



**OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS,
CENTRAL EXCISE & SERVICE TAX, HYDERABAD ZONE,
L.B. STADIUM ROAD : BASHEERBAGH : HYDERABAD – 500 004.**

Ph. (040) 23232028 Fax: 040-23230974, 23299206 (T/F)

E-Mail: raccehyd@gmail.com

C.No. IV/16/222 /2011-CC-HZ-Tech

DATE:: 3.01.2013

**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY
COMMITTEE, HYDERABAD ZONE HELD ON 28.12.2012**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 28.12.2012 at 15.30 hrs, at Hyderabad, which was presided over by Shri Shashi Bhushan Singh, Chief Commissioner of Customs, Central Excise & Service Tax, Hyderabad Zone, Hyderabad and was attended by the following members :-

1. Shri S.Thirumalai, The Federation of A.P.Chambers of Commerce & Industry (FAPCCI).
 2. Shri Mahesh Pandya, All India Manufacturers Organisation.
 3. Shri Vijay Kumar, Member of All India Induction Furnace Association.
 4. Shri K. Radha Krishna Murthy, Representative of Bulk Drug manufacturers Association.
 5. Shri C.S. Narendar, President, Customs House Agents Association.
 6. Shri Lalit Mohan Chandna, Representative of The Institute of Company Secretaries of India
 7. Shri V.S. Sudheer, Representative of The Andhra Pradesh Tax Bar Association.
2. Following Departmental Officers were also present:-
1. Shri M.K. Singh, Commissioner, Hyderabad-II Commissionerate
 2. Shri J.S.Chandrashekar, Commissioner, Hyderabad-III Commissionerate.
 3. Shri M. Srinivas, Commissioner (Appeals I & III).
 4. Dr. S.L. Meena, Commissioner (Appeals II & IV).
 5. Shri R.S. Maheshwari, Additional Commissioner(CCO)

6. Shri R. Manohar, Additional Commissioner, Hyderabad-IV
Commissionerate.

3. The Chief Commissioner, welcomed all the members of the RAC.
Thereafter the following Agenda points were taken up for discussion:-

3.1 Points raised by Representative of the Institute of Company Secretaries of India, Hyderabad.

Point No.1: Eltech Services (P) Ltd, New Bowenpally, Hyderabad, is SSI unit engaged in the manufacture of Door inter lock systems and other similar goods. Eltech has been claiming SSI exemption under Notification No.8/2003-CE upto Rs.150 lakhs. Recently, it has supplied some goods to a SEZ unit at Vizag. The officers refused to admit the goods in SEZ for want of LUT and ARE1.

Please clarify the following:-

- a) **We are not register with excise being SSI and claiming exemption.**
- b) **What is the procedure for supply to SEZ for exports. Since we are not registered, should be execute LUT and prepare ARE1 for supply to SEZ or for exports.**

Reply: The Chief Commissioner draw the attention of the members to the Rule 30 (10) of SEZ Rules, 2006 which provides that where the goods are to be procured by a Unit or Developer from a Domestic Tariff Area supplier who is not registered with the Central Excise authorities, or is a trader or merchant exporter, the procedure under sub-rule (1) and (2) of the Rule shall apply, *mutates-mutandis*, except that the goods shall be brought to the Special Economic Zone under the cover of an Invoice and the ARE-1 shall not be required.

In view of the above the Chief Commissioner requested the members to take up the matter with SEZ authorities.

Point No.2: Pitti Laminations Limited

- (i) **We are engaged in manufacture of Laminations & Stampings and supply mostly to GE, USA. To export this item, we are importing inputs under DFIA scheme without duties. Locally we procure inputs on payment of duty. Both imported / Local inputs are used for manufacture of Stampings / Laminations for Export. We have credit in Cenvat Account. Can we export our finished goods under claim for rebate under Rule 18 of Central Excise Rules, 2002? Kindly confirm.**

Reply: The Chief Commissioner informed that the issue raised needs further examination in consultation with the Board and accordingly it was deferred for next meeting.

- (ii) **When a registered excise manufacturer wants to get the goods manufactured on job work basis, he is filing a declaration under Notification 214/86 and sending the inputs to his job worker under Rule 4(5)(a) of Cenvat Credit Rules. The procedure is simple and no approval is required from the department.**

Rule 16A of Central Excise Rules, 2002 was inserted w.e.f. 01.04.2003. As per this rule, any inputs may be removed for job work subject to fulfillment of conditions specified in this behalf by the Commissioner of Central Excise. Department has been taking a view that for any 'job work', a manufacturer has to obtain permission under Rule 16A. Whereas industry is of the view that when Cenvat Credit Rules 2004, independently contain the procedure, no approval is required under Rule 16A. Rule 16A may be applicable in those cases where provisions of Cenvat Credit Rules are not applicable. Kindly clarify.

Reply: The Chief Commissioner informed that Rule 16 of the CER, 1944 provides that any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfillment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

The Chief Commissioner clarified that so far no conditions have been prescribed by any of the Commissionerates in this Zone and therefore no permission is required for clearing the inputs for Job Work. However, he directed the Commissioners to issue suitable trade notice specifying the conditions/procedure to be followed in this regard to streamline the implementation of the said rule.

Point No.3: We M/s. M.G.Automotives Pvt. Ltd, Zaheerabad are manufacturing buses and some of the buses are cleared without payment of duty under Notification 6/2006-CE dated 01.03.2006. On buses, in addition to excise duty, NCCD is also payable, which has been levied under Finance Act, 2001.

The department has been demanding NCCD even on those buses which are cleared under exemption Notification 6/2006. CBEC circular No.641/32/02-Cx. Dt.26.06.2002 and Section 37B order No.60/1/2006 dt.13.01.2006, has clarified

that NCCD is not payable on exports of goods. Tribunal in case of Toyota Kirloskar – 2006 (196) ELT 362 also held that NCCD is also exempt when excise duty is exempt. Please clarify the correct position?

Reply: The Chief Commissioner informed that the Notification No.6/2006 CE dated 01.03.2006 grants partial or full exemption to the duty of excise specified under First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the table. The exemption is only to the duties specified under the First Schedule to the CETA. The exemption is also not absolute exemption as it is based on the rate specified in column 4 of the table.

NCCD is charged under Section 136 of the Finance Act, 2003 on specified goods manufactured in India. Since NCCD is levied under Seventh Schedule to the CETA and not under First Schedule to the CETA, the exemption from NCCD would not be available basing on the conditions of the Notification.

The Chief Commissioner further informed that the above view has been upheld by the Tribunal in the case of M/s.Hero Honda Motors – 2011 (273) ELT 89 (Trib) and Superfine Syntex (P) Ltd., reported in 2009(237)ELT 292 (Tri-Ahmd).

Point No.4: We are manufacturers as well as providing service. We are also doing `trading`, trading is to be treated as "exempted service" for the purposes of Cenvat Credit Rules 2004. Please clarify.

Reply: The Chief Commissioner informed that the scheme of cenvat credit on input/input services is intended to avoid the cascading effect of taxes. The Cenvat Credit Rules, 2004 have been framed to allow cenvat credit on input/input service/capital goods which are used for providing taxable output services or manufacture of dutiable final product. The basic philosophy as enshrined in Rule 6 of the said Rules is that credit on eligible input/input services is admissible if the same are used for output service/manufacture of finished goods on which appropriate service tax/excise duty is payable/paid. The activity of trading does not entail any payment of service tax/excise duty. Consequently, cenvat credit on input services attributable to trading activity is not admissible.

With effect from 1.7.2012, the exempted service has been defined under Rule 2(e) of Cenvat Credit Rules, 2004 as under:-

2(e) "exempted service" means a -

- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (2) service, on which no service tax is leviable under Section 66B of the Finance Act; or
- (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of Rule 6A of Service Tax Rules, 1994.

Consequent to introduction of negative list of services, the trading of goods has been mentioned at Sl.No. (e) of the negative list of services under Section 66D of the Act. Therefore trading of goods is to be considered as 'exempted services' for the purpose of Cenvat Credit Rules, 2004.

Point No.5: Non issuance of user ID / TPIN No. & Password.
On 6th November, 2012 two of my clients (who are individuals) have given letter to Superintendent (Service Tax) Hyderabad-II-Commissionerate (Group-IX) (which were acknowledged on 08.11.2012) requesting for user ID (TPIN No.) and Password. (copies of letters enclosed). Thereafter, a letter was sent to Assistant Commissioner, on 29.11.2012 to look into the matter (copy enclosed). Till date no action on this.

Reply: The Chief Commissioner informed that in this case the TPINs were issued on 8-11-2012 i.e., immediately on receipt of the above referred letters. However, the passwords regenerated on 18.12.2012 once again as the same were said to have been not received by the assessee on 18-12-2012.

3.2 Points raised by Representative of the All India Manufacturers Organisation.

Point No.6: Please advise the head in Central Excise ER1 return where we can show the credit taken on the basis of orders passed by Dy. Commissioner (eg. that portion of the rebate claim which is not refunded but allowed credit).

Reply: The Chief Commissioner informed that while examining a rebate claim, the Assistant/Deputy Commissioner should decide the

amount of duty rebatable. Any duty of Excise which is not rebatable cannot be sanctioned either in cash or in credit to CENVAT and therefore there should not be any occasion to take such credit. He directed the Commissioners to look into it and issue suitable instructions to the Divisional Officers in this regard. However as there may still be certain circumstances where refund is sanctioned by way of credit in CENVAT account, the matter would be taken up with the Director General of Systems to provide an entry for the purpose in the Return. It was further advised that till suitable changes are made, credit may be shown under the head where it fell originally at the time of taking initial credit.

**Point No.7: Due to rounding off in every invoice, total of ED over all invoices in a month will differ slightly from system calculated ED based on the total clearances for the month. The ER1 excel download utility should not give following error message on this account:
"There are calculation errors in sheet payable (1)"**

Reply: The Chief Commissioner informed that Section 37 D of the Act provides for rounding off of duty, interest, penalty etc., to the nearest rupee, as under:-

"The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored".

It is clear from the perusal of said section that this rounding off should be done at the stage of duty payment, which is done on monthly basis. The invoice wise details are not captured in the system. Therefore, if the rounding off is done in respect of monthly duty payable, the system will not show any error.

However, the Chief Commissioner informed that the matter will be examined in detail and, if necessary, the same will be referred to the Directorate General of Systems.

Point No.8: Central Excise rebate claims for duty paid on goods exported: For Ex-works, export shipment being picked up by Customer nominated forwarder paid by the Customer, Rebate sanctioning department in Division Office is asking for local freight component and making corresponding

reductions in FOB value. For Ex-works exports it is improper to make reductions towards freight & local freight.

Reply: The Chief Commissioner informed that as per Section 4 of the Central Excise Act, 1944 the transaction value shall be the transaction value for delivery at the time and place of removal.

In case of goods sold on ex-works basis, the place of removal is the factory gate. Accordingly, the assessable value in such cases cannot include the transportation charges from the factory to the port.

However, if the contract price i.e., ex-works price is not inclusive of freight and no freight charges are paid by the exporter to the freight forwarder, the question of deduction of freight from the contract price does not arise.

Point No.9: CUSTOMS: A checklist of documents to be furnished for clearance of import of raw materials and export of finished products by manufacturers should be made available as a signed PDF file on the Departments Website.

Reply: The Chief Commissioner informed that the said information is available at Chapter 3 of CBEC Customs Manual & Customs Series Form No. 138 & 139 which are available in Part 5 Customs Forms & Bonds of Customs Law Manual for Non EDI cases. For EDI the information is available at Chapter 2, Sl.Nos. 21 and 22 of Manual for Self Assessment. The said information is also available at CBEC Website. The check list of documents are as under:

A) For Imports:

1. Signed invoice
2. Packing list
3. Bill of Lading or Delivery Order/Airway Bill
4. GATT declaration form duly filled in
5. Importers/CHA's declaration
6. License wherever necessary
7. Letter of Credit/Bank Draft/Wherever necessary
8. Insurance document
9. Import License
10. Industrial License, if required
11. Test report in case of Chemicals
12. Adhoc exemption order
13. DEEC Book/DEPB in original
14. Catalogue, Technical write up, Literature in case of machineries, spares or chemicals as may be applicable
15. Separately split up values of spares, components machines
16. Certificate of Origin, if preferential rate of duty is claimed

17. No Commission declaration

B) Exports:

1. A declaration in the format Annexure-A along with supporting documents.
2. Copy of Export Invoice
3. SDF declaration
4. Drawback/DEEC/DFRC/DEPB declarations/ AR-4s etc. as applicable.
5. Packing list.

4. The meeting concluded with vote of thanks by the Additional Commissioner (CCO), Hyderabad Zone, Hyderabad and the discussions are fruitful.

5. This issues with the approval of the Chief Commissioner.


03.01.13
(R.S. MAHESHWARI)
ADDITIONAL COMMISSIONER.
EX-OFFICIO MEMBER SECRETARY

To

All the RAC Members by E-mail.

Copy to:

- (1) The Commissioner, Customs, Central Excise & Service Tax, Hyderabad - I, II, III & IV Commissionerates and Appeals, Hyderabad.
- (2) Webmaster, with a request to upload the minutes on Zonal Website.