ANNEXURE-B

B1- Hyderabad Zone- Assessment and Valuation-Non-adoption of Section 4A-Valuationof Goods-Clearances made to Depots by Cement Manufacturers:-

Issue:

Cement in packaged form has been notified under Section 4A of the Central Excise Act, 1944 with effect from 17.3.2012. The assessee affixes a label on the bags removed to its depots clearly stating, "meant for industrial/institutional consumer". An audit objection has been raised in this zone for non-adoption of retail sale price based valuation on the clearances made to depots by a cement manufacturer, subsequently sold to industrial/institutional consumers. However, the assessee is clearing such consignments of cement in bags to their depots on the basis of value arrived as per Section 4 of the Central Excise Act, 1944, on the ground that the depot is nothing but an extended arm of the factory and when goods are sold to the industrial/institutional buyer, provisions of Section 4A do not apply.

Relevant legal provisions: Rule 3 of Legal Metrology (Packaged Commodities) Rules, 2011 states that the provisions of these rules shall not apply to industrial or institutional consumers, who buy packaged commodities directly from the manufacturer for use by that institution or industry. As per Rule 4 of Legal Metrology (Packaged Commodities) Rules, 2011, "no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon or on a label securely affixed thereto, such declarations as are required to be made under these rules". However, explanation to Rule 4 of Legal Metrology (Packaged Commodities) Rules, 2011 states that the existence of packages without the declaration of the retail sale price in the manufacturer's premises shall not be construed as violation of these rules and it shall be ensured that all the packages leaving the premises of manufacturer for their destination shall have declaration of retail sale price on them.

Discussion & Decision

It was brought to the notice of the conference that the issue had been agitated before the appellate forum by some of the Commissionerates. After discussion conference concluded that depot is a place of removal of the manufacturer under section 4(3)(c)(iii) of the Central Excise Act, 1944 from where cement is sold to the institutional/industrial buyers who are not covered under Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011. It was also noted that definition of 'Industrial Consumer' and 'Institutional consumer' has been substituted by Legal Metrology (Packaged Commodities) (Amendment) Rules, 2015 in terms of notification dated 14.05.2015, issued by the Ministry of Consumer Affairs, Food & Public Distribution.The revised definition includes the consumer who buys packaged commodities directly from the manufacturer or from an importer or from whole sale

dealer.The conference was of the view that the valuation of goods in respect of clearances to industrial consumers even from the depot will be made under Section 4 of the Central Excise Act, 1944 and not under Section 4A of the Act ibid. The conclusion was reached in view of the fact that in case of institutional buyers purchasing goods, depot is only an extended arm of the manufacturer, being a place of removal. The issue is also covered in the Hon'ble Supreme Court judgment in case of M/s Sony India Ltd. [2004 (167) E.L.T 385].

B2-Jaipur Zone - Assessment and valuation-Retention of Sales Tax Collected from Customers and Inclusion thereof in the Transaction Value:

Issue:

During the course of audit of certain units, it has been noticed that Government of Rajasthan has declared that the concerned manufacturer shall be eligible for Customized Package (a financial package) under Rajasthan Investment Promotion Policy-2010 (RIPS 2010) on fulfillment of conditions laid down therein. According to the scheme manufacturer shall be allowed subsidy (consisting of Investment Subsidy and Employment Generation Subsidy) for a period of 7 years. Under the scheme the maximum amount of subsidy shall be 55% of the total amount of taxi.e. VAT and CST which become due to be deposited into the government exchequer.

2. A doubt has arisen, whether such subsidy granted by the Industrial Department of Government of Rajasthan to the extent adjusted against sales tax liability is liable to be included in the transaction value under the provisions of Section 4 of the Central Excise Act, 1944. Concerned Zone also informed that the subsidy amount given by RIPS, 2010 is not paid in cash to the unit and is adjusted against the sales tax liability. The subsidy is itself calculated as a percentage of VAT/CST liability and VAT/CST actually paid is adjusted accordingly. In other words, the manufacturer collects and retains a percentage of sales tax amount as subsidy. Zone was of the view that the as a percentage of tax (max.55%) collected from the customer is retained by the manufacturer, it shall be includable in the transaction value as per the provisions ofsection 4 of the Central Excise Act, 1944.

Discussion & Decision

Board's circulars/instructions were discussed by the conference. Instruction issued videF.No. 6/8/2014-CX.1 dated 17.09.2014 wasdiscussed. The said instruction was issued consequent upon the judgment of Hon'ble Supreme Court in the case of M/s Super Synotex India Limited, which clarified that Sales tax, collected from the customers but not paid to the Government under Sales tax incentive scheme, has the character of the consideration paid for transfer of title of goods from the manufacturer to the third party. Therefore, the same was required to be included in the assessable value.

Circular no. 983/7/2014-CX dated 10.07.2014 was discussed which clarifies that fertilizer subsidy paid by the Government to a manufacturer as a result of public policy is not

includible in the assessable value. It was noted that such subsidy is directly paid by the Government to the manufacturer.

The conference concluded that any VAT, if retained would be added to the assessable value even if it is retained through the mechanism of adjustment against a subsidy payable under the scheme. Section 4 provides for abatement of taxes actually paid. Taxes can be considered to be paid for the purposes of granting abatement under Section 4 only if they are deposited with the exchequer. It was also notedthat the issue in circular dated 10.7.2014 was relating to addition of additional consideration whereas the present issue relates to allowing abatement of taxes actually paid. Therefore, the circular dated 10.7.2014 has no application to the present case. Further, fertilizer subsidy is directly paid by the Government to the manufacturer which is not the case presently at hand as the present scheme works by mechanism of adjustment of subsidy against taxes.

There is no abatement for taxes not paid, even when such taxes are considered notionally paid by adjustment against a subsidy payable by the State Govt. State VAT laws may considers VAT as fully paid in such situations but it is only a deeming fiction of full payment and not actual payment to the exchequer. Such deeming fiction would apply only for purposes of considering VAT fully paid under the State law and not for allowing abatement under Section 4 of the Central Excise Act, 1944.Definition of transaction value quite clearly states that transaction value does not include taxes actually paid.

B3 - Vadodara Zone-Assessment and Valuation- Whether the Excisable Products like Dish Washing Liquid, Floor Cleaner, Toilet Cleaners Falling under Tariff Items 34022010 and 34022090, Liable for Excise Duty by Assessing Value under Section 4 or Section 4A (MRP based assessment) of Central Excise Act, 1944.

Issue:

The sponsoring zone explained that a doubt had arisen regarding the applicability of section 4A of Central Excise Act, 1944 in respect of excisable products like Dish washing liquid, liquid floor cleaner, liquid toilet cleaners falling under tariff items 34022010 and 34022090. The said goods at present are being cleared in retail packs of 250 ml/500 ml/ 1 litre in open market, under Section 4 of Central Excise Act, 1944, and the manufacturer is paying duty on the transaction value under Section 4 instead of under Section 4A of said Act (MRP based assessment). The sponsoring zone was of the view that the said products are liable for assessment under Section 4A (MRP based assessment) in view of Serial no. 40 of notification no. 49/2008 (N.T) dated 24.12.2008 which prescribes abetment for assessment under section 4A read with the third schedule of the CEA,44 .

Discussion & Decision

The conference noted that for assessment of any commodity under Section 4A, one of the conditions to be satisfied is that Central Government should have specified it in a notification issued under Section 4A. [para 2 of Jayanti Food Processing (P) Ltd, 2007 (215) ELT 327 refers]. In the present case, goods under discussion are covered in the third schedule of the

Central Excise Tariff Act, 1985 but are not covered in the notification no. 49/2008 (N.T) dated 24.12.2008 issued under Section 4A. The scope of entry in the third schedule appeared to be larger than that of the entry in the notification and therefore assessment under Section 4A may not be possible for items not covered under the notification no. 49/2008 (N.T) dated 24.12.2008. Concerned zone may take final decision in light of the facts of the case and the case law cited.

B4 - Kolkata Zone - Assessment and Valuation - Fixation of special rate representing the actual value addition under Area based Exemption Scheme :

Issue:

It was explained by the sponsoring zone that an assessee was engaged in the manufacture of various food products and cosmetic products under chapter 21 and chapter 33 and availing area based exemption notification no 20/2008-CE dated 27.03.2008 and 38/2008-CE dated 10.06.2008. The assessee had applied for fixation of special rate for the F.Y 2011-12. The Joint Director (Cost) Kolkata initially worked out the percentage of value addition based on the Value Addition Formula prescribed in the notification no 20/2008-CE dated 27.03.2008. But a re-working of actual value addition in respect of these products was carried out by the Joint Director adopting the formula prescribed in Cost Audit Report Rules, 2011 and taking into account two more ingredients viz (i) consumption of stores & spares and (ii) consumption of fuel indicated a different value addition. The Advisor (Cost) Kolkata expressed agreement with the recommendations of the Joint Director (Cost) and opined that subject matter being contentious, should not be decided for the time being. The jurisdictional Commissioner elaborated the logic of applicability of Cost Audit Report Rules, 2011. The issue has been brought before the conference as to whether the said Cost Audit Report Rules may be adopted for fixing value addition though these rules are not specified in the notification on area based exemption.

Discussions & Decision

The conference discussed the issue and after discussions concluded that the formula prescribed in the notification is binding for arriving at the value addition by revenue. It was beyond the authority of law to impose conditions in a notification not explicitly prescribed in the notification concerned. The sponsoring zone may make a detailed reference to the Board, suggesting change in the notification, if they deem it necessary. However, till the amendments are made in the notification, the formula as prescribed in the notification is required to be followed to arrive at value addition. As the present applications would be governed by the notification as they exist, they should be decided on the basis of the formula prescribed in the notification.

B.5 - Ranchi Zone - Classification – Classification of Silica Ramming Mass under Chapter Heading 3816 of CETA, 1985.

Issue:

A large number of units situated in the jurisdiction of the zone are engaged in the process of crushing, screening, grinding and mixing of quartz / quartzite mineral stones (in boulder form) to convert them into quartz/ quartzite grains and powder, which is known in trade parlance as Silica Ramming Mass or Ramming Mass. The quartz/ quartzite mineral contain more than 95% of silica (up to 99.9%), hence the name. The quartz and quartzite minerals are not mixed with each other, since quartz mineral has higher silica content as compared to quartzite mineral. The assessees classify the aforesaid goods under chapter heading 2506 of CETA, whereas the zone is of the preliminary view that goods are more appropriately classifiable under Chapter heading 3816 of CETA in view of Chapter Note 1 of Chapter 25.

Discussion & Decision

The issue was deliberated in the Conference where, two heads of classification viz., CETH 2506 and 3816 were discussed in case of the product Ramming Mass of the kind obtained by crushing/grinding and mixing of quartz and quartzite minerals of different sizes and where no external binders are added to such mixture.

It was noted that explanatory notes to the HSN of Heading 3816 **covers** *certain preparations (e.g. for furnace linings)…,* ***with an added refractory binder*** *…. Many of the products of this heading* ***also contain non-refractory binders such*** *as hydraulic binding agents*, therefore, to qualify for classification under heading 3816, refractory binder is required to be added to such powdered/grained quartz/quartzite mixture. Since no refractory binder is added to the impugned product, the same is not covered under heading 3816. This view is reinforced by the Tribunal in the case of M/s Mayur Chemicals Industries [2001 (136) ELT 1389] upheld by the Hon'ble Supreme Court.

Chapter Note 1 of Chapter 25 is also relevant to this issue. Hon'ble CESTAT, in the matter of M/s 20 Microns Ltd. [2012-TIOL-1467-CESTAT-AHM] has held that specific heading has to be preferred to the general heading and Chapter 38 being a residual chapter, Chapter 25 is to be preferred. In this regard, para 10 of the CESTAT order is specifically relevant & may be referred where it has been explained that where no material of different composition is mixed, the exclusion clause of Note 1 of Chapter 25 does not apply. This view is reinforced by the observation of Hon'ble Supreme Court in the matter in the matter of M/s Deepak Agro Solutions Ltd. [2008-TIOL-98-SC-CUS]. Additionally, Rule 2(b) of the General Rules for Interpretation of Schedule provides that any reference to a given material

or substance shall be taken to include a reference to goods wholly or partly of that substance. Accordingly, it was concluded that the impugned product, when not added with any external binder, shall be classified under Chapter heading 2506.

B.6 - Hyderabad Zone – Classification – Classification of Coconut Oil Packed in Packages up to Sizes of 200ml:

Issue:

This issue relates to classification of Coconut Oil. There are two contending classifications of Coconut Oil under the Central Excise Tariff. Chapter 15 covers various types of Vegetable Oils including Coconut Oil and Chapter 33 covers Cosmetics including Hair Oil. The dispute with regard to classification of the product i.e. Coconut Oil arose after the Board's clarification vide Circular no. 145/56/1995-CX dated 12.10.1995, wherein the Board clarified that the Coconut Oil being marketed in small containers could not be a basis for classifying the product as Hair Oil. For classification under Chapter Heading 3305, product should be suitable for use on hair and the product should be put up in a packing of a kind sold in retail for such use. Further, the Central Board of Excise and Customs, New Delhi vide Circular no. 890/10/2009-CX, dated 3/6/2009 issued under Sec. 37 B clarified that the Coconut Oil packed in small containers up to 200 ml shall be classified under Chapter Heading No. 3305 by treating it as Hair Oil.

Discussion & Decision

The conference noted that the issue has been resolved by the Board by issue of Circular no. 1007/14/2015-CX dated 12.10.2015. The circular takes note of the judgments in case of In case of Raj Oil Mills Ltd. vs. Commissioner, Central Excise [2014 (314) ELT 541/2013-TI0L-1609-CESTAT*]*, where Hon'ble Tribunal held that edible Coconut Oil in retail packing of 200 ml or less is classifiable under Chapter 15 covering Animal or Vegetable Fats and Oils and not under Chapter 33 covering Cosmetics and Toilet Preparation. Similar view was taken by Tribunal in case of Capital Technologies Ltd. & Ors Vs CCE, Tirupati reported in [2015(321) ELT 479/2011-TIOL-775-CESTAT]. The issue of classification can now be decided by the field taking into consideration the facts of the case read with the judicial pronouncements. For further details the circular may be referred.

B.7 - Kolkata Zone – Classification – Description of Goods under Tariff Item No 22029020 being "Fruit-Pulp or Fruit Juice Based Drinks"

Issue:

The sponsoring zone pointed out that tariff item 22029020 provides description of goods as "fruit-Pulp or fruit Juice based drinks" but this description of goods seems incomplete as no percentage of fruit juice is mentioned. The rate of duty under this tariff item is lower than

most of other tariff items of this chapter. This may lead to some assessees taking advantage and classifying goods of other headings into this heading. It is suggested that a percentage of fruit juice be mentioned against the CETH concerned.

Discussion & Decision

The conference noted that fruit juices [CETH 2009] and fruit pulp or fruit juice based drinks [CETH 22029020] have same tariff rate of duty @ 6%. Thus all fruit juices and fruit pulp or juice based drinks attract same rate of duty. Tariff heading no 22029090 on the other hand was a residuary heading and would apply only when the goods under consideration do not find coverage under other tariff heads. Conference further noted that in the absence of specific product under reference with details of constituents and manufacturing process, it would not be possible to come to any firm conclusion. Therefore, conference did not recommend any amendment in the tariff.

B.8 – Lucknow Zone – Classification – Classification of Goods Known as TASLA

Issue:

An item by the name of 'TASLA' of Iron and Steel is being manufactured in this zone and the assessee is classifying the same under tariff item 82019000 as "other Hand Tools of a kind used in agriculture, horticulture or Forestry". The process of manufacture adopted is procuring the iron and steel sheet, slitting and cutting circles out of it and pressing them in the deep drawing double action power press giving it a deep shape and folding corner edges for convenience and safety. The local Commissionerate is of the view that the said goods are better classified under tariff item 73239410 as "Ghamellas" on the grounds that the party has mentioned the product on its website as "Tasla a.k.a Ghamella ". The local Commissionerate also relied on Rule 3(a) of the General Rules for the Interpretation of the Schedule to the Central Excise Tariff Act 1985 and the fact that the assessee sells their product at factory gate to the customers mainly situated in the city area. The end use of the product is in miscellaneous work and thus the claim of the party that their product is a tool for agricultural, horticultural or forestry use in field in not correct. The effective rate of duty in case of tariff item 73239410 is 12.5%. In view of the difference in rate of duty, the correct classification of the item needs to be decided.

Discussion & Decision

The conference discussed the issue after the details of the nature of the product and manufacturing process was explained by the sponsoring zone. It was noted that the scope of tariff item 7323 is in the nature of articles which are tableware and kitchenware and other household articles. In HSN these products are explained to include – Articles for kitchen use, Articles for table use and other household articles.

On the other hand tariff item 8201 applies to hand tools and other tools of a kind used in agriculture or forestry. Thus it is quite clear that for classification in tariff item 7323 the size and use of the product is relevant. From the description of the product as explained by the zone, it does not fit the description namely table, kitchen or other household articles of iron and steel. Specific heading of 73239410 meant for Ghamellas in the tariff would apply only to articles which qualify to be classified under tariff head 7323 and fits the description "Table, Kitchen or other household articles of iron and steel". The quality of steel or iron is also a relevant consideration as goods need to be safe for use as kitchenware. In the present case these criteria are not satisfied. Classification of goods solely on the basis of description as Ghamella on website for sale is not a relevant consideration.

Rule 3(a) of the rules of interpretation has no application in the present case as rule 3 applies only as a sequel to rule 2(b). Rule 2(b) applies to mixtures and combinations, which is not the case at hand. The issue of classification of Shallow pan (ghamela/tasla) was also examined by Hon'ble tribunal in case of M/s Mehta Steel Industries [2000(120)ELT 583(Tri)] wherein it was held that *"The product in question shallow pans apparently falls under Heading No. 82.01 of the Tariff as this heading covers not only hand tools, but also other tools of kind used in the agriculture, horticulture or forestry. The shallow pans are used in the agriculture, horticulture as well as forestry. The Asstt. Collector has rightly classified the product under this heading, keeping in view the Explanatory Notes under HSN. Being an implement of a kind used in the agriculture, Heading No. 73.26 of the Tariff as contended by the SDR, is not at all attracted in this case, as the same relates only to the other articles of iron and steel, forged or stamped, but not further worked. Keeping in mind the use of the product in question, and taking into consideration the HSN Explanatory Notes, the view taken by the Asstt. Collector as well as by the Commissioner (Appeals) classifying the product (shallow pans) under Heading No. 82.01 of the Tariff cannot be said in any manner erroneous so as to call for any interference in the appeal before us."*

The conference accordingly concluded that the ghamella/tasla of the kind described by the zone is correctly classified under tariff item 8201.

B.9 - Vadodara Zone – Classification – Classification of "Milking Machines and Dairy Machines"- Whether Classifiable Under Tariff Item 84.18 or 84.19:

Issue:

The Bulk Milk Cooler is described as an insulated tank made up of SS 304 stainless steel sheets with evaporators, direct expansion condensing unit and smooth agitation, which is installed at village unions of dairy co-operative societies and in the farms. This equipment is defined by the international standard ISO 5708 which require: to cool down the temperature of milk from 35 degree C to 4 degree C in less than 3 hours with an ambient temperature upto 38 degree C and then to keep the temperature of milk at 4 degree C constant so that the quality of milk doesn't get deteriorated and bacteria are not generated

in the milk. The unit classified the said product under tariff item 84342000 prior to 2011. However, after objection by the audit, accepting the suggestion to classify the goods under tariff item 84198990 instead of 84342000, the assessee started to classify "Bulk Milk Cooler" under tariff item 84198990 which attract duty @ 12.5%. References have been received from the Trade that in respect of the said product there is no uniformity of practice. Different classifications under contention in different zones are under the headings 8418, 8419 and 8434. Sponsoring zone requested that the scope of these headings and classification of the product may be decided.

Discussion & Decision

The issue was discussed in the conference with respect to scope of the three headings. It was noted that in the context of the goods under discussion heading 8418 applies to refrigerators, freezers and other refrigerating or freezing equipment; tariff item 8419 applies to machinery, plant for treatment of material by a process involving a change of temperature whereas tariff item 8434 applies to Milking machines and dairy machinery. Note 2 of chapter 84 interalia provides that a machine or appliance which answers to a description of one or more of the heading of 8401 to 8424 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under appropriate heading 8401 to 8424 and not under heading 8425 to 8480. Further, as per HSN explanatory note to Chapter Heading 84.34, that machines for processing milk dependent essentially on the principle of heat exchange (heading 84.19) are excluded from coverage under chapter heading 84.34. The heading also excludes refrigerating appliance (whether or not specially designed for cooling or keeping milk and milk cooling vats incorporating evaporator of a refrigerating unit (heading 84.18) from Chapter Heading 84.34. Thus any machinery which answers to a description under headings 8418 or 8419 cannot be classified under heading 8434. This principle was upheld by Hon'ble Supreme Court in case of HMT Limited [2007 (214) E.L.T. 10(S.C.)] where milk/cream chillers and chilling plants were under consideration amongst other equipments for classification and classification under 84.34 rejected.

As far as classification under CETH 8418 is concerned, HSN notes for the heading provides that – "The refrigerators and refrigerating equipment of this heading are in the main machines or assemblies of apparatus for production, in a continuous cycle of operations, of low temperatures (in the region of 0 degree centigrade or less) at the active cooling element, by the absorption of the latent heat of evaporation of liquefied gases (e.g. ammonia, halogenated hydrocarbons), of volatile liquids or, in case of certain marine types, of water." In case of M/s Praj Industries [2009(242)ELT 430], Hon'ble Tribunal decided classification of Bulk Milk Cooling Tank having following items viz. (i) Milk Vessel (ii) Ice Water Vessel, (iii) Cooling Coil, (iv) Condensing Unit etc. relying on the HSN notes decided the classification of goods under CETH 8418. Hon'ble Tribunal recorded the following argument as justification for classification of the equipment under the heading 8418 - "as

per the explanatory note to CH. 8418, the temperature at the active cooling element is what is important and not the temperature of the refrigerated product. The cooling coil immersed in water generates ice of 38 mm diameter around it, thus producing cryogenic temperature.

"For scope of classification under heading 8419, two case laws were examined. In case of M/s Universal Heat Exchangers [2000 (122) ELT 770], Hon'ble Tribunal noted that Ammonia condenser, used by appellant in chilling of water is able to achieve cooling only up to $8^{O}C$ and not freezing temperature which is around zero or sub-zero degree, hence it is not classifiable as refrigerating equipment [8418]. In case of Pan Asia Corporation [1999 (107) ELT 306] the distinction between the two headings 8418 and 8419 was explained by the tribunal to say that - A distinction is to be made between Tariff Heading 84.18 and 84.19. Cooling is no doubt affected by machineries and appliances falling under Tariff Heading 84.18 but the cooling should be of the range which a refrigerator or refrigerating machines achieves i.e. around zero or sub-zero temperatures. In the present case it is not disputed that the cooling effect is from $45^{o}C$ to $6^{o}C$. Further it is also clear that it is not based on the refrigerating system. The lower appellate authority's finding that the goods would be rightly classifiable under Tariff Heading 84.19 is correct."

The conference noted that the Bulk Milk Cooler under discussion apparently achieves a cooling up to 4 degree centigrade in three hours. The information regarding whether the machine under discussion is a refrigeration machine and achieves zero and sub-zero temperatures around the cooling coil is not available in the reference, but if these two conditions are satisfied, then the Bulk Milk Cooler under discussion would be covered by the judgment in case of Praj Industries (supra) and the equipment would be prima-facie classified under 8418. However, the sponsoring Zone may verify the facts of the case and scope of the headings explained in the foregoing paragraphs and decide the classification

B10 - Ahmedabad Zone - Scope of Exemption to annealed Hot Rolled Patta Patti of Chapter 72 under Sr. No. 203 of Notification No. 12/2012-CE dated 17.03.2012 :

Issue:

The sponsoring zone explained that an assessee in the zone is engaged in the manufacture of stainless steel hot rolled patties and pattas and stainless steel cold rolled patties and pattas falling under chapter 72. They have cleared the annealed hot rolled patta and patti by availing exemption from payment of Central Excise duty under Sr. No. 203 of notification no 12/2012-CE dated 17.03.2012. There are certain intermediate processes between hot rolling and cold rolling. Hot-rolled pattas/patties are subjected to process like pickling and annealing to make them suitable for cold-rolling process. The zone was of the view that the exemption was intended for processes that are performed on the hot rolled pattas/patties such as pickling and annealing. The exemption was not available for hot rolling of Stainless Steel (SS) flats into pattas and patties as the raw material for hot rolling process is not patta/patti, but SS flats. Pattas/patties emerge only after hot rolling process. The zone also

referred to the relevant part of the letter of J.S (TRU-I) vide F.No. B/31/8/94-TRU dated 4-5-1994 which is reproduced below -

" Thus, all stages prior to the stage of cold rolling have been exempted from excise duty. This would cover hot rolling of pattas and patties processes such as annealing, pickling etc."

The zone was of the view that the exemption covers only processes such as annealing, pickling etc carried on hot rolled SS flats. Had the intention been to exempt hot rolling process too, then it could have been clearly mentioned along with annealing and pickling.

Discussion & Decision

The conference examined the tariff heading involved, exemption notification and the clarification issued by TRU and concluded that clarification was clearly worded with no room for doubt. All processes prior to cold rolling are eligible for exemption from duty under sr. no. 203 of notification no. 12/2012-CE dated 17.03.2012. It appeared that the view of the zone was premised on the interpretation that the expression patties and pattas do not include stainless steel flats. There is no reason for such interpretation as the expression patties and pattas have to be understood in terms of general trade parlance and would include stainless steel flats. Benefit of exemption was available to the process of hot rolling of SS flats.

It was also observed by the Member(CX) that field officers are bound by the clarifications and letters issued by the Board and where they have a contrary view, it should be referred to the Board. It was expected that the Chief Commissioners would take steps to ensure that the clarification issued by the Board are implemented in right earnest.

B11 - Chennai Zone - Scope of Exemption Notification No.12/2012-CE dated 17.3.12 (Sl.No.336 dealing with ICB):

Issue:

Sponsoring zone explained that in terms of sl.no 336 of notification no. 12/2012-C.E dated 17.3.2012, all goods supplied against international competitive bidding attract nil duty subject to the condition prescribed under sl.no. 41. The condition specifies that *"if the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975(51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India".* The customs exemption prescribes conditions which have to be adapted for granting exemption from Central Excise duty in view of condition 41. This leads to dispute regarding interpretation of the conditions as they are amenable for Customs exemption and not for Central Excise notification. In this connection, reference was invited by the zone to CESTAT Order in the case of AUDCO India Ltd.[2013 (297) ELT (Tri Chennai)]. Relevant portion of the order is reproduced below:

" The present dispute has arising basically because of the fact that the Excise duty exemption has been provided with reference to exemption for Customs Duty and the condition that are appearing in the Customs notification has not been adopted to suit claiming excise duty exemption. There is necessity for making changes if the exemption from excise duty is to be meaningful. In the first place, there is no importer involved when goods are manufactured in India or supplied in India. Similarly, customs assessment and duty payment are before clearance of the goods whereas for excise levy the system is of self-assessment and duty payment at the end of the month, though the requirement for producing the certificate also needed suitable change. Similarly, Customs notification is applicable to a contractor or a sub-contractor when they import goods. So confusion arises as to who has to satisfy the purchaser. Comparing with the situation of import, the purchaser has to satisfy the condition. But these are all logical interpretation and not explicitly provided in the notification. When goods are imported by the contractor, or sub-contractor, the end use verification become easy with reference to the auditing the books of accounts of these persons. A mechanism will be required to ensure proper end-use in the case of goods manufactured in India and supplied to such contractors or sub-contractors which has not been prescribed in the Excise notification. Now the option before us is to hold that Excise Duty exemption under such notification will not be applicable at all to any clearances by a strict interpretation of the condition as canvas by revenue or to hold that the excise duty exemption is to be made available subject to necessary changes read into the conditions prescribed under Customs notification. The former interpretation is not justified because to our mind it is implied that the condition prescribed in Customs Notification is to be read mutatis mutandis for excise exemption. Once the later proposition is agreed to, we are of the view that correct interpretation is that the goods should have been supplied to the contractor or sub-contractor who has used the goods in oil exploration activity, the exemption should be available. In the present case, such condition has been satisfied in the case of supplies to M/s. Reliance Industries Ltd though after clearance."

Sponsoring zone suggested that in order to avoid this kind of dispute, the conditions prescribed under Customs notification may be incorporated under the Central Excise notification.

Discussion & Decision

Conference after discussion noted that necessary amendment to notification no.12/12-CE dated 17.3.12 has already been made vide notification no 12/2015-CE dated 01.03.2015. A proviso has been incorporated in the condition no. 41 of the notification to provide that the conditions for exemption in the Customs notification shall apply mutatis mutandis for the purpose of said Central Excise notification. It was further clarified that the phrase "mutatis

mutandis" in the said amendment would mean - "with such changes as are required" to make the exemption notification operational on Central Excise side also.

B12 - Coimbatore Zone - Scope of SSI Exemption- When there is a Deed of Assignment of Brand Name Within the Hindu Undivided Family (HUF):

Issue:

The sponsoring zone explained that in a case noticed in the zone, a HUF owned a particular brand. Each of the members of the HUF was allotted different areas of operations by virtue of a deed of assignment. Each member was manufacturing and clearing excisable goods, using the same brand name, within his allotted area, with each of them separately availing the threshold SSI exemption. The Hon'ble Supreme Court has stated in this case i.e. where a Brand Name has been assigned to members of HUF that the trademark would remain vested with all the members and that all of them are separately eligible for SSI exemption. The sponsoring zone was of the view that the provision is prone to misuse and there was a need for amendment in the SSI notification no 8/2003-CE dated 01.03.2003.

Discussion & Decision

The conference noted that the issue has been decided by the Apex Court in the case of M/s Kali Aerated Water Works [2015 (320) E.L.T. 692(S.C.)] where joint family business dissolved by Deed of Mutual Agreement, which provided that all parties were allowed to use the said brand name without payment of any royalty or remuneration to the other party. Each member was owner of the Brand and was entitled to SSI exemption. This situation was peculiar to HUF where the brand name could be assigned to various members by a deed of assignment. The said interpretation is unique to HUF and may not be in widespread use adversely affecting the revenue and therefore conference does not recommend amendment in the notification.

B13 - Hyderabad Zone - Scope of exemption- admissibility to intermediate goods used in the manufacture of cement supplied to SEZ units:

Issue:

Notification No. 67/95-CE dated 16-03-1995 provides duty exemption to captively consumed inputs in the manufacture of dutiable final products. Exception to this notification is that this duty exemption is not applicable, if the final products are exempted from duty payment or attract nil rate of duty. An exception to this exception is when clearance of final products is made to a unit in Free Trade Zone (FTZ), a 100 % EOU and a unit in Hardware Technology Park or Software Technology Park. Thus, when final products are supplied to FTZ, EOU etc intermediate products continue to be exempted. Now, FTZ scheme does not exist and existing EPZ/FTZ have been notified as SEZ. The issue is whether

the benefit of exemption to the intermediate product is available when final products are supplied to the SEZ. The issue has been discussed in the past tariff conference also but no final view was taken. Show Cause Notices have been issued in the zone on the subject.

Discussion & Decision

The conference after discussion noted that the issue has been decided by the Tribunal in case of M/s Ultratech Cement and other manufacturers [2015-TIOL-2110-CESTAT-Mad] where the Tribunal decided that benefit of exemption to intermediate products is available when the final products are supplied to SEZ. Hon'ble Tribunal noted that during the relevant period of dispute, no FTZ was in operation and therefore no clearance could be made to FTZ as this was a period after the enactment of SEZ Act on 10.02.2006. Once the SEZ Act came into effect from 10.02.2006, all the units functioning as FTZ were declared as SEZ units. notification no. 4/2003-CE, dated 30.03.2003 was issued to convert various FTZs into SEZs. Further, as per the Notes explaining clauses of the Finance Bill, 2007 (clause 106), after enactment of SEZ Act, FTZs have become redundant and hence it sought to amend sub-section (1) of Section 3 of the Central Excise Act. By virtue of the above amendment, the word FTZ was omitted and substituted with the word SEZ in section 3 of the Central Excise Act, 1944. Consequently, tribunal concluded that now the expression FTZ in the notification no. 67/95-C.E. needs to be read as SEZ and the benefit of exemption extended to the intermediate goods when final goods are supplied to SEZ. Conference accepted this view and concluded that benefit of exemption should be extended to the intermediate goods when final goods are supplied to SEZ. Conference also recommended to the Board that notification no 67/95-C.E. should be amended to avoid litigation on the issue.

B14- Chennai Zone - Scope of exemption- under the Central Excise Notifications should be appended to the notifications:

Issue:

Amendments made to Rules and Notifications are notified with only the text or entry which amends the existing text or entry as the case may be. Subsequently, clarifications are issued in some cases to clear the doubts arising on the impact of the amendments. The sponsoring zone was of the view that to avoid disputes owing to interpretations, all amendment notifications should be appended with a clarification in the notification itself or a circular should be subsequently issued to explain the effect of the amendment.

Discussion & Decision

The issue was deliberated. The general opinion was that while clarification may be issued where necessary but not in all cases particularly where the language of the notification or amendment in the rule is quite clear.

B15 - Meerut Zone –Scope of Exemption-Duty Rate applicable to 'Mobile Handsets' in terms of Notification No. 12/2012-CE Dated 17.03.2012:

Issue:

Central Excise duty @ 1% is applicable for manufacture of 'Mobile Handsets' in terms of Sr. No. 263A to the notification no. 12/2012-CE dated 17.03.2012 subject to condition that no credit under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004 has been taken in respect of inputs or capital goods used in the manufacture. Units manufacturing Mobile Handsets are Sourcing inputs required to manufacture Mobile Handsets at 'NIL' rate of duty in terms of S.No. 431 of the notification no. 12/2012-Cus dated 17.3.2012 subject to the condition that the importer follows the procedure set out under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The duty foregone on such imports ranges from 17.5% to 28.5% (approx.). However, if Cenvat Credit is availed on the inputs used for the manufacture of Mobile Handsets, the applicable rate of Central Excise Duty is @12.5%. It appears that the prescribed duty rate of 1% is very low compared to the duty foregone or duty incidence at the input stage. Further, condition of not availing credit on input services or utilization thereof for the purpose of payment of Central Excise duty on Cellular phones, should also be incorporated in the condition of the notification no. 12/2012-CE as substantial revenue is being paid by the units from the Cenvat credit availed on input services.

Discussion & Decision

Conference discussed the language used in the exemption notification and the conditions prescribed therein and noted that the language of the exemption notification is quite clear. Duty rate applicable for manufacture of 'Mobile Handsets' in terms of sl. no. 263A to the notification no. 12/2012-CE dated 17.03.2012 is 1% subject to condition that no credit under Rule 3 or Rule 13 of the Cenvat Credit Rules, 2004 has been taken in respect of inputs or capital goods used in the manufacture. So long as the conditions in the notification are satisfied, the benefit of the concessional rate is available. An exemption notification is required to be implemented by the field formations without going into the policy intent behind it, if the language used in the notification is clear. For example, it is not relevant for the field formation to examine whether the effective duty rate of 1% is appropriate or whether any credit of input services is available to be taken or not. Once the condition of not availing credit in respect of inputs and capital goods as prescribed is fulfilled, the effective duty rate consequent upon exemption is only required to be paid giving full effect to the exemption notification.

B.16 -Vadodara Zone- Scope of Exemption- parts of wind-mill :

Issue:

There exists ambiguity regarding exemption to parts of wind-mill in light of Tribunal's order in the case of M/s. Gemini Instratech Pvt. Ltd. V/s. Commissioner of C. Ex.,

Nashik[2014(300) ELT 446 (Tri-Mumbai)]. On the other hand, Hon'ble Supreme court in case of M/s. Corporation Ltd. V/s. Commissioner of C.Ex., Calcutta [2006 (203) ELT 362 (S.C.)] had held that insulated wires and cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, hence the benefit of exemption is not available to Cables and wires. Further, in case of M/s. Enercon (India) Ltd., Authority of Advance Ruling had ruled that entry "Wind Operated Electricity Generator" covers the generator per-se and it is not intended to include equipments which are deployed with the generator for production of electricity. The sponsoring zone was of the view that the towers and others parts, which are not directly related to generation of electricity would not be eligible for exemption. In view of the sponsoring zone, it would be desirable that the list of equipments/parts/components eligible for exemption may be spelt out in the Exemption Notification.

Discussion & Decision

It was noted in the conference that a clarification has already been issued on 20.10.2015 vide Circular No. 1008/18/2015-CX by the Board wherein details of parts on which exemption is available is specified. Ministry of New and Renewable Energy had clarified to CBEC that tower, nacelle, rotor , turbine controller are parts of wind turbine and accordingly the circular has been issued clarifying that exemption is available to these parts. For details, the above noted circular may be referred.

B.17 - Vishakhapatnam Zone - Scope of Exemption- Manufacture under Central Excise – Clearances to Nepal with reference to Exemption Notification No. 8/2003-CE:

Issue:

In terms of SSI notification no. 8/2003-CE dated 01.03.2003, computation of clearances for home consumption, wherever referred in the notification, shall include clearances for export to Bhutan and Nepal. However, with effect from 01.03.2012, export clearances to Nepal have been made at par with all other countries. Further, CBEC vide Circular No.961/04/2012-CX dated 26.03.2012, has clarified that, in respect of Nepal, even if the export proceeds are received under Indian rupees, the clearances are still eligible for rebate or refund as the case may be. In such a case, it is not known why the export clearances to Nepal are still being considered as home clearances with reference to the limit of exemption available to an SSI under the notification referred. The condition in the notification is restricting the benefit to the Small Scale Manufacturers to the extent of clearances made to Nepal. Clarification is needed in view of the change in the treatment given to Exports to Nepal w.e.f. 01.03.2012.

Discussion & Decision

The conference agreed that it was a valid suggestion and there was a need to amend notification no. 8/2003 - CE dated 01.03.2003 to bring parity in the exports to Nepal under

various notifications. The conference recommended that Board may examine the same However, it was also agreed that till the necessary amendments in SSI exemption are made, the present dispensation of treating exports to Nepal as domestic consumption shall continue to apply.

B.18 - Chennai Zone - Cenvat Credit - Amendment to Notification No. 67/95-CE dated 16.03.1995 [Exemption for captive consumption]:

Issue:

Notification No. 67/95-CE dated 16.03.1995 grants exemption to intermediate products manufactured and consumed captively for the manufacture of dutiable goods. However, the above exemption is not applicable if the intermediate products are used for the manufacture of final products which are exempted from duty or chargeable to nil rate of duty. The relevant proviso is reproduced below:

> *"Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the [duty of excise or additional duty of excise leviable thereon] or are chargeable to nil rate of duty, other than those goods which are cleared :-*
>
> *(i) to a unit in a Free Trade Zone, or*
> *(ii) to a hundred per cent Export Oriented Undertaking, or*
> *(iii) to a unit in an Electronic Hardware Technology Park, or*
> *(iv) to a unit in a Software Technology Park, or*
> *(v) under notification No. 108/95-Central Excise, dated the 28th August, 1995, or*
> (vi) *by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in [rule 6 of the CENVAT Credit Rules, 2001.] "*

By virtue of the exception as mentioned in sl. no. (vi) of the above proviso, a manufacturer, producing dutiable and exempted products, would be eligible for exemption on captively consumed goods, if he discharges the obligation prescribed under Rule 6 of the Cenvat Credit Rules. The above condition was justifiable and reasonable when the erstwhile provisions of Rule 6 stipulated payment of an amount @10% or 8% of the value of exempted final product. w.e.f. 01.04.2008, Rule 6 of Cenvat Credit Rules provides for two options viz. Rule 6(3)(i) - payment of 6% value of the exempted goods or Rule 6(3)(ii) - reversal of proportionate credit as per the formula prescribed.

In view of the above changes made in 2008, if a manufacturer reverses proportionate credit, he would be entitled for captive consumption exemption and consequently the value addition for the manufacture of intermediate product is escaping the tax net. For example, sugar manufacturer claims captive consumption exemption for molasses which are used for manufacture of ethyl alcohol, a non-excisable product, by reversing negligible portion of Cenvat credit taken. While it is necessary to grant exemption

to intermediate products used for manufacture of specified final product as mentioned under Sl.no. (i) to (v), there is no justification for extending the exemption by prescribing reversal of proportionate credit. This proviso not only results in revenue loss but also leads to disputes. It is, therefore, suggested that either of the following suggestion may be considered:-

a) Sl.No.(vi) of the proviso to Notification No.67/95-CE can be omitted so that the manufacturer can pay duty on the intermediate product on comparable value, if available or on the value arrived at as per CAS-4 method

or

b) The words & figures "Rule 6 of Cenvat Credit Rule, 2001", may be substituted by Rule 6 (3)(i) of Cenvat Credit Rules, 2004 so as to prescribe payment of 6% of the value of exempted final products.

Discussion & Decision

The alternative mechanisms prescribed in Rule 6 of the Cenvat Credit Rules, 2004 was intended to offset the Cenvat credit taken in proportion to the exempted goods/services. Thus, payment of an amount equivalent to 6% of value of exempted goods/services was an alternative to Cenvat credit reversal and both the alternatives were on equal footing. The intention behind this provision was not to charge any duty/amount equivalent to 6% of value, rather it was a simplified procedure for the assessee to comply with the provisions without maintaining separate records. Accordingly, the payment of 6% amount cannot be considered to be at a different footing as compared to credit reversal. In light of this it was concluded that there was no need to amend the notification. Conference concluded that exemption is available to the intermediate products manufactured by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the CENVAT Credit Rules, 2004 and such manufacturer has the option of choosing any of the alternatives provided in rule 6.

B.19 – Chennai Zone - Cenvat Credit – Reversal of Credit on Common Input Services:

Issue:

In terms of Rule 6(3) of Cenvat Credit Rules, 2004 [CCR], a manufacturer of goods or the provider of output service, opting not to maintain separate accounts for the receipt and use of input services used in the manufacture of dutiable final goods and exempted goods, or for providing output and exempted services, shall pay an amount equal to 6% of the value of exempted goods or 7% of the value of exempted goods and exempted services or pay an amount as determined under Sub-rule 3A of Rule 6 of CCR 2004. The above sub rule prescribes a formula for arriving at the amount attributable to input services used for manufacture of exempted goods or providing exempted service. Doubts have been raised

by the field formations about the expression "Total cenvat credit taken" used in the formula prescribed in the rule.

2. A manufacturer of goods or provider of output services may use various input services in or in relation to the manufacture of dutiable and exempted final products and for the provision of output and exempted services. Certain input services may be used exclusively for the manufacture of dutiable goods or provision of taxable service viz. "A". Certain other input services may be used exclusively for exempted category viz. "B" and the third category of input services may be used for exempted as well as dutiable / taxable category viz. "C". In terms of Rule 6(1) and (2) of CCR, 2004, Cenvat credit shall not be allowed on such quantity of inputs or input services used for the manufacture of exempted goods or provision of exempted service's. It is clear from the above that Cenvat credit can be taken on input services covered under category "A" and Cenvat credit cannot be taken on input services used in category "B". Therefore, for arriving at the quantum of credit liable to be reversed, common input services referred in category "C" alone should be taken into account while applying the formula prescribed. However, it may be seen that the expression "P" in the formula specifically reads as 'total cenvat credit taken on input services during the financial year'. Hence, the same is interpreted by some field officers as total of - Cenvat credit on the input services used exclusively in manufacture of dutiable goods and for provision of output services [+] Cenvat credit taken in respect of inputs used exclusively in exempted category [+] Cenvat credit taken on common input services used in both dutiable and exempted categories".

3. In this context, reference is invited to the observations oftheHon'ble CESTAT, Mumbai while passing stay order in the case of Thyssenkrupp Industries Pvt Ltd Vs CCE, Pune reported as [2014 (310) E.L.T. 317 (Tri.-Mumbai)], which is reproduced hereunder for reference:

> "*It is well settled position in law that while interpreting statutes*, no word can be added or removed / *deleted from the statute. As held by Rowlatt J., "in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". If, we apply this principle to the formula prescribed in sub-rule (3A), there is no scope for interpreting the term "P" otherwise. If the formula leads to an anomalous situation, the remedy lies in amending the provisions of statute and judiciary is helpless. In this regard, the decision of the Hon'ble Apex Court in the case of ShakarRaju – 2011 (271) E.L.T. 492 (S.C.) REFERS. In the present case, it is a fact that the total CENVAT credit taken on common input services is only Rs.2.07 Crore (approximately) whereas, if we apply the formula, the amount of credit required to be reversed works out to Rs.8.62 Crore"*

4. It may be seen that the Hon'ble CESTAT has noticed in the aforesaid order, an anomalous situation, where an assessee would be required to reverse more than the

amount of Cenvat credit taken on common input services, if "P" is to mean total Cenvat credit taken on all the input services by the assessee instead of Cenvat credit taken on 'common input services'. These are prima facie observations made by the Tribunal in the stay order and the final order is yet to be passed. It was suggested that the intention of the Government is to consider 'credit taken on common input services' only, as this amount is only sought to be divided into the two categories viz. used for dutiable and exempted categories. Clarification was sought by the zone to avoid disputes on the issue and the divergent practices followed.

Discussion & Decision

The conference noted that the language of the rule is very clear. Further, the rule has been framed keeping the concept of averages in mind. The input and input services have been presumed to be going uniformly in the manufacture of the dutiable and exempted goods. This may lead to situations where some industry may be required to reverse lesser credit than actual usage in exempted goods whereas some other industries may be required to reverse credit more than the actual usage in the exempted goods. As this alternative comes in operation when separate accounts are not maintained, the formula can only be based on ratios of values which is how the formula in the rule is. Conference also noted that the rule is quite clear in terms of language used and has stabilized after a long period of time. Therefore, it was concluded that there was no need to amend or clarify Rule 6 as it exists and should be implemented in terms of clear provisions of the rule as it exists.

B.20 - Chennai Zone – Cenvat Credit – Rule 9(1)(a) of Cenvat Credit Rules, 2004:

Issue:

The said Rule provides for taking credit on the basis of an invoice issued by a manufacturer for clearance of inputs or capital goods as such. Apart from a manufacturer, service providers can also clear inputs and capital goods as such. However, there is no corresponding provision similar to Rule 9(1)(a)(i)(II) of CCR, 2004 for taking credit on the basis of invoice issued by the service provider for removal of inputs or capital goods as such. Even though Rule 3(6) of CCR, 2004 allows an assessee to take credit of duty paid by the manufacturer/ provider of output service in respect of removal of inputs or capital goods as such or used capital goods, invoices issued by an output service provider for removal of inputs or capital goods as such are not included in Rule 9 of CCR, 2004 which specifies various documents for taking credit. It was suggested that an amendment to Rule 9 of CCR, 2004 may be considered to include the invoices issued by a provider of output service for clearances of "inputs or capital goods as such" as an eligible document for taking credit .

Discussion & Decision

The suggestion made by the sponsoring zone was found acceptable by the conference and it was recommended to the Board that necessary amendments in the Cenvat Credit Rules,

2004 be made by inserting service provider in Rule 9(1)(a)(i)(II). Conference also noted that even without the amendment in the rules, CENVAT credit is available on the basis of an invoice issued by a service provider removing inputs and capital goods as such in view of provisions of rule 3(5) and 3(6) of CCR, 2004. Conference was of the view that various provisions of the rules need to be read harmoniously to make the rule operational for the purpose for which it is intended.

B.21 - Hyderabad, Coimbatore, Vadodara, Vishakhapatnam, Delhi Zone-Cenvat Credit - Balance of Education Cess and Secondary & Higher Education Cess lying in the CENVAT Credit Account:

Issue:

Exemption from levy of Education Cess and Secondary & Higher Education Cess has been provided w.e.f. 01.03.2015 vide notification no. 14/2015-CE & 15/2015-CE both dated 01.03.2015, Sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004, specifies that CENVAT credit of specified duties shall be utilized for payment of those specified duties only. CENVAT Credit of Education Cess and Secondary & Higher Education Cess can be utilized only for payment of Education Cess and Secondary & Higher Education Cess, respectively. Consequent upon grant of exemption there is issue of utilization of the accumulated credit of the past. It is suggested that an amendment to sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004 may be made to allow the utilization of balance CENVAT Credit of Education Cess and Secondary & Higher Education Cess towards payment of either duty of excise or Service Tax.

Discussion & Decision

The conference after discussion and briefing from the officers from the Board noted that it was Government's conscious policy decision to withdraw the Education Cess and Secondary & Higher Education Cess. It is a policy decision to not allow utilization of accumulated credit of education cess and secondary and higher education cess after these Cesses have been phased out. As these Cesses have been phased out and no new liability to pay such Cess arises, no vested right can be said to exist in relation to the accumulated credit of the past. The rule and notifications as they exist need to be followed and do not need any amendment.

B.22 - Coimbatore Zone – Cenvat Credit – Refund of Cenvat Credit under Rule 5 of CCR, 2004, in respect of raw material used in respect of goods supplied duty free against ICB to mega power/ultra mega power projects:

Issue:

It would be desirable to provide completely duty free procurement of raw materials (zero rating) for use in the manufacture of goods to be supplied against ICB to mega power/ultra

mega power projects. While the main units/sub-contractors are entitled to exemption under notification no. 12/2012-CE dated 17.03.2012, the vendors who supply materials to such main units/sub-contractors do not get any exemption from payment duty. This leads to accumulation of credit with main units/sub-contractors. Cenvat credit so accumulated should be allowed refund under Rule 5 of the Cenvat Credit Rules, 2004.

Discussion & Decision

The provisions of refund of accumulated credit under rule 5 of the Cenvat Credit Rules, 2004 are only meant for physical exports and not for deemed exports with one exception i.e. supplies to SEZs which is treated as exports. The meaning of the expression export goods has been inserted in the rule 5 of CCR, 2004 by notification no. 6/2015-C.E(N.T) dated 1.3.2015 to say that export goods means any goods which are to be taken out of India to a place outside India. Thus, supplies to EOU and supplies under ICB can not avail the benefit of refund of accumulated credit under rule 5. Under the present policy, it would not be possible to allow refund of accumulated credit on supplies to ICB.

B.23 - Coimbatore Zone - Cenvat Credit – Applicability of Section 11D of Central Excise Act, 1944 and amendment thereof where the amount of 6% is charged from the buyer but not deposited with the department.

Issue:

Board circular no. 870/8/2008-CX dated 16.05.2008 clarifies that the amount paid under Rule 6(3) of the Cenvat Credit Rules, 2004 can be recovered by the manufacturer from the buyers. If the assessee is allowed to recover the amount from the buyers, then the very purpose of payment of 6% under, the Cenvat Credit Rules, 2004, is defeated. Since the final product is exempted, it is logical to consider that the assessee availed the credit of input taxes embedded in inputs and is recovering the same from the buyer, when he charges this amount separately on the invoice. It is thus akin to recovery of duty. The present Section 11D of Central Excise Act, 1944, does not provide for recovery of such amounts, so it is felt that the assessees who recover such amounts are unjustly enriching themselves. It is suggested that suitable amendments may be made to Section 11 D of Central Excise Act, 1944 so that such amounts can be recovered.

Discussion & Decision

The conference after discussion concluded that neither the assessee can be prevented from charging the amount of 6%/7% in lieu of amount paid under Rule 6 of the Cenvat Credit Rules, 2004, nor can the said amount could be made part of value, as it was being separately mentioned in the invoice over and above the cost of the goods/services. Further, no credit of this amount is available to the buyer of the goods. The transaction is essentially a commercial one between the buyer and seller and no amount is recovered by seller

representing or showing it as Central Excise duty. Therefore, department cannot be said to be aggrieved by the transaction. No amendment in section 11D of the Central Excise Act, 1944, to recover such amount is warranted, even if this additional amount is charged from the customer and not deposited with the department.

B.24 - Hyderabad Zone - CENVAT Credit – Whether the benefit of Rule 5 of Cenvat Credit Rules, 2004, can be extended to clearances made to 100% EOUs (deemed exports):-

Issue:

Rule 5 of the Cenvat Credit Rules, 2004, allows refund of accumulated Cenvat credit on export of goods and services in terms of the formula, procedure, conditions etc. specified therein.

2. The term "export service" has been defined under the provisions of the said rule to mean a service which is provided as per Rule 6A of the Service Tax Rules, 1994, whereas, there was no explanation under central excise as to what are "export goods" till 01.03.2015. In the absence of such definition of Export Goods till 01.03.2015, the contentious issue that arose was whether refund under the provisions of Rule 5 the Cenvat Credit Rules, 2004, can be sanctioned in respect of clearances made to EOUs (which are termed as 'deemed exports' under Para 8.1 of the Foreign Trade Policy) or the same is to be restricted only for the physical exports made without payment of duty under 'bond or letter of undertaking'. It is pertinent to mention that conceptually SEZs and EOUs merits to be equated and supplies to EOUs may also have to be treated as Exports (Deemed exports as per FTP), but for the recent incorporations of the definition of "Export Goods". The terms exports, prior to incorporation of the definition, was interpreted in several judicial pronouncements to include deemed exports. In a similar situation in respect of SEZs, Board vide Circular 1001/8/2015-CX.8 dated 28.04.2015 has clarified that all supplies to SEZ should be treated as exports. However, the said circular did not cover the supplies to EOU. Clarification is needed regarding benefit under Rule 5 of the Cenvat Credit Rules, 2004 for supplies to EOUs.

Discussion & Decision

The issue is identical to the issue of extending benefit of refund under rule 5 of the Cenvat Credit Rules, 2004, for supplies made under International Competitive Bidding discussed in the foregoing paragraphs. The conference noted that the benefit of refund of accumulated credit under rule 5 of CCR, 2004 is not admissible for supplies to EOUs. Even prior to the amendment to the Rule, EOUs were not eligible for such benefit though it was extended in some of the cases by Hon'ble courts. The definition of export goods has now been incorporated in the rules removing confusion and ambiguity. With reference to SEZ, it was noted that SEZ Act, 2005, has an overriding application over other Acts including the Customs Act and therefore benefit of refund of accumulated credit is available for supplies

of goods to SEZ. The present policy is to not allow the benefit of refund of accumulated credit for supplies to EOU.

B.25 - Hyderabad Zone - CENVAT Credit – Insertion of a rider under Rule 5 of the CENVAT Credit Rules 2004 restricting the Credit to be refunded to actual usage:

Issue:

Rule 5 of the CENVAT Credit Rules, 2004, w.e.f 01.04.2012, (replaced vide Notification No. 18/2012-CE (NT), dated 17.03.2012) provides that a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of Cenvat credit as determined by the specified formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board.

The specified formula may give undue/unintended benefit by allowing refund of the entire CENVAT credit in proportion to the export turnover, irrespective of its actual usage in manufacture of exported goods. It is felt that CENVAT credit eligible as cash refund should pertain to the input / input services which were actually used in the manufacture of goods or provision of output services, which are exported. Hence, it may be recommended by the conference to the Board to insert a rider under the provisions of Rule 5 of Cenvat Credit Rules, 2004 so that refund of unutilized credit is restricted to the extent which is relatable to the exported goods/services to prevent premature cash refund of tax on inputs/input services where such inputs/input services are at a much later stage.

Discussion & Decision -

The conference discussed the issue and it emerged that there was no empirical data with respect to the number of instances and quantum of credit encashed in advance as anticipated in the point sponsored. Further, no prudent business establishment would invest in excess inventory, simply to claim refund of credit, before the same actually gets used in manufacture of export goods. Further, the present scheme is administratively simple to implement and was introduced in the year 2012 as a measure of simplification. Therefore, it was decided that no change was needed at present when the department was focusing on “ease of doing business” by simplification of business processes.

B.26 - Meerut Zone - CENVAT Credit – Reversal of Cenvat Credit in respect of Service tax paid on Input Services:

Issue:

Rule 3(5) of the Cenvat Credit Rules, 2004 provides as under:

"when inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9"

An audit objection has been raised that Cenvat credit taken in respect of service tax paid on input services like Customs Brokers charges, Clearing and Forwarding Agencies Services(C&F), GTA etc used for procurement/transportation of inputs/capital goods, should also be reversed at the time of clearance of inputs/capital goods as such from the factory of the manufacturer. The present Rule 3(5) of the Cenvat Credit Rules, 2004 does not mention 'Input Services' amongst the credits required to be reversed and therefore it is not possible to demand reversal of credit of input services. There is need to amend the rules so that reversal of credit taken on input services can also be achieved.

Discussion & Decision

The conference noted that Rule 3(5) of the CENVAT Credit Rules, 2004 does not provide for reversal in respect of input services for a reason. Input services are consumed once the inputs and capital goods are received in the factory. Thus on receipt of inputs and capital goods, the associated input services have to be considered as consumed within the factory and become a cost to the business. Demand for reversal of the input services credit, when such input services cannot be reused, unlike inputs and capital goods which are available for reuse would not be fair to the trade. Therefore, the conference concluded that the present rule represents the correct provision in accordance with the principles of input tax credit. Rule 3(5) of the Cenvat Credit Rules, 2004, does not need any amendment. Audit para may be replied accordingly.

B.27 - Meerut Zone - Cenvat Credit – Interest on Reversal of Cenvat Credit Taken on Inputs Sent for Job Work and not Received Within Stipulated Period.

Issue:

Rule 4(5)(a)(i) and Rule 4(5)(a)(ii) of the CENVAT Credit Rules, 2004 provides that CENVAT credit on inputs shall be allowed even if inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products. Such inputs and capital goods are required to be received back in the factory within one hundred and eighty days of their being sent to a job worker. If the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service is required to pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or

otherwise. Rule 4(5)(a)(iii) of the CENVAT Credit Rules, 2004 provides for reversal of Cenvat credit when the inputs and capital goods are not received within the stipulated time. It is however silent on the question whether interest should also be charged at the time of reversals of Cenvat Credit taken on the inputs or capital goods sent for job work and not received within the stipulated period of 180 days and if yes, what should be the period for which interest should be charged, i.e. period starting from the date of clearance from the factory or for the period starting after 180 days of clearance of such inputs and capital goods.

Discussion & Decision

The conference noted that when the rule provides for a time-frame within which the goods cleared for job-work are required to be returned and the infringement of the same would invite action as provided for under the recovery provisions of the Cenvat Credit Rules 2004. The conference noted that Hon'ble Tribunal in case of General Motors India Ltd [2010 (260) ELT 81] has ruled that Section 11AB of the Central Excise Act, is the provision under which interest is to be demanded which provides that interest is liable from the first date of month succeeding the month in which the duty ought to have been paid under the Act. Applying this ratio, the tribunal concluded that interest is liable to be paid after the expiry of the period of 180 days from the date of issue of capital goods to the job worker. The same principle would apply in case of inputs sent to the job worker.

B.28 - Meerut Zone - Cenvat Credit – Availment of Credit of Duty Paid on Welding Electrodes Used for Repairing Work.

Issue:

Credit of duty paid on welding electrodes used for repairing work in factory has been in dispute since 1996. Several hundreds of Show Cause Notices are pending on account of contradictory judgments. Hon'ble Allahabad High Court, in the case of Upper Ganga Sugar & Industries Ltd.in CEA No. 135/2005, has held that Welding Electrodes used in repairing and maintenance are not eligible for Cenvat Credit .Hon'ble Rajasthan High Court in the case of Hindustan Zinc Ltd. [2008 (228) ELT 517 (Raj.)] on the other hand has allowed Cenvat Credit of duty paid on Welding Electrodes used for repairing of Capital goods. In view of the contrary judgments the Board may like to issue clarification regarding admissibility of Cenvat Credit on Welding Electrodes used for repairing and maintenance, so that a uniform practice is followed all over the country.

Discussion & Decision

The conference noted that there are contrary judgments on the issue by Hon'ble Allahabad High court in the case of M/s Upper Ganges Sugar & Industries Limited and by Hon'ble Rajasthan High Court in case of M/s Hindustan Zinc Limited. Further Hon'ble Supreme Court has referred the matter to a larger bench in case of RamalaShahkariChini Mills Ltd [2010

(260) ELT 321]. As the issue is pending before the Hon'ble Supreme Court, for the present the cases may continue to be in the Call Book. Further the conference recommended that Board should examine the issue and if needed amend the rules to bring certainty to the issue of availability of credit on welding electrodes used under different situations.

B.29 - Meerut Zone - Cenvat Credit - Dutiability of Baggase, Pressmud in Sugar Factory and Zinc, Aluminium Ash/Dross in Metal Industry and Similar Waste/Refuse arising from Cenvated Inputs:

Issue:

Baggase, press mud in sugar factory and zinc and aluminium ash/dross in non-ferrous metal industry have been held as non-excisable goods by Hon'ble Supreme Court in the following cases respectively - M/s DSCL SUGAR LTD,(2015-TIOL-240-SC) &Indian Aluminium Company Ltd., [2006 (203) ELT 3(SC)]. As such a provision similar to the one that existed in the erstwhile Modvat scheme may be provided in the Cenvat Credit Rules, 2004 to treat waste/scrap produced from inputs on which Cenvat credit has been availed as 'deemed manufactured products' so that appropriate duty/credit may be recovered from the assessee and litigations avoided.

Discussion & Decision

The conference noted that Hon'ble Supreme Court in the case of M/s DSCL Sugar Limited (supra) has held that Sections 2(d) and 2(f) of the Central Excise Act, 1944 have to be satisfied conjunctively for imposition of Excise duty under Section 3 of the Act. The period involved in the case was subsequent to 10th May, 2008, i.e. the date when an explanation was added to Section 2(d) of Central Excise Act, 1944. Therefore, goods which are not manufactured would not be chargeable to Central Excise duty even after amendment in Section 2(d). However, rule 6(1) of the Cenvat Credit Rules, 2004 has been amended vide notification no. 6/2015-C.E (N.T) dated 1.3.2015, providing that for the purposes of Rule 6 of the CENVAT Credit Rules, 2004, non-excisable goods shall be considered as exempted goods. Therefore, input and input services credit relatable to manufacture of such non-excisable goods would need to be reversed by the assessee in the same way it is required to be reversed for the exempted goods. Treatment of non-excisable goods and exempted goods are required to be same w.e.f. 1.3.2015 under Rule 6 of the CENVAT Credit Rules, 2004.

B.30 - Meerut Zone - Cenvat Credit – Admissibility of Cenvat Credit on Service Tax Paid on Sales Agency Commission Service:

Issue:

CBEC vide its Circular No. 943/4/2011-CX dated 29.04.2011 at point No.5 has clarified that credit of service tax paid on sales commission services (Business auxiliary services) used in

relation to manufacture/sale of finished goods is admissible under Cenvat Credit Rules, 2004. However, there are conflicting judgments of Hon'ble High Courts in this regard. Hon'ble High Court of Gujarat in case of Cadila Health care [2013(030) STR 0003] has disallowed the said Cenvat credit whereas Hon'ble Tribunal in case of Birla Corporation Ltd – [2014(35) STR977] followed the judgment of Hon'ble High Court of Bombay and allowed the credit. Board may be requested by the conference to issue necessary clarification on the subject to avoid further litigation and to achieve uniformity in the practice of assessment.

Discussion & Decision

The conference discussed the issue in detail and the facts of both the cases where apparently conflicting judgments have been delivered. It was noted that the judgment of Hon'ble High Court of Gujarat was in a very specific set of circumstances where the sales commission agent seemed to be only trading in the goods i.e. buying and selling the goods without undertaking any sales promotion or advertising. In the said judgment, Hon'ble Court noted that "there is nothing to indicate that such commission agents were actually involved in any sales promotion activities as envisaged under the said expression. Obviously, commission paid to the various agents would not be covered in this expression since it cannot be stated to be a service used directly or indirectly in or in relation to the manufacture of final products or clearance of final products from the place of removal". Board Circular No. 943/4/2011-CX., dated 29.4.2011 at point no 5 on the other hand has explained the situation where the commission agent renders the service of sales promotion in following words – "……. Moreover the activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale……. " . Board circular directs that input service credit would be available when there is a element of sales promotion as sales promotion is a service. Thus, the conflict between the judgment and the circular is not as large as is perceived. Both the Board circular and case laws on the subject allow credit of input services, when the activity of the sales commission agent involves an element of sales promotion.

B.31 - Vishakhapatnam Zone - Cenvat Credit – Whether Restriction of One Year Applicable When Duty Paid Goods are Being Received into Factory Beyond One Year after Repairs/Reconditioning etc:

Issue:

In terms of Rule 16 of Central Excise Rules, 2002, the assessee can bring goods (his own finished goods or other goods on which duty has been paid) into his factory for being re-made, refined, re-conditioned or for any other reason and can take credit of such duty treating those goods as inputs under Cenvat Credit Rules, 2004 and utilise this credit according to the said rules. Whereas, in terms of proviso 5 of sub-rule (7) of Rule 4 of Cenvat Credit Rules, 2004, the manufacturer shall not take Cenvat credit after one year of the date of issue of any of the documents specified in sub rule(1) of Rule 9 of Cenvat Credit Rules,

2004. It may be clarified as to whether the restriction of one year of the date of issue of input invoices can be made applicable to the documents based on which duty paid goods are being received into the factory for repairs/re-conditioning under Rule 16 of Central Excise Rules, 2002.

Discussion & Decision

The conference discussed the issue and noted that board had issued Circular no. 990/14/2014-CX-8, dated 19.11.2014 explaining the intent behind the amendment made in sub-rule (7) of Rule 4 of the CENVAT Credit Rules, 2004. The circular clarified that the credit should be taken within the time-limit prescribed on the basis of eligible documents specified in rule 9 for the first time. The limitation does not apply for retaking of the credit. It was noted that the documents for credit are generally issued by a seller and used for taking credit by a buyer say a manufacturer or a provider of the output service. Rule 16 of Central Excise Rules, 2002 on the contrary does not deal with the receipt of inputs from a seller but deals with receipt for goods produced in the same factory brought back for being re-made, reconditioned etc. To make the credit eligible on such receipt, the rule creates a deeming fiction as if these goods have been received are inputs and allows credit after entering the particulars of such receipt in the records. Credit is thus taken by making appropriate entry in records and not on the basis of documents issued by a seller. Further, there is no bar of time in the rule 16 itself for receipt of the goods back in the factory. The conference was of the view that when rule 16 does not provide for any time limit, the same cannot be read into the rules indirectly through amendment in rule 4(7). Taking into consideration the intent behind the amendment, scope of Rule 9 of the CENVAT Credit Rules, 2004 and scope of rule 16 of the Central Excise Rules, 2002, it was concluded that the time-limit prescribed in 5th proviso of sub-rule (7) of rule 4 of the CENVAT Credit Rules, 2004 CCR, 2004 would not apply when goods are brought back to the factory for reprocessing, reconditioning etc under rule 16 of the Central Excise Rules, 2002.

B.32-Delhi Zone - Cenvat Credit – CAG Audit - Loss of Revenue on Clearance of Inputs As Such.

Issue:

CAG audit has raised audit paras for loss of revenue on clearance of inputs as such and has suggested amendment in rules on following grounds. Inputs removed as such are not used in the manufacture of final products therefore input credit is not admissible under the Cenvat Credit Rules 2004. However for reversal following changes in rules are suggested -

(a) In case of removal of inputs as such, at a price lower than the one at which it was received, a manufacturer should reverse Cenvat credit taken on the inputs at the time of receipt on the factory .

(b) In case inputs removal as such at a price higher than the purchase price, the manufacturer should reverse the credit taken initially from the Cenvat account and pay duty on the differential value from the account current.

Rule 3(5) of the CENVAT Credit Rules, 2004 provide for payment of an amount of credit availed in respect of inputs or capital goods removed as such. The position was however different prior to 1.03.2003 before issuance of notification no. 13/2003-CE (NT) dated 01.03.2003, when on removal of inputs or capital goods as such, a manufacturer was required to pay an amount equal to the duty of excise leviable on such goods at the rate applicable on the date of such removal and on the value determined under section 4 or Section 4A of the Central Excise Act 1944, as the case may be. The view of the audit is that provisions of rule 3(5) of the CENVAT Credit Rules, 2004 can be misused and are being misused. The intention of audit is to bring this to the notice of the Government for the remedial action by amendment in the rules.

Discussion & Decision

The conference concluded after discussion that the audit paras raised by CAG are not acceptable both on the grounds of merit and equity. On grounds of equity, any rule which prescribes reversal on the basis of transaction value only when the selling price is higher and not when it is lower is not likely to stand judicial scrutiny. Further, Central Excise duty is a duty on manufacture of goods. In case of clearance of inputs or capital goods as such there is no manufacture involved. The maximum reversal of credit which the department can demand is the credit which was taken on receipt of inputs/capital goods. Any demand higher than the amount of credit taken would not stand judicial scrutiny as it would amount to demanding Central Excise duty on an activity which is not manufacture. The audit objection is accordingly not acceptable and reply to the same may be given suitably.

B.33 - Nagpur Zone - Central Excise Rules & Procedures – Proper Officer to Issue Show Cause Notice for Recovery of Duty under the Concessional Duty Rules:

Issue:

(i) Manufacturers and manufacturer importers are permitted to procure excisable goods at concessional rate of duty by following the procedure prescribed under *Central Excise (Removal Of Goods At Concessional Rate Of Duty For Manufacture Of Excisable Goods) Rules, 2001* [CE Concessional Duty Rules] and Customs (Import Of Goods At Concessional Rate Of Duty For Manufacture of Excisable Goods) Rules, 1996 [Cus Concessional Duty Rules].

(ii) In many cases, the duty foregone becomes recoverable on account of violation of the conditions of the Concessional Duty Rules viz. short receipt of goods, diversion of goods, loss of goods, use of goods for manufacturing ineligible final products etc, benefit under the

Concessional Duty Rules is to be denied. The power to recover the duty foregone has been provided under the Concessional Duty Rules itself which reads as under:

RULE 6 Recovery of duty in certain cases — The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of section 11A and section 11AA of the Central Excise Act, 1944 (1 of 1944) shall apply *mutatis mutandis* for effecting such recoveries :……..

Rule 8 of Cus. Concessional Duty Rules

Recovery of duty in certain cases. - The Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall ensure that the goods imported are used by the manufacturer for the intended purpose or are re-exported in terms of Rule 7A and in case they are not so used take action to recover the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under Section 28AB of the Customs Act, 1962, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(iii). It appears from the aforesaid provisions that despite the apparent difference in the wordings of the provisions of Rule 6 and Rule 8, if the said goods are not used for the intended purpose, it is the DCCE/ACCE having jurisdiction over the recipient Manufacturer/Manufacturer Importer who is required to exercise the powers of recovery, rather than the DCCE/ACCE having jurisdiction over the supplier of goods or the DCC/ACC of the Port of Import, as the case may be.

(iv). However, divergent views have been expressed by the Appellate authorities in this respect in so far as the Cus. Concessional Duty Rules are concerned. In the case of Molex (I) Ltd. -2012 (275) E.L.T. 607 (Tri.- Bang.), it was held by the Tribunal that the Show cause notice issued under Rule 8 by the DCCE/ACCE having jurisdiction over the recipient manufacturer importer was without jurisdiction whereas in the cases of Samtel Colour Ltd. – 2000 (126) E.L.T. 1256 (Tribunal) and Cosmo Ferrites Ltd. - 2014 (308) E.L.T. 633 (Tri. - Del.), it has been held by the Tribunal that it is only the DCCE/ACCE, having jurisdiction over the recipient manufacturer importer, who can issue Show cause notice for recovery of differential duty under Rule 8.

Discussion & Decision

The conference noted that there are three judgments cited by the sponsoring zone on the subject. In case of Samtel Colours Ltd it was held by the tribunal that Assistant Commissioner having jurisdiction over his factory shall have jurisdiction to issue notice for recovery of differential duty under Rule 8 ibid, and not the Assistant Commissioner of Customs at the port of importation under Rule 5 ibid. Civil appeal filed by the assessee was dismissed by the Hon'ble Supreme Court leading to merger of the order of the tribunal with the order of the Supreme Court. The issue of jurisdiction to issue show cause notice is thus judicially settled. The next issue is regarding the legal provision under which the demand should be raised. In case of Molex (I) ltd Hon'ble High Court affirmed the decision of the tribunal and found that a Central Excise Officer not appointed as a Customs officer is not the competent authority to issue the show cause notice in such cases. Tribunal further held that the appropriate section for demanding differential duty in the case was section 28 of the Customs Act, 1962 and not section 11A of the Central Excise Act, 1944. In case of Cosmo Ferrites Ltd also it was held that the appropriate section to demand duty would be section 28 of the Customs Act. The conference therefore concluded that the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the actual user factory, when appointed as proper officer of Customs, would be the appropriate authority to demand differential duty under section 28 of the Customs Act, 1961.

B.34 - Mumbai-II Zone - Central Excise Rules & Procedures – Amendment in the Provisions of Rule 16(1) of Central Excise Rules 2002

Issue

The provisions of Rule 16(1) of Central Excise Rules 2002 provide that *"where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, reconditioning or* ***for any other reason*** *the assessee shall be entitled to take credit of such duty as if such goods are received as inputs under the Cenvat Credit Rules and utilize the credit according to the said rules."* Further sub-rule (2) of he said Rule 16 stipulates that, "*if the process to which the said goods are subjected, does not amount to manufacture, then the assessee shall pay an amount equal to the Cenvat credit taken under sub-rule(1)* ". It can be envisaged that this provision can be misused by the manufacture for bringing in his factory any duty paid goods for any reason and availing the Cenvat credit thereon.

It may be pertinent to mention that provisions of Rule 16(1) of CER 2002 the phrase i.e. *" for any other reason"* has to be read in context with earlier words i.e. *"re-made, refined, reconditioning".* Therefore it can be interpreted that Rule 16(1) ibid does not confer any blanket permission for availment of CENVAT credit on any goods even if the said goods are not undergoing any process which amount to manufacture. Such indiscriminate availment of CENVAT credit would be against the cardinal principles of the CENVAT scheme. For e.g. cutting and slitting of steel sheet in coil is considered as not amounting to manufacture. However, as per the present provisions of Rule 16(1) ibid, the processor can avail the

CENVAT credit (which in such cases is normally of a considerable amount running into crores) and pass on the same to their customers. Secondly, the duty paid goods can also be brought in the factory and subsequently cleared as a Trading activity under the provisions of said Rule 16(1) ibid.

In order to eliminate the possibility of misuse of the provisions of Rule 16(1) ibid for availing the CENVAT credit, it is suggested that the words for **"any other reason"** may be substituted by the words **"for any other similar process".**

Discussion & Decision

It was agreed in the conference that the words "for any other reason" appeared to cover many *bona-fide* business situations. Further, there was no data to indicate that the provision was currently being misused. It was accordingly decided that no amendment in the rules were warranted .

B.35 - Chennai and Vishakhapatnam Zones - Central Excise Rules & Procedures – Exports – Grant of Rebate by Customs:

Issue:

Presently the process of sanction of central excise rebate involves filing and verification of voluminous documents like ARE1s, invoices, shipping bills, bill of lading, mate's receipt, packing list, etc. This is highly time-consuming and leads to delay. Further, rebate is sanctioned by passing an Order-in-Original and subjected to audit and review, which is again a needless procedure. Hence, as a significant measure to improve ease of doing business, the current process of rebate sanction needs to be reviewed and it would be appropriate to grant rebate by the Customs on the basis of shipping bills and credit the rebate directly to the bank account of the exporter. Procedures similar to sanction of drawback which is disbursed commodity-wise on the basis of All Industry Rate [weighted average] may be devised for excise rebate also. Hence, a committee may be constituted to review the current system and suggest commodity-wise standardization of rebate, which will vastly reduce the transaction costs and time for exporters.

Discussions & Decision

Conference after discussion concluded that there is a need to simplify export procedures and sanction of export benefits on Central Excise side. It was decided that a committee may be constituted to be headed by the Chief Commissioner of Central Excise, Chennai Zone to recommend new export procedures (including the procedure for sanctioning of export benefits such as rebate). One officer from the policy wing of the Board at the Director level was decided to be a member of the Committee and submit its report to the Board for further action by 15.1.2016.

B.36 - Hyderabad Zone – Central Excise Rules & Procedures - Rebate of Duties Paid on Raw Materials & Services Used in Manufacture of Exempted Goods:

Issue:

It is to submit that the Bulk Drug Manufacturers Association (India), Hyderabad a representative body of Bulk Drug Manufacturing units based at Hyderabad have represented that some of their member units are manufacturing products which are exempted from Central Excise duty vide notification no. 12/2012 CE dated 17.03.2012 and as a consequence they are not availing CENVAT credit of central excise duty paid on input raw-materials. To claim the rebate of Central excise Duties paid on input raw materials on export of these exempted products, they were advised to avail facility under notification no. 21/2004CE (NT) dated 06.09.2004 and to export the goods in Form ARE2 specified under the said notification; to which they have been intimated that by filing ARE2 which contained a declaration as at (d) that they shall not claim any drawback on export of the consignment covered under this application, they could not claim drawback of the Customs portion of the notified rate. Further as per the drawback schedule, the rate indicated in column no. 4 i.e Drawback when Cenvat facility has not been availed and column no. 6 i.e Drawback when Cenvat facility has been availed are same which shall mean that the rate pertains to only customs component in terms of condition no. 6 of the said notification. Therefore the trade was apprehensive that clearing the goods under notification no. 21/2004 CE (NT) dated 06.09.2004 would make them ineligible to claim drawback of customs portion of duty in view of the declaration given in Form ARE2. Association has suggested that for claiming both the rebate claim of Cenvat duty paid on inputs under notification no. 21/2004 –CE (NT) dated 06.09.2004 as well as drawback of the customs component as per All Industry Drawback rate, the existing declaration (d) appended to Form ARE-2 (Annexure 23) which appears to be prohibitory for claiming of any drawback, may be modified from " We further declare that we shall not claim any drawback on export of the consignment covered under this application" to " We further declare that we shall not claim any drawback (Central Excise Component) on export of the consignment covered under this application" so as to enable such exporters to avail both the benefits.

Discussion & Decision :

The Conference noted that declaration (d) of ARE-2 was meant to ensure that benefit of duty rebate and drawback was not taken simultaneously for the same element of tax i.e. Customs portion or the Central Excise portion. It was decided by the conference that the issue needs to be referred to the Drawback section with appropriate inputs from central Excise wing. Further, the conference decided that the declaration (d) of ARE-2 needs to be amended**.**

B.37 - Bhopal Zone - Central Excise Rules & Procedures - Doubt regarding Computation of Penalty under Rule 8(3A) of Central Excise Rules, 2002, When Period of Delay Involves Part of a Month:

Issue:

Rule 8(3A) of the Central Excise Rules, 2002 provides that

"If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one percent on such amount of the duty not paid, for each, month or part thereof calculated from the due date, for the period during which such failure continues.

Explanation - For the purposes of this sub-rule, "month' means the period between two consecutive due dates for payment of duty specified under sub-rule (1) or the first proviso to sub-rule (1) as the case may be,,

The point of dispute in the said Rule 8(3A) is the calculation of penalty for each month or part thereof which can be interpreted in the following two ways -

(a) Penalty is to be charged and collected by taking part of a month as one full month.
(b) No of asessees are not in agreement with aforesaid view and are paying penalty @ 1% on actual no of days of failure to pay the duty calculated on prorate basis as this r view is supported by the judicial decisions of the CESTAT and High Courts on the interpretation of the phrase “part of the month”.

It is suggested that the phrase “for every month or part thereof ” be read down as “ for every month or part thereof considered on a pro rata basis.”

Discussion & Decision

The issue was discussed and it was noted that there was variance in the practice of calculation of penalty under rule 8(3A). There are court cases wherein it is provided that calculation for part of the month for levy of interest should be done only for the number of days of delay and not for the full month. Case of BPL Mobile Cellular Ltd [2005(183) ELT324] may be referred in this regard. However, such judgments relate to payment of interest and not to payment of penalty. The character of tax, interest and penalty has been explained by Hon’ble Supreme Court in case of Pratibha Processors [1996 (86) ELT 88]. Para 13 of the judgment is relevant and is reproduced below – *“13. In fiscal Statutes, the import of the words — ‘tax’, ‘interest’, ‘penalty’ etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty — which is penal in character.”* It is in this background that courts have directed that

interest should be charged only for actual no of days of delay as revenue is entitled for compensation for actual number of days of delay only. However, penalty has a different character. Once it is prescribed in law, the quantum cannot be changed as it is penal in nature and is considered mandatory penalty. Therefore, even for default of a part of a month, penalty for the full month shall be recovered.

B.38 - Chennai Zone and Coimbatore Zone - Central Excise Rules & Procedures - Amendment of Rule 12 of Central Excise Rules, 2002:

Issue:

At present filing of Central Excise returns by all assessees are being done through ACES. Errors and omissions after the filing of periodical returns such as ER1, ER2, ER3, ER8 etc. cannot be rectified because there is no provision in the Rules for such correction. Whereas Rule 7B of Service Tax Rules, 1994 allows revision of return to correct a mistake or omission within a period of 90 days from the date of submission of return. A provision to revise the returns within a stipulated time may be provided in Rule 12 of Central Excise Rules, 2002 to give an opportunity for the assessees to rectify any mistakes or omission before the last date of filing the next return. It was suggested that a proviso may be added at the end of Rule 12 as "The assessee who files the return as per this provision may revise the return to correct a mistake or omission on or before the due date of filing the next return."

Discussion & Decision

Service tax return is filed on half yearly basis whereas excise return is filed on monthly or quarterly basis. The nature of the assessee in Service tax and Central Excise is also different as a manufacturer often has better qualified compliance team. Therefore the need for revision of return is not as pressing in Central Excise. Further, the nature of revision would also be a relevant issue for consideration. Whether revision should be allowed for all elements of the return including turnover and tax liability or should it be allowed only for bona-fide and clerical mistakes needs to be examined. The conference concluded that a blanket provision for revision of all the prescribed returns may not be desirable and may complicate the compliance regime in Central Excise. The issue would also involve changes in ACES and would need consultation with DG, Systems. The conference concluded that a more nuanced view needs to be taken on the subject after collecting inputs from various stake holders. Conference suggested that policy wing in the Board may take further action as deemed fit.

B.39 - Coimbatore Zone - Central Excise Rules & Procedures-e-payment of Excise Duty against Incorrect Assessee code Rectification -Regarding:

Issue:

E-payment of excise duty was introduced with effect from April 2007. Under the e-payment system if an assessee enters an incorrect assessee code number (ECC) while making payment there are no clear instructions on the procedure and the mode to be adopted for rectifying the mistake. The Office Memorandum issued by the Principal Chief Controller of Accounts, CBEC, New Delhi envisages formulation of modalities to be followed while keeping track of such type of cases by the Commissioners. The avowed policy of the Government is to promote ease of doing business. Therefore, keeping in consonance with the above policy it is felt that a uniform procedure to rectify the mistake committed by an assessee may be formulated by the Board and provided in automation mode.

Discussion & Decision

The conference after due deliberations concluded that this is a long standing problem with the assessee and needs to be addressed. It was decided that Coimbatore zone should make a reference to the Board with complete set of correspondence made with Pr. CCA on the issue for further examination and issuance of necessary instructions/circular in this regard in consultation with Pr CCA.

B.40 - Kolkata Zone - Central Excise Rules & Procedures - Penalty for default under Rule 8(3A) of Central Excise Rules, 2002:

Issue:

There is no stipulation of the period in the rule for which the default or failure to pay duty can continue after which coercive action for recovery can be taken. Rule 8(4) of the said rules provide for applicability of the provisions of section 11 of the Central Excise Act, 1944 but here too, no specific time limit has not been prescribed for application of the said rule. It is suggested that the rule should incorporate a specified time limit for such default after which coercive recovery can be made. Further, penalty should be graded in nature say for the first month @ 1% on the amount of duty not paid, on the second month @ 2% and so on. Such escalated penalty would act as deterrence for the frequently defaulting assessees.

Discussion & Decision

The conference after due discussion did not agree with the proposal to amend the rule and provide for escalation in penalty for continued default. With regard to implementation of the rule as it exists, it was noted that non-payment of duty duly reflected in a Return is a case of admitted liability. Provisions of section 11A(16) introduced in the budget of 2015 are relevant in this regard wherein it has been provided that provisions of section 11A do not apply for duty which has been self assessed, reflected as payable in the Return but has not been paid. The implication of this sub-section is that for admitted liabilities no show cause notice and adjudication proceedings need to be undertaken. For such liability, provisions of rule 8(4) of the CER, 2002 apply. This rule provides that provisions of section 11 of the Act shall be applicable for recovery of duty, interest and penalty in case of default. The conference

concluded that recovery of admitted liability thus can be initiated forthwith once the return has been filed and duty shown payable has not been paid. As the legal empowerment is available, necessary recovery can be made forthwith.

B.41 - Vishakhapatnam Zone - Central Excise Rules & Procedures - No penalty for non-filing of NIL return:

Issue:

Rule 12(6) of Central Excise Rules envisages imposition of penalty for non-filing of returns irrespective of either NIL or otherwise. Under the Finance Act there exists proviso to Rule 7C of Service Tax Rules, 1994 that "where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty". In view of the above, the Rule 12(6) may be modified in line with Rule 7C of Service Tax Rules. No penalty for not filing NIL return may be considered.

Discussion & Decision

Conference after discussion referred to the different nature of assessee in Central Excise and Service tax. A Central Excise assessee has better set-up for compliance and therefore it is expected that returns including NIL return would be filed in time. Therefore, it was decided that the Central Excise provision need not be amended as it was working well.

B42 - Lucknow Zone-Implementation & Other Related Issues-Non availability of any expert facility for determining the speed of FFS machine under Compounded Levy Scheme:

Issue:

Sponsoring Zone explained that presently there are more than 2 slabs of duty on pan masala, gutkha and chewing tobacco based on the number of pouches packed per minute on the FFS machines. It is seen that most of the assessees declare their packing speed at 500 to 600 pouches per minutes. In view of this, the duty slabs may be reduced from three slabs at present to two viz one for packing speed up to 500 pouches per minute and another for more than 500 pouches per minute as no expert facility for determining maximum speed of FFS machine is available with the field officers .

Discussion & Decision

It was informed by the sponsoring zone that software inbuilt in the FFS machine is used to reduce the speed of the machine at the time of inspection by Central Excise Officers, whereas the machines are operated at higher speed before or after such inspection. It was pointed out that Central Excise Officers, not being technical experts in the field, were neither able to confirm nor deny the claim of the assessee regarding maximum speed in absence of manufacturer's catalogue specifying the capacity etc. of the machine. Manufacturers of the machine do not specify any technical specifications including maximum speed, capacity etc. While appreciating the above concerns of the zone, the conference did not agree with the

suggestion of the sponsoring zone to reduce the number of slabs of speed to lesser number of slabs as it would not address the issue of miss-declaration of speed. The slabs were fixed only in the last one year after detailed study and certainty in taxation required that frequent changes should not be made in the duty structure. It was decided that besides measuring the speed, assessees may be asked to furnish manufacturer's certificate or chartered engineer's certificate to verify the speed.

B43 - Chennai Zone- Implementation & Other Related Issues - Mismatch in UQC with regards to Matches:

Issue:

There is a mismatch in the Unit Quantity Code (UQC) as per the Central Excise Tariff and the UQC adopted in trade parlance, with regard to matches. The UQC is "Kg" in Tariff, whereas in practice it is in boxes of 50 sticks. The trade sells products in units pack only. Therefore, it is felt that the Unit Quantity Code prescribed in the Central Excise Tariff be changed from Kg to boxes as this would be in tune with the practice adopted by the Trade. It was suggested that Unit Quantity Code in the Central Excise Tariff may be amended to "Boxes of 50 sticks."

Discussions & Decision

After discussion the conference concluded that there was not enough statistical data available to conclude that such change was necessary. Chennai Zone, was advised to provide statistics as to quantum and frequency of such mismatch and difficulties faced due to the mismatch. Based on such feedback, Board will look into the matter and decide if there was any need to change the UQC.

B.44- Chennai Zone- Implementation & Other Related Issues -Matches - Inverted Duty Structure in matches :

Issue:

The sponsoring zone explained that most of the manufacturers of matches are availing CENVAT credit in respect of the following inputs at the given rates :

(i) Pottasium Chlorate 12%
(ii) Wax 14%
(iii) Paper Boards 6% and 12 % as the case may be
(iv) Wrapper 6% and 12 % as the case may be, etc

Whereas the rate of duty for matches manufactured by semi mechanized sector is @6 % .This leads toinverted duty structure and consequently payment of duty in cash is negligible. The cash component of the duty has also fallen over the years on account of the gradual inclusion of various processes associated with manufacturing getting included for availing credit while the scope of concessional rate of duty has expanded.

Discussion & Decision

The conference noted that there are different rates of duty for matches manufactured by manual process, semi-automatic process and automatic process. These rates have a certain ratio and have been fixed after studying the industry in detail. Therefore, it would not be desirable to change the rates without a detailed study of various inputs, processes and proper calculation of duty inversion, if any. It was decided that the sponsoring zone would provide the statistical data and analysis pertaining to value addition, quantity of raw material used and duty structure etc. Based on the data further decision would be taken in the Board on the subject.

B.45 - Chennai Zone–Implementation & Other Related Issues-Redrafting of CBEC's Supplementary Instructions:

Issue:

The CBEC's Excise manual of Supplementary Instructions 2005 stipulates procedures to be followed on various aspects w.r.t. registration, invoice systems, etc. For instance, Chapter 4 - CBEC's Supplementary Instructions stipulates prior intimation of serial numbers of invoices, maintenance of different invoice books, submission of cancelled invoices within 24 hours of cancellation etc. Similarly, Chapter 7 stipulates annual filing of Letter of Undertaking [LUT] for effecting exports, filing of ARE-1 in respect of exports made under self-sealing to the Range Officer within 24 hours, etc. Such conditions have lost relevance with the advent of self-assessment and they also expend considerable compliance time and paperwork. Therefore, the Supplementary Instructions should be revamped with an objective to dispense with redundant procedures and in place prescribe online filing of intimation, LUT, bonds, etc to reduce transaction cost. Supplementary instruction also needed to be revised to make it consistent with subsequent legal changes.

Discussion & Decision

It was decided in the tariff conference that that after taking inputs from the field Supplementary Instructions would be examined for revisionwith the objective of providing solutions to the problems faced by the field. Chapter wise instructions would be circulated by the policy wing among the field formations for examining and proposing changes in the instructions. The policy wing would compile the proposals.

B.46 - Chennai Zone–Implementation & Other Related Issues-Monetary limit for filing appeal before Commissioner (Appeals).

Issue:

At present there is no prescribed minimum monetary limit for filing appeals with Commissioner (Appeals) which results in frivolous appeals involving small amounts. In order

to reduce small cases at the level of Commissioner (Appeals), a proviso may be inserted in Section 35A of the Central Excise Act, 1944, prescribing a monetary limit of Rs.1 Lakh for filing of appeal before the Commissioner (appeal). With reference to the Tribunal, similar provision exists in the second proviso to Section 35B which prescribes monetary limit of Rs.2 Lakhs for CESTAT.

Discussion & Decision

It was concluded in the conference that there may be cases of small amounts where confirmation of demand could be unfair. Assessee should not be deprived of his right to appeal at the first stage on adjudications by DC/AC/Supdt. If the idea was to decrease the number of appeals before Commissioner (Appeal), then it can also be achieved by addressing the quality of adjudication orders. However, it was decided to suggest that Board examine the proposal of fixing monetary limit with regard to appeals filed by the department.

B.47 - Hyderabad Zone-Implementation & Other Related Issues-Period of Condonation of Delay in Payment of Pre-deposit; Sec.35F of Central Excise Act, 1944:

Issue:

As per the provisions of new Sec.35F of CEA, 1944, which came into effect from 06.08.2014 (inserted vide Sec.105 of Finance Act, 2014), the Tribunal or Commissioner (Appeals) as the case may be, "shall not entertain" any appeal unless the appellant deposits seven and half percent (7.5%) of the duty and penalty. The appellant has to pay ten percent (10%) of the duty and/or penalty in case it is second level of appeal [against the order of the Commissioner (Appeals)]; subject to a maximum of Rs.10 Cr.

2. The provision is harsh for the trade and is also prone to litigation. Many assessees are of the view that they have time till the first hearing of the case for making the mandatory pre-deposit. On the other hand, at present an appeal is considered incomplete without proof of payment of pre-deposit. In order to alleviate possible litigation and to ensure that due payment of the pre-deposit can be made with convenience by the assessee, it is felt that a further period 30 days from the date of expiry of the normal appeal period should be inserted as 3rd proviso to Sec 35F. Further, the appeal in the CESTAT comes up for first hearing after a gap of couple of years and therefore it would be reasonable to allow the assessee to pay pre-deposit till such time.

Discussion & Decision

The conference noted that after the amendment the new provisions, trade and department have just settled with the new provisions. Since the amendment in the law was made only last year, at present no further change in law was recommended in the conference.

B.48 - Hyderabad Zone-Implementation & Other Related Issues - Section 11 AC of the Central Excise Act 1944 - Penalty in Cases Concerning Erroneous Refund:

Issue:

It is requested to consider omitting the words "or erroneously refunded" appearing in clause (a) sub-section (1) of the Section 11AC of the CEA, 1944 which deals with cases of normal period. Erroneous refunds would not be for reasons other than suppression/fraud etc on the part of the claimant and therefore provisions for normal period of time were of not applicable. On the other hand if the erroneous refund was on account of the error of the refund sanctioning authority, the claimant should not be liable for penalty under Section 11AC (1)(a) of the CEA,1944.

Discussion & Decision

The issue was discussed and it was noted that the minimum penalty under the provision 11AC(1)(a) is only rupees five thousand. Assessee has the option of not paying even this small penalty by repaying the excess refund any time before the issuance of show cause notice or within thirty days of issue of SCN. A wrong payment of refund cannot arise unless a wrong claim or exaggerated claim for refund has been filed by the assessee. Even if such wrong claim is made inadvertently,a small penalty for contravention of rule/procedure etc can be imposed as it is a civil offence. It is only for offences entailing criminal liability that mens-rea is required to be proved. Therefore, it was concluded in the conference that no change in the present law is needed.

B.49 - Mumbai II Zone- Implementation & Other Related Issues-Introduction of Time Limit for Compliance of Provisions of Notification No. 43/2001-CE (NT) dated 26.06.2001:

Issue:

Notification no. 43/2001-CE (NT) provides for procurement of inputs (goods) without payment of duty for the purpose of use in the manufacture or processing of export goods. The said notification specifies the conditions, safeguards and procedures for procurement of duty free inputs for the intended purpose. The said notification *inter alia vide* condition no (ii) stipulates that provisions of 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 observed that the said Central Excise (Removal of Goods at Concessional rate of duty for manufacture of Excisable goods) Rules 2001, does not contain a time limit for completion of process of manufacture of finished goods and disposal of goods(inputs) that have been procured duty free as per provisions of the above said Rules. The Rule 6 of the said rules has a provision for recovery of duty, if goods are not used for the intended purpose. As per Rule 6 of the said Rules, the provisions of Section 11A and 11AA of Central Excise Act 1944 shall apply mutatis mutandis for effecting such recoveries. In absence of any time limit for

export of goods, it not only becomes difficult but impossible for the field formations to keep proper track of records and verify the proper use of the inputs by them duty free in the past. Lack of such provision may pave way for unscrupulous manufacturers for misuse of duty free procurement of inputs. In case of Customs, an importer has an obligation to export the goods within certain time limit of import or raw materials obtained duty free under certain schemes like DEEC etc.

It is suggested that a time limit for completion of manufacture/processing and export of finished goods from the date/period of procurement of duty free goods (inputs) may be incorporated in the aforesaid notification. In order to make the provisions of notification no. 43/2001 supra in harmonization with section 11A time limit of 1 year for export of goods may be introduced. Similarly, an amendment in Rule 6 of the said Rules may also be made to specify the time limit of one year for the intended purpose by the manufacturer from the date of receipt of such goods.

Discussion & Decision

Use of the goods within a specified time limit is not the intention of the Central Excise (Removal of Goods at Concessional rate of duty for manufacture of Excisable goods) Rules 2001 as no such provision has been made in the said Rules. Erstwhile chapter X procedure under central excise also had no such stipulation and no time limit for use of the goods procured was specified. The issue of is regarding recoveries required to be made after the lapse of limitation period specified in section 11A. The conference discussed the issue and after discussion concluded that in such cases of non-fulfillment of the condition in the notification, duty can be demanded without any period of limitation. As provided in rule 6 , Section 11A applies to the case “mutatis mutandis” i.e. with such changes as are necessary for affecting such recovery. In the present case, the change required to be read in Section 11A would be regarding the period of limitation prescribed. The period of limitation would not apply.

It was also noted that the issue is well settled judicially also in case of Bombay Hospital Trust Vs Commissioner of Customs, Sahar, Mumbai [2005 (188) E.L.T. 374 (Tri. - LB)] wherein it has been held that in case of demand of duty under an exemption notification which casts continuous obligation, limitation under Section 28 of Customs Act, 1962 is not applicable. The tribunal had noted that in such cases the duty demand does not relate to short levy or non-levy at the time of initial assessment on importation, but arises subsequently on account of failure to fulfill the post-importation conditions and therefore limitation prescribed in Section 28 has no application. The conference noted that demand of duty is made in such cases in terms of the bond executed to avail of the exemption and for this reason also the limitation prescribed in section 11A would not apply. It was accordingly concluded that there is no need for changing the rule and demand of duty can be made without any period of limitation, if the end use condition is not satisfied.

B.50 - Implementation & Other Related Issues- Reassignment of Cases for Adjudication by Chief Commissioner and Reassignment of Cases for Adjudication by Commissioner.

Issue:

The issue regarding competence of Chief Commissioner and Commissioner for to reassignment cases for adjudication amongst different Commissionerates was discussed.

Discussion & Decision

After discussion of the legal provisions and delegated power with the Chief Commissioner it was concluded that –

(i) Audit Commissioners of Central Excise do not have powers to adjudicate and cannot be assigned any case for adjudication.

(ii) In exercise of powers of the Board, delegated to the Chief Commissioner vide notification no. 11/2007–C.E(N.T) dated 1.3.2007, Chief Commissioner may assign cases from one Commissioner to another for expeditious adjudication, when pendency is large and such reassignment is necessary. Similarly, the Chief Commissioner may reassign cases for levels below the Commissioner from one Commissionerate to another within his zone. Appropriate orders would be required to be issued for such reassignment of cases. Chief Commissioner can also issue orders appointing common adjudicating authority within his zone .

(iii) Powers to assign cases amongst officers within a Commissionerate would fall within the administrative competence of the Commissioner. Appropriate order would be required to be issued in this regard.

B.51 - Implementation & Other Related Issues -Change in the practice of assessment :

Issue:

There are instances where individual Commissionerates or offices say a Division, change a long standing assessment practice. After changing the assessment practice such assessee may also be issued a show cause notice which is unfair situation for the business of the assessee. The Conference was requested to discuss this situation and suggest appropriate course of action in this regard.

Discussion & Decision

The conference discussed the issue in detail and noted that change in assessment practice which changes a long standing assessment practice which has prevailed across various zones should be strictly avoided. Any such proposal for a change should have approval of the higher officers of the zone say Commissioner or Chief Commissioner. Before making such change it would also be desirable for the zone to consult other zones regarding assessment practice. If the zone after due consultation is of the view that the long standing assessment

practice across the country is erroneous, due information on assessment practice and justification should be collected from various zones and a detailed reference made to the Board in this regard. Conference also suggested that Board should dispose off such references expeditiously and where needed issue a circular.

B.52 - Implementation & Other Related Issues-Ex-parte Adjudication of Show Cause Notices under Specified Circumstances.

Issue:

The issue of procedure for adjudication where a CERA objection is closed was discussed.

Discussion & Decision –

The conference discussed that audit of a Central Excise or Service tax assessee by CERA results in Local Audit Paragraphs (LAR). Many of these LARs are closed and not converted to Statement of Facts (SOF) as the reply given by the department is accepted by the AG's office. This process may take time and during this process protective in many cases show cause notices are issued to protect the interest of revenue. The issue is whether the adjudication of such show cause notices after the closure of audit paragraphs in consultation with CERA, should follow the procedure of examining the reply of the assessee to the notice, grant of personal hearing etc. The conference was of the view that where an audit objection by CERA is dropped and the audit paragraph closed on the basis of the reply of the department and the view of the department continues to be so, elaborate adjudication proceedings are not required as the department itself has not agreed with the audit paragraph and the consequential show cause notice. Such show cause notices may be dropped by the adjudicating authority without waiting for reply from the assessee or grant of personal hearing as insistence on these steps imposes unwarranted litigation cost on the assessee. This procedure would also apply regarding adjudication of cases where the issue has been clarified by the Board in favour of the trade or where the issue has been decided in favour of the assessee by the Hon'ble Supreme Court.

B.53 –Audit manual - Release of Central Excise and Service Tax Audit Manual (CESTAM)

A new Central Excise and Service Tax Audit Manual was released during the Central Excise Tariff Conference held on 28th Oct-29th Oct., 2015 at Chandigarh. The manual consists of 9 chapters and 11 annexures (on the Central Excise side). The manual provides an exhaustive coverage of various aspects relating to Central Excise audit such as management of audit functions in light of new Audit Commissionerates, principles of audit, responsibility and authority of auditors, audit preparation and verification, audit report etc. A key feature of the audit manual is risk based selection of assessees for audit, based on certain pre-defined risk parameters. Besides, the audit manual also lays down guidelines for audit of multi-

locational units (integrated audit) i.e. a manufacturer having more than one unit on the same PAN.