

[(TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No. 3/2012-CENTRAL EXCISE (N.T.)

New Delhi, dated, 12th March, 2012

G.S.R. __ (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2012.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the CENVAT Credit Rules, 2004, for rule 12AA the following rule shall be substituted, namely:-

"12AAA: Power to impose restrictions in certain types of cases.- Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board".

F.No.267/77/2011-CX.8

(V P Singh)
Under Secretary to the Government of India

Note.- The principal rules were published vide notification No. 23/2004-Central Excise (N.T.), dated the 10th September, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide G.S.R.600 (E), dated the 10th September, 2004 and were last amended vide notification number 01/2012-Central Excise (NT), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1), vide number G.S.R 83(E), dated 9th February, 2012.

[(TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No. 4/2012-CENTRAL EXCISE (N.T.)

New Delhi, dated, 12th March, 2012

G.S.R.__(E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 2002, namely:-

1.(1) These rules may be called the Central Excise (First Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise Rules, 2002, for rule 12CC, the following rule shall be substituted, namely:-

"12CCC: Power to impose restrictions in certain types of cases.- Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of evasion of duty, nature and type of offences or such other factors as may be relevant, is of the opinion that in order to prevent evasion of, and default in payment of, duty of excise, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify the nature of restrictions including suspension of registration in case of a dealer, types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board".

F.No.267/77/2011-CX.8

(V P Singh)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India vide notification number 04/2002-CE(NT), dated the 1st March, 2002 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide G.S.R. 143(E), dated the 1st March 2002 and were last amended vide notification number 32/2011-CE (NT), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (1), vide number G.S.R 917(E), dated 30th December, 2011.

[(TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No. 5/2012 - Central Excise (N.T.)

New Delhi, dated, 12th March, 2012

G.S.R. (E).- In pursuance of rule 12CCC of the Central Excise Rules, 2002, and rule 12AAA of the CENVAT Credit Rules, 2004 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 32/2006-Central Excise (N.T), dated the 30th December, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide G.S.R number 782 (E) dated the 30th December, 2006, the Central Government, hereby declares that where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following,-

- (a) removal of goods without the cover of an invoice and without payment of duty;
- (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
- (c) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
- (d) taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;
- (e) issuing duty of excise invoice without delivery of goods specified in the said invoice;
- (f) claiming of refund or rebate based on the duty of excise paid invoice or other documents which a person has reason to believe as not genuine;
- (g) removal of inputs as such on which Cenvat credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the Cenvat Credit Rules, 2004,

an officer authorized by the Central Board of Excise and Customs may order for withdrawal of facilities or impose the restrictions as specified in para 2 of this notification.

2. Facilities to be withdrawn and imposition of restrictions.- (1) Where a manufacturer is prima facie found to be knowingly involved in committing the offences specified in para 1, the officer authorized by the Central Board of Excise and Customs may impose following restrictions on the facilities, namely:-

- (i) the monthly payment of duty of excise may be withdrawn and the assessee shall be required to pay duty of excise for each consignment at the time of removal of goods;
- (ii) payment of duty of excise by utilisation of CENVAT credit may be restricted and the

assessee shall be required to pay duty of excise without utilising the CENVAT credit;

(iii) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which Cenvat credit has not been taken;

(iv) the assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which Cenvat credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order:

Provided that where a person is found to be knowingly involved in committing any one or more type of offences as specified in para 1 for the second time or subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse.

Explanation.- For the purposes of this paragraph, it is clarified that-

(i) a person against whom the order under sub-para (3) of para 4 has been passed may continue to take CENVAT credit, however, he would not be able to utilize the credit for payment of duty during the period specified in the said order.

(ii) if the assessee commits any offence specified in para 1 for the second time or subsequently, the officer authorized by the Central Board of Excise and Customs may impose the restriction specified in clauses (i) and (ii).

(iii) "principal inputs", means 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 raw materials for the manufacture of unit quantity of a given final products.

(2) Where a first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e) of para 1, the officer authorized by the Central Board of Excise and Customs may order suspension for a specified period, the registration granted under rule 9 of the Central Excise Rules 2002.

(3) During the period of suspension, the said dealer shall not issue any Central Excise Invoice:

Provided that he may continue his business and issue sales invoices without showing duty of excise in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

(4) Where a merchant exporter is found to be knowingly involved in committing the type of offence specified in clause (f) of para 1, the officer authorized by the Central Board of Excise and Customs may order withdrawal of the self sealing facility for export consignment and each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer:

(5) If a manufacturer, first stage dealer or second stage dealer or an exporter does anything specified in clause (f) of para 1, the officer authorized by the Central Board of Excise and Customs may order withdrawal of the other facility available to them.

3. Monetary limit.- The provisions of this notification shall be applicable only in a case where the duty of excise or CENVAT Credit alleged to be involved in anything specified in para 1 exceeds rupees ten lakhs.

4. Procedure.- (1)The Commissioner of Central Excise or Additional Director General of Central Excise Intelligence, as the case may be, after examination of records and other evidence, and after satisfying himself that the person has knowingly committed the offence as specified in para 1, may forward a proposal to the Chief Commissioner or Director General of Central Excise Intelligence, as the case may be, to withdraw the facilities and impose

restriction during or for such period, within 30 days of the detection of the case, as far as possible.

(2) The Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, as the case may be, shall examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that a person has knowingly done or contravened anything specified in para 1, may forward the proposal along with his recommendations to the Central Board of Excise and Customs:

provided that the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, before forwarding his recommendations, shall give an opportunity of being heard to the person against whom the proceedings have been initiated and shall take into account any representation made by such person before he forwards his recommendations to the Central Board of Excise and Customs.

(3) An officer authorized by the Central Board of Excise and Customs shall examine the recommendations received from the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative.

F.No.267/77/2011-CX.8

(V P Singh)

Under Secretary to the Government of India