1) The CENVAT credit in respect of inputs can be taken immediately on receipt of the inputs in the factory of the manufacturer/premises of provider of output service. The CENVAT credit can also be taken by the job worker referred to in rule 12AA of Central Excise Rules, 2002 for jewellery manufacturers.

(2) The CENVAT credit in respect of capital goods received in a factory or premises of provider of output service at any point of time in a given financial year can be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year. However, if the capital goods are cleared as such in the same financial year, then the CENVAT credit can be taken in full. Further, the credit of duty leviable under sub-section (5) of

section 3 of Customs Tariff Act, 1985 read with clause 72 of Finance Bill, 2005 is also allowed to be taken in full immediately on receipt of capital goods.

(3) The CENVAT credit in respect of the capital goods is allowed to a manufacturer or provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods is not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or output service provider claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(5) The CENVAT credit is allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications. The condition of return within 180 days as per clause (a) of sub-rule (5) is not applicable to such jigs and fixtures, moulds and dies when sent to a job worker for production of goods on behalf of principal manufacturer.

(6) The CENVAT credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Other Provisions of CENVAT Credit Rules

2.6 Rule 5 of the CENVAT Credit Rules is regarding refund of CENVAT Credit in specified situations(Annexure-15.) The refund is allowed only if the credit has been accumulated due to export of final products under Bond or due to providing output service which is exported and if such credit cannot be utilized for payment of duty on domestic clearances or on export clearances under claim of rebate or for payment of service tax. No refund of credit is allowed if the manufacturer avails of draw back allowed under Customs & Central Excise Duties Draw Back Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002 in respect of such duties.

2.7 Rule 6 of the CENVAT Credit Rules explains the obligations of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. These are briefly as under –

i) No credit can be taken on such quantity of inputs/ input services which is used for manufacture of exempted goods or for providing exempted services.

ii) Where inputs are used for exempted as well as dutiable final products/ taxable services, separate accounts for such inputs/ input services are required to be maintained.

iii) If the manufacturer/ does not want to maintain separate accounts, he shall pay an amount equal to 10% of the total price of the exempted final products except in the case of certain specified final products mentioned therein. Similarly, in this situation, the provider of output service shall utilize credit only to extent of an amount not exceeding twenty per cent. of the amount of service tax payable on taxable output service.

iv) No credit can be taken on capital goods which are exclusively used in the manufacture of exempted goods or in exempted services except where these are exempted under a notification based on the value or quantity of clearances in a financial year.

2.8 Rule 7 provides the manner of distribution of credit by input service distributor. The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the conditions that the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon and credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

2.9 Rule 8 of the CENVAT Credit Rules is regarding storage of inputs outside the factory of the manufacturer. The Assistant Commissioner or Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer of final products in exceptional circumstances having regard to the nature of the goods and shortage of space at the premises of such manufacturer may permit to store inputs in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify.

In case, such inputs are not used in the manner prescribed in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit available in respect of such inputs.

2.10 Documents

2.10.1 Rule 9 of the CENVAT Credit Rules specifies the documents on which CENVAT credit can be taken. The documents are –

i) Invoice issued by a manufacturer from his factory or depot or from the premises of the consignment agents or any other premises from where such goods are sold,

ii) Invoice issued by an importer or by an importer from his depot or from the premises of the consignment agents or any other premises from where such goods are sold,

iii) Invoice issued by a first stage dealer or a second stage dealer,

iv) A supplementary invoice issued by a manufacturer or importer (This includes challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act.)

v) Bill of Entry,

vi) Certificate issued by an Appraiser of Customs in respect of goods imported through Foreign Post Office,

vii) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii) and (iv) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994,

viii) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004,

ix) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994,

The credit is allowed in cases where the invoice is issued from premises other than the factory, only if such depots, premises of consignment agents or any other premises are registered in terms of Central Excise Rules, 2002.

2.10.2 It also provides for maintenance of accounts by first and second stage dealer. The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that the

inputs or capital goods were supplied from the stock on which duty was paid by the manufacturer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

2.10.3 The manufacturer of final products or provider of output service is required to maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been procured is recorded and the burden of proof regarding admissibility of CENVAT credit shall lie upon manufacturer/ provider of output service taking such credit.

2.10.4 Similarly, the manufacturer of final products or the provider of output service is required to maintain separately proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

For the sake of removal of doubts, it is clarified that separate records should be maintained for availment of credit on inputs and input services.

2.11 Information relating to Principal inputs

2.11.1 Rule 9A has been inserted w.e.f. 25.11.2004 requiring a manufacturer to furnish declaration in respect of each of the excisable goods manufactured by him about principal inputs and quantity of principal inputs required for use in the manufacture of unit quantity of such final product. The term 'Principal Input' has been defined as any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of the raw materials.

2.11.2 The manufacturer is also required to file a monthly return regarding the receipt and consumption of each principal input with reference to the quantity of final products manufactured.

2.11.3 Manufacturers engaged in the manufacture of goods other than falling under Ch- 22, 28, 29,30, 32, 33, 34, 38, 39, 40, 48, 72, 73, 74, 76, 84, 85, 87 and Headings No. 54.02, 54.03, 55.01, 55.02, 55.03 and 55.04 and who have paid duty less than Rs 100 lakhs from account current

during previous year have been exempted form filing of declaration and monthly return under this rule.

2.11.4 The formats of the declaration and the monthly return under this rule have been notified separately. (Annexure-13, 14.)

2.12.1 Returns

2.12.1 The manufacturer of final products is required to submit a monthly return in specified proforma within 10 days from the close of each month to the Superintendent of Central Excise. In respect of manufacturers availing exemption under a notification based on value or quantity of clearances in a Financial year, he shall file a quarterly return in the form specified by notification by the Board within 20 days after the close of the quarter to which the return relates.

2.12.2 A first stage or a second stage dealer shall submit within 15 days from the close of each quarter of a year to the Superintendent of Central Excise a return in the form specified. (Annexure-12.)

2.12.3 Board vide Notification No.73/2003-C.E (N.T.) dated 15th September, 2003 has specified the form for the quarterly return for the registered dealer for the purpose of this rule. Board vide Notification No.25/2004- CE (NT) dated 27th September, 2004 has specified the form ER-1, (Annexure-9) ER-3(Annexure-11) in which monthly/quarterly return for production and removal of goods and other relevant particulars and CENVAT credit under rule 12 of Central Excise Rules, 2002 and rule 9 (7) of CENVAT Credit Rules, 2004 is required to be furnished. (Annexure-10)

2.12.4 The provider of output service availing CENVAT credit shall submit a half-yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

2.12.5 The input service distributor shall submit a half yearly Statement, giving the details of credit received and distributed during the said half year to the Superintendent of Central Excise, by the end of the month following the half year.

2.13 Transfer of credit

Under rule 10 of the Credit Rules, it has been provided that the manufacturers or provider of output service shall be allowed to transfer CENVAT credit lying unutilized in their accounts to such transferred, sold, merged, leased or amalgamated factory/ business on account

of shifting his factory/ business to another site or factory/ business transferred due to change in ownership on sale, merger, amalgamation, lease or transfer of a factory/ business to joint venture with specific provision for transfer of liabilities of such factory. This shall be allowed only if stock of inputs as such or in process or capital goods is also transferred to new site and the same is duly accounted for to the satisfaction of the Commissioner.

[Transfer of credit by Exempted Textile Manufacturer

2.14 Rule 8A of erstwhile CENVAT Credit Rules, 2002 provides for transfer of the credit of duty paid on the inputs, , falling under Chapter No. 51, 52,54,55, 58 or 60 of the First Schedule of the Central Excise Act, 1985 used in the manufacture of the fabrics to the buyers of the said fabrics]*.

* Rule 8A has been omitted w.e.f. 9.7.2004

2.15 Transitional Provisions are specified in rule 11 of the CENVAT Credit Rules. Any amount of credit earned by manufacturer/ provider of output service under CENVAT Credit Rules, 2002 and remaining unutilized on 10th September, 2004 is allowed as CENVAT credit under these rules and allowed to be utilized. However, certain restrictions are imposed in this rule.

2.16 Transitional provisions for textile and textile articles were provided in rule 9A of erstwhile Cenvat Credit Rules, 2002 which has now been omitted.

2.17. Special dispensation

2.16.1 Goods manufactured in factories located in specified areas in the notified areas of North-East, J&K, Sikkim and Kutch (Gujrat) are exempted from excise duty by Notification Nos. 32/99-CE & 33/99-CE both dated 8.7.1999 as amended, 56/2002-CE & 57/2002-CE both dated 14.11.2002 as amended, 56/2003-Central Excise dated 25th June, 2003 , 71/2003-Central Excise the dated 9th September, 2003 and 39/2001-CE dated 31.7.2001 as amended.

Any inputs and capital goods produced by these factories are not required to pay any excise duty from account current. However, a special provision has been made in rule 12 that

the amount of excise duty payable on any inputs or capital goods produced in such factories, but for the exemption, would be available as CENVAT credit.

2.17.2 On the issue of diversion of credit taken on inputs for exempted products under the North-East notifications for payment of Central Excise duty on other products, it has been provided that the CENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notification numbers 32/99-CE and 33/99-CE, both dated the 8.7.199, 39/2001-Central Excise, dated the 31st July, 2001, 56/2002-Central Excise, dated the 14th November, 2002, 57/2002-Central Excise, dated 14th November, 2002, 56/2003-Central Excise, dated the 25th June, 2003 and 71/2003-Central Excise, dated the 9th September, 2003, shall be utilized only for payment of duty on final products cleared after availing of the exemption under the said notifications.

2.18 Power of Central Government to notify goods for availment of deemed credit are contained in rule 13 of the CENVAT Credit Rules. Accordingly, certain inputs were notified on which the duties of Excise or additional duties paid shall be deemed to have been paid at the prescribed rate and allow credit of such amount subject to certain conditions. (Notification Nos. 52/2001-CE(NT), 53/2001-CE(NT), 54/2001-CE(NT), 55/2001-CE(NT) all dated 29.6.2001). These provisions cease to exist w.e.f 1.4.2003.

2.19 Recoveries of credit wrongly taken or utilized or erroneously refunded are governed by rule 14 of the CENVAT Credit Rules. Where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from manufacturer and the provision of Section 11-A and 11-AB of the Central Excise Act, 1944 shall apply mutatis mutandis for effecting recoveries.

2.20 Provisions for confiscation and penalty, for contravention of the CENVAT Credit Rules are contained in rule 15. Where CENVAT Credit has been taken wrongly in respect of inputs or capital goods, all such goods shall be liable to confiscation and such person shall be liable to a penalty not exceeding the duty in the excisable goods in respect of which any contravention has been committed or ten thousand rupees, whichever is greater. In case CENVAT Credit has been taken or utilised wrongly on account of fraud etc., the person availing credit shall also be liable

to pay penalty in terms of the provision of Section 11AC of the Central Excise Act. Similar penal provisions have been provided for wrong availment of Cenvat credit on input services.

2.21 Supplementary provisions are specified in rule 16 of the Credit Rules, 2002, which is reproduced below :

"Rule 16. Supplementary provision.- Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

3. Important clarifications

3.1 Once the SSI exemption limit is crossed and the manufacturer starts paying duty, he is eligible to take CENVAT credit in respect of inputs lying in stock, on the inputs contained in finished goods lying in stock and on the inputs in process. For this purpose, it is obligatory on the assessee to quantify the amount of admissible credit based on documentary evidence and records maintained for this purpose.

3.2 The CENVAT credit can be utilised for payment of duty on waste and scrap as waste and scrap are 'final products' within the definition given in the Credit Rules.

3.3 The CENVAT credit is admissible on raw material used for making packing material CENVAT Credit is permissible on the 'raw material' so used. This is for the reason that the packing material being an input, the raw material used for making packing material is also to be construed as inputs used in or in relation to the manufacture of finished products.

3.4 There is no bar for a manufacturer to remove the inputs or capital goods as such for export under bond.

3.5 CENVAT credit may be taken immediately on receipt of inputs in the factory. This, however, does not mean, nor it is even intended that if the manufacturer does not take credit as soon as the inputs are received in the factory, he would be denied the benefit thereof.

3.6 Air-conditioners and refrigerating equipment and computers are eligible to CENVAT credit as capital goods. The only condition is that the manufacturers should use them in the manufacture of final product. For example, an air-conditioner used in the office premises or a computer used in the office premises of the factory shall not be eligible to CENVAT credit.

3.7 CENVAT credit is also admissible in respect of the amount of inputs contained in any of the waste, refuse or bye product. Similarly, CENVAT is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly.

3.8 If the inputs or capital goods are cleared to a job worker, they should be received back within 180 days. If these are not received, the manufacturer or provider of output service is required to debit the CENVAT credit attributable to such inputs or capital goods. However, the manufacturer or provider of output service shall be entitled to take CENVAT credit as and when the goods sent to the job worker are received back. If part of the goods is received back within 180 days and the rest of the goods are received back after 180 days, the obligation for debiting the credit shall arise only in respect of CENVAT credit attributable to that part which is not received within 180 days.

3.9 Provision has been made for permitting the CENVAT credit when the inputs or capital goods are purchased from the first stage dealer or from the second stage dealer. These dealers should be registered under rule 9 of the Central Excise Rules, 2002. The other procedural requirements in respect of first stage dealer and second stage dealer will continue as in the case of Modvat rules.

3.10 The documents on which CENVAT credit can be taken have been prescribed to enable verification, where needed, by the department. The admissibility of the amount of CENVAT

credit should be discernible from the records of the manufacturer/ provider of output service, including the payment made to the sellers of inputs and capital goods and providers of input services. The basic responsibility is upon manufacturer/ provider of output service to prove that inputs or capital goods were purchased and were used by him for the intended purpose.

3.11 Notification No. 70/2003-CE (NT) dated 15.9.2003 vide which inter alia, clause (b) of sub-rule (2) of rule 4 of CENVAT Credit Rules, 2002 was amended to substitute the words 'refractories and refractory materials, moulds and dies' in place of ' refractories and refractory materials'. This means that credit is allowed in respect of the balance 50% of the duty on Moulds and Dies in a subsequent financial year even if the conditions of these goods being in the possession and use of the manufacturer of final products in such subsequent years is not fulfilled. In other words, the balance 50% credit may be taken by the manufacturer of final products for Moulds and Dies in a subsequent financial year when these goods have been used for the manufacture of final products but no longer available in such subsequent financial year.

Application to exempted goods/ exempted services

3.12 No credit can be taken on inputs/ input services which are used exclusively in or in relation to the manufacture of exempted final products/ exempted services. The basic principle underlying the CENVAT scheme is that credit is admissible if duty is paid on final products/ output service. Attention is drawn to sub-rule (1) of rule 6 of the CENVAT Credit Rules, which clearly provides that CENVAT credit shall not be allowed on such quantity of inputs or input services which is used in the manufacture of exempted goods/ exempted services, except in circumstances specified in sub-rule (2). The provisions of sub-rule (2) and sub-rule (3) of rule 6 provide as to how to deal with and account for the inputs and credit of duty in cases where the inputs are used in manufacture of both dutiable as well as exempted products/ services.

In other words, in terms of Rule 6, the assessee who has not maintained separate inventory and has taken credit on common inputs/ input services to manufacture dutiable and exempted products [except in the cases mentioned in the provisions contained in sub-Rule (3)(a)] has no option but to reverse 10 % of the price of the exempted goods as per provisions of sub-rule (3)(b) of the said rule. The recovery of such amount is covered by Explanation II provided in the rule itself.

Molasses

3.13 The utilisation of accumulated Modvat/Cenvat Credit on molasses for payment of duty on sugar may vary depending on the situation. Molasses is generated as a by-product in the sugar manufacturing units and attracts specific rate of duty. The molasses generated can be captively consumed for further manufacture of ethyl alcohol either in the same unit or in a distinct distillery unit. However, ethyl alcohol which is manufactured using the molasses may be dutiable or exempted or non-excisable. All such possible situations are discussed as follows.

(a) A composite unit may manufacture sugar, molasses and Ethyl Alcohol dutiable, exempted and non-excisable. In case, Ethyl Alcohol non-excisable or exempted is manufactured, the duty becomes payable on molasses and no credit of duty paid on "in-house" manufactured molasses shall be available. In case, the ethyl alcohol is cleared on payment of duty, no duty is required to be paid on molasses and hence, no question of availing credit arises.

(b) A composite unit may manufacture sugar, molasses and ethyl alcohol and also procure duty paid molasses from outside. In such an event, the credit of duty paid on molasses used as input in the manufacture of dutiable ethyl alcohol shall be available which can be utilised for the payment of duty on any finished product manufactured in the same factory. In case, exempted/non-excisable ethyl alcohol is produced, no credit of duty paid on molasses procured from outside shall be available.

(c) Where sugar unit and distillery unit are two distinct entities, molasses is produced in sugar unit and cleared on payment of duty. No question of availing credit of duty paid on molasses arises in such case. However, if molasses so produced is used as input in distillery unit which is altogether a separate entity, credit of duty paid on such molasses can be utilised by the later entity.

3.14 Cenvat Credit is admissible only when the inputs or Capital goods are used by the manufacturer within the factory premises [except when inputs or capital goods are used/sent for job work outside factory]. This position remains unchanged in the present Cenvat Credit Rules, 2004.

3.15 The admissibility of Modvat/Cenvat Credit on the inputs/capital goods written off including partial write off is as follows:-

i) In cases, where unused inputs are fully written off, Board's instructions dated 22.2.95 shall apply i.e. the credit availed must be paid back.

ii) In cases where the value of the inputs is partially written off / reduced in the accounts of the company, but the inputs are still capable of and available for use in the manufacture of finished goods, there would be no question of payment of CENVAT credit availed.

iii) In respect of capital goods viz. components, spare parts etc. which are written off before use and hence are not proposed to be used, the CENVAT credit availed will have to be paid back on the same lines as applicable to "inputs" as mentioned in (i) above.

3.16. Modvat/Cenvat credit of duty paid on the inputs contained in finished products on which duty remission has been granted shall not be admissible and reversal thereof should be ensured before granting remission of duty. Further, before granting remission of duty on any finished products destroyed or damaged in fire, accident etc., it should also be ensured that the insurance amount claimed by the assessee does not include the duty element for which remission is being claimed.

3.17. Cenvat credit is also available on the capital goods used in manufacturing of intermediate goods exempt from payment of duty so long as these intermediate goods are consumed within the factory of production and are further used in the manufacturing of the final products which are cleared form payment of duty. e.g. capital goods used in the preparatory stages of Cotton in a textile mill which are exempt from duty but are produced in the course of manufacturing of finished products chargeable to duty.

3.18. In case the manufacturer wishes to clear the goods directly from the premises of the job worker, as per rule 4(6), the Commissioner having jurisdiction over the factory of manufacturer of final products can allow such clearance subject to conditions including the manner of

payment of duty, imposed by him in this regard. Such permission shall be valid for a financial year. It may however, be noted that the duty in such case is required to be paid by the principal manufacturer only and the job worker shall have no option to pay duty.

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Chapter-6

RECORDS AND RETURNS

Part-I
Records

1. Introduction

1.1 Records are to be necessarily maintained in the course of any business activity. These records are also used to determine the tax liability of the assessee. Earlier, for this purpose the Government had prescribed the records to be maintained, popularly referred to as 'Statutory records'. The statutory records under Central Excise Rules, 1944 were dispensed with in the year 2000 and it was decided to rely on private records of the assessee. This was done as a measure of simplification. While framing the Central Excise Rules, 2002 (hereinafter referred to as the said Rules), CENVAT Credit Rules, 2004 and other Rules issued under Central Excise Act, 1944, the Government has continued with the policy of relying on the private records of the assessee.

2. Private records

2.1 The main features of the acceptance of private records are as below: -

(i) The fact that the rules do not prescribe 'statutory records' shall not be construed that no record has to be maintained. Every assessee shall maintain private records.

(ii) the rules which require certain records to be maintained, are self contained and they specify the minimum information that an assessee MUST enter in his own record;

(iii) There is no format for record–keeping, except in the case of Rule 17 of the said Rules where it is provided that the 100% EOU shall maintain in proper form appropriate account relating to production, description of goods, quantity removed, duty paid and each removal shall be made on an invoice. This Format has been notified by Notification No. 59/2001-Central Excise (N.T.) Dated 6th August, 2001 and is given at **Annexure-16**

(iv) This means that the assessee is free to devise his record-keeping, depending upon his accounting requirements but shall ensure that the requirements of particular rules are met;

(v) There is a specific requirement about maintenance of "Daily Stock Account' in rule 10 of the said Rules. It provides that every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or

manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid. The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent. All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

(vi) There is no requirement of 'authentication' of records by jurisdictional Central Excise Officer before a book/register is brought into use by an assessee. These records (relevant for Central Excise) shall, however, be authenticated on the first and last page by the assessee in the same manner as the Daily Stock Account. They shall also be preserved for a period of five years immediately after the financial year to which such records pertain.

(vii) Every assessee/ dealer is statutorily required to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods and receipt, procurement or payment of input services. The assessee shall also on demand, provide all financial records including trial balance or its equivalent.

(viii) Every assessee/dealer shall, on demand make available to the Range officer duly empowered by Commissioner or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,-

(a) the records maintained or prepared by him in terms of sub-rule (2) of rule 22 of the said Rules;

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

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

(d) for the scrutiny of the officer or audit party, as the case may be.

(ix) Every assessee who is having more than one factory and maintains separate records in respect of every factory for the purpose of audit, then, he shall produce the said records for audit purposes.

2.2 Records shall mean all the records prepared or maintained by the assessee for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods. All accounts, agreements, invoice, price-list, return, statement or any other source document ,whether in writing or in any other form shall be treated as records. Source documents are those documents which form the basis of accounting of transactions and include sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit note.

2.3 Every assessee should be asked to furnish the list of all records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of goods including inputs and capital goods and receipt, procurement or payment of input services, if they have not done it so far. If there is any modification in the list, the same may be communicated to the Department as and when such modification takes place.

2.4 Non-maintenance of daily stock account as contemplated under rules or other information mentioned in other rules mentioned above by the assessee in his private records will mean contravention of specified rules attracting appropriate penal action. If such non-maintenance of records is with intent to evade payment of Central Excise duty, the more stringent penal provisions of the Central Excise Act and Central Excise Rules shall be attracted. Trade and industry are advised to ensure that the requisite information as required under amended rules is scrupulously maintained in their identified private records to avoid any penal action.

2.5 The private records relevant for Central Excise including the Daily Stock Account maintained in compliance with the provisions of the said Rules shall necessarily be kept in the factory to which they pertain.

2.6 The manufacturer shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods including the relevant information regarding value , duty paid etc. from the persons whom the input and capital goods procured is recorded and the burden of proof regarding the admissibility of the Cenvat Credit shall lie upon the manufacturer taking such credit. (Rule 9 of CENVAT Rules, 2004). Similarly, the records are required to be maintained for receipt, payment or procurement of input services.

Part-II

RETURN

1. Introduction

1.1 The Central Excise Rules, 2002 (hereinafter referred to as the said Rules) provide that the assessee shall be required to file certain periodic returns, which relate to his tax liability and other transaction, such as relating to CENVAT credit .

2. Monthly/Quarterly Return

2.1 Rule 12 of the said Rules provides that every assessee shall submit to the Superintendent of Central Excise a monthly return in proper form, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. However, where an assessee is availing of the exemption under a notification based on the value of clearances in a financial year, he shall file a quarterly return in proper form, of production and removal of goods and other relevant particulars, within twenty days after the close of the quarter to which the return relates. The prescribed monthly return is E.R.-1Return and quarterly return is E.R.-3 Return.

2.2 The E.R.-1 and E.R.-3 returns are consolidated returns which give details of goods manufactured, cleared, duty paid thereon as well as details of the CENVAT credit availed on input and capital goods and input services and so utilized.

2.3 The new ER returns are effective from 27.9.2004. This simplified single page return has been made less rigorous by substantially reducing the number of details required to be furnished in the returns. Further in the new returns, details of information about the excisable goods manufactured by an assessee is required to be furnished based on six digit sub-heading (To be changed to 8-digit, once 8-digit code is in operation) on Central Excise Tariff Act, 1985 and not on the description of the goods. This shall facilitate online filing of returns and use of automation for collection, compilation and analysis of trade statistics. (Circular No. 747/63/2003-CE dated 22.09.2003) (Annexure-25)

2.4 A First Stage Dealer or Second Stage Dealer shall submit to the Superintendent of Central Excise a quarterly return within 15 days from the close of each quarter in the format prescribed vide Notification No. 73/2003-CE(N.T.) dated 15.09.2003 (Annexure Dealers return).

2.5 As duties payable on individual consignments need not be paid at the time of removal from the factory or approved place of storage, and sum total of this duty liability can be discharged on monthly basis, duties payable and

the manner in which the actual duty payments are effected by the assessee, the interest payment - if any, where duties paid beyond permitted dates etc. have been specified in the E.R.-1 and E.R.3 Return.

2.6 The assessees would continue to submit along with the E.R.-1/ E.R.-3 Return for the month, copies of the account current and relevant TR6 challans etc. The account current Extracts will give details of all the credits made through TR6 challans during the month and upto the 5th of the following month – upto which the duty liability can be discharged for the month. A summary could also be put at the end of the account current Extracts indicating the following:

(a) Opening balance, after discharging the duty liability for the previous month;

(b) The credits made during the month; and upto the 5th of the following month;

(c) Total duty discharged through account current during the month; and

(d) Closing balance in the account current after discharging duty liability for the month.

2.7 The instructions given at the end of E.R.-1/ E.R.-3 return further elaborate the manner in which it should be compiled and the information to be furnished to the Department.

2.8 Return to be filed by Hundred percent Export Oriented Units is the E.R.-2 Return, notified by Notification No. 26/2004-Central Excise (N.T.) dated 27.9.2004.

2.9 As per sub-rule (2) of rule 12, the manufacturers paying duty more than rupees one hundred lakhs from account current in a financial year are required to furnish an Annual Financial Information Statement, every year by 30th day of November. The format of the statement has been prescribed vide notification No.36/2004-CE(NT) dated 1.11.2004. (Annexure- 17)

Part-III

Electronic maintenance of records and preparation of Returns and documents

1. Procedure

1.1 Any person may electronically maintain or generate all or any of the records, returns, invoices and other documents prescribed under the rules made under Central Excise Act, 1944, using a computer, in electronically readable format. No specific permission from the Central Excise Department is required for this purpose. Such person is also not required to give any intimation to the Department.

1.2 The Range Office, however, will record in "Scrutiny Register" or any other record indicating a person's profile, the fact that such person is electronically maintaining records or generating returns, invoices or other documents, using computer.

1.3 The records can be kept on any electronic media, such as hard disk of computers, floppies, CDs or tapes and preserved.

1.4 The records, returns and documents should be in electronically readable format. This also means that a person who uses computerized system to generate records/books of accounts, returns etc., must keep the electronic record, even when a hard copy is kept.

1.5 The printouts (hard copies) of records and documents must be taken out at the end of each month and kept in bound folders, separately for each type of record, return, documents etc.

1.6 The person should ensure that proper back-up records are also maintained and preserved so that in the event of destruction due to unavoidable accidents or natural causes, the information can be restored within reasonable period of time. All such records, returns, invoices and other documents (both electronic and hard copy, including back-ups) shall be preserved for a period of five years (counted from the first day of the financial year following the financial year to which a record, return, invoice or document pertain).

1.7 It shall be incumbent upon a person (who maintains electronic records, returns, documents etc.) to produce, on demand, the relevant records, returns or documents, in hard copy and/or in the form of tapes or floppies or cartridges or compact disk or any other media in an electronically readable format (duly authenticated by the assessee), documentation including policy and procedure manuals, instructions to record the flow and treatment of transactions through accounting system, from the stage of initiation to closure and storage to the Central Excise Officers, or the Audit

parties deputed by the Commissioner or the Comptroller and Auditor General of India. Such records, returns, invoices or other documents will be produced pertaining to such period (subject to the period of preservation) as may be requested including the daily entries in electronic format relating to the current month for which the printouts are not taken out.

1.8 He shall also provide account of the audit trail and inter-linkages including the source document, whether paper or electronic, and the financial accounts record layout, data dictionary and explanation for codes used and total number of records in each field along with sample copies of documents. Whenever changes are made in the aforesaid systems adopted by the assessee, he shall inform the Central Excise Officers and submit the relevant document.

1.9 In case any person is found to be misusing this facility or not providing access to the information or if there are any other cogent reasons, the Assistant Commissioner or the Deputy Commissioner of Central Excise may, after recording such reasons and after taking into consideration the explanation tendered by the person, regarding the discrepancies, if any, prohibit a person from electronically maintaining or generating any records, returns, invoices or other documents using computer and inform the immediate superior officer.

Chapter 7

EXPORT WITHOUT PAYMENT OF DUTY

Part-I
General

1. Introduction

1.1 The conditions and procedure relating to export without payment of following type of duties are contained in Notification Nos. 42/2001-Central Excise (N.T.) to 45/2001-Central Excise (N.T.), all dated 26th June, 2001 issued under rule 19 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules).

The duties of excise collected under the following enactments, namely:-

(a) the Central Excise Act, 1944 (1 of 1944);
(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004);
(e) any special excise duty collected under a Finance Act.
(f) The additional duties of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
(g) the Education Cess on excisable goods as levied and collected under Clause 91 read with Clause 93 of the Finance(No.2) Act, 2004. (23 of 2004)

Board vide Circular No.807/4/2005-CX dated 10th February, 2005 has clarified that Additional Duty of Excise or Special Additional Duty of Excise leviable under different sections of Finance Acts are not required to be paid for the goods exported under Bond.

1.2 Some important changes have been introduced under the present procedure, which are mentioned below and explained in detail subsequently: -

(i) The concept of furnishing of a 'Letter of Undertaking' by a manufacturer-exporter has been introduced. The clearances for export by a manufacturer-exporter will be effected similar to clearances for home consumption after he furnishes the Letter of Undertaking.

(ii) The merchant-exporters are required to file 'bond' in specified format. A manufacturer-exporter may also file bond and follow the 'bond-procedure' specified in the notification.

(iii) Under bond procedure, the concept of 'self-debit' by the exporter has been introduced. The exporter need not go to the 'bond-accepting authority for a 'debit-certificate' before each removal.

(iv) The procedure of 'acceptance of proof of export' has been simplified. The concept of ' Self-credit" based on the copy of A.R.E.1 duly certified by Customs authorities at the place of export has been introduced.

(v) In each Commissionerate of Central Excise, a 'Deputy/Assistant Commissioner of Central Excise (Exports)' has been designated to function similar to the Maritime Commissioners.

(vi) Number of copies of 'application for Removal (A.R.E.1)' has been reduced compared to AR-4. This will be further reduced after completion of computer networking in the Department enabling 'on-line verification' of exports.

(vii) In addition, a 'maritime Commissioner" has been appointed in each Commissionerate under whose jurisdiction one or more of the Port, Airport, Land Customs Station or post office of exportation is located.

2. Categories of exports

2.1 There are two categories of export without payment of duty -

(i) Export of finished goods without payment of duty under bond or undertaking.

(ii) Export of manufactured/processed goods after procuring raw material without payment of duty under bond.

Part-II

Export to all countries except Nepal and Bhutan

1. Introduction

1.1 Procedures and conditions for export to all countries except Nepal and Bhutan are specified in notification No. 42/2001-CE (N.T.) dated 26.6.2001. The details are mentioned hereinafter:

2. Conditions

2.1 An exporter shall furnish bond in Form B-1 and obtain certificate in Form CT-1. A manufacturer-exporter may furnish annual Letter of Undertaking. No CT-1 is required in this case. The export shall be subject to following conditions: –

(i) The goods shall be exported within six months from the date on which these were cleared for export from the factory of the production or manufacture or warehouse or other approved premises within such

extended period as the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner may in any particular case allow;

(ii) When the export is from a place other than registered factory or warehouse, the excisable goods are in original packed condition and identifiable as to their origin;

3. Forms to be used

3.1 ARE.1 is the export document for export clearance (Annexure-18), which shall be prepared in quintuplicate (5 copies). This is similar to the erstwhile AR.4. This document shall bear running serial number beginning from the first day of the financial year. On A.R.E.1, certain declarations are required to be given by the exporter. These should be signed by the exporter or his authorised agent. The different copies of ARE.1 forms should be of different colours indicated below:

Original	White
Duplicate	Buff
Triplicate	Pink
Quadruplicate	Green
Quintuplicate	Blue

3.2 It will be sufficient if the copies of ARE.1 contain a color band on the top or right hand corner in accordance with above color scheme.

3.3 An invoice shall also be prepared in terms of rule 11 of the said Rules. It should be prominently mentioned on top "FOR EXPORT WITHOUT PAYMENT OF DUTY"

3.4 The Letter of Undertaking is to be furnished in the Form UT-1 specified in Annexure-15 to Notification No. 42/2001-Central Excise (N.T.), (Annexure-19) supra. Any manufacturer, who is an assessee under Central Excise Rules, 2002, shall furnish a Letter of Undertaking only to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over his factory from which he intends to export. The Letter of Undertaking should not be furnished to the Maritime Commissioner or any other officer authorized by the Board. A 'Letter of Undertaking' shall be valid for twelve calendar months provided the exporter complies with the conditions of the Letter of Undertaking, especially the procedure for 'acceptance of proof of export' under this instruction. In case of persistent defaults or non-compliance causing threat to revenue, the manufacturer-exporter may be asked to furnish bond with security/surety. For the sake of clarification, it is mentioned that this Letter of Undertaking should not be taken for each consignment of export.

3.5 The obligation of the manufacturer flows from statutory requirement of exporting the goods within six months or such extended period as the Deputy/Assistant Commissioner of Central Excise may allow. Failing this, the exporter is required to deposit the requisite sum (duty and interest) *suo motu,* considering that the manufacturer has to do 'self-assessment'. Any non-payment within 15 days of expiry of the stipulated time period, shall be treated as arrears of revenue and the Department will proceed to recover the same as 'sum due to Government'. *Suo motu* payment within 15 days of expiry of the stipulated time period will not be treated as 'default'.

3.6 On repeated failure of the manufacturer-exporter to comply with the conditions of the Letter of Undertaking or the procedure for 'acceptance of proof of export' under this instruction, the Deputy/Assistant Commissioner of Central Excise may direct him in writing that the letter of undertaking is not valid and he should furnish B-1 Bond with sufficient security/surety.

3.7 The Letter of Undertaking shall not be discharged unless the goods are duly exported, to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer, or until the full duty due upon any deficiency of goods, not accounted so, and interest, if any, has been paid.

3.8 Though any exporter (Manufacturer-exporter or merchant-exporter) can furnish bond, the merchant-exporters are necessarily required to furnish bond in the B-1 Form specified in notification no. 42/2001-Central Excise (N.T.) (Annexure-20), supra with such security or surety as may be specified by the concerned bond accepting authority. Specified categories/merchant exporters namely status holders (Super Star Trading House, Star Trading House, Trading House, Export House) and exporters registered with recognized Export Promotion Councils would be exempted from furnishing security and/or surety with the bond executed by them for export of goods without payment of duty unless they have come to the adverse notice of the Department. The bond shall be in a sum equal at least to the duty chargeable on the goods for the due arrival of export goods at the place of export and their export there from under Customs or as the case may be postal supervision. The officer, who will accept the bond, will also be responsible for discharging that bond upon furnishing proof of export by the exporter.

3.9 The bond shall not be discharged unless the goods are duly exported, to the satisfaction of the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner or such other officer as may be authorized by the Board on this behalf within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer, or until the full duty due upon any deficiency of goods, not accounted so, and interest, if any, has been paid

"Maritime Commissioner" would mean the Commissioner of Central Excise under whose jurisdiction one or more of the Port, Airport, Land Customs Station or post office of exportation is located.

3.10 Certificate 'CT-1", as specified in Annexure-21 have to be obtained by merchant-exporters for procuring goods from a factory or warehouse. Such certificates need not be obtained for each consignment but will be given in lot of 25. Manufacturer exporter need not obtain such certificate for the purpose of export.

4. Bond Accepting Authority

4.1 Bond may be accepted by any of the following officers: -

(i) The Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse or any other premises approved by the Commissioner for storing non-duty paid goods;

(ii) Maritime Commissioners under whose jurisdiction one or more of the port, airport, land customs stations or post office of exportation is located.

(iii) The Deputy/Assistant Commissioner of Central Excise (Export) as officers authorized by the Board for this purpose.

4.2 Exporters are required to clearly indicate on the ARE.1 the complete postal address of the authority before whom the bond is executed and to whom the documents are to be submitted/ transmitted for admission of proof of export.

5. Security or surety with bond

5.1 Wherever bond is taken, sufficient security or surety is also required as per the notifications issued under rule 19 of the said Rules. In 1996, Board had taken a decision that in respect of exporters having good track record may be allowed to furnish bond with nil security or surety. The Board in Circular No.284/118/96 dated 31.12.1996 issued an instruction. Now, since the manufacturer-exporters, who are also assessee of the Central Excise Department, have an option to furnish 'Letter of Undertaking" (without any security or surety), the question of furnishing of 'security or surety' is mainly related to merchant-exporters who are not assessees of the Central Excise Department. In this scenario, the Board has decided that security (Bank Guarantee or Cash Guarantee or Cash Security) or surety need not be insisted upon from Super Star Trading Houses, Star Trading Houses, Trading Houses, Export Houses and merchant exporters registered with recognized Export Promotion Councils provided that -

(i) The exporter has not come to adverse notice of the Central Excise or Customs Department in last three years from the date under consideration;

(ii) All the formalities required under Central Excise Act and rules made there under are regularly complied with by the exporter, especially regarding timely submission of proof of export and deposit of duty with interest in time where proof of export is not received within stipulated time frame;

(iii) A self-attested copy of the proof of Status (Super Star Trading Houses, Star Trading Houses, Trading Houses and Export Houses) and merchant exporters registered with Export Promotion Councils from concerned authority (Ministry of Commerce and Industry – Directorate General of Foreign Trade) is submitted.

5.2 Other exporters shall be required to furnish surety equal to full bond amount or security equal to twenty five percent. (25%) of the bond amount, along with the bond.

5.3 The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished.

5.4 Where export is effected by merchant-exporter, the bond has to be necessarily furnished. It is open for the manufacturer to furnish bond on behalf of the merchant-exporter. It is clarified that in such cases, the manufacturer will not take a stand that since he is responsible for the duty liability, the export should be allowed on the basis of the 'Letter of Undertaking', which he has already furnished to the Department. In such circumstances, the application in Form ARE.1 will be in the name of the manufacturer who executes the Bond. All other procedures for admission of the proof of export would be the same as in the case of manufacturer-exporters.

5.5 It should be noted that once a manufacturer furnish bond for exports by merchant exporters, it would be his responsibility to account for the export goods.

5.6 It may be noticed that only General bond (B-1) has been specified. Even where bond is required for only one consignment, the Form will remain the same. The exporter may get the bond redeemed immediately after he completes the exports and obtains the proof of export.

5.7 In case of B-1 general bond a running bond account in proforma of Annexure- shall be maintained by the exporter because he is responsible for debit in the bond before preparation of 'certificate' for obtaining goods for export. He shall also take self-credit in the manner specified in this instruction.

5.8 For the sake of clarity it is informed that the concept of 'Block Transfer' has lost its relevance in the context of self-debit and self-credit of bond and the new system of acceptance of proof of export [to be explained in subsequent paragraphs] by the exporter.

5.9 It is further mentioned that where the merchant exporter executes bond, it shall be necessary that both the merchant-exporter and the manufacturer sign the ARE.1.

6. Procedure for clearance from the factory or warehouse

6.1 A Manufacturer-exporter who has furnished a Letter of Undertaking will prepare the export documents (A.R.E.1 and invoice under rule 11) for clearance from his factory of production.

6.2 A Merchant-exporter who has furnished a bond shall be provided sufficient number of certificates (CT-1), duly signed/certified, in multiples of 25 copies, normally covering a period of one to three months, depending upon the track record of compliance by the exporter. The 'bond accepting authority' shall be responsible for verifying and accepting the proof of export and in case of any defaults by the exporter, to recover the sum and enforcing the bond. The certificate should be provided according to the volume of exports projected by the exporter (which should also reflect in the amount of bond). The compliance of the exporter in submitting the requisite documents towards 'proof of export' shall be another criterion.

6.2.1 The second part of CT-1 is very important. The exporter shall determine the description of goods for procurement from a particular factory or warehouse or an approved place of storage, quantum, value of procurement (provisional figures) and duty involved therein (provisional figures – but based on correct rate of duty and contracted transaction value). This 'duty' element will be debited provisionally. The exporter shall ensure that at the time of debit, sufficient credit is available at that point of time to cover the said debit. The provisional debit shall be converted into final debit within a period of seven days form the date of removal of goods on A.R.E.1, based on the 'duty payable' in goods cleared for export reflected in the said A.R.E.1 and invoice.

6.2.2 The manufacturer shall record the clearance in his Daily Stock Account indicating, inter alia, the invoice number/date, A.R.E.1 number/date and duty payable but foregone under rule 19.

6.3 The exporter has two optional procedures regarding the manner in which he may clear the export consignments from the factory or warehouse or any other approved premises, namely: -

(i) Examination and sealing of goods at the place of despatch by a Central Excise Officer; or

(ii) Under self-sealing and self-certification

7. Sealing of goods and examination at place of despatch

7.1 The exporter is required to prepare five copies of application in the Form ARE-1. The Form is specified in Annexure-I to notification No. 42/2001-Central Excise (N.T.) dated 26.6.2001. The goods shall be assessed to duty in the same manner as the goods for home consumption; though duty is not required to be paid considering clearance is meant for export without payment of duty. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or the said Rules. The value shall be the "transaction value" and should conform to section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than,

equal to or more than the F.O.B. value indicated by the exporter on the Shipping Bill.

7.2 The duty payable shall be determined on the ARE.1 and invoice and recorded in the Daily Stock Account as "duty foregone on account of export under rule 19".

7.3 The exporter may request the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture, warehouse or approved premises for examination and sealing at the place of despatch 24 hours in advance, or such shorter period as may be mutually agreed upon, about the intended time of removal so that arrangements can be made for necessary examination and sealing. Further Board vide Circular No. 6/2002-Cus dt.23.1.2002 has prescribed that in the case of Export goods which are examined by the Central Excise/Customs officers and stuffed under their supervision at a factory or in an approved warehouse, the consignment shall be accompanied by an examination report in the format annexed to the said circular dt.23.1.2002. Whenever Central Excise officers examine and seal the export goods at a factory or a warehouse the duly completed examination report must accompany the export goods to the port/airport of export. (Circular No.630/21/2002-Cx.dt.27.3.2002).

7.4 In case of exports under Duty Exemption Entitlement Certificate Scheme (DEEC), Duty Exemption Pass Book Scheme (DEPB) and claim for Drawback, the Superintendent of Central Excise shall also examine and seal the consignment and sign the documents in token of having done so. In exceptional cases, where the exporter has unblemished track record of compliance (Central Excise) and where there is non-availability of Superintendent of Central Excise due to leave, vacant post or other reasonable causes, the jurisdictional Deputy/Assistant Commissioner of Central Excise may permit examination and sealing by Inspector. All other types of export may be examined and sealed by the Inspector of Central Excise.

7.5 The Superintendent or Inspector of Central Excise, as the case may be, will verify the identity of goods mentioned in the application and also verify whether the duty self-assessed is appropriate and that the particulars of the duty payable have been recorded in the Daily Stock Account. If he finds that the declaration in ARE.1 and the invoices are correct from the point of view of identity of goods and its assessment to duty, he shall seal each package or the container ensuring that the goods cannot be tampered with after the examination. Normally, individual packages should be sealed by using wire and lead seals and an all-sides-closed container by using numbered One time Lock/Bottle seals or in such other manner as may be specified by the Commissioner of Central Excise by a special or general written order. Thereafter, the said officer shall endorse and sign each copy of the application in token of having such examination done and put his stamp with his name and designation below his signature. The duly completed Examination Report must accompany the export goods to the port/airport of Export.

8. Distribution of ARE.1 in the case of export from the factory or warehouse

Original(First Copy)	The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature
Duplicate (Second Copy)	The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature.
Triplicate (Third Copy)	Sent to the bond sanctioning authority, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records.
Quadruplicate (Fourth Copy)	Retain for official records
Quintuplicate (Fifth Copy)	Optional copy - The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature.

9. Distribution of ARE.1 in the case of export from other than factory or warehouse

9.1 Where goods are not exported directly from the factory of manufacture or warehouse, the distribution of A.R.E.1 will be same as above except that the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse verification triplicate copy in the manner specified above.

10. Despatch of goods by self-sealing and self-certification

10.1 The facility of self-sealing and self-certification is extended to all categories of manufacturers-exporters subject to compliance with the existing instructions. The Exporter shall however, endorse the certificate on ARE-1/ARE-2. Export goods, which are self- sealed by the manufacturer Exporter himself shall be subjected to examination norms at the part of export as prescribed by customs from time to time. It may, however, be noted that the procedure for examination and sealing of the goods at the place of the dispatch by central excise officers is purely optional and the option shall remain only with the manufacturer-exporters. (Circular No. 736/52/2003-CX. Dated 11.8.2003).

For this purpose the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit-Exporter or a person (who should be permanent employee of the said manufacturer-exporter holding reasonably high position) duly authorised by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application (A.R.E. 1) that the description and value of the goods covered by this invoice/ARE-I/ARE-2 have checked by me and the goods have

been packed and sealed with lead seal/one time lock seal having number _____ under my supervision.

The exporter shall distribute the copies of A.R.E. 1 in the following manner:

Original (First copy) and Duplicate (Second copy)	Send to the place of export along with the goods
Triplicate (Third copy) and Quadruplicate (Fourth copy)	Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods
Quintuplicate (Fifth copy)	Optional copy - Send to the place of export along with the goods

10.2 The said Superintendent and Inspector of Central Excise shall verify the particulars of assessment, the correctness of the amount of duty paid or duty payable, its entry in the Daily Stock Account maintained under rule 10 of the Central Excise Rules, 2002 (the manufacturer or warehouse owner will be required to present proof in this regard), corresponding invoice issued under rule 11. If he is satisfied with the particulars, he will endorse the relevant A.R.E. 1 and append their signatures at specified places in token of having done the verification. In case of any discrepancy, he will take up the matter with the assessee for rectification and also inform the jurisdictional Assistant/Deputy Commissioner. Once verification is complete and the A.R.E. 1 is in order, he shall distribute the documents (A.R.E. 1) in the following manner:

Triplicate (Third copy)	Send to the bond accepting authority, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records. Where manufacturer has given LUT, triplicate shall be retained and will be forwarded to the Deputy/Assistant Commissioner of the Division along with Statement, after matching them with original copies of A.R.E.1s.
Quadruplicate (Fourth copy)	Retain for Range records (The notification does not specify distribution of this copy)

11. Export by parcel post

11.1 In case of export by parcel post after the goods intended for export have been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package or packages to which it refers, to the postmaster at the Office of booking.

12. Examination of goods at the place of export

12.1 The place of export may be a port, airport, Inland Container Depot, Customs Freight Station or Land Customs Station.

12.2 The exporter shall present together with original, duplicate and quintuplicate (optional) copies of the application (A.R.E. 1) to the Commissioner of Customs or other duly appointed officer – normally goods are presented in the designated export shed.

12.3 The goods are examined by the Customs for the purposes of Central Excise to establish the identity and quantity, i.e. the goods brought in the Customs area for export on an A.R.E. 1 are the same, which were cleared from the factory. The Customs authorities also examine the goods for Customs purposes such as verifying for certain export incentives such as drawback, DEEC, DEPB or for determining exportability of the goods.

12.4 For Central Excise purposes, the Officer of Customs at the place of export shall examine the consignments with the particulars as cited in the application (A.R.E. 1) and if he finds that the same are correct and the goods are exportable in accordance with the laws for the time being in force (for example, they are not prohibited or restricted from being exported), shall allow export thereof. Thereafter, he will certify on the copies of the A.R.E. 1 that the goods have been duly exported citing the shipping bill number and date and other particulars of export and distribute in the following manner:

(i) The officer of customs shall return the original and quintuplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom exporter wants to claim rebate.

(ii) Quintuplicate A.R.E. 1 is the Export Promotion Copy and the exporter shall use this copy for the purposes of claiming any other export incentive.

13. Procedure relating to proof of export and re-credit against such proof

13.1 The procedure relating to acceptance of proof of export or the 'validation' of actual export has been simplified. The original and duplicate copies of A.R.E. 1 are presented to the Customs authorities at the place of export [with option for exporter to also present quintuplicate copy]. The Customs authority certifies the actual export on these documents and distributes the copies as specified.

13.2 The exporter shall submit a Statement, at least once in a month, in Form specified in Annexure-19 along with the Original copies of A.R.E. 1 with due certification of export (Pass for Shipment Order) by Customs authorities at the place of export to the Divisional office (through Range)or in the office of the bond-accepting authority. Other supporting documents shall also be furnished, namely, Self-attested photocopy of Bill of Lading and Self-attested photocopy of Shipping Bill (Export Promotion Copy). The Range office or the Office of the bond-accepting authority on receipt shall immediately acknowledge the Statement.

13.3 The exporter is permitted to take credit in his running bond account on the basis of copy of the Statement referred to above, duly acknowledged by the Range office or the office of the bond-accepting authority

13.4 It shall be the responsibility of the Range Office and Division Office or the other bond-accepting authority to verify the correctness of Statement and A.R.E.1 furnished by the exporter within the shortest possible time. The Statement and A.R.E.1 will be tallied by the Range Officers with the triplicate copies of A.R.E.1 already with them and the A.R.E.1 or its summary received directly from the place of export (hard copies or electronic summary or e-mail) within 15 days of the receipt. The Divisional Officer shall accept the proof of export or initiate necessary action in case of any discrepancy.

13.5 In case of other bond-accepting authority, their office will do this work. The bond-accepting authority shall accept the proof of export or initiate necessary action in case of any discrepancy. He will also intimate about the acceptance of proof of export or any other action to the Deputy/Assistant Commissioner of Central Excise from whose jurisdiction goods were cleared for export.

13.6 In case of non-export within six months from the date of clearance for export (or such extended period, if any, as may be permitted by the Deputy/Assistant Commissioner of Central Excise or the bond-accepting authority) or any discrepancy, the exporter shall himself deposit the excise duties along with interest on his own immediately on completion of the statutory time period or within ten days of the Memorandum given to him by the Range/Division office or the Office of the bond-accepting authority. Otherwise necessary action can be initiated to recover the excise duties along with interest and fine/penalty. Failing this, the amount shall be recovered from the manufacturer-exporter along with interest in terms of the Letter of Undertaking furnished by the manufacturer. In case where the exporter has furnished bond, the said bond shall be enforced and proceedings to recover duty and interest shall be initiated against the exporter.

13.7 In case of any loss of document, the Divisional Officer or the bond accepting authority may get the matter verified from the Customs authorities at the place of export or may call for collateral evidences such as remittance certificate, Mate's receipt etc. to satisfy himself that the goods have actually been exported.

14. Functioning of Deputy/Assistant Commissioner of Central Excise (Export)

14.1 Under the normal export procedure, the merchant-exporters including those manufacturer-exporters (Project-exporters who have to export bought out goods) have to procure the excisable goods for export under bond manufactured in different parts of the country. For this purpose, they have to furnish either several bonds with the Deputy/Assistant Commissioner of Central Excise of the supplier's area and submit proof of exports for discharge of such bonds or furnish a bond with the Maritime Commissioner who are located at various ports of exportation. Considering that there have been tremendous export potentials from the inland areas located at considerable distance from a sea port and that there have been considerable growth of exports from Inland Container Depots and the Air Cargo

Units located in such inland areas, the Board had appointed an officer in each Commissionerate except those Commissionerates in which the Maritime Commissioner is posted as Deputy/Assistant Commissioner of Central Excise (Export) for the purpose of facilitating export under bond by Circular No. 500/66/99-CX dated 15th December, 1999, under authority of rule 19 of the said Rules read with notification No.42/2001-Central Excise (N.T) dated 26.6.2001 Commissioner having jurisdiction over Maritime Commissioner may also designate the Maritime Commissioner as Deputy /Assistant Commissioner of Central Excise(Export)}

14.2 Any merchant exporter/manufacturer-cum-merchant exporter can file the required bond with the Deputy/Assistant Commissioner of Central Excise (Export) under whose jurisdiction his Head Office/factory is located (within the jurisdiction of the Commissionerate). In such case the exporter can procure the goods from a factory located anywhere in India.

14.3 For clarification, it is mentioned that the Deputy/Assistant Commissioner of Central Excise (Export) will not deal with the exports where the manufacturer-exporters are permitted to export by furnishing an Annual Undertaking (UT-1) in lieu of bond.

Part-III

SIMPLIFIED EXPORT PROCEDURE FOR EXEMPTED UNITS

1. Introduction

1.1 Units, which are fully exempted from payment of duty by a notification granting exemption based on value of clearances for home consumption, may be exempted from filing ARE.1 and Bond till they remain within the full exemption limit. The following simplified export procedure shall be followed in this regard by such units: -

2. Filing of declaration

2.1 Manufacturers exempted from payment of duty will not be required to take Central Excise Registration. They shall however, file a declaration in terms of Para 2 of Notification No. 36/2001-CE (NT) dated 26.6.2001, and obtain declarant code number [notwithstanding that they are exempted from declaration, but for this procedure].

3. Documentation

3.1 The clearance document will be as follows:

(i) Such manufacturers are permitted to use invoices or other similar documents bearing printed Serial Numbers beginning from 1st day of a financial year for the purpose of clearances for home consumption as well

as for exports. (The printing of Serial Numbers can be done by use of franking machine). The invoices meant for use during a month shall be pre-authenticated by the owner or partner or Director/Managing Director of a Company or other authorised person.

(ii) The declarant's Code Number should be mentioned on all clearance document.

(iii) Such clearance document should contain particulars of the description of goods, name and address of the buyer, destination, value, [progressive total of total value of excisable goods cleared for home consumption since beginning of the financial year], vehicle number, date and time of the removal of the goods.

(iv) The clearance document will be signed by the manufacturer or his authorised agent at the time of clearance.

(v) In case of export through merchant exporters, the manufacturer will also mention on the top "EXPORT THROUGH MERCHANT EXPORTERS" and will indicate the Export-Import Code No. of such merchant exporters.

(vi) In case of direct export by the manufacturer-exporters, he will indicate on the top "FOR EXPORT" and his own Export - Import Code No.

3.2 Records

3.2.1 Such units shall maintain a simple record of quantity and value of production and clearance. Entries in production record should either be allowed to be made at the close of the day or before the commencement of the production on the following day. Entries need not be made on days when there is no production or clearance of goods.

3.3 Statement

3.3.1 Such units shall file a prescribed quarterly statement to the Jurisdictional Range Superintendent containing various particulars. (Annexure- 22)

4. Proof of Export

4.1 Following documents shall be accepted as proof of export :

4.1.1 In the case of direct export by the Manufacture- exporter

(i) Duly attested photocopy of shipping bill (Export Promotion Copy) bearing the particulars and date of clearance document under which the goods are cleared from the factory of production, having endorsement on its reverse by the Customs of the particulars of mate's receipt no. (wherever applicable), name of the ship/ flight no., of the aircraft, vehicle no. - by which the goods were exported out, date of export, and EGM Number/ Airway Bill Number (wherever applicable);

(ii) Customs attested copy of Bill of lading; and

(iii) Foreign Exchange Remittance Certificates.

4.1.2 In the case of export through Merchant-exporter the document prescribed by Sales Tax Department will be accepted as the proof of export. Sales made by manufacturer of the goods' to the merchant exporter which ultimately are exported are exempt from Central Sales Tax. The Sales Tax Department issues booklet to the merchant exporters containing serially numbered H-Forms/ST-XXII form or equivalent Sales Tax form. After the goods have been exported by the merchant exporters, the latter issues these forms to the manufacturers of the goods. The merchant exporters in turn have to account all these serially numbered forms to the Sales Tax Department by furnishing a proof that the goods have been exported out. These proofs are in the form of presentation of the Shipping Bill duly completed by the customs, bill of lading, foreign exchange remittance certificates etc. The liability of the manufacturers to the Central Sales Tax gets discharged only when they submit these forms to the Sales Tax Department. It is, therefore, seen that indirectly exports get accounted for through the issue of H-form or ST-XXII Form. Thus, photocopy of H-form or ST-XXII Form or any other equivalent Sales Tax form duly attested and stamped by the manufacturer or his authorised agent will be accepted for purpose of proof of export. It is clarified that this facility is available only in respect of the exempted units which undertake exports themselves or through merchant exporters directly from the unit itself This facility is not available for the supplies made to any other domestic manufacturer who may or may not export his finished products. (Circular No. 648/39/2002-CX. dated 25.7.2002).

4.2 Submission of proof of export and processing thereof

4.2.1 The proof of export should be submitted to the Range Officer within a period of 6 months from the date of clearance of goods from the factory of production.

4.2.2 If Range Superintendent finds that the clearances for home consumption, and the clearances for export where proof of exports have not been furnished within 6 months, when taken together, are likely to exceed the exemption limit (which is presently Rs. 100 lakhs for home consumption), he should issue show cause notices for safeguarding revenue. These show cause notices, however, should be kept pending for another three months by which time proof of exports are expected to be received.

4.2.3 The Range Superintendent will maintain manufacturer wise record on the basis of the quarterly return and the proof of exports submitted by the manufacturer from time to time in order to ascertain that the clearances for exports and the proofs of exports are duly accounted for and in case of failure on the part of exporter to submit proof of export, necessary action can be initiated promptly on the lines already mentioned in the above para.

4.2 4 In case clearances of such manufacturers for home consumption plus clearance for export where proof of export were not furnished within 6 months,

exceed the exemption limit, they should take Central Excise Registration and follow the regular A.R.E.1 procedure.

4.2.5 This procedure will also be applicable to exporter of ready-made garments who are primarily exporting their clearances.

Part-IV

EXPORT TO NEPAL AND BHUTAN WITHOUT PAYMENT OF DUTY

1. Introduction

1.1 The conditions and procedure for export to Nepal and Bhutan without payment of duty (under Bond) have been specified in Notification No. 45/2001-Central Excise (N.T.) dated 26.6.2001(hereinafter referred to as the 'said notification'). The term 'Exporter' has been used in this notification in general sense and hence, this notification is applicable to both Manufacturer-exporters and Merchant-exporters.

2. Places from where goods can be exported

2.1 Under the said notification, export can be made from any of the following places: -

(i) the factory of production or manufacture,

(ii) warehouse, or

(iii) any other premises as may be approved by the Commissioner of Central Excise.

3. Forms to be used

3.1 The exporter is required to file a general bond in the Form specified in the said notification (Annexure-20) with such security or surety as may be specified by the concerned bond accepting authority. The bond shall be in a sum equal at least to the duty chargeable on the goods for the due arrival of export goods at the place of export (Land Customs Station) and their export there from under Customs supervision. The officer who will accept the bond, will also be responsible for discharging that bond upon furnishing proof of export by the exporter.

3.2 The bond shall not be discharged unless the goods are duly exported, to the satisfaction of the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner or such other officer as may be authorised by the Board in this behalf within the time allowed for such export or are otherwise accounted for to the satisfaction of such officer, or until the full duty due upon any deficiency of goods, not accounted so, and interest, if any, has been paid

3.3 Invoice in the Form specified in the said notification (Annexure-23) shall be used for export clearances. Six copies of invoice shall be prepared. This document shall bear running serial number beginning from the first day of the financial year. On the invoice, certain declarations are required to be given by the exporter. They should be signed by the exporter or his authorised agent.

3.4 Certificate shall be required in the Form specified in the said notification (Annexure-24) from the Reserve Bank of India or any other bank authorised to deal in foreign exchange by the Reserve Bank of India, for the receipt of full payment in freely convertible currency. Certificate will also be required where remittance is received in Indian Rupee.

4. Categories of exports and the conditions and safeguards thereto

4.1 Export under bond to Nepal or Bhutan where payment is in freely convertible currency

4.1.1 Export under bond to Nepal or Bhutan where payment is in freely convertible currency, shall be subject to following conditions, namely: -

(i) The importer in Nepal or Bhutan, as the case may be, shall open an irrevocable letter of credit in favour of the exporter in India, before the export takes place. However, this is not necessary in the following cases of export:

(a) All excisable goods other than consumer goods and
(b) Motor vehicles,

if they are exported without payment of duty as –

(i) supplies to projects financed by any United Nations agency, the International Bank for Reconstruction and Development, International Development Association, the Asian Development Bank or any other multilateral agency of like nature; and

(ii) to all diplomatic missions in Nepal or Bhutan provided the Indian Embassy or the Ministry of External Affairs certifies that the import is for the personnel of the diplomatic community;

(ii) The exporter shall furnish a bond in Form specified in Annexure- of the above-mentioned notification before the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory, warehouse, or the approved premises or such other officer as authorised by the Board on this behalf, from where the goods are removed for export to Nepal, as the case may be, or Bhutan;

(iii) After the exports are effected the exporter shall furnish a certificate of remittances from the Reserve Bank of India or an authorised bank in India, showing that full payment for the goods has been duly received in freely convertible currency, as defined in the said notification. On receipt of such a certificate and on the satisfaction that the goods have been exported in terms of the bond, the bond accepting authority shall discharge the exporter of his liabilities under the bond.

4.2 Export to Nepal in bond against payment in Indian rupee

4.2.1 As an exception to the above category of export, capital goods, as defined in the said notification may be exported under bond directly from the factory

of manufacture to Nepal against any global tender invited by His Majesty's Government of Nepal without payment of duty, for which payment is received in Indian currency. Such exports shall be subject to the following further conditions, namely: -

(i) the exporter shall furnish a bond in specified Form before the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or such other officer as authorised by the Board on this behalf; and

(ii) the exporter shall furnish a certificate of remittances in specified Form from a bank in India showing that full payment for the goods has been duly received in Indian currency by the said bank;

4.2.2 On receipt of the certificate of remittances and on the satisfaction that the goods have been exported in terms of bond, the bond accepting authority shall discharge the exporter of his liabilities under the bond.

4.3 Export in bond of petroleum oil, liquified petroleum gas and lubricant products to Nepal

4.3.1 The export in bond without payment of duty of excise of petroleum oil, liquified petroleum gas and lubricant products to Nepal is permitted through the agency of Nepal Oil Corporation from calibrated stocks of M/s Indian Oil Corporation registered as a warehouse in accordance with the provisions of rule 20 of the said Rules, and situated at places notified for the purpose or purchased without payment of duty from tanks of other Oil Companies or Undertakings. For this facility, the Indian Oil Corporation shall be required to furnish a bond in the specified Form to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the installation from which the petroleum oil and lubricant products are to be exported. It may be noted that warehousing provisions to petroleum products has been withdrawn w.e.f 6th September, 2004. However, it may be seen that the facility of export warehousing under notification No. 46/2001-CE(NT) dated 26th June, 2001 has been extended to all exporters for petroleum products. The warehouses for the purpose of export of petroleum products falling under Chapter-27 of the First Schedule to the Central Excise Tariff Act, 1985 has also been allowed to be established and registered at any place within the territory of India. {Circular 798/31/2004-CX dated 8th September, 2004.}

4.4 Export in bond for supplies to Government of India Aided Projects in Nepal and the Embassy Cooperative Store and Embassy Petrol Pump located in Nepal for the bonafide use of officers and staff of the Embassy in Nepal

4.4.1 Export in bond for supplies to Government of India Aided Projects in Nepal and the Embassy Cooperative Store and Embassy Petrol Pump located in Nepal for the *bonafide* use of officers and staff of the Embassy in Nepal shall be subject to the following conditions, namely: -

(i) the exporter shall furnish a bond in specified Form to the Deputy/Assistant Commissioner of Central Excise; and

(ii) the First Secretary (Economic), Embassy of India, Nepal, certifies the signature and stamp or seal of the person authorised to place the order for supply of excisable goods to the specified Government of India Aided Projects in Nepal;

4.5 Export without payment of duty to Kurichu Hydro Electric Project and Tala Hydro Electric Project in Bhutan

4.5.1 Export of all excisable goods without payment of duty to Kurichu Hydro Electric Project and Tala Hydro Electric Project in Bhutan shall be subject to the following conditions, namely: -

(i) The exporter shall furnish a bond in Form in specified Form before the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse from which the goods have to be cleared;

(ii) The goods are supplied against one or more specified contract which have been registered with the Directorate General of Inspection, Customs and Central Excise in the following manner:

(a) Every Project Authority specified in the notification (notification no. 45/2001-CE(N.T.), supra, desirous of obtaining supplies under benefits of this notification shall apply in writing to the Director General, Directorate General of Inspection (Customs and Central Excise) [hereinafter referred to as DGICCE], 5th Floor, Drum Shape Building, I.P. Estate, New Delhi for registration of the contract through Ministry of External Affairs as soon as the contract has been concluded with the suppliers;

(b) The application shall be accompanied by the original deed of contract and list of items duly approved by the Ministry of External Affairs;

(c) The Project Authority shall also furnish such other documents or other particulars as may be required by the DGICCE in connection with the project.

(d) DGICCE, on being satisfied, shall register the contract by entering the particulars in a Register maintained separately for each project and shall assign a number in token of registration and communicate the same to the Project Authority and shall also return to the project authority all original documents which are no longer required. This number shall be indicated on all the invoices and other related documents.

(e) A copy of the contract so registered along with the approved list of items shall be forwarded to the Commissioner of Central Excise having jurisdiction over the factory/warehouse to which the contract pertains for extending benefits under this notification and consequent benefits under the Central Excise CENVAT Credit Rules, 2002 to the supplier.

4.5.2 Amendment of Contract

(a) If any contract referred to hereinabove is amended, whether before or after registration, the Project Authority shall make an application for registration of amendments to the said contract to the DGICCE.

(b) The application shall be accompanied by the original deed of contract relating to the amendment and a list of items pertaining to amendment, if any, duly approved by the Ministry of External Affairs.

(c) On being satisfied that the application is in order the DGICCE shall make note of the amendments in the relevant entries.

(d) The DGICCE shall forward copy of the amended contract and the amended list of items, if any, to the concerned Commissioner of Central Excise.

4.5.3 Finalisation of Contract

(a) Each Project Authority shall submit a statement of supplies received on quarterly basis along with relevant invoices and other documents to the DGICCE within one month from the last date of the quarter.

(b) The Commissioner of Central Excise to whom a registered contract has been forwarded shall forward a statement, after all the items covered under the contract have been exported, to the DGICCE.

(c) The DGICCE shall, on receipt of the statement, reconcile both and, if satisfied, finalise the contract and close the entry in the register.

4.5.4 There should be a release order from the officer authorised by the General Manager of the concerned project authority covering he goods;

4.5.5 The exporter shall furnish a bond in the specified Form to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory or warehouse or the approved premises or from where the goods are removed for export to the specified project.

5. Export Procedure

5.1 Procedure at the place of despatch

5.1.1 Six copies of invoice shall be presented to the Superintendent or Inspector of Central Excise having jurisdiction over the factory, warehouse or any other approved premises along with the export goods;

5.1.2 In case of export for supplies to Government of India Aided Projects in Nepal and the Embassy Cooperative Store and Embassy Petrol Pump located in Nepal for the *bonafide* use of officers and staff of the Embassy in Nepal, the order from Project Implementation Authority shall also be presented;

5.1.3 the Superintendent or Inspector of Central Excise having jurisdiction over the factory, warehouse or any other approved premises shall verify the identity of goods with reference to description mentioned in the invoice and the particulars of the duty payable but for export, and if found in order, he shall seal the consignment, tank or container with Central Excise seal or in such other the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the export invoice in token of having such verification and examination done by him;

5.1.4 The said Superintendent or Inspector will allow export and distribute invoices in the following manner:

Original (First copy)	Hand over to the exporter
Duplicate, triplicate and quadruplicate (second, third and fourth copies)	Hand over to the exporter or his agent in a sealed cover for delivery to the Customs officer in-charge of the Land Customs Station through which the goods are intended to be exported.
Quintuplicate copy (Fifth copy)	Forwarded to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise who has accepted the bond
Sixtuplicate (Sixth copy)	Retain for official record

5.1.5 The exporter or his agent shall then be free to remove the goods for export to Nepal through the Land Customs Station indicated on the respective invoices.

5.1.6 For the sake of removing doubts, it is clarified that procedure of self sealing of export goods is not applicable to export of foods to Nepal and Bhutan. (Circular No. 741/57/2003-CX dated 2.9.2003).

5.1.7 Where the goods are exported by land, the export shall take place through any of the following land customs stations, namely, Sukhiapokhri, Panitanki, Jogbani, Jayanagar, Bairgania, Bhimnagar, Bitamore (Sursand), Raxaul, Sonauli, Barhni, Nepalganj Road, Shohratgar (Khunwa), Jarwa, Katarniaghat, Gauriphanta, Banbasa, Jhulaghat, Dharchula, Naxalbari, Galgalia, Kunauli, Sonabarsa, Tikonia, or such other check-post as may be specified by the Board;

6. Procedure at the Land Customs Station

6.1 The exporter or his agent shall present the goods to the officer of customs in-charge of the land customs station along with the original copy of the invoice and the sealed cover containing duplicate, triplicate and quadruplicate copies and obtain acknowledgement;

6.2 Where the contents of all the copies of invoices tally and the packages, goods or container are satisfactorily identified with their seals in tact, the officer of customs in-charge of the land customs station shall make necessary entries in the register maintained at the land customs station and allow the goods to cross into the territory of Nepal or Bhutan and certify accordingly on each of the four copies of the invoice and indicate the running serial number in red ink prominently visible and encircled. In case the seals are not found intact, the officer of customs in charge of the land customs station may re-seal the containers with his own seal after satisfying himself as to the identity of the containers and the goods from the particulars shown on the invoice by opening and examining the goods, if necessary;

6.3 Distribution of invoices by Customs Officer:

Original (First copy)	Hand over to the exporter or his agent along with the goods for presentation to the Customs Officer of Nepal or Bhutan.
Duplicate and triplicate (Second and third copy)	Send to the Nepalese or Bhutanese Customs Officer in-charge of the check post through which the goods are to be imported into Nepal or Bhutan, as the case may be

6.4 Presentation of goods to Nepalese or Bhutanese Customs Officers: the goods are then to be produced before the Nepalese or Bhutanese Customs Officer, as the case may be, at the corresponding border check-post alongwith the original copies of the invoice. The Nepalese or Bhutanese Customs Officer shall deal with the original and triplicate copies of the invoice as directed by His Majesty's Government of Nepal or His Majesty's Government of Bhutan and return the duplicate copy, after endorsing his certificate of receipt of goods in Nepal or Bhutan, as the case may be, directly to the officer of customs-in-charge of the land customs station in India;

6.5 Further distribution of invoices: The officer of customs in-charge of the land customs station shall forward the duplicate copy to the Central Excise Officer in charge of the factory or warehouse from which the goods were removed for export without payment of duty. For this purpose, the said officer in charge of the land customs station should keep a note of the return of duplicate copies from the Customs Officer of Nepal or Bhutan and remind the exporter for such copies as have not been received, failing which the exporter may be liable to pay full duty on such consignments;

6.6 The officer of custom, at the land customs station shall also maintain a separate record of all such in-bond exports of the goods without payment of duty

and shall assign running serial number on the invoice at the time of export as indicated earlier;

7. Procedure for discharge of bond or the duty liability

7.1 Essential ingredients for discharge of bond have already been mentioned under each category of exports.

7.2 The general procedure would be - the exporter shall submit the quadruplicate copy duly endorsed by the officer of customs in-charge of land customs station to the Central Excise officer who has accepted the bond along with bank certificate, evidencing receipt of payment in freely convertible currency (in Indian Rupee in particular category), within six months from the date of removal of the goods. It may be noticed that earlier, the above mentioned period has been extended from 'three' months to 'six' months, as compared to erstwhile notification.

7.3 The Central Excise officer will tally the particulars with quintuplicate copy of the invoice received from the Central Excise officer who has allowed clearance from the factory or warehouse or any other approved premises and make suitable entries in Bond Account of the exporter, giving provisional credit or discharging the bond provisionally.

7.4 On receipt of the duplicate copy of invoice, duly endorsed by customs officer of Nepal or Bhutan from the customs officer in charge of land customs station, certifying export of the goods and after tallying the particulars with those in quadruplicate copy of the invoice make suitable entries in Bond Account and the obligation under the said bond will then be discharged.

7.5 In case of failure to export within six months from the date of removal from the factory or warehouse or any other approved premises, or shortages noticed, the exporter shall discharge the duty liability on the goods not so exported or shortage noticed along with twenty four per cent. interest thereon from the date of removal for export without payment of duty till the date of payment of duty in terms of the bond.

Part-V

Miscellaneous Export Provisions

1. Cancellation of Export documents

1.1 If the excisable goods cleared under A.R.E.1 are not exported for any reason and the exporter intends to divert the goods for home consumption, he may request in writing the authority who accepted the bond or letter of undertaking to

allow cancellation of application, and diversion of goods for consumption in India. He will be permitted to do so if he pays the duty as specified in the application along with interest at the rate of twenty four percent per annum on such duty from the date of removal for export from the factory or warehouse till the date of payment of duty. The permission shall be granted within 3 working days. Since duty assessment on A.R.E 1 has to be done in normal course, there will not be any need for re-assessment by the Department or the assessee unless there are reasons to believe that the assessment was not correct. After the duty is discharged, the exporter may take credit in his running bond (where bond is furnished) on the basis of letter of permission, invoice and TR-6 Challans on which duty is paid. He shall record these facts in the Daily Stock Account

1.2 If the exporter, after clearing the goods for export without payment of duty, intends to change the destination or buyer or port/place of export, he may do so provided he informs the bond/LUT accepting authority in writing about the changes and makes necessary changes in all the copies of A.R.E.1 and the invoices. If he intends to cancel the original export documents and issue fresh ones, the same may be done under permission and authentication by bond/LUT accepting authority who will ensure that the serial no. and date of the initial documents are endorsed on the fresh documents. In such cases, if bond was furnished for single consignment, fresh bond may not be asked.

2. Re-entry of the goods, cleared for export under bond but not actually exported, in the factory of manufacture.

2.1 The excisable goods cleared for export under bond or undertaking but not actually exported for any genuine reasons may be returned to the same factory provided –

(i) such goods are returned to the factory within six months along with original documents (invoice and A.R.E.1);

(ii) the assessee shall give intimation of the re-entry of each consignment in Form D-3 within twenty-four hours of such re-entry;

(iii) such goods are to be stored for separately at least for 48 hours from the time intimation is furnished to Range Office or shorter period if verification is done by the Superintendent of Central Excise in the manner mentioned subsequently ; and

(iv) the assessee shall record details of such goods in the daily stock account and the goods taken in to the stock in the factory;

2.2 The Superintendent of Central Excise will verify himself or though Inspector in charge of the factory, about the identity of such goods with reference to invoice, A.R.E.1 and the daily stock account in respect of 5% of intimations, within another 24 hours of receipt of intimation.

3. Re-import of exported goods for repairs etc. and subsequent re-export

3.1 It has been provided in the Notification 42/2001-Central Excise (N.T.), supra, that the exported excisable goods which are re-imported for carrying out repairs, re-conditioning, refining, re-making or subject to any similar process may be returned to the factory of manufacture for carrying out the said processes and subsequent re-export. It may be noted that 're-import and re-export' shall be governed by the provisions of the Customs Act, 1962.

3.2 So far Central Excise is concerned, the manufacturer shall maintain separate account for return of such goods in a daily stock account and make suitable entry on the said account after goods are processed, repaired, re-conditioned, refined or re-made. When such goods are exported, the usual export procedure shall be followed.

3.3 Any waste or refuse arising as a result of the said processes shall be removed from the factory on payment of appropriate duty or destroyed after informing the proper officer in writing at least 7 days in advance and after observing such conditions and procedure as may be specified by the Commissioner of Central Excise and thereupon the duty payable on such waste or refuse may be remitted by the said Commissioner of Central Excise.

4. Entry of goods in another factory of the same manufacturer for consolidation and loading of consignment for export:

4.1 Goods removed without payment of duty for export on A.R.E.1 from one factory (hereinafter referred to as 'the first factory') of a manufacturer are allowed to enter in another factory of the said manufacturer (hereinafter referred to as the 'subsequent factory') ONLY for the purpose of consolidation and loading of goods manufactured in subsequent factory and export therefrom subject to following conditions: -

(i) The exporter shall be required to get his goods examined and sealed at each factory [the places of despatch] by a Central Excise Officer.

(ii) The export goods shall be brought under cover on invoice and A.R.E.1 in the subsequent factory in original packing and duly sealed by Central Excise Officers. In case goods are stuffed in a container, Central Excise Officer shall duly seal the container in the first factory and the sealing of each package shall not be insisted upon. The Central Excise Officer having jurisdiction over the subsequent factory shall supervise the opening of the seal of container, loading of goods (duly sealed if these goods are to be loaded in open truck/vehicle) belonging to the subsequent factory in vehicle or container and sealing of the container.

(iii) The exporter or the manufacturer shall pay the supervision charges.

5. Samples of export goods

5.1 The Central Excise Officer examining the consignment would draw representative samples wherever necessary in triplicate. He would hand over two sets of samples, duly sealed, to the exporter or his authorized agent, for delivering

to the Customs Officer at the point of export. He would retain the third set for his records. The instructions and procedure for drawal of samples specified by the Board should be followed.

Part-VI

Manufacture of export goods in bond

1. Introduction

1.1 The Board has, by Notification No. 43/2001-Central Excise (N.T.) dated 26.6.2001 [hereinafter referred to as the 'said notification'] notified the conditions, safeguards and procedures for procurement of the excisable goods without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India, to any country except Nepal and Bhutan.

1.2 It may be noted that in rule 19 of the said Rules and in said notification, expression 'export goods' has been used. This refers to excisable goods (dutiable or exempted) as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not.

1.3 It may be also noted that materials, as defined in the said rule 19 may be used for manufacture or processing. In other words, any processing not amounting to manufacture (such as packing, blending etc.) will also be eligible for the benefit under said notification.

1.4 Removal without payment of duty of equipment and machinery in the nature of capital goods used in relation to manufacture or process of finished goods shall not be allowed.

2. Conditions and procedures

2.1 The conditions and procedure for manufacture of export goods in bond shall be, as follows:

(i) The manufacturer or the processor intending to avail benefit of this notification shall register himself under rule 9 of the said Rules; and

(ii) The procedure specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 shall be followed, mutatis mutandis. It is clarified that there is no need for any separate exemption notification for applying this rule.

It has also been provided that the manufacturer may furnish a general bond without surety or security, or a letter of undertaking in the Form specified in Annexure-II to the Ministry of Finance (Department of Revenue) notification No.42/2001-Central Excise (N.T.) dated, the 26th June, 2001 in lieu of a bond.

(iii) The manufacturer or processor shall file a declaration with the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacture under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, and also declare ratio of input and output and rate of duty payable on excisable goods to be procured without payment of duty. Where there are more than one export product, separate statement of the input-output ratios may be furnished for each export product. The consumption should be net of recycled materials. Where recoverable wastage are generated but not recycled but sold on account of its unsuitability, the same should be clearly reflected in the declaration. The declarant should also enclose, in case of a new product or in case where the manufacturer is not regularly manufacturing the export goods and clearing for home consumption or export, a write up of manufacturing process.

2.2 Verification of Input–output ratio and grant of permission

2.2.1 The Deputy/Assistant Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Deputy/Assistant Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods and countersign the application in the manner specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

2.2.2 It is clarified that for the sake of convenience and transparency, input output norms notified under the Export Import Policy may be accepted by the Department unless there are specific reasons for variation. However, in case, the input output norms notified under the Export Import Policy does not include all the materials used in export goods, the claim under this scheme should not be denied merely on that ground.

2.3 If for any reason the Deputy/Assistant Commissioner of Central Excise is not satisfied with reference to the correctness of the consumption norms claimed by the applicant, especially where the product is being manufactured for the first time in his jurisdiction, he may permit the manufacturing operations and the verification of the consumption norms should be completed while the process of manufacture is on. The verification should be completed before allowing the export of the goods as the manufacturer working under this Scheme is expected to declare the raw materials consumed in ARE-2.

2.4 The permission granted by the Deputy/Assistant Commissioner of Central Excise can be withdrawn at any time if any glaring misuse resulting loss of revenue comes to his notice.

2.5 Any change in the consumption ratio [input-output ratio] should be promptly intimated by the manufacturer to the Deputy/Assistant Commissioner of Central Excise and the jurisdictional Range Superintendent giving reference of the permission granted. If necessary, the Deputy/Assistant Commissioner of Central Excise may order fresh verification.

3. Procurement of material

3.1 The procedure of procurement of material required for the manufacture shall be governed by the provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. Board has clarified that no reversal of credit is required for the duty paid on inputs used in the manufacture of goods supplied under this notification for use in the manufacture of goods to be exported.

4. Removal of materials or partially processed material for processing

4.1 The Deputy/Assistant Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -

(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or process; or

(b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;

(c) Any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor;

5. Procedure for export

5.1 The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure-26 and the procedures specified in the Notification No. 42/2001-Central Excise dated 26th June, 2001 shall be followed. (This amendment has been made vide notification No. 10/2004-CE(NT) dated 3rd June, 2004 and as per

Board's Circular No. 805/2/2005-CX dated 11th January, 2005 is not applicable to clearances made prior to amendment of the said notification on 3.6.2004.) It is mentioned that in such cases, fresh A.R.E.1 is not required because export will be effected on A.R.E.2 itself. But the procedure specified in the aforementioned notifications relating to removals, distribution of documents at the place of despatch and place of export, acceptance of proof of export etc. shall be followed *mutatis mutandis*.

5.2 The Deputy/Assistant Commissioner of Central Excise should point out deficiency, if any within 15 days of filing of A.R.E.1 duly certified by Customs indicating actual export. Queries/ deficiencies shall be pointed out at one go and piecemeal queries should be avoided.

6. Accounts & Returns

6.1 The manufacturer shall maintain register of duty free materials brought to the factory for manufacture of finished goods for export and the account for finished goods manufactured and exported. Any officer duly empowered by the Deputy/Assistant Commissioner of Central Excise in this behalf shall have access at all reasonable times to any premises indicated in the application. The applicant shall also permit the officer of Central Excise access to any records relating to the production, storage and export of goods.

6.2 The colour coding of A.R.E.2 will be as follows:-

Original	White
Duplicate	Buff
Triplicate	Pink
Quadruplicate	Green
Quintuplicate	Blue

7. Checks by Customs Officers

7.1 Samples will be invariably drawn by the Customs Officers for testing at the place of export in case the export goods are of sensitive nature considering that they are made from materials bearing high Central Excise Duty.

7.2 Customs officer responsible for making endorsement in A.R.E.2 shall carefully check that exports are not covered under any of the following:

- The Duty Drawback Scheme
- A Value Based Advance Licence issued prior to 31.03.95
- A Quantity Based Advance Licence issued prior to 31.03.95

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Chapter 8

EXPORT UNDER CLAIM FOR REBATE

1. Introduction

1.1 The conditions and procedure relating to export under claim of rebate are contained in Notification 19/2004-Central Excise (N.T.) dated 6th September 2004 and notification No.20/2004-CE (NT) dated the 6thSeptember, 2004 issued under rule 18 of the Central Excise Rules, 2002.

1.2 It is worth mentioning that as per the definition of the term 'refund' in Section 11B of the Central Excise Act, 1944, refund includes 'rebate' of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Thus, the procedure specified in the said Rules and the notification issued there under are subject to section 11B of the said Act.

2. Categories of exports

2.1 There are mainly three categories of exports: -

(i) Export of all excisable goods to all countries except Nepal and Bhutan

(ii) Export to Nepal and Bhutan;

(iii) Export of tea to any country except Nepal and Bhutan.

Part-I

Export to all countries except Nepal and Bhutan

1.1 Conditions relating to the said export are, as follows

1. Export of excisable goods to all countries except Nepal and Bhutan

(i)	It is essential that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under rule 10 of the said Rules, whereas the duty may be discharged in the manner specified under rule 8 of the said Rules, i.e. monthly basis
(ii)	In certain cases, the Board may issue instructions/procedures for exporting the duty paid goods from a place other than the factory or the warehouse. In this regard, a general permission has been granted in respect of goods where it is possible to correlate the goods and their duty paid character.
(iii)	The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse. This date will be indicated on the ARE.1 and invoice issued for the purpose. However, the Commissioner of Central Excise has powers to extend this period, for reasons to be recorded in writing in any particular case. The exporter will be required to submit written request to the Commissioner specifying the reasons why they could not export within the stipulated six months' period. The Commissioner should give his decision within seven working days of the receipt of the request. It should also be noted that such permissions should not be given in a routine manner.
(iv)	The excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are covered by the notification mentioned above and are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable;
(v)	The market price of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed for export;
(vi)	The rebate claim will be admissible only if the amount of rebate of duty admissible is five hundred rupees or more.
(vii)	The rebate of duty paid on those excisable goods export of which is prohibited under any law for the time being in force, shall not be made.

2. Forms to be used

2.1 ARE.1 is the export document (Annexure-7/1), which shall be prepared in quintuplicate (5 copies). This is similar to the erstwhile AR.4. This document shall bear running serial number beginning from the first day of the financial year. On A.R.E.1, certain declarations are required to be given by the exporter. They should be read carefully and signed by the exporter or his authorised agent. The different copies of ARE.1 forms should be of different colours as indicated below:

Original-	White
Duplicate	Buff
Triplicate	Pink
Quadruplicate	Green
Quintuplicate	Blue

It will be sufficient if the copies of ARE.1 contain a color band on the top or right hand corner in accordance with above color scheme.

2.2 An invoice shall also be prepared in terms of rule 11 of the said Rules.

2.3 For filing rebate claim: There is no specified form for filing claim of rebate. The same may be done by the exporter on their letterhead and filed with the requisite documents.

3. Procedure for clearance for export

3.1 The exporter has the option to adopt any of the procedures regarding the manner in which he may clear the export consignments from the factory or warehouse, namely: -

(i) Examination and sealing of goods at the place of dispatch by a Central Excise Officer.

(ii) Under self-sealing and self-certification

4. Sealing of goods and examination at place of dispatch

4.1 The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in the Annexure to Notification No. 19/2004-Central Excise (N.T.) dated 6.9.2004. The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Shipping Bill.

4.2 The duty payable shall be determined on the ARE.1 and invoice and recorded in the Daily Stock Account and it should be paid in the manner specified in I rule 8 of the said Rules.

4.3 The exporter may request the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture.

warehouse or approved premises for examination and sealing at the place of dispatch 24 hours in advance, or such shorter period as may be mutually agreed upon, about the intended time of removal so that arrangements can be made for necessary examination and sealing.

4.4 In case of exports under Duty Exemption Entitlement Certificate Scheme (DEEC), Duty Exemption Pass Book Scheme (DEPB) and claim for Drawback, the Superintendent of Central Excise shall also examine and seal the consignment and sign the documents in token of having done so. In exceptional cases, where the exporter has unblemished track record of compliance (Central Excise) and where there is non-availability of Superintendent of Central Excise due to leave, vacant post or other reasonable causes, the jurisdictional Deputy/Assistant Commissioner of Central Excise may permit examination and sealing by Inspector. Other types of export may be examined and sealed by the Inspector of Central Excise.

4.5 The Superintendent or Inspector of Central Excise, as the case may be, will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable. If he finds that the declaration in ARE.1 and the invoices are correct from the point of view of identity of goods and its assessment to duty, and that the exporter has recorded the duty payable in Daily Stock Account, he shall seal each package or the container ensuring that the goods cannot be tampered with after the examination. Normally, individual packages should be sealed by using wire and lead seals and an all-sides-closed container by using numbered One time Lock/Bottle seals or in such other manner as may be specified by the Commissioner of Central Excise by a special or general written order. Thereafter, the said officer shall endorse and sign each copy of the application in token of having such examination done and such examination report must accompany the export goods to the port/airport of export.

5. Distribution of documents (ARE.1)

5.1 Export from the factory or warehouse

5.1.1 In the case when export takes place from the factory of warehouse, the distribution of ARE.1 shall be, as follows:

Original (First Copy)	The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature
Duplicate (Second Copy)	The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature.
Triplicate (Third Copy)	Sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the

	exporter in a tamper proof sealed cover after posting the particulars in official records.
Quadruplicate (Fourth Copy)	Retain for official records
Quintuplicate (Fifth Copy)	Optional copy - The said Superintendent or Inspector of Central Excise shall return to the exporter immediately after endorsements and signature.

5.2 Export from place other than factory or warehouse (including diversion of duty paid goods for export)

5.2.1 Where goods are not exported directly from the factory of manufacture or warehouse, the distribution of A.R.E.1 will be same as above except that the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse who shall, after verification forward the triplicate copy in the manner specified above.

6. Dispatch of goods by self-sealing and self-certification

6.1 The facility of self-sealing and self-certification is extended to all categories of manufacturers-exporters subject to compliance with the existing procedure. For this purpose the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit exporter or a person (who should be permanent employee of the said manufacturer-exporter holding reasonably high position) duly authorised by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application (A.R.E. 1) that the description and value of the goods covered by this invoice/ARE-I/ARE-2 have been checked by me and the goods have been packed and sealed with lead seal/one time lock seal having number _____ under my supervision.

6.2 The exporter shall distribute the copies of A.R.E. 1 in the following manner:

Original (First copy) and Duplicate (Second copy)	Send to the place of export along with the goods
Triplicate (Third copy) and Quadruplicate (Fourth copy)	Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods
Quintuplicate (Fifth copy)	Optional copy - Send to the place of export along with the goods

6.3 The said Superintendent and Inspector of Central Excise shall verify the particulars of assessment, the correctness of the amount of duty paid or duty payable, its entry in the Daily Stock Account maintained under rule 10 of the said Rules (the manufacturer or warehouse owner will be required to present proof in this regard), corresponding invoice issued under rule 11. If he is satisfied with the particulars, he will endorse the relevant A.R.E. 1 and append their signatures at specified places in token of having done the verification. In case of any discrepancy, he will take up the matter with the assessee for rectification and also inform the jurisdictional Deputy/Assistant Commissioner. Once verification is complete and the A.R.E. 1 is in order, he shall distribute the documents (A.R.E. 1) in the following manner:

Triplicate (Third copy)	Send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records
Quadruplicate (Fourth copy)	Send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records

7. Examination of goods at the place of export

7.1 The place of export may be a port, airport, Inland Container Depot, Customs Freight Station or Land Customs Station.

7.2 The exporter shall present together with original, duplicate and quintuplicate (optional) copies of the application (A.R.E. 1) to the Commissioner of Customs or other duly appointed officer – normally goods are presented in the designated export shed.

7.3 The goods are examined by the Customs for the purposes of Central Excise to establish the identity and quantity, i.e. the goods brought in the Customs area for export on an A.R.E. 1 are the same, which were cleared from the factory. The Customs authorities also examine the goods for Customs purposes such as verifying for certain export incentives such as drawback, DEEC, DEPB or for determining exportability of the goods.

7.4 For Central Excise purposes, the Officers of Customs at the place of export shall examine the consignments with the particulars as cited in the application (A.R.E. 1) and if he finds that the same are correct and the goods can be exported in accordance with the laws for the time being in force (for example, they are not prohibited or restricted from being exported), shall allow export thereof. Thereafter, he will certify on the copies of the A.R.E. 1 that the

goods have been duly exported citing the shipping bill number and date and other particulars of export.

7.5 The officer of customs shall return the original and quintuplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom exporter wants to claim rebate. However, where exporter claims rebate by electronic declaration on Electronic Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.

7.6 The exporter shall use the quintuplicate copy for the purposes of claiming any other export incentive.

8. Sanction of claim for rebate by Central Excise

8.1 The rebate claim can be sanctioned by any of the following officers of Central Excise: -

Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner.

8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

8.3 The following documents shall be required for filing claim of rebate:

(i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates , corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,

(ii) original copy of the A.R.E.1,

(iii) invoice issued under rule 11,

(iv) self attested copy of shipping Bill, and

(v) self attested copy of Bill of Lading.

(vi) Disclaimer Certificate [in case where claimant is other than exporter]

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E.1 duly certified by Customs, and that the goods are of 'duty -paid' character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of

Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued.

8.5 Where the individual rebate claim exceeds Rs.5 lakh , they shall be pre-audited before these are disbursed.

9. Export by parcel post

9.1 In case of export by parcel post after the goods intended for export have been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package or packages to which it refers, to the postmaster at the Office of booking.

10. Filing of rebate claims by electronic declaration and sanction thereof through Electronic Data Inter-change (EDI)

10.1 The new concept of filing of rebate claim and its sanction through EDI established by the Customs formations at different ports/airports/ICDs/CFSs has been incorporated in the new procedure. However, its implementation is dependent upon development of software and formats of electronic forms, administrative set-up at the places of exports for auditing such claims and putting in place the necessary hardware. The new process will also require to be tested. This may take some time. Accordingly, the provision has been made that this facility will be available at such places and from such time as may be specified by the Board.

10.2 For this purpose, the expression 'electronic declaration" has been defined as the declaration of the particulars relating to the export goods, lodged in the Customs Computer System, through the data-entry facility provided at the Service Center or the data communication networking facility provided by the Indian Customs and Central excise Gateway (called ICEGATE) from the computer of the person authorized for this purpose.

Part-II

Export to Nepal or Bhutan

1. Introduction

1.1 For export to Nepal, a different procedure has to be followed considering that the rebate is granted to the His Majesty's Government of Nepal based on Indo-Nepal Treaty. Currently, the procedure is specified only for exports through specified Land Customs Stations. There is no rebate procedure for Bhutan, the rebate to Bhutan is disbursed by the Directorate General of Inspection in accordance with the provisions of the Indo-Bhutan treaty to His Majesty's Government of Bhutan.

2. Conditions of export

2.1 The conditions of export are similar to export to other countries except for some minor variations. For clarity, these are explained below: -

(i) It is essential that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under rule 10 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules), whereas the duty may be discharged in the manner specified under rule 8 of the said Rules, i.e. monthly basis.

(ii) In certain cases, the CBEC may issue instructions/procedures for exporting the duty paid goods from a place other than the factory or the warehouse.

(iii) The excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse. This date will be indicated on the Nepal Invoice issued for the purpose. However, the Commissioner of Central Excise has powers to extend this period, for reasons to be recorded in writing in any particular case. The exporter will be required to submit written request to the Commissioner specifying the reasons why they could not export within the stipulated six months' period. The Commissioner should give his decision within seven working days of the receipt of the request. It should also be noted that such permissions should not given in a routine manner.

(iv) The goods can only be exported by land through any of the following land customs stations, namely, Sukhiapokhri, Panitanki, Jogbani, Jayanagar, Bairgania, Bhimnagar, Bitamore (Sursand), Raxaul, Sonauli, Barhni, Nepalganj Road, Shohratgar (Khunwa), Jarwa, Katarniaghat, Gauriphanta, Banbasa, Jhulaghat, Dharchula, Naxalbari, Galgalia, Kunauli, Sonabarsa, Tikonia, or such other check-post as may be specified by the CBEC.

3. Nepal Invoice

3.1 The Format of 'Nepal Invoice' has been specified in the Annexure to the notification No. 20/2004-Central Excise (N.T.) dated 6.9.2004 (Annexure-7/6)

4. Procedure for export to Nepal

4.1 The exporter is required to prepare five copies of Nepal Invoice. The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or the said Rules. The value shall be the "transaction value" and should conform to section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the F.O.B. value indicated by the exporter on the Bill of Export.

4.2 The duty payable shall be determined on the Nepal Invoice and recorded in the Daily Stock Account, it should be paid in the manner specified in rule 8 of the said Rules.

4.3 The exporter may request the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture, warehouse or approved premises for examination and sealing at the place of dispatch 24 hours in advance, or such shorter period as may be mutually agreed upon, about the intended time of removal so that arrangements can be made for necessary examination and sealing.

4.4 In case of exports under Duty Exemption Entitlement Certificate Scheme (DEEC), Duty Exemption Pass Book Scheme (DEPB) and claim for Drawback, the Superintendent of Central Excise shall also examine and seal the consignment and sign the documents in token of having done so. In exceptional cases, where the exporter has unblemished track record of compliance (Central Excise) and where there is non-availability of Superintendent of Central Excise due to leave, vacant post or other reasonable causes, the jurisdictional Assistant/Deputy Commissioner of Central Excise may permit examination and sealing by Inspector. Other types of export may be examined and sealed by the Inspector of Central Excise.

4.5 The Superintendent or Inspector of Central Excise, as the case may be, will verify the identity of goods mentioned in the application and the particulars of the duty paid or payable. If he finds that the declaration in Nepal Invoice are correct from the point of view of identity of goods and its assessment to duty, and that the exporter has recorded the duty payable in Daily Stock Account, he shall seal each package or the container ensuring that the goods cannot be tampered with after the examination. Normally, individual packages should be sealed by using wire and lead seals and an all-sides-closed container by using numbered One time Lock/Bottle seals or in such other manner as may be specified by the Commissioner of Central Excise by a special or general written order. Thereafter, the said officer shall endorse and sign each copy of the application in token of having such examination done;

4.6 The distribution of the Nepal invoice shall be, as follows:

Original (First copy)	Hand over to the Exporter or his agent along with the goods, packages or container after

	sealing it.
Duplicate (Second Copy)	To be put in a sealed cover and given to the exporter or his agent by the Central Excise Officer for being handed over to the officer of Customs In-Charge of the concerned land customs station
Triplicate (Third Copy)	To be put in a sealed cover and given to the exporter or his agent by the Central Excise Officer for being handed over to the officer of Customs In-Charge of the concerned land customs station
Quadruplicate (Fourth Copy)	To be retained by the Central Excise Officer;

4.7 The exporter or his agent shall then be free to remove the goods for export to Nepal, through the specified land customs stations.

5. Procedure at the land customs station

5.1 The exporter or his agent shall present the goods to the officer of Customs in-charge of the land customs station along with the original copy of invoice and the sealed cover containing duplicate and triplicate copies;

5.2 The said officer shall examine the goods with reference to the declarations in the Nepal Invoice. Where the contents of all the copies of invoices tally and the packages, goods or container are satisfactorily identified with their seals in tact, the said customs officer shall make necessary entries in the register maintained at the land customs station and allow the goods to cross into the territory of Nepal. He may, to satisfy himself as to the identity of the packages, goods or containers from the particulars shown on the invoice, open container or packages and examine the goods, especially where the seals are broken;

5.3 He will also certify on each of the three copies of the invoice to this effect and simultaneously indicate the running serial number in red ink prominently visible and encircled against Item 3 on all the three copies of the invoice.

5.4 The customs officer should then deliver the original copy of the invoice duly endorsed to the exporter or his agent along with the goods for presentation to the Nepalese Customs Officer.

5.5 He shall also send, directly the duplicate and triplicate copies of the invoice to the Nepalese Customs Officer in-charge of the check post through which the goods are to be imported into Nepal;

5.6 The goods will then be produced before the Nepalese Customs Officer at the corresponding border check post along with the original copy of the invoice. The Nepalese Customs Officer, shall deal with the original copy as directed by His Majesty's Government of Nepal and return the duplicate copy, after filling up the required information at S.No.1 to 4 in the part meant for the Nepalese Customs and after endorsing his certificate of receipt of goods in Nepal directly to the officer of customs in-charge of the land customs station;

5.7 The officer in-charge of the land customs station shall forward the duplicate copy to the Deputy Director of Inspection, Customs and Central Excise, Nepal Refund Wing, New Delhi. For this purpose, the said officer in-charge of the land customs station should keep a note of the return of duplicate copies from the Nepalese Customs Officer and remind the exporter for such copies as have not been received.

6. Procedure to be followed by the Directorate General of Inspection, Customs and Central Excise (Nepal Refund Wing), New Delhi

6.1 The Directorate General of Inspection, Customs and Central Excise (Nepal Refund Wing), New Delhi [hereinafter referred to as "the Directorate"] shall maintain separate registers for each Indian Border Customs Check Post.

6.2 The duplicate invoice will be entered in the respective registers showing the running serial number in the recapitulation statement register prescribed for the purpose.

6.3 At the end of every month he shall calculate the amount of rebate due in respect of all certificates of exports received during that month and shall prepare a consolidated statement to arrive at the amount of rebate due to His Majesty's Government of Nepal.

6.4 One copy of the recapitulation statement shall be forwarded to the Commissioner of Central Excise concerned for verifying the payment of rebate to Nepal Government and for issue of a post audit certificate in respect of the amount allowed as rebate against each invoice passed in that bill. In order to detect errors in the duty amount and quantity indicated. Internal Audit Department of the Commissionerate concerned should check this factor by comparison with the recapitulation statement forwarded by the Directorate and the monthly return of the factories concerned.

6.5 Where any over payment is noticed the fact should be brought to the notice of the Directorate for making necessary adjustment.

6.6 One copy of the recapitulation statement shall be forwarded to His Majesty's Government of Nepal.

6.7 One copy of the recapitulation statement shall remain as office copy with the Directorate.

6.8 After receiving the recapitulation statement, the Commissioner will get a verification conducted that the concerned factories have actually paid the duty of excise against which the rebate is to be given and the Commissioner/PAO of that Commissionerate shall furnish a certificate to the Directorate to the effect that all the concerned factories have paid the amounts of duty as indicated in the Annexure to the recapitulation statement.

6.9 In case the Directorate does not receive the duplicate copy of the invoice from the Officer in-charge of the Indian Land Customs Station and the triplicate copy is not received by the Nepal Government, necessary check should be made with the officer in-charge of the Indian Land Customs Station concerned as to the whereabouts of the particular invoice.

Part-III

SPECIAL PROCEDURE FOR STORE FOR CONSUMPTION ON BOARD AN AIRCRAFT ON FOREIGN RUN

1. Introduction

1.1 A separate rebate procedure has been notified in respect of supplies of mineral oil products falling under Chapter 27 of the First Schedule to the Central Excise Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run.

2. Conditions of rebate

2.1 Earlier, the rebate was limited, by notification, to all countries, which did not have land frontiers with India, except Pakistan, Bangladesh, Myanmar and Bhutan (though these countries have land frontier with India). But this facility was available by executive instructions to all countries, including the countries, which were not appearing in the notification for grant of this facility. The Government has decided to extend this facility to all countries, without any restrictions about the countries having land frontier. The supplies of ATF and other listed items (supplies to aircraft going to Nepal, Afghanistan and Bhutan) will be allowed in the same manner as it is allowed to supplies of ATF and other listed items to aircraft going to other foreign countries, including the payments or remittances.

2.2 The products as remain on board an aircraft after completion of an internal flight but prior to its reversion to foreign run, the rebate for which shall be granted without production of documents evidencing the payment of duty thereon. The proper officer of Customs shall certify in the manner specified by the Commissioner of Central Excise the quantity of products left on board for determining the quantum of rebate therefore.

Part-IV MISCELLANEOUS

1. Time limit for disposal

1.1 The rebate sanctioning authority should point out deficiency, if any, in the claim within 15 days of lodging the same and ask the exporter to rectify the same within 15 days. All Queries/ deficiencies shall be pointed out once collectively and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months.

2. Supplementary Rebate Claim

2.1 The Supplementary Rebate Claim, if any, should be filed within the stipulated time provided under section 11B of the Central Excises Act, 1944.

3. Entry of goods in another factory of the same manufacturer for consolidation and loading of consignment for export:

3.1 Goods removed on A.R.E.1 from one factory of a manufacturer may be allowed to enter in another factory of the said manufacturer ONLY for the purpose of consolidation and loading of goods in second or subsequent factory(ies) and export there from. For this facility the exporter shall be required to get his goods examined and sealed at each factory [the places of dispatch] by a Central Excise Officer. The packages loaded in the vehicle shall be in sealed condition in their original packing. Where goods are stuffed in a container, the container shall be sealed. The Central Excise Officer having jurisdiction over the second or subsequent factory(ies) shall supervise the opening of the seal of container, loading of goods (duly sealed if these goods are to be loaded in open truck/vehicle) belonging to the subsequent factory in vehicle or container and sealing of the container.

4. Cancellation of documents

4.1 After the goods are cleared for export on payment of appropriate duties of excise under claim of rebate but are not exported for any reason, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory or the warehouse, shall, on being requested by the exporter in writing, cancel the export documents and make necessary endorsements. Thereafter, the goods shall be treated as if these were cleared for home-consumption. The goods need not be brought back to the factory or warehouse.

Part-V

EXPORT UNDER CLAIM FOR REBATE OF DUTY ON EXCISABLE MATERIAL USED IN THE MANUFACTURE OF EXPORT GOODS

1. Introduction

1.1 The Government has, by Notification No. 21/2004-Central Excise (N.T.) dated 6.9.2004 [hereinafter referred to as the 'said notification'] allowed rebate of whole of the duty paid on excisable goods, which are in fact materials or inputs for manufacture or processing of other goods, on their exportation out of India, to any country except Nepal and Bhutan, to be paid subject to the conditions and the procedure specified in the above-mentioned notification.

1.2 It may be noted that in rule 18 and in said notification, expression 'export goods' has been used. It refers excisable goods (dutiable or exempted) as well as non-excisable goods. Thus, the benefit of input stage rebate can be claimed on export of all finished goods whether excisable or not.

1.3 It may be also noted that materials may be used for manufacture or processing. In other words, any processing not amounting to manufacture (such as packing, blending etc.) will also be eligible for the benefit under said notification.

1.4. The expression 'material' shall mean all raw materials, consumables, components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packing materials required for manufacture or processing of export goods. Rebate of Central Excise duty paid on equipment and machinery in the nature of capital goods used in relation to manufacture or process of finished goods shall not be allowed.

1.5 The benefit of input stage rebate cannot be claimed in any of the following situations:

(i) where the finished goods are exported under Claim for Duty Drawback.

(ii) where the finished goods are exported in discharge of export obligations under a Value Advance Licence or a Quantity Based Advance Licence issued before 31.03.95.

(iii) where facility of input stage credit is availed under CENVAT Credit Rules, 2002.

(iv) The market price of the goods is less than the rebate amount.

(v) The amount of rebate admissible is less then Rs. 500/-

1.6 The claim for rebate should be filed within the time stipulated under Section 11B of the Central Excise Act, 1944.

2. Procedures and conditions to be followed

2.1 The manufacturer or processor shall file a declaration (Annexure-27) with the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported. Where there are more than one export product, separate statement of the input-output ratios may be furnished for each export product. The consumption should be net of recycled materials. Where recoverable wastage are generated but not recycled but sold on account of its unsuitability, the same should be clearly reflected in the declaration. The declarant should also enclose, in case of a new product or in case where the manufacturer is not regularly manufacturing the export goods and clearing for home consumption or export, a write up of manufacturing process.

3. Verification and grant of permission

3.1 The Deputy/Assistant Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Deputy/Assistant Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.

3.2 It is clarified that for the sake of convenience and transparency, input output norms notified under the Export Import Policy may be accepted by the Department unless there are specific reasons for variation. However, in case, the input output norms notified under the Export Import Policy does not include all the materials used in export goods, the claim under this scheme should not be denied merely on that ground.

3.3 If for any reason the Deputy/Assistant Commissioner of Central Excise is not satisfied with reference to the correctness of the consumption norms claimed by the applicant, especially where the product is being manufactured for the first time in his jurisdiction, he may permit the manufacturing operations and the verification of the consumption norms should be completed while the process of manufacture is on. The verification should be completed before allowing the export of the goods as the manufacturer working under this Scheme is expected to declare the raw materials consumed in the ARE-2 for claiming rebate.

3.4 The permission granted by the Deputy/Assistant Commissioner of Central Excise can be withdrawn at any time if any glaring misuse resulting into loss of revenue comes to his notice.

3.5 Any change in the consumption ratio [input-output ratio] should be promptly intimated by the manufacturer to the Deputy/Assistant Commissioner of Central Excise and the jurisdictional Range Superintendent giving reference of the permission granted. If necessary, the Deputy/Assistant Commissioner of Central Excise may order fresh verification.

4. Procurement of material

4.1 The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the said Rules.

4.2 The manufacturer or processor may also procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2004 under invoices issued by such dealers.

5. Removal of materials or partially processed material for processing

5.1 The Deputy/Assistant Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory –

(i) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or processor

(ii) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;

Any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor;

6. Procedure for export

6.1 The goods shall be exported on the application in Form A.R.E. 2 specified (Annexure-7/9) and the procedures specified in Notification No.19/2004-Central Excise (N.T.) dated 9th September 2004 or in

Notfn.No.42/2001-CE (NT) dt.26.6.2001 shall be followed. In other words, the exporter has option to pay duty on finished export goods (if these are excisable) and claim rebate of such duty. He may also export the excisable goods without payment of duty. In both cases, fresh A.R.E.1 is not required because export will be effected on A.R.E.2 itself. But the procedure specified in the aforementioned notifications relating to removals, distribution of documents at the place of dispatch and place of export, acceptance of proof of export/filing of claim etc. shall be followed *mutatis mutandis*.

6.2 The colour coding of A.R.E.2 will be as follows:-

Original	White
Duplicate	Buff
Triplicate	Pink
Quadruplicate	Green
Quintuplicate	Blue

7. Presentation of claim of rebate

7.1 The claim for rebate of duty paid on materials used in the manufacture or processing of goods shall be lodged only with the Deputy/Assistant Commissioner of Central Excise having jurisdiction of the place approved for manufacture or processing of such export goods. The following documents shall be presented with the claim: -

(i) Original copy of the ARE2 duly endorsed by the Customs Officer;

(ii) Duly self-attested copy of Shipping Bill (Export Promotion Copy)

(iii) Duly self-attested copy of Bill of lading/ Air way bill

(iv) Duplicate copy of the Central Excise Invoice under which Central Excise duty was paid/accounted as payable on goods cleared for export. [where rebate of finished goods are also being claimed]

(v) Duplicate copy of the ARE.2 received from the customs officer in a sealed cover (if obtained).

8. Communication of deficiency in claim

8.1 The Assistant Commissioner of Central Excise should point out deficiency, if any within 15 days of lodging of the claim and ask the exporter to rectify the same within 15 days. Queries/ deficiencies shall be pointed out at

one go and piecemeal queries should be avoided. The claim of rebate should be disposed of within a maximum period of two months.

8.2 Rebate of input stage duty shall be allowed to manufacturer((Processor)-Exporter, as the case may be, where such inputs are used in the manufacture/processing of export goods and cleared directly from the factory of manufacture/processor. The manufacturer/processor may export the goods directly himself or through merchant exporter where the goods are exported by merchant-exporter, his name shall be mentioned on ARE-2 and other conditions prescribed in Notification No.21/2004-C.E.(NT) dt.9th September 2004 should be fulfilled.

9. Accounts & Returns

9.1 The manufacturer shall maintain register of duty paid materials brought to the factory for manufacture of finished goods for export under claim for input stage rebate and the account for finished goods manufactured and exported. Any officer duly empowered by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise in this behalf shall have access at all reasonable times to any premises indicated in the application. The applicant shall also permit the officer of Central Excise access to any records relating to the production, storage and export of goods.

10. Checks by Customs Officers

10.1 Samples will be invariably drawn by the Customs Officers for testing at the place of export in case the export goods are of sensitive nature considering that they are made from materials bearing high Central Excise Duty.

10.2 Customs officer responsible for making endorsement in A.R.E.2 shall carefully check that exports are not covered under any of the following:

- The Duty Drawback Scheme

- A Value Based Advance Licence issued prior to 31.03.95

- A Quantity Based Advance Licence issued prior to 31.03.95

Part-VI

SPECIAL PROCEDURE FOR EXPORT OF TEA UNDER CLAIM OF REBATE

1. Introduction

1. In rule 18 of the Central Excise Rules, 2002 and Notification 21/2004-Central Excise (N.T.) dated 6.9.2004; the expression "*processing*" has been

used. It includes blending, packaging or any other operation. One problem which comes into the way is that the Notification No. 21/2004-CE (N.T.), supra, provides for procurement of goods **directly from the factory of manufacture** and the open market procurement is allowed only where goods are in original packed condition and the invoices are issued by registered dealers. In case of tea, condition relating to open market purchase cannot be fulfilled. Accordingly, a special procedure has been framed for export of tea bought in auctions (on which duty is paid at specific rate), under claim of rebate are specified below: -

2. Procedure

2.1 The exports shall be made under the provisions of notification No.21/2004-CE (N.T) dated 6.9.2004. Board's instructions in Part-I of this Chapter may be followed *mutatis mutandis.*

2.2 For the purpose of export of blended/packaged tea where such blending/packaging was/is done after purchasing bulk tea from the open market or in auctions, the condition of the aforesaid notification regarding procurement of materials (tea in this case), directly from the factory will be relaxed, provided:

(i) Deputy/Assistant Commissioner of Central Excise is satisfied that the bulk tea contained in the blended/packaged tea has actually been exported and appropriate duty of excise has been paid. For this purpose, the copies ARE.2 together with Bill of Lading and Shipping Bill duly endorsed by the Customs at the place of export may be verified.

(ii) in case of tea purchased in auctions, the brokers catalogue indicating the details of the invoices on which the bulk tea was removed from the factory for home consumption on payment of appropriate duty and the broker's contract relating to purchase of such tea is submitted along with rebate claim.

(iii) in case tea is purchased other than in auctions, copies of relevant invoices evidencing payment of duty are submitted along with rebate claim.

2.3 It shall be ensured that exporters do not claim drawback as well as rebate under notification 21/2004-CE (N.T.), supra., simultaneously.

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Chapter 9

REFUND

1. Introduction

1.1 Refund of any duty of excise is governed by Section 11B of the Central Excise Act, 1944. By definition, refund includes rebate of duty paid on goods exported out of India or on materials used in the manufacture of goods exported out of India. A separate Chapter (No.8) deals with rebate of Central Excise Duty. The refund claim can be filed within one year from the relevant date in the specified Form by an assessee or even a person who has borne the duty incidence, to the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacture. The limitation of one year does not apply where any duty has been paid under protest.

1.2 The "relevant date" has been defined in section 11B and refund of duty paid can be sought provided the manufacturer has not passed on the burden of duty. In case the burden of duty has been passed on, the refund can be claimed by the person who has actually paid the duty otherwise the amount is liable to be deposited in the Consumer Welfare Fund created by the statute.

1.3 The Central Excise Act also provides for payment of interest on delayed payment of refund. As per Section 11BB, if any duty ordered to be refunded under Section 11B has not been refunded within three months from the date of receipt of the refund application in the prescribed manner and form along with the supporting documentary evidence as laid down in the relevant rules, interest at the rate notified by the Central Government shall have to be paid on such duty from the date immediately after the expiry of three months from the date of receipt of application till the date of refund of such duty.

2. Presentation of refund claim

2.1 Any person, who deems himself entitled to a refund of any duties of excise or other dues, or has been informed by the department that a refund is due to him shall present a claim in proper Form, (Annexure-28) along with all the relevant documents supporting his claim and also the copies of documents/records supporting his declaration that he has not passed on the duty incidence.

2.2 The claim should be filed with the Deputy/Assistant Commissioner of Central Excise with a copy to the Range Officer.

2.3 The claim is to be presented in duplicate and is to be duly signed by the claimant or by duly authorised person on his behalf and shall be pre-receipted (with revenue stamp on original copy, where necessary).

2.4 It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period.

3. Scrutiny of refund claim and sanction

3.1 The Range Officer will complete the scrutiny of the papers within 2 weeks from the date of receipt of the claim in the Range Office and send a report of scrutiny to the Divisional Deputy/Assistant Commissioner of Central Excise.

3.2 The Divisional Office will scrutinise the claim, in consultation with Range, where necessary and check that the refund application is complete and is covered by all the requisite documents. This should be done at the time of receipt of refund claim and in case of any deficiency, the same should be pointed out to the applicant with a copy to the Range Officer within 15 days of receipt.

3.3 In the Divisional Offices, final processing of refund claims after the receipt of Range Officer's report should be completed including the verification of the fact whether the assessee

has passed on the duty incidence to their buyer (in cases where the refund claim is filed by a manufacturer or owner of warehoused goods). The types of cases to which this provision will not be attracted are already specified in section 11B itself. Where the duty incidence has been passed on, the duty refund, if otherwise admissible, will be sanctioned but will be ordered to be credited to the Consumer Welfare Fund. The burden of proving that the duty incidence has not been passed on is on the claimant and the latter may be required to submit sufficient documentary proof for this purpose. It is clarified that the question of unjust enrichment has to be looked into on case by case basis. There cannot be a general instruction indicating the documents and /or record, which the claimant should produce as a proof that he has not passed on the duty incidence to any other person.

3.4 Claim for refund of less than Rs. 100 shall not entertained in respect of all excisable commodities. For rebate, the minimum should be Rs. 500/- per claim as specified in the Notification No.40/2001 CE (NT) dated 26..6. 2001.

4. Unjust enrichment

4.1 Text of the legal provisions relating to unjust enrichment {vide Section 11(B)(2)} is reproduced below :-

(2) "If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person;

(e) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person;

(f) the duty of excise borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

4.2 The Supreme Court in the case of M/s. Mafatlal Industries Ltd vs. Union Of India (per majority of 9 Judges Bench) in their judgment dt. 19.12.1996 [1997(89)ELT247(SC)]has held :

i) If the person claiming the refund has passed on the burden of duty to another and has not really suffered any loss or prejudice, there is no question of reimbursing him and he cannot successfully sustain an action for restitution, based on Section 72 of Indian Contract Act. (Para 112)

ii) The obligation to prove that duty has not been passed on to another person is always there as a precondition to claim of refund. It cannot also be said that by giving retrospective effect to Section 11B, any vested or substantive rights are being taken away. The manufacturer has already collected the duty from his purchaser and has thus reimbursed itself. A manufacturer had no vested legal right to refund even when he had passed on the burden of duty to others. No law conferred such a right in him not Article 265 nor Section 11B. It was only on account of an incorrect view of law taken in Kanthaiyalal – and that cannot be treated as a vested legal right. Correction of judicial error does not amount to deprivation of vested/substantive rights, even though a person may be deprived of an unwarranted advantage he had under the over-ruled decision. In cases, where the burden is not passed on, there is no prejudice; he can always get the refund. (Para 88).

iii) All claims for refund including those arising as a consequence of appellate/revisionary orders and/or as a consequence of orders made by High Court/Supreme Court (except where the provision under which the duty levied is declared as unconstitutional) have necessarily to be filed under Section 11B, and considered and disposed of only under and in accordance with the relevant provisions relating to refund as existing from time to time. No order of refund is to be made unless the claimant establishes that he has not passed on the burden of duty to others. In this regard sub-section (3) of the amended Section 11B is emphatic. No exception can be made for the refund claim arising as a result of decision in appeal/reference/writ petitions.

iv) The jurisdiction of a Civil Court is expressly barred vide Sub Section 5 of Section 11B prior to its amendment in 1991 and sub Section (3) of Section 11B as

amended in 1991. (para68). However, where the levy is unconstitutional outside the provisions of the Act or nor contemplated by the Act, the jurisdiction of Civil Court is not barred. (Para 135,137)

v) Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule(5) are appealed against – or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed/decreed – then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) re-agitating the issues already decided under Rule 9B – assuming that such a refund claim lies – and is allowed, it would obviously be governed by Section 11B. (Para 95).

4.3 The Hon'ble Supreme Court in the case of Union of India and others v. Solar Pesticides Pvt. Ltd. vide order dt. 4.2.2000 (Civil Appeal No. 921 of 1992) has held that the principle of unjust enrichment would be applicable in respect of cases of refund of duty paid on imported raw materials even if captively consumed in the manufacture of a final product. The Hon'ble Supreme Court has held that even for captive consumption of goods, if certain duties have been paid, whose refund is claimed, the claimant will have to establish that the incidence of duty has not been passed on, directly or indirectly, to any other person.

5. Disposal of claims where application is pending at appellate level

5.1 Cases where it is considered advisable to contest an" adverse" High Court judgment, inter alia, **involving substantial refund or release of any seized/confiscated goods by filing Special Leave Petition (SLP) including Stay Application, in the Hon'ble Supreme Court.**

a. In such cases most speedy action should be taken by concerned Commissioner to submit considered comments, grounds for appeal and all relevant papers to Board for obtaining Law Ministry's advice and if agreed filing SLP & Stay Petition against the order of the

High Court. (Where appropriate considering the stakes and urgency of the matter conversant officer dealing with the case be also deputed to help expedite the aforesaid action)

b. In terms of the present practice in the Supreme Court Registry, the SLPs/Stay Applications filed in the Supreme Court are listed for hearing in their own turn according to the dates of their filing. However, in case of urgency, there is a procedure of mentioning before the bench headed by the Hon'ble the Chief Justice of India for **ad interim stay** till the stay application is heard and disposed of by the Supreme Court. For this purpose, the Central Agency Section has to be requested to file an application with the Registrar of the Supreme Court giving reasons justifying out of turn hearing of the stay application. In case the Registrar is satisfied about the urgency, the application is included in the "List of cases for urgent mentioning" and it is then possible to mention the case on the following day before the bench headed by the Chief Justice of India.

In view of the aforesaid procedure, it may not be possible to move the Supreme Court for out of turn hearing of stay applications in every case in a routine way. The department has to justify the urgency and serious implications if the adverse order is not stayed. It may also not be always possible to get an application listed for early hearing. The Commissioners should, therefore, while ensuring submission of proposals for SLP/Stay on top priority basis also take steps simultaneously so that non-implementation of the High Court's Order without obtaining stay from the Supreme Court does not create complications. In such cases, therefore the following action is advised :-

(i) Where a High Court has stipulated any time limit for implementation of its order, the Customs House/Central Excise Commissionerate apart from taking steps for filing SLP/Stay Petition before the deadline, as mentioned in para (a) above, should simultaneously file an application before the High Court intimating steps taken for filing SLP/Stay Petition before the Apex Court, and request be made for extension of time limit for implementation of the order till the department's Stay Application is heard or disposed of by the Hon'ble Supreme Court. If the High Court rejects the application, a copy of the application filed and the order of the High Court should be immediately faxed

to the Board, so that even this could be produced to Supreme Court Registry, while seeking out of turn/urgent hearing for stay.

(ii) Where no time limit is stipulated by the High Court for implementing its order, but the petitioner files a contempt petition/notice in the High Court, the same should be immediately faxed to the Board, for similar action as mentioned in (i) above for pressing for urgent hearing of our stay.

It would be possible for the Board's office to file SLP/Stay Petition with relevant documents showing justification for **urgency petition** before the Registrar of the Supreme Court (for inclusion of department's application for out of turn hearing in the 'list of cases for urgent of monitoring'), and to get interim stay in time, from the Supreme Court when we have a good case, only if Commissioners and the Legal Cells keep very strict personal watch for taking time bound & speedy action suggested above.

No unilateral decision should be taken by the Commissioners to release the goods/order refund in a case where it is decided in consultation with our Counsels in the field, and Law Ministry, to file SLP/Stay Application before the Apex Court against the order of the High Court and till this is pending decision before the Apex Court. The decision in such cases where there is any urgency & stay of Apex Court is not forthcoming, should be taken only in consultation with the Board.

5.2 Cases where Civil Appeal (CA) is proposed against adverse decision of the CEGAT involving high refund and or release of seized/confiscated goods.

The guidelines applicable to SLPs mentioned above should be followed mutatis mutandis even in such cases involving Civil Appeals/Stay Petitions. The relevant papers relating to Civil Appeals should be sent latest within 2 weeks of the receipt of CEGAT Order and active liaison should be kept with the concerned senior officer in the Board and even Central Agency Section till the Department's Stay/CA petitions is heard and decision given by the Apex Court. Where considered advisable, considering the stakes involved conversant officer to be deputed for briefing the Senior Counsels/Law Officer who may be moving for stay petition.

5.3 The cases where refund arises due to order of Commissioner (Appeals) or Commissioner of Central Excise/Customs and decision is taken to contest them before CEGAT.

In such cases appeal/stay application should be filed expeditiously well before the expiry of stipulated period of three months (and not waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to obtain stay order expeditiously where the orders passed by Commissioner (Appeals) suffer from serious infirmities and it involves grant of heavy refunds.

5.4 Cases where refund arises due to order of a Central Excise Officer/Customs Officer subordinate to Commissioner of Central Excise/Customs and decision is taken to file appeal before Commissioner (Appeals).

In such cases also, appeal/stay application should be filed expeditiously within the stipulated period (but without waiting for the last date of filing of appeal). However, no refund/rebate claim should be withheld on the ground that an appeal has been filed against the order giving the relief, unless stay order has been obtained. It would be the responsibility of the concerned Commissioner to move expeditiously and obtain stay order from Commissioner (Appeals), especially where the orders passed by such Central Excise Officer/Customs Officer suffer from serious infirmities and it involves grant of heavy refunds.

5.5 General

In all types of cases mentioned above, processing of refund application should simultaneously start separately from the point of view of unjust enrichment provisions and accordingly the assessee/claimant should be asked to submit the evidence to establish his claim that incidence of duties whose refund is claimed has been borne by him and that the same has not been passed on to the buyer(s). Where the claimant is unable to furnish this evidence or otherwise is not entitled to refund, passing of appropriate orders on refund requested could be considered by competent authority irrespective of the outcome of SLP/Civil Appeals/Stay Petitions pending before Supreme Court or other appeals etc. before lower appellate authorities.

In all other cases, not involving any dispute, refund applications should be processed on merits speedily and a decision taken within a period of three months from the date of application to avoid any interest liability – where refund is held admissible.

6. Refund/Return of deposits made under Sec. 35 F of CEA 1944 and Section 129 E of Customs Act 1962

6.1 In such cases, Refund applications under Sec 11B (1) of CEA' 44 or under Sec. 27 (1) of Customs Act 1962 need not be insisted upon. A simple letter from the person who has made such deposit, requesting for return of the amount, along with an attested xerox copy of order in appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose. All pending refund applications already made under the relevant provisions of the Indirect Tax Enactments for return of such deposits and which are pending with the authorities will also be treated as simple letters asking for return of the deposits, and will be processed as such. Similarly, bank guarantees executed in lieu of cash deposits shall also be returned.

7. Payment of refund

7.1 Where the claim has been admitted whether in part or in full, and claimant is eligible for refund, the Deputy/Assistant Commissioner of Central Excise should ensure that payment is made to the party within 3 days of the order passed after due audit, if any.

7.2 All claims shall be paid to the applicant by a cheque on the authorised bank with which the sanctioning authority maintains account.

7.3 On receipt of sanctioning claims from the dealing hands, the cheque shall be written out by the cashier (or his assistant) and simultaneously an entry made in the cash book. The Deputy/Assistant Commissioner shall sign the cheque as well as the entry in the cashbook simultaneously. A receipt of the cheque should be obtained from the payee and placed on file.

7.4 After the cheque has been signed, it shall either be delivered to the claimant or his authorised representative personally when the next calls for it or sent to him by Registered Post 'Acknowledgement Due' at Government cost.

8. Pre Audit/Post Audit

8.1 Board has issued revised guidelines for following the procedure for sanction of refund/ rebate claims. {refer Circular No. 809-CX dated 1.3.2005).

8.2 Board has decided that all refund /rebate sanction orders must necessarily be issued as an Order-in-Original. A separate series with suffix 'R' for numbering of Orders-in-Original issued for sanction of refund/rebate claims may be used. However, in terms of risk to revenue, a monetary limit of Rs. 50,000/- has been fixed below which O-in-O may not be issued if the rebate is sanctioned in full. This shall also enable the department to focus on the cases where amount sanctioned is higher than Rs. 50,000/-.

8.3 Board has further decided that:

(i) All refund/rebate claims involving an amount of Rs. 5 lakhs or above should be subjected to pre-audit at the level of jurisdictional Commissioner. In such cases, a suitable Order-in-Original shall be passed by Deputy/Assistant Commissioner of Central Excise. Since the claim is pre-audited with the concurrence of Commissioner, the usual review proceedings under section 35E may not be necessary in such case.

(ii) For the refund/rebate claims involving an amount above Rs. 50,000/- but below Rs. 5 lakhs, Orders-in-Original should be issued by Deputy/Assistant Commissioner. These O-I-Os should be subjected to compulsory post-audit at the level of Additional/Joint Commissioner (Audit). The Orders-in-Original shall also be subjected to review under section 35E.

(iii) In cases of refund/rebate claims involving an amount upto Rs. 50,000/-, no Order-in-Original need be passed if the claim is sanctioned in full. However, in case the sanctioned amount is less than the claimed amount, O-in-O should invariably be issued. These sanction orders may be post-audited on the basis of the random selection by

Deputy/Assistant Commissioner (Audit) in such a way that at least 25 percent. of the claims are post-audited. As Orders-in-Originals are not being passed in such smaller cases (except when not sanctioned in full), it may not be necessary to subject these sanction orders to review under section 35E.

8.4 All refund/rebate claim papers should be sent by the Divisional Deputy/Assistant Commissioner to the Commissionerate Headquarters {Additional/Joint Commissioner (Audit)} for post-audit within a week of payment thereof irrespective of the amount involved. Jurisdictional Commissioners of Central Excise may evolve a suitable mechanism to ensure that the refund/rebate claims papers (including those where O-in-O is not being issued for amount below Rs. 50,000/-) are received in Commissionerate Headquarters for post- audit as per prescribed norms stated in Sl. Nos (ii) and (iii) of Para 8.3 above.

8.5 For the purpose of post-audit/pre-audit of refund/ rebate claims, a cell comprising of Deputy/Assistant Commissioner (Audit), one Superintendent and Inspectors as required, under the overall supervision of Additional/Joint Commissioner (Audit) may be constituted. The cell should complete the post-audit before the expiry of three months from the date of payment. The cell shall also be responsible for maintaining the record of the Orders-in-Original issued by various rebate/ refund sanctioning authorities. The cell would also monitor and point out any missing Orders-in- Original by tracking the serial number and other relevant details.

9. Monitoring and control for timely disposal of refunds

9.1 The Commissioner of Central Excise should devise appropriate control to ensure that the refund/rebate claims are expeditiously sanctioned within the time limit stipulated above.

10. Time bar Under Section 11B not applicable

10.1 The Hon'ble Supreme Court in Civil Appeal No.2178-79/2001 in the case of CCE, Shillong v. Woodcrafts Products Ltd. has held in its judgment dated 9.4.2002 [2002 (143) E.L.T. 247 (S.C.) that in case of consequential refund, the time bar under section 11A of Central Excise

Act, 1944 will not be applicable for recovery of refunded amount if the issue is finally decided in favour of the Department.

11. Refund of Amount earlier credited to Consumer Welfare Fund

11.1 The drawl of amount originally credited to Consumer Welfare Fund usually takes time due to involvement of various agencies resulting in delay in grant of refund to the assessee and the Department has to pay interest on such delayed refunds. Accordingly, the matter was taken up with Principal Chief Controller of Accounts (CBEC).

Pr. Chief Controller of Accounts (CBEC) has informed the Board that in consultation with the Chief Controller of Accounts, Ministry of Consumer Welfare and Public Distribution who maintains account of Consumer Welfare Fund, the procedure of processing refund claims relating to Consumer Welfare Fund has been strengthened for timely payment of the claims. A system of monitoring has been set in place to ensure timely payment of refund claim within a month of the application. Pr. Chief Controller of Accounts (CBEC) has further informed the Board that instructions have been issued to PAO's to ensure that request for refund claim from Commissionerates are made within three days of receipt of such reference/order sanctioning refund. Pr.Chief Controller of Accounts (CBEC) has also desired that in case, refunds are not effected within 45 days of request made to PAO, Chief Commissioners/Commissioners should take up the matter with him with a D.O. reference with full details.

12. Refund of Excise Duty to Diplomatic Missions

12.1 Board's instructions on this are, F.No.45/7/56-CX(M).II dt.24.7.1957 read with Circular No.1/MOTOR VEHICLES/70 dt.19.2.1970. One of the conditions mentioned in these circulars is that the refund claims from diplomatic missions should be entertained by the Central Excise officers only if they are filed within 3 months from the date of purchase of the motor vehicle. Claims filed beyond three months were not to be admitted without reference to the Ministry of Finance. After the recent amendment to Sec.11B of the Central Excise Act, 1944, in May 2000, the time limit for filing refund claims has been raised from six months to one year from the relevant date. It has been pointed out that this discrepancy between the time limit prescribed in

the statute (1 year) and the time limit (3 months) mentioned in Board's instructions of 1957 and 1970, is creating confusion in the field.

In the past, refunds on purchases by diplomatic missions were being granted, either as an ex-gratia payment, or on the basis of ad-hoc exemption orders. Being ex-gratia payment, the time limit for claiming refund was prescribed through the above executive instructions and in a number of cases relaxations were also granted. Subsequently, from 1998, Ministry declined to relax the time limit beyond that statutorily prescribed (then six months).

Subsequently, when the provisions of section 5A(2) relating to ad-hoc exemptions were amended in 1999 to limit its coverage to goods for charitable purpose or of strategic or secret nature only, ad-hoc exemptions to diplomatic missions could no longer be given under section 5A(2). It was then decided to issue a general exemption notification to cover such cases. This was done for the first time by notification No 44/99-CE dt 29.12.99.

The relevant notification which presently allows exemption to goods supplied to diplomatic missions is notification No.3/2001-CE dt.1.3.2001 (Sl.No.250). This notification grants full exemption to all goods (and not merely motor vehicles) supplied for the official use of foreign diplomatic or consular missions in India. The exemption is subject to condition (45) of the notification which, inter-alia, requires production of a certificate from the Protocol Division of the Ministry of External Affairs and an undertaking from the diplomatic mission that they will produce, within a period of 3 months or such extended period, a certificate that the goods have been put to the specified use. There is also a condition that the said goods cannot be disposed of before the expiry of 3 years from the date of clearance of the goods.

It may be noted that earlier, exemption was available (through executive instructions and ad-hoc exemption orders) to goods (including cars) meant both for official as well as personal use of the mission or its staff. The general exemption notification limits this benefit only to goods meant for the official use of the mission/consular office.

There seems to be no justification, now, for continuing the old Circulars of 1957 and 1970. Refunds to diplomatic missions would be guided by the normal rules/provisions relating to refunds. In view thereof the Circulars of 1957 and of 1970 have been withdrawn.

Refunds would therefore be governed entirely by the conditions mentioned in notifn. No.3/2001 CE dt 1.3.2001(sl.No.250) and the time limit for making the refund claim would be one year from the date of purchase of the goods by the diplomatic mission or consular office, as per the provisions of section 11B(1) of the Central Excise Act, 1944, read with Explanation (B)(e). No extension beyond 1 year from the date of purchase, would be permissible as this time limit is statutorily prescribed. Cases need not, therefore, be referred to the Ministry for relaxation or extension of this time limit.

Refunds would be entertained by the Commissionerate within whose territorial jurisdiction the mission/consular office is located as per Board's instructions F.No.156/14/2000 – CX 4 dated 11th April, 2001.

The missions are, obviously, free to clear the excisable goods straight from the factories, without payment of duty, after satisfying the conditions of the above exemption notification. In that case there would be no case for claiming any refund.

It may be pointed out that petrol is also one of the items on which refunds are sanctioned to diplomatic missions. Petrol refunds are governed by a separate set of instructions and, therefore, the procedure indicated in para 8 above will not apply to motor spirit/petrol refunds which would continue to be governed by existing instructions on the same.

13. Exemption to specified goods –Refund of duty paid in cash

13.1 NotificationNo.56/2002-C.E., dated 14.12.2002 exempts excisable goods, with a few exceptions, when cleared from a unit located in specified areas in the State of Jammu & Kashmir (J & K). Similarly, Notification No.57/2002-C.E, dated 14.11.2002 exempts specified goods cleared from a unit, irrespective of its location in the State of J & K. Exemption under both the notifications will apply only to new units set up or after 14-6-2002 or to units undertaking substantial expansion on or after this date. The exemptions are available for a period not

exceeding 10 years from 14-6-2002 or commencement of commercial production. The exemptions are on the lines of the notifications issued for North Eastern States under Notification No.32/00-C.E. and 33/99-C.E. both dated 8-7-1999.

The above two notifications for the State of J & k exempt that portion of the excise duty, which is paid by the manufactures in cash. For this purpose, a suitable mechanism has been incorporated in the notifications. The manufacturer is first required to pay the excise duty and thereafter, whatever is paid in cash is to be refunded. It is also intended that the user of any input or capital goods on which such exemption has been availed should get the full Cenvat credit including the portion of duty refunded to the manufacturer of such input or capital goods. For this purpose, Cenvat Credit Rules, 2002 have been amended by Notification No.39/2002-C.E 9N.T. dated 14-11-2002.

In this context, it may be pointed that the "Refund" envisages in the notifications is not on account of any excess payment of excise duty by the manufacturers, but is basically designed to give effect to the exemption. In other words, the mechanism has been adopted to operationalise the exemption envisaged in these two notifications. In view of this aspect of the matter, the provisions of Section 11B of the Central Excise Act, 1944 would not apply in the case of these notifications.

The notifications provide for expeditious refund of duty paid in cash. It is for this reason that a provision has been made for allowing refund even on provisional basis by the 15th of the next month, in case there is likely to be a delay in verification of the refund claims. Any excess or shortfall in case of refund allowed on provisional basis maybe adjusted in the subsequent refund claims. Considering the fact that verification of refund claims basically involves checking of duty paid in case, in most cases, it should be possible to allow refund by the 15th of the subsequent month. The Board is of the view that pre-audit of refund claims of more than Rs.5 lakhs should not lead to delays. If it is possible to pre-audit, and the finalisation of claim could be completed before the 15th of the next month, it may be resorted to. Otherwise, the initial provisional refund maybe allowed without pre-audit and while deciding upon its finalisation, pre-audit and while deciding upon its finalisation, pre-audit may be done.

It may be noted that the notifications apply to goods cleared from a factory. As such, they do not apply to goods cleared from the warehouses. Problems, if any, faced in this regard may please be brought to the notice of the Board.

As regards the date of commencement of production, the Department of Industries of the State Government may be consulted who should be in a position to advise on this aspect.

The exemption under these notifications applies to new units set up on or after 14-6-2002 or to the existing units undertaking substantial expansion by way of increase in installed capacity by not less than 25% on or after 14-6-2002. Normally, if a unit has been undertaken substantial expansion in capacity, it would utilise the expanded capacity and not keep it idle. There could, however, be a case where a unit discontinues production on newly installed machinery or may later on decrease the capacity of production. Such cases may have to be examined carefully in more detail.

These instructions by and large, cover the key issues and concerns involved in the effective implementation of these notifications. If any problem is still faced in the implementation of these notifications, suitable reference to the Board may be made.

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Chapter 10

WAREHOUSING

Part-I
General

1. Introduction

1.1 In pursuance of sub-rule (1) of rule 20 of the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') the Board has issued notification no. 46/2001-Central Excise (N.T.) dated 26th June, 2001 as amended vide Notification No. 30/2003-CE (N.T.) dated 4.4.2003, which has come into force on 1st July, 2001, whereby the warehousing provisions have been extended to all excisable goods specified in the First Schedule to the Central Excise Tariff Act, 1985 intended for storage in a warehouse registered at such places as may be specified by the Board and export there from.

1.2 Facility of warehousing of excisable goods without payment of duty has been provided in respect of the specified commodities by Notification 17/2004-C.E. (NT) dated 4th September, 2004. The Central Board of Excise and Customs has also specified detailed procedure including the conditions, limitations and safeguards for removal of excisable goods sub-rule (2) of Rule 20 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules). It may be noted that warehousing facility to specified petroleum products as per earlier notification No. 47/2001-CE(NT) dated 26th June, 2001 has been withdrawn w.e.f 6th September, 2004.

1.3 Any goods warehoused may be left in the warehouse in which they are deposited, or in any warehouse to which such goods have been removed, till the expiry of three years from the date on which such goods were first warehoused.

2. Place of registration of warehouse

2.1 Commissioner of Central Excise will specify the places under his jurisdiction where warehouse can be registered, by issuing Trade Notice. Any person desiring to have warehouse will get himself registered under the provisions of Rule 9 of the said Rules.

3. Procedure for warehousing of excisable goods removed from a factory or a warehouse

3.1 The consignor (i.e. the manufacturer or the registered person of the warehouse) shall prepare an application for removal of goods from a factory or a warehouse to another warehouse in quadruplicate in the specified Form (Annexure-29).

3.2 The consignor shall also prepare an invoice in the manner specified in Rule 11 of the said Rules in respect of the goods proposed to be removed from his factory or warehouse.

3.3 The consignor shall send the original, duplicate and triplicate application and duplicate invoice along with the goods to the warehouse of destination.

3.4 The consignor shall send quadruplicate copy of the application to the Superintendent–in-charge of his factory or warehouse within twenty-four hours of removal of the consignment.

3.5 On arrival of the goods at the warehouse of destination, the consignee (i.e. the registered person of the warehouse who receives the excisable goods from the factory or a warehouse) shall, within twenty-four hours of the arrival of goods, verify the same with all the three copies of the application. The consignee shall send the original application to the Superintendent-in-charge of his warehouse, duplicate to the consignor and retain the triplicate for his record.

3.6 The Superintendent-in-charge of the consignee shall countersign the application received by him and send it to the Superintendent-in-charge of the consignor.

3.7 The consignor shall retain the duplicate application duly endorsed by the consignee for his record.

4. Failure to receive a warehousing certificate

4.1 The consignor should receive the duplicate copy of the warehousing certificate, duly endorsed by the consignee, within ninety days of the removal of the goods. If the warehousing certificate is not received within ninety days of the removal or such extended period as the Commissioner may allow, the consignor shall pay appropriate duty leviable on such goods.

4.2 If the Superintendent-in-charge of the consignor of the excisable goods does not receive the original warehousing certificate, duly endorsed by the consignee and countersigned by the Superintendent-in-charge of the consignee, within ninety days of the removal of the goods, weekly reminders must be issued by him to the Superintendent-in-charge of the consignee. If despite such reminders the original warehousing certificate is not received within a further period of sixty days of the expiry of the ninety days period, the Superintendent-in-charge of the consignor shall inform his Assistant Commissioner/Deputy Commissioner who shall either secure a satisfactory proof of the goods having been duly received by the consignee or ensure that the duty of excise due on the goods not received at destination is recovered from the consignor.

5. Accountal of goods in a warehouse

5.1 The registered person of the warehouse shall maintain a register showing all entries in to and removals of the goods from his warehouse and shall indicate the value, quantity of the goods removed, their marks and numbers as well as the rate of duty and amount of duty involved. The processes carried out on the warehoused goods, if any, shall also be recorded.

5.2 The first and last pages of the register should be pre-authenticated by the owner of the warehouse or his authorised agent.

6. Responsibility of the registered person

6.1 The registered person of the warehouse shall be responsible for due reception of the goods in to the warehouse and delivery there from including their safety during the period they are lodged in the warehouse.

6.2 The registered person shall be responsible for the payment of penalty or interest leviable in respect of the goods which are warehoused as per the provisions of the Central Excise Act, 1944 and the rules made there under.

7. Revoked or suspended registration of a warehouse

7.1 If the registration of a warehouse is revoked or suspended, the excisable goods lodged therein shall either be cleared for home consumption on payment of duty or shall be removed to another warehouse without payment of duty.

8. Warehouse to store goods belonging to the registered person

8.1 A warehouse shall be used solely for storing excisable goods belonging to the registered person of the warehouse alone. He shall not admit or retain in the warehouse any excisable goods on which duty has been paid;

8.2 The Commissioner of Central Excise having jurisdiction over the warehouse may permit storage of excisable goods along with the excisable goods belonging to another manufacturer;

8.3 The Commissioner of Central Excise having jurisdiction over the warehouse may permit the registered person of the warehouse to store duty paid excisable goods or duty paid imported goods along with non-duty paid excisable goods in the warehouse.

8.4 The facility of storage of duty paid goods belonging to another manufacturer along with non-duty paid goods in the warehouse has been extended with the permission of the Commissioner of Central Excise having jurisdiction over the warehouse. [Circular No. 632/23/2002-CX. Dated 1.4.2002].

9. Registered person right to deal with the warehoused goods

9.1 The owner of the warehouse may sort, separate, pack or re-pack the goods and make such alterations therein as may be necessary for the preservation, sale or disposal thereof.

10. Special procedure for movement of Petroleum Products through Pipeline

For the procedure to be followed by the assessees when the goods are cleared through pipeline, the procedure laid down in the Board's Circular No 663/54/2002-CX dated 23.09.2002 be followed. The procedure in brief is as under :

(a) The refineries can generate one ARE-3 on quarterly basis for one product for one destination at the end of each quarter within fifteen days of the end of the quarter. In other words, if 'N' no. of the petroleum products are sent to 'N' no. of destinations, in each quarter there shall be N x N ARE-3 at the refinery end in each quarter. (It is felt that at the end of the quarter, the refinery should be able to know the destination product-wise).

(b) The receiving Commissionerate at the tapping off points can issue the re-warehousing certificate ARE-3 wise as per the receipt at their end. These re-warehousing certificates should be acceptable to jurisdictional Central Excise Officer at refinery end in the first instance, though provisionally.

(c) At the end of the year, when annual pipeline accountal takes place in the oil companies, the reconciliation can be carried out by way of a statement to be submitted by oil companies having refineries showing the actual quantity dispatched, the quantity re-warehoused and the gain and loss in respect of each product and each destination.

(d) The annual account should be submitted by the oil companies within 60 days from the end of the financial year which should be certified by a firm of practicing Chartered Accountants. The necessary assessment order may be issued within 60 days of the receipt of the annual account.

(e) The requirement of D-3 intimation and consignment-wise AR-3A/Annexure-A/ARE-3 may be dispensed with.

(f) The limit of transit loss to be condoned shall be 0.25 percent as per the existing guidelines.

(g) Wherever the imported and indigenous products are involved, the annual reconciliation statement should give the details separately for the purpose of reconciliation.

(h) Wherever, shortages occur, the assessment may ordinarily be carried out on the basis of highest value and highest rate of duty applicable for the particular product during the quarter/ period under consideration unless the assessee establishes that the shortages relate to a particular batch for which the value and rate of duty is not in dispute.

The above procedure shall be applicable to new as well as existing pipelines. It may be seen that for the purpose of filing ER-1, the quantity cleared without payment of duty is required to be mentioned which should be available with the refineries in terms of total quantity dispatched without payment of duty. Therefore, there should not be any difficulty in filing monthly return with this procedure. Similarly, the duty demand for the shortage assignable to a particular quarter can be raised at the end of the quarter. For all other shortages not assignable to a particular period, demands may be raised if necessary, at the end of the year when the annual reconciliation statement is available. Regarding the limit of condonation of losses, this is the maximum limit to which the losses can be condoned. If it is felt that there is improper accountal of the goods or the condonation which is claimed by the assessee is not supported by the documents, the person is lible to pay duty on such losses. It may be noted that warehousing facility to specified petroleum products has been withdrawn w.e.f 6th September, 2004. Therefore, any such procedure shall be applicable for past period only.

Part-II

EXPORT WAREHOUSING

1. Introduction

1.1 In pursuance of sub-rule (1) of rule 20 of the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') the Board has issued notification no. 46/2001-Central Excise (N.T.) dated 26th June, 2001 as amended vide Notification No. 30/2003-CE (N.T.) dated 4.4.2003, which has come into force on 1st July, 2001, whereby the warehousing provisions have been extended to all excisable goods specified in the First Schedule to the Central Excise Tariff Act, 1985 intended for storage in a warehouse registered at such places as may be specified by the Board and export there from. For Nepal, the export from Export Warehouse has also been allowed on payment of duty. For such removals, the regular procedure of clearance of goods on payment of duty may be followed.

1.2 In pursuance of the above-mentioned notification the Board has also specified by Circular No. 581/18/2001-CX dated 29th June, 2001 the places and class of persons to whom the provisions of the notification No.46/2001-Central Excise (N.T.) dated 26th June, 2001 shall apply. In the same Circular, the Board has specified the conditions (including interest), limitations, safeguards and procedures.

1.3 The facility of export warehousing is available to the following exporters and places, namely: -

1. Exporters:. The exporters who have been accorded status of Super Star Trading House or Star Trading House, the foreign departmental stores of repute and the automobiles manufacturers who have signed Memorandum of Understanding with Directorate General of Foreign Trade in the Ministry of Commerce and Industry.

2. Places: The warehouses may be established and registered in Ahmedabad, Bangalore, Kolkata, Chennai, Delhi, Hyderabad, Jaipur, Kanpur, Ludhiana, Mumbai, Districts of Pune and Raigad in the state of Maharashtra, District of East midnapore in the state of West Bengal District of Kanchipuram in the state of Tamil Nadu, and the district of Indore in the state of Madhya Pradesh.

3. Petroleum products: The export warehousing facility is applicable to all exporters for petroleum products. The warehouses for the purpose of export of petroleum products falling under Chapter-27 of the First Schedule to the Central Excise Tariff Act, 1985 may be established and registered at any place within the territory of India. (Circular No. 798/31/2004-CX dated 8th September, 2004)

2. Conditions of Export Warehousing

2.1 The exporter shall furnish a general Bond (B-3) under rule 19 of the said Rules read with notifications issued there under, backed by twenty five per cent security of the bond amount.

2.2 Where any goods are diverted to home consumption from the warehouse, interest shall be charged at the rate of twenty four per cent per annum on the duty payable, calculated from the date of clearance from the factory of production or any other premises approved by the Commissioner, till the date of payment of duty and clearances.

3. Procedure of export warehousing

3.1 Registration

3.1.1 The exporter shall make a written request along with application for registration under rule 9 to the Commissioner for being allowed to establish a export warehouse under this provision. The Commissioner may cause an enquiry to be made in respect of the security of the premise for warehouse indicated by the exporter in the application. If found in order, the Commissioner will accord his approval subject to such directions, terms and manners as he may specify and forward the application to the jurisdictional Superintendent of Central Excise through the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise (having jurisdiction over the premise) within seven working days of the receipt of the application.

3.1.2 The registration certificate containing registration number will be issued by the jurisdictional Deputy or Assistant Commissioner of Central Excise immediately on receipt. Procedure relating to registration will be same as notified in Notification No.35/2001-Central Excise (N.T.) dated 26.6.2001 as amended.

3.2 Execution of bond

3.2.1 Every exporter registered in the aforesaid manner, shall execute before the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the warehouse a general bond under Rule 19 of the said Rules for export of goods from the warehouse in the B-3 Bond (General Security) Format at Annexure-30. The exporter availing this scheme shall be required to furnish security equal to 25% of the bond amount. In case any bank guarantees are furnished, it shall be the sole responsibility of the exporter to renew its validity from time to time.

3.2.2 A 'Running Bond Account' will be opened in the format specified at Annexure-31. This register shall be maintained by the exporter in the warehouse and shall be made available to the officer-in -charge or officers of Internal Audit for scrutiny and checking.

3.3 Removal of goods to warehouse

3.3.1 For removal of excisable goods from a factory or any other premise approved by the Commissioner to a warehouse, procedure laid down in Circular No. 579/16/2001-CX dated 26.6.2001 issued under rule 20 of the said Rules will be

applicable. It is clarified that the Notification No. 46/2001-CE(NT) dated 26.6.2001 do not cover removal from one warehouse to another.

3.3.2 The Central Excise Officer in-charge of the warehouse will issue certificate of removal in duplicate in the Form CT-2 specified at Annexure-32 indicating details of the general bond executed by the exporter. The CT-2 shall bear per-printed serial numbers running for the whole financial year beginning on the 1st April of each year. The said officer will issue twenty five CT-2 certificates at a time, signing each of the leaf with the official stamp. More certificates can be issued if it is so requested by the exporter on the grounds of large number of procurements. The exporter will fill up the relevant information in CT-2. After making provisional debit in the Running Bond Account, he will indicate the same in the CT-2. One copy of CT-2 will be forwarded to Officer-in charge of the warehouse. One copy will be sent to the consignor and one copy will remain with the exporter.

3.3.3 The consignor will prepare an application for removal in the Form specified in Annexure-IV (hereinafter referred to as ARE-3) and an invoice (under rule 8 taking into account CT-2 certificate) and follow the procedure specified in Circular No. 579/16/2001-CX dated 26.6.2001 issued under rule 20. The serial number of the corresponding CT-2 shall be mentioned on the top of the each copy of ARE-3. Any nominal variations between the provisional debit indicated in the CT-2 and the actual duty involved in the goods removed as indicated in ARE-3, can be ignored. Immediately on receipt of goods, the provisional debit shall be converted into actual debit on the basis of the details mentioned in ARE-3.

3.3.4 The officer-in-charge of the warehouse will countersign application and despatch to the Range Office having jurisdiction over the factory / other approved premise of removal within one working day of receipt of the application. He will make suitable entry in his own record accordingly.

3.3.5 The exporter [warehouse owner] shall maintain private record (Warehousing Register) containing information relating to details of ARE-3 and invoice, date of warehousing certificate, description of goods received including marks and numbers, quantity, value, amount of duty, details of operation in the warehouse and new packages and their marks and number, clearance from the warehouse for export (ARE-1 No., Invoice No., quantity, value, duty) and clearance for home consumption. They shall produce this Register to the Central Excise Officers in-charge of the warehouse whenever required.

3.4 Receipt and storage of goods in warehouse

3.4.1 Receipt of goods will be governed by the procedure specified Circular No. 579/16/2001-CX dated 26.6.2001 issued under rule 20 *with the modification that in case of Aviation Turbine Fuel intended for supply of foreign going aircrafts and other petroleum products i.e. FO/LDO/HSD intended for supply as Bunker Fuel to foreign going vessels, the goods may also be received through dedicated tanks in intermediate storage of goods cleared for export warehouse. For the removal of doubts, it is clarified that mixed bonding of duty paid goods with non-duty paid goods is not permitted at such intermediate storage installations. {Circular 804/1/2005-Cx dated 4th January, 2005.}*

3.4.2 Ten percent of the consignments, subject to minimum of two, received in a month will be randomly selected, spread over the entire month, for verification by officer-in-charge after the receipt of the written intimation.

3.4.3 Goods brought under the cover of each ARE-3 shall be stored separately or proper accountal shall be maintained, till these are exported or diverted for home-consumption.

3.4.4 The Commissioner of Central Excise having jurisdiction over the warehouse may permit the registered person of the warehouse to store duty paid excisable goods or duty paid imported goods along with non-duty paid excisable goods in the warehouse subject to conditions, procedure and manner of payment of duty prescribed by him. {Circular 804/1/2005-Cx dated 4th January, 2005}

3.5 Packing, re-packing, labelling or re-labelling within the warehouse

3.5.1 The operations of Packing, re-packing, labelling or re-labelling in relation to excisable goods received and stored in the warehouse will be governed by the procedure specified under rule 20. Suitable entries must be made in the Export-Warehouse register. In case of non-reconciliation of quantity, after adjusting any wastage or refuse, the differential quantity shall be treated as unaccounted and action for recovery of duty will be initiated.

3.5.2 The exporter may procure packing or labeling material and bring the same into the warehouse under the warehousing procedure itself. No duty paid goods will be permitted to be brought into the warehouse.

3.5.3 Where the process of packing, repacking, labelling or re-labelling amounts to manufacture in terms of the provisions of the Central Excise Tariff Act, 1985, the goods permitted for clearance for home consumption shall be assessed accordingly.

4. Goods supplied by an SSI Unit exempted from Registration

4.1 An SSI Unit exempted from registration under rule 9 of the said rules will also prepare ARE-3 against CT-2 in the same manner as mentioned in Para 3.3.5 above except that he will use his own invoice. Registration under rule 9 shall not be insisted. The Warehousing Certificate forwarded to the Range Office having jurisdiction over such SSI Unit shall be retained in the office and will be tallied with the details submitted by the SSI Unit in the quarterly statement. The procedure to be followed is based on Board's Circular No. 212/46/96-CX dated 20th May, 1996, which continues to be applicable under the said Rules. The clearances on those ARE-3 in respect of which Warehousing Certificate is not received within ninety days of removal or such extended period as the Commissioner may allow, will be treated as clearances for home-consumption. If the Warehousing Certificate is subsequently produced, the clearances, which were treated as "clearance for home consumption" as aforesaid, shall be expunged.

5. Clearance of goods for export outside India

5.1 For the export of goods from the warehouse, the procedure relating to preparation of application for export (ARE.1), examination and sealing, acceptance of proof of export etc. shall be governed by Notification No. 42/2001-Central Excise (N.T.) dated 26.6.2001 as amended vide Notification. No. 45/2003- CE (N.T.) dated 14.5.2003 and instructions applicable for this notification.

5.2 The requisite copies of application will be filed with the Deputy Commissioner or Assistant Commissioner having jurisdiction over the warehouse and with whom the Bond was executed, for acceptance of proof of export and issue of a certificate to this effect.

5.3 The credit in Running Bond Account shall be made by the exporter on the basis of the application (ARE.1) duly endorsed by Customs at the place of export evidencing that the goods have actually been exported. The exporter will submit list of ARE.1 along with the date of export for the goods exported in each month, within six months of the removal from the warehouse and the original copies of the respective ARE.1 duly certified by Customs authorities that the goods have actually been exported [containing Pass for Shipment Order]. The exporter shall be liable to pay duty with interest where such proof of export is not available with him within six months from the date of removal from the warehouse.

5.4 The Superintendent in-charge of the warehouse is empowered to issue certified attested copies of ARE.1 [more than one copies may be required by exporter as one application (ARE.1) may consist of goods of several ARE-3s] and hand over to the exporter for forwarding to the factory whose goods were exported so that such factories can avail other export benefits, such as refund of CENVAT credit accumulated on account of export in terms of the CENVAT Credit Rules, 2002. This refund will be given only after goods covered on an ARE-3 is entirely exported. In case of any diversion to home-consumption, refund will be reduced on pro-rata basis. For the sake of clarification, it is stated that the removal from the factory of production to export warehouse on ARE-3 is 'removal under bond for export'. Thus, the manufacturer shall not be asked to reverse CENVAT Credit @ 8% (now 10%) of price of the said goods.

5.5 On request from exporter, copies of proof of export may be sent directly, by post to the Range Office having jurisdiction over the factory or handed over to the exporter in sealed cover for delivery to such Range Office.

5.6 Photocopies of the Shipping Bill/ Export Application and Bill of Lading duly attested by the Superintendent in-charge of the Warehouse along with certificate of proof of export should be accepted as valid documents for the purposes of refund of accumulated credit under the CENVAT Credit Rules, 2004 on account of exports without payment of duty. The proof of export received directly or in official sealed cover from the Superintendent in-charge of the warehouse may be used to verify the authenticity.

5.7. Where neither the duplicate copy of ARE.1 nor the original copy of ARE-1 duly attested at the port of export, are made available within the time stipulated

period of six months, it shall be presumed that export of goods cleared from warehouse has not taken place. The demand shall be raised by the Deputy/Assistant Commissioner having jurisdiction over the warehouse for non-fulfilment of the conditions of bond executed by the exporter.

5.8 Procedure for export directly from warehouse to Nepal when the transaction is in Indian rupees

If the goods are cleared for export on payment of duty, same is allowed in respect of all countries subject to following the procedure laid down in the relevant notification. Further, the facility of clearances (for export) from export warehouse to Nepal on payment of duty is also available when the transaction is in Indian Rupees. Normally, such removals would be treated as domestic clearances and subject to payment of interest as per paragraph 10 of the said Circular No.581/18/2001-CX. However, since the goods are ultimately exported and the rebate of duty is given to HMG Nepal, it has been decided to relax this condition and allow the exporter to clear the goods on payment of duty without interest. Accordingly, exports may be allowed directly from the export warehouses to Nepal on payment of duty even when the transactions are done in Indian Rupees and no interest is liable to be paid on the duty paid on such export transactions.

5.9 Direct export of goods after further processing by merchant exporters

The denial of facility of clearance of goods directly from the premises of job worker in the case of merchant exporters increases the cost of transactions. In this connection, as in terms of rule 4 (6) of Cenvat Credit Rules, 2002, the clearance of finished goods for export directly from the job workers' premises has already been provided. The same facility can be extended to merchant exporters who procure goods for export from the export warehouse on the strength of CT-I certificate furnished by the exporter. Accordingly, goods can be cleared directly from the job workers' premises to export warehouses of merchant exporters for export subject to fulfillment of procedure prescribed by the Commissioner. (Circular No.676/67/2002-CX 25th November, 2002).

6. Diversion of goods for home-consumption

6.1 Goods can be diverted for home-consumption from the warehouse with the permission of the jurisdictional Deputy/Assistant Commissioner of Central Excise. The clearance shall be effected on invoice prepared under rule 8 on payment of duty, interest and any other charges on TR-6 Challans and after making necessary entries in the export warehouse register maintained by the exporter in the warehouse. Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse. If entire quantity is not diverted, calculation shall be done on pro-rata basis.

6.2 Goods can be diverted for home-consumption even after the clearance from the warehouse on ARE.1. For cancellation of documents, provisions of Notification No. 46/2001-CE (NT) dated 26.6.2001 as amended vide Notification. No. 30/2003-CE (N.T.) dated 4.4.2003 shall be followed. The intimation shall be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.

6.3 Where the goods are diverted for home-consumption in full or in part the exporter shall be liable to pay interest @ 24% per annum on the amount of duty payable on such goods from the date of clearance from the factory of production or any other premises approved, till the date of payment of duty and clearance.

7. Waiver of physical warehousing in case of exigency

7.1 The officer- in-charge of the warehouse may permit waiver from physical warehousing (i.e. permitting export without physically storing the goods in the warehouse) where exporter so requests in writing provided all the formalities relating to record-keeping shall be completed in usual manner with suitable record in the Warehousing Register: 'warehousing waived'. This permission will be given in exceptional cases where delay occurred due to delayed supply from the factory or longer transit-period or requirement of immediate export or any other genuine reasons, provided the entire consignment is entered for export in the original packing. Such cases of permission granted will be reported to Superintendent-in-charge of the warehouse at the earliest.

8. Providing of accommodation for the Officer

8.1 The exporter shall provide adequate office accommodation and furniture for the Officer deployed for examination and supervision, in the warehouse. Where the exporter is willing to bear the cost of the posting of Officers on "cost recovery basis", the Commissioner, depending upon the administrative feasibility, may consider the deployment.

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CHAPTER- 11
SAMPLES

1. Introduction

1.1 There is no specific provision in Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules') governing drawl and testing of 'samples' of manufactured goods or inputs to ascertain their correct identity or classification or eligibility of any exemption. However, under various procedures, such as relating to exports, assessment etc. drawl of samples is required.

2. Categorization of Samples

2.1 The samples can be categorized, as follows:

(i) Trade samples sent to customers for trial; or trade samples for free distribution to public/ultimate consumer;

(ii) Samples for test purposes;

(iii) Samples for supply against sale contracts or for enforcement of control measures;

(iv) Samples for display at exhibitions, fairs and in show-cases; and

(v) Samples for market inquiries by Central Excise Officers.

2.2 Apart from the assessee requiring the samples for cogent reasons, the Central Excise Department may also require drawl and testing of samples and the assessee shall comply with such directions as may be given in this regard. However, there shall not be any drawl and testing of samples in routine manner.

3. Procedure for the drawl and accounting of Samples

3.1 Trade Samples

3.1.1 The manufacturers' generally give such samples to their customers for 'trial and approval'. Trade samples may also be distributed free to public/ ultimate consumer. The removal shall be in the same manner as the removal of goods for home consumption. The manufacturer shall prepare an invoice under rule 11 of the said Rules and record the details in his Daily Stock Account. He shall discharge duty in the manner specified in rule 8 of the said Rules unless the removal of samples are

exempted from duty by a notification issued under Section 5A of the Central Excise Act, 1944.

3.1.2 Samples of certain goods sent to the trade by manufacturers are likely to be returned. In such cases, the procedure specified in rule 16 of the said Rules and the instructions relating thereto shall be followed.

3.2 Samples for test purposes

3.2.1 The samples of this category will generally include:-

(i) Samples drawn by in-house laboratory for testing quality and adherence to product specifications;

(ii) Samples drawn for preservation for investigation of complaints;

(iii) Samples drawn for test at other concerns and independent testing agencies;

(iv) Samples required to be sent to Revenue Laboratories (Chemical Examiners) including Government Test centers.

3.2.2 The assessee is required to maintain a proper account of receipts and the utilisation of samples in the test, in the laboratory. The removal shall be in the same manner as the goods are removed for home consumption. The manufacturer shall prepare invoice under rule 11 the said Rules and make issue entries for the goods (samples) in the Daily Stock Account. Appropriate duty shall be paid by the assessee on these samples before their removal for test purposes unless otherwise exempted by a duty exemption notification.

3.3 Samples for other purposes

3.3.1 Where samples are required for the purposes specified at (iii), (iv) and (v) of paragraph 2.1 above, the procedure specified at paragraph 3.2 shall be followed. However, it is clarified that when a manufacturer preserves the samples of their product for some period for investigation of complaints, if any, no duty should be charged on these samples considering that the goods remain within the factory. Duty shall be charged, unless exempted by a notification, once the samples are cleared

from the factory. If at any time the manufacturer desires to destroy these samples, procedure specified in rule 21 of the said Rules shall be followed.

4. Quantity of samples

4.1 The quantity of the samples should be drawn are indicated in Annexure I in the Central Excise Manual of Chemical laboratories in the Custom Houses published by Directorate of Publications, Customs and Central Excise, New Delhi 1983, which is reproduced below .

S.No.	Description of Goods	Minimum quantity of samples required for test in the laboratory
1	Sugar and Sugarhouse Products	250 grms.
2	Confectionery & Chocolates	300 grms.
3	Prepared food products	500 grms. Preferably in original packing
4	Coffee	125 grms.
5	Tea	125 grms.
6	Tobacco	100 grms.
7	Mineral Oil (Motor Spirit H.S.D. etc.)	One Litre
8	Kerosene	One Litre
9	Refined Diesel Oil & Vaporising Oil	One Litre
10	Diesel Oil N.O.S. /other Mineral Oil	One Litre
11	Furnace Oil	One Litre
12	Asphalt Bitumen & Tar	500 grms.
13	Products derived from refining of crude petroleum, or not otherwise specified	
(a)	Lubricating Oil	1 Litre
(b)	Grases, Waxes	500 grms.
(c)	Mineral Turpentine Oil	1 Litre
(d)	Transformer Oil	4 Litres
(e)	Other (i) In liquid form	1 Litre
	(ii) Semi – Solid or Solid in form	250 grms.
14	(i) Blended of compounded lubricating Oils	1 Litre
	(ii) Blended or compounded greases	500 grms.
15	Calcined petroleum coke etc.	250 grms.
16	Vegetable Oils	250 grms.
17	Vegetable products	250 grms.
S.No.	**Description of Goods**	**Minimum quantity of samples**

		required for test in the laboratory
18	Paints, Enamels, Varnishes, Lacquers etc.	500 grms.
19	Soda Ash	250 grms.
20	Soap	250 grms.
21	(i) Synthetic organic products of a king used as I) Organic Luminophores	50 grms.
	(ii) Products of the kind known as optical Bleaching Agents, Substantive to the Fibre.	250 grms.
22	Organic surface-Active (Other- than soap); Surface-Active preparations and washing preparations, whether or not containing soap.	250 grms.
23	Caustic Soda	250 grms.
24	Soduum Silicate	500 grms.
25	Glycerine	250 grms.
26	Dyes/ pigments	250 grms.
27	Medicines	200 grms. Or/ 100 Tablets/Capsules
28	Cosmetics & Toilet preparations	Original packing of about 250 grms.
29	Acids	250 ml.
30	Fertilisers	250 grms.
31	(i) Plastics	100 grms. If solid, 250 ml. If liquid
	(ii)Synthetic Resins	250 grms.
32	(a) Rubber products	250 grms.
	(b) Rubberised fabrics	½ metre long of full width
33	Plywood and Flush doors	½ Sq. Metre
34	Paper, Board etc.	10 Sheets (Approx. 30 cm. X 20 cm.)
35	Rayon & Synthetic yarn	500 metres or full hank, as the case may be
36	Cotton Twist yarn & thread	1000 metres (one hank)
37	Wool Tops	100grms.
38	Woolen Yarn	200 Metres
39	Cotton Fabrics	One metre full width
40	Woolen Fabrics	½ metre full width
41	Rayon or Art Silk Fabrics	One metre full width
42	Varnished Cloth leather cloth	One metre full width
43	Cement all varieties	500 grms.
44	Glass & Glassware	The two whole articles if possible. If the article is too bulky 250 grms. In weight of representative portion of the

		article
45	Chinaware and porcelainware	- do -
S.No.	**Description of Goods**	**Minimum quantity of samples required for test in the laboratory**
46	Asbestos Cement products	500 grms.
47	Copper & Copper Alloys	100 grms.
48	Iron or Steel products	250 grms.
49	Wires & Cables	5 Metres
50	Footwear	One Pair
51	Metals & Alloys	250 grms.

However, in some cases a specific quantity is asked for which should be supported by requisition order from the Chemical Examiner. An account of all departmental samples drawn and sent to the Chemical Examiner should be maintained by the Range Officer.

5. Test Memo

5.1 A test memo should always be prepared in triplicate, the original to be sent to the Chemical Examiner, triplicate to the Deputy/Assistant Commissioner and duplicate retained on the Range Officer's record.

6. Preservation of Samples

6.1 The samples drawn by the Range staff but not sent for test to laboratories should be preserved for six months from the date of analytical report on the sample tested. In case of any discrepancy being noticed, the samples have to be preserved till the period of Appeal or Revision application is over or till disposal of Appeal/Revision Application. The remnants, which are not required by the concerned assessee, may be destroyed soon after the parties specially inform that they accept the analytical report furnished by the Director (Revenue Laboratories) or after completion of the period of appeal or revision petition is over, as the case may be.

7. Cost of samples when drawn by the Department

7.1 In respect of samples drawn by the officers of the Central Excise Department for ascertaining the identity of goods/its classification or any other official purposes relating to Central Excise, the cost of samples may be reimbursed on manufacturer's request out

of the contingency by the divisional officer. The cost of the containers required for drawl of samples may not be much and if the same cannot be borne by the assessee through persuasion the same should be borne by the Department.

8. Procedure for testing and re-testing of samples drawn by the Department

8.1 Except where there are special instructions for particular kind of samples, the representative samples from such or any lot must be drawn in quadruplicate in the presence of the owner/manager of the factory or his representative.

8.2 The quantities of excisable goods or materials taken for testing should be the minimum necessary for testing and the Commissioner will, in consultation with the Chemical Examiner concerned, specify for each kind of excisable goods or materials the size of samples for this purpose.

8.3 The samples should be sealed with Excise seals and a declaration obtained from the owners (manufacturers) to the effect that the samples drawn are representative of the lot and that he is satisfied with the manner of drawing of the sample. The assessee, if he so desires, may also be permitted to affix his seal on the samples.

8.4 The four samples drawn for test should be clearly marked as:

(a) Original for Chemical Examiner (to be despatched to him along with the declaration and the relative test memorandum under intimation to the Assistant/Deputy Commissioner concerned).

(b) Duplicate to be sent to the Deputy/Assistant Commissioner of Central Excise (to be forwarded to him for safe custody for further use in case a dispute arises).

(c) Triplicate for Range Officer (to be retained for any future reference or to cover loss by post or other emergency).

(d) Quadruplicate to be given to the manufacturer (for his own record).

8.5 Before despatch of sample to the Deputy/Assistant Commissioner of Central Excise and the Chemical Examiner, the samples should be packed properly, sealed and marked in such a way that they suffer no loss or deterioration in transit or subsequent storage.

8.6 The Chemical Examiner after test, will return the remnant sample, if fit for re-test and not in other cases, together with his test report, to the Assistant Commissioner concerned. The Chemical Examiner will be in position to indicate whether or not a remnant is fit for re-test and the Deputy/Assistant Commissioner of Central Excise or other adjudicating authority will in most cases be able to anticipate whether the assessee will demand a re-test or not. The test results should be speedily communicated to the Assessee.

8.7 The Department shall carefully preserve the remnant sample.

8.8 Whenever the assessee is dissatisfied with the test carried out by Chemical Examiner he can apply to Deputy./Assistant Commissioner of Central Excise concerned for re-test within 90 days from the date on which the test result was communicated to him after payment of the prescribed fees. The prescribed fee for re-testing of the samples in the laboratories of Central Board of Excise and Customs have been prescribed in Appendix A of the Central Manual of Chemical laboratories in the Custom Houses containing procedure, rules and regulations by Directorate of Publication, Customs and Central Excise, New Delhi 1983 as under, which is reproduced below :

"Schedule of fees for testing and re-testing sample in the laboratories of the Central Board of Excise & Customs

	SCHEDULE I FEE Rs.50/- PER SAMPLE			
1	Dangerous Petroleum for Certificate G. The Petroleum Rules, 1937			
	SCHEDULE II FEE Rs.60/- PER SAMPLE			
1	Asphalt		11	Miscellaneous (qualitative)
2	Chemicals drugs other than prohibited drugs; tests for B.P. Standards etc. (qualitative)		12	Opium (qualitative)
3	Cocaine		13	Press cake or baggasse (Sugar percent)
4	Denatured Spirit (qualitative) per sample.		14	Paper (Fibre count)
5	Dyes (qualitative)		15	Potable spirits for obscuration
6	Gauging		16	Sackings and Hessians
7	Gold and Silver articles (qualitative)		17	Spent dye (for salt content)

8	Greases (for pour points)		18	Spirituous preparations (alcoholic strength) (a) essences, (b)Medical preparations (c) toilet preparations and (d) Wines, Corlials
9	Jute, hemp and other vegetable fibres (identification)		19	Starch, Flour, rice and other cereals, identification of
10	Metals (qualitative)		20	Textiles and yarns(qualitative)
	SCHEDULE III FEE Rs.150/- PER SAMPLE			
1	Chemicals; drugs other than prohibited drugs tests for B.P.Standards etc. (quantitative)		26	Oils, Minerals, e.g., petrol, kerosene, diesel etc., including those tested to ascertain if they are suitable for use as an illuminant in wick lamp.
2	Condensed steam and sugar factory effiuents.		27	Oils other than specified under essentials oils and oil and fats, waxes, fatty acids, stearing, tallow etc.
3	Dangerous petroleum in mixutes and toilet preparations		28	Opium, estimation of morphine.
4	Denaturants		29	Ores (qualitative)
5	Denatured Spirits (quantitative)		30	Paints, varnishes and lacquers
6	Distillary sample		31	Paper (volumetric)
7	Dye (quantitative)		32	Perfumed spirit-analysed to determine if perfumed spirit
8	Explosives		33	Pigments
9	Fermented liquors (bear, tari etc.) determination of original gravity, physical constants etc.		34	Pitch and Tar
10	Gold and Silver articles (quantitative)		35	Power alcohol, denatured or undenatured
11	Greases (complete analysis) and petroleum jelly.		36	Rectified spirit, denatured or undenatured
12	Gums, glus, gelatine, resins natural and synthetic and related substances.		37	Restricted and prohibited drugs, detection as such estimation of in medicines etc.
13	Gur and gur drainings.		38	Salt in country soaps
14	Hemp drugs		39	Soaps (general and quantitative)
15	Instruments standardization of		40	Sugar candy and candy syrups
16	Licit and illicit spirits		41	Sugar confectionery products
17	Massacuite		42	Sugar of all kinds not otherwise specified
18	Matches and fire works		43	Syrup (complete chemical analysis)
19	Medicinal preparations (Medicated wines complete analysis)		44	Tea
20	Metals, determination of one or two constituents		45	Textiles and yarns (quantitative
21	Methylated liniments and tinctures.		46	Toilet preparations
22	Milk and milk powders (quantitative)		47	Turpentine and turpentine substitute
23	Molasses		48	Water analysis

24	Motor Spirits.		49	Samples, not otherwise specified, involving determination of not more than two constituents or constants or which involve a qualitative analysis and determination of one constituent or constant.
25	Oils ((lubricating and batching, Linseed and other paint oils other vegetable oils).			
	SCHEDULE IV FEE Rs.250/- PER SAMPLE			
1	Butter		10	Saline earths
2	Cement, clays, bleaching earth, sand, stone powers, infusorial earth and related substances		11	Salt, Sitta, refinery salt (complete quantitative analysis)
3	Essential oils		12	Saltpotre
4	Ghee		13	Trade and patent products imported under fancy names for chemical composition
5	Lemon and lime juice for ships provisions etc.		14	Vegetable oils
6	Manures (quantitative)		15	Vegetable products, ghee etc.
7	Metals and metallic alloys, determination of three or more constituents.		16	Flours
8	Mineral oils for Railways		17	Samples not otherwise specified, involving determination of more than two constituents or constants or which involve a qualitative analysis and determination of more than one constituent or constant.
9	Ores (quantitative)			

8.9 Where the remnant sample is available in sufficient quantity in its original state, re-test should ordinarily be on such remnant sample. Where such remnant sample was received from the Chemical Examiner but it is not in sufficient quantity or in original state, or where the party concerned desires, for one or the other reasons, a re-test on duplicate or triplicate sample, Deputy/Assistant Commissioner of Central Excise, the adjudicating authority or, as the case may be, the appellate authority should pass an appropriate order for re-test on duplicate or triplicate sample.

8.10 Where an assessee requests for re-test in a laboratory other than a Control Laboratory (hereinafter in this paragraph referred to as "outside laboratory") whether on the remnant or the duplicate or triplicate sample, such request may be allowed for testing

the sample from an outside Government or Semi-Government laboratory with the prior permission of the Commissioner or the Appellate or the Reversionary authority, as the case may be after Director (Revenue Laboratories) has confirmed that the departmental laboratories do not have the facilities for performing the particular test in question. The request for re-test in outside laboratories will be conditional upon the party concerned meeting the cost of the re-test.

8.11 It is always open to the assessee concerned to get the authenticated sample, in its possession, analysed in any laboratory of his own choice and submit the findings of such laboratory for due consideration on merits of each case, by the appropriate adjudicating/appellate authority. However, the assessee should ensure that the laboratory which analyses the samples indicates clearly in its test report the full particulars of the samples and whether the central excise seals affixed to the samples were intact or not at the time of its receipt by such laboratory.

8.12 The payment of a fee for re-test does not entitle the assessee to a copy of chemical report. The result of any such retest must however be communicated to the owner at the earliest. Where a copy of the test report is to be furnished to the assessee at its request, the Department shall have the option to provide only a concise, edited) form of the Test Report. The editing of the Test Report should be done in consultation with the Chemical Examiner.

8.13 For the purpose of market enquiries regarding the value of excisable goods, samples can be drawn by Central Excise Officer on written order of the Deputy/Assistant Commissioner of Central Excise, on returnable basis. There is no need to make any issue entries in Daily Stock Account for such samples as the same are to be returned to the factory. The Range Officer should maintain a simple account showing the date of taking the sample, quantity taken and date of return. There should be proper acknowledgement of drawl and return of sample. The officer who draws sample, will also give acknowledgement to the assessee and take acknowledgement when he returns the sample.

9. Clearance of model/proto-type without payment of duty for trial etc.

9.1 Where a finished excisable goods falling in the category of model/proto-type are to be sent out for trial purposes by actually putting them to effective use after conducting certain test to ensure that they meet with certain standard/specified norm, clearance may be allowed on payment of duty. Their subsequent return to the factory may be regulated in terms of rule 21 of the said Rules.

10. Samples drawn at the time of export of goods

10.1 Three sets of samples are drawn at the time of examination or sealing of export goods. Two sets of samples, duly sealed, are handed over by the Central Excise Officer examining the consignment to the exporter or his authorised agent for delivery to the Custom Officer at the point of export. The Central Excise Officer for his record retains the third set of sample.

10.2 The Customs Officer will check the export goods with the sample before allowing export. The samples shall be dealt with in accordance with instructions/standing orders of the Board or the Commissioner of Customs.

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CHAPTER 12

Special Procedure for Specified Goods

PART I
Stainless steel pattis/pattas,

and Aluminium Circles

1. Introduction

1.1 Under rule 15 of the Central Excise Rules, 2002 (hereinafter referred to as the 'said Rules'), special central excise procedures have been framed with the view to facilitate the trade in specified goods, viz. Stainless Steel Pattas/ Patties and Aluminium Circles. These procedures deal with all aspects of central excise such as payment of duty, maintenance of records, filing of returns etc.

2. Duty payable under special procedure

2.1 By Notification No. 34/2001-Central Excise dated 28.6.2001(effective from 1st July, 2001) an assessee shall have an option to pay the duty of excise on the basis of the cold rolling machine installed for the manufacture of Stainless steel pattis/pattas, falling under Chapter 72, or Aluminium circles falling under Chapter 76 of the Schedule to the Central Excise Tariff Act, 1985(5 of 1986) by the process of cold rolling. The rates of duty per cold rolling machine, per month are, as follows :

S.No.	Item	Rate of Duty per cold rolling machine per month
(i)	stainless steel patties or pattas	Rs.15,000
(ii)	aluminium circles produced from sheets manufactured on cold rolling machines	
	(a) where the length of the roller is 30" or less	Rs. 7,500
	(b) where the length of the roller is more than 30"	Rs. 10,000

2.2 The rate of duty is fixed subject to the condition that no credit of duty paid on any raw materials, component part or machinery or finished products used for cold rolling of Stainless steel pattis/pattas, or Aluminium circles under CENVAT Credit Rules, 2004 shall be taken and further that the specified procedure is followed.

3. Application to avail special procedure

3.1 The manufacturer shall make an application in the form specified to the Superintendent of Central Excise for this purpose and the Superintendent, may grant permission for the period in respect of which the application has been made.

3.2 The application shall be made so as to cover a period of not less than twelve consecutive calendar months, but permission may be granted for a shorter period for reasons to be recorded in writing, by the Deputy/Assistant Commissioner of Central Excise.

3.3 If at any time during such period the manufacturer fails to avail himself of the procedure contained in this notification, he shall, unless otherwise ordered by the Assistant Commissioner or the Deputy Commissioner, be precluded from availing himself of such procedure for a period of six months from the date of such failure.

3.4 If the manufacturer desires to avail himself of the procedure even after the expiry of the period for which his application was granted, he shall, before such expiry, make a fresh application to the Deputy/Assistant Commissioner of Central Excise and on his failure to do so, he shall, except as provided herein, be precluded from availing himself of such procedure for a period of six months from the date of such expiry.

3.5 An application made by a manufacturer, under erstwhile sub-rule (1) of rule 96ZA of the Central Excise Rules, 1944, shall be deemed to be an application made under the said Notification.

4. Discharge of duty liability on payment of certain sum.

4.1 A manufacturer whose application has been granted shall pay a sum calculated at the rate specified in the said notification, subject to the conditions therein laid down. Such payment shall be in full discharge of his liability for duty leviable on his production of such cold re-rolled Stainless steel pattas/pattis, or Aluminium circles during the period for which the said sum has been paid. However, if there is revision in the rate of duty, the sum payable shall be recalculated on the basis of the revised rate, from the date of revision and liability for duty leviable on the production of the said goods from that date shall not be discharged unless the differential duty is paid. In case the amount of duty so recalculated is less than the sum paid, the balance shall be refunded to the manufacturer.

4.2 When a manufacturer makes an application for the first time for availing the procedure contained in this notification, the duty liability for the month in which the application is granted shall be calculated pro-rata on the basis of the

total number of days in that month and the number of days remaining in the month from the date of such grant.

4.3 The sum payable under the said notification shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time during three calendar months immediately preceding the calendar month in which the application under the said notification is made.

4.4 The sum shall be tendered by the manufacturer along with the application.

5. Manufacturer's declaration and accounts

5.1 The manufacturer who has been granted the required permission shall make an application in the form specified in Annexure-33 to the said notification to the Superintendent in charge of the factory for permission to remove the Stainless steel pattis/ pattas, or Aluminium circles from his premises during the ensuing month, declaring the maximum number of cold rolling machines installed by him or on his behalf, in one or more premises at any time during three calendar months immediately preceding the said calendar month in which such application is made.

5.2 If such application is not made to the Superintendent of Central Excise within the specified time limit, the manufacturer shall, unless, otherwise directed by the Deputy/Assistant Commissioner of Central Excise, and in exceptional circumstances, be liable to pay duty on his entire production of Stainless steel pattis/pattas, or Aluminium circles during the month or part thereof in respect of which the application was to be made, at the rate prescribed in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any relevant notification or notifications issued under sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

5.3 The manufacturer shall also intimate the Superintendent of Central Excise in writing of any proposed change in the number of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change.

6. Exemption from certain provisions etc.

6.1 During the period in respect of which any manufacturer has been permitted to avail himself of the procedure of the said notification, he shall be exempt from the operation of rule 8 of the said Rules.

6.2 Except in accordance with such terms and conditions as the Central Government may by notification specify in this behalf, no rebate of excise duty

shall be paid under rule 18 of the said Rules, in respect of any Stainless steel pattis/pattas, or Aluminium circles exported out of India, out of the stock produced by such manufacturer during such period.

7. Provisions regarding new factories and closed factories

7.1 In the case of a manufacturer who commences production for the first time or who recommences production after having ceased production for a continuous period of not less than three months, and who has been permitted by the Deputy/Assistant Commissioner of Central Excise to avail of the special procedure, the amount payable by him for the first month or part thereof, as the case may be, shall be provisionally calculated on the basis of his declaration of the maximum number of cold rolling machines that are or are likely to be installed by him or on his behalf during such period.

7.2 At the expiry of the period, the amount payable shall be recalculated on the basis of the maximum number of cold rolling machines actually installed and if the initial payment falls short of the total liability so determined, the deficiency shall be recovered from the manufacturer and where the total liability is less than the initial deposit, the balance shall be refunded to the manufacturer.

8. Power to condone failure to apply for special procedure

8.1 Notwithstanding anything contained in the said notification, the Additional/Joint Commissioner of Central Excise may, at his discretion, for reasons to be recorded in writing, and subject to such conditions as he may deem fit, apply the provisions contained in the said notification to a manufacturer who has failed to avail himself of the special procedure, or to comply with any condition laid down in this notification.

9. Provision regarding factories ceasing to work or opting for the normal procedure

9.1 Where a manufacturer who had availed himself of the special procedure contained in the said notification ceases to work (i.e. for more than one or two shifts only) or reverts to the normal procedure, the duty payable by him in the month during which he has availed the procedure shall be calculated on the basis of the maximum number of cold rolling machines installed during the last month in the prescribed manner and the amount already paid for the month shall be adjusted towards the duty so calculated. If on such adjustment if there is any excess payment it shall be refunded to the manufacturer and any deficiency in duty shall be recovered from him.

10. Confiscation and penalty

10.1 If any manufacturer contravenes any provision of the said notification in respect of any excisable goods, then all such goods shall be liable to confiscation, and the manufacturer shall be liable to penalty under rule 25 of the said Rules.

PART-II

(Applicable only for the relevant period)

Textiles and textile articles. - (1) Notwithstanding any thing contained in these rules, every person (not being an export-oriented unit or a unit located in special economic zone) who gets yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act] produced or manufactured on his account, on job work (herein after referred to as "the said person" shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee:

Provided that the job worker may, at his option, agree to obtain registration, maintain accounts, pay the duty leviable on such goods, prepare the invoice and comply with the other provisions of these rules. In such a case the provisions of these rules shall not apply to the said person. The job worker, may, at his option, authorize the said person to, on his behalf as his agent, maintain accounts, pay duty, prepare invoice and comply with any of the provisions of these rule except that of rule 9:

Provided further that the job worker may make an option to undertake the activities mentioned in this sub-rule as an agent or person authorized by the said person and in such a case, the said job worker shall be deemed to be the said person.

(2) If the said person desires clearance of excisable goods for home consumption or for exports from the premises of the job worker, he shall pay duty on such excisable goods and prepare an invoice, in the manner referred to in rules 8 and 11 respectively except for mentioning the date and time of removal of goods on such invoice. The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after completion of job work are intended to be cleared, before the goods are cleared from the premises of the job worker. The job worker shall fill up the particulars of date and time of removal of goods before the clearance of goods. After such clearance the job worker shall intimate to the said person, the

date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.

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

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(a) inputs in respect of which he may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2002, without reversal of the credit thereon; or

(b) goods manufactured in the factory of the said person without payment of duty;

under a challan, consignment note or any other document (herein after referred to as "document") as described in sub-rule (4), duly signed by him or his authorized agent. **In case the job worker has undertaken to pay the duty then the duty paying document shall be endorsed in the name of the said job worker.**

(4)(a) The document shall be in duplicate, in printed (including computer printed) format, having printed running serial numbers on a financial year basis. The document, before it is issued shall be signed by the sender, of the goods referred to in sub-rule (3) or his authorized representative, as the case may be.

Before making use of the said document, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction.

(b) The document for the movement of goods from the said person to the job worker shall contain the following information, -

(i) the name, address and registration number of the said person;
(ii) the Range, Division and the Commissionerate with whom the said person is registered;
(iii) the description, quantity (in terms of kg./m/Sq.m) and the value of the goods being sent for the job work;
(iv) the date of dispatch of such goods; and
(v) the name and address of the job worker.

(c) The document pertaining to movement of goods from a job worker to another job worker or from a job worker to the said person shall contain, -

(i) the name and address of the job worker (the sender).

(ii) The description and quantity (in terms of kg./m/Sq.m) of the goods being sent.
(iii) The date of dispatch of such goods.
(iv) The name and address of the job worker/the said person to whom the goods are being sent (the receiver).

(d) The responsibility in respect of accountably of the goods, referred to in sub-rule (3) shall lie on the said person.

(5) The job worker, on receipt of the goods mentioned in sub-rule (3) or, as the case may be, from another job worker sent by him in terms of clause (ii) to sub-rule (7), shall duly acknowledge the receipt of the goods on the said document.

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

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

(i) return the goods without payment of duty to the said person; or
(ii) send the goods without payment of duty to another job worker; or
(iii) clear the goods for home consumption or for exports

subject to receipt of an invoice from the said person, as mentioned in sub-rule (2). The job worker shall clear the goods after filling in the time and date of removal and authenticating such details. The rate of duty on such goods shall be rate in force on the date of removal of such goods from the premises of the job worker. No excisable goods shall be removed except under an invoice:

Provided that the goods may be sent under a proforma invoice in terms of proviso to sub-rule (1) of rule 11.

(8) The provision of rule 12B , mutatis mutandis, be applicable to the goods in the nature of the waste, by-products or like goods arising during the course of manufacture of the goods mentioned in sub-rule (1).

(9) Nothing contained in Central Excise Rules, 2002 shall apply to the goods sent from or to an export oriented unit or a unit located in a special economic zone.

Explanation 1. - For the purposes of rule 12B, "job worker" means a person engaged in manufacture or processing on behalf and under the instructions of the said person from any inputs or goods supplied by the said

person or by another job worker or by any other person authorized by the said person, so as to complete a part or whole of the process resulting ultimately in manufacture of 1[yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60 readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act] and the term "job work" shall be construed accordingly.

Explanation 2. - For the removal of doubt, it is clarified that any goods or part thereof is lost, destroyed, found short at any time before the clearance of yarn or fabrics falling under Chapter 50, 51, 52, 53, 54, 55. 58 or 60 or readymade garments falling under Chapter 61 or 62 of First Schedule to the Tariff Act or waste, by-products or like goods arising during the course of manufacture of such goods, the said person shall be liable to pay duty thereon as if the such goods were cleared for home consumption.

PART-III

Special Procedure for Textiles and Textile Articles including Ready made Garments

In the Union Budget 2003, a special thrust has been given for rationalization of excise duties of textile sector. The proposals involve lowering excise duty rates, completion of CENVAT credit chain, replacement of credit on deemed basis by actual, removal of excise duty exemption on unprocessed woven and knitted fabrics, and restricting the exemption on processing of fabrics only for pure hand processed fabrics. Government was aware that these changes might initially create certain problems of compliance for large number of powerlooms and processors who have been hitherto exempted from excise duty. Having regard to this, these changes have come into effect from 1.4.2003, and a simplified system of procedures have been worked out for the units liable to excise duty for the first time.

2. The **salient features of the new textile rules and procedure** are as follow:

- Yarn processors, powerlooms, hand processors and power processors, who do only job work for others, need not take any excise registration or maintain records or pay duty. For such job workers, all formalities would be undertaken by the trader/master weaver/the owner of goods, who gets the job work done.
- The movement of goods in such cases would be under a simple (printed and serially numbered) challan, a practice that is already followed by the trade even now. Such challans can be prepared in local language also, in

addition to English. The procedure permits movement of goods from one job worker to another and also final clearance of the goods from job worker's premises. The job worker only has to make entries in the challan.

- The trader/master-weaver/owner has been permitted to clear goods directly from the premises of the job worker on payment of duty.
- In case the job worker wants to clear goods on payment of duty, he can do so. In such cases, after taking registration, he can also authorize the trader/supplier to make payment of duty on his behalf.
- The procedure for registration (for those who would be paying duty) has been simplified. There is no need for the assessee to visit Central Excise office for this purpose. The help of the office bearers of the trade associations is solicited in this regard. Individual assessee can collect the forms from the associations, fill the same and hand it over to the office bearers. The office bearers can approach the jurisdictional Commissioners for instant registration of the units. A special cell for this purpose has been opened in all Commissionerates. Normally no verification of premises by the officers would be conducted. Assessees not having Income Tax PAN would also be granted registration. **[This relaxation is not required now and therefore the assessees should follow normal procedure available for other assessees].**
- A simplified procedure for filing of return has been prescribed. Those manufacturing yarn preparatories (i.e. twisting, warping, doubling of yarns), unprocessed fabrics and readymade garments can file quarterly return in a simplified format. The duty in respect of clearances for a particular month has to be paid by the 5th of the succeeding month.
- In case a person requires passing on the credit on goods sold by him without being manufactured by him, he can take registration as a registered dealer.
- Facility of endorsement of duty paying documents has been made available to those who are undertaking non-excisable or exempted process. Such persons simply have to endorse the duty paying documents to the next persons to whom they sell the goods.
- Provisions have been made for allowing credit in respect of inputs (namely, yarn and fabrics) lying in stock, inputs in process and inputs contained in finished goods lying in stock as on 31.03.2003. There will be no need to produce duty paying documents for this stock and the assessee can take the entire credit himself based on the formula which has been prescribed. What the assessee or the trader (who is registered) has to do is to give a declaration of the description, quantity and value of the stock (yarn, unprocessed fabrics lying with the dealers/manufacturers, and processed fabrics lying with the manufacturers only) and take credit on the strength of this declaration, which can be utilized, for payment of duty on his clearances. **(Not needed now and accordingly be deleted).**
- Credit of duty paid on inputs used by a job worker can be utilized for payment of duty, when the job worker clears goods on payment of duty.

- It is also being provided that for procedural mistakes, no penalty or coercive action will be taken.
- Considering the trade practices, a system of sending the goods on proforma invoice to the buyer has been prescribed. The seller can issue the final invoice within five days from the removal of goods, after the same has been accepted by the buyer.

3. Related Changes in the Central Excise Rules and Cenvat Credit Rules

(a) Central Excise Rules, 2002 have been amended so as to prescribe special procedure for Textile and Textile articles. Rule 12B introduced vide Notification No. 24/2003 CE (N.T.) dt. 25.3.03 from F. No. B3/1/2003 TRU vide which a separate procedure for Job Work in Textiles and Textile Articles including Ready Made garments has been prescribed. Under the special procedure, the duty liability, accountability and the responsibility for complying with the excise procedures (such as registration, return filing, maintenance of records) would rest with the person who gets yarns, fabrics or ready made garments manufactured or processed on job work. Such person would normally be the owner of the raw material who gets finished products manufactured on payment of job charges. He can take credit of the goods which are used in job work. In such a case, the job worker (such as power looms, hand processor and power processors) would be totally free from the duty burden as well as from the procedural requirements. The job worker, however, at his option, can take upon himself to comply with the excise law and pay duty. He can also do so on behalf of the owner of the goods working as his agent. Conversely, such a registered job-worker can authorise a broker/arhatia to pay duty on his behalf. Such persons, who manufacture goods or get goods manufactured on job work basis, get registered and pay duty, would be treated at par with actual manufacturer.

(b) The rules also provide for situations when the goods move from one job worker to another during the course of completion of its manufacture. Such movement would be under simple Challans which would contain certain minimum information and would be printed (including computer printed) and serially numbered. Considering the literacy level, such Challans could also be in local/vernacular language.

(c) It is also provided that the owner of the goods can, if he so desires, clear the finished products directly from the premises of the job worker on payment of duty.

(d) The owner of the goods can take credit of duty paid on inputs, which are used by the job worker. In certain cases, an actual manufacturer (e.g. a yarn manufacturer) may also send some goods to a job worker for further manufacture and receive back the goods after job work, and if such manufacturer has a credit balance in respect of inputs used in other goods (including goods manufactured

on job work basis), the same can be utilized for payment of duty on clearances of the goods received after job work.

(e) In case a person wants to pass on the credit on goods sold by him without any manufacture, he is required to undertake registration as registered dealer.

(f) In certain cases, some of the intermediate processes may be either exempt (for example, being carried out without aid of power or steam) or are not excisable (such as sizing of yarn). In order to ensure that the credit chain remains unbroken, it is proposed to permit endorsement of the duty paying document issued in favour of a person undertaking such exempted/non-excisable activity in favour of either the buyer of the goods or to another person who is undertaking a subsequent excisable activity. Such person simply has to endorse the duty paying document to the next person to whom they sell the goods. It would not be necessary for the person endorsing to be registered with the department. However, the person undertaking such exempted/non-excisable activity, can, at his option, get himself registered as a registered dealer. This would enable him to issue dealers' invoice in favour of the person undertaking a subsequent excisable activity.

(g) Normally, the assessees not covered under SSI exemption are required to file monthly return as well as they are required to pay duty on a monthly basis. As a measure of facilitation, it is proposed that in the case of yarn preparatories (i.e. twisting, warping, doubling of yarns), unprocessed fabrics and readymade garments (made by units availing of SSI exemption scheme), the manufacturers would be required to file only quarterly returns in a simplified format. The duty, however, would be paid on monthly basis.

(h) Processors who undertake job work and also do processing on their own and obtain dye and chemicals under invoice issued in his name, can take credit of duty paid on such dyes and chemicals to pay duty on his dutiable clearances, even though some of these inputs were used for making goods cleared without payment of duty under the job work scheme.

(i) Credit of duty paid on capital goods can be taken only by the manufacturer in whose premises the capital goods are installed.

(j) As the manufacturer and traders are expected to have stock of inputs as on 31.03.2003, for which they may not be in a position to produce documents evidencing payment of duty, provisions are being made to give a one time credit for the inputs and/or inputs contained in the finished products lying in stock as on 31.03.2003. This facility would be available to all such persons, who would be required to pay duty or pass on the credit i.e. manufacturers, persons getting the goods manufactured on job work and registered dealers. All such persons would declare the stock of inputs (including those contained in process or are in stock

of finished product) giving description, quantity (in unit length or weight, as the case may be) and value. If duty paying documents are available, credit will be allowed on the basis of these documents. Where no such documents are available, credit will be allowed on a deemed basis. In respect of yarn lying in stock, the credit amount has been notified vide notification No.35/2003-CE (N.T.) dated 10.4.03. In respect of fabrics lying in stock, credit will be allowed at the rates prescribed under notification No.54/2001-CE, or as the case may be under notification No.6/2002-CE (NT). As the duty payment for April, 2003 will have to be made only by 5th May 2003, credit would be admissible in respect of the stock lying on 31.3.2003, even if the rates are not notified on or before 1.4.2003. The assessee would work out the credit amounts and take credit accordingly. In the case of processed fabrics, only the stock lying with a manufacturer would be entitled for such credit. For unprocessed fabrics and yarns, the credit would be available both for manufacturers/job workers, and also for traders who get registered. **(Not needed now and accordingly be deleted).**

(k) In case a person gets goods manufactured on job work and clears the same for sale, the excise duty would be payable on the transaction value at which such goods are sold. However, in case the job worker, i.e. a weaver or processor prefers to clear goods on payment of duty (even if he is actually undertaking job work and is not actually selling the goods back to the trader) the duty would be worked out on the value calculated on the basis of the price of inputs i.e. yarn or grey fabric price plus the actual job charges.

(l) It has been brought to notice that sometimes sale of yarns, fabrics or readymade garments take place on approval basis. In such cases, the goods are sent to the buyer under a challan or proforma invoice and the sale is finalised after the approval of the buyer, the buyer may reject part or whole of the goods or negotiate the price depending upon the quality. In order to accommodate such practice within the framework of the excise law, it is proposed to permit removal of such goods under a proforma invoice. Such challan/ proforma invoice would also be printed and serially numbered and have all particulars except the details of the duty payable. Within five working days from the issuance of the proforma invoice, the manufacturer would prepare the final invoice after making adjustments in respect of the goods rejected and returned by the buyer. The proforma invoice and the invoice would have cross reference to each other by way of mention of their serial numbers.

(m) The special procedure for textiles and textile articles is not applicable to Export Oriented Units (EOUs) and Units located in Special Economic Zones (SEZs).

4. There will be no visit to the premises of the new assessees, to verify the stock or premises (except in respect of traders), unless there is a specific intelligence. Such verification, if any, will be done only with the approval of the

jurisdictional Assistant/ Deputy Commissioner, who will record the reasons for such verification in writing.

5. The application for registration for these new registrants would be in the same format prescribed under the existing rules. However, the information regarding PAN (if they do not have such number), details of boundaries, property holding rights, estimated investments, bank account number, business transaction numbers obtained from other government agencies, details about owner, partners etc. at the initial stages, if it is difficult for the assessee to provide these at the initial stages, may not be insisted upon. **(At present these types of relaxations are not required to be given now, therefore, the new assessees should follow normal registration procedure and the old assessees got registered in the last financial year should update their data at par with other assessees).**

6. The purpose of the new rules is to allow the textile sector to carry on the work as they have been doing all along, and not to disturb the trade practices. It would be sufficient if the manufacturers or the deemed manufacturers keep account of production & clearance, pay duty accordingly and take credit only on the strength of duty paying documents. Generally, there is no need for any physical verification of premises, goods or records unless there is a specific intelligence suggesting evasion.

7. In order to establish and continue the Cenvat chain, without causing difficulties to the exempt textile sectors, it has been permitted that an exempt unit or a trader in textile can endorse, in full, the duty paying document of his inputs in favour of the buyer of his goods. This can be done without being registered with the department. The buyer would be eligible for full credit of duty on the basis of this document.

8. Acknowledging the fact that in weaving and garment manufacturing sector, many units function in common premises, such individual units have been permitted to take separate registrations. The clearance-based exemption would also apply considering them as separate units.

Special Procedure for Passing on of the credit of duty paid yarn by the exempted powerloom units to multiple buyers

01. Power loom weavers who avail exemption under notification No. 35/2003-CE, dated 30th April, 2003, as amended by notification No. 47/2003-CE, dated 17th May, 2003 are allowed to pass on the credit available on their inputs, i.e. yarns by endorsing the duty paying document, in favour of the buyer (please refer to notification No. 25/2003-CE (NT) dated 25th March, 2003). However, the facility is available to such weaver only in cases when the input documents are

endorsed in full i.e. in favour of ONE person. For those who send their exempted grey fabrics, made from a single consignment of yarn (i.e. yarn covered under single input invoice), to various users, this option is not available.

02. The power loom weavers who are availing of the aforesaid clearance based exemption i.e. full exemption upto first annual clearance of Rs. 25 lakhs, have represented that a mechanism may be devised so that they can pass on the credit even if their exempted final products, made from a single consignment of yarn and covered under single invoice, is sold to more than one user. The Board, having considered the issue, have devised the following procedure:-

- This will be an optional scheme for independent weavers of unprocessed fabrics falling under Chapters 51, 52, 54, 55, 58 or 60.
- The person opting for the scheme shall file an application in the similar simplified format (Annexure-IA to notification No. 35/2001-CE (NT), dated 26th June, 2001, as amended) as that in case of registration of textile manufacturers. (Please see notification No. 53/2003-CE (NT) dated 9th June amending notification No. 36/2001-CE (NT) dated 26th June, 2001. The weavers may take assistance of trade association for filing such application.
- Instead of granting registration to the person, he shall be allotted (within 24 hours of the receipt of the application) a declarant code which will be 12 digit code i.e. first two digit for Commissionerate, 3rd and 4th digits for division, 5th and 6th digits for range and balance 6 digits would be running serial number of such assessee. The first six digits i.e. location codes should be as per the codes given by the Directorate General of Systems and Data Management. The balance six numbers would be running serial numbers, starting from 000001.
- The exempted unit will receive inputs i.e. yarns under duty paying documents and retain the said documents. While clearing exempted fabrics, along with his commercial invoice/document, he shall enclose a pre-printed serially numbered challan (in triplicate), in a format prescribed under Notification No. 54/2003-CE (N.T.) dated 9th June, 2003. The challan would give details of (a) his input/inputs and the related invoice/invoices,(b) particulars of duty paid thereon and (c) the proportionate amount of excise duty paid on inputs i.e. yarn, which is attributable to have been used in the manufacture of the fabrics being cleared under this challan. The ORIGINAL copy of this challan would be an eligible document for the buyer to claim CENVAT credit to the extent of such attributable duty. (Please see notification No. 54/2003- CE (N.T.), dated 9th June, 2003].
- Such exempted units shall file a quarterly statement in a format prescribed under notification No. 54/2003- CE (N.T.), dated 9th June, 2003, showing the quantity and value of goods received as well as sold and the proportionate credit passed on. The person shall enclose all original

copies (he may keep photocopies for his own records) of their input invoices (on the strength of which the credits were passed on) received and all the DUPLICATE copies of the challan issued during the year.

Special Procedure for New Central Excise Registration for Powerloom Weavers/ Hand Processors/ Dealers of Yarns and Fabrics/ Manufacturers of Ready Made Garments

In this regard, Chapter-2 of this Manual may be referred.

Certain clarification issued regarding excise duty structure on textile and textile articles

Issue No.1 :

Vide notification Nos. 34/2003-CE and 35/2003-CE; both dated 30th April, 2003, exemptions have been given to fabrics and readymade garments and clothing accessories, upto specified clearance values. These exemptions are applicable to manufacturers having aggregate value of clearances below certain limits. For calculations of these limits, it has been, *inter alia*, prescribed that where these goods are cleared by one or more manufacturers from a factory, the exemption will apply to the aggregate value of clearance from such factory and not separately for each manufacturer. In this regard, doubts have arisen regarding the application of this condition and scope of the term 'factory'. It has been reported that in certain cases a number of manufacturers of these items put up their sewing machines or looms in the same premises. In such cases, they share the manufacturing premises while having their individual manufacture and clearances not linked to each other. The manufacture is carried out by different legal entities. In this regard, it is clarified that in such cases, the entire premises having several manufacturers undertaking individual manufacturing activity should not be treated as a single factory. There may not be any physical separation between the different units but the fact that the machines/looms belong to different individuals/legal entities who carry out manufacturing activities unrelated to each other, gives them a distinct identity. Therefore, it is clarified that in such cases, the machines/looms belonging to a specific manufacturer should be treated as a factory for the purposes of these notifications and the total production from the premises should not be clubbed to calculate the eligibility limit for the exemption limit. To illustrate, if in the same premises there are three powerloom units A, B and C having 5, 6 and 7 looms respectively. In this case, the factory in respect of A, B and C will respectively refer to 5, 6 and 7 looms, and for determining the clearances of 'A' from the factory, only the clearances of 5 looms should be taken into account.

Issue No.2 :

In the aforesaid two notifications, an obligation has been placed on the manufacturers to keep the documents relating to purchase of their inputs i.e.

yarns or fabrics. Under notification No.25/2003-CE (NT) dated 25.3.2003 as amended by notification No.28/2003-CE (NT) dated 1.4.2003, it has been provided that textile manufacturers fully exempted can endorse, in full, their input documents in favour of any other manufacturer, producer, first or second stage dealer. This facility is also available to the powerlooms or garment or accessories manufacturers availing the said notification No.34/2003-CE and 35/2003-CE. Such endorsement has to be made by the manufacturer on the original copy of such input invoices and same has to be handed over to the subsequent purchaser of their products. In such cases, the said exempted manufacturer will not have the original document relating to the purchases of his inputs. In this regard, it is clarified that in such cases it would suffice if the said manufacturer keeps a photocopy of the invoices. This copy should suffice for satisfying condition No. (iv) of para 2 of the notification Nos. 34/2003-CE and 35/2003-CE relating to keeping of purchase documents.

Issue No 3 :

The traders of textile and textile articles have been permitted (vide notification No.28/2003-CE (NT) dated 1.4.2003) to endorse in full, their purchase documents in favour of a manufacturer, producer or another dealer without obtaining registration. However, in case the quantity purchased under one invoice is to be sold in parts (to different persons), such a trader has to obtain dealer's registration. It has been reported that in certain cases the field formations insist upon bringing such purchased goods by the trader to his registered premises first before such subsequent sale under endorsed invoice or dealer's invoice can be made. It is clarified that there is no obligation provided under the Cenvat Credit rules, 2002 where under the trader has to necessarily bring the goods to his registered premises before selling the same. In many cases, these goods are sold even without unloading from transport or even during transit. Thus, it is clarified that there is no requirement for the traders to necessarily bring the goods to their premises before they are being sold. Such resale can take place from the transporters premises or before such goods are unloaded from the vehicle or even during the transit of the goods. The registered dealer is, however, under obligation to maintain account of all the goods purchased, sold or have under stock. He is also required to maintain the accounts regarding the credit on the goods received by him and the credit that has been passed on to the subsequent buyer.

Issue No.4:

Whether the exemption of Rs. 30 lakhs/Rs.25 lakhs vide notification nos. 34/2003-CE and 35/2003-CE, both dated 30.04.2003 is available to a person (trader) who is getting readymade garments/grey fabrics, manufactured by a job-

worker and the total value of turnover of the job-worker is more than the exemption limits i.e. Rs. 30 lakhs/Rs.25 lakhs?

Clarification:

(a) Notification nos. 34/2003-CE and 35/2003-CE, both dated 30.04.2003, fully exempt first clearance for home consumption upto certain aggregated value (Rs. 30 lakhs or Rs.25 lakhs, as the case may be) of specified goods, subject to certain conditions enumerated in the second paragraph of these notifications. These conditions are with respect to the 'manufacturer'. Clarifications have been sought as to whether, in case of goods manufactured on job work basis, the term manufacturer/manufacturers appearing in these notifications refers to (i) the job worker, who actually manufacturers the goods, or (ii) to the trader/ principal manufacturer/ master weaver/person, who gets his goods manufactured on job work, or (iii) to both.

(b) The doubt appears to have arisen because of rule 2(h) of the CENVAT Credit Rules, 2002, which provides that the term 'manufacturer', in respect of certain types of yarns and fabrics etc. includes a person who is liable to pay duty under rule 12B of the Central excise Rules, 2002 (i.e. the master weaver). Rule 12B of the Central excise Rules, 2002 also mentions that a trader, who gets goods manufactured on job work, shall take registration, pay duty and follow procedures as if he is an 'assessee'. These provisions appear to have given an impression that even for the purposes of the said exemption notifications, the term 'manufacturer' would include such trader/ principal manufacturer/ master weaver/person, who gets his goods manufactured on job work.

(c) Under central excise law and as interpreted by the courts, a job worker is treated as the manufacturer. There is thus no reason why a different view should be taken in case of the readymade garment and unprocessed fabrics manufactured on job work basis. The provisions of rule 2(h) of the CENVAT Credit Rules, and rule 12B of the Central Excise Rules are only for specific purposes, to enable the traders/principal manufacturer/mater weaver to undertake excise formalities and pay duty in place of the job worker and to enable taking credit of the input duty. These provisions therefore, do not alter the basic position that the job worker remains the manufacturer and any condition (imposed on a manufacturer) in an exemption notification applicable to goods manufactured (whether on his own or on job work) would be applicable to such actual manufacturer i.e. the job worker.

(d) Doubts have also been raised as to whether for calculating the clearance value under notification nos. 34/2003-CE or 35/2003-CE, the value of clearance of goods, cleared on job work should also be taken into account. In this regard, it is clarified that the clearance value limits prescribed in these notifications include value of all clearances, whether it is of goods manufactured on job work or as independent weaver.

Further, for all clearances, the value will be determined under Section 4 of the Central Excise Act and rules made there under (and not merely the job charges in case of job work clearances).

(e) In case a weaver/ garment manufacturer who either does job work (of one person or more than one persons) or makes clearances as independent weaver/manufacturer, there is no duty liability till he reaches the total clearance level of Rs.25 lakhs or Rs. 30 lakhs as the case may be. Consequently, till then, the trader, who is getting his goods manufactured on job work, need not follow the Rule 12B procedure. It is relevant to note that Rule 12B authorizes the trader to pay the duty leviable on the job worker. Once the job worker is no longer entitled to duty exemption, the duty liability has to be discharged by the trader unless the job worker opts to pay the duty. Thus, once the total value of clearance exceeds the threshold limit of Rs.25 lakhs (or Rs. 30 lakhs, as the case may be), no further exemption would be available. In such cases, after the exemption limit is crossed, duty would be payable and the trader who is getting the job work done would have to be registered and pay duty. In case, the total clearance levels cross the eligibility limits of Rs.30 lakhs (or 40 lakhs, as the case may be) all past clearances become dutiable and the trader/traders/weaver, would be required to discharge duty on earlier clearances.

(f) The following illustration are given to explain the above,-

- Three traders A, B, and C get grey fabrics manufactured from job worker 'X'. The value (raw material cost + job charges) of the goods made on job work for <u>each</u> of the trader is Rs.20 lakhs. Since total clearance value of the job worker is Rs.60 lakhs, he is not eligible to claim any benefit under notification 35/2003-CE. Duty is payable on his entire clearance.

  Three traders A, B, and C get grey fabrics manufactured from job worker 'X'. In addition, X also clears grey fabrics manufactured by him as independent weaver. His clearance as independent weaver is Rs.15 lakhs. Thereafter, he undertakes job work for A, B and C in a sequential manner. The value of clearances for A is, say, Rs.5 lakhs, that for B is, 7 lakhs and for C is, Rs. 7 lakhs. For clearances made as independent weaver and on job work for 'A', there is no duty as the total clearance till then is below Rs.25 lakhs. The first clearances of Rs.5 lakhs for 'B' are also exempted. Thus, till then, 'B' need not follow Rule 12 B procedure. However, the balance Rs.2 lakh clearances for 'B' become dutiable, as the total clearances of 'X' have now crossed the limit of Rs.25lakhs. Thus, now 'B' has to take registration and pay duty on clearances of Rs.2 lakhs. As for 'C' his entire clearances of Rs. 7 lakhs are dutiable and he has to follow rule 12B procedure for his entire clearances. It may be mentioned that in case the clearances value for 'C' increases beyond Rs 8 lakhs, the total clearance value of 'X' would exceeds Rs. 35 lakh eligibility limit. Consequently, the entire clearance of 'X' would become dutiable and

duty demand would arise against all i.e. 'A', 'B', 'C' and 'X' on their respective clearances.

- A trader 'A' gets grey fabrics manufactured by job workers 'X', 'Y' and 'Z' and the total clearance value of each of these job workers is below Rs.25 lakhs. All the clearances from the job workers are within the exemption limit for individual units. The trader has no obligation to register himself or pay duty in terms of Rule 12B. In other words, he is out of the scope of the provisions of Rule 12B.

Issue No.5 :

M/s A, M/s B and M/s C (three separate legal entities) purchase fabrics, cut them in their premises to the required shape for making readymade garments. The cut fabrics are sent to one job worker, M/s JW for stitching and packing. The packed fabrics are received back by M/s A, M/s B and M/s C. All three persons are availing benefit of Rs.30 lakhs exemption under notification No. 34/2003-Ce individually. M/s A, M/s B and M/s C claim that they are the manufacturers of readymade garments since they are cutting the fabrics to required shapes and are individually eligible for exemption of the said notification, even though the total value of clearance of M/s JW is Rs.90 lakhs. Whether M/s A, M/s B and M/s C are eligible for such exemption ?

Clarification: Cutting fabrics to required shape does not make M/s A, M/s B and M/s C, manufacturer of readymade garments as unless stitched, readymade garments in marketable form do not come into existence. In the instant case, readymade garment is manufactured by M/s JW. Thus, in view of the clarification given above, duty is chargeable on the entire clearance as the total clearances made by the job worker M/s JW is beyond the eligibility limit of Rs.40 lakhs. Consequently, M/s A, M/s B and M/s C would have to follow the procedure in terms of Rule 12B and pay duty.

IssueNo.6:

Whether a manufacturer of readymade garment or grey fabrics and availing exemption under Notification nos. 34/2003-CE or 35/2003-CE, as the case may be can send inputs or semi-finished goods for job work?

Clarification: Independent manufacturers availing these exemptions do not have the facility of sending inputs or semi-finished goods, duty free, for job work unlike the units availing SSI exemption under Notification nos. 8/2003-CE or 9/2003-CE, who can avail the benefit of notification nos. 83/94-CE and 84/94-CE.

Issue No.7

Levy of excise duty on readymade garments on the basis of Retail Sale Price (RSP).

Clarification:

Doubts have been raised as to whether readymade garments should be assessed to duty on the basis of RSP or on the basis of transaction value.

The provisions of Section 4A do not apply to the readymade garments, as they have not been notified under that section. But under notification No. 20/2001-C.E. (N.T.) dated 30.4.2001, tariff value (at the rate of 60% of the retail sale price declared or required to be declared) was fixed on readymade garments and other articles of apparel. Vide Board's letter F. No. B.3/4/2003, dated 01.04.2003, it was clarified that for valuation, the provision of section 4 i.e. transaction value, would apply in case the RSP is not required to be declared and is not declared.

Section 39 of the Standards of Weights & Measures Act, 1976 applies to commodities, which are cleared, sold, distributed etc. in packed condition. In terms of Rule 1 (l) of the Standards of Weights & Measures (Package Commodity) Rules, 1977, a 'pre-packaged commodity' means a commodity, which, without the purchaser being present, is placed in a package so that the quantity of goods contained therein, has a pre-determined value and such value cannot be altered without opening the package. Further, in terms of the said Rules, the term 'package' is to be construed as package containing such pre-packed commodity. Therefore, only when such pre-packed commodities are sold in retail packages, the provisions of Standards of Weights & Measures Act and rules regarding declaration of the retail sale price (and consequently valuation of the goods based on such RSP) arises. Many times, garments are cleared in bulk where the manufacturer neither packs the same nor declares the retail sale price therein. Such garments are ultimately displayed in the retailer's outlets, which may or may not attach a price tag thereto. Some times the dealer/retailer packs, re-packs, labels or re-labels the goods, which may result in such goods fall within the purview of Standards of Weights and Measures (Packaged Commodity) Rules. However, in such cases central excise valuation is not important, as such activities undertaken on duty paid goods are fully exempt vide notification No. 38/2003-CE dated 30.04.2003. Thus, it is clear that in such cases, the manufacturer of the garments is under no legal obligations to declare the retail sale price while clearing the garments from his factory in bulk and in unpacked condition.

CHAPTER 13

DEMAND NOTICE/SHOW CAUSE NOTICE, ADJUDICATION, INTEREST, PENALTY, CONFISCATION, DUTY PAYMENT UNDER PROTEST

PART I

DEMAND NOTICE/SHOW CAUSE NOTICE

1. Introduction

1.1 In accordance with the principles of natural justice, the Central Excise law provides that before any action is taken against an assessee/party, he must be given reasonable opportunity of presenting his case. Some such situations necessitating the issue of Show Cause Notice would be those relating to the demand of duty not paid, short paid or erroneously refunded, change in classification, establishing that goods are manufactured and are marketable, CENVAT credit wrongly availed, confiscation of goods seized, imposition of penalty etc.

1.2 Communications, orders, suggestions or advice from the Department cannot be deemed to be in the nature of a Show Cause Notice. Hence, it is mandatory that a show cause notice is issued if the department contemplates any action prejudicial to the assessee. Thus, if on account of an infraction of the provisions of the Central Excise law it is considered appropriate to penalise the defaulter, it is necessary to first issue a show cause notice. The show cause notice would detail the provisions of law allegedly violated and ask the noticee to show cause why action should not be initiated against him under the relevant provisions of the Act/Rules. Thus, a show cause notice gives the noticee the opportunity to present his case. Further, compliance with all the formalities pursuant to the issue of the notice alone would entitle the Department to recover any dues. [Circular F.No.67/17/88-CX.2 dated 18.08.1988].

2. Issue of duty demand notice

2. 1 Section 11A of the Central Excise Act, 1944 provides that if excise duty has not been levied or paid or has been short levied or short paid or erroneously refunded, a notice has to be served within one year from the relevant date on the person from whom the differential duty is demanded.

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there-under with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words one year, the words "five years" were substituted:

2.2. For Demand/recovery of duty under Compounded levy scheme, general time limit under Section 11 A is not applicable. [Circular No.677/68/202-CX.3, dated 3.12.2002]

2.3 The Board has also empowered the Officers of the Directorate General of Central Excise Intelligence to issue Show-cause notices in accordance with the powers of Central Excise Officers conferred on them under rule 3 of the Central Excise Rules [Circular No.373/06/98-CX dated 20.01.1998].

2.4 In order to provide a mechanism for early dispute resolution, it has also been provided in the Act that an assessee may request for waiver of notice, if he deposits the amount of differential duty on his own along with interest in respect of only such cases where such non-levy or short levy or non-payment or short payment is by reason other than suppression of facts, fraud, collusion etc. Wherever prima facie, offences of serious nature or high stakes and/or legal questions are involved, Show Cause Notices must not be waived. [Circular No.290/6/97-CX dated 20.01.1997]

2.5. By opting for waiver of issue of notice, the assessee may avoid long drawn process of adjudication and appellate process including interest on the differential duty demanded. It is therefore, advisable that in cases where the assessee is convinced that the Department is correct in demanding duty, he may opt for this facility.

2.6 Wherever Board's instructions or circulars (whether issued under Section 37B or not) exist on a particular issue, protective demands should be raised on the basis of CERA objection if the objection is contrary to such Board's instructions or circulars till the time written instructions from the Board for not raising protective demands are received. However, in all such cases, the matter should be immediately referred to PAC section of the Board for resolving the issue with the C&AG of India. [Circular No.698/14/2003-CX, dated 03.03.2003].

2.7 In respect of all cases, requiring the issue of Show Cause Notices, the said Show Cause Notices should be approved in writing and signed by the Officer competent to adjudicate the said show cause Notice. [Circular No.752/68/2003-CX dated 01.10.2003].

2.8 In the event that the extended period is invoked in the Show Cause Notice issued, it is essential that the assessee is put to notice specifically regarding which of the various commissions or omissions stated in the Proviso to Section 11A has been committed. [1995 (76) ELT 497 (SC) and Circular No.312/28/97-CX dated 22.04.1997]. For example, if the extended period is invoked on account of fraud, the notice should specifically allege fraud.

2.9 Invoking of the extended period under the Proviso to Section 11A in the Show Cause Notice proposed to be issued should be resorted to only in the event of fraud, collusion, wilful mis-statement, suppression of fact or contravention of any of provisions

of the Excise Act/Rules with intent to evade payment of duty and not as a matter of routine. [circular No.5/92 dated 13.10.1992]

2.10 When a Show Cause Notice is issued, citing documents seized from the party, it should be ensured that only those documents/pages proposed to be relied on in framing/establishing charges should be referred to in the Notice. [Circular No.2/89 dated 09.01.1989] Once the Show Cause Notice is issued to the party, all the documents/records which have not been relied upon may be returned to the party under proper receipt. The party should be allowed to obtain photocopies of the documents relied upon. [Circular No.171/5/96-CX. Dated 2.2.1996]

2.11 When there exists a Court Order for stay of collection of duty only and no stay for issue of Show Cause Notice, Show Cause Notice can be issued for imposition of such duty.[Circular No.50/89 dated 29.08.1989]

2.12 When an Appeal for an earlier period on a similar issue is pending before an appellate Authority, Show Cause cum Demand Notices for subsequent periods can be raised but not enforced till final decision of the Appellate Authority is known.[Circular No.1/90-AU dated 19.03.1990]

2.13 When an issue relating to a Public Sector Undertaking arises and issue of Show Cause Notice is proposed, instructions contained in Circular No.20/20/94-CX dated 10.2.1994 may be referred to.

3. Instances requiring issue of Show Cause Notices :

3.1 Recovery of erroneous refund is required to be made under Section 11A of the Central Excise Act, 1944 and not through review proceedings under Section 35E. Notwithstanding orders passed under Section 35E, in the absence of notice under Section 11A for recovery within time limit prescribed therein, such recovery is hit by limitation. [1998 (99)ELT 502 (Tribunal)]

3.2 Show Cause Notice has to be issued if the Department intends rejecting refund claims found to be incomplete in particulars or not supported by required documents by pointing out the said deficiencies. [Circular No.21/90-CX.8 dated 04.04.1990] In addition, the issue of unjust enrichment too should be raised in the notice if required [Circular No.19/93-CX.6 dated 29.12.1993]

3.3 For the purpose of enforcing any recovery under Section 11D, notice has to be issued under Section 11A. Section 11D of the Central Excise Act, 1944 is not to be read in isolation, but instead, is to be read with Section 11A ibid. [1994 (72) ELT 848(Mad.)]

3.4 Burden is on the Department to prove that the process of manufacture has resulted in a commercially distinct commodity. The assessee is to be put to notice by the

Department about the Technical Literature that the Department intends to rely on to prove the same. [1995(77) ELT 248(SC)]. Similarly, burden rests on the Department that the goods are marketable and hence liable to duty. [1989(43) ELT 214 (SC)]

3.5 It is mandatory to issue Show Cause Notice before CENVAT credit wrongly availed can be disallowed.

3.6 In respect of 100% EOU's, in the event the Board of Approval or the Development Commissioner concerned determines that the Unit has failed to export the fixed percentage of articles for the specified period, in such cases it can be held that the conditions of the notification have been violated and it will be open to the Department to issue a show Cause Notice to the Unit demanding the duty due on the imported goods. [Circular No.21/95-Cus dated 10.03.1995]

3.7 In respect of simplified export procedure for exempted units, where the clearances for home consumption and the clearances for export where proof of export have not been furnished within 6 months, when taken together, is likely to exceed the exemption limit, show cause Notice may be issued for safe guarding revenue. [Circular No.212/46/96-CX dated 20.05.1996]

3.8 If during the scrutiny of the RT-12 return or the audit or inspection, it is noticed that duty of excise leviable on any goods has escaped self-assessment and been not paid/short paid or has not been correctly or properly self-assessed and been paid by the assessee on that basis, necessary action shall be taken by the Proper Officer for preparation and issue of Demand-cum-Show Cause Notices in accordance with Section 11A of the Act, [Circular No.249/83/96-CX dated 11.10.1996]

PART-II

ADJUDICATION

1. Introduction

1.1 Central Excise law is a self-contained law. Besides containing the provisions for levy of duty, adjudication of matters relating to the provision of the Law is also provided for in the legal provisions e.g. for demand of duty, credit availed, determination of classification, valuation, confiscation and imposing penalty. The adjudication is done by the departmental officers, and in this capacity they act as quasi-judicial officers. It is an important function of the officers and casts heavy responsibility on the officers invested with the powers of adjudication to use it with utmost care and caution, free from any prejudice or bias. It is important to know and understand the facts of the case, process them properly and to apply correctly the sections and rules of Central Excise law or Notifications that may be relevant to the facts of each case.

1.2 Principles of Adjudication: Adjudication proceedings shall be conducted by observing principles of natural justice. The principles of natural justice must be followed by the excise authorities at all levels in all proceedings under the Central Excise Act or Rules and the order passed in violation of the principles of natural justice will be a nullity and is liable to be set aside by Appellate Authority. Natural justice is an uncodified law purely based on principles of substantial justice and judicial spirit. It has no fixed definition or specific connotation and will depend on the circumstances of each individual case. It has certain cardinal principles, which must be followed in every proceeding. Judicial and quasi-judicial authorities should exercise their powers fairly, reasonably and impartially in a just manner and they should not decide a matter on the basis of an enquiry unknown to the party, but should decide on the basis of material and evidence on record. Their decisions should not be biased arbitrary or based on mere conjectures and surmises. The noticee has a right to inspect or to get copies of all the documents/ records relied upon in the show cause notice (1993(65) ELT 357(SC), 1989(39)ELT329(SC) and 1997(95)OLT 251(Tri). The noticee(s) shall be given a Personal Hearing before the case is adjudicated. Section 35Q of the Central Excise Act, 1944 provides for appearance by authorized representative before a central excise officer or Appellate Tribunal in connection with any proceedings. Cross examination of witnesses, whose statements are relied upon in the proceedings, shall be allowed if there is any request in this regard from the defendant {2002(143ELT21(SC), 2002(146)ELT248(SC), 2000(122)ELT641(SC)}. The Allahabad High Court in {1993(68) ELT548(All)} has held that the right to cross-examination is not an absolute right and the question whether the petitioner was entitled to cross-examination is a question which may largely depend on the facts of the case. Hence, the adjudicating authority shall take a decision on requests for cross-examination is a question which may largely depend on the facts of the case. Hence, the adjudicating authority shall take a decision on requests for cross-examination considering the facts and circumstances of each case. In adjudication proceedings, reliance cannot be placed on Section 9C of the Central Excise Act, 1944, and powers under this Section is available only to a court of law in prosecution proceedings. However, mens rea is not a pre-requisite to impose penalty under Central Excise law.

2. Adjudication and determination of duty

2.1 Adjudication of the case where anything is liable to confiscation or any person is liable to penalty has to be done by Officers specified in section 33 of the Central Excise Act, 1944. Central Excise Officers have the power to determine whether duty of excise has not be levied or short paid or not paid, erroneously refunded under section 11A of the said Act. For this purpose, the Board has prescribed monetary limit to different categories of officers for the purpose of deciding the competence of adjudication of cases without differentiating whether or not cases involve fraud, collusion, any wilful mis-statement, suppression of facts or contravention of Central Excise Act/ Rules with an intent to evade duty and/ or where extended period has been invoked.

2.1.1 The monetary limit of the amount of duty involved from the present level for different categories of officers for adjudication cases has also been enhanced as below:

2.1.2 It ahs been decided to –

(i) Have uniform monetary limits for adjudication of Central Excise Cases under Section 11A and/or Section 33 of the Central Excise Act, 1944, whether or not the cases involve fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made there-under with intent to evade payment of duty and whether or not extended period has been involved.

(ii) Prescribe monetary limits for adjudication of show cause notices relating to classification and valuation of excisable goods to different categories of officers. Prior to this circular, Deputy/Assistant Commissioners were competent to adjudicate show-cause notices relating to determination of classification and valuation without any monetary limit of the amount of duty involved.

(iii) Prescribe monetary limits for adjudication of show cause notices relating to CENVAT Credit cases for different categories of officers. Prior to this Circular Deputy/Assistant Commissioners are competent to adjudicate show cause notices relating to CENVAT credit without any monetary limit of the amount of credit involved.

2.1.3 For this purpose, the Board has decided that the powers of adjudication and determination of duty shall be exercised, based on monetary limit (duty involved in a case) as under:-

A. *All cases involving fraud, collusion, any wilful mis-statement, suppression of facts or contravention of Central Excise Act/ Rules with an intent to evade duty and/ or where extended period has been invoked in show cause notices (including classification and valuation of excisable goods and CENVAT credit cases) will be adjudicated as follows:-*

Central Excise Officers	**Powers of Adjudication (Amount of duty involved)**
Deputy/Assistant Commissioners	Up to Rs.5 lakhs
Joint Commissioners	Above Rs.5 lakhs and up to Rs.20 lakhs
Additional Commissioners	Above Rs.20 lakhs and up to Rs.50 lakhs
Commissioners	Without limit

B. *Cases which do not fall under the Category (A) above including all cases relating to determination of classification and valuation of excisable goods and CENVAT credit will be adjudicated as follows:*

Central Excise Officers	**Powers of Adjudication (Amount of duty involved)**
Deputy/Assistant Commissioners	Up to Rs.5 lakhs
Joint Commissioners	Above Rs.5 lakhs and up to Rs.20 lakhs
Additional Commissioners	Above Rs.20 lakhs and up to Rs.50 lakhs
Commissioners	Without limit

C. Cases related to issues mentioned under first proviso to Section 35B(1) of Central Excise Act, 1944 would be adjudicated by the Additional/ Joint Commissioners without any monetary limit.

2.1.4. In view of the above modifications, all cases including cases relating to determination of classification and valuation and cases pertaining to CENVAT credit whether or not involving fraud, collusion, wilful mis-statement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked will be treated uniformly and the prescribed monetary limit is applicable to all cases for the purpose of adjudication.

2.1.5. In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, attention is invited to CBEC's Circular No.362/78/97-CX dated 9.12.97 whereby it has been clarified that all the show cause notices involving the same issue will be adjudicated by the adjudicating authority competent to decide the cases involving the highest amount of duty.

2.1.6. The value of goods/conveyance liable to confiscation will not alter the above powers of adjudication, which shall solely depend upon the amount of duty/ CENVAT credit involved in the offending goods.

2.1.7. Regarding issue of show cause notices, it is clarified that in respect of all cases, whether or not fraud, collusion, willful mis-statement, suppression of fact or contravention of Central Excise Act/ Rules with intent to evade duty and/ or where extended period has been invoked i.e. cases falling under any category (A), (B) or (C) of para 2.1.3 above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice. This instruction will come into effect prospectively i.e. from the date of issue of the Circular.

2.1.8. It is clarified that notwithstanding this revision, in all cases where the personal hearing has been completed, orders will be passed by the Adjudicating Authority before whom the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.

2.1.9. In all cases where personal hearing is yet to be commenced, the adjudications should be done by the appropriate level of officers as per the revised instructions.

3. The Board, under section 2(b) of the Central Excise Act, 1944 read with rule 3 also invests certain officers with powers of Commissioners or other officers through out the territory of India, for the purpose of investigation and adjudication.

4. Time limit for issue of adjudication orders :

The demands on account of short levy, non-levy or erroneous refund, by reason of fraud collusion, willful mis-statement or suppression of facts shall be adjudicated within a period of one year from the date of issue of show cause notice, where it is possible

{Clause (a) of Sub-section 2A of Section 11A of Central Excise Act, 1944}. In any other case, as far as possible, the case shall be adjudicated within a period of six months {Clause (b) of Sub-section 2A of Section 11A ibid}.

All cases where personal hearings have been concluded, it is necessary to communicate the decision immediately or wi6thin a reasonable time of 5 days. If the above time limit cannot be adhered to under any circumstances, the order should be issued within 15 days or at the most one month from the date of conclusion of personal hearing (Board's Circular No.732/48/2003-CX dated 5.8.2003).

4.1 The adjudication order must be a speaking order giving clear findings of the adjudicating authority and he shall discuss each point raised by the defense and shall give cogent reasoning in case of rebuttal of such points. The duty demanded and confirmed shall be quantified correctly and the order portion must contain the correct provisions of law under which duty is confirmed and penalty is imposed. Adjudication orders shall be issued under the signature of the adjudicating authority. If confiscation is adjudged during adjudication proceedings, an option shall be given to the owner of the goods to redeem the goods on payment of a fine in lieu of confiscation.

4.2 Adjudicating authority is not empowered to issue any subsequent corrigendum making material changes in the order already passed and issued (Board's Circular No.502/68/99-CX dated 16.12.1999).

5. **De Novo adjudication** :

For adjudication of cases remanded by the Appellate Authorities for de novo adjudication, it is clarified that the cases should be adjudicated in de-novo proceedings by the same authority which had earlier adjudicated the case. In other words, the revision of adjudication powers shall have no bearing on cases remanded for de-novo adjudication.

PART III
INTEREST, PENALTY, CONFISCATION, DUTY PAYMENT UNDER PROTEST

Introduction

(i) Provision exists in the Central Excise statute for charging interest on duty not paid in time. Thus, it is in the interest of an assessee to discharge duty liability at the earliest and not to prolong the dispute only for the sake of delaying payments.

(ii) Penalty and confiscation of offender's goods are the outcome of the adjudication proceedings. There is provision for mandatory and general penalty. Penal provisions are also there in the Central Excise Rules for certain offences. These are deterrents aimed at cautioning the dishonest tax payers.

(iii) The goods in respect of which any contravention of Central Excise Rules have been committed are liable to confiscation.

1. Interest

1.1 Interest is chargeable in the following instances :

(i) On the delayed payment of duty under the provisions of Section 11AA, 11AB and Rule 8.

(ii) On CENVAT Credit taken or utilized wrongly under the provisions of Section 11 A and 11 AB.

(iii) On the excess amount collected in excess of the amount of duty assessed and determined and paid on any excisable goods, from the buyer of the goods under Section 11 DD.

Interest is also payable by the Department in delayed refund cases under the provisions of Section 11 BB.

1.2 As per Section 11 AA inserted with effect from 26.5.1995 by the Finance Act, 1995, interest is chargeable on delayed payment of duty after three months from the date of determination of duty liability by the Central Excise officer under sub-section (2) of Section 11 A.

1.3 Section 11 AB was inserted by the Finance Act, 1996 with effect from 28.9.1996 as per which interest will be charged from the first date of the month following the month in those cases where the duty was not paid on account of fraud suppression etc. [Sec.11AB(1)].

1.3.1 As a result of the insertion of Section 11 AB by the Finance Act, 1996 for the period from 28.9.1996 to 11.5.2001 {substitution of Section 11 AB(1) and 11 AB(2) vide Finance Bill 2001} interest is chargeable as follows :

(a) In the normal case, interest will be charged for the period of delay after **three months** from the date of such determination of the duty liability till the date of payment of duty.

(b) In cases where the duty is not paid on account of fraud, suppression etc., the interest will be charged from **the first date of the month following the month** in which the duty was not paid.

1.3.2 Retrospective application of Section 11 AB of the Central Excise Act, 1944.

Regarding application of Section 11 AB, Board issued clarification vide F.No.354/118/96-TRU dated 6.1.97 to the effect that it would apply even to past cases where duty under Section 11 A(2) is determined on or after 28.9.96. The decision of CEGAT was confirmed by the Hon'ble High Court and Supreme Court subsequently.

In the light of the aforesaid decisions, Section 11 AB can be invoked only in respect of clearances effected on or after 28.9.1996 irrespective of the date of passing of the adjudication of a case.

1.4 Section 11AB(1) and Section 11 AB(2) have been substituted w.e.f. 11.5.2001 by the Finance Act, 2001 making it now clear that Section 11 AB as amended, will apply only to cases where duty has become payable or ought to have been paid on or after 11.5.2001. Accordingly, provisions of Section 11AA will not apply to cases where duty becomes payable on or after 11.5.2001.

Proviso to Section 11 AB (1) inserted with effect from 11.5.2001 makes it clear that duty becomes payable on the basis of instructions or directions of the Board also and not necessarily because of adjudication of a case.

1.5 Presently, as per Rule 8(3), when assessee fails to pay duty by the due date, he shall pay the outstanding amount with interest @ 2 % per month for the period starting with the first day after due date till the actual payment.

1.6 CENVAT Credit taken or utilized wrongly shall also be recovered with interest as per the provisions of Section 11A and Section 11 AB. (Rule 14 of CENVAT Credit Rules).

1.7 Under Section 11 DD, Interest is to be charged for the excess amount collected in excess of the amount of duty assessed and determined and paid on any excisable goods, from the buyer of the goods, from the first day of the month succeeding the month in which the amount ought to have been paid.

1.8 There may not be need for any explicit mention of the interest liability in the show-cause notice since the legal provisions are explicit. However, the same may be done as a matter of abundant precaution. Likewise, the adjudicating officer may incorporate the fact about the interest liability in the order confirming the demand.

1.9 No interest is chargeable or payable in respect of fines and penalties.

1.10 Amount deposited under Section 35 F as a condition precedent to hearing an appeal does not bear the character of Duty but has character only of Security Deposit. Such Deposit not governed by provisions of Section 11 B relating to refund of Duty or 11 BB – Interest on delayed Refunds.

1.11 Interest chargeable under the Sections is simple interest and the rate will be fixed by the Government from time to time between the lower limit of 10% and upper limit of 36% per annum.

1.12 Under Section 11BB interest is payable by the Department in delayed refund cases. Interest is payable for the period of delay after 3 months from the date of receipt of application of refund.

1.13 Interest payable by the Department as delayed refunds as per Section 11 BB will be not below 5% and not exceeding 30% per annum, fixed by the Government from time to time.

2. Penalties and Confiscation

2.1 Penalty is imposable under Section 11 AC of Central Excise Act, rule 25, rule 26 and rule 27 of Central Excise Rules, 2002 and rule 15 of CENVAT Credit Rules, 2004. Confiscation is provided under rule 25 and rule 27 of Central Excise Rules and rule 15 of CENVAT Credit Rules, 2004. Though, there is no specific provision in the Central Excise Act, 1944 for confiscation, Section 12 of Central Excise Act, 1944 read with Notification No.68/63 dated 4.5.1963 as amended provides for adopting certain provisions relating to confiscation under the Customs Act, 1962 in respect of Central Excise. Rule 25 of the Central Excise Rules provides for confiscation of goods under specified circumstances.

(i) Section 11AC prescribes a mandatory penalty equal to the duty not levied or paid or has been short levied, short paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement, suppression of facts or contravention or any of the provisions of the act or the rules made there-under with intent to evade payment of duty. However, in the event the duty and interest thereon is paid within 30 days from the date of the communication of the order, the penalty shall be 25% of the duty subject to it being paid within the said period of 30 days.

(ii) Rule 25 of the Central Excise Rules, 2002 provides for penalty on any producer, manufacturer, registered person of a warehouse or a registered dealer not exceeding the duty on the excisable goods in respect of which any of the specified contravention have been committed, or rupees ten thousand, whichever is greater. The penalty is subject to the provisions of Section 11 AC of the Central Excise Act, 1944. The offending goods are also liable to confiscation. The specified contraventions are :

(a) Removal of any excisable goods in contravention of any of the provisions of the said rules or the notifications issued under the said rules; or

(b) Non-accountal of any excisable goods produced or manufactured or stored; or

(c) Manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section 6 of the Central Excise Act; or

(d) Contravention of any of the provisions of the said rules or the notifications issued under the said rules with intent to evade payment of duty.

(iii) Under rule 26 of the Central Excise Rules it is provided that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or the said Rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater.

(iv) Rule 27 of the Central Excise Rules provides for imposition of a general penalty which may extend to five thousand rupees and with confiscation of the goods in respect of which the offence is committed. This is attracted when no other specific penalty is provided for.

(v) Rule 15 of CENVAT Credit Rules, 2004 provides for penalty on any person takes CENVAT credit in respect of inputs or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods has been paid as indicated in the document accompanying the inputs or capital goods specified in Rule 9 of CENVAT Credit Rules, 2004 or contravenes any of the provisions of these rules in respect of any inputs or capital goods in respect of which any contravention has been committed or ten thousand rupees, whichever is greater.

In a case, where the CENVAT credit has been taken or utilized wrongly on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Act or the rules made there-under with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11AC of the Act.

2.2 If penalty is imposed under Section 11AC, penalty under rule 25 will not be imposed. This, however, does not preclude the Department from confiscating the goods, imposing any fine in lieu of confiscation and prosecuting a person.

2.3 Rule 26 of the Central Excise Rules also provides that before any order of penalty or confiscation is passed the adjudicating authority shall follow the principles of natural justice. In other words, a notice explaining the reasons why penalty should not be imposed or goods confiscated has to be given to the person. Thereafter, reasonable opportunity shall be given to such person to explain or defend his case. The adjudicating Officer shall pass a reasoned order, incorporating the defence arguments given by such person or his authorised representative.

2.4 As per Rule 28 of the Central Excise Rules, when any goods are confiscated under these rules, such thing shall thereupon vest in the Central Government. Accordingly, the Central Excise Officer adjudging confiscation shall take and hold possession of the things confiscated, and every Officer of Police, on the requisition of such Central Excise Officer, shall assist him in taking and holding such possession.

2.5 Rule 30 of the Central Excise provides that if the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation, he may be required to pay such storage charges as may be determined by the adjudicating officer.

2.6 Provisions for disposal of goods confiscated are contained in rule 29 of the Central Excise Rules. Goods of which confiscation has been adjudged and in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

2.7 If the offence relating to any seized goods is proved, the Adjudicating Authority should necessarily for ordering confiscation. (Board's Circular No.5/89, dated 19.1.1989 (From F.No.208/2/89-Cx.6).

2.8 Rule 173Q of erstwhile Central Excise Rules, 1944 stipulated confiscation of land, buildings, Plant and Machinery etc. in cases where duty evasion exceeded one lakh rupees. There are no such provisions in the Central Excise Rules, 2002.

3. DUTY PAID UNDER PROTEST

3.1 At present, there is no explicit provision either in the Central Excise Act or Rules for payment of duty under protest.

However Section 11B proviso provides that the limitation of one year period prescribed for making application for refund of duty from the relevant date shall not apply where any duty has been paid under protest.

3.2 Earlier, Rule 233 B of the Central Excise Rules, 1944 was in existence which prescribed the procedure to be followed in cases where duty is paid under protest. No corresponding provision exists in the present rules. The procedure to be followed has been incorporated only in the Supplementary instructions issued by CBEC under the provision of Rule 31 of Central Excise Rules, 2002, which is as below :

(i) The assessee shall inform the Superintendent or Inspector of Central Excise in writing giving reasons for paying duty under protest and a dated acknowledgement will be given to him.

(ii) He will mark invoices or monthly/ quarterly return indicating the goods on which duty is paid 'under protest'. If it is a lump-sum duty payment in respect of past demand, he may record the fact of duty payment under protest in the

Personal Ledger Account [against debits] CENVAT Account [against debits] and the Daily Stock Account.

(iii) If a case is appealed against by the assessee or where the appeal period for further appeal is available, he may continue to pay duty under protest. However, if decision is not in his favour and he exhausts the appellate remedy or does not appeal within stipulated period, the assessee shall not have any right to pay duty under protest.

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CHAPTER 14

Bonds and Letters of Undertaking

1. Bonds

1.1 Bond is an instrument by which the obligation to pay money is created expressly. It is also a legal agreement whereby a person undertakes to do or not to do anything subject to conditions stipulated in the agreement. (Annexure-34) The primary purpose of the bond is to secure due compliance of law and to safeguard interest of revenue. A bond is a collateral security, which the department is securing to ensure payment of appropriate duty, in addition to the statutory provisions available, to ensure compliance.

1.2 As a measure of rationalization and simplification of excise law and procedures, the number of bonds has been reduced and several bonds which were in vogue prior to 1st July, 2001 have been dispensed with. Care should be taken with regard to bonds, which were executed prior to 1st July, 2001 while discharging the same. These bonds should be discharged only after the completion/performance of the obligation promised in terms of the bond.

2. Types of bonds

2.1 Bonds are basically of two types ,i.e. surety and security. Under a surety bond, another person stands as surety to guarantee the performance on the part of obligor. The surety should be for the full value of the bond and the person standing as surety should be solvent to the extent of the bond amount. Under the Contracts Act, the liability of the surety is co-extensive with that of the principal debtor and hence the department is at liberty to enforce the recovery of the dues either from the obligor or from the surety.

2.2 The following are the types of bonds, which are presently in vogue :

(a) B1 – General Bond with surety/security for removal for export of excisable goods without payment of duty for export. (Annexure-35, 36, 37)

The bond is to be filed by the exporters for export of goods without payment of duty. The bond amount should be sufficient to cover the duty liability. The person standing as surety should be solvent to the full amount covered. The security should normally be limited to the 25% of bond amount. Fixation of amount of surety/ security is as per Board's Circular No. 284/118/96-CX dated 31.12.96. However, certain categories of exporters, namely, recognized export houses, holders of RCMC memberships are not required to furnish any bank guarantee/ cash security while executing bond. Board Circular No.711/27/2003-CX dated 30.04.2003 refers.

(b) B2 – General Bond with surety/ security for provisional assessment of goods to excise duty. (Annexure-38)

The bond is to be filed where an assessee finds that final assessment is not possible, as per situations mentioned in rule 7 of the Central Excise Rules, 2002 and the request

for provisional assessment is accepted by Deputy/ Assistant Commissioner of Central Excise. The bond is to be executed for an amount equal to the estimated differential duty and is to be backed by security or bank guarantee equal to 25% of the bond amount.

(c) B3 – General bond for due dispatch of excisable goods removed for re-warehousing and export there from without payment of duty. (Annexure-39,40)

The bond is to be filed by an exporter for an amount equal to duty liability and is to be backed by security equal to 25% of the bond amount. In this regard Board Circular No.581/18/2001-CX dated 29.06.2001 may be referred to.

(d) B11 – Bond for provisional release of seized goods. (Annexure-42)

The seized goods, if allowed to be released provisionally by an officer normally competent to adjudicate the case, may be released under B-11 Bond for an amount equal to value of goods seized backed by security equal to 25% of bond amount. In this regard, Board's Circular No.686/2/2003/CX dated 2.1.2003 may also be referred to..

(e) B17 – General Bond (Surety/Security) – Composite Bond of EPZ/ 100% EOUs for assessment, export, accounting and disposal of excisable goods obtained free of duty.

The bond is to be filed by EOUs for an amount equal to duty involved and backed by security equal to 5% of the bond amount.

(f) In terms of Rule 3(3) and 3(4) of the Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) (Annexure-41) Rules, 2001, the receiver of the goods is also required to execute a General Bond with the jurisdictional A.C./D.C.

Also, a surety for a bond is to be for the full amount of the bond and it should be ensured that surety is financially sound.

Further, undertaking owned and managed directly through any Ministry, Directorate/ Directorates by the Central Government or State Government is exempt from furnishing any security or surety or a bond.

3. Guidelines for executing bonds

3.1 The bond should be executed on non-judicial stamp paper of appropriate value. The bond should be signed by the obligor or by the authorised agent. The surety should be for the full amount and the person standing as surety should be solvent to the extent of the amount covered. The security should normally be limited to 25% of the bond amount.

3.2 In case of exporters, certain specific categories i.e. Super Star Trading House, Star Trading House, Exporters registered with Export Promotion Council & Registered Exporters need not furnish any bank guarantee/cash security while executing export bonds. They may furnish sureties only. This is a modification over the previous instruction contained in Board's Circular No.284/118/96-CX dated 31.12.96.

Presently, specified categories of merchant exporters namely status holders (Super Star Trading House, Star Trading House, Trading House, Export House) exporters registered with any recognized Export Promotion Councils would be exempt from furnishing security and/or surety with the bond executed by them for export of goods without payment of duty unless they have come to the adverse notice of the Department.

3.3 In the case of E.O.Us obtaining indigenous goods without payment of duty under a notification issued under section 5A of the Central Excise Act, 1944, acceptance of surety bond instead of bank guarantee is permissible. EOUs may continue to execute bond in the Format given in Form B-17 under the erstwhile Central Excise Rules, 1944. While executing combined B17 Bond, security to the extent of 5% of the value of the bond in the form bank guarantee or cash deposit or any other mode of security may be accepted in lieu of surety (Board's letter F.No.305/86/98-FTT dated 19/6/98). Fresh bond may not be taken, where the existing units have already furnished bond in B-17 Form prior to 1.7.2001. The existing bond may be simply re-validated under the new rules. (Annexure-43)

It was further clarified that Bond will be for 25% of duty foregone on the sanctioned requirement of imported and indigenous capital goods plus duty on stock of raw materials to be held in stock for three months only. The amount will be calculated and certified by the unit itself. The surety can be Director of the company in personal capacity or other Corporate Body can stand surety (Refer Circular No.92/2000-Cus. dated 20.11.2000).

In case of units in Special Economic Zones, units whose turnover exceeds Rs.1 crore in preceding financial year do not have to provide any security/surety, if there is no offence case. Others have to provide surety/ security equal to 5% of bond amount in the form of Bank Guarantee {Refer MF(DR) Circular No.66/98-Cus dated 15.9.98 and 92/2000-Cus. dated 20.11.2000}.

3.4 The export bonds executed under rule 19 of the said Rules should be accepted within 24 hours or the next working day and communicated to the exporter by the Deputy/Assistant Commissioner of Central Excise or Maritime Commissioner or any other officer authorised by the Board in this behalf.

3.5 Bonds should be executed in favour of and in the name of the President of India. They should be properly stamped. The prescribed wordings of the bond form must be copied out on a non judicial stamp paper of the appropriate amount (to be locally ascertained), except where arrangement can be made for embossing printed forms or where the State Government rules require otherwise. The bonds must be executed on stamp paper of the respective State Government in which the registered person's business is situated.

4. Bonds for provisional assessment

4.1 The amount of the bond in forms B-2 should be fixed on the following basis: -

(i) The amount of the specific bond in Form B-2 should be sufficient to cover the difference between the duty payable on provisional assessment and the probable duty payable if the highest rate / value applicable for such goods is applied.

(ii) The amount of the general bond in Form B-2(Surety)/(Security) should be equal to the difference between the duty payable on provisional assessment and the probable duty payable applying the highest rate / value applicable to such goods for a period of 3 months. If the provisional assessment cannot be completed within the 3 months and longer time is required, say a period of one year, in appropriate cases, differential duty likely to arise during such period shall be the basis/ determination of the bond amount. When the security bond is executed, the amount of security will be generally fixed at 25% of the bond amount. However, in appropriate cases, for special reasons to be recorded, the proper officer under rule 7 of the said Rules may order for a higher security amount. In the event of death or insolvency or insufficiency of the surety / security, the proper officer may demand fresh bond. If the security furnished is found to be inadequate, he may demand additional security also. In the case of provisional assessment, if the assessee fails to make the due adjustment within the period of 15 days after the final assessment made, the proper officer may proceed to enforce the bond or encash the bank guarantee after due notice to the assessee.

5. Stamps on bond

5.1 All bonds must bear stamps on the scale prescribed by article 57 of the schedule I to the Indian Stamp Act 1899, modified as may be, by State Legislation. Commissionerate should circulate to their staff the rate of stamp duty required in each State within Commissionerate for each type of bond.

5.2 Whoever affixes an adhesive stamp to any instrument chargeable with duty which has been executed by any person shall when affixing such stamp cancel the same so that it cannot be used again and whom so ever has executed any instrument on any paper bearing an adhesive stamp shall at the time of execution unless such stamp has been already been cancelled in the manner aforesaid, cancel the same so that it cannot be used again. Any instrument bearing an adhesive stamp, which has not been cancelled so that it cannot be used again, shall so far as such stamp is concerned be deemed to be un-stamped. The person required to cancel an adhesive stamp may cancel it by writing on or cross the stamp with his name or initials or the name or initial of his firm with the true date of his so writing, or in any other effectual manner.

6. Execution of bond by Government Undertaking or Autonomous Corporations

6.1 The Board has decided that an undertaking owned and managed directly through any Ministry, Directorate or Directorates by the Central Government is exempt from the execution of

any bond; a State Government is exempt from furnishing any security or surety for bond, where the execution of such bond, or, as the case may be furnishing of security or surety is required by or under any provision of the rules made under Central Excise Act, 1944.

6.2 An undertaking owned or controlled by the Central Government or State Government does not include any undertaking belonging to a corporation owned or controlled by the Central Government or State Government and established by or under a Central or State Act; or any undertaking belonging to Government Company within the meaning of Section 617 of the Companies Act, 1956 (1 of 1956).

7. Security

7.1 The security to be furnished in respect of the bonds will be, as follows:

(i) The security furnished should either be cash, Government promissory notes, post office savings, bank deposits, National Savings Certificates, National Defence Bonds or similar realizable Government papers. Promissory Notes and stock Certificates of the Central Government or a State Government shall be accepted subject to the conditions laid down in clause (ii) of Rule 274 of GFR.

(ii) Deposit receipt of bank can also be pledged as security for Central Excise - Bonds subject to certain specific conditions under Rule 274 (vi) of G.F.R. The conditions inter alia are:

(a) The deposit receipt shall be made out in the name of the pledgee or if it is made out in the name of the pledger, the bank shall certify on it that the deposit can be withdrawn only on demand or with the sanction of the pledgee.

(b) The depositors shall agree in writing to undertake any risk involved in the investment and make good the depreciation, if any.

(c) The depositors shall receive the interest when due, direct from the bank on a letter from the pledgee authorising the bank to pay it to him.

(d) The responsibility of the pledgee in connection with the deposit and the interest on it will cease when he issues a final withdrawal order to the depositor and sends an intimation to the Bank that he has done so.

(e) Only the larger Scheduled banks are to be considered as recognized banks approved by Government for the purpose of item of Rule 274 of G.F.R.

(f) Interest on the securities will, however, continue to accrue and will be realised by the holders on discharge of the bond and return of the securities.

(g) Where the same bond and security continue for over one year, arrangements must be made for credit or payment of the interest on such securities to the bonders.

(h) On cash securities no interest is payable. In the case of Savings Bank Account, the interest may be paid to the parties on claim preferred by them periodically or can be collected after the amount is returned to them. In respect of other securities, arrangements are to be made for the payment of interest at regular intervals of 6 months.

8. Surety

8.1 Whenever surety bond is executed it is to be ensured that both the obligor and surety sign the bond. Field officers will ensure that surety is financially sound and have been verified from time to time. Whenever bank guarantee is accepted for security, care should be taken to get the guarantee renewed before expiry from time to time, so as to enable the enforcement of liability as and when such need arises. Execution of B17 Bonds is optional and if the assessee does not wish to avail of this facility, he may execute individual bonds prescribed for different purposes.

8.2 A partner or a director of a limited company can also stand as surety in his individual capacity to guarantee the performances of the firm or a company as the case may be. Since, in law, a limited company is a distinct legal entity and the member of the company including directors are distinct from the company, there should be no objection to allow the directors of the limited company to stand as surety for the companies provided they fulfil all the other conditions applicable to sureties. (F. No. 8/10/16/CX II dt 5/8/1960)

9. Guarantee bond executed by bank

9.1 The provisions governing the execution of bonds by banks are as follows:

(i) When the State Bank of India or a scheduled bank gives a guarantee for a registered person with or without deposit of security, the guarantee bond should provide a period of validity and an extra period during which obligations arising during the period of validity can enforced. The time limit for enforcement of obligation should be at least two years.

(ii)Where there is a need for extension of the period of validity of bank guarantee furnished by the bank on behalf of a party in pursuant to an order of an original or appellate authority or any other reason, it should be done by means of supplementary deed of bank guarantee on a stamp paper.

10. Preservation of bond and retention of securities

10.1 Proper preservation of bonds is to be ensured in the interest of the revenue.

(i) Bonds must be preserved as long as they are valid and should be returned only after all the obligations under the bond had been discharged.

(ii) All officers who fill Central Excise bonds must be careful not to write the word "cancelled" on the bonds even after the apparent fulfilment of obligation ; otherwise it is likely to be argued that persons liable under the bond have been there by discharged from the liabilities imposed by the bond. The obligations under the bond are not legally extinguished so long as the bond is not returned to the obligor or is not cancelled on execution of a deed of cancellation.

11. Verification of sureties

11.1 In respect of surety bonds, periodical verification, preferably on an annual basis will be made by the jurisdictional Central Excise Officers so as to ensure the sureties are financially sound, solvent and alive. The enquiry to verify the financial stability of the sureties will be made by any of the following methods:

(i) By reference to the surety's bankers.

(ii) By making personal enquiries and ascertaining whether the surety possesses a house or other immovable property, industrial equipment, shop etc. which would cover the bond amount. Alternatively, the sureties may themselves be asked to furnish a list of their property, which may be verified by the Officer.

(iii) By reference to Revenue Officer not below the rank of Tahsildar or a Mamalatdar.

(iv) The result of enquiry as well as the solvency of the surety should be incorporated in the records of the Department.

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Chapter 15

What is Excise Audit 2000.

The new system of audit called the Excise Audit 2000 [EA 2000] was first started in December 1999 on an experimental basis in case of assessees paying duty in PLA over Rs. 5 crore per annum. In September 2000, this system of audit was made applicable to those assessees paying PLA duty over Rs. 1 crore per annum. It was decided to continue with both the systems for time being [the prevailing system of audit for the smaller assesses] till EA 2000 audits stabilised and gained acceptability both within the department and among the assessees. With effect from 01-01-2002, the Central Board of Excise and Customs instructed that henceforth all audits would be conducted under EA 2000 system and the traditional system of audit was phased out.

EA 2000 audit is based on verification of the private records of the assessee and their methods of accounting & record keeping. Starting with the selection of units on the basis of their risk perception, this methodology relies on the efficient use of audit resources viz. manpower and skills. Pre-audit review and the study of system of Internal Control are the main features of this audit. It also lays emphasis on gathering data about the assessee, understanding his financial and accounting system, studying the flow of material, cash and documentation and run tests to evaluate the vulnerable areas. Armed with this information, the auditors prepare an Audit Plan and conduct verification according to that plan. The system requires documenting each step of audit scrutiny and invites the assessee to give his views on all the objections.

The ethos of EA 2000 audit is to resolve the tax non-compliance issues by way of constant consultation with the assessee. It aims at settling the audit disputes by way of consensus as far as possible. It involves discussions between senior officers from the department and senior officials of the assessee in the atmosphere of mutual understanding. The stress is therefore on correcting the factors, leading to non-compliance.

The broad principles are:

[i] Audit will be conducted in a systematic and comprehensive manner.

[ii] Emphasis will be on scrutiny of records maintained in the normal course of business.

[iii] Audit effort will be based on materiality principle - higher the potential risk, greater the intensity of scrutiny.

[iv] Recording of all findings.

[v] Audit is clearly distinct from anti-evasion activity - audit can uncover non-compliance only to the extent of their reflection in the books of accounts.

Procedure of Excise Audit 2000

The steps in brief are mentioned below. It is important that the auditor records all of the steps, in Working Papers, as he goes along.

1. Selection of Assessee

The process of EA 2000 begins with identification of a unit to be audited. Normally, there are about 1000 to 1500 assessees under the jurisdiction of a Central Excise Commissionerate. It is not possible for the audit staff to conduct audit of all the units every year. Therefore, depending upon the manpower availability and the frequency prescribed, units are selected for conducting audit during the financial year. Under the conventional system of audit the units were picked up randomly without any scientific basis of selection. Under EA 2000, the selection of units [other than mandatory units] is based taking into account the 'risk-factors'. This means that the assessees who have a higher risk-perception are picked up for audit on priority over those whose risk-perception [as reflected by the risk parameters in use] is lower.

2. Preliminary or Desk Review.

Upon assignment of an audit, the auditor is required to be sufficiently prepared before the

visit to the unit. This is done in the office and involves reviewing all the information available about the unit, its operations, reasons for selection for audit and possible issues that can be identified at this stage. Perusal of Assessee Profile, Annual Report, Trial Balance, Cost Audit Report and Income Tax Audit Report helps the auditor in the preliminary review.

The foremost duty of the auditor is to access the Assessee Profile (maintained for the purpose] and other information from the computer wherever computerized information is available. If the information is incomplete, the same should be entered so that in due course information becomes complete.

3. *Gathering Information about the Assessee and the Systems followed by him.*

Before conducting the audit, the auditor gathers information about various activities of the unit like tax accounting, procurement of raw materials, production, marketing, stocks and sales. This information is gathered through discussions with the senior management. In the case of bigger units paying annual PLA revenue of over Rs. 1 crore, this may be done during a brief preparatory visit to the unit and in other cases at the beginning of the single visit for audit-verification. A sample reconciliation of the tax returns with the financial accounts is done. This information collected is documented so as to test it against the actual functions during 'walk through' conducted while evaluating the internal control.

4. *Evaluation of the Internal Controls.*

Internal Controls form a basis for reliability of the company's own accounting records. The evaluation of Internal Controls is necessary for determination of the scope and extent of audit checks required for the assessee.

If the internal controls are well designed and working properly, then it is possible to rely on the books maintained by the assessee. The scope and the extent of the audit can be reduced in such a case. The reverse would be true if the internal controls are not reliable. It is essential to test the application of internal controls in practice to judge and form an opinion about how effectively the prescribed procedures are actually followed.

This study will enable an auditor to assess the level of compliance and level of reliability of the prevalent internal control system.

[i] Walk-through

One of the ways of evaluating internal control is to do a 'walk through'. Undertaking a 'Walk-through' and conducting ABC analysis during this process helps the auditor to evaluate the system of internal control in a scientific manner. 'Walk-through' is a process by which the auditor selects any transaction by sampling method and traces its movement from the beginning through various sub systems. The auditor verifies this transaction in the same sequence as it had moved. By this method the auditor can get a feel of the various processes and their inter linkages. The auditor can undertake walk through process of sales, purchase, excise, account adjustment systems etc.

[ii] ABC Analysis

In order to filter out the irrelevant or relatively insignificant data, various techniques are applied and ABC Analysis is one of such data management technique. In ABC analysis the whole data population is classified into three categories based on the importance. A-category is the class of data that is most important from the point of view of managing and controlling the same. B-category is the class of data, which should invariably be controlled, but the degree of control is not as intense as for Acategory. C-category is the class of data, which has much less revenue-implications and can be controlled by suitable test-checks: The auditor can apply ABC Analysis specially in case the quantum of data/information to be analysed is voluminous.

As a result of the observations and test carried out, the auditor has to evaluate as to how far he can rely on the internal control system. He should assess whether the control procedures as prescribed and applied in practice are effective in preventing or detecting material errors and irregularities in the accounting system. This is essentially a question of a best judgement in a particular situation.

If there exist certain errors or infirmities in the system, he should try to adjudge the impact of the same on tax compliance. Based on the evaluation, the auditor will grade the soundness of the level of internal control of each sub-system as "reliable", "adequate" or "poor".

Thus, evaluation of Internal Controls is important as it helps in determining the scope and duration of the audit.

*5. **Revenue Risk analysis.***

Having assessed the reliability of company's accounting records, the next step is to assess the "potential" risk to the revenue. If the risk is low, i.e. accounting records are accurate; the extensive tests may not be required. There are several methods to assess the revenue-risk, such as, comparison of the derived [from financial records] dutiable clearance and tax liability vis-a-vis actual clearance shown and duty paid.

*6. **Trend analysis.***

This is an important step in assessing a company's accounting records. Analysis of various trends will help highlight unusual situations or abnormal trends. Trend analysis involves comparing operations from year to year and comparing with other units in the same sector.

*7. **Developing the Audit Plan.***

This is one of the most significant steps in the audit programme. The auditor assesses all the information gathered about the assessee and develops a plan to examine detailed records related to the areas where material problems are indicated or foreseen.

The Audit Plan is documented in the Working Papers. They should ensure that it is consistent with the complexity of the unit, materiality, problems and risk factors identified up to this point and the reasons for selection of the unit for audit in the first place.

The draft Audit Plan is submitted for approval of Addl./Joint Commissioner

[Audit] and the audit is undertaken only after such approval.

8. Tour of the Premises/Plant

This is used to gather information about the systems. A physical tour provides confirmation of much of the information gathered during previous steps and it also helps resolve issues noted earlier. Often, the tour brings out operations and technical details about inputs used and products/byproducts/wastes manufactured, some of which may not have been discussed during the discussions. It provides clues about important aspects of the operations of the unit. If necessary the auditor speaks to the plant manager or foreman during the tour.

9. Verification

This is the detailed verification as per Audit Plan. Entry in the working paper is made for each item of the Audit Plan. At the end of each entry in working paper, auditor indicates the objections and his findings. If any of the planned verifications is not conducted the reasons thereof is recorded.

Audit objections raised must be fully supported by documentary and legal evidence. This will greatly help in explaining and discussing the objections with the assessee and other follow up action.

10. Summarising Audit Findings.

This step involves putting together all of the audit findings in one place to be placed in the audit file. Where necessary, important objections and findings are reviewed with the immediate supervisor before discussing them with the assessee.

11. Informing the Divisional Deputy/Assistant Commissioner of major audit points.

If the audit party detects a major audit points involving short levy/short payment, which requires immediate attention of the jurisdictional officers including time-bound proceedings for recovery of the dues, the head of the audit party discusses the issue with the Divisional Deputy/Assistant Commissioner This is done immediately after

completion of the audit of the unit to bring all such points to the notice of the Deputy/Assistant Commissioner in-charge of the Division.

*12. **Reviewing results with the Assessee.***

It is important that the auditor informs the assessee of all the objections before preparing draft Audit Report. The assessee must have the opportunity to know the objections and to offer clarifications with supporting documents. This process will resolve potential disputes early and avoid unnecessary disputes.

*13. **Compliance of Audit objections.***

Where the assessee is in agreement with the audit findings, in part or in full, the auditor requests that payments be made promptly to stop accrual of interest. Voluntary compliance should be encouraged so as to avoid protracted legal wrangles. Attention of the assessee is invited to sub section [28) of Section 11 A of the Cellltral Excise Act, 1944.

*14. **Future Compliance.***

This is the final step before the auditor leaves the assessee's premises. The auditor discusses with the assessee, steps to improve compliance including systemic improvement and modifications in the legal arrangements.

*15. **Reporting.***

The draft Audit Report is completed at this stage after the auditor has recorded all the findings against each of the detailed audit steps. All the Working Papers are included as attachments to the final Audit Report.

*16. **Audit Follow up:***

After the submission of the Audit Report along with the Working Papers,

- The Superintendent in-charge of the audit team discusses the major audit points with Assistant/Deputy Commissioner audit. After preliminary

discussion the action points are identified by the audit team.

- The Audit Report is submitted for evaluation to the Audit Cell.
- The Audit Cell evaluates the Audit Report and score each report as per the instructions of the Board. [Circular No. 514/10/2000- CX dated 16.2.2000]
- This Cell, headed by the Commissioner, during its monthly meetings reviews the Audit Reports for final acceptance {or non-acceptance} of the audit points. Thereafter the draft Audit Report is finalised by the Audit Cell.
- The minutes of the meeting of the Audit Cell clearly states the required action to be taken in respect of each of the audit points.
- The Audit cell updates the Assessee Master file based on the information available in the Audit Report.
- The audit section maintains Registers of Audit Planning and Audit Follow-up in prescribed format until the closure of the audit point either by issue of a show cause notice and recovery of dues or by non-acceptance of the audit point by the Audit cell.

Computer Assisted Audit Programme

Large number of companies have started maintaining their records in electronic format [some companies are paperless]. These companies have global perspective and are competing internationally and have huge volume of records. The system of manual audit is not adequate to handle the auditing of such assessees. Auditing of their records require understanding of not only the accounting systems but also computer skills to read and process data files. The auditors need to be equipped to interrogate the data in electronic format.

The Computer Assisted Audit Programme [CAAP] is a method of audit of such

assessees. By using CAAP, the auditor analysis the business system of the assessee, understands the systems flow chart, computer programming flow chart, the layout of the files and finally determine the data transfer mechanism. The linkages and discrepancies in the assessee's data are detected for the purposes of identifying and narrowing down the possible areas of tax non-compliance, which helps in conduct of EA 2000 audit.

After downloading the assessees data files the auditor prepares these files so as to make them readable for the audit software. The WINIDEA software is used to perform various functions on this data like, File Stratification, Joining of data bases, Extraction of selected portion of data bases, detection of missing invoices or duplicate series etc. Essentially this software allows the auditor to interrogate and analyse data for audit purpose.

Thereafter, the steps are the same as those in EA 2000 audits. The CAAP has been started on experimental basis in few selected Commissionerates.

For further details on EA-2000, the Audit manual issued by Directorate-General of Audit may be referred to.

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CHAPTER –16

APPEALS

1. Introduction

1.1 The provisions for appeal are contained in Chapter VI A of the Central Excise Act, 1944. The rules pertaining to Appeals i.e. Central Excise (Appeals) Rules, 2001 (hereinafter referred to as 'Appeal Rules') have been notified w.e.f. 1.7.2001.

1.2 These provisions provide for appeals to Commissioner (Appeals), Appellate Tribunal, procedure, orders of appellate tribunal, powers of revisions of Board, revision by Central Government, statements of case to High Court, appeal to High Court, appeal to the Supreme Court, transfer of certain pending proceedings and transitional provisions.

1.3 Provisions relating to appeals, as contained in Central Excise Act, 1944 and rules made thereunder are also applicable to cases under Produce Cess Act, 1966, and for Handloom Cess leviable under Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953.

2. Appellate Stages

2.1 Under the new Chapter VIA of the Central Excise Act,1944, both the assessee and the department have been conferred with a right of two or three stage remedies against the orders passed under Central Excise Act and Rules. For orders passed by officers lower than the rank of Commissioner of Central Excise, the first appeal lies to the Commissioner (Appeals) and there from to the Appellate Tribunal and finally to the Supreme Court. But where the order of the Tribunal does not relate to determination of rate of duty or value of goods, an appeal to the High Court lies under Sections 35G & reference application under 35H, instead of Appeal to Supreme Court. In cases where the Order-in-Original is passed by a Commissioner of Central Excise, appeal lies directly to the Appellate Tribunal.

2.3 The appellate remedy available for orders passed by different authorities is as follows:-

Sr. No.	Order passed by	Appellate Authority
1	All officers upto & including Additional Commissioner	Commissioner (Appeals)
2	Commissioner or Commissioner (Appeals)	CESTAT except in cases where order relates to:– (a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or

		during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse; (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India; (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty; (d) credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of the Central Excise Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998].
3.	Commissioner (Appeals)	Revision application to Central Govt. (in matters relating to export without payment of duty, goods short landed, loss of goods in transit).
4.	CESTAT	Supreme Court (Classification and Valuation cases)
5.	CESTAT	High Court (Other than classification and valuation matters)
6.	High Court	Supreme Court

3. Appeals to Commissioner (Appeals)

3.1 All decisions and orders passed under the Central Excise Act or the rules made thereunder are generally subject to two appeals. The First Appeal as per the provisions of Section 35 of the Central Excise Act lies to the Commissioner (Appeals) if the order or decision is of an officer lower in rank than the Commissioner of Central Excise. Such an appeal can be filed within sixty days from the date of the communication of decision/ order. This period can be extended by a further period of thirty days by Commissioner (Appeals) on sufficient cause being shown. Thereafter, the Second Appeal against the order of the Commissioner (Appeals) can be filed to the Appellate Tribunal except for the type of cases referred to in Sl.No.2 of the chart above. (para 2.3).

3.2 As per Rule 3 of Central Excise (Appeals) Rules, 2001, an appeal under sub-section (1) of Section 35 to the Commissioner (Appeals) shall be made in Form No.E.A.-1(Annexure-44)(in duplicate) and shall be accompanied by a copy of the decision or order appealed against.

3.3 The grounds of appeal and the form of verification as contained in Form No.E.A.-1 shall be signed -

(a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorized by

him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

(b) in the case of a Hindu undivided family, by the karta and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or some person competent to act on his behalf.

3.4 As per Rule 4 of the Appeal Rules, an application under sub-section (4) of Section 35E to the Commissioner (Appeals) shall be made in Form No.E.A.-2(Annexure-45) and such an application shall be treated as an appeal.

3.5 The form of application in Form No.E.A.-2 shall be filed in duplicate and accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals).

3.6 The Commissioner (Appeals) shall, where it is possible to do so hear and decide every appeal within a period of six months from the date on which it is filed.

3.7 Amendment has been made to section 35 of the Act to provide that adjournment of the hearing shall not be granted more than three times to a party during the proceedings.

3.8 On the disposal of appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Central Excise or the respondent.

4.[1] Jurisdiction of Commissioner of Central Excise (Appeals)

4.1 Commissioners of Central Excise (Appeals) have been given concurrent jurisdiction of the entire zone and jurisdiction of Chief Commissioner has been extended to all the Commissioners of Central Excise (Appeals) within his zone. Chief Commissioner of Central Excise, within his jurisdiction, may specify the jurisdiction of individual Commissioner of Central Excise (Appeals), under his charge, by issuing suitable orders.

4.2 In normal situations, each Commissioner of Central Excise (Appeals) should continue to handle the appeals arising out of the jurisdiction of specific Commissionerates of Central Excise, as specified by Chief Commissioner of Central Excise. However, Chief Commissioner, may allocate additional charge or any individual cases to Commissioner of Central Excise (Appeals), as and when required.

5. Production of additional evidence before Commissioner (Appeals)

5.1 An appellant can produce additional evidence before the Commissioner (Appeals). As per sub rule (1) of rule 5 of the Appeal Rules, the appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority except in the following circumstances, namely :

(a) Where the adjudicating authority has refused to admit evidence which ought to have been admitted; or
(b) Where the appellant was prevented by sufficient cause from producing the evidence which was called upon to produce by the adjudicating authority; or
(c) Where the appellant was prevented by sufficient cause from producing before the adjudicating authority any evidence which is relevant to any ground of appeal; or
(d) Where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

5.2 No evidence shall be admitted under sub-rule (1) unless the Commissioner (Appeals) records in writing the reasons for its admission.

5.3 The Commissioner (Appeals) shall not take any evidence produced under sub-rule(1) unless the adjudicating authority or an officer authorized in this behalf by the said authority has been allowed a reasonable opportunity –

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant, or
(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1)

5.4 It is also provided that nothing contained in the said rule shall affect the power of the Commissioner(Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

6. Effective handling of Central Excise and Customs Appeals before Commissioner (Appeals)

6.1 [2]The Board on recommendation of Expert Group in appeal matters, has issued the guideline that in order to make the Department's representation before Commissioner (Appeals) more effective, it has been decided that the Commissioner's representative may be present during the hearing before Commissioner (Appeals). It is left to the best judgment of the Commissioner as to the level of officer who should represent the Department, and also the cases in which such representation is desirable.

7. Appeals to Appellate Tribunal

7.1 In response to the long outstanding demand of the trade and industry for establishing an independent machinery to redress the grievances of the Excise and Customs assesses, the Central Government set up the Customs, Excise and Gold Control Appellate Tribunal in the year 1982 to hear and dispose of appeals in Central Excise, Customs and Gold Control matters. The name of the Customs Excise & Gold (Control) Appellate Tribunal stands changed to "Customs, Excise & Service Tax Appellate Tribunal". {Vide CESTAT Circular F.No.29/21/CEGAT/Admn./2003 dated 5.6.2003.}

7.2 The Benches of the Tribunal are composed of Judicial and Technical Members. As per Section 35D (3) of Central Excise Act, 1944, Single member Bench has the jurisdiction to hear appeals involving an amount of duty, fine or penalty not exceeding ten lakh rupees.

7.3 Every appeal to the Tribunal shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

7.3.1 As per rule 6 of the Appeal Rules, an appeal under sub-section (1) of section 35B to the Appellate Tribunal shall be made in Form No.E.A.-3 (Annexure-46)and the following shall be observed:

(1) A memorandum of cross objections to the Appellate Tribunal under sub-section (4) of section 35 B shall be made in Form No.E.A-.4. (Annexure-47)

(2) Where an appeal under sub-section (1) of section 35B or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the Commissioner of Central Excise, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos.E.A.3 and E.A.-4, as the case may be respectively shall be signed by the persons specified in sub-rule (2) of rule 3.

(3) The form of appeal in Form No.E.A.-3 and the form of memorandum of cross-objections in Form No.E.A.-4 shall be filed in quadruplicate and accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

8. Appeal to Appellate Tribunal against order of Commissioner (Appeals)

8.1 As per Section 35 B(2) of Central Excise Act, 1944, the Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct any Central Excise Officer authorized by him in this behalf to appeal on his behalf to the Appellate Tribunal against such order.

9. Form of application to Appellate Tribunal

9.1 As per rule 7 of the Appeal Rules, an application under sub-section (1) of section 35E to the Appellate Tribunal shall be made in Form No.E.A.-5. (Annexure-48) The form of application in Form No.E.A.-5 shall be filed in quadruplicate and accompanied by an equal number of copies of the decision or order passed by the Commissioner of Central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board directing such Commissioner to apply to the Appellate Tribunal.

10. Order of Appellate Tribunal

10.1.1 As per Section 35C(2) of Central Excise Act, 1944, [3] the Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.

10.1.2 As per Section 35C (2A) of Central Excise Act, 1944, [4] the Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :

Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of Section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.

10.1.3 Amendment has been made to section 35 C of the Act to provide that adjournment of the hearing shall not be granted more than three times to a party during the proceedings

10.2[5] The Board's Circular No. 453/19/99-CX.dated 9-4-99 envisaged that all field Commissioners shall ensure quick critical examination of all the appeals filed by assessees or importers as the case may be in all cases involving important law points and/or revenue of more than Rs. 20 lakhs in each case and

(i) file memorandum of Cross Objection in the Tribunal with copy to the concerned CDR/JCDR/SDR within the stipulated period of 45 days from the date of receipt of the notice from CESTAT in terms of Section 35B(4) of Central Excise Act or Section 129A(4) of Customs Act, or

(ii) send their comments along with copies of the relevant documents to the concerned CDR/JCDR/SDR as the case may be within the said 45 days, so that the Departmental Representatives can effectively represent department's side before CESTAT.

10.4 [6] All cases involving important law points or revenue of more than Rs. 20 lakhs as per above para shall be immediately taken up for scrutiny on receipt of the notice from CESTAT and Cross Objections/comments shall be filed within prescribed time limit. It may be kept in mind that where the order under challenge is passed by the Commissioner as an Adjudicating Authority, authorisation for filing cross objection is to be given by Board, and therefore, the Zonal Chief Commissioner has to send draft Review Order along with the case records and the Memo of appeal filed by the assessee within ten days of receipt of notice from the CESTAT. Further, whenever any specific comments or clarification is asked for, it should be very expeditiously attended to and well considered comments shall be sent by the Commissioners themselves under their own signature.

10.5[7] It may be ensured that applications for early and out of turn hearing are filed only in deserving cases giving proper and detailed reasons for the same.

It should be ensured that such application should not be filed in a routine manner and due justification must be given for out of turn hearing while filing such applications.

10.6 [8] The Board has issued instructions in the past reiterating the importance of language used in the authorisation. Circular No. 413/46/98-CX, dated 6-8-1998 (F. No. 390/120/98-JC) [1998 (102) E.L.T. T31] & Circular No. 560/56/2000-CX, dated 30-11-2000 (F. No. 387/269/2000-JC) [2000 (122) E.L.T. T28] in this regard are relevant. There may be cases where even though the Commissioner was inclined to accept the order of Commissioner (Appeals), the Chief Commissioner feels otherwise and on his advice appeal is filed and authorisation for that purpose is issued by the Commissioner. In such circumstances, it would be prudent if Chief Commissioner himself passes an authorisation indicating therein that he had applied his mind and he found the order to be not legal and proper. In case the Commissioner decides to himself issue authorisation on the advice of the Chief Commissioner the file and the order of authorisation have to indicate that the Commissioner had indeed applied his mind and found the order of the Commissioner (Appeals) not to be legal and proper. Commissioners are also advised to keep in mind the provision of law and the previous instructions in this regard which very clearly stipulate that the authorisation should show Commissioner's opinion that the order passed by Commissioner (Appeals) is not legal or proper.

11. Effective handling of Central Excise & Customs Appeal in CESTAT.

11.1 [9]The Board, on recommendation of Expert Group in appeal matters has issued the following guidelines :

a. Copy of the Department's appeals both against the order of the Commissioner as well as Commissioner (Appeals), should be handed over to the office of CDR/Joint CDR after filing of the same in the CESTAT Registry so as to enable them to scrutinise such appeals for pointing out the technical defects and possible remedial measures.

b . All correspondence with the office of the CDR/ Joint CDR or the Registry of CEGAT should be under the signature of an officer not below the rank of Addl./ Joint Commissioner in the Commissionerate .

c. Appeals should be filed with proper authorization by Commissioner and after citing correct provisions of law i.e. Section 35 B or 35 E of Central Excise Act or Section 129 A or 129 D of the Customs Act. When the Board authorizes Commissioner to file appeal, it should be filed against each respondent. Appeal authorization should clearly indicate that order has been found to be not legal and proper. Commissioners should invariably file cross objection or send para -wise comments in terms of the Board's order on the subject, within the stipulated period of 45 days. Conversant officers should be deputed to brief the DRs so that the case can be presented effectively before the CESTAT.

d. The improper order in favour of revenue should not be accepted in routine and the review authority should give its observations for guidance of the adjudication authorities. The tendency to invariably pass the orders in favour of revenue without application of mind or to file frivolous appeals should end forthwith. Whenever any such cases noticed, the CDR should send a note to the Chief Commissioner concerned with a copy to the Board.

12. Application to High Court

12.1 As per Section 35H ,the Commissioner of Central Excise or the other party may, within 180 days of the date upon which he is served with notice of an order under section 35C passed before 1.7.2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Tribunal to refer to it any question of law arising out of such order and, subject to the other provisions contained in this section. If the High Court so directs, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court :

12.2 On receipt of notice that an application has been made under sub section (1), the person against whom such application has been made, may notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

12.3 Sections 35H of the Central Excise Act, 1944 provides for a reference to the High Court against any order of the Appellate Tribunal provided such order does not relate to the determination of rate of duty or value of goods among other things. However, where there are conflicting decisions of the High Courts in relation to the question of law involved, Section 35 H of the Central Excise Act provides for a direct reference to the Supreme Court.

13. [10] Appeal to High Court

13.1 As per Section 35G of Central Excise Act, 1944, an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

13.2 The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;
(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

13.3 Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

13.4 The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

14 Procedure for filing Revision Application

14.1 Sections 35E, 35EA, & 35EE of Central Excise Act provide for review of an order passed by the adjudicating authorities.

14.2. Section 35E gives powers to Board or Commissioner of Central Excise to pass certain orders.

14.3 Section 35EA deals with powers of revision of Board or Commissioner of Central Excise in certain cases while Section 35EE deals with revision by Central Government.

15. Revision Application

15.1 As per Rule 9 & 10 of the Appeal Rules, the revision application under Section 35 EE shall be in Form E.A.-8(Annexure-51) & presented in person to the Under-Secretary Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, New Delhi or sent by registered post addressed to such officer.

(1) The revision application sent by registered post shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer.

(2) The grounds of revision application and the form of verification as contained in Form EA-8 shall be signed by the person specified in sub-rule (2) of Rule 3.

(3) The application shall be filed in duplicate & shall be accompanied by two copies of the following documents, i.e.
   (i) Order referred to in 1st Proviso to Section 35B(1)
   (ii) Decision or order passed by Central Excise Officer which was the subject matter of the order referred to in rule 9(4)(i)

16. Form of application to High Court

16.1 As per Rule 8, an application under sub-section (1) of section 35 H requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No.E.A.6(Annexure-49) and such application shall be filed in quadruplicate. Further provisions are as below:

(1) A memorandum of cross-objections under sub-section (3) of section 35H to the High Court shall be made in Form No.E.A.-7(Annexure-50) and such memorandum shall be filed in quadruplicate.

(2) Where an application under sub-section (1) of section 35H or a memorandum of cross-objections under sub-section (3) of that section is made by any person other than the Commissioner of Central Excise, the application, the memorandum or form of verification, as the case may be, contained in Form No.E.A.-6 or Form No.E.A.-7 shall be signed by the person specified in sub-rule (2) of rule 3.

17. Appeal to Supreme Court

17.1 The Central Excise Act, 1944, provides a two tier machinery for redressal of grievances against the decision of the Appellate Tribunal. In cases where the decision of the Appellate Tribunal relates to any question having relation with the determination of 'rate of duty' or 'value of goods' amongst other things, the same is directly appealable to the Supreme Court under Section 35L of the Central Excise Act, but where the order of the Appellate Tribunal does not relate to 'rate of duty' or 'value of goods', first a reference to the High Court has to be made under Section 35H and thereafter an appeal, against the judgment of the high Court on a reference, can be made to the Supreme Court provided the High Court certifies it to be a fit case for appeal to the Supreme Court.

17.2 Orders appealable to the Supreme Court

An appeal under Section 35L of Central Excise Act, 1944 shall lie to the Supreme Court from—

(a) [11] any judgment of the High Court delivered

i) in an appeal made under Section 35G; or

ii) on a reference made under Section 35G by the Appellate Tribunal before the 1st day of July, 2003;

iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certified to be a fit one for appeal to the Supreme Court; or

b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

17.3 The petition of appeal under Section 35L of the Central Excises and Salt Act, 1944, shall, subject to the provisions of Section 4,5 and 12 of the Limitation Act, 1963 (36 of 1963) be presented within sixty days from the date of the order sought to be appealed against or within sixty days from the date on which the order sought to be appealed against is communicated to the appellant, whichever is later provided that in computing the said period, the time requisite for obtaining a copy of such order shall be excluded.

18. Effective handling of Central Excise and Customs Appeals in Supreme Court.

18.1 [12]The Board on recommendation of Expert Group in appeal matters has issued the following guidelines for strict compliance.

a. On the basis of the terminal list provided by the Supreme Court Registry, the Directorate of Legal Affairs may list out all cases likely to come up in the next session of the Supreme Court and send it to the concerned Commissionerates . The Commissionerate in turn should review their files and take necessary action to follow up contacting the concerned advocates. Any defects or pending orders which require to be removed/implemented should be attended to well in advance of the actual date of listing.

b. The Commissionerate should appoint a nodal officer responsible for maintaining a data-base of their cases and keep the same updated on the basis of references received from the DLA, Board office, Central Agency Section, Supreme Court website and take step accordingly. The nodal officer will also be responsible for attending to any important message telephone /fax relating to cases of the Commissionerate from the Boards office/Directorate of legal Affairs. The Commissionerate should inform the DLA/Chief Commissioner and the Board about the appointment of the nodal officer of the Commissionerate .

1 Board's circular 774/7/2004 dated 4.2.2004 read with Notification No.14/2002-CE(NT) amended by Notification No. 3/2004-CE (NT) dated 4.2.2004.
2 Board's Circular 768/01/2004-CE dated 5.1.2004.
3 Substituted (w.e.f. 11.5.2002) by s. (40 of the Finance Act, 2002 (20 of 2002).
4 Inserted (w.e.f. 11.5.2002) by s.140 of the Finance Act, 2002 (20 of 2002).
5 Board's Circular No.596/33/2001-CX. dated 5.11.2001 from (F.No.390/254/2001-JC).
6 Board's Circular No.596/33/2001-CX. dated 5.11.2001 from (F.No.390/254/2001-JC).
7 Board's Circular No.597/34/2001-CX. dated 5.11.2001 from (F.No.390/254/2001-JC).
8 Board's Circular No.612/3/2002-CX. dated 17.1.2002 from (F.No.390/121/2002-JC).
9 Board's Circular 768/01/2004-CE dated 5.1.2004.
10 Substituted (w.e.f. 14.5.2003) by s. 144 of the Finance Act, 2003 (32 of 2003).
11 Substituted (w.e.f. 14.5.2003) by s. 147 of the Finance Act, 2003 (32 of 2003).
12 Board's Circular 768/01/2004-CE dated 5.1.2004.

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CHAPTER 17

SEARCH, SEIZURE, ARREST AND PROSECUTION

PART I
SEARCH and SEIZURE

1. Introduction

1.1 Provisions of search and seizure are used by the Central Excise Officers to enforce the provisions of the Central Excise Law. These provisions are used as an exception when the direct physical intervention becomes necessary. At the same time, the search and seizure is to be done in accordance with the laid down law. In this regard reference is to be made to the applicable provisions of other statutes like The Code of Criminal Procedure, 1973, Customs Act, 1962 etc.

2. Provisions relating to search

2.1 The provisions relating to search are given in Section 18 of the Central Excise Act, 1944, which provides that all searches should be made in accordance with the provisions of the Code of Criminal Procedure.

2.2 Rules 22 and 23 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules), empower the authorized officer to enter and search any premises, conveyance or other place. Further, rule 24 ibid specifically empowers such officer to effect a seizure or detention. Moreover, Section 12 of the Central Excise Act, 1944, empowers the Central Government to apply the provisions of the Customs Act to the Central Excise also. In exercise of such powers the Central Government has issued Notification No.68/63, dated 4.5.1963 modifying and extending the various sections of Customs Act, 1962 to Central Excise matters. The provisions of Sections 105 (1), 110, 115 [except clauses (a) and (e) of sub section (1)], 118(a), 119, 120, 121, 124, 142 (1)(b) ,142(i)(c)(ii) and 150 have been made applicable to Excise duties with modifications as stipulated in the said notification 68/63 as amended.

2.3 In terms of the said rules, an officer not below the rank of an Inspector of Central Excise, duly authorized by Commissioner by special or general order, can search at any time, any premises or conveyance where he has reason to believe that excisable goods are manufactured, stored or carried in contravention of the provisions of the Act or rules. For a registered premises or for stopping and searching any conveyance in transit no search warrant is required. However, in other cases, normally search warrants are issued by the Deputy/Assistant Commissioner authorizing the search. The Central Excise Officer is also authorized to stop and search any conveyance as well. The search is to be carried out in the presence of two independent witnesses.

2.4 Section 22 deals with vexatious searches, seizure etc. by Central Excise Officers. In such cases, the Central Excise officer will be liable to punishment under the law. Similar provision is made applicable to any person wilfully and maliciously giving false information leading to vexatious search.

3. Seizure

3.1 Rule 24 of the said Rules provides for power to detain goods or seize the excisable goods. If a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

3.2 The power to release seized goods emanates from the power to seize. The goods seized may be released provisionally under bond in the Format specified under the erstwhile Central Excise Rules, 1944 [B-11 bond] along with 25% security or surety by the officer who is normally competent to adjudicate the case. The adjudicating officer will also consider the importance of such goods for evidence, and will release the goods provisionally if the bond is furnished. Wherever necessary, sample may also be drawn. The adjudicating officer, however, will ask the owner or in-charge of the goods to whom the goods were released provisionally to produce the goods any time before the issue of adjudication order, if he is of the view that the goods are liable for confiscation. In case the person to whom goods were released provisionally fails to produce the goods at appointed time, the bond may be enforced for recovering the amount due.

(Auth: CBEC Circular No. 686/2/2003-CX. dated 2.1.2003).

PART II

ARREST AND PROSECUTION

1. Arrest

1.1 Provisions for arrest are contained in Sections 13, 18, 19 and 20 of Central Excise Act, 1944. These provisions provide for power to arrest, searches and arrests how to be made, disposal of persons arrested and procedure to be followed by officer –in-charge of police station.

1.2 Any Central Excise Officer not below the rank of Inspector with prior approval of the Commissioner can arrest any person under Section 13 whom he has reason to believe that he is liable to punishment under the Central Excise Act or the rules made there under. (Section 141 of Finance Act, 2003).

1.3 The arrested person shall be produced before the Jurisdictional Magistrate or the Chief Judicial Magistrate, as the case may be, within twenty-four hours of the arrest.

1.4 Power to grant bail is normally to be exercised by a Jurisdictional Magistrate.

1.5 Supreme Court in case of D.K.Basu vs State of West Bengal has stipulated instructions which should be invariable be followed while making arrest.

2. Prosecution

2.1 Besides the departmental adjudication, prosecution may also be launched under Section 9 of the Central Excise Act, 1944 for the offences under Section 9(1) of the Act. As per provisions of Section 9AA, prosecution may be launched against any person, Director, Manager, Secretary or other officers of a company or partner/ proprietor of the firm, who is responsible for the conduct of the business of the company/firm and is found guilty of the offences under the Central Excise Act/Rules.

2.2 A minimum limit of Rs. 25 lakhs of duty involvement has been decided for launching prosecution so as to ensure better utilization of manpower, time and resources of the Department. However, prosecution can be considered in case of habitual offenders irrespective of the monetary limit prescribed, if the circumstances warrant so. (Circular No. 208/31/97-CX. dated 12.12.1997).

2.3 Section 9 of the Central Excise Act, 1944, provides for prosecution of offenders in a court of law and prescribes a minimum imprisonment of six months. However, in cases where the duty involved is more than one lakh or the offender has been convicted previously under this section, the court can award maximum imprisonment for a term not exceeding seven years.

2.4 Prosecution proceedings in a Court of Law are generally initiated after departmental adjudication of an offence has been completed. However, prosecution may be launched even where adjudication is not complete.

2.5 Generally, the adjudicating authority should indicate whether a case is fit for prosecution, though this is not a necessary pre-condition.

2.6 Confiscation and penalty in departmental adjudication and prosecution in criminal proceedings are independent of each other and do not amount to double jeopardy.

2.6 Prosecutions are launched in cases of serious nature and where sufficient evidence to prove fraudulent intention is available. Hence, before launching prosecution, it is necessary that the department has evidence to prove that the person, company or the individual is guilty of knowledge of the offence or had fraudulent intention or in any manner possessed *mens rea.* Prosecution should be launched against top management of the company only when there is sufficient and clear evidence to show their direct involvement in the offence.

2.7 Under executive instructions, the Chief Commissioner of Central Excise or in specified cases, the Director General of Central Excise Intelligence, has power to sanction prosecution.

2.8 Once prosecution is sanctioned, the complaint should be filed in court immediately after sanction of prosecution. If the complaint cannot be filed for some reason, the matter should be reported to the authority who sanctioned the prosecution.

2.9 Procedure for withdrawal of prosecution:

2.9.1 In respect of cases, where sanction for filing criminal complaint has already been given by the Chief Commissioner/Director General but complaint has not yet been filed, Ministry of Law has opined that the authority to withdraw prosecution should rest with an authority superior to the authority which approves launching of prosecution. Hence, in such cases, where warranted, the Chief Commissioner/Director General may recommend to the Board the withdrawal of the sanction of prosecution.

2.9.2.1 In cases where a complaint for launching prosecution has already been filed in the Court, it will be upto the Court to decide whether or not to pursue prosecution in terms of Sections 257 and 321 of Cr. PC. If a Court has given the order for withdrawal, the Deputy/Assistant Commissioner may withdraw the prosecution after getting a formal approval from the Chief Commissioner/Director General, DGCEI who had sanctioned the prosecution.

2.9.2.2 In specific cases, the Central Government may recommend withdrawal of prosecution. In this context, the opinion of the Ministry of Law is that Public Prosecutor can move the Court only after obtaining approval of the Central Government to withdraw prosecution. If the Central Government,

before issuing such permission to withdraw prosecution considers the competent legal advice of the Prosecutor in charge or the legal advice of the Ministry of Law, the Ministry/Department is competent to permit withdrawal of prosecution. If the Ministry/Department proposes to permit withdrawal of prosecution without the legal advice or against the legal advice, they have to refer the matter to the Cabinet for obtaining the approval and permission of the Cabinet for withdrawal of prosecution. The revision of monetary limit, if any, for launching prosecution shall not be a valid ground for the recommendation.

2.10 For further details, instructions on Prosecution issued by Board from time to time may be referred to.

Part III

Compounding of Offences

1. Compounding of Offences

1.1 Sub-section (2) has been inserted in section 9A of Central Excise Act, 1944 so as to provide for compounding of offences under Chapter-II of the Act by Chief Commissioner of Central Excise on payment of compounding amount prescribed by the rules.

CHAPTER 18

Miscellaneous Provisions - Part I

Remission of duty and Destruction of goods

1. Legal Provision

1.1 Rule 21 of the Central Excise Rules, 2002 provides for remission of duty in certain situations.

1.2 Where it is shown to the satisfaction of the Central Excise Officers specified in the Table below that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods as to the extent specified in the corresponding entry in the said Table, subject to such conditions as may be imposed by him by order in writing. The competence to supervise destruction of excisable goods claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal has also been specified in column 4 of the said Table. Destruction shall be carried on only after the competent officer has passed the order for remission.

TABLE

Sl. No.	Competent Central Excise Officer	Amount of duty empowered to remit	Monetary limit to supervise destruction
(1)	(2)	(3)	(4)
1	Commissioner	Without limit, but normally any amount exceeding Rs. 5,000	-
2	Additional/Joint Commissioner	Rs2,500 to Rs. 5,000	-
3	Deputy/Assistant Commissioner	Rs. 1,000 to Rs. 2,500	Exceeding Rs. 20,000
4	Superintendent	Below Rs. 1,000	Rs. 5,000 but not exceeding Rs. 20,000
5	Inspector	None	Below Rs. 5,000

1.3 The proper officer may not demand duty (remit duty) due on any excisable goods, including 'tea', claimed by the manufacturer as unfit for consumption or

marketing provided the goods are destroyed irrecoverably under the supervision of the proper officer, and subject to the procedure specified hereinafter.

Procedure for Remission

1.4 The procedure to be followed for destruction of goods and remission of duty thereon shall be as follows:

(i) A manufacturer desiring to destroy and seek remission of duty in respect of the excisable goods manufactured in his factory, in terms of Rule 21 on the grounds that the said goods have been rendered unfit for consumption or for marketing, will make an application in duplicate to the Range Officer indicating complete details of the goods and reasons for destruction, along with the proof that the goods have become unfit for consumption or for marketing such as report of chemical test or any other test, conducted by a Government recognised laboratory.

(ii) The application will be quickly processed by the Range Officer. In case the Range Officer is competent to allow destruction and remission (in terms of para 1.2 above), he will proceed to take necessary action at his level. In case the matter falls within the competency of superior officer, he will forward the application along with his recommendation to the Deputy/Assistant Commissioner of the Division within 15 days of receipt.

(iii) The Deputy/Assistant Commissioner will scrutinise the application and based upon the information given by the assessee, if found in order, allow destruction of goods and remission of duty, if the case relates to his competency. Otherwise, he will forward the application with his remarks to the superior authority competent to give permission for destruction and remission (Additional/Joint Commissioner or Commissioner, as the case may be) within 3 days.

(iv) Where only physical verification is required, the same may be conducted by the remission granting authority (proper officer), as specified above and upon his satisfaction, destruction of goods and remission of duty may be allowed.

(v) In case of any doubts, the competent authority may, for reasons to be recorded in writing, order for drawing of samples and its testing by the Central Revenue Control Laboratory or the Custom House Laboratories or any other Government recognised laboratory where the aforementioned laboratories cannot test the samples. The testing of samples will be done in the manner specified in the Basic Excise Manual as modified by the instructions issued, if any, by the Board in this regard.

(vi) Ordinarily the views of the assessees that the goods are rendered unfit for consumption or marketing, should be accepted and necessary permission should be granted within a period of 21 days or earlier, if possible. Where samples are drawn, such permission should be granted within 45 days.

(vii) Actual destruction of goods should be supervised by the officers according to the monetary limits specified in column (4) of the Table in para 1.2

above. The date and time for destruction should be fixed by mutual convenience of the proper officer and the assessee and it should be ensured that the same date and time are not fixed for more than one assessee. It should also be ensured that there is no inordinate delay once permission for destruction and remission is granted.

(viii) In case of frequent requests for destruction of goods by an assessee, necessary enquiries into the cause thereof should be conducted before according permission for destruction of goods.

(ix) The proper officer personally supervising the destruction will check the quantity by physical verification i.e. by weight or by counting or using appropriate method in case of liquids, as the case may be, and the identity of goods by reference to relevant records and the application for destruction. The clearance of goods, within or outside the factory premises, shall be done on an invoice, indicating 'nil' duty. The order of the proper officer permitting destruction and remission, should be quoted on the invoice.

(x) As far as possible, destruction should be done inside the factory.

2. Manner of destruction

2.1 The goods intended and presented before the proper officer for destruction must be destroyed in such a manner that they become irretrievable as excisable commodity. The actual method of destruction will depend upon the nature of the goods to be destroyed. For example, matches, cotton, rayon and woollen fabrics, paper, cigar and cheroots may be destroyed by fire. Electric bulb and batteries may be destroyed by crushing into bits and scraps. Vegetable oils and vegetables products may be destroyed by mixing earth or kerosene and dumping into pits. Whatever method of destruction is adopted, the officer supervising the destruction will satisfy himself that the destroyed goods cannot be marketed. If there is any doubt with regard to the suitability of any particular method for destruction of any goods, the officer destroying the goods will refer the matter to his superior officer for orders.

2.2 The officer supervising the destruction must endorse under his signature the relevant records/ documents such as ARE-1, invoices and other relevant factory records indicating the description and quantity of the goods destroyed in his presence specifying the time and date.

2.3 Immediately after destruction of the goods is completed, the officer supervising destruction must also send a certificate to his immediate superior, countersigned by the factory manager and the factory officer.

2.4 CENVAT credit of duty paid on inputs contained in finished products on which duty remission has been granted shall have to be reversed. Board has issued revised guidelines in the light of Tribunal's decision in case of M/s Mafatlal Industries Ltd. vs CCE, Ahmedabad. {2003(154) ELT 543(T-Mumbai) (CBEC Circular No. 800/33/2004-CX. dated 1.10.2004)

2.5 Where inputs have been destroyed as such, proportionate credit of duty paid on such inputs should be reversed as the goods have not been put to use in manufacture of excisable goods.

2.6 There will be no limit on the executive powers of the Commissioners to order remission of duty in such cases. However, it has been decided that as a measure of administrative control and information, where the duty amount exceeds Rs.5 lakhs in a case, the Commissioners will send a report to the Board (in CX.-9 Section) giving sufficient details of such cases.

2.7 No remission of duty in case of theft should be allowed, since the goods are available for consumption somewhere else.

PART II

Over time Fee

1. Over time Fee

1.1 Wherever an assessee or exporter is requires the services of Central Excise Officers for supervision in accordance with of any procedure specified in this regard by rules or instructions beyond office hours or on Sundays, Saturdays or public holidays and where there is no specific posting of Officers in shifts by any Office order, he shall be required to pay Merchant Overtime at the rates specified under the Customs Act, 1961 under Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998.

1.2 If a manufacturer or exporter requisitions the services of Central Excise Officers for supervision and examination of export cargo and stuffing in containers at his premises, such Officers also discharge functions of a "Customs Officers".

PART III

Recovery of Dues

1. Recovery of dues

1.1 In the event the Government dues are not paid, the law provides for recovery thereof. For the recovery of dues action is to be taken under Section 11 of the Central Excise Act. After exhausting the option of taking action as above, if dues remain un-recovered , action is to be taken under the provisions of Section 142 of the Customs Act, 1962 which have been made applicable to like matters in Central Excise by Notification No. 68/63-Central Excise dated 4.5.1963 issued under Section 12 of the Central Excise Act, 1944.

1.2 Am amendment to section 11 has been made vide Finance (No. 2) Bill, 2004 to provide that the duty or any other sums of any kind are recoverable from the successor and all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody of the person so succeeding can also be attached or sold for the purpose of recovering such duty or other sums due.

1.3 If the stay application is filed by the assessee against the Order-in-Original confirming the duty demand, no coercive action should be taken to realise the dues till the disposal of the stay application by the Commissioner of Central Excise (Appeal) or the Appellate Tribunal as the case maybe. However, this instruction is only for first stage appeals, in the cases where the appeal lies before the Appellate tribunal. The Commissioner (Appeal) shall dispose of the stay application where it is possible to do so, within one month of its filing.

1.4 A period of 3 months from the date of communication of the order-in-original/ order-in appeal should be normally provided (one month for filing appeal and stay application and two more months for obtaining orders on the stay application), before taking coercive measures to recover the dues. However, if a stay application of an assessee is rejected by an appellate authority even before the lapse of the time limit of three months, recovery proceedings should be initiated immediately thereafter.

1.5 In respect of cases decided by Commissioner of Central Excise (Appeals), Tribunal, Government of India or High Court, the assessee should be given a maximum period of one month from the date of communication of the Order to pay up the dues before resorting to any coercive action. In case of decision of Supreme Court of India, the assessee should pay the Government dues, if any, forthwith or else the recovery proceedings, shall be initiated within 15 days of the communication of the order.

1.6 By virtue of Central Excise (Second amendment) rules, 2003 vide Central Excise Notification No. 12/2003-CE(NT) dated 1.3.2003, new sub rule (4) has been substituted under rule 8 of Central Excise Rule 2002. According to the new sub rule (4), provisions of Section 11 of the Act shall be applicable for recovery of the duty as

assessed under rule 6 and the interest under sub rule (3) in the same manner as they are applicable for recovery of any duty or other sum payable to the Central Government. To implement these provisions following guidelines are prescribed.

- The range superintendent, immediately on receipt of the ER-1 returns, shall identify the cases of default and record them in the register maintained by them.
- Thereafter, the defaulters should be informed to pay the amount of duty defaulted along with interest forthwith by a notice to be issued immediately for compliance (copy as per Annexure-A).
- Simultaneously they should keep the notice, to be issued to the defaulter for his default in payment of the of the duty, ready, initiating the proposed action. (copy as per Annexure-B). In order to save time, they must use cyclostyled standard form of notice.
- In the event of the assessee's failure to pay the amount of duty defaulted, within the prescribed period, the proper officer should issue a notice in the above format to the defaulter in terms of sub-rule (3) of Rule 8 of the Central Excise Act, 1944 for recovery of the dues.
- If the amount is not paid within 30 days from the date when the default is detected, action prescribed under second to rule 8(3) may be initiated.
- The action as detailed above, should invariably be completed within the period of one month from the due date of payment of the duty. In case the dues are not realized in terms of Section 11 of the Central Excise Act, 1944, within on month from the due date of payment of duty, an immediate action should be initiated by treating the clearances of goods as 'without payment of duty'. Simultaneously, action should also be initiated for recovery of the dues, in terms of section 142 of the Customs Act, 1962.

ANNEXURE A

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,
RANGE _____

To
*M/s.*_____

_____

Gentleman,

Sub :- Default in payment of C.Ex. duty – reg.

On scrutiny of ER-1 for the month of _____ *filed by you, it is noticed that in the month of* _____ *you have failed to pay C.E., duty amounting to Rs.* _____ *by 5th of* _____ *on the goods cleared during the Month.*

2. *From the above facts it is clear that you have defaulted in payment of Centarl Excise duty and thereby contravened the provisions of Rule 8(3) of the Central Excise Rules 2002.*
3. *Your attention is further invited to second proviso to sub rule 3 of Rule 8 of the Central Excise Rule 2002 vide which-*

   i) *failure to pay duty outstanding and interest would mean that the goods have been cleared without payment of duty, and,*
   ii) *where such duty and interest are not paid within the period of one month from the due date, the consequences and the penalties ON YOU as well as ON YOUR CUSTOMERS to whom such goods have been supplied, including the confiscation of goods at the customers' end as well as denying CENVAT credit to your customers, shall follow.*

4. *You are therefore directed to,*
   i) *pay the defaulted of Rs.* _____ *alongwith interest @ 2% per month or penalty of Rs. 1000/- per day whichever is higher as provided under the said Rule within 10 days from the receipt of this letter. If you faild to pay the same, the action for recovery of the Government dues will be intimated under the provisions of Sec. 11 of the Central Excise Act, 1944 read with Sec. 142 of the Customs Act, 1962.*
   ii) *Submit all sale invoices pertaining to clearances made and covered by aforementioned ER-1*

Yours faithfully,

SUPERINTENDENT
CENTRAL EXCISE
RANGE _____

Copy to : - Deputy Commissioner, Central Excise, Division _____

ANNEXURE B

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE,
RANGE _____

F.No.
Dt.

To
M/s. _____

_____

Please take notice that the letter of even no. dated _____ has been forwarded to you by this office for the recovery of an amount of Rs. _____. And interest leviable thereon. Since no payment has been received against the said outstanding dues, the undersigned is authorized under sec. 11 of Central Excise Act, 1944 to recover the defaulted amount of Rs. _____ alongwith interest, pertaining to the payment of C.Ex. Duty for the month of _____

2. You are hereby required to pay the amount aforesaid within seven days from the date of service of this notice. A copy of the Challan in form TR 6 is enclosed for the purpose.

3. You are hereby informed that in case of failure, steps will be taken to realize the amount by resorting to attachment and sale of excisable goods as provided in Section 11 of Central Excise Act.

4. In addition to the amount aforesaid you will also be liable for –

a) Interest as is payable at the rate of 2% per month or Rs. 1000/- per day which ever is higher, as per Rule 8(3) of the Central Excise Rules, 2002 for the period from the first day after the due date of payment of Central Excise Duty to the date of actual payment of duty.

b) All cost, charges and expenses incurred in respect of this notice and of warrants and other processes and of all other proceedings taken for realizing the arrears

Yours faithfully

SUPERINTENDENT
CENTRAL EXCISE
RANGE _____

Copy to : - Deputy Commissioner, Central Excise, Division _____

PART IV

Return of duty paid goods to the factory

1. Return of duty paid goods

1.1 Rule 16 of the said Rules provides for return of any goods, on which duty has been paid at the time of removal, to the factory for being re-made, refined, re-conditioned or for any other reason. In such cases, the assessee shall state the particulars of such return in his records and shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules. Receipt of duty paid goods in the factory of manufacturer for the purpose specified in said rule may be allowed even in respect of goods not manufactured by them subject to adherence of other conditions prescribed under Rule 16.

1.2 If the goods so returned are subjected to certain process which do not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken.

1.3 In any other case (where the returned goods are subjected to process amounting to manufacture), the manufacturer shall pay duty at the rate applicable on the date of removal and on the value determined under Section 4 or Section 4A of the Act, as the case may be. The amount of duty paid shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.

1.4 In the event the assessee has any difficulty, the Commissioner is empowered to resolve the same and permit the entry of the goods into the factory and the availment of CENVAT credit thereon. For this the Commissioner, either on case to case basis by special order or to be applied to "particular type of case" by general order, impose such conditions as may be necessary for safeguarding interest of revenue.

PART V

Removal of goods for job work or other purposes

1. Rule 16A:

1.1 Rule 16A deals with the removal of inputs for job work for those manufacturers who are outside Cenvat scheme and hence are not able to send the inputs or partially processed inputs for job work as per rule 4(5) of CENVAT Credit Rules, 2004. Commissioner of Central Excise is empowered to prescribe conditions and safeguards for the purpose.

2. Rule 16B and 16C:

2.1 Rule 16 B deals with the situations where the semi-finished goods are required to be removed for carrying out certain manufacturing processes to the job worker or to any other registered premises. Jurisdictional Commissioner of Central Excise is also

empowered to permit the manufacturer to allow these goods to be cleared form the premises of the job worker or other registered premises for clearance on payment of duty or for export without payment of duty.

2.2 Rule 16 C deals with the situations where the excisable goods manufactured in the factory are required to be removed for carrying out tests to some premises or to any other registered premises. Jurisdictional Commissioner of Central Excise is also empowered to permit the manufacturer to allow these goods to be cleared form the such premises or other registered premises for clearance on payment of duty or for export without payment of duty. This provision is not applicable to "prototypes" which are sent out for trial or development test.

PART-VI

Write-Off of irrecoverable arrears

1. Write off:

1.1 Powers to write off irrecoverable amounts of Central Excise duties and abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excise Act, 1944 and Gold Control Act, 1968 have been specified in Board's letter F.No. 290/20/90-CX 9 dated 21st September, 1990. A gist of the said letter is as below:

Name of the authority		Power delegated	
1.	Chief Commissioners of Customs and Central Excise	(a)	Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excise Act, 1944 and Gold Control Act, 1968
		(b)	To write of irrecoverable amounts of Customs /Central excise duties upto Rs.15 lakhs subject to a report to the next higher authority.
2.	Commissioners of Customs and Central Excise	(a)	Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962, Central Excise Act, 1944 and Gold Control Act, 1968
		(b)	To write of irrecoverable amounts of Customs /Central excise duties upto Rs.10 lakhs subject to a report to the next higher authority.
3.	Commissioners of Customs	(a)	Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under Customs Act, 1962 and Gold Control Act, 1968
		(b)	To write of irrecoverable amounts of Customs duties upto Rs.10 lakhs subject to a report to the next higher authority.
4.	Commissioners of Central Excise	(a)	Full powers of abandonment of irrecoverable amounts of fines and penalties imposed under Central Excise Act, 1944 and Gold Control Act, 1968
		(b)	To write of irrecoverable amounts of Central excise duties upto Rs.10 lakhs subject to a report to the next higher authority.

CHAPTER-19

SCHEME OF ADVANCE RULINGS FOR NON-RESIDENTS UNDER THE INDIAN CUSTOMS, CENTRAL EXCISE AND SERVICE TAX LAW.

1. THE SCHEME OF ADVANCE RULINGS

1.1 With a view to facilitate the non-resident investor in ascertaining his tax liabilities in terms of Customs duties, Central Excise duties and Service Tax, a scheme of Advance Rulings has been incorporated in the Customs Act, 1962 and the Central Excise Act, 1944 by the Finance Act, 1999. Chapter V-B in the Customs Act, 1962 and Chapter IIIA in the Central Excise Act, 1944 are the relevant chapters under these two Acts.

1.2 The scheme allows a non-resident investor, entering into a joint venture in India in collaboration with a non-resident or resident, or a resident setting up a joint venture in India in collaboration with a non-resident to obtain in advance, a binding ruling from the authority for Advance Rulings. Vide Finance Bill, 2005, section 23A of Central Excise Act, 1944 is being amended so as to allow an existing Joint venture in India to avail the benefit of Advance Ruling. The Central Government is also being empowered to notify any class or category of persons as eligible for availing the benefit of Advance Ruling.

1.3 An advance ruling under the scheme is with respect to :-

- Classification of goods.
- Principles of valuation.
- applicability of exemption notifications which could arise in determining the duty liability in respect of an activity proposed to be undertaken by the joint venture parties.
- Notification issued in respect of duty of excise under the Central Excise Tariff act and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable.
- Admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to manufacture of the excisable goods.

Such knowledge of tax consequences would also assist them in determining the viability of the proposed activity. The rulings being final in nature, subject of course to Section 28J(2) of the Customs Act, 1962 and Section 23 E(2) of the Central Excise Act, 1944, would also leave the parties free of any time-consuming and expensive litigation, subsequently.

1.4 The Authority for Advance rulings (Procedure), 2002 details the procedure for obtaining advance rulings.

1.5 'Authority for Advance Ruling' has also been renamed as "Authority for Advance Ruling (Customs, Central Excise and Service Tax).

2. ACTIVITY ON WHICH ADVANCE RULINGS CAN BE SOUGHT

Activity means import or export of goods under the Customs Act, 1962 and production or manufacture of goods under the Central Excise Act, 1944.

3. BENEFITS OF OBTAINING ADVANCE RULINGS

Obtaining an advance ruling helps the applicant in planning their Customs & Central Excise activities, well in advance. It would also bring certainty in determining the duty liability, as the ruling is binding. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive, and the procedure is simple & expeditious.

4. AUTHORITY PRONOUNCING ADVANCE RULINGS

An advance ruling is pronounced by an authority known as the Authority for Advance ruling, constituted under Section 28F of the Customs Act, 1962. It consists of a Chairman, who is a retired Judge of the Supreme Court of India and two members, one from the Indian Customs & Central Excise Service who is qualified to be a Member of the Central Board of Excise & Customs and the other from the Indian legal Service who is or is qualified to be an Additional Secretary to the Government of India.

5. WHO CAN SEEK AN ADVANCE RULING?

Any person, who is a non-resident and is setting up a joint venture in India in collaboration with a non-resident or resident, or a resident who is setting up a joint venture in India in collaboration with a non-resident. Vide Finance Bill, 2005, section 23A of Central Excise Act, 1944 is being amended so as to allow an existing Joint venture in India to avail the benefit of Advance Ruling. The Central Government is also being empowered to notify any class or category of persons as eligible for availing the benefit of Advance Ruling

6. WHO IS A NON-RESIDENT?

Under the existing provisions of the Income Tax act, 1961 the taxable entities are broadly divided into three groups, viz., Individual, Company and all other persons such as Hindu Undivided Family, Firm, association of Persons, etc.

These taxable entities are divided into three categories depending upon their resident status. These categories are :

- Resident,
- Resident but not ordinarily resident and
- Non-resident

The resident status of each group of the taxable entitles is, in brief, as under:

❖ **Individual:**

An individual is a 'resident' in India in any previous year:

1. If he has been in India during the previous year for 182 days or more, or
2. If the individual has been in India during the previous year for less than 182 days but has been in India for an aggregate of 365 days or more in the four years preceding the previous year and his stay in India during the previous year is 60 days or more.

- The criterion mentioned at (2) above does not apply if the individual is –

  (i) a citizen of India who has left India during the previous year for the purpose of employment outside India; or
  (ii) a citizen of India or a person of Indian origin, who being outside India, has come to India on a visit during the previous year.

- A person of Indian origin is one if he, or either of his parents of any of his grand-parents, was born in undivided India.

Individuals, who are not 'resident' In accordance with the above, are treated as 'non-resident' under the Income Tax Act.

❖ **Company:**

A company is a non-resident in India in any previous year if, it is neither an Indian company nor one the control and management of whose affairs during the previous year is situated wholly in India.

❖ **Every other person:**

Every other person is a non-resident in India in any previous year, if during that year the control & management of its affairs is situated wholly outside India.

7. QUESTIONS ON WHICH ADVANCE RULINGS CAN BE SOUGHT

An advance ruling can be sought on any question in respect of –

- Classification of any goods under the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 :

- Applicability of exemption notifications issued under sub-section(1) of section 25 of the Customs Act, 1962, or sub-section (1) of section 5A of the Central Excise Act, having a bearing on the rate of duty.

- Principles to be adopted for the purposes of determination of value of the goods under the provisions of the Customs Act, 1962 or the Central Excise Act, 1944.

- Notification issued in respect of duty of excise under the Central Excise Tariff act and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable.

- Admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to manufacture of the excisable goods.

However, an advance ruling cannot be sought where the question –

- is already pending, in applicant's case, before any officer of the Customs or Central Excise, the Appellate tribunal or any Court; or
- is the same as in a matter already decided by the appellate Tribunal or any Court.

8. PROCEDURE FOR SEEKING ADVANCE RULINGS

8.1 The applicant may seek an advance ruling by filling an application to the authority in the prescribed form and manner. The following steps need to be followed by an applicant-

8.2 Filing of an application

- An application, in quadruplicate, should be filed in the prescribed form either by the applicant in person or by an authorised representative of may be sent by registered post to the Authority.
- An application and the accompanying annexures may be neatly typed on one side of plain paper of A-4 size [210x297 mm] leaving a minimum margin of 30 mm on all the four sides and may be duly page numbered and indexed.
- Only photocopies of the documents on A-4 size may be enclosed with the application except when a document cannot be legibly reduced to A-4 size on photocopier and, in the latter case, it should be folded to A-4 size.
- The question of law or fact on which advance ruling is sought may be stated clearly in the application.

8.3 Signing of an application

An application including the documents annexed thereto should be signed in the manner indicated in note 10 to the prescribed form. Where a person signing the application and other documents claims to have been duly authorized to do so, the application should include a power of attorney, authorizing him to sign and an affidavit setting out the unavoidable reasons, which entitle him to sign it.

8.4 Authorised Representative

An applicant is entitled to represent his case before the Authority either personally or through an authorized representative. If the applicant desires to be represented by an authorized representative, a document authorizing him to appear for the applicant should be enclosed in original, before the commencement of hearing. If the authorized representative is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed. However, where the authorized representative is a legal practitioner, such document of authorization shall be a duly executed vakalatnama.

8.5 Payment of Fee

An application should be accompanied by a fee of Rs. 2,500 (Two thousand five hundred Indian rupees) through a demand draft drawn in favour of the 'Authority for Advance rulings' payable at New Delhi.

8.6 Withdrawal of application

An applicant may withdraw his application within 30 days from the date of filing the application.

9. TIME LIMIT FOR PRONOUNCING AN ADVANCE RULING

An advance ruling is required to be pronounced by the Authority within 90 days of the receipt of a valid application.

10. IS AN ADVANCE RULING BINDING?

An advance ruling pronounced by the Authority shall be binding {subject to Section 28J(2) of the Customs Act, 1962 and Section 23E(2) of the Central Excise Act, 1944}, only –

- On the applicant who has sought it, and
- On the Commissioner of Customs or Commissioner of Central Excise, as the case may be, and the Customs and Central Excise Authorities subordinate to him, in respect of the applicant.

11. CONFIDENTIALITY

The contents of an application would not be disclosed to unauthorized persons.

12. ENQUIRY

For Forms and any latest information, Additional/Joint Commissioner. Authority for Advance rulings, Customs and Central Excise, 4th Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi-110 021 INDIA may be contacted on any working day. The telephone numbers & Web site address are given hereunder:-

0091- 11- 26876412 - 0091-11-26876729
Website:- www.cbec.gov.in/cae/aar.htm.

ANNEXURE – 1

Declaration Form

To

The Assistant Commissioner / Deputy Commissioner,
Central Excise,

I/We ..... declare that to the best of my/our knowledge and belief the information furnished in the Schedule below is true and complete.

I/We undertake to apply for a Central Excise registration certificate in the proper form as soon as the value of the goods, mentioned in the said Schedule, cleared for home consumption in a financial year, reaches the full exemption limit.

I/We undertake to apply for a Central Excise Registration in the proper term as soon as the goods mentioned in the Schedule become chargeable to duty.

I/We undertake to maintain such records and follow such procedure as may be prescribed by the Commissioner in relation to the exempted goods.

I/We also undertake to intimate any change in the information furnished in the said Schedule.

THE SCHEDULE

1. Name(s) and address(es) of the proprietors/all partners/Directors of the company owning the factory.
2. Name and address of the factory.
3. Name and addresses of the other factories/manufacturers (producing such goods) in whom the manufacturer claiming the exemption has proprietary interest.
4. Full description of the goods (heading-wise) manufactured by the factory.
5. Value/quantity of the goods cleared during the preceding financial year.
6. Value/quantity of the goods estimated to be cleared in the current financial year.
7. Heading No. or sub-heading of the said Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) under which the goods are classifiable.
8. (a) Reference to the heading/sub-heading of the said Schedule Section 5A of the Central Excise Act, 1944 (1 of 1944), the case may be (under which the goods are exempted from the whole of the duty of excise leviable thereon).
   (b) Ground of exemption under the said heading/sub-heading or the said notification.
9. Process of manufacture.

(Signature of the Applicant)

Note : Portion of the Form/Schedule that is not relevant to a particular manufacturer may be deleted.

ANNEXURE – 2

Application Form for Central Excise Registration of Powerloom Weavers/Hand processors/Dealers of yarns and fabrics/manufacturers of readymade garments*

1. Legal Name of the Business with full address of the premises to be registered .....
.....

2. Permanent Account Number (PAN) (*if given by Income Tax authorities or else leave blank*).....

3. Name, designation and address of authorized person(s) .....
.....

4. Name and address (with telephone nos.) of Proprietor/Partner(s)/Chief Executive Officer / Chairman / Managing Director /Trustee / etc. .....
.....
.....

5. Major excisable goods to be manufactured/traded .....
.....

6. Major raw materials/inputs used in manufacture of goods mentioned above.....
.....

Declaration

I hereby declare that the information given in this Form is true, correct and complete in every respect and that I am authorized to sign on behalf of the Registrant.
[Name and Signature (with date) of the Applicant/authorised person with stamp]
(in case of Unregistered Partnership firms all the partners should sign this Form)
.....

Acknowledgement
(to be used if the Registration Certificate is not given at the time of receipt of the Application)

In accordance with your application for Registration, the Registration Certificate will be sent by mail at the address given at Serial No. 1/ handed over personally on .....at ..... (time).
[Name and Signature (with date) of the Central Excise Officer with Official Seal].

ANNEXURE – 3

APPLICATION FOR CENTRAL EXCISE REGISTRATION

New Registration ☐

Amendments to information pertaining to existing Registrant ☐

Registration Number in case of existing Registrant

Part I : Identification of business requiring Registration (Manufacturing, Warehousing, hundred percent Export Oriented Undertaking, Unit in Export Processing Zone, First Stage Dealer, Second Stage Dealer)

1. Name of the Registrant *(Please see instruction No. 5)*

2. Details of Permanent Account Number (PAN) *(Please see instruction No. 6)*

(i) Whether PAN has been issued by the Income Tax Department Yes ☐ No ☐

(ii) If yes, the PAN

(iii) Name of the Registrant *(as appearing in PAN)*

(iv) If PAN is not available, whether applied for PAN Yes ☐ No ☐

3. Category (tick only one box)

Manufacturer	☐	Warehouse	☐
Export Oriented Undertaking	☐	Unit within Export Processing Zone	☐
Manufacturer's Depot	☐	Dealer	☐

4. Constitution of business (tick only one box) *(Please see instruction No. 7)*

Proprietorship	☐	Partnership	☐	Registered Company	☐		
Unregistered Company	☐	Trust	☐	Society	☐	Others	☐

5. Address of business premises

(i) Name of premises/Building

(ii) Flat/Door/Block No.

(iii) Road/Street/Lane

(iv) Village/Area/Locality

(v) Block/Taluka/Sub-Division/Town

(vi) Post Office

(vii) City/District

(viii) State/Union Territory

(ix) PIN

(x) Telephone Nos. : *(Please see instruction No. 8)*

(xi) Fax No. *(Please see instruction No. 8)*

6. Define boundaries of the premises to be Registered *(please see instruction No. 9)*

(i) North

(ii) East

(iii) West

(iv) South

7. Details of property holding rights of the Registrant with respect to the premises sought to be Registered (tick only one box)

Ownership ☐ Lease/Rent ☐

If owned whether mortgaged/hypothecated : Yes ☐ No ☐

8. Estimated investment in land, plant and machinery (Rupees in Lakh) :

9. Address of Head Office if different from that given at S.No. 5 above.

(i) Name of premises/Building

(ii) Flat/Door/Block No.

(iii) Road/Street/Lane

(iv) Village/Area/Locality

(v) Block/Taluka/Sub-Division/Town

(vi) Post Office

(vii) City/District

(viii) State/Union Territory

(ix) PIN

(x) Telephone Nos. : *(Please see instruction No. 8)*

(xi) Fax No. *(Please see instruction No. 8)*

(xii) E-mail Address.

10. Name, designation and address of the person signing this Application Form and the authorised person(s) : *(Please see instruction No. 10)*

(i) Name

(ii) Designation

(iii) Name of Residential Premises/Building

(iv) Flat/Door/Block No.

(v) Road/Street/Lane

(vi) Village/Area/Locality

(vii) Block/Taluka/Sub-Division/Town

(viii) Post Office

(ix) City/District

(x) State/Union Territory

(xi) PIN

(xii) Telephone Nos. : *(Please see instruction No. 8)*

(a) Office

(b) Residence

(xiii) Fax No. *(Please see instruction No. 8)*

(xiv) E-mail Address.

11. Details of Bank Accounts used for business transactions by the Resistrant *(Please see instruction No.11)*

(a) Number of Bank Accounts

(b) Account 1

(i) Name of the Bank

(ii) Name of the Branch

(iii) Account No.

(c) Account 2

(i) Name of the Bank

(ii) Name of the Branch

(iii) Account No.

Part II :	**Business Transaction Number obtained from other Government Agencies/Departments**

12. Details of Business Transaction Numbers obtained from other Government Agencies/Departments *(Please see instructions No. 12 and 13)*

(i) Customs Registration No. (BIN No.) Yes ☐ No ☐

If yes, give details

(ii) Directorate General Foreign Trade's Import Export Code No. Yes ☐ No ☐

If yes, give details

(iii) Sales Tax Registration Nos.

(a) State Sales Tax No. Yes ☐ No ☐

If yes, give details

(b) Central Sales Tax No. Yes ☐ No ☐

If yes, give details

(iv) Registrar of Company's CIN No. Yes ☐ No ☐

If yes, give details

Part III :	**Proprietor/Partners/Chief Executive Officer/Chairman/Managing Director/Trustee etc.**

13. Mode of business *(Please see instruction No. 14)*

(i) Name

(ii) Designation

(iii) Name of Residential Premises/Building

(iv) Flat/Door/Block No.

(v) Road/Street/Lane

(vi) Village/Area/Locality

(vii) Block/Taluka/Sub-Division/Town

(viii) Post Office

(ix) City/District

(x) State/Union Territory

(xi) PIN

(xii) Telephone Nos. : *(Please see instruction No. 8)*

(a) Office

(b) Residence

(xiii) Fax No. *(Please see instruction No. 8)*

(xiv) E-mail Address.

(xv) PAN *(issued by the Income Tax Department)*

Part IV :	**Major Excisable goods to be manufactured, warehoused or traded/ Major inputs**

14. Major excisable goods manufactured, warehoused or traded (description and CETSH) *(Please see instruction No.15)*

(i)_____ (ii) _____ (iii) _____

15. Major excisable goods used in the manufacture of final product (description and CETSH) *(Please see instruction No. 15)*

(i)_____ (ii) _____ (iii) _____

DECLARATION

I, _____ hereby declare that the information given in this Application Form is true, correct and complete in every respect and that I am authorised to sign on behalf of the Registrant.

(Please tick appropriate box)

(a) **For new Registration/Amendment to Registration Certificate** ☐

I would like to receive the Registration Certificate –

☐ By mail at the address specified at S. No. _____ of Part-I ☐

☐ By Hand ☐

(b) **For amendments to information pertaining to existing Registrant** ☐

The above mentioned amendments are with effect from ☐☐ ☐☐ ☐☐☐☐

(Signature of the applicant/authorised person with stamp)
(Please see instruction No. 16)

Date :
Place :

ACKNOWLEDGEMENT

(To be given in the event Registration Certificate is not issued at the time of receipt of Application for Registration)

I hereby acknowledge the receipt of your Application Form

(a) **For new Registration/Amendment to existing Registration Certificate** ☐

As desired, the New Registration Certificate will be sent by mail/handed over to you in person on ☐☐ ☐☐ ☐☐☐☐

(b) **For amendment to information pertaining to existing Registrant** ☐

Signature of the Officer of Central Excise
(with Name & Official Seal)

Date :

Instructions for filling up the Application Form for Registration

(1) This Application Form should be used for applying for Registration as also for informing any corrections/changes in the information, subsequent to Registration. Any change in the information subsequent to Registration, except those under part IV, must be brought to the notice of the Central Excise Department. Such changes should be indicated by ticking the relevant box at the top of the Form, providing the Registration Number and filling up only such information that has undergone change leaving the boxes for information not to be amended blank

(2) The Application Form has to be filled in Duplicate, and submitted to the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, having jurisdiction over the place of business.

(3) Export Oriented Units in Export Processing Zones in the Port Towns/cities which are in the jurisdiction of Commissioners of Customs would submit the Application Form to the concerned Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(4) After entering the relevant details, extra boxes in a field may be left blank. Also one box may be left empty after completion of each entry. For example more than one telephone number may be given as under:

0	1	1	3	0	9	2	8	2	9		0	1	1	3	0	9	2	8	3	0		

(5) The name should be the name and style in which the Registrant is likely to carry out business from the premises seeking to be registered. Please do not mention any prefixes such as M/s. Mr., Sh., etc.

(6) An attested copy of PAN allotted by the Income Tax Department should be enclosed; in case PAN has not been allotted attested copy of the acknowledged application for PAN should be enclosed.

(7) A registered company means, a company registered with the Registrar of Companies under the Companies Act, 1956 (1 of 1956) and having a CIN number. Unregistered means a company that is not so registered.

(8) Telephone and fax numbers to be given with NSD code, without leaving a gap.

(9) The description of the boundaries of the premises to be registered, should correspond to the one given in the Land Records.

(10) If there are more than one authorized persons, information is to be provided in respect of all in a separate sheet in the same box format.

(11) In case the Registrant has more than one Bank Account, for transacting his business only two accounts with the maximum transactions must be mentioned.

(12) The details relevant to the Registrant only are to be filled. The details of businesses carried out from other premises need not be filled.

(13) If the status of the company is shown as Registered Company in Part 14, then the information in Part II 12 (iv) is mandatory.

(14) The maximum number of persons, whose details are to be provided, should not exceed seven. In the case of partnership firm, details of partners are to be provided; in case of Registered / unregistered company, the details of its Chief Executive Officer / Chairman and Managing Director/Managing Director/Chairman/Key Directors as per relevance are to be provided; in the case of Society, the details of its President, key Executive Members, are to be provided; in case of any other type of business, the details of key personnel engaged in management of the business are to be provided. If more names are to be provided the information shall be provided in respect of all in a separate sheet in the same manner.

(15) The details of the three major excisable goods/inputs likely to be manufactured/used/traded should be mentioned.

(16) The instructions in respect of the person signing the Application for registration are as under :

(a) The Application may be signed by the Registrant himself or by his authorised agent having general power of attorney.
(b) The person signing the Application must be a holder of Permanent Account Number (PAN) allotted by the Income Tax Department.
(c) In case of unregistered partnerships, all the partners should sign the application.
(d) In case of registered Partnership the Managing Partner or other partners so authorised in the Partnership Deed may sign the application.]

ANNEXURE – 4

Form RC
Central Excise Registration Certificate

This is to certify, subject to conditions specified below, that M/s. _____ _____ (Registrant and its constitutions) is registered for _____ (type of business) at _____ (address of the business premises) on the basis of the Application received in this office on _____ (date of receipt).

Registration Number is | | | | | | | | | | | | | | | |

Signature of the
Deputy Commissioner of Central Excise or
Assistant Commissioner of Central Excise
(with name and official seal)

Date :
Place :

Conditions

(i) This Registration Certificate is valid for the premises and purposes specified in the Application.
(ii) This Registration Certificate is not transferable.
(iii) This Registration Certificate is not valid in case the constitution of the management of the firm undergoes change (s)
(iv) No corrections / changes in the Registration Certificate will be valid unless the request for any correction/change is applied for and the same is acknowledged.
(v) This Registration Certificate shall remain valid till the Registrant carries on the activity for which it has been issued or surrenders it or till it is revoked or suspended.
(vi) The grant of this Registration Certificate shall be without prejudice to the rights of any other person(s) over the registered premises or purpose to which such person may be lawfully entitled].

ANNEXURE 5

"FORM B-2

GENERAL BOND (SURETY/SECURITY)

General Bond with surety/security for provisional assessment of goods to excise duty

(Rule 7)

I/We .....of..... hereinafter called "the

For surety obligor(s)"

bond and ..... of.....hereinafter called "the

surety(ies)"/

am/are held and firmly bound to the President of India (hereinafter called the "President") in the sum of.....rupees to be paid to the President for which payment will and truly to be made/ I/We jointly and severally bind myself/ourselves and my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents :

For security

bond I/We.....of.....hereinafter called "obligor(s)"I/am/are held and firmly bound to the President of India (hereinafter called "the President" in the sum of.....rupees to be paid to the President of India for which payment will and truly to be made, I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents; Dated this.....day of.....

WHEREAS final assessment of excise duty of ..... (hereinafter called the "goods") manufactured/cured/warehoused by the above bounded obligor from time to time could not be made for want of full information as regards value/description/quality or of proof thereof or for the non-completion of the chemical or other tests in respect thereof or otherwise and whereas the obligor desires that the he should make provisional assessment as per provisions contained in Rule 7 of the Central Excise

For (No.2) Rules, 2001;

security

bond AND WHEREAS the Commissioner has required the obligor to deposit as security for the amount of this bond/ the sum of ..... rupees in cash (the securities as hereinafter mentioned of a total value of ..... rupees endorsed in favour of the President and accepted on his behalf by the Commissioner Deputy Commissioner, Assistant Commissioner , Superintendent of Central Excise/ namely .....) and whereas the obligor has furnished such guarantee by depositing with the Commissioner the cash/securities as aforementioned;

The condition of this bond is that if the obligor and his representative observe all the provisions of the Central Excise Rules, 2001 and all such amendments thereto as may be issued from time to time to be observed in respect of provisional assessment of goods to excise duty under Rule 7; And whereas the obligor(s) has /have furnished such guarantee by depositing with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise the cash/securities/bank guarantee as aforementioned.]

The condition of this bond is that if the obligor(s) shall observe all the provisions of the Central Excise(No.2) Rules, 2001 or the provisions of other rules made under the Central Excise Act, 1944 (1 of 1944) and all such amendments thereto, as may be issued from time to time so far as they relate to the provisional assessment of duty

For surety And if all dues whether excise duty or other lawful charges, which shall be bond only demandable on the goods removed after provisional assessment to duty as shown by the Central Excise records, be duly paid into the treasury to the

account of the Commissioner along with interest, if any, within ten days of the date of demand thereof being made in writing by the said Officer of Central Excise, this obligation shall be void.

For security bond only

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

Provided always that the liability of the surety hereunder shall not be impaired or discharged by reason of any time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts hereunder;

AND the President shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/We further declare that this bond is given under the orders of the Central Government for the performance of enact in which the public are interested. In these presents the words imposing singular only shall also include the plural and vice versa where the context so requires;
IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obligor(s) and the surety (ies).

Signature(s) of obligor(s).
Date :
Place :
Witnesses
(1) Name and Address Occupation
(2) Name and Address Occupation
Date
Place
Signature(s) of surety (ies).
Date:
Witnesses
(1) Name and Address Occupation
(2) Name and Address Occupation
Accepted by me this.....day of .....(month).....……..(year)
……..of Central Excise, (Designation)
for and on behalf of the President of India.".

ANNEXURE-6

Original
Duplicate
Triplicate

Personal Ledger Account (P.L.A.)
For the month of.....200.....

Commissionerate:
Division:
Range:
Name of the factory
With address and
Registration
EC Code No.

Date & S.No. of entry	Particulars of credit/debit document	Description of documents with name of treasury where necessary	No.. & Date	Central Excise Tariff sub-heading number	ECC No. of the buyer	Basic Excise Duty					
						Credit	Debit	Balance	Credit	Debit	Balance
1.	2.		3.	4.	5.	6.	7.	8.	9.	10.	11.

Cess on Commodities						Miscellaneous						Signature of the assessee
Credit	Debit	Balance	Credit	Debit Balance	Balance	Credit	Debit	Balance	Credit	Debit	Balance	
12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.

Notes:-

1. This account should be prepared in triplicate using indelible pencil and double sides carbon. The original and duplicate copies should be detached and sent to the Central Excise Officer-Incharge along with R.T.12 Return.
2. Columns 7 to 9 of the Form have been left blank to be used for showing the appropriate type of duty and the duty credited and debited there against.

3. No. and date of invoice against which debit is raised in this account should be shown in Col.3.
4. where single invoice covers goods falling under different sub-heading, separate entries shall be made for each of such sub-heading.
5. where consolidated debit entry is permitted to be made at the end of the day, separate entries shall be made for each sub-heading.
6. Assessee may exclude from their Accounts those of the Columns 7 to 11 which are inapplicable.
7. The closing balance in the last month's PLA should be brought and shown in the column for credit against the entry "balance BF". Which should be verified by the C.A.O. with the closing balance in the last month's PLA.

Annexure 7

Pass Out Document
(For removal of Liquid gasses in terms of rule 8)

Serial No.
Original/Duplicate/Triplicate

1. Name & Address of the manufacturer—
2. Registration Number
3. New ECC Number

4. Range..... Division ---------- Commissionerate-
5. Date of Removal---------- Time of Removal----------

Part –I.

(1) Description of the goods and its Tariff Sub-Heading No.	
(2) Lorry Tanker Registration No.	
(3)Gross Weight of the loaded tanker at the time of dispatch	Kg M^3
(4) Tare Weight of Lorry Tanker	Kg
(5) Net Weight of goods despatched (3)-(4)	Kg M^3

6. Duty leviable on the Net Weight of goods despatched (calculated provisionally):

Rs.----------

(In words)Rupees)----------

Provisional Entry No. in Daily Stock Account_____

Part-II
(i) Supply Schedule

S. No	Name of the Customer	Delivery Note No.	Quantity of Goods Delivered	Time		Customer's Signature	To be filed latest by the next working day of the Return of lorry Tanker in the factory		
			Kg M^3	In	Out		Invoice No.& Date	Final Duty	Entry No. In Daily Stock Account
1.									
2.									
3.									
4.									
5.									

(ii)

1.	Quantity of goods returned to factory in lorry tanker	Kg M^3
2.	Quantity of gods lost in transit & other losses. If any	Kg. M^3

.....

.....

I/we hereby solemnly declare that information above is true and correct in all respects.

Signature of the Registered person or his authorised agent

(iii)

Undertaking

I/we am/are taking clearance of the aforesaid goods under special procedure as per Commissioner of Central Excise permission F.No._____dated_____under a specific condition that any quantity not shown as delivered to the customer/consignees including the quantity attributable to all kinds of losses will be liable to full payment of duty by me/us. According, I/we hereby undertake that I/we will pay central excise duty on the entire quantity of such unaccounted goods including all types of losses at the highest effective rate prevailing on the date of removal of the consignment.

Place

Date

Signature of the Registered person or his authorised agent

Certificate of warehousing by the consignee
(on original and duplicate)

I/we hereby certify that the consignment arrived at .....on.....that the goods conform in all respects to the description given overleaf except for the following discrepancies and that ;they have been warehoused under Entry No.....of the register maintained in the ware house.

Particulars of discrepancies

No. and description of packages not received	Quantity short received	Duty payable on the shortage	Remarks
1	2	3	4

Place.....

Date.....

Signature of consignee(s) or his/their authorized agent.

ANNEXURE NO-8

Original/Duplicate/Triplicate/Quadruplicate

Range.....Division.....

.....

Application for removal of excisable goods from a factory or a warehouse to another warehouse
(Also called A R E 3 for Export Warehousing)

I/We holder(s) of Central Excise Registration No.....have undertaken to remove the under mentioned goods from
the factory/warehouse at.....to the warehouse at.....in Range.....Division .....;of Mr./Messrs.....holders of Central Excise Registration No.
.....

Number and date of entry in ware-house register	Description of Goods	No. and Description of packages	Gross weight of packages	Marks and numbers on packages	Quantity of goods	Date of first warehousing	Of Value	Duty		No.& date of invoice (s) for Removal of goods	Manner of Transport	Remarks
								Rate	Amt			
1.	2.	3.	4.	5.	6.	7.	8.	9	10	11	12	13
							Rs.P.	Rs.P.	Rs.P.			

I/we hereby declare the above particulars to be true.

Signature of consignor(s) or his/their authorized agent.

Place.....
Date.....

ANNEXURE-9

Monthly return for production and removal of goods and other relevant particulars and CENVAT credit

Form E.R.-1

Original/Duplicate

[See rule 12 of the Central Excise Rules, 2002 and rule 9(7) of CENVAT Credit Rules, 2004]

	M M	Y Y Y Y
Return of excisable goods and availment of CENVAT credit for the month of		

1. Registration number

2. Name of the assessee

3. Details of the manufacture, clearance and duty payable:

CETSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)

Duty	Notification availed	Serial No. in Notification	Rate of duty	Duty payable (Rs.)	Provisional assessment number (if any)
(6)	(7)	(8)	(9)	(10)	(11)
CENVAT					
Other Duties					

4. Details of duty paid on excisable goods:

Duty code	Account current (Rs.)	Credit account (Rs.)	Total duty paid (Rs.)
(1)	(2)	(3)	(4)

CENVAT			
Other Duties			

5. Details of CENVAT credit availed and utilized:

Details of Credit	CENVAT (Rs.)	AED (TTA) (Rs.)	NCCD (Rs.)	ADET (Rs.)	Education Cess on excisable goods (Rs.)	Service Tax (Rs.)	Education Cess on taxable services (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Opening balance							
Credit availed on inputs							
Credit availed on capital goods							
Credit availed on input services							
Total credit availed							
Credit utilized for payment of duty on goods							
Credit utilized when inputs or capital goods are removed as such							
Credit utilized for payment of duty on services							
Closing balance							

6. Details of other payments made:

Payments	Amount Paid (Rs.)		Challan		Source document No. & date
	Account current	Credit account	No.	Date	

(1)	(2A)	(2B)	(3A)	(3B)	(4)
Arrears of duty under rule 8					
Other arrears of duty					
Interest payment under rule 8					
Other interest payments					
Misc. Payments					

7. Self- assessment memorandum:

a) I hereby declare that the information given in this Return is true, correct and complete in every respect and that I am authorised to sign on behalf of the assessee.

b) During the month, total Rs._____was deposited vide TR 6 Challans (copies enclosed).

c) During the month, invoices bearing S.No._____ to S.No. _____ were issued.

Place:
Date:

Name and signature of Assessee or Authorised Signatory)

ACKNOWLEDGEMENT

M M Y Y Y Y

Return of excisable goods and availment of CENVAT credit for the month of

D D M M Y Y Y Y

Date of receipt

Name and Signature of the Range Officer with Official Seal

INSTRUCTIONS

1. Indicate the 15-digit PAN based registration number and the name as appearing in the Registration Certificate.

2. **In case more than one item is manufactured, additional row may be inserted in each table, wherever necessary. For giving information about the details of production and clearance, payment of duty and CENVAT credit availed and utilised month wise, the respective tables may be replicated.**

3. **If a specific product attracts more than one rate of duty, then all the rates should be mentioned separately.**

For example: If a product is cleared at full rate of duty to the local market and at a concessional /nil rate of duty for earthquake relief, then the details for each category of clearance must be separately mentioned.

4. In case the goods are cleared for export under Bond, the details of clearance may be mentioned separately. Under the columns (7) and (8) of table at serial number 3, the words 'Export under Bond' may be mentioned.

5. If a specified product attracts different rates of duty, within the same month, then such details should be separately mentioned.

For example: On the 10th of a month, the effective rate of duty leviable for the product is changed, then the details relating to production, clearance and payment of duty need to be mentioned separately for the period up to 9th of the month and from 10th to the end of the month.

6. 6-digit CETSH Number may be indicated without any decimal point.

7. Wherever quantity codes appear, indicate relevant abbreviations as given below.

Quantities	Abbreviations
Centimetre(s)	Cm
Cubic centimeter(s)	cm^3
Cubic meter(s)	m^3
Gram(s)	G
Kilogram	Kg
Kilolitre	Kl
Litre(s)	L
Metre(s)	M
Square metre(s)	m^2
Millimetre(s)	Mm
Metric tonne	Mt
Number of pairs	Pa
Quintal	Q
Tonne(s)	T
Thousand in number	Tu
Number	U

8. Where the duty is specific and is charged based on specified unit quantity, the same quantity code must be used for showing clearance figures.

9. In column (5) of Table at serial number 3, the assessable value means,

(a) where goods attract advalorem rate of duty, the value under section 4 of Central Excise Act, 1944 (1 of 1944);

(b) where goods are covered under section 4A of the Act, the assessable value as worked out under MRP after allowing deductions as provided under section 4A of the Act;

(c) in case of goods for which the tariff value is fixed, such tariff value;

(d) in case of specific rated goods, the aggregated invoice value of the goods excluding all taxes;

(e) in case of combination of advalorem and specific duties, the transaction value under section 4 of the Act;

(f) in case of exports under Bond, the ARE-1/ARE-2/invoice value.

The abbreviations and expressions used to denote a particular type of duty are as below:

CENVAT- **Duty of Excise leviable as per First Schedule to Central Excise Tariff Act, 1985 (5 of 1986).**

SED- **Special Excise Duty leviable as per Second Schedule to Central Excise Tariff Act, 1985 (5 of 1986).**

AED (GSI)- **Additional Duty of Excise leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).**

NCCD- **National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(as amended).**

AED (TTA)- **Additional Duty of Excise leviable under Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978).**

SAED- **Special Additional Excise Duty leviable under section 147 of the Finance Act, 2002.**

ADE- **Additional duty of Excise on Motor Spirit and High Speed Diesel leviable under section 111 of the Finance (No. 2) Act, 1998 and section 133 of the Finance Act, 1999 respectively.**

ADET- **Additional duty of Excise on Tea and Tea Waste leviable under section 157 of the Finance Act, 2003.**

Education Cess on excisable goods-Education Cess on excisable goods leviable under section 91 read with section 93 of Finance (No. 2) Act, 2004 (23 of 2004).

Service Tax- **Service tax leviable under section 66 of the Finance Act, 1994 (32 of 1994).**

Cess- Cess leviable under different Cess enactments.

10. In Tables at serial numbers 3 and 4 the 'Other duties' paid/payable, as applicable, may be mentioned as per the following sequence.

SED					
AED(GSI)					
NCCD					
AED(TTA)					
SAED					
ADE					
ADET					

EDUCATION CESS ON EXCISABLE GOODS					
CESS					

11. In column (9) in Table at serial number 3, indicate the effective rates of duty. Columns which are not applicable, may be left blank.

12. Goods cleared under compounded levy scheme, indicate the aggregate duty payable in column (10) of Table at serial number 3 as per the compounded levy scheme. The columns not applicable may be kept blank.

13. In case the goods are assessed provisionally, the details may be given separately in Table at serial number 3. In column (11) of Table at serial number 3, specify the Unique Identification number mentioned in the order for Provisional Assessment.

14 In column (4) of Table at serial number 6, specify the Order-in-Original number and date relating to the payment of arrears of duty and of interest, the period for which the said interest has been paid. For other miscellaneous payments, mention the source document number and date.

ANNEXURE 10

Monthly return in respect of excisable goods manufactured and receipt of inputs and capital goods.

Form E.R.-2

Original/Duplicate

{See rule 17(3) of the Central Excise Rules, 2002 and rule 9(7) of CENVAT Credit Rules, 2004 }

	M M Y Y Y Y
Return of excisable goods and receipt of inputs and capital goods for the month of	

1. Registration number

2. Name of the assessee

3. Details of the manufacture, clearance and duty payable:

CETSH NO.	CTSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)

Duty	Notification availed	Serial No. in Notification	Rate of duty	Duty payable (Rs.)
(7)	(8)	(9)	(10)	(11)
CENVAT				
Other duties				

4. Details of duty paid:

Duty code	**Account current (Rs.)**	**Credit account (Rs.)**	**Total duty paid (Rs.)**
(1)	**(2)**	**(3)**	**(4)**
CENVAT			
Other Duties			

5. Details of inputs and capital goods received without payment of duty:

CETSH NO.	CTSH NO.	Quantity code	Total quantity received	Value of the goods received (Rs.)	Notification No.	Serial No in Notification
(1)	(2)	(3)	(4)	(5)	(6)	(7)

6. Details of CENVAT credit availed and utilized:

Details of Credit	CENVAT (Rs.)	AED (TTA) (Rs.)	NCCD (Rs.)	ADET (Rs.)	Education Cess on excisable goods (Rs.)	Service Tax (Rs.)	Education Cess on taxable services (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Opening balance							
Credit availed on inputs							
Credit availed on capital goods							
Credit availed on input services							
Total credit availed							
Credit utilized for payment of duty on goods							
Credit utilized when inputs or capital goods are removed as such							
Credit utilized for payment of duty on services							
Closing balance							

7. Details of other payments made:

Payments	Amount paid (Rs.)	Challan		Source document No. and date
		No.	Date	
(1)	(2)	(3A)	(3B)	(4)
Arrears of duty				
Interest				
Misc. Payments				

8. Self- assessment memorandum :

a) I hereby declare that the information given in this Return is true, correct and complete in every respect and that I am authorised to sign on behalf of the assessee.

b) During the month, total Rs._____was deposited vide TR 6 Challans (copies enclosed).

c) During the month, invoices bearing S.No._____ to S.No. _____ were issued.

Place :
Date :

(Name in capital letters and Signature of assessee or authorized signatory)

ACKNOWLEDGEMENT

M M Y Y Y Y

Return of excisable goods and receipt of inputs and capital goods for the month of							

[

D D M M Y Y Y Y

Date of receipt

Name and Signature of the Range Officer with Official Seal

INSTRUCTIONS

1. Indicate the 15-digit PAN based registration number and the name as appearing in the Registration Certificate.
2. In case more than one item is manufactured, additional rows may be inserted in each table, wherever necessary.
3. In column (4) of Table at serial number 3, the entire quantity of goods manufactured in the unit whether or not cleared on payment of duty, should be indicated.
4. If a specified product attracts more than one rate of duty, then all the rates should be mentioned separately.

   For example: If a product is cleared at full rate of duty to the local market and at a concessional/ nil rate of duty for earthquake relief or deemed exports, then the details for each category of clearance must be separately mentioned.

5. In case the goods are cleared for export under Bond, the details of clearance may be mentioned separately. Under the columns (8) and (9) of Table at serial number 3, the words 'Export under Bond' may be mentioned.

6. If a specified product attracts different rates of duty, within the same month, then such details should be separately mentioned.

   For example: On the 10th of a month, the effective rate of duty leviable for the product is changed, then the details relating to production, clearance and payment of duty need to be mentioned separately for the period up to 9th of the month and from 10th to the end of the month.

7. 6-digit CETSH Number may be indicated without any decimal point.

8. Wherever quantity codes appear indicate relevant abbreviations as given below.

Quantities	Abbreviations
Centimetre(s)	cm
Cubic centimetre(s)	cm^3
Cubic metre(s)	m^3
Gram(s)	g
Kilogram	kg
Kilolitre	kl
Litre(s)	l
Metre(s)	m
Square metre(s)	m^2
Millimetre(s)	mm
Metric tonne	mt
Number of pairs	pa
Quintal	q
Tonne(s)	t
Thousand in number	Tu
Number	u

9. Where the duty is specific and is charged based on specified unit quantity, the same quantity code must be used for showing clearance figures.

10. In column (6) of Table at serial number 3, the assessable value means,

(a) where goods attract ad valorem rate of duty, the value as per proviso to section 3 (1) of Central Excise Act, 1944 (1of 1944);

(b) in case of specific rated goods, the aggregated invoice value of the goods excluding all taxes;

(c) in case of combination of ad valorem and specific duties, it is the value under proviso to section 3(1) of the Act;

(d) in case of exports, the value as aforesaid, also declared in ARE-1/ARE-2.

11. In column (10) in Table at serial number 3, indicate the effective rates of duty. Columns that are not applicable may be left blank.

12. In Table at serial number 4, the details of the inputs and capital goods received without payment of Central Excise duty or Customs duty as the case may be, should be given.

13. In column (4) of Table at serial number 5, specify the Order-in-Original number and date relating to the payment of arrears of duty and of interest, the period for which the said interest has been paid. For other miscellaneous payments, mention the source document number and date.

ANNEXURE-11

Quqrterly Return for Clearance of Goods and Cenvat Credit

Form E.R.-3

Original/Duplicate

[See rule 12 of the Central Excise Rules, 2002 and rule9 (7) of CENVAT Credit Rules, 2004]

[To be submitted by the assesses falling under proviso to rule 12 of the Central Excise Rules, 2002]

	M M Y Y Y Y
Return of excisable goods and availment of CENVAT cred credit for the quarter ending	

1. Registration number

2. Name of the assessee

3. Details of the manufacture, clearance and duty payable during the first/second/third month of the quarter:

CETSH NO.	Unit of quantity	Quantity manufactured	Quantity cleared	Assessable value (Rs.)
(1)	(2)	(3)	(4)	(5)

Duty	Notification availed	Serial No. in Notification	Rate of duty	Duty payable (Rs.)	Provisional assessment number (if any)
(6)	(7)	(8)	(9)	(10)	(11)
CENVAT					
Other Duties					

4. Details of duty paid on excisable goods during the first/ second/ third month of the quarter:

Duty code	Account current	Credit account	Total duty paid

	(Rs.)	(Rs.)	(Rs.)
(1)	(2)	(3)	(4)
CENVAT			
Other Duties			

5. Details of CENVAT credit availed and utilized during the first/second/third month of the quarter:

Details of Credit	CENVAT (Rs.)	AED (TTA) (Rs.)	NCCD (Rs.)	ADET (Rs.)	Education Cess on excisable goods (Rs.)	Service Tax (Rs.)	Education Cess on taxable services (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Opening balance							
Credit availed on inputs							

Credit availed on capital goods							
Credit availed on input services							
Total credit availed							
Credit utilized for payment of duty on goods							
Credit utilized when inputs or capital goods are removed as such							
Credit utilized for payment of duty on services							
Closing balance							

6. Details of other payments made:

Payments	Amount Paid (Rs.)		Challan		Source document No. & date
	Account current	Credit account	No.	Date	
(1)	(2A)	(2B)	(3A)	(3B)	(4)
Arrears of duty under rule 8					
Other arrears of duty					
Interest payment under rule 8					
Other interest payments					
Misc. Payments					

7. Self- assessment memorandum:

a) I hereby declare that the information given in this Return is true, correct and complete in every respect and that I am authorised to sign on behalf of the assessee.

b) During the quarter, total Rs._____was deposited vide TR 6 Challans (copies enclosed).

c) During the quarter, invoices bearing S.No._____ to S.No. _____ were issued.

Place :

(Name in capital letters and Signature of Assessee or Authorized Signatory)

Date :

ACKNOWLEDGEMENT

Return of excisable goods and availment of CENVAT credit for the quarter ending	M M	Y Y Y Y

Date of receipt	D D	M M	Y Y Y Y

Name and Signature of the Range Officer with Official Seal

INSTRUCTIONS

1. Indicate the 15-digit PAN based registration number and the name as appearing in the Registration Certificate

2. In case more than one item is manufactured, additional row may be inserted in each table, wherever necessary. For giving information about the details of production and clearance, payment of duty and CENVAT credit availed and utilised month wise, the respective tables may be replicated.

3. If a specific product attracts more than one rate of duty, then all the rates should be mentioned separately.

For example: If a product is cleared at full rate of duty to the local market and at a concessional /nil rate of duty for earthquake relief, then the details for each category of clearance must be separately mentioned.

4. In case the goods are cleared for export under Bond, the details of clearance may be mentioned separately. Under the columns (7) and (8) of table at serial number 3, the words 'Export under Bond' may be mentioned.

5. If a specified product attracts different rates of duty, within the same month, then such details should be separately mentioned.

For example: On the 10th of a month, the effective rate of duty leviable for the product is changed, then the details relating to production, clearance and payment of duty need to be mentioned separately for the period up to 9th of the month and from 10th to the end of the month.

6. 6-digit CETSH Number may be indicated without any decimal point.

7. Wherever quantity codes appear, indicate relevant abbreviations as given below.

Quantities	Abbreviations
Centimetre(s)	cm
Cubic centimetre(s)	cm^3
Cubic metre(s)	m^3
Gram(s)	g
Kilogram	kg
Kilolitre	kl
Litre(s)	l
Metre(s)	m
Square metre(s)	m^2
Millimetre(s)	mm
Metric tonne	mt
Number of pairs	pa
Quintal	q
Tonne(s)	t
Thousand in number	Tu
Number	u

8. Where the duty is specific and is charged based on specified unit quantity, the same quantity code must be used for showing clearance figures.

9. In column (5) of Table at serial number 3, the assessable value means,

(a) where goods attract advalorem rate of duty, the value under section 4 of Central Excise Act, 1944 (1 of 1944);

(b) where goods are covered under section 4A of the Act, the assessable value as worked out under MRP after allowing deductions as provided under section 4A of the Act;

(c) in case of goods for which the tariff value is fixed, such tariff value;

(d) in case of specific rated goods the aggregated invoice value of the goods excluding all taxes;

(e) in case of combination of advalorem and specific duties, the transaction value under section 4 of the Act;

(f) in case of exports under Bond, the ARE-1/ARE-2/invoice value.

The abbreviations and expressions used to denote a particular type of duty are as below:

CENVAT- **Duty of Excise leviable as per First Schedule to Central Excise Tariff Act, 1985 (5 of 1986).**

SED- **Special Excise Duty leviable as per Second Schedule to Central Excise Tariff Act, 1985 (5 of 1986).**

AED (GSI)- **Additional Duty of Excise leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).**

NCCD- **National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(as amended).**

AED (TTA)- **Additional Duty of Excise leviable under Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978).**

SAED- **Special Additional Excise Duty leviable under section 147 of the Finance Act, 2002.**

ADE- **Additional duty of Excise on Motor Spirit and High Speed Diesel leviable under section 111 of the Finance (No. 2) Act, 1998 and section 133 of the Finance Act, 1999 respectively.**

ADET- **Additional duty of Excise on Tea and Tea Waste leviable under section 157 of the Finance Act, 2003.**

Education Cess on excisable goods-Education Cess on excisable goods leviable under section 91 read with section 93of Finance (No. 2) Act, 2004 (23 of 2004)

Service Tax- **Service tax leviable under section 66 of the Finance Act, 1994 (32 of 1994)**

Cess- Cess leviable under different Cess enactments.

10. In Tables at serial numbers 3 and 4 the 'Other duties' paid/payable, as applicable, may be mentioned as per the following sequence.

SED					
AED(GSI)					
NCCD					
AED(TTA)					
SAED					
ADE					
ADET					
EDUCATION CESS ON EXCISABLE GOODS					
CESS					

11. In column (9) in Table at serial number 3, indicate the effective rates of duty. Columns which are not applicable, may be left blank.

12. Goods cleared under compounded levy scheme, indicate the aggregate duty payable in column (10) of Table at serial number 3 as per the compounded levy scheme. The columns not applicable may be kept blank.

13. In case the goods are assessed provisionally the details may be given separately in Table at serial number 3. In column (11) of Table at serial number 3, specify the Unique Identification number mentioned in the order for Provisional Assessment.

14. In column (4) of Table at serial number 6, specify the Order-in-Original number and date relating to the payment of arrears of duty and of interest, the period for which the said interest has been paid. For other miscellaneous payments, mention the source document number and date.

ANNEXURE-12

Quarterly Return under Rule 7 of the CENVAT Credit Rules, 2002
for the Registered Dealers
{See sub-rule (6) of rule 7}

Return for the quarter ending ----------

1. Name of the first stage/second stage dealer :
2. Excise registration number :
3. Address :
4. Particulars of invoices issued by first stage/second stage dealer :

S.No.	Invoice No. with date	For the main item in the document*			
		Description of the goods	Central Excise Tariff Heading	Quantity	Amount of duty involved (Rs.)

5. Particulars of the documents based on which the credit is passed on:

S.No.	Invoice/ Bill of entry No. with date	Name and address of the manufacturer/ importer or the first stage dealer (as the case may be)	For the main item in the document*		
			Description of the goods	Central Excise Tariff Heading	Amount of duty involved (Rs.)

* Give details with respect to the item with maximum duty covered by the document

Place:

Date:

Signature of the registered person or the authorised signatory

Name in capital letters
Designation
Seal of the registered dealer.

ANNEXURE-13

CENVAT – Annual return of information relating to principal inputs.

In exercise of the powers conferred by sub-rule (1) of rule 9A of the CENVAT Credit Rules, 2004, the Central Board of Excise and Customs hereby specifies the following Form for the purposes of the said rule, namely, -

FORM ER-5

{sub-rule (1) of rule 9A of CENVAT Credit Rules, 2004}

1. Name of the manufacturer:

2. PAN based Registration Number:

3. Annual Declaration

(i) New declaration

(ii) Amendments to declaration already filed

(Pl. tick the appropriate box)

4. Declaration for the Financial Year _____

Sr. No.	Description of principal inputs	Central Excise Tariff Sub-HeadingNo. of principal inputs	Quantity code*	Description of finished goods in which principal input mentioned in column (2) is used	Central Excise Tariff Sub-Heading No. of finished goods	Quantity code*	Quantity of principal input mentioned in column (2) required for use in the manufacture of unit quantity of finished goods mentioned in column (5)
1	2	3	4	5	6	7	8

*NOTE. - Please indicate the abbreviation referred to in Instruction No. 7 mentioned in Form E.R.-1 and Form E.R.-3 specified in the Government of India, Ministry of Finance (Department of Revenue) vide No.25/2004-Central Excise (N.T.), dated the 27th September, 2004 published vide G.S.R.No.643 (E) dated the 25th September, 2004.

5. (i) I/We _____ hereby declare that the information given above is true, correct and complete in every respect to the best of my/our knowledge and belief.

(ii) I/We am/are authorized to sign this declaration.

(Name in capital letters and signature of the assessee or authorized signatory)

Place:

Date:

ACKNOWLEDGEMENT

Declaration for the Financial Year _____

	D D	M M	Y Y Y Y
Date of receipt			

Place:

Name and signature of the officer with seal

Date:

ANNEXURE-14

CENVAT - Monthly return of information relating to principal inputs.

In exercise of the powers conferred by sub-rule (3) of rule 9A of the CENVAT Credit Rules, 2004, the Central Board of Excise and Customs hereby specifies the following Form for the purpose of the said rule, namely:-

FORM ER-6

{sub-rule (3) of rule 9A of CENVAT Credit Rules, 2004}

1. Name of the manufacturer:

2. PAN based Registration Number: | | | | | | | | | | | | | | |

3. Month to which the return relates:

4. Details of receipt and consumption of principal inputs and finished excisable goods:

TABLE

Sr. No.	Description of principal inputs	Quantity Code*	Opening Balance	Receipt	Taken for use in the manufacture of dutiable and exempted finished goods	Removed as such for export or for home consumption	Closing Balance	Finished goods manufactured out of inputs		Quantity code of finished goods*	Quantity of finished goods manufactured
								S. No.	Description		
1	2	3	4	5	6	7	8	9(A)	9(B)	10	11

Details of waste and scrap arising during manufacture and cleared/destroyed:

TABLE

S.No.	Description of waste and scrap	Quantity code*	Quantity	
			Cleared	Destroyed
1	2	3	4(A)	4(B)

NOTE. - (1) Finished goods mentioned in Column (9B) should be stated in respect of each of the inputs mentioned in Columns (2) and (6).

(2) *Please indicate the abbreviation referred to in Instruction No. 7 mentioned in Form E.R.-1 and Form E.R.-3 specified in the Government of India, Ministry of Finance (Department of Revenue) vide No.25/2004-Central Excise (N.T.), dated the 27th September, 2004 published vide G.S.R.No.643 (E) dated the 25th September, 2004.

6. (i) I/We _____ declare that the particulars declared above have been compared with the records and books of my/our factory/warehouse and the same are true and correct to the best of my/our knowledge.

(ii) I/we am/are authorized to sign this return.

(Name in capital letters and signature of the assessee or authorized signatory)

Place:
Date:

ACKNOWLEDGEMENT

Return of receipt and consumption of principal inputs and finished excisable goods for the month ending ____

DD MM YYYY

Date of receipt										

Name and signature of the officer with seal

ANNEXURE-15

Application for refund of CENVAT credit under rule 5 of the CENVAT Credit Rules, 2002
(Refund relating to quarter or month -)

To

The Deputy / Assistant Commissioner of Central Excise,

Sir,

I/We have exported under-mentioned quantity and description of the goods to _____. A copy of the relevant Bill of Lading, Shipping Bill or Export Application is also attached. I/We am/are not in a position to utilize the CENVAT credit of duty paid on inputs allowed under rule 3 of the CENVAT Credit Rules, 2002, in respect of final products exported under bond during the quarter or month _____. I/We request that refund of this credit may be granted.

1. Particulars of the goods exported.

(i) Full description of the goods.

(ii) Full description of the inputs going into such exported products and credit availed of in respect of such inputs under rule 3.

2. Relevant extracts of the records maintained under the CENVAT Credit Rules, 2002 or the deemed credit register maintained in respect of textile fabrics, as the case may be, in respect of such input duty credit.

3. Number and date of Bill of Lading or Shipping Bill or Export application.

4. Amount of refund claimed.

I / We certify that the aforesaid particulars are correct and I / we am / are the rightful claimant(s) to the refund of excise duty due thereon which may be allowed in my/ our favour.

I/We undertake to refund, on demand being made, within six months of the date of payment any refund erroneously paid to me/ us.

I/We declare that no separate claim for rebate of duties in respect of excisable materials used in the manufacture of the goods covered by this application has been or will be made under the Customs and the Central Excise Duties Drawback Rules, 1971 or under claim for rebate under the Central Excise Rules, 2002.

I/We declare that we have not filed /will not file any other claim for refund under rule 5 for the same quarter or month to which this claim relates.

Signature and full address of the claimant (s)

Refund Order No. _____
Date _____

The claim of Shri /Messrs. _____ has been scrutinized with the relevant Bill of Lading or Shipping Bill or Export application and refund of Rs_____(Rs._____) is sanctioned.

Date_____

Deputy / Assistant Commissioner of Central Excise_____

Forwarded to-

1. The Chief Accounts Officer, Central Excise, for information and necessary action.
2. The Commissioner of Central Excise _____

Date_____

Deputy / Assistant Commissioner of Central Excise_____

Passed for payment of Rs _____(Rs._____). The amount is adjustable under Head "038-Union Excise Duties-Deduct Refunds".

Date_____

Chief Accounts Officer

Cheque No._____dated_____issued in favour of Shri/Messrs _____ for Rs _____ (Rs._____ _).

Date_____

Chief Accounts Officer

Received Cheque No. _____ dated _____ for Rs. _____ (Rs._____).

Dated_____

Signature of claimant.

ANNEXURE-16

AC-1
[Rule 17)2)]

Commissionerate.....

Division.....

Range.....

Name and Address of the Unit.....

Date	Description of goods	Opening balance	Quantity manufactured	Total	Quantity cleared		Invoice number and date	Closing balance	Duty paid	Remarks
					Too domestic Tariff Area	For Export				
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.

ANNEXURE-17

Annual Financial Information Statement/Form[1]

In exercise of the powers conferred by clause (a) of sub-rule (2) of rule 12 of the Central Excise Rules, 2002, the Central Board of Excise and Customs hereby specifies the following Form for the purposes of the said clause (a) of sub-rule (2) of rule 12, namely:-

"Form E.R.-4

Original/Duplicate

ANNUAL FINANCIAL INFORMATION STATEMENT FOR THE FINANCIAL YEAR_____

(All figure relating to value and amount to be given in Rs. Lakhs)

1. Registration number

2. Name of the assessee

3. Details of expenditure:

(i) Details of inputs including packing material and components used for manufacture.

a) Total value of inputs including packing materials and components used for manufacturing on which CENVAT credit availed (value as per purchase invoice or import document excluding all taxes). Rs.....

b) Total value of inputs including packing materials used for manufacturing on which CENVAT credit not availed. Rs.....

c) Value of raw material including packing materials and components consumed as per Profit and loss account. Rs.....

(ii) Value and quantity of each major raw material consumed in the manufacture of goods.

(a) Description of raw material.....Raw Material 'A'

	Quantity (Please specify the unit also)	Value
Opening stock of Raw Material		
(+) Purchase of raw material		
(-) Closing Stock of Raw Material		
Raw Material consumption		

b) Please state description of final product [as mentioned at Sr. No. 4(ii) below], where the raw material is principally used

(iii) Details of other expenditure

a)	Total Inward Freight	Rs.....
b)	Total Outward Freight	Rs.....
c)	Advertisement/Sales Promotion	Rs.....
d)	Commissioner paid for sales of manufactured goods	Rs.....
e)	Total R&D expenditure	Rs.....
f)	Wages	Rs.....
g)	Power and Fuel	Rs.....
h)	Other expenses* [excluding (a) to (g) above].	Rs.....

(iv) Details of goods got manufactured by the assessee through job workers:

a)	Whether goods are got manufactured through job worker?	Yes/No
b)	If yes, whether any raw material/inputs are supplied to job worker?	Yes/No.
c)	Whether any raw material/inputs are used by the job worker which are not supplied by the assessee?	Yes/No
d)	Total amount paid by the assessee to job worker.	Rs.....

4. Details of Income:

(i) Total Sales value (Gross) as per Profit & Loss Account. Rs.....

(ii) Value and quantity of each major manufactured goods sold @..

Please mention description and Chapter Sub-heading. Finished Goods 'A'

	Quantity (Please specify the unit also)	Value (excluding Taxes)
Opening stock of Raw Material		
(+) Production of finished goods		
(-) Closing Stock of finished goods		
Finished goods sold		

(iii) Details of trading activity [excluding inputs cleared as such as per Sr. No.(viii) below].

	Quantity (Please also specify the unit)	Value (excluding Taxes)
Opening stock of Trading Goods 1		
(+) Purchase of Trading Goods		
(-) Closing Stock of Trading Goods 1		
Trading Goods sold		

(iv) Sale value of non-excisable and fully exempted goods (excluding the goods exported) cleared during the financial year. Rs.....

(v) Value of goods exported under Bond Rs.....

(vi) Value of goods exported under claim for rebate. Rs.....

(vii) Total value of sale of waste and scrap. Rs.....

(viii) Value of inputs on which CENVAT credit has been availed and cleared as such:

a) On payment of amount equal to the credit availed : Rs.....

b) Without payment of any such amount to job worker (excluding the value of both the inputs as such or the inputs used in job worked goods , received back by the assessee from job worker). Rs.....

(ix) Total Sales Tax Paid. Rs.....

(x) Details of other income:

S.No.	Category	Amount
1.	Warranty charges from buyers	
2.	Advertisement/Marketing Expenditure recovered from customers	
3.	Handling, storage, packing & forwarding charges	
4.	Pre-delivery inspection charges	
5.	Product development, Drawing, design and development charges	
6.	Transportation charges received	
7.	Erection & Commissioning charges received	
8.	Technical, engineering, Consultancy etc. charges received	
9.	Other receipts/income (excluding (1) to (8) above)	

(xi) Total "Other income" as per Profit and Loss Account. Rs.....

(xii) Details of job work activity carried out by the assessee for others: Yes/No

a) whether any such job work activity carried out by the assessee ? Yes/No

b) Whether job work done using own raw material/inputs (i.e. other than those supplied by the person for whom job work is done). Yes/No

c) Whether job work goods are cleared on payment of duty. Yes/No

d) Total amount of job work charges received during the financial year. Rs.....

5. CENVAT Credit details:

	Credit Availed (Rs.)	Credit utilized (Rs.)
On inputs		
On Capital Goods		
On Taxable input Service		

6 (i) I/We _____ declare that the particulars declared above have been compared with the records and books of my/our factory/warehouse and the same are true and correct to the best of my/our knowledge.

(ii) I/we am/are authorized to sign this return.

(Name in capital letters and signature of the assessee or authorized signatory)

Place:
Date:
Note:

To be given separately and distinctly for each major raw material consumed on the lines of Sl.No. 3(ii)(a)(1) of Part-II of the Schedule VI pertaining to section 211 of the Companies Act, 1956 (1 of 1956),i.e. each such raw material which in value independently accounts for 10% or more of the total value of the raw materials consumed.

- Other expenses include all expenses like interest, depreciation other overheads as shown in Profit and Loss Account.

- To be given separately and distinctly for each class of major finished goods sold, i.e. each such finished goods which in value independently accounts for 10% or more of the total value of the finished goods sold as clarified in Note 3 to the para 3 of Part-II of the Schedule VI pertaining to section 211 of the Companies Act, 1956 (1 of 1956).

Please enclose copy of Profit and Loss Account and Balance Sheet.

ACKNOWLEDGEMENT

D D M M Y Y Y Y

Date of receipt

Name and signature of the officer with seal

Place:
Date:

ANNEXURE-18

Range.....
Division.....Address.....
Commissionerate.....

Original (White)
Duplicate (Buff)
Triplicate (Pink)
Quadruplicate (Green)

FORM A.R.E. 1

Application for removal of excisable goods for export by (Air/Sea/Post/Land)*

To

Superintendent of Central Excise
.....(Full Postal Address)

1. Particulars of [Assistant/Deputy Commissioner of Central Excise]/Maritime Commissioner of Central Excise from whom rebate shall be claimed/with whom bond/undertaking is executed and his complete postal address.

2. I/We ..... of .....propose to export the under-mentioned consignment to ..... (Country of destination) by Air/Sea/Land/Parcel Post under claim for rebate/bond/undertaking*.

Particulars of Manufactu-rer of goods-and his Central Excise Registration No.	No. and Description of packages	Gross weight/ Net weight	Marks and Nos. on packages	Quantity of goods	Descriptio n of Goods
(1)	(2)	(3)	(4)	(5)	(6)

Value	Duty		No. and date of Invoice under which duty was paid/No. and date of bond/undertaking executed under Rule 19	Amount of Rebate claimed	Remarks
	Rate	Amt. (Rs.)			
(7)	(8)	(9)	(10)	(11)	(12)

3. I/We hereby certify that the above- mentioned goods have been manufactured.
(a) availing facility/without availing facility of CENVAT credit under CENVAT Credit Rules, 2001
(b) availing facility/without availing facility under Notification 41/2001-Central Excise (N.T) dated 26th June, 2001 issued under rule 18 of Central Excise(No.2) Rules, 2001.
(c) availing facility/without availing facility under Notification 43/2001-Central Excise (N.T) dated 26th June, 2001 issued under rule 19 of Central Excise (No.2) Rules, 2001.
4. I/We hereby declare that the export is in discharge of the export obligation under a Quantity based Advance Licence/Under Claim of Duty Drawback under Customs & Central Excise Duties Drawback Rules, 1995.
5. I/We hereby declare that the above particulars are true and correctly stated.

Time of Removal.....

Signature of owner or his
Authorised agent with date.
Name in Block Letters & Designation (SEAL)

PART A

Certification by Central Excise Office

3. Certified that duty has been paid by debit entry in the Personal Ledger Account No. .....and/or CENVAT Account Entry No.....**or** recorded as payable in Daily Stock Account, on the goods described overleaf.

OR

Certified that the owner has entered into Bond No. ..... under Rule 19 of Central Excise (No.2) Rules, 2001 with the.....[F.No._____], duly accepted by the Assistant Commissioner/Deputy Commissioner of Central Excise_____ on _____(Date).

4. Certified that I have opened and examined the packages No..... and found that the particulars stated and the description of goods given overleaf and the packing list (if any) are correct and that all the packages have been stuffed in the container No. ..... with Marks ..... and the same has been sealed with Central Excise Seal/One Time Seal (OTS) No. .....

5. I have verified with the records, the exporter is only availing the export incentives, as specified in box No.6. and found it to be true.

6. Certified that I have drawn three representative samples from the consignment (wherever necessary) and have handed over, two sets thereof duly sealed to the exporter/his authorised representative.

Place.....
Date .....

Signature
(Name in Block Letters)
Superintendent of Central Excise

Signature
(Name in Block Letters)
Inspector of Central Excise

PART B
CERTIFICATION BY THE CUSTOMS OFFICER

Certified that the consignment was shipped under my supervision under Shipping Bill No_____ dated _____by S.S./Flight No. _____which left on the_____ day of_____ (Month)_____(year)

OR

Certified that the above-mentioned consignment was stuffed in Container No._____ belonging to Shipping Line_____ based on the "Let Export Order" given on _____day of._____(Month)_____year) on the Shipping Bill No_____ dated_____ and sealed by seal/one time lock No._____ in my supervision and the container was handed over to the Custodian M/s_____ for being shipped via _____(Name of the Port).

OR

Certified that the above-mentioned consignment has been duly identified and has passed the land frontier today at_____in its original condition under Bill of Exports No_____ Place_____ Date_____.

Signature
(Name and designation of the Customs
Officer in Block Letters)/(Seal)

PART C
EXPORT BY POST

Certified that the consignment described overleaf has been despatched by foreign post to ..... on ..... day of 200.....

Place .....
Date .....

Signature of Post Master
(Seal)

PART D
REBATE SANCTION ORDER

(On Original, Duplicate and Triplicate)

Refund Order No..... dated ..... Rebate of Rs..... (Rupees .....) sanctioned vide Cheque No. .....dated .....

Place .....
Date .....

Assistant/Deputy Commissioner/ Maritime
Commissioner of Central Excise

ANNEXURE-19
FORM UT-1

Letter of Undertaking
For removal for export of excisable goods without payment of duty

To

The President of India (hereinafter called the "President"), acting through the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or the Maritime Commissioner or such Central Excise Officer duly authorised by the Central Board of Excise and Customs, constituted under the Central Board of Revenue Act, 1963 (54 of 1963) (hereinafter called "the Board")_____[Address of the office].

I/We .....of..... (Address of the factory) having Central Excise Registration No..... , hereinafter called "the undertaker(s) including my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents, hereby jointly and severally undertake on this.....day of..... to the President.

g. to export the excisable goods removed from my/our factory/warehouse/approved place of storage without payment of duty under rule 19 of the Central Excise (No.2) Rules, 2001 within six months from the date of such removal or such extended period as may be permitted by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or the Maritime Commissioner or the Central excise Officer duly authorised by the Board;
h. to observe all the provision of the Central Excise (No.2) Rules, 2001and all such amendments thereto as may be issued from time to time to be observed, in respect of export of excisable goods to a foreign country;
i. to export the goods to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of production or manufacture
j. pay the excise duty payable on such excisable goods in the event of failure to export them, along with an amount equal to twenty four percent interest per annum on the amount of duty not paid, from the date of removal for export till the date of payment.

I/We declare that this undertaking is given under the orders of the Board for the performance of enacts in which the public are interested.

Signature(s) of undertaker(s).
Date :
Place :
Witnesses
1. Name and Address Occupation
2. Name and Address Occupation

Date
Place

Accepted by me on this.....day of ..... (month).....(year)

.....of Central Excise, (Designation)

for and on behalf of the President of India.

ANNEXURE-20

FORM B-1
GENERAL BOND (SURETY/SECURITY)

General Bond with surety/security for removal for export of excisable goods without payment of duty for export

For surety bond

[I/We .....of..... hereinafter called "the obligor(s)" and ..... of.....hereinafter called "the surety(ies)"/ am/are held and firmly bound to the President of India (hereinafter called the "President") in the sum of.....rupees to be paid to the President for which payment will and truly to be made/ I/We jointly and severally bind myself/ourselves and my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents] :

For security bond

I/We.....of.....hereinafter called "obligor(s)"I/am/are held and firmly bound to the President of India (hereinafter called "the President") in the sum of.....rupees to be paid to the President of India for which payment will and truly to be made, I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents];

Dated this.....day of.....

WHEREAS the above bounden obligor has been permitted to remove from time to time the excisable goods from his registered warehouse/registered factory at .....for export to foreign countries without payment of duty;

For security bond only

AND WHEREAS the Commissioner has required the obligor to deposit as security for the amount of this bond/ the sum of ..... rupees in cash (the securities as hereinafter mentioned of a total value of ..... rupees endorsed in favour of the President and accepted on his behalf by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, namely, ... and whereas the obligor has furnished such guarantee by depositing with the Commissioner the cash/securities as aforementioned;

The condition of this bond is that if the obligor and his representative shall observe all the provisions of the Central Excise (No.2) Rules, 2001 and all such amendments thereto as may be issued from time to time to be observed in respect of export of excisable goods to a foreign country or manufacture of goods and export thereof under rule 19;

And whereas the obligor(s) has /have furnished such guarantee by depositing with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise the cash/securities/bank guarantee as aforementioned.

And shall observe all the provisions of the Central Excise (No.2) Rules, 2001 or the provisions of other rules made under the Central Excise Act, 1944 (1 of 1944) and all such amendments thereto, as may be issued from time to time so far as they relate to the export of excisable goods without payment of the whole or part of the duty;

And if the relevant and specific goods are duly exported to destination within such time as specified in the Central Excise (No.2) Rules, 2001 or notifications issued thereunder and/or if all dues whether excise duty or other lawful charges, which shall be demandable on the goods removed by the obligor(s) without payment of the whole or

part of the duty and transported from the place of procurement for export as shown by the Central Excise records, be duly paid into the treasury to the account of the Commissioner of Central Excise along with such interest as may be specified in the said rules,/notification within ten days of the date of demand thereof being made in writing by the said Officer of Central Excise, this obligation shall be void.

surety bond only

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

For security bond only

Provided always that the liability of the surety hereunder shall not be impaired or discharged by reason of any time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts hereunder;

AND the President shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/We further declare that this bond is given under the orders of the Central Government for the performance of enact in which the public are interested.
In these presents the words imposing singular only shall also include the plural and vice versa where the context so requires;
IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obligor(s) and the surety(ies).

Signature(s) of obligor(s).
Date:
Place:
Witnesses

1. Name and Address Occupation

2. Name and Address Occupation

Date
Place

Signature(s) of surety (ies).

Date:
Place:

Witnesses

1. Name and Address Occupation

2. Name and Address Occupation

Accepted by me this.....day of .....(month).....(year)

.....of Central Excise, (Designation)
for and on behalf of the President of India.

ANNEXURE-21

Range
Year) Division Serial Number_____/_____(Financial
Commissionerate

FORM CT-1

Certificate for procurement of excisable goods for export without payment of duty

This is to certify that,

11. The exporter has furnished a Bond in Form [Specific/General]* for Rs_____, which has been accepted by the Assistant Commissioner of Central Excise/the Deputy Commissioner of Central Excise in F.No. _____ on the _____day of the _____(month) _____ (Year).

OR

Mr./Messers. _____(Name and address) is/are registered under rule 9 of Central Excise (No.2) Rules, 2001 in this Range, having registration number_____has furnished an undertaking in the form specified under Notification No. /2001-Central Excise (N.T.) dated to the Assistant Commissioner of Central Excise/the Deputy Commissioner of Central Excise, _____(Name of the Division or the Office) who has accepted the undertaking in F.No. _____ on the _____day of the _____(month) _____ (Year).

12. The above-said exporter/manufacturer-exporter is permitted to obtain excisable goods for export under rule 19 of the Central Excise (No.2) Rules, 2001 as per details specified overleaf. This certificate is valid upto one year from the date of issue specified below.

Name and Signature of the
Superintendent of Central Excise
["Seal"]

Dated:
(Address of the Range Office)

(To be printed overleaf)

To be filled by the exporter

For Procuring Goods under the procedure specified under Notification No. 42/2001-Central Excise (N.T.) dated 26th June, 2001 issued rule 19 of the Central Excise (No.2) Rules, 2001

Name and address of the factory/ _____
warehouse/place of storage of the supplier _____
Registration Number of the factory/warehouse _____
Details of the goods to be procured

Sl. No.	Description	Quantity	Value	Duty involved

I hereby declare that I have made a provisional debit of Rupees .....
(in both words and figures) in the Bond Account at serial No..... dated .....

and on this day and after the abovementioned debit, the balance in the Bond Account is Rs. ..... .

OR

Please find attested copy of the specific bond/Undertaking details of which is specified by the Superintendent of Central Excise,_____ (address) overleaf.

(Dated signature of the Exporter(s)
or his/ their authorised agents
and their seal.

ANNEXURE-22

Return for Manufacturers following Simplified Export Procedure

1. Name and address of the manufacturing unit
2. Range, Division and Commissionerate
3. Code Number (Wherever allotted) by Central Excise Department
4. Financial Year
5. The period (quarter for which statement is submitted)
6. Description, quantity and value of goods cleared for home consumption during the quarter
7. Description, quantity and value of goods cleared during the quarter:-

   (i) for direct export
   (ii) for export through merchant export

8. Progressive total of clearances for home consumption up to the quarter
9. Details of value of clearances for which proof of export not received within 6 months

The following manufacturers shall follow regular procedure of ARE.1and bond/letter of undertaking for exports :

(i) Those who are availing facility of credit under CENVAT Credit Rules, 2001
(ii) Those who are claiming rebate of duty paid on materials under Rule 18 of the Central Excise (No.2) Rules,2001 read with Notification 41/2001-Central Excise (NT) dated 26.6.2001, and/or
(iii) Those who are engaged in the manufacture of export goods under bond under Rule 19(2) of the Central Excise (No.2) Rules, 2001 read with Notification 44/2001-Central Excise (NT) dated 26.6.2001

Proforma of running Bond Account in respect of B-I Bond

1. Consolidated B-1 Bond No. & Amount of Bond
2. Whether with Surety or Security
3. Name of Surety & his complete address

Date	Particulars	Credit Rs.	Debit Rs.	Balance	Remarks	Signature of Exporter
	Opening Balance			Cr.		

Note:-

1. Debit & Credit entries should be entered in separate lines
2. Opening Balance is the amount of Bond as soon as it is executed and accepted
3. Debit entry shall be made on Block Transfer, while issuing certificate of Provisional debit or exports.
4. Credit entry shall be made in the manner specified in the instructions.

ANNEXURE-23
INVOICE

ORIGINAL
DUPLICATE
TRIPLICATE
QUADRUPLICATE

Invoice of goods liable to Central Excise Duty in India transmitted under Central Excise Seal to Nepal
(Under DRP)

Invoice No._____ Date_____
Range_____Division_____Commissionerate_____
_____From_____(Factory/Warehouse) by _____
through the Border Post of _____
Name and Address of Importer in Nepal_____

Marks and Numbers of packages	Number and description of packages	Description of goods with tariff heading/ sub-heading	Gross weight of packages	Net weight or quantity	Value (words and figures)	Rate of Duty	Amount of duty paid or payable (in words and figures)	Number and date of document under which Central Excise duty was paid or is payable	Number and date of railway receipt/ lorry receipt (including carrier's name)

1. I/We hereby declare that the above-mentioned particulars are true and correctly stated and that the consignment of goods is intended for export to Nepal_____(place) and shall not be diverted to en route to any other country.

Signature of exporter or his authorised agent.

Place:
Date:

(To be printed overleaf)
2. Certified that the above-mentioned packages have been identified by me and sealed with the Central Excise seal under my supervision.

Signature with Date and designation of the
Officer of Central Excise

Running Serial No.

Date:

3. Certified that the above-mentioned consignment has been duly identified by me and has passed the Border Customs Post into Nepal.

Signature with Date and designation of the
Indian Officer –in – charge of the Border Customs post at_____

Running Serial No. of Border Check Post
(to be written in red ink prominently encircled)
Date

4. (i) Certified that the above-mentioned consignment/packages have been duly identified by me and have been received and accounted for in Nepal.
4. (ii) it is also certified that the entries mentioned in the Table below are correct.

Table

Tariff Heading/ Sub-heading	Value of goods assessed	Effective rate of import duty and like charges levied by HMG Nepal on similar goods imported from countries other than India	Amount of Import duty assessed

Signature with date and designation (with official seal)
Of Nepalese Customs officer
Check Post_____".

ANNEXURE – 24

Bank Certificate

This is to certify that the following Bills covering exports of ..... to Nepal/Bhutan drawn by M/s. ..... have been negotiated and proceeds as given below received by us in the approved manner. We also certify that the payments thereof have been received in freely convertible currency.

Signature of Manager/Authorised Officer
of the Bank with Official Stamp.

Notes:

1. This certificate should be on the Bank's letterhead and should bear the Official Stamp of the Bank.
2. This certificate will be issued only after the full proceeds of the Bill have been realized.

ANNEXURE-25

Circular No. 747/63/ 2003-CX
22nd September, 2003

F.No. 201/6/2002-CX-6 (Pt. II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject : Notifications 69/2003-CE (NT) to 73/2003-CE (NT) -Introduction of new formats of monthly/quarterly return to be filed by SSI/Non SSI manufacturers, Export Oriented units and Registered dealers- reg,

I am directed to refer to the notifications 69/2003-CE (NT) to 73/2003-CE (NT) all dated 15th September, 2003 on the subject cited above and to say that as a measure towards simplification of indirect tax procedures with the objective of reducing the complexities and the transaction cost, the monthly/ quarterly returns to be filed by the manufacturer of excisable goods have been reduced to a unified , single and a simplified one page return. Notifications giving effect to these new formats w.e.f. 1.10.2003 have already been issued. The details of the formats of the returns are available in CBEC website http://www.cbec.gov.in

2. At present, the manufacturer of excisable goods registered with the Central Excise Department are required to file two returns, one return for production and clearance of manufactured goods and another for CENVAT availment. It has now been decided to reduce the number of returns filed by an assessee to a single return and also introduce a simplified single page return. It may be noted that the said return format has been made less rigorous by substantially reducing the no. of details required to be furnished in the return. Further, in the new return, details of information about the excisable goods manufactured by an assessee is required to be furnished based on the six digits sub-heading level of Central Excise Tariff Act, 1985 and not on description of goods. This shall facilitate on line filing of returns and use of automation for collection, compilation and analysis of trade statistics. Wide publicity may be given to the new format of returns. Commissioners are also advised to guide the trade suitably in case of any difficulty.

3. The new returns will come into force from 1st October, 2003. It may be clarified that the monthly return of excisable goods required to be filed by 10th of November, 2003 for the month of October, 2003 and the quarterly return for the quarter ending December, 2003 shall be required to be filed in the new format.

4. Certain other changes in Central Excise Rules, 2002 and CENVAT Credit Rules, 2002 have been carried out which may be gone through. Now the Export Oriented units shall also be required to give details of the goods manufactured and exported under bond as well as the inputs and capital goods received without payment of duty in the monthly return filed by them. It may also be noted that full CENVAT credit of the duty paid on Moulds and Dies shall now be available to the manufacturer in the first year of acquisition itself. However credit on the moulds and dies received in the factory already before this amendment may be allowed as per the provisions existing earlier.

5. Trade and field formations may please be informed suitably

6. Receipt of the circular may be acknowledged.

7. Hindi version will follow.

Vijay Mohan Jain
Under Secretary to the Govt. of India

ANNEXURE-26

ARE 2 No._____
Original (White)
Duplicate (Buff)
Triplicate (Pink)
Quadruplicate (Green)
Quintuplicate (Blue)

Form A.R.E. 2

Combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

To

The Superintendent of Central Excise.
(Address)
_____ (full postal address)

2. Particulars of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise from whom rebate shall be claimed / with whom bond is executed and his complete postal address _____

3. I / We _____ of _____ propose to export the under mentioned goods (details of which are given in Table 1 below) to _____ (country of destination) by *air/sea / land /post parcel* under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods.

3. *The finished goods being exported are not dutiable

or

We intended to claim the rebate of Central Excise Duty paid on clearances of goods for export under notification 40/2001-Central Excise (N.T) dated 26th June, 2001 issued under Rule 18 of Central Excise (No.2) Rules, 2001.

or

The Export goods are intended to be cleared without payment of Central Excise Duty under notification 42/2001-Central Excise (N.T) dated 26th June, 2001 issued under Rule 19 of Central Excise (No.2) Rules, 2001.

TABLE 1
(Details of goods to be exported)

Sl. No.	Description of packages	Marks & Nos. on packages	Gross Weight	Net Weight and quantity of goods **	Description of finished goods	Value	Finished Stage Central Excise Duty		Invoice No. & date	Bond /Undertaking executed under rule 19 (if any)	Amount of Rebate Claimed under Rule 18	Rema-rks
							Rate	Amount				
1	2	3	4	5	6	7	8	9	10	11	12	13

*Strike out portion not applicable **Quantity of goods to be furnished in units of sale where it is different than weight. #Write NA where exports are under bond/letter of undertaking in terms of Rule 19 or where goods are not chargeable to duty

TABLE 2

Details of duty paid excisable Materials and Packing materials used in manufacture of export goods for which rebate under notification _____ dated _____ is being claimed

S. No.	Name/description of materials/ packing with technical specification/ Quantity	Central Excise Tariff Sub-heading	Unit	Qty used	Name of Supplier	Invoice No. & Value/ Unit Rs.	Assessable Value/ Unit Rs.	Rate of Central Excise duty	Duty Amt. per unit Rs.	Total Wastages		Rebate admissible under Rule 18 Rs.	Remarks
										Recoverable	Irrecoverable		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

Declaration :

(a) We hereby certify that we have not availed facility of CENVAT credit under CENVAT Credit Rules, 2001

(b) We hereby declare that the export is not in discharge of export obligation under a Value based Advance Licence issued prior to 31.03.95

(c) We hereby declare that the materials on which input stage rebate in claimed are not sought to be imported under a Quantity Based Advance Licence issued prior to 31.03.95.

(d) We further declare that we shall not claim any Drawback on export of the consignment covered under this application.

(e) I / We hereby declare that the above particulars are true and correctly stated.

(f) We have been granted permission by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise Vide C.No. _____ date _____ for working under Notification _____ dated _____

Time of Removal _____

Signature of owner or his authorised agent with date
Name in Block Letters & Designation
SEAL

Note 1: The A.R.E. 2 should be submitted by the manufacturer at least 24 hours intended removal of goods for export, to the superintendent of Central Excise.

Note 2 : A running serial of the factory starting with one every financial year should be allotted to every A.R.E. 2

FOR DEPARTMENT USE

PART A

CERTIFICATION BY THE CENTRAL EXCISE OFFICER

1. Certified that

*duty has been paid on the goods described above or duty is payable as recoded at entry number___ in Daily Stock Account.

or

*the owner has entered into B-1 bond No _____ /given an Undertaking _____under Rule 19 of Central Excise (No.2) Rules, 2001 with the _____ or *the finished goods being exported are not dutiable

2. Certified that I have opened and examined the packages No. _____ and found that the particulars stated and the description of goods given overleaf read with the invoice and the packing list (if any) correct *[and that all the packages have been stuffed in the container No. _____ with Marks _____]*and the same has been sealed with Central Excise Seal/*One Time Seal (OST) No. _____

4. I have verified with the records, the declaration of the manufacture given at Sl. No. 3 overleaf regarding non availment of credit under rule CENVAT Rules and found it to be true.

4. Certified that I have drawn three representative samples from the consignment and have handed over two sets thereof duty sealed to the manufacturer/ his authorised representative. (wherever feasible)

13. Certified that the material consumption's indicated in Table 2 overleaf are in accordance with the declaration No. _____ filed by _____ on _____

Place : _____

Date : _____

Signature
(Name in Block Letters)
Superintendent of Central Excise

Signature
(Name in Block Letters)
Inspector of Central Excise

*Strike out inapplicable portions

Note 3 : The details given in table 2 may be verified by the Superintendent of Central Excise subsequentto clearances. For this purpose a detailed verification report may be submitted by the Superintendent to the Assistant Commissioner of Central Excise along with Triplicate copy of A.R.E. 2

Note 4 : The original -duplicate and sixtuplicate shall be returned to the manufacturer for presenting to the Customs Officer.

PART B

Certification by the Customs Officer

1. Certified that I have examined the consignment described overleaf, and the seals on the packages were found intact and I have satisfied myself that particulars of the consignment are as specified overleaf except for the shortages mentioned below:

_____

2. Certified that the exports are not under Duty Drawback Scheme. It is further certified that exports are not in discharge of export obligation under Value Based Advance Licence or a Quantity Based Advance Licence issued before 31.03.95.

3. Certified that all copies of Shipping Bill / Bill of export contain endorsement of A.R.E. 2 No. in the space provided for indicating ARE 1.

4. Certified that the consignment was shipped under my supervision under *Shipping Bill No. / Bill of Export No. _____ dated _____ which left for _____ on _____/ which passed the frontier on _____

5. Duplicate copy of A.R.E. 2 Forwarded to Assistant/Deputy Commissioner of Central Excise ..... on .....

Place
Date

Signature
(Name and designation of the Customs Officer in Block letters)

(Seal)

Note 5 : The customs shall send the duplicate to the address given at Sl. No. 1 over leaf and handover original and sixtuplicate to the exporter

PART C*

Rebate Sanction Order Under Rule 18(1)
(On Original, Duplicate and Triplicate)

Refund Order No. _____ dated _____ Rebate of Rs. _____ (Rupees _____ sanctioned vide cheque No. _____ dated _____

Place _____
Date _____

Assistant/Deputy Commissioner of Central Excise

PART D

Rebate Sanction Order under rule 18(2)
(On Original, Duplicate and Triplicate)

Refund Order No. _____ dated _____ Rebate of Rs. _____ (Rupees _____ sanctioned vide cheque No. _____ dated _____

Place _____
Date _____

Assistant/Deputy Commissioner of Central Excise

ANNEXURE-27

Form of Declaration for availing Benefit of Rebate of Central Excise Duty Paid on Materials used in Manufacture and Packing of Export Goods
(To be filed in Quintuplicate)

To

The Commissioner of Central Excise
_____

Sir,

1. We, _____ (name of the manufacturer) having our office at_____ and our factory at _____ seek your permission to export materials used in the manufacture and packing of finished goods.

2. We are furnishing herewith details of finished goods to be exported and manufacturing formula with reference to quantity/proportion in which the materials are required for the finished goods & the tariff classification of materials and the duty payable the materials.

3. We agree to abide by the provision of the Central Excise (No.2) Rules, 2001, notifications and any supplementary instructions issued in this regard;

4. We undertake to intimate any change in the consumption ratio within 10 days of such change.

5. We here declare-

(iv) that we are not availing facility of input stage credit under CENVAT Credit Rules, 2001;
(v) that we shall export the finished goods without availing duty drawback of such duty;
(vi) that the finished goods shall not be exported in discharge of export obligation under a Value Based Advance License or a Quantity Based Advance License issued prior to 31-3-95.

(Signature)
Seal

Dated_____

Enclosed:

4. Write up on manufacturing Process
5. Statement of Input-Output Ratios
6. Ground Plan of the premises

For use in Central Excise Office

CERTIFICATE OF VERIFICATION

I have visited the factory on _____ and have verified the manufacturing process and the input/ output ratios. On the basis of the records maintained by the applicant, the write up on the manufacturing process, the flow diagram submitted be the application and physical verification of the manufacturing process, I find that the consumption of materials and wastage indicated in the statement of Input-Output ratios are in order. I have also verified the Quantity indicated in Column 5 of the Table to the Statement of Consumption does not include materials which is recycled in the process.

Or

I find following difference in the Input-Output Ratios Claimed and actually observed.

_____(Name)
_____ of Central Excise
(Designation)
SEAL

DATE _____

ANNEXURE NO.28

CENTRAL EXCISE SERIES NO.2-AA
FORM R

Application for refund of excise duty
(Rule 173-S)

To

The '(Assistant Commissioner of Central Excise or

Deputy Commissioner of Central Excise.)

Division.....

Commissionerate.....

1. I/we claim refund of Rs..... Rupees.....

on the grounds mentioned hereunder:

(a)

(b)

(c)

2. I/we enclose the following documents in support of the claim:

1.

2.

3.

4.

5.

3. The amount claimed was originally paid by AR1/AR5/AR6/AR7/AR8/AR9/AR10/DD1/DD2 Treasury Challan No.....dated.....deposited into ....Treasury under the Head of Account III Union Excise duties/Duty on.....miscellaneous receipts/by adjustment in account current No .....dated.....

OR

The amount claimed was debited to account current No.....on.....against G.P.1.No.....dated.....vide entry at Serial No.....

OR

4. The amount claimed was paid vide G.P.I No.....dated.....and invoice No.....dated.....of M/s...

5. The payment of refund may please be made in my/our favour by a crossed cheque on.....Treasury/by money order at Government cost.

6. I/We declare that no refund on this account has been claimed/received by me/us earlier.

7. I/We declare that the duty for which refund has been claimed has not been charged/realised from any other person and a copy of the price-list, relevant Gate Pass(Central Excise) like documents and invoices are enclosed

8. I/We undertake to refund on demand being made within six months of the date of payment of any rebate erroneously paid to me/us,

9. I/We declare that the goods received by me/us after payment of Central Excise duty for which refund has been claimed has been consumed by me/us as industrial consumer/has been sold in wholesale/retail.

Dated.....
Signature and full address of claimant

Received payment

Revneue stamp ;(For amounts exceeding Rs.20,00)

.....Signature of claimant Claim of Shri/Messrs..... has been scrutinised and found correct Refund of Rs.....(Rupees .....) is sanctioned. Certified that ;no refund order regarding ;the sum now in question has previously been passed.

Head of Account

Supdt./A.C. of C.Ex.....
(SANCTIONING AUTORITY)

Rs.....credited towards consumer welfare fund established under section 12C of the Central Excise Act,1944.

Cheque No.....dated .....for

Rs.....Rupees.....)

Issued on.....(RBI/SBI/Treasury)in settlement of this claim.....

.....

A.C. of Central Excise.....
(For use in the C.A.O's office)

Past audited certified that

(i) the amount concerning which the refund is given has been credited into the Treasury.

(ii) order of refund has been verified with

(a) DD1/DD2/AR1/AR5/AR6/AR7/AR8/AR9/AR10/T.C. No.....
dated..... Gate Pass No,.....

OR

(b) Debit entry in account current No.....dated ..... and refund has been noted against the original credit under my signature. .....

ANNEXURE-29

Original/Duplicate/Triplicate/Quardruplicate
Range.....
Division.....

Application for removal of excisable goods from a factory or a warehouse to another warehouse
(Also called A.R.E.3 for Export Warehousing)

I/we holder(s) of Central Excise Registration No..... have undertaken to remove the undermentioned goods from the factory/warehouse at..... to the warehouse at .....in Range.....Mr./Messers.....
...
Holders of Central Excise Registration No.....

Number and date of entry in warehouse register	Description of goods	No. & description of packages	Gross weight of packages	Marks & nos. on packages	Quantity of goods	Date of first warehousing	Value	Duty		No. & date of invoice(s) for removal of goods	Manner of transport	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13
							Rs. P.	Rs. P.	Rs. P.			

I/We hereby declare the above particulars to be true.

Place.....

Signature of consignor(s) or his/their authorized agent.

Date.....

Certificate of warehousing by the consignee
(on original and duplicate)

I/We hereby certify that the consignment arrived at..... on..... That the goods conform in all respects to the description given overleaf except for the following discrepancies, and that they have been warehoused under Entry No..... of the register maintained in the warehouse.

Particulars of discrepancies

No. and description of packages not received	Quantity short received	Duty payable on the shortage	Remarks
(1)	(2)	(3)	(4)

Place.....

Date.....

Signature of consignee(s) or his their authorized agent.

ANNEXURE-30

B-3 General Bond (Security)

Bond for the due despatch of excisable goods removed for warehousing and export therefrom to a foreign country without payment of duty

(Rule 20)

(Delete the letters and words not applicable)

I/We .....[hereinafter called the obligor(s)] am/are jointly and severally bound to the President of India in the sum of..... Rupees to be paid to the President of India for which payment, I/we jointly and severally bind myself/ourselves and my/our legal representatives.

The above bounden obligor(s) being permitted to remove the excisable goods from time to time conditional on the provision of Central Excise Rules, 1944, being observed, without payment of duty from the registered factory/any other premises approved by Commissioner at ..... For warehousing at ..... and exportation therefrom.

Whereas the Comissioner of Central Excise at.....[hereinafter called the Commissioner] has required the obligor(s) to deposit as security for the amount of this bond, the sum of ..... Rupees in cash or securities as hereinafter mentioned of a total value of rupees..... Endorsed in favour of the President of India and accepted on this behalf by the Commissioner, Additional Commissioner, Deputy Commissioner or Assistant Commissioner of Central Excise, namely:.....,

And whereas the obligor(s) has/have furnished such guarantee by depositing with the Commissioner the cash/security as aforementioned.

The condition of this bond is that the obligor(s) and his/their legal representatives shall observe all the provisions of the Central Excise Rules, 2001, notifications and instructions issued thereunder relating to Export Warehousing, and all such amendments thereto, as may be issued from time to time to be observed in respect of excisable goods removed.

and if the said goods are duly removed from the factory or any other premise as may be approved by the Commissioner, warehoused at.....

And exported from the aforesaid warehouse within such period as the Commissioner directs,

And all such dues whether excise duty or other lawful charges as shall be fixed by the Commissioner of Central Excise and payable on the said goods or any portion or portions thereof are paid by TR-6 challans in the nominated bank(s) by the obligor(s) to the account of the Commissioner within ten days of the date of demand thereof being made in writing boy the said Commissioner.

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

AND the President shall, at his option, be competent to make goods all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/we declare that this bond is given under the orders of the Central Government for the performance of an act in which the public are interested.

Place:
Date:

Signature(s) of Obligor(s)

Witnesses: (1) Address (1) Occupation(1)
(2) Address (2) Occupation(2)

Accepted by me this.....day of.....(Month).....(Year)

[.....of Central Excise]
[for and on behalf of the President of India]

ANNEXURE-31

Proforma of Running bond Account to be maintained by Exporter in the Warehouse in respect of B-3 (General Security) Bonds

1. Name of the Exporter
2. Address of the Exporter
3. Details of B-3 Bond

Sl.No.	Bond No.	Bond Amount	Security Amount
1.			
2.			
3.			

Entry No.	Date	Opening Balance	Credit	Debit	Balance	Remarks	Signature of Exporter or his agent
1	2	3	4	5	6	7	8

1. Debit & Credit entries should be entered in separate lines.
2. Opening Balance is the amount of Bond as soon as it is executed and accepted.
3. Provisional debit entry shall be made at the time of issue of CT-1A. suffix 'P' may be added to indicate provisional debit
4. The provisional debit will be converted into actual debit on receipt of ARE-3.
5. Credit entry shall be made on acceptance of proof of export or execution of fresh bond.
6. The bond amount, security amount, opening balance, credit, debit and balance will be indicated in rupee terms.

ANNEXURE-32

Serial Number_____/ _____(Financial Year).

Range.....
Division.....
Commissionerate

FORM C.T.-2

Certificate for procurement of excisable goods under Procedure for Export Warehousing
(Rule 20)

This is to certify that,

(1) Mr./Messers._____(Name and address) is are registered under Rule 9 of Central Excise (N0.2) Rules, 2001 in this Range, having registration number _____. He has also furnished a Bond in Form for Rs._____ which has been accepted by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise in F.No._____ 0n the _____ day of the _____(month)_____(Year).

(2) The above-said registration authorities him/her/them to obtain_____ (Name of the product) falling under Tariff sub-heading_____ of the Central Excise Tariff Act, 1985 at nil/concessional rate of _____[rate of duty to be furnished- in case of full exemption write "exempted"] under Notification No._____ dated_____for the manufacture of _____/use at_____.

Name and signature of the
Superintendent of Central Excise
["Seal"]

Dated:
(Address of the Range Office)

(To be printed overleaf)

To be filled by End-User

For Procuring Goods under the Export Warehousing procedure specified under Rule 20 of the Central Excise (No.2) Rules, 2001

Name and address of the factory/_____

Warehouse/place of storage of the supplier_____

Registration Number of the factory/warehouse_____

Details of the goods to be procured

Sl.No.	Description	Quantity	Value	Duty involved

I hereby declare that I have made a provisional debit of Rupees.....(in both words and figures) in the Bond Account at serial No..... dated..... And on this day, after the abovementioned debit, the balance in the Bond Account is Rs.....

Dated signature of the Exporter(s)
or his/their authorized agents
and their seal.

ANNEXURE-33

[Appendix-I
FORM A S P II

Application for permission to avail of the special procedure relating to stainless steel patties or pattas or aluminium circles.

Name of the factory/factories.....Address.....

I/We ..... manufacturers of stainless steel patties or pattas/aluminium circles, residing at.....taulk/tehsil.....district.....and holders of Central Excise Registration No..... dated..... Hereby apply to avail myself/ourselves during the..... Calender month/the period beginning with.....20.....
and ending.....20.....of the special procedure in respect of the production or transactions in such stainless steel patties or pattas or aluminimum circles at my/our above mentioned factory/factories.

2. I/We hereby agree to abide by the terms and conditions of the said procedure throughout the said period.

Place:
Date:

Signature of manufacturers of his/their authorized agent(s)

COUNTERSIGNED

..... of Central Excise
Range.....
Circle.....

Place:
Date:

Permission granted for the Calender month...../the period beginning with..... and ending with.....

Assistant Commissioner/Deputy
Commissioner of Central Excise

Place:
Date:

Note: Delete the entries which are not applicable].

CESS					

11. In column (9) in Table at serial number 3, indicate the effective rates of duty. Columns which are not applicable, may be left blank.
12. Goods cleared under compounded levy scheme, indicate the aggregate duty payable in column (10) of Table at serial number 3 as per the compounded levy scheme. The columns not applicable may be kept blank.
13. In case the goods are assessed provisionally the details may be given separately in Table at serial number 3. In column (11) of Table at serial number 3, specify the Unique Identification number mentioned in the order for Provisional Assessment.
14. In column (4) of Table at serial number 6, specify the Order-in-Original number and date relating to the payment of arrears of duty and of interest, the period for which the said interest has been paid. For other miscellaneous payments, mention the source document number and date.

ANNEXURE-34

FORM UT-1
Letter of Undertaking

For removal for export of excisable goods without payment of duty

To

The President of India (hereinafter called the "President"), acting through the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise or the Maritime Commissioner or such Central Excise Officer duly authorised by the Central Board of Excise and Customs, constituted under the Central Board of Revenue Act, 1963 (54 of 1963) (hereinafter called "the Board")_____[Address of the office].

I/We .....of..... (Address of the factory) having Central Excise Registration No..... , hereinafter called "the undertaker(s) including my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents, hereby jointly and severally undertake on this.....day of..... to the President.

(a) to export the excisable goods removed from my/our factory/warehouse/approved place of storage without payment of duty under rule 19 of the Central Excise (No.2) Rules, 2001 within six months from the date of such removal or such extended period as may be permitted by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise or the Maritime Commissioner or the Central excise Officer duly authorised by the Board;

(b) to observes all the provisions of the Central Excise (No.2) Rules, 2001and all such amendments thereto as may be issued from time to time to be observed, in respect of export of excisable goods to a foreign country;

(c) to export the goods to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of production or manufacture

(d) pay the excise duty payable on such excisable goods in the event of failure to export them, along with an amount equal to twenty four percent interest per annum on the amount of duty not paid, from the date of removal for export till the date of payment.

I/We declare that this undertaking is given under the orders of the Board for the performance of enacts in which the public are interested.

Signature(s) of undertaker(s).

Date :

Place :

Witnesses

(1) Name and Address Occupation

(2) Name and Address Occupation

Date

Place

Accepted by me on this.....day of

.....(month).....(year)

.....of Central Excise, (Designation)

for and on behalf of the President of India.

ANNEXURE-35

FORM B-1

GENERAL BOND (SURETY/SECURITY)

General Bond with surety/security for removal for export of excisable goods without payment of duty for export

For surety bond

[I/We .....of..... hereinafter called "the obligor(s)" and ..... of.....hereinafter called "the surety(ies)"/ am/are held and firmly bound to the President of India (hereinafter called the "President") in the sum of.....rupees to be paid to the President for which payment will and truly to be made/ I/We jointly and severally bind myself/ourselves and my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents] :

For security bond

I/We.....of.....hereinafter called "obligor(s)"I/am/are held and firmly bound to the President of India (hereinafter called "the President") in the sum of.....rupees to be paid to the President of India for which payment will and truly to be made; I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents];
Dated this.....day of.....
WHEREAS the above bounden obligor has been permitted to remove from time to time the excisable goods from his registered warehouse/registered factory at .....for export to foreign countries without payment of duty;

For security bond only

AND WHEREAS the Commissioner has required the obligor to deposit as security for the amount of this bond/ the sum of ..... rupees in cash (the securities as hereinafter mentioned of a total value of .....
Rupees endorsed in favour of the President and accepted on his behalf by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, namely, ... and whereas the obligor has furnished such guarantee by depositing with the Commissioner the cash/securities as aforementioned;

The condition of this bond is that if the obligor and his representative shall observe all the provisions of the Central Excise (No.2) Rules, 2001 and all such amendments thereto as may be issued from time to time to be observed in respect of export of excisable goods to a foreign country or manufacture of goods and export thereof under rule 19;

And whereas the obligor(s) has /have furnished such guarantee by depositing with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise the cash/securities/bank guarantee as aforementioned.

And shall observe all the provisions of the Central Excise (No.2) Rules, 2001 or the provisions of other rules made under the Central Excise Act, 1944 (1 of 1944) and all such amendments thereto, as may be issued from time to time so far as they relate to the export of excisable goods without payment of the whole or part of the duty;

And if the relevant and specific goods are duly exported to destination within such time as specified in the Central Excise (No.2) Rules, 2001 or notifications issued thereunder and/or if all dues whether excise duty or other lawful charges, which shall be demandable on the goods removed by the obligor(s) without payment of the whole or part of the duty and transported from the place of procurement for export as shown by the Central Excise records, be duly paid into the treasury to the account of the Commissioner of Central Excise along with such interest as may be specified in the said rules,/notification within ten days of the date of demand thereof being made in writing by the said Officer of Central Excise, this obligation shall be void.

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

For surety bond only
Provided always that the liability of the surety hereunder shall not be impaired or discharged by reason of any time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts hereunder;
For security bond only
AND the President shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/We further declare that this bond is given under the orders of the Central Government for the performance of enact in which the public are interested.

In these presents the words imposing singular only shall also include the plural and vice versa where the context so requires;

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obligor(s) and the surety(ies).

Signature(s) of obligor(s).

Date:

Place:

Witnesses

(1) Name and Address Occupation
(2) Name and Address Occupation

Date
Place
Signature(s) of surety (ies).

Date:

Place:

Witnesses
(1) Name and Address Occupation
(2) Name and Address Occupation

Accepted by me this .....day of .....(month).....(year)

.....of Central Excise, (Designation)
for and on behalf of the President of India.

ANNEXURE-36

Serial Number_____/_____ (Financial Year).

Range
Division
Commissionerate

FORM CT-1

Certificate for procurement of excisable goods for export without payment of duty

This is to certify that,

(1) The exporter has furnished a Bond in Form [Specific/General]* for Rs_____, which has been accepted by the Assistant Commissioner of Central Excise/the Deputy Commissioner of Central Excise in F.No. _____ on the _____day of the _____(month) _____ (Year).

OR

Mr./Messers. _____(Name and address) is/are registered under rule 9 of Central Excise (No.2) Rules, 2001 in this Range, having registration number_____has furnished an undertaking in the form specified under Notification No. /2001-Central Excise (N.T.) dated to the Assistant Commissioner of Central Excise/the Deputy Commissioner of Central Excise, _____(Name of the Division or the Office) who has accepted the undertaking in F.No. _____ on the _____day of the _____(month) _____ (Year).

(2) The above-said exporter/manufacturer-exporter is permitted to obtain excisable goods for export under rule 19 of the Central Excise (No.2) Rules, 2001 as per details specified overleaf. This certificate is valid upto one year from the date of issue specified below.

Name and Signature of the Superintendent of Central Excise
["Seal"]

Dated:

(Address of the RangeOffice)

(To be printed overleaf)
To be filled by the exporter
For Procuring Goods under the procedure specified under
Notification No. 42/2001-Central Excise (N.T.) dated 26 th June, 2001 issued rule 19 of the Central Excise (No.2) Rules, 2001

Name and address of the factory/ _____

warehouse/place of storage of the supplier _____

Registration Number of the factory/warehouse _____

Details of the goods to be procured

S.No.	Description	Quantity	Value	Duty involved

I hereby declare that I have made a provisional debit of Rupees ..... (in both words and figures) in the Bond Account at serial No..... dated ..... and on this day and after the abovementioned debit, the balance in the Bond Account is Rs. .....

OR

Please find attested copy of the specific bond/Undertaking details of which is specified by the Superintendent of Central Excise,_____ (address) overleaf.

(Dated signature of the Exporter(s)
or his/ their authorised agents
and their seal.

ANNEXURE-37

Proforma of Running Bond Account in respect of B-1 Bond

1. Consolidated B-1 Bond No. & Amount of Bond.

2. Whether with Surety of Security.

3. Name of Surety & his complete address.

Date	Particulars	Credit Rs.	Debit Rs.	Balance	Remarks	Signature Of Exporter
	Opening balance			Credit		
1.	2.	3.	4.	5.	6.	7.

Note: -

1. Debit & Credit entries should be entered in separate lines.

2. Opening Balance is the amount of Bond as soon as it is executed and accepted.

3. Debit entry shall be made on Block Transfer, while issuing certificate of Provisional debit or exports.

4. Credit entry shall be made in the manner specified in the instructions.

ANNEXURE-38
FORM B-2
GENERAL BOND (SURETY/SECURITY)

General Bond with surety/security for provisional assessment of goods to excise duty.

(Rule 7)

For surety bond

I/We..... of hereinafter called "the obligor(s)" and ..... of hereinafter called "the surety(ies)"/ am/are held and firmly bound to the President of India (hereinafter called the "President")
in the sum of rupees to be paid to the President for which payment will and truly to be made/ I/We jointly and severally bind myself/ourselves and my/our respective heirs. executors/ administrators. legal representatives/successors and assigns by these presents :

For security bond

I/We..... of hereinafter called "obligor(s)"I/am/are held and firmly bound to the President of India (hereinafter called "the President" in the sum
of rupees to be paid to the President of India for which payment will and truly to be made. I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/legal representatives/successors and assigns by these presents;

Dated this day of.....

For Security Bond

WHEREAS final assessment of excise duty of (hereinafter called the "goods") manufactured/cured/warehoused by the above bounded obligor from time to time could not be made for want of full information as regards value/description/quality or of proof thereof or for the non-completion of the chemical or other tests in respect thereof or otherwise and whereas the obligor desires that the he should make provisional assessment as per provisions contained in Rule 7 of the Central Excise (No.2) Rules. 2001;

AND WHEREAS the Commissioner has required the obligor to deposit as security for the amount of this bond/ the sum of rupees in cash (the securities as hereinafter mentioned of a total value of rupees endorsed in favour of the President and accepted on his behalf by the Commissioner /Deputy Commissioner. Assistant Commissioner. Superintendent of Central Excise/namely .....) and whereas the obligor has furnished such guarantee by depositing with the Commissioner the cash/securities as aforementioned; The condition of "this bond. is that *if* the obligor and his representative observe all the provisions of the Central Excise Rules. 2001 and all such amendments thereto as may

be issued from *time* to time to be observed in respect of provisional assessment of goods to excise duty under Rule 7;

And whereas the obligor(s) has /have furnished such guarantee by depositing with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise the cash/securities/bank guarantee as aforementioned.)

The condition of this bond is that If the obligor(s) shall observe all the provisions of the Central Excise(No.2) Rules. 2001 or the provisions of other rules made under the Central Excise Act. 1944 (1 of .1944) and all such amendments thereto. as may be issued from time to time so far as they relate to the provisional assessment of duty

And if all dues whether excise duty or' other lawful charges. which shall be demandable on the goods removed after provisional assessment to duty as shown by the Central Excise records, be duly paid into the treasury to the account of the Commissioner along with interest, if any, within ten days of the date of demand thereof being made in writing by the said Officer of Central Excise. this obligation shall be void,

For security bond only

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be In full force and virtue:

Provided always that the liability of the surety hereunder shall not be impaired or discharged by reason of any time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts hereunder;

For security Bond only

AND the President shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/We further declare that this bond is given under the orders of the Central Government for the performance of enact in which the public are interested.

In these presents the words imposing singular only shall also include the plural and vice versa where the context so requires;

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obllgor(s) and the surety (Ies).

Signature(s) of obligor(s).

Date :

Place:

Witnesses

(1) Name and Address Occupation

(2) Name and Address Occupation

Date

Place

Signature(s) of surety(ies)

Date:
Witnesses

1) Name and Address Occupation

(2) Name and Address Occupation

Accepted by me this ..... day of ..... (month) ..... (Year)

.....of Central Excise, Designation)
for and on behalf of the President of India.

ANNEXURE- 39

B-3 General Bond (Security)

Bond for the due despatch of excisable goods removed for warehousing and export therefrom to a foreign country without payment of duty

(Rule 20)

(Delete the letters and words not applicable)

I/ We ..... of ..... [hereinafter called the obligor (s)] am/ are jointly and severally bound to the President of India in the sum of ..... rupees to be paid to the President of India for which payment. I /we jointly and severally bind myself/ ourselves and my/our legal representatives.

The above bounden obligor (s) being permitted to remove the excisable goods from time to time conditional on the provisions of Central Excise Rules, 1944, being observed, without payment of duty from the registered factory/ any other premises approved by Commissioner at ..... for warehousing at ..... and exportation there from.

Whereas the Commissioner of Central Excise at ..... [hereinafter called the Commissioner] has required the obligor (s) to deposit as security for the amount of this bond, the sum of ..... rupees in cash or securities as hereinafter mentioned of a total face value of rupees ..... endorsed in favour of the President of India and accepted on this behalf by the Commissioner, Additional Commissioner, Deputy Commissioner or Assistant Commissioner of Central Excise, namely: .....,

And whereas the obligor (s) has/ have furnished such guarantee by depositing with the Commissioner the cash/ security as aforementioned.

The condition of this bond is that the obligor (s) and his/ their legal representatives shall observe all the provisions of the Central Excise Rules 2001, notifications and instructions issued thereunder relating to Export Warehousing, and all such amendments thereto, as may be issued from time to time to be observed in respect of excisable goods removed.

And if the said goods are duly removed from the factory or any other premise as may be approved by the Commissioner, warehoused at ..... and exported from the aforesaid warehouse within such period as the Commissioner directs,

And all such dues whether excise duty or other lawful charges as shall be fixed by the Commissioner of Central Excise and payable on the said goods or any portion or portions thereof are paid by TR-6 challans in the nominated bank(s) by the obligor (s) to the account of the Commissioner within ten days of the date of demand thereof being made in writing by the said Commissioner.

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

AND the President shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above-written bond or the both;

I/We declare that this bond is given under the orders of the Central Government for the performance of an act in which the public are interested.

Signature (s) of Obligor (s)

Place:

Date:

Witnesses (1) Address (1) Occupation (1)

(2) Address (2) Occupation (2)

Accepted by me this ..... day of ..... (Month).....(Year)

[..... of Central Excise]
[for and on behalf of the President of India]

ANNEXURE- 40

Proforma of Running bond Account to be maintained by Exporter in the Warehouse in respect of B-3
(General Security) Bonds

1. Name of the Exporter

2. Address of the Exporter

3. Details of B-3 Bond

S.No.	Bond No.	Bond Amount	Security Amount
1.			
2.			
3.			

Entry No.	Date	Opening balance	Credit	Debit	Balance	Remarks	Signature of Exporter or his agent
1	2	3	4	5	6	7	8

1. Debit & Credit entries should be entered in separate lines.
2. Opening Balance is the amount of Bond as son as it is executed and accepted.
3. Provisional debit entry shall be made at the time of issue of CT-1A. Suffix 'P' may be added to indicate provisional debit.
4. The provisional debit will be converted into actual debit on receipt of ARE-3.
5. Credit entry shall be made on acceptance of proof of export or execution of fresh bond.
6. The bond amount, security amount, opening balance, credit, debit and balance will be indicated in rupee terms.

ANNEXURE-41

[See Rule 3 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001]

Application under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001

[Original with 3 copies to be submitted through the Range Superintendent]

To

The Assistant Commissioner or Deputy Commissioner of Central Excise,
Division .....

Vide S. No. ..... of Notification No. ..... Central Excise, dated the issued under Section 5A(1) of the Central Excise Act, 1944 read with the relevant provisions of the Central Excise Act, 1944 (1 of 1944) and the Central Excise Tariff Act, 1985 (5 of 1986) and other laws for the time being in force the goods, namely..... used for the specified purpose of .... attract the following excise duty(ies) (specify rates): Basic excise duty/Special excise duty"! Additional duty(ies)/Other Duty(ies).

We undertake to follow the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 as required by the above notification. The quantity and value of subject goods, we wish to obtain during the financial year.... for the aforesaid specified purpose is (specify quantity and value) and we intend to procure the subject goods for use in our premises at .....

The estimated duty leviable on the subject goods but for the exemption under the above notification is rupees.....only (attach calculation sheet)and the estimated total duty on the subject goods payable at the time of removal under the above notification is rupees only (attach calculation sheet).

We also hereby undertake :

(a) to use the subject goods.....for the purpose of ..... and to follow any other condition that the said notification imposes on us; and

(b) to pay on demand, in the event of failure to comply with (a) above, an amount equal to the difference between the duty leviable on such quantity of the subject goods but for the exemption under the aforesaid notification and that paid at the time of removal.

We have also executed the necessary bond dated (enclose the bond executed) for your acceptance.

Date: *Signature and stamp of authorised signatory, with*
Place: *name and address of the premise* ..

(Endorsement and counter-signature of the said Assistant Commissioner or Deputy Commissioner on the application)

It is hereby certified that *M/s*..... having their premise at ..... have executed the bond as required by the said rules, for rupees only, which has been accepted on behalf of the President of India by the undersigned and entered at S. No. dated of Bond Register.

F. No.

I

Signature of the said Assistant Commissioner
Or *Deputy Commissioner with date, name, stamp and seal*
Date:

Place:

ANNEXURE-42

FORM B-11 - RELEASE OF GOODS SEIZED

CENTRAL EXCISE SERIES NO. 32-E

Range
Circle

FORM B-11 (SECURITY)

Bond (with security) to be entered into by person seeking release of goods seized pending adjudication

(Rule 206)

(Delete the words and lellers 1/not applicable)

I/We of [hereinafter called the obligqr(s))
am bound to the President of India (hereinafter called the , are jointly and severally
the Government) in the sum of .....rupees to be paid to the Government for which payment I bind myself and my
We jointly ourselves and our
and severally
representatives.

Whereas a quantity of .....(hereinafter called the said goods) belonging to the obligor(s) are seized by the Central Excise Officer Range/Circle/Division (hereinafter called the said officer) for an alleged offence under the Central Excise Act, 1944 and the Rules made thereunder;

And whereas the said officer has required the obligor(s) to deposit as guarantee for the amount of this bond the sum of ..... rupees in cash;

The securities as hereinafter mentioned of a total face value of rupees endorsed in
favour of the President of India and accepted on his behalf by the [Commissioner], [Joint Commissioner of Central Excise) or [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise), namely:

And whereas pending adjudication of the case by the competent officer, the said officer has under sub-rule (3) of rule 206 of the Central Excise Rules. 1944. agreed to release to the obligor(s) the said goods on the obligor(s) executing the bond in the manner aforesaid;

Now the condition of this bond is that *(a)* if the obligor(s) and his/their legal representatives shall observe all the provisions of the Central Excise Rules, 1944, so far as they relate to the seized goods; *(b)* if all dues whether duty, value, penalty, or other lawful charges. which shall be demandable on the goods released to the obligor(s), be duly paid into the treasury to the satisfaction of the said officer within 10 days of the date of demand thereof being made in writing by the said officer of Central Excise; *(c)* if the said goods are produced, unless the same have totally perished in the meantime, as and when directed by the said officer;

This obligation shall be void.

Otherwise and on breach or failure in the performance of any part of this condition, the same shall be in full force.

And I/we agree that the Government shall be at liberty to appropriate the said deposit towards the payment of the amount of duty/value/penalty/other lawful charges, as may be assessed by the competent authority in respect of the goods.

And I/we declare that this bond is given under the orders of the Central Govt. for the performance of an act in which the public are interested.

Place:

Dale : Signature(s) of obligor(s)

Witncsses (1)Address Occupation (I)
(2) Address Occupation (2)

Place:

Date:
Accepted by me this day of 20.....

.....of Central Excise
.....for and on behalf of the President of India.

ANNEXURE 43

3.220
'CENTRAL EXCISE SERIES NO. 32-N
FORM B-17 (GENERAL SURETY/SECURITY)
General Bond (with Surety/Security) to be executed by thel00% EOUs/Units in the EHTP/STP/FTZ
(Rules 9-B, 13, 14 and 192)

We, having our registered office al hereinafter referred to as the obligors and ..~ , called the surety(ies) (which expression shall, unless repugnant to the context or meaning thereof, include our heirs, successors, executors, administrators, liquidators, legal representatives and assignees) hereby hold and firmly bind ourselves jointly and severally unto the President of India, hereinafter referred to as the Government in the sum of Rs. ..... (Rupees.....only) for which payment to be well and truly made, we, the obligors, bind ourselves by these presents.

WHEREAS we the obligors have been granted by the Government an Industrial licence for setting up a hundred per cent export oriented undertaking for the manufacture of goods for export out of India on the terms and conditions stipulated in the letter of intent No..... dated .....and we the obligors have duly accepted the said terms and conditions.

AND WHEREAS the [Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] at.....has licensed/authorised the premises at..... as a private warehouse/unit wherein the dutiable goods, imported/sourced indigenously by us from time to time for manufacture of goods as aforesaid could be deposited for a period of 5 years/one years as the case may be without payment of duty on conditions specified in sub-section (I) of section 59 of the Customs Act, 1962, which conditions we the obligors hereby accept.

AND WHEREAS on compliance with the provisions of the said section 59 as aforesaid, the proper officer [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or such other delegated authority, as the case may be, has made an order under section 60 of the Customs Act and under Chapter X of the Central Excise Rules, 1944, permitting us to deposit the aforesaid goods in the said private warehouse without payment of duty.

AND WHEREAS we the obligors having been permitted by the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise/Customs] at.....to purchase from time to time goods not exceeding the quantity listed in the Annexure I as may be required for manufacture of goods in his factory annually in the manner specified without payment of whole of the duty.

AND WHEREAS the said [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] has permitted the obligor to clear duty free imported goods from Ports/ Airports/Inland Container Depots or Bonded Warehouses as the case may be, to the export oriented unit.

AND WHEREAS, pursuant to sub-section (I) of section 65 of the said Customs Act, the said [Assistant Commissioner of Central Excise] or Deputy Commissioner of customs/ central Excise has accorded sanction to

us, the obligors, on payment of the prescribed fee of Rs.....(Rupees.....only) and on prescribed conditions hereinafter set-out which conditions we the obligors hereby accept, to carry on manufacturing operations in relation to the said imported goods.

AND WHEREAS the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise/Customs] or proper officer under section 67 of the Customs Act, or [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or such other delegated authority, as the case may be, under rule 13 of the Central Excise Rules, 1944 has permitted the obligors to remove the said goods from the said unit without payment of duty and despatch the same by air, sea, rail or road for export to foreign countries without payment of duty and when required *bonafide* to do so, or other EOUs/warehouses subject to the prescribed conditions set out for the due arrival of the said goods at the said warehouse.

AND WHEREAS the [Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] has permitted the obligor to remove the goods sourced imported/domestically or goods partially manufactured or processed therefrom to the any other place in India without payment of duty subject to such conditions and limitations as may be specified by him for the purpose of repair, refining, processing, testing job work or display and to be returned to the unit thereafter.

AND WHEREAS the [Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] has permitted provisional assessment of goods manufactured/warehoused by the above obligors from time to time which could not be finalised for want of full information as regard to value/description/quality or of the proof thereof or for the non-completion of the chemical or other tests in respect thereof or otherwise, as per the provisions contained in the Central Excise Rules, 1944 as per request of the obligator.

AND WHEREAS the Commissioner of Central Excise or such other delegated authority as the case may be, has required the obligor to deposit as security for the amount of this bond, the sum of Rs.....(Rupees.....) in cash (the securities as hereinafter mentioned of a total value of Rs.....(Rupees.....) endorsed in favour of the President of India and accepted for and on behalf of the President of India by the Commissioner, Joint Commissioner of Central Excise], [Assistant Commissioner of Central Excise and Deputy Commissioner of Central Excise] Superintendent of Central Excise, namely .....) and whereas the obligor has furnished such guarantee by depositing the cash/securities as aforementioned.

Now the conditions of the above written bond are that:

1. We, the obligors shall, observe all the provisions of. the Customs Act, 1962, Central Excise Act, 1944 and the rules and regulations made thereunder in respect of the said goods.

2. We. the obligors shall, pay on or before a date specified in a notice of demand all duties, and rent and charges claimable on account of the said goods under the Customs Act, 1962, Central Excise Act, 1944 and rules/regulations made thereunder together with interest on the same from the date so specified at the rate applicable.

3. We, the obligors shall, discharge all duties and penalties imposed for violation of the provisions of the Customs Act, 1962, Central Excise Act, 1944, rules and regulations in respect of the said goods not removed within one year or 5 years as the case may be from the date of the order permitting the deposit of the said goods at the said warehouse/EOU, or within such further time as may be extended by the Chief Commissioner, Commissioner of Customs/Central Excise or by the Central Board of Excise & Customs, on a specific request made by us, the obligors and also pay interest at a rate applicable from the expiry of the above said period till the date of the clearance of the goods.

4. We, the obligors shall, furnish to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] at Port/ Airport/International Container Depot/warehouse evidence to his satisfaction within a period of three months from the date of despatch from any warehouse or unit that the said goods have duly arrived at the unit or the warehouse as the case may be.

5. We, the obligors, shall be wholly and solely responsible for ensuring that there shall be no pilferage during transit of the said goods when despatched from the place of import, the factory of manufacture, or from the warehouse to the unit and, *vice versa,* and we, the obligors, shall pay the duty on pilfered goods, if any.

6. We, the obligors, shall observe and comply with all the provisions of the manufacture and other operations in Warehouse Regulations, 1966, Warehoused Goods (Removal) Regulations, 1963 and such other conditions as may be imposed by the proper officer [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or such other delegated authority, as the case may be for carrying out the purpose of the aforesaid regulations.

7. We, the obligors, shall maintain detailed accounts of all imported and indigenous goods used in the manufacturing processes and operations in proper [form including of those remaining in stock and those sent outside under our obligation, and shall produce such accounts for inspection of the proper officer Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or such other delegated authority as the case may be, when directed by him.

8. We, the obligors shall, provide to the officer of Customs/Excise stationed at the warehouse for control and supervision of the manufacturing processes and other operations such amenities, as may be specified by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.

9. We, the obligors, shall pay all charges, including pay, allowance, leave and pension. any charges of such officer.

10. We, the obligors, shall fulfil the export obligation and conditions stipulated in Customs/Central Excise Notifications, as amended, under which the specified goods have been imported/sourced, as well as the Import-Export Policy for April, 1997 to 2002,as amended from time to time and to pay on demand an amount equal to the Customs and Central Excise Duties leviable on the goods as are not proved to the satisfaction of : Assistant Commissioner of Central Excise or Deputy Commissioner of *Customs/* Central Excise] to have been used in the manufacture of articles for export and any penalty imposed under Customs Act 1962 or Central

Excise Act, 1944 and rules or regulations made thereunder as the case may be.

11. We, the obligors, shall discharge all dues whether Central Excise duty or the lawful charge which shall be demandable on the goods obtained by us without payment duty from' the domestic tariff area and transported from the place of procurement to our premises for use in Special Industrial purpose and shall also pay after final assessment by the proper officer Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or such other delegated authority, as the case may be, which were assessed on provisional basis under rule 9B of the Central Excise Rules, 1944 all dues within 10 days of the date of demand thereof being made in writing by such officers.

12. We, the obligors, shall if the articles so manufactured are allowed to be sold in India in such quantity and subject to such other limitations and conditions as may be specified in this behalf by the Director General of Foreign Trade, pay duty of Excise leviable, on such articles under section 3 of the Central Excise Act, 1944; and shall pay duty of, excise leviable on such articles under section 3 of Central Excise Act, 1944 and duty of Customs & Central Excise leviable on the raw materials/component parts used in the manufacture of such articles as are not allowed to be sold in India in accordance with the provision of Exim Policy.

13. We, the obligors, shall comply with the conditions and limitations stipulated in the said Import and Export Policy as amended from time to time or the Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] permitting the goods imported into India or sourced indigenously for the purpose aforesaid or the articles manufactured or package therefrom to be taken outside the undertaking temporarily, without payment of duty, for testing, repairs, reconditioning, processing or display, etc.

14. We, the obligors, shall not change the name and style under which we, the obligors, are doing business or change the location of the manufacturing premises except with the written permission of the [Assistant Commissioner of Central Excise or Deputy Commissioner of Customs/Central Excise] at.....

If each and every one of the above conditions is duly complied with by us, the obligors, the above written bond shall be void and of no effect; otherwise the same shall remain in full force and effect and virtue.

It is hereby declared by us, the obligors and the Government as follows;

1. The above written bond shall continue in force notwithstanding the transfer of the goods to any other person or removal of the said goods from one warehouse to another warehouse;

2. The above written bond is given for the performance of an act in which the public are interested;

3. .The Government through the Commissioner of Customs/Central Excise or any other officer of Customs/Central Excise recover the sums due from the obligors in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 or sub-section (1) of section 11 A of the Central Excise Act, 1944 :

Provided always that the liability of the surety hereunder shall not be impaired or discharged by reason of any time being granted or any forbearance, act or omission of the Government (whether with or without the knowledge or the consent of the surety) in respect of or in relation to the obligation and condition to be performed or discharged by the obligor(s) nor shall it be necessary to sue the obligor(s) before suing the surety for amounts hereunder.

AND the President of India shall, at his option, be competent to make good all the loss and damages from the amount of the security deposit or by endorsing his rights under the above written bond or both;

I/We further declare that this bond is given under the orders of the Central Government in the performance of an act in which the public are interested;

In these presents the words imposing singular only shall also include the plural and *vice versa* where the context so requires;

IN WITNESS THEREOF these presents have been signed this day ..... Of . 20..... hereinbefore written by the obligor(s) and the surety(ies).

Place
Date:
Signature of the obligor

Witnesses (1)Address (1) Occupation(1)
(2)Address (2) Occupation(2)

Signature of the Surety
Witnesses (1)Address (1) Occupation(1)
(2)Address (2) Occupation(2)

Signature and date
Name.....
Designation .....

ACCEPTED for and on behalf of the President of India on .... Day of ... 20..

Signature and date
Name.....
Designation .....

ANNEXURE 1

TABLE

Marks & Numbers	No.of packages	Description of goods	Quantity	Assesable value	Rate of Duty	Amount of Duty
1	2	3	4	5.	6.	7

ANNEXURE 44

FORM NO. E.A.-1

(See Rule 3)

Form of Appeal to the Commissioner(Appeals) under section 35 of the Act

1. No. ..... of 2001

2. Name and address of the appellant.

3. Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.

4. Date of communication of the decision or order appealed against to the appellant.

5. Address to which notices may be sent to the appellant.

(i) Description and classification of goods

(ii) Period of dispute

(iii) Amount of duty, if any, demanded for the period mentioned in the item (ii)

(iv) Amount of refund, if any, claimed for the period mentioned in item (ii)

(v) Amount of fine imposed

(vi) Amount of penalty imposed

(vii) Market value of seized goods.

7. Whether duty or penalty or both is deposited; if not whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished).

8. Whether the appellant wishes to be heard in person?

9. Reliefs claimed in appeal.

Statement of facts
Grounds of appeal

Signature of the authorized Representative, if any.

Signature of the applicant.

Verification

I ..... the appellant, ...do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the .....day of.....

Place.....
Date.....

Signature of the authorized Representative, if any.

Signature of the applicant.

Note - (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of rule 3.

(2) The form of appeal including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

ANNEXURE 45

FORM NO.E.A.-2

(See Rule 4)

Form of Application to the Commissioner (Appeals) under sub-section (4) of Section 35E of the Act.

No..... of 2001

.....Applicant.

.....Respondent.

1. Designation and address of the applicant (If the applicant is not the adjudicating authority, a copy of the authorization from the Commissioner of Central Excise to make the application should be enclosed).

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

4. Date on which order under sub-section (1) of section 35E has been passed by the Board.

5. Date of communication of the order referred to in (3) above in the adjudicating authority.

6. (i) Description and classification of goods

   (ii) Period of dispute

   (iii) Amount of duty, if any demanded for the period mentioned in column (ii)

   (iv) Amount of refund, if any, claimed for the period mentioned in column (ii)

   (v) Amount of fine imposed

   (vi) Amount of penalty imposed

   (vii) Market value of seized goods.

7. Reliefs claimed in the application.

ANNEXURE 46

[See Rule 6 of the Central Excise (Appeal) Rules, 2001]

FORM NO. E.A.-3

(See Rule 6)

Form of Appeal to Appellate Tribunal under section 35B of the Act

[IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL]

APPEAL NO. ..... OF 2001

.....Appellant.

.....Respondent.

1. The designation and address of the authority passing the order appealed against.

2. The number and date of the order appealed against.

3. Date of communication of a copy of the order appealed against.

4. State/Union territory and the Commissionerate in which the order/decision of assessment/penalty/fine was made.

5. Designation and address of the adjudicating authority in cases where the order appealed against is an order of the Commissioner (Appeals).

6. Address to which the notices may be sent to the appellant.

7. Address to which the notices may be sent to the respondent.

8. Whether the decision or order appealed against involves any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment or not; difference in duty or duty involved, or amount of fine or penalty involved or value of goods involves, as the case may be.

9. (i) Description and classification of goods

   (ii) Period of dispute

   (iii) Amount of duty, if any, demanded for the period mentioned in item (ii)

   (iv) Amount of refund, if any, claimed for the period mentioned in item (ii)

   (v) Amount of fine imposed

   (vi) Amount of penalty imposed

   (vii) Market value of seized goods.

10. Whether duty or penalty is deposited, if not, whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished).

11. Whether the appellant wishes to be heard in person?

12. Reliefs claimed in appeal.

Statement of facts
Grounds of appeal

Signature of the authorized Representative, if any

Signature of the applicant.

Verification

I, ... the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of ..... 2001 .....

Signature of the authorized Representative, if any

Signature of the applicant.

Notes - (1) The grounds of appeal and the form of verification shall, if the appeal is made by any person, other than the Commissioner of Central Excise be signed by the appellant in accordance with Rule 3.

(2) The appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appeal against (one of which at least shall be a certified copy).

(3) The form of appeal shall be in English (or Hindi) and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively.

(4) The fee of Rs.200.00 required to be paid under the provisions of the Act shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

ANNEXURE 47

FORM NO.E.A.-4

[See Rule 6(2)]

Form of Memorandum of Cross-objections to the Appellate Tribunal under Section 35 B of the Act

[IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL]

Cross-objection No. ..... Of 2001

In Appeal No. ..... of 2001

.....Appellnt.

Vs.

.....Respondent.

1. State/Union Territory and the Commissionerate in which the order/decision of assessment/penalty/fine was made.

2. Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the appellant or as the case may be, the Commissioner of Central Excise.

3. Address to which notices may be sent to the respondent.

4. Address to which notices may be sent to the appellant/applicant.

5. Whether the decision or order appealed against involves any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment; if not, difference in duty or duty involved, or amount of fine or penalty involved or value of goods involved, as the case may be.

6. (i) Description and classification of goods
   (ii) Period of dispute
   (iii) Amount of duty, if any demanded for the period mentioned in item (ii)
   (iv) Amount of refund, if any, claimed for the period mentioned in item (ii)
   (v) Amount of fine imposed
   (vi) Amount of penalty imposed
   (vii) Market value of seized goods.

7. Reliefs claimed in the memorandum of cross-objections.

Signature of the authorized Representative, if any

Signature of the Respondent.

Verification

I, ... the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of ..... 2001 .....

Signature of the authorized Representative, if any

Signature of the Respondent.

Notes - (1) The grounds of cross objections and the form of verification shall be signed by the respondent in accordance with the provisions of Rule 3.

(2) The form of memorandum of cross-objections shall be filed in quadruplicate.

(3) The form of memorandum of cross-objections should be in English or Hindi and should set forth, concisely and under distinct heads the ground of the cross-objections without any argument or narrative and such grounds should be numbered consecutively.

(4) The number and year of appeal/application as allotted by the office of the Appellate Tribunal and appearing in the notice of appeal/application received by the respondent is to be filled in by the respondent.

ANNEXURE 48

FORM NO.E.A.-5

[See Rule 7]

Form of Application to Appellate Tribunal under sub-section(1) of Section 35B of the Act

[IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL]

APPEAL No. ..... of ..... 2001.

..... Applicant.

.....Respondent.

1. Designation and address of the applicant (If the applicant is not the adjudicating authority, a copy of the authorization from the Commissioner of Central Excise to make the application should be enclosed).

2. Name and address of the respondent.

3. Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.

4. State/Union Territory and the Commissionerate in which the decision or order was made.

5. Date on which order under sub-section (1) of section 35E of the Act has been passed by the Board.

6. Date of communication of the order referred to in (3) above to the adjudicating authority.

7. Whether the decision or order appealed against involves any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment; if not, difference in duty or duty involved, or amount of fine or penalty involved or value of goods involved, as the case may be.

8. (i) Description and classification of goods

   (ii) Period of dispute

   (iii) Amount of duty, if any demanded for the period mentioned in column (ii)

   (iv) Amount of refund, if any, claimed for the period mentioned in column (ii)

   (v) Amount of fine imposed

   (vi) Amount of penalty imposed

   (vii) Market value of seized goods.

9. Relief claimed in the application.

Statement of facts

Ground of application

Signature of the authorized Representative, if any

Signature of the applicant.

Note :- The form of application including the statement of facts and grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the Commissioner of Central Excise (one of which at least shall be a certified copy) and a copy of the order passed by the Board under sub-section (1) of section 35E of the Act.

ANNEXURE 49

FORM NO.E.A.-6

[See Rule 8(1)]

Form of Application to the High Court under sub-section (1) Of Section 35H of the Act.

IN THE HIGH COURT OF JUDICATURE AT

In the matter of Appeal No. (name of the appellant)

Application No. ..... of 2001

(To be filled in by the Office)

..... Applicant.

....Respondent.

1. State or Union Territory and the Commissionerate from which the application is filed.

2. Number of the appeal which gives rise to the reference.

3. Address to which notices may be sent to the applicant.

4. Address to which notices may be sent to the respondent.

5. The appeal noted above was decided by the ..... Bench of the Appellate Tribunal on.

6. The notices of the order under section 35C of the Act was served on the applicant on.

7. The facts which are admitted and/or found by the Appellate Tribunal and which are necessary for drawing up a statement of the case are stated in the enclosure for ready reference.

8. The following questions of law arise out of the order of the Appellate Tribunal.

9. The applicant, therefore, requires under sub-section (1) of section 35H of the Act that the High Court directs the Appellate Tribunal to refer to the High Court the question of law referred to in paragraph 8 above.

10. The documents or copies thereof specified below (the translation in English of the documents, where necessary) are annexed with the statement of the case.

Signature of the authorized Representative, if any

Signature of the applicant.

Verification

I, ... the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of ..... 2001 .....

Signature of the authorized Representative, if any

Signature of the applicant.

Notes.- (1) The application and the form of verification shall, if the application is made by any person, other than the Commissioner of Customs, be signed by the applicant in accordance with the provisions of Rule

(2) The application shall be filed in quadruplicate.

(3) The fee of Rs.200/- required to be paid under the provisions of the Act shall be through a crossed bank draft drawn in favour of the Registrar of the High Court on a branch of any nationalized bank located at the place where the High Court is situated and the demand draft shall be attached to the form of application.

ANNEXURE 50

FORM No.E.A.-7

[See Rule 8(2)]

Form of Memorandum of Cross-objections under sub-section (3) of section 35H of the Act in the matter of an application before the High Court under sub-section (1) of section 35H of the Act.

IN THE HIGH COURT OF JUDICTURE AT .....

Memorandum of Cross-Objection No. ..... of ..... 2001 .....

(To be filled in by the office)

In application No. ..... Of ..... 2001 .....

.....Applicant.

Vs.

..... Respondent.

1. State or Union Territory and the Commissionerate from which the memorandum of cross-objection is filed.

2. Date of receipt of application filed with the High Court by the respondent.

3. Address to which notices may be sent to the respondent.

4. Address to which notices may be sent to the applicant.

5. The facts which are admitted and/or found by the Appellate Tribunal and which are necessary for drawing up a statement of the case, are stated in the enclosure for ready reference.

6. The following questions of law arise out of the order of the Appellate Tribunal.

7. The respondent, therefore, requires under sub-section (1) of section 35H of the Act that the Tribunal may be directed to furnish a statement of the case on the questions of law referred to in paragraph 6 above.

8. That the documents or copies thereof as specified below (the translation in English of the documents where necessary) is annexed with the statement of case.

Signature of the authorized
Representative, if any

Signature of the applicant.

Verification

I, ... the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of ..... 2001 .....

Signature of the authorized
Representative, if any

Signature of the applicant.

Notes.

(1) The form of memorandum of cross-objection and the form of certification shall, if the memorandum is filed by any person, other than the Commissioner of Central Excise be signed in accordance with the provisions of Rule 3.

(2) The memorandum of cross-objection shall be filed in quadruplicate.

ANNEXURE 51

FORM NO. E.A.-8

(See Rule 9)

Form of Revision Application to the Central Government under Section 35EE of the Act.

Revision application No. ..... of ..... 2001 .....

1. Name and address of the applicant.

2. Address of the Commissioner (Appeals) passing the order against which the revision application is filed.

3. The number and date of the order.

4. Date of communication of the order.

5. Designation and address of the adjudicating authority against which the order has been passed by the Commissioner (Appeals).

6. Address to which notices/communications may be sent to the applicant.

7. Whether the appellant wishes to be heard in person.

8. (i) Description and classification of goods

   (ii) Period of dispute

   (iii) Amount of duty, if any demanded for the period mentioned in item (ii)

   (iv) Amount of refund, if any, claimed for the period mentioned in item (ii)

   (v) Amount of fine imposed

   (vi) Amount of penalty imposed

   (vii) Market value of seized goods.

9. Whether duty or penalty, if any, has been deposited (a copy/extract of the challan/account-current, as the case may be under which the deposit is made, shall be furnished).

10. Relief claimed in application.

Statement of facts

Grounds of application

Signature of the authorized Representative, if any

Signature of the applicant.

Verification

I, ... the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of ..... 2001 .....

Signature of the authorized
Representative, if any

Signature of the applicant.

Note.- (1) The grounds of application and the form of verification shall be signed by the person specified in sub-rule (2) of Rule 3.

(2) Whether the application is signed by the authorized representative of the applicant, the document authorizing the representative to sign and appear on behalf of the applicant shall be appended to the application.

(3) The application, including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by an equal number of copies of the order against which the application is filed and also the decision/order of the adjudicating authority against which Commissioner (Appeals) passed the order.

(4) The form of application shall be in English (or Hindi) and should set forth concisely and under distinct head grounds of application without any argument or narration and such grounds should be numbered consecutively.

(5) The fee of Rs.200.00 required to be paid under the provisions of the Act shall be paid under T.R.6 challan and the duplicate copy of T.R.6 challan shall be filed along with the application for revision.