



**OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS,
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DATE: 14.07.2015

**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE,
HYDERABAD ZONE HELD ON 30.06.2015**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 30.06.2015 at 15.30 hrs, at Hyderabad, which was presided over by Ms. R.Shakuntala, Chief Commissioner and was attended by the following members :-

1. Shri. Lalith Mohan Chandna, representative of The Institute of Company Secretaries of India.
2. Shri. Ashok Surana, representative of the All India Manufacturers Association.
3. Shri. S.Thirumalai, representative of the Federation of A.P.Chambers of Commerce and Industry .
4. Shri. V.Hanumanta Rao, representative of The Federation of Andhra Pradesh Small Industries Association.
5. Shri.A.S.Roy, Assistant General Manager , MMTC Ltd.
6. Shri. M.Amanulla ,Manager, MMTC Ltd.

2. Following Departmental Officers were also present:-

1. Shri. B. Ravichandran, Principal Commissioner, Hyderabad III & Audit Commissionerate, Hyderabad
2. Shri. Sunil Jain, Commissioner, Hyderabad-II Commissionerate and Service Tax Commissionerate.
3. Shri.A.R.S.Kumar,Commissioner,Hyderabad-IV Commissionerate.
4. Shri. N.Sridhar, Commissioner, Customs Commissionerate.
5. Shri. M.Uma Shankar, Joint Commissioner, CCO, Hyderabad zone.

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

3.1 Points sponsored by Shri. Lalit Mohan Chandna,RAC Member on behalf of Institute of Company Secretaries:

(i) Place of Removal : Of late, the audit teams have been quoting Board Circulars No.988/12/2014-Cx dated 20.10.2014 and Circular No.999/6/2015-Cx dated 28.02.2015 to demand Excise duty on Transportation wherever an assessee has not included cost of freight into the value of the goods, for the purpose of excise duty calculation.

The above circulars have been issued with reference to 'place of removal' inserted in Cenvat Credit Rules, 2014 recently w.e.f. 11.07.2014. The industry view is that these circulars have no connection with law relating to 'valuation' under excise and or valuation rules, 2000 which are independent. But audit is of the view that wherever, an assessee agrees to deliver the goods at buyer's premises as per the purchase order, the sale takes place at the buyer's premises. Those issues are under litigation and notices have been already been issued. But audit seems to suggest that these circulars reflect the correct legal position on inclusion of freight and therefore have been asking the assessee to pay duty on freight? Please give your valuable comments on this. (Copies of Circulars enclosed).

Reply : The issue was discussed at length. In terms of Section 4(1) (a) of Central Excise Act, the duty of excise is chargeable on any excisable goods with reference to their value on each removal , where the goods are sold by the assessee for delivery at the time and **Place of Removal. Place of Removal** is defined as per para (c) of Explanation VI of Section 4(3) of the Central Excise Act .Further as per Explanation 2 to Rule 5 of Central Excise valuation Rules, it was clarified that the cost of transportation from the factory to the place of removal, where the factory is not the **Place of Removal**, shall not be excluded for the purposes of determining the value of excisable goods. Therefore it is evident that **Place of Removal** is to be determined for each removal for the purpose of determination of transaction value for proper payment of Central Excise duty.

Same definition of **Place of Removal** under Section 4 of the Central Excise Act is adopted and provided in Cenvat Credit Rules w.e.f. 11.07.2014 to bring harmony in determination of transaction value and availment of Cenvat credit . Subsequently Board has vide circulars no. 988/12/2014-CX dated 20.10.2014 and Circular no. 999/6/2015-CX dated

28.02.2015 issued clarification/guidelines for the purpose of determination of place of removal. Para (6) of the Board's circular dated 20.10.2014 states that the place of removal needs to be ascertained in terms of provisions of Central Excise Act 1944 read with provisions of the Sale of Goods Act ,1930. Therefore the place where sale has taken place or when property in goods passes from the seller to the buyer is the relevant consideration to determine **Place of Removal**.

Therefore the Chair opined that **Place of Removal** is to be ascertained for each removal based on terms and conditions of individual contracts and in terms of provisions of Central Excise Act 1944 read with provisions of the Sale of Goods Act ,1930 as reiterated in Board's Circular dated 20.10.2014 . Once place of removal is ascertained , there is no doubt about inclusion of freight charges up to the place of removal for the purpose of payment of Central Excise Duty and availment of Cenvat Credit on outward freight . The assesseees cannot claim factory gate as **Place of Removal** for payment of duty and other places for availing cenvat credit for outward freight when the definition of **Place of Removal** is same under Central Excise Act 1944 and Cenvat Credit Rules 2004.

The Principal Commissioner , Audit Commissionerate mentioned that the Departmental Audit Officers have been raising the said objections after having ascertained the "place of removal" from the documents furnished by the assesseees, in accordance with the Central Excise Act, 1944 and the Rule made there under and that the said circulars are very much relevant for the Valuation purpose as the definition of Place of Removal given in Section 4 of the Central Excise Act 1944 is only adopted and inserted in Cenvat Credit Rules 2004.

The Chair further opined that RAC is a forum constituted at local level to oversee difficulties in procedural aspects and to bring uniformity in implementation of rules and regulations in the field formations and is not a legal body or a policy making body and cannot rule on the matter of taxation/ clarify points on legal issues. Therefore, the members were requested not to sponsor points on taxation matters and on legal issues.

ii) Clearance of tools manufactured and captively used : A company has been manufacturing tools for their client and use the same in their factory for making final product of their client. Such tools are exempt from payment of excise duty under Notification 67/95-CE dated 16.03.1995. After some time the company will raise a bill and tools are sold to the client but physically the tools will remain in their factory. Sometimes, after using the tools for a period of one/two years, the owner wants the tools back. What is the procedure to be followed under Excise for clearance of such exempted tools? The company would have raised an excise invoice for 'captive consumption' in the month of manufacture and also the company would have shown in the production of tools in ER1 return. Now after two or three years of usages, the said tools are being sent to the owner. The questions are,-

- a) Procedure, if any to be followed under excise rules.
- b) Excise duty/Cenvat Credit implications if any.

Please clarify.

Reply : The Chair opined that it is a hypothetical point. However it was opined that assuming that the tools were manufactured in the factory and used within the factory of production they are eligible for exemption under Notification No. 67/1995-CE dated 16.03.1995. However when the said tools are cleared outside the factory of use, Central Excise Invoice has to be raised and appropriate Central Excise Duty is to be paid.

iii) Filing of returns by SSI Unit :An SSI unit has taken registration during 2014-15, since It crossed Rs.150 lakhs but did not cross Rs.400 lakhs. In the current financial year, the unit is again claiming exemption of Rs.150 lakhs from 01.04.2015. Is such unit required to file NIL return till he crosses Rs.150 lakhs turnover or he need not file any return such he is not paying any duty. Please clarify.

Reply : It was opined that if the assessee prefers to continue with the Registration already issued to them, they are required to file the returns

furnishing all the information i.e production, clearance, value of clearances, exemption notification numbers availed etc. in terms of second proviso to Rule 12(1) of the Central Excise Rules, 2002.

iv) Check list for execution of B1 Bond / LUT and Refund (Rebate under Rule 18) : The department has on 02.03.2015 sent to Members of RAC `Draft` of Checklist for execution of B1 Bond / LUT for suggestions. On 18.03.2015, I have forwarded my suggestions for the same. Kindly let us know whether Trade Notices have been issued. Similarly on `Refund (Rebate under Rule 18)` a checklist in the form of Trade Notice was requested earlier. Kindly update the status, on both.

Reply : With regard to issue of Check list for execution of B1 Bond / LUT by the zone the chair stated that the same is under active consideration.

With regard to issue of Check list in the form of Trade Notice for `Refund (Rebate under Rule 18)` the chair opined that the Supplementary Instructions issued by CBEC as given in the Central Excise Manual(2014-15) at page 6.199 already gives a list of documents to be filed with the Refund/Rebate claim for Central Excise. The list however is only illustrative and not exhaustive. The Rebate sanctioning Authority may call for any other documents to satisfy the admissibility/ correctness of a Rebate claim. Hence, it is felt that issuance of a Trade Notice/Facility is not required.

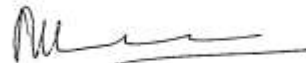
3(ii) Point raised by Smt. Swathi Pillarisetty , Administrative Officer , on behalf of All India Manufacturers' Organization, A. P. State Board:

In previous RAC meeting we have asked for clarification about utilization of credits in PE Cess & HSE cess heads as on 1-3-2015. This credit comprises of PLA payments as well as cess paid on goods and services received/availed before 28th Feb 2015. We suggest that the sentence "Balance in cess to be utilised for payment of cess" in rule 6A be deleted to clear the way for assesses to utilise their locked funds for payment of current duty liability.

Reply : Shri Ashok Surana raised the point and requested to pursue the

matter with the Board's office as large amounts of money are blocked on account of unutilized credit of Education Cess and Secondary and Higher Education cess . The Chair opined that there is no such Rule 6 A under Cenvat Credit Rules 2004 / Central Excise Rules 2002 as stated by the member who sponsored the point . However as already stated in previous RAC meeting a reference was already made to Board's Office vide letter C.NO.IV/16/158/2014-CC(HZ) Tech dated 25/03/2015 requesting for amendment of sub-rule 7 (b) to rule 3 of Cenvat Credit rules 2004 to allow utilization of balance CENVAT credit of Education Cess and Secondary Higher Education Cess towards payment of either duty of excise on the goods cleared by the manufacturer or service tax on the output service. Further based on the earlier request another letter dated 06.05.2015 was also issued to the Board's office to consider such amendment. The reply of the Board is awaited .The Chair further stated that one more reminder will be issued to the Board's office to consider such amendment .

Towards the end of the meeting, Shri. Lalith Mohan Chandana requested that Duty payment certificates from the Range Officers in respect of goods cleared to various organizations like public sector undertakings and railways etc are required by the trade for submission to the said organizations for payments of their bills as the said organizations are asking for the same. He requested for issue of a fresh circular to the field formations with regard to issuance of Duty Payment Certificates by the Range officers on the lines of earlier issued circular dated 22.10.2010 by the then Chief Commissioner to which the Chair stated that the matter would be looked into.



(M.UMA SHANKAR)
ADDITIONAL COMMISSIONER

To
All the RAC members by e-mail .

Copy submitted to the Commissioner of Customs, Central Excise & Service Tax, Hyderabad- I, II, III & IV, Audit, Service Tax and Customs Commissionerates, and Appeals- Central Excise & Customs and Service Tax, Hyderabad with a request to give wide publicity and for compliance of the directions given against relevant points.