

:केंद्रीय उत्पाद तथा सीमा शुल्क के आयुक्त का कार्यालय:

:टाऊन सेंटर : सिडको : औरंगाबाद 431 030:

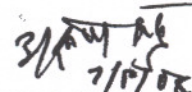
व्यापार सूचना नं. 08/2008

(अ.क.7/GEN./2007 दिनांक 07.08.2008)

विषय : Payment of amount under Rule 6 of the CENVAT Credit Rules, 2004-Reg...

उपरोक्त विषय पर भारत सरकार वित्त मंत्रालय राजस्व विभाग नई दिल्ली द्वारा दिनांक 16.05.2008 की फा.सं.267/91/2007-CX.8 तहत जारी परिपत्र /पत्र की प्रतिलिपि सूचना मार्गदर्शन एवं कार्यवाही के लिये प्राप्त करें /

सभी संबंधित संगठनों से अनुरोध है कि वे इस परिपत्र/पत्र की जानकारी अपने सभी सदस्य निर्माताओं और व्यापारियों को दें /


(अरुण साहू),
आयुक्त

फा.सं. VGN(30) 07/TC /2008/2354
औरंगाबाद, दिनांक 07.08.2008

प्रतिलिपि प्रेषितः डाक सूची के अनुसार

उप/सहायक आयुक्त सभी मंडल प्रभारी तथा आय.सी.डी.

सभी अनुभाग प्रमुख मुख्यालय

मुख्य आयुक्त केंद्रीय उत्पाद तथा सीमा शुल्क नागपुर

आयुक्त के उत्पाद तथा सी.शुल्क (अपील), औरंगाबाद

F. No.267/91/2007-CX 8
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise and Customs)

New Delhi dated the May16, 2008

To

All Chief Commissioners of Customs & Central Excise,
All Chief Commissioners of Central Excise,
All Commissioners of Customs & Central Excise,
All Commissioners of Central Excise,

Sub.: Payment of amount under Rule 6 of the CENVAT Credit Rules, 2004 – reg.

Sir /Madam,

The undersigned is directed to refer to circular No. 599/36/2001-CX dated November, 2001, wherein the issue of the applicability of the provision of section 11D of the Central Excise Act, 1944 in cases of payments made under erstwhile rule 57CC (1) of the Central Excise Rules, 1944 was examined. It has been brought to the notice of the Board that there are some decisions of the Tribunal contrary to the said circular. Further, rule 6 of the CENVAT Credit Rules, 2004, has been amended w.e.f. 01.04.2008, necessitating re-examination of the circular of the circular in the light of these developments.

2. It is seen that the Larger Bench of the Tribunal in the case of Unison Metals Ltd. Versus Commissioner of Central Excise, Ahmedabad-I [2006(2004) E.L.T. 323 (Tri.-LB)] has held that section 11D provides that any amount which has been collected as excise duty and not paid to the credit of the Central Government shall be liable to be recovered. The scheme of the Law is that manufacturers shall not collect amounts falsely representing them as Central Excise duty and retain them, thus, unjustly benefiting themselves. However, in case of payments made under erstwhile rule 57CC(1), section 11D of the Act is not applicable since the amount of 8% or 10% has already been paid to the revenue and no amount is retained by the assessee. The said order of the Tribunal has been accepted by the Department.

3. The matter has been examined. Sub-rule (3) of rule 6 of the CENVAT Credit Rules, 2004 has been amended w.e.f. 01.04.2008 to provide for payment of an amount equal to 10% of **value** of the exempted goods, instead of 10% of the **price** of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

4. In the light of what is sated above, it is clarified that as long as the amount of 8% or 10% is paid to the Government in terms of erstwhile rule 57CC of the Central Excise Rules, 1944 or rule 6 of the CENVAT Credit Rules, the provisions of section 11D shall not apply even if the amount is recovered from the buyers. However, it may be noted that the CENVAT credit of the said amount of 8% or 10% cannot be taken by the buyer since such payment is not a payment of duty in terms of rule 3(1) of the CENVAT Credit Rules, 2004. Therefore, the said 10% amount should be shown in the invoice as "10% amount paid under Rule 6 of the CENVAT Credit Rules, 2004".

5. Board's circular No. 599/36/2001-CX dated November, 2001 stands withdrawn.

6. The field formations as well as trade and industry may be suitably informed.

7. Hindi version will follow.

Yours faithfully,
(Rahul Nangare)
Under Secretary to the Govt. of India