

## CHAPTER 4

### CENTRAL EXCISE PROCEDURAL SIMPLIFICATION

#### 1. Introduction

1.1 Being the single largest contributor to the tax revenues of the Government, central excise revenues and administration have a critical role in the Indian economy. Naturally, any set back or slow down in central excise revenue mobilization adversely impacts economic planning. Therefore, it is important to devise a suitable tax administration which facilitates voluntary compliance by the tax payer and leads to the collection of revenue at minimum cost.

1.2 In this regard a number of steps have been taken in the recent past to improve central excise administration. Some of these are :

- (i) With exception of cigarettes, self assessment of Central Excise duty by the manufacturer without reference to or interaction with the department has become the norm of Central Excise Administration.
- (ii) Central Excise rules earlier numbering over 234 have been considerably simplified and replaced by new set of Central Excise Rules, wherein the number of rules has been reduced to only 72.
- (iii) Payment of duty has been simplified with the introduction of a fortnightly payment system. As a measure of further relaxation the units in the small scale sector are required to pay duty on monthly basis.
- (iv) Documentation is reduced to the minimum and largely reliance is placed upon the tax payers own records. Further, the filing of statutory return with the department has been made less rigorous by increasing the periodicity. Tax payers are required to file a simple monthly return and those in the small scale sector have to furnish the return only on a quarterly basis.

- (v) A statutory body has been set up for giving Advance Rulings on matters of classification and valuation of goods and applicability of notifications with the objective of introducing uniformity and certainty in Central Excise Administration.
- (vi) Computerisation has been initiated on a large scale in the and the emphasis is on effective monitoring, analysis of data base, and use of Information Technology to carry out day to day functions.
- (vii) New PAN based excise registration has been adopted with the objective of moving towards on-line registration to facilitate the tax payer.
- (viii) Manufacturer exporters have been facilitated by dispensing with the requirement of bonds and security. Further a simplified procedure has been introduced for self-credit of the duty on the goods exported. In respect of merchant exporters also the requirement of security for exports is not insisted upon.
- (ix) Disputes with the tax payer have been sought to be reduced with the introduction of new valuation; rules and extension of the scheme of assessment based on Maximum Retail Price.
- (x) To ensure speedy disposal of cases pending adjudication and in appeal a time period for deciding the cases has been prescribed in the law.
- (xi) Selective Audit based upon risk assessment has been introduced.
- (xii) For greater facilitation the administration has been brought closer to the tax payer by an increase in the number of Central Excise Chief Commissioners from 10 to 23, Commissioners from 61 to 92 and Commissioners of Central Excise (Appeals) from 18 to 71.

1.3 However, it is clear that while the direction is correct, the steps taken so far have not materially altered the general perception that the central excise administration is not tax payer friendly and the systems and procedures are even now far too complex. Therefore, much more

need to be done. Importantly, to make a visible impact it is necessary to make fundamental changes without further loss of time. Accordingly, based upon the principles formulated by the Task Force the following recommendations are aimed at comprehensively changing the essence of central excise administration with the twin objective of tax payer facilitation and encouraging compliance for increased revenue.

## **2. Manufacture**

### **2.1 Increasing scope of central excise levy**

2.1.1 In terms of the Constitution provisions [Seventh Schedule, List 1, Entry 84] central excise duty is levied on all articles produced or manufactured (except alcohol for human consumption etc.). Interestingly, such a levy on act of 'manufacture' is unique in the sphere of indirect tax administration world over. What we have instead is the rise of Value Added Tax (VAT), with over 120 countries\* adopting one or the other variant of this tax. This evidences the fact that efficiency of VAT is unquestioned. Needless to state the globalisation of the Indian economy demands that the question of acceptance of VAT as a uniform National level tax is settled at the earliest in its favour.

2.1.2 In the Indian context, as seen, central excise duty is levied on the manufacture of goods and 'manufacture' has been defined under Section 2(f) of the Central Excise Act, 1944. However, apart from this definition there are a number of deeming provisions under various Chapter Notes of the Central Excise Tariff Act, 1985, which also define 'manufacture'. Over the time Government has been tinkering with the said Chapter Notes in order to expand the scope of the term 'manufacture', particularly to include activities such as packing, labeling and re-labeling in its ambit. As a result more and more activities, which basically are not 'manufacture' in the strict sense of the word but do add value to the product are being covered under the ambit of the central excise levy.

2.1.3 It appears that the traditional approach in defining the taxable event i.e. 'manufacture' has largely lost relevance given the fast changing technology and new emerging markets. In the final analysis what is material in the world of business is whether an activity has added value or not. Accordingly, it is the value addition which must be tapped for purposes of taxation. In this background, the present definition of manufacture resting basically upon the act of 'bringing into

existence an article which has a different name, character and use' appears woefully inadequate. A modern tax system requires focus upon value addition, and the central excise must also eventually move towards this concept, which will also gradually pave way towards VAT. Thus, central excise levy can no longer continue with the concept of tax based upon factum of production or manufacture, as at present. Besides, there are a number of disputes today whether a particular activity amounts to manufacture or not.

2.1.4 The implication is that the future of central excise lies in taxing any activity which adds value to the product. Of course, the idea is not to encroach upon the territory of sales tax. In this regard it is to be appreciated that even today the central excise levy is basically on the value addition but the critical difference is that the tax is levied only if manufacture takes place. What is now being proposed is that the tax would be levied whenever value addition takes place on account of some processing of the manufactured goods. In other words, the concept of production or manufacture would require a re-look and this may have constitutional and legal implications. This has the following advantages :

- (i) Concept of value addition is easy to understand and implement. It does not suffer from interpretation problems associated with the definition of 'manufacture'.
- (ii) It widens the tax base and would positively impact the tax to GDP ratio.
- (iii) Value addition in contrast to 'manufacture' ensures against tax evasion and avoidance through sub-contracting or segregation of the value addition activities outside the manufacturing premises.
- (iv) Basing central excise levy on value addition is a step closer to the National VAT.
- (v) Uncertainty in the minds of tax payers will be removed.

2.1.5 Accordingly, **it is recommended that through immediate suitable legislative changes, the levy of central excise should be progressively based upon value addition. Since concept of value addition would apply only to the processing stage (of manufactured**

**goods) it would be ensured that the area of Sales Tax is not entered into and possibility of double taxation is avoided.**

## **2.2 Powers to notify act of 'Manufacture'**

2.2.1 Charge of central excise levy is attracted when goods are produced or manufactured. Thus, the issue when manufacture is said to have taken place has oft been the subject matter of legal debates and judicial decisions. Simply put excisability of particular goods would depend upon the fact of their manufacture and marketability. The matter stands largely settled now and except for stray cases there is certainty in the minds of both tax administrators and the tax payer. In this background concern has been voiced in many quarters about the recent legislative amendments [section 2 (f) of the Central Excise Act, 1944] empowering the executive to rule upon what is manufacture and that the ruling would have retrospective effect over the past one year. In other words once the executive clarifies in a particular case that manufacture has taken place, by virtue of this provision it would be in a position to demand the duty from the tax payer on all production and clearances made over the past one year, which would be a heavy burden. The trade and industry is concerned that such power may be misused.

2.2.2 On a careful perusal of the said provision it is noted that this provision has been introduced only recently and has not been invoked so far. It appears that with the issue of what is manufacture having been judicially settled over the time there may in fact be no occasion to invoke this power. Moreover, there is a positive aspect, which is that should the power be exercised it would ensure uniformity of practice all over the country. Otherwise it is often the case that an issue is raised and decided against one tax payer whereas his competitors in other Commissionerates escape the proceedings. It is expected that these considerations would have weighed with the legislature while empowering the executive. At the same time due importance must be given to certainty in tax matters which boosts the confidence of the tax payer and is necessary for a higher degree of compliance.

**2.2.3 It is recommended that the said provision should not be used routinely. Moreover, a suitable amendment is necessary so that it is applied prospectively. It may however be noted that this provision will be redundant once it is decided to charge duty on value addition , independent of which a particular process amounts to manufacture or not.**

## **2.3 Expanding definition of 'Manufacture'**

2.3.1 Assessment based on the **Maximum Retail Price** (MRP) of goods covered under the Standards of Weights and Measures Act, 1976 and provided for under Section 4A of the Central Excise Act, 1944, has been found to be very effective. It has reduced disputes and brought about certainty in assessment. However, the Standards of Weights and Measures Act provides for certain relaxation of the condition of affixation of MRP on goods such as when the goods are sold in bulk quantities for actual industrial use. It is the apprehension that such relation may be used to avoid central excise duty. For instance, a manufacturer may clear the goods from the factory in bulk and get it re-packed outside into retail packages.

2.3.2 In order to prevent any misuse of the MRP provisions, **it is recommended that the wherever MRP based levy is applied, the act of repacking into retail containers or affixation of MRP on any goods covered under Section 4A may be deemed to be amounting to manufacture.**

## **3. Assessment**

### **3.1 Confirmation of assessment**

3.1.1 Correct assessment of duty is critical to the central excise administration. This entails correct determination of classification, rate of duty and valuation of the excisable goods. Presently we have a system of self-assessment whereby the tax payer determines his duty liability and pays the same suo moto. He later files a return with the Department indicating the production and clearances and duty paid.

3.1.2 It is the perception that the introduction of self-assessment in Central Excise has reduced responsibility of the Central Excise officers in ensuring the correctness of assessment including correct availment of Cenvat credit. By and large the officers feel that since the tax payer is responsible for self-assessment of the return their own responsibility is reduced to mere confirmation of mathematical accuracy. This is not correct. The C.B.E.C. had clearly laid down the responsibilities of the assessing officers right up to the level of Addl. Commissioner in ensuring correctness of assessment and availment of Cenvat credit by the tax payer. The

instructions also empower the officers to call for any document to confirm the assessment of the tax payer. However, it is a finding that this is not being done properly, furthermore there is an absence of a monitoring mechanism and as a result proper checks are not carried out. Infact, the assessing officers take the stand that with the introduction of self assessment and the non-submission of invoices with monthly returns the responsibility of finding out short levy is on the Audit or Anti-Evasion.

3.1.3 It is the view that assessment should be the primary function of the Central Excise officers. Self assessment on the part of the tax payer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the central excise officers in ensuring correctness of duty payment. No doubt Audit and Anti-Evasion have their roles to play but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise officers.

**3.1.4 It is recommended that the officers should be make responsible for assessments of ER 1 returns, and for this purpose clear cut instructions should be issued. Some monetary limit may be fixed for confirmation of assessment by each level of Central Excise officer upto Additional Commissioner.**

### **3.2 Valuation**

3.2.1 Valuation of the excisable goods is an important exercise as the duty charged is mostly on ad-valorem basis. Over time, there have been commendable efforts to simplify the valuation norms for levy of central excise duty. The amendments to Section 4 have indeed brought about much needed clarity and certainty to the principles of valuation. Moreover the increasing use of MRP based assessment has increased certainty and is a welcome step. But, the change-over to new rules and the introduction of new norms and the increasing usage of MRP-based levy, may well lead to a new era of disputes, and, therefore, it will be in the interest of both, the Department and the industry, to address these issues proactively. It is appreciated that this is indeed what is being done, such as the recent clarification on matter of treatment of Sales Tax.

3.2.2 At present there are more than one method of valuation applied to the excisable goods, Transaction value, Tariff value and Value based upon Maximum Retail Sale Price (MRP). Transaction value is the most commonly adopted method. By and large no fresh issues have

been thrown up in this area as a result of switching over to this method of valuation in July, 2001, from the earlier practiced method of 'normal price'. The transaction value method is tried and adopted the world over and there can be no two views on its acceptance in principle. However, it is noted that there are certain areas which require a clarification lest we enter into fresh disputes on valuation. Primarily these relate to cost of transport, margin of profit and determination of abatement under MRP based assessment etc.

### **3.3 Cost of Production**

3.3.1 The answer to the question "what would constitute cost of production", which is necessary to determine in order to value goods under rule 8 of the Central Excise Valuation Rules, 2000 is not very clear. In many cases, excise audit parties are directing the assessee to add advertising, marketing, Head Office costs, etc. It is the view of the trade that only the raw material costs, packaging material cost, energy and services cost and factory overheads should form part of the cost of production. Head Office costs are in the nature of Corporate costs which have no direct bearing on the intermediate goods cleared for captive consumption. Further, advertising, sales and distribution costs are also not relevant in this case as such intermediate products are neither advertised nor sold in the trade. The sales and distribution expenses relate to finished goods marketed and sold and, therefore, hold no relevance to the intermediate goods.

3.3.2 Since different views are being taken by the field formation as to what constitutes cost of production, it would only be appropriate that the C.B.E.C. issues clear guidelines on the aspect of valuation of intermediate goods used captively to avoid disputes in the matter. It is understood that such guidelines (AS4) are being worked out by the Institute of Chartered Accountants.

**3.3.3 It is recommended that the guidelines on determination of cost of production should be issued at the earliest and till such time all disputes be kept pending.**

### **3.4 Margin of Profit**

3.4.1 Under the Central Excise Valuation Rules, 2000, when the goods have been consumed captively by the assessee in the production or manufacturing of other articles or these are sold to the related person for his captive consumption, the duty is to be charged on 115% of cost of production as assessable value. It is the view of the trade that 115% is an abnormal margin as

such profits are an exception. However, in the overall interest of ensuring certainty in taxation it was conceded that rather than individual determination of the profit margin, its standardization in the law is a better step. At the same time it was felt that since this is largely going to be a revenue neutral exercise as the recipient unit can claim CENVAT credit, it would be better to review the margin and reduce it. This step would positively impact the cash flow and benefit the industry. There is force in this argument.

**3.4.2 It is recommended that the 115% should be brought down to 105%. Moreover, there should be a moratorium on this figure, so that there is certainty in taxation.**

### **3.5 MRP based value**

3.5.1 It is observed that notwithstanding certain questions on the rationale for levy of excise duty on the basis of a price over which the manufacturer has no control the switch over to MRP based value and the increasing use of this method has been welcomed by the trade and industry. Interestingly, it marks a change in the mindset of the tax administrators who were traditionally not looking beyond the factory gate for determining the value of the excisable goods. MRP based levy has an intrinsic advantage in ensuring certainty of determination and reduces disputes. Therefore, this is a step in the right direction.

**3.5.2 Accordingly, it is recommended that system of MRP based valuation must be expanded. However, in order to improve the usage of this mechanism of assessment, certain issues relating to the method of determining the abatement and secondly its nexus with the SWMA require resolution.**

### **3.6 Abatement**

3.6.1 The Government, by issue of a notification, announces the percentage of abatement to be allowed from MRP in order to arrive at the assessable value for charging excise duty. Two inter-related issues are raised in this regard. Firstly, the determination of abatement is not a transparent exercise. Secondly, the extent of abatement does not take into account certain standard deductions and the changes in rates of various levies.

3.6.2 Taking up the matter of extent of abatement first, it is reported that the present quantum of abatement just takes care of the levies of excise duty, sales tax, octroi, etc. The other permissible deductions under erstwhile Section 4 viz. the delivery charges, secondary packing, etc. have not been considered. Further, the quantum of abatement which had been fixed at the time of bringing the commodities under Section 4A has not taken into account the subsequent developments such as the adoption of uniform sales tax rates by the State Governments, which has resulted in extra burden ranging from 15 to 20 per cent. As seen, the extent of abatement is largely a matter of fact. It should get resolved once the system of fixing abatement is improved, which is now taken up.

3.6.3 Secondly, there is a view that fixing of abatement is not a transparent exercise. No doubt the abatement is done on basis of industry averaging but the manner of its determination leaves doubts in the minds of the affected industry regarding its correctness. It is the view that Government policies particularly in matters of taxation must not only be fair but should be transparently fair to all. Hence, wider consultation is required and the industry should be fully associated in the exercise.

#### **3.6.4 It is recommended that :**

- (i) **A 'Permanent Committee on MRP Abatement' should be formed under Member (Budget), C.B.E.C. which should include representatives of all Chambers of Trade and Industry Associations, to meet on annual basis (or more often, if required) to recommend the extent of abatement for the items brought under MRP.** The Committee may co-opt experts or industry specific Associations also on need basis. This step would restore the confidence of the industry and the participative determination of abatement would remove the allegation of arbitrariness.
- (ii) **The Permanent Committee on MRP Abatement should be formed immediately so that its recommendations can be taken note of for the Budget 2003-04.**

### **3.7 Application of Standards of Weights and Measures Act, 1976**

3.7.1 Section 4 A of the Central Excise Act, 1944 provides for valuation of excisable goods with reference to their retail sale price. Accordingly, as provided herein, the Central Government by notification specifies the goods in relation to which it is required under the Standards of Weights and Measures Act, 1976 or its rules to declare on the packet the retail sale price. On issue of such notification the said goods are subjected to valuation with reference to their retail sale price.

3.7.2 In this regard, it is reported that the reference to the Standards of Weights and Measures Act, 1976, has lead to complications and disputes. At times, even though a particular item is specified by notification the tax payer points to the Standards of Weights and Measures Act, 1976, as providing an exemption from the declaration of retail sale price. In fact, there are quite a few exemptions under this Act, and the Central Excise officers are not familiar which creates doubts and raises disputes. It is the view that the cross reference to this legislation has not resulted in any advantage and, on the contrary has complicated matters. This is not to state that the provisions of the said legislation should not be applied. It is, in fact, necessary that an item should be covered by the provisions of this legislation, which requires the affixing of retail sale price before it is notified under Section 4A of the Central Excise Act. However, there is a better methodology than making a cross reference to this legislation in the Central Excise Act.

**3.7.3 It is recommended that Section 4A of the Central Excise Act may be amended to delete reference to the Standards of Weights and Measures Act, 1976. At the same time, the Central Government should internally refer to this Act, while specifying the items for valuation based on retail sale price. Further, the Notification may itself indicate the conditions under which it shall not apply to a particular item even though specified.**

## **4. Cenvat**

### **4.1 Removing distinction between inputs an capital goods**

4.1.1 At present, the Cenvat credit is admissible in respect of inputs which are brought into a factory “for use in or in relation to the manufacture of the final products”. In contrast the Cenvat

credit is admissible in respect of capital goods when these are “used in the factory of the manufacturer”. This distinction is a cause of many disputes and litigation.

4.1.2 No doubt the levy of central excise duty is on manufacture. However, there is no reason why the Cenvat credit must also be linked to the act of manufacture. The term manufacture is strictly interpreted and many legitimate business activities such as the use of a computer for calculation of duty may not get covered even though the said goods are indeed required to support the manufacturing activity. Actually, Cenvat credit can be viewed as an exemption and to remove all controversies, we need to allow the input credit on the basis of “use in the factory” rather than on the basis of “use in manufacture of final products”. Incidentally, the grant of Cenvat credit on capital goods by using the yardstick of factory of the manufacturer has not led to any disputes and is time tested.

4.1.3 At the same time it is possible that there may be a possibility of tax payers taking credit on items such as building materials, airconditioners used in guest houses etc, within the factory premises etc. Accordingly, this needs to be taken care of.

**4.1.4 It is recommended that the Cenvat Credit Rules, 2002 should be amended to abolish the distinction between capital goods and inputs and allow credit on all inputs brought into the factory except for those figuring in a small negative list, such as office furniture, motor vehicles, MS, HSD, etc.**

## **4.2 Cenvat credit on capital goods**

4.2.1 At present, when capital goods are procured the recipient manufacturer is entitled to take 50% of the duty paid thereon as Cenvat credit in the year of their procurement. The balance 50% is availed the next year provided the goods remain in the premises. There is, however, a relaxation in respect of identified components of capital goods on which the entire credit can be taken in the first year itself.

4.2.2 A careful examination of the said provision reveals that this could only have been a measure to stagger the Cenvat credit so that the heavy inflow does not disturb the duty payable by the unit. For instance, in case of a new investment or a new factory the Cenvat credit on the capital goods may be so large that the duty payable by the unit in cash i.e. PLA would be

negligible or even nil as the entire duty can be paid through the debit of the accumulated Cenvat credit. Thus, the measure is basically an artificial method to have positive revenue. It is a moot point that even payment of duty through Cenvat credit is nothing but a payment of revenue, though for reasons unknown it is not considered so by the authorities. It is the view that such artificial measures go against the basic philosophy of Cenvat credit scheme. Any person should be entitled to full Cenvat credit of the duty paid so long as the items in question qualify for the credit.

**4.2.3 It is recommended that the Cenvat Credit Rules, 2002 should be amended to allow full credit of the duty paid on the capital goods immediately on receipt, as in the case of inputs.**

#### **4.3 Cenvat credit to be allowed despite technical or procedural violations**

4.3.1 Reportedly a large number of Cenvat disputes arise on account of technical or procedural violations or infringements. In such cases it is not in dispute that the said inputs are duty paid, have been received by the claimant for use in the manufacture of the final products, and the final products are dutiable. In the event it appears that while fulfillment of procedural conditions is important the substantive claim of the tax payer should not be denied. Where merited, penalty proceeding may be in order to ensure compliance of the procedures. Accordingly, it is necessary that a clear statement should be made that the procedural violations are not punished in terms of denial of substantive benefits so long there is no revenue loss.

**4.3.2 It is recommended that a suitable provision should allow Deputy/Assistant Commissioner to condone technical lapses/ infirmities while allowing Cenvat credit.**

#### **4.4 Credit of Duty on Goods Returned to the Factory**

4.4.1 Rule 16 (1) of Central Excise Rules provides for taking CENVAT credit on returned goods. Sub-Rule (2) provides for payment of an amount equal to the CENVAT credit taken under Sub-Rule (1), if the process carried out on the returned goods does not amount to manufacture. In this context, it is reported that there is no provision or clarification for the recipient of the said goods to take credit of the said amount on receipt of the goods.

**4.4.2 It is recommended that an Explanation may be inserted in rule 16 to the effect that the amount paid on removal of returned goods can be taken as Cenvat credit in the hands of the recipients.**

**4.5 Levy of duty on scrap arising out of dismantled/ broken capital goods.**

4.5.1 The Cenvat Credit Rules, 2002 provide that when inputs or capital goods are cleared as such then the manufacturer shall pay an amount equal to the duty of excise which is leivable on the said goods. However, in case capital goods are broken up or dismantled and then removed no duty is being charged. This is in view of the CEGAT orders that no manufacturing activity has taken place on account of dismantling of capital goods. Further, it can also not be said that the capital goods are being removed as such. It is the view that the absence of a provision to charge duty is liable to be misused.

**4.5.2 It is recommended that a specific provision may be introduced to charge duty on the dismantled capital goods when removed from the factory.**

**4.6 Review of grant of Cenvat credit on deemed basis**

4.6.1 Rule 11 of the Cenvat Credit Rules, 2002, provide that the Central Government may issue a notification declaring the inputs on which Excise duty or Additional Customs duty shall be deemed to have been paid at the specified rate or equivalent to such amount as may be specified and Cenvat credit of the same would be allowed. Accordingly, a number of notifications have been issued under the authority of this rule indicating the deemed amount of duty which can be availed as Cenvat credit. These notifications are basically for inputs such as yarn used in the manufacture of fabrics and for fabrics used in the manufacture of specified articles of apparel and clothing accessories.

4.6.2 It is the view that as a policy Cenvat credit should be available on actual basis. No doubt, deemed credit appears attractive as it reduces the documentation since evidence of payment of duty need not be insisted upon. However, this is against transparency.

**4.6.3 It is recommended that as a policy, Cenvat credit should not be allowed on deemed credit basis.**

#### **4.7 Recovery of Cenvat credit erroneously refunded**

4.7.1 Rule 12 of the Cenvat Credit Rules, 2002, deals with recovery of Cenvat credit wrongly taken. As mentioned therein, the credit wrongly taken or utilized along with interest shall be recovered from the manufacturer by applying the provisions of Section 11A & 11AB of the Central Excise Act, 1944. These Sections provide for issue of demand notice for Central Excise duty not levied or paid or short levied or short paid or erroneously refunded.

4.7.2 In this regard, it is seen that in terms of rule 5 of the said Cenvat Credit Rules the refund of Cenvat credit can be given to the manufacturer in certain situations. However, in the event a refund is erroneously given there appears to be no provision to recover the same. No doubt, Section 11A would apply to a case of erroneous refund of Central Excise duty but by virtue of rule 12 of the Cenvat Credit Rules it would not apply in case of Cenvat credit erroneously refunded.

**4.7.3 It is recommended that rule 12 of the Cenvat Credit Rules, 2002 should be amended to provide for recovery of Cenvat credit erroneously refunded.**

#### **4.8 Storage of inputs outside factory after taking Cenvat credit**

4.8.1 There is no provision in the Cenvat Credit Rules allowing the recipient of the Cenvat inputs who has availed the credit to store the said goods outside the factory in case there is a shortage of space or for any other reason. Presently, the goods cannot be removed from the factory of manufacture unless the removal is for purpose of job work or these are being cleared permanently. It is the view that the absence of a suitable provision is causing genuine difficulties for the manufacturers who like to get the inputs at the best price by buying in bulk but use the inputs in smaller quantities. There are occasions when a particular input is procured for a specific purpose say, an export order which gets cancelled or postponed necessitating the need to hold the input stocks for a later date. Thus, the facility of storage of the inputs outside the factory would facilitate the trade and industry. It is also not a risk to revenue since a suitable procedure can be drawn up to identify the place of storage and account for the inputs.

**4.8.2 It is recommended that Cenvat inputs maybe allowed to be stored outside the factory in an identified place of storage subject to procedural safeguards for due accountal of the inputs.**

## **5. Exports**

### **5.1 Self Sealing**

5.1.1 Self sealing of container and export goods is allowed under Central Excise provisions subject to prescribed conditions and responsibilities imposed on the exporter which safeguards revenue. Normally these permissions require periodic renewal. At times the field formations are known to refuse this permission. In such situation the exporter has the option of getting the goods sealed by the central excise officers.

5.1.2 In so far as the sealing of export goods by the central excise officers is concerned, it is the view that this invariably causes delays as the officers may not always be present. Further, there is a rise in transaction cost on account of the fact that overtime has to be paid to the department for this work. In any case self-sealing or sealing by central excise officers does not provide a significant relief since the customs at the port of export has the right to re-examine the goods. No doubt the risk attached to goods may be lower when the goods are sealed by the central excise officers. Taking into account all factors related to the sealing of export goods, the pros and cons it is the view that the exports should not be subjected to avoidable transaction costs incurred on account of sealing by the central excise officers. In any case there is a revenue safeguard since the Risk Assessment module at the port of export would take into account the fact that the goods are self-sealed.

**5.1.3 It is recommended that sealing of export consignments by Central Excise officers should be replaced by self-sealing by the exporter.** This should be granted as a matter of right and not on case to case basis.

### **5.2 Rebate of Duty.**

5.2.1 As per rule 18 of the Central Excise Rules, 2002, rebate is granted on the amount of duty paid on such excisable goods or materials which are used in the manufacture of goods exported

out of India. In accordance with the relevant notifications Nos. 40 and 41/2001-CE (N.T.), both dated 26<sup>th</sup> June, 2001 the rebate is granted by the Deputy Commissioner having jurisdiction over the factory of the manufacture or the Warehouse or the Maritime Commissioner of Central Excise.

5.2.2 In so far as the grant of rebate by the Maritime Commissioner is concerned, at present the exporters after obtaining the proof of export from the Customs officer at the port of shipment have to tender this document to the office of the Maritime Commissioner. Invariably this causes delays. On the other hand if the functions of the Maritime Commissioner are transferred to the Customs Houses located at the said ports the delays would get reduced. Further, such a system would have the following advantages:-

- (i) Reduction in the transaction costs of the manufacturer-exporters.
- (ii) The proof of Export being signed by the Customs officer at the port of shipment would also ensure the genuineness of export within the same office.
- (iii) Reduce the number of agencies and the paper work both for the department and the exporting community.

5.2.3 **Accordingly, it is recommended that the work of grant of rebate should be centralized at the Custom House itself. In the alternative, an EDI link can be provided between the Customs House and the Maritime Commissioner.**

5.2.4 This measure is in addition to the grant of rebate by the Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer or warehouse, as at present.

### **5.3 All refunds/rebates to be directly credited to Bank account.**

5.3.1 At present, refund/rebate is sanctioned by the competent authority and the payment is made by issue of cheque. The practice is that the cheque is physically delivered to the tax payer, and reportedly this is an avoidable contact point. On the other hand the exporting community is happy with the system of disbursal of the drawback by credit directly to their bank account.

Similarly, it is reported that on the Income Tax side the procedure of disbursal of refunds by transfer of cheques direct to the bank account of the assessee is trouble free.

**5.3.2 It is recommended that in order to reduce contact points and speed up the disbursal of the rebate/refund, the same should be directly credited to the tax payers' own bank account.**

## **6. Manner of payment of Duty**

### **6.1 Periodicity of Payment of Duty**

6.1.1 At present, in terms of rule 8 of the Central Excise Rules, 2002 SSI units pay duty on a monthly basis while non-SSI units pay the same on a fortnightly basis. A condition has also been imposed that Cenvat credit of inputs, raw materials etc. available as on the fifteenth day of the month alone should be utilized while discharging the duty liability for the fortnight. This increases the documentation on the part of the tax payer. It also increases the checks to be performed by the Department while doing the scrutiny of the prescribed return. Accordingly, it is the view that a uniform periodicity of payment of duty would be administratively convenient to administer and increase transparency. It would also reduce the number of duty payment challans and facilitate revenue reconciliation. It would also be in line with the practice of monthly filing of returns by assesses. However, no change is suggested for the SSI sector.

**6.1.2 It is recommended that fortnightly payment of duty may be replaced by monthly payment.**

### **6.2 Date of Payment of duty**

6.2.1 Explanation to Rule 8 of the Central Excise Rules 2002 dealing with manner of payment of duty clarifies that duty liability shall be deemed to be discharged only if the amount payable is credited to the account of the Central Government by the specified date. Also C.B.E.C. has clarified that the date of affixation of 'receipt stamp' on duty payment document (TR-6), against duly cleared cheque shall be treated as the date on which the amount is credited to the Central Government account. However, it is a fact that it is difficult to ascertain exactly when the amount paid is credited to the Government account. Moreover there is invariably few days delay in

realisation of the amount when payment is by cheque. Such instances are treated as default in payment of duty and penal action is initiated against the assessee even though he has deposited the cheque by the due date. However it would be unfair if despite having deposited the duty amount by the due date and the cheque having been honoured, the tax payer is penalized on account of the delays in banking channel. In fact, on the Service Tax side and also in Income Tax Department the date of payment of duty is the date of deposit of cheque. This is considered a better method.

**6.2.2 It is recommended that the date of payment of central excise duty may be prescribed as the date of presentation of the cheque to the Bank subject to its realization.**

### **6.3 Default in payment of duty**

6.3.1 Rule 8 (4) of the Central Excise Rules, 2002, provides that in case an assessee defaults in payment of installment of duty, as specified, then he shall forfeit the facility to pay the dues in installments for a period of two months starting from the date of communication of an order passed by the Deputy/ Assistant Commissioner or till such date on which all dues are paid, whichever is later. Further, during the period the facility is withdrawn , the assessee has to pay duty on consignment basis by debit to account current (PLA).

6.3.2 Three issues arise out of the above provision. Firstly, whether it is correct to deny the facility of payment of duty in installments. It is the view that this is too harsh and it should suffice that an assessee who has defaulted in timely payment of duty pays the due interest and penalty on account of the non-payment of duty on time. It is the finding that very often the present provision of withdrawing the facility altogether affects the affected industry and its various survival is in doubt. Accordingly, in the event an assessee has defaulted in payment of duty by the due date the law should provide for automatic calculation of interest and penalty, which can be fixed in terms of the quantum of delay. The facility should not be withdrawn.

6.3.3 The second issue is regarding the passing of an order by the Deputy/ Assistant Commissioner withdrawing the facility of payment of duty in installments. In the event it is considered that the facility must be withdrawn, though it is recommended that it should not be so, there should be an automatic system of withdrawal of facility. The passing of an order implies following due process including issue of notice, grant of personal hearing, etc. This defeats the

objective. It should be legally justified to withdraw the facility when the default is noticed by issue of a simple communication.

6.3.4 The last issue relates to the present provision of payment of duty on consignment basis by debit in account current. In other words, during the period the facility of payment of duty in installments has been withdrawn the assessee cannot pay duty by using the accumulated Cenvat credit. It is the view that this is too harsh a measure. Government should be concerned with payment of duty and not whether it is being paid through debit and account current or through Cenvat credit. Accordingly, it is the view that this condition should be withdrawn.

**6.3.5 It is recommended that :**

- (i) The provision of withdrawing the facility of payment of duty in installments in case of default should be withdrawn.**
- (ii) There should be automatic charge of interest and penalty in the event duty is not paid on time.**
- (iii) In the event it is decided to retain the provision of withdrawing the facility the assessee should be allowed to pay duty during this period through Cenvat credit.**

6.3.6 At the same time it should not happen that an assessee continues to default stating that he would pay the interest and penalty in due course. Accordingly, in such case the recovery proceedings under the law should be initiated.

**7. Budget Day restrictions**

7.1 Rule 32 of the Central Excise Rules, 2002, indicates the restrictions on removal of goods on Budget Day. Essentially it provides that between the time the Budget/ Finance Bill is presented and 2400 hrs midnight on the said day no excisable goods can be removed from a factory or warehouse unless specific permission is obtained from the Commissioner of Central Excise. Moreover, an application for removal of goods has to be presented before 1700 hrs on the working day immediately before the Budget Day.

7.2 Budget Day restrictions had been present in Central Excise law from the very beginning. Earlier, the restrictions were more rigid. Even at present, the net result is that on the Budget Day, clearances of excisable goods all over the country come to a stand still. Reportedly, factories shutdown and there are no economic activities. The Central Excise officers also resort to physical verification of stocks and clearances from the factory, if permitted, take place under physical supervision. Expectedly, transactions costs go up and it is a fertile ground for corrupt practices. Evidently, the restrictions were earlier imposed to ensure against speculation and evasion of duty as during these times the central excise duty was usually revised upwards. Moreover during these times the central excise duty was discharged consignment wise. This is not the case now. In any case, it appears incongruous that the Budget, an instrument to boost economic activity starts with the complete stoppage of all such activity. As regard the likely misuse, no doubt, there may be small clearances of goods at lower duty (if the duty rates go up) but this should be ignored in the interest of encouraging free trade and commerce. Also, under the self-assessment system a procedure is in place to ensure proper accountal and discharge of duty.

**7.3 It is recommended that the Budget Day restrictions are out of tune in present day world and should be removed**

**8. Removal of goods for job-work**

8.1 Central Excise Rules, 2002 do not contain any provisions for removal of goods without payment of duty from one factory to another for the purpose of processing when the manufacturer is not working under Cenvat scheme. For instance, earlier rule 96E of the Central Excise Rules, 1944 provided a special procedure for removal of cotton yarn for processing like winding, doubling, reeling etc. or for conversion into hank yarn in plain Reel hank. Thus, the manufacturers not working under Cenvat scheme would have to pay duty on the goods at the time of removal to other factories for the purpose of further processing. This requires redressal.

**8.2 It is recommended that there should be a provision for allowing the movement of dutiable goods without payment of duty to job worker even in situations when the principal manufacturer is not working under Cenvat Scheme.**

## **9. Collection of information from tax payer**

9.1 While studying the various contact points between department and tax payer, it was revealed that in order to collect information on central excise duty collections all large assesses are being contacted over telephone and through visits to ascertain the duty paid by them during the fortnight. Reportedly, this information is being collected on behalf of C.B.E.C. It is not clear how this information is made use of. In any case, a separate recommendation has already been made for shifting to monthly payment of duty. In the circumstance, it appears that the information on fortnightly payment of duty need not be collected as it increases contact points and causes harassment.

**9.2 It is recommended that fortnightly statement of revenue paid, which is presently being collected from tax payers, may be discontinued. Further, as a policy, no information should normally be asked for (from departmental officers or industry) unless it is being obtained in the prescribed returns.**

## **10. Dispute resolution**

10.1 Section 11A of the Central Excise Act, 1944 provides for voluntary payment of duty, with interest, by assessee before issue of a Show Cause Notice. However, cases involving suppression, mis-declaration etc., with intent to evade duty are excluded. It appears that since the intention of the Government is to realize the duty at the earliest the assessee should be given the option of voluntarily depositing duty even in the case of fraud etc. However, to ensure that no undue advantage is taken of this facility, such cases should be subject to payment of interest and 25% penalty. In any case even at present after a long drawn out adjudication proceeding the assessee has the option of paying 25% penalty if he pays the confirmed duty within one month of the order determining the duty.

10.2 A related issue is that as a policy when department detects short levy or payment of duty it should have an open discussion with the assessee before proceeding with the issue of Show Cause Notice, if warranted. This will allow the assessee to exercise the option of voluntary payment of duty thereby saving on time and resource in adjudication proceedings.

**10.3 It is recommended that :**

- (i) **Scope of Section 11A(2)(B), i.e. non-issue of SCN to be expanded to include cases of non-payment detected by Audit/ Department.**
- (ii) **Section 11A should be amended to provide for the issue of a Show Cause Notice which automatically collapses if the tax payer voluntarily pays the duty and interest and 25% penalty within a period of 30 days of the issue of the notice. This would apply to cases involving fraud, etc. In such cases the Notice should also mention in its preamble that there would also be no prosecution proceedings. The provision regarding collapse of the Show Cause Notice should apply to 'other' cases but without the requirement of payment of 25% penalty.**

**11. Filing of Returns**

11.1 Every tax payer is required to submit a return in the prescribed form indicating the production and removal of the goods and other relevant information including duty paid. This is supported by a copy of TR6 challan which evidences the deposit of duty in the Bank. Whereas, an assessee is required to furnish this return by the 10<sup>th</sup> of each month (for the preceeding month) an assessee in the small scale sector is required to furnish this return by the 20<sup>th</sup> day following each quarter (for the preceeding quarter). Two issues are raised in respect of the filing of return. Firstly, the duty has to be paid by the 5<sup>th</sup> of the following month and it becomes difficult to finalise the return in only 5 days thereafter. Secondly, the furnishing of the return is a contact point which is avoidable. Hence, steps must be taken in the interest of transparency and tax payer facilitation

11.2 In this regard a perusal of the return and a study of the present system shows that on-line filing of return would greatly facilitate both department and assessee. However, there are two constraints in moving towards this mechanism. Firstly, digital signatures are not recognized. Secondly, the submission of the hard copy of the TR6 challan requires manual filing of return. In so far as, the submission of the TR6 challan is concerned it is felt that this can be dispensed with. Presently, this document is used to reconcile the payments by matching with the copy of TR6 challan received separately by the PAO from the Bank. Instead the matching could be done on

the basis on declaration of duty paid to TR6 on the return with the TR6 copy with the PAO. In so far as, digital signature is concerned steps have to be taken for its recognition.

**11.3 It is recommended that :**

- (i) **Date of filing return be shifted to the 15th. of the close of the month/quarter, as the case may be for all tax payers i.e. including those in the SSI sector. However, the large units would furnish on-line or otherwise, by the 6th of each month, the information of total duty paid.**
- (ii) **As a first step towards on-line filing of returns the monthly/quarterly submission of TR 6 challans may be discontinued and steps should be taken to eventually allow on-line filing of returns. The details of TR 6 Challans will be mentioned in the returns.**

**12. Voluntary filing of documents by tax payers**

12.1 Sometimes the tax payer would like to voluntarily file some documents in connection with his manufacturing activity with his jurisdictional excise department even though the same are not statutorily prescribed. This is done as a matter of abundant caution so as to preempt allegation of suppression of facts and creating hardship and loss through imposition of fine and penalty.

12.2 Such a refusal appears unfair and unwarranted. Voluntary filing of documents and papers to safeguard the tax payers interest cannot be denied. Moreover, this has no risk to revenue and instead helps in dispensing justice.

**12.3 It is recommended that it must be made binding on the field officials to accept such documents and give an acknowledgement in writing, if needed, in order to safeguard tax payers interest.**

**13. Visits of CAG staff**

13.1 Rule 22 (3) of the Central Excise Rules, 2002 provides that every assessee shall, on demand make available to the audit party deputed by the Comptroller and Auditor General of

India (CAG) the specified records maintained by him. As a result it has been reported that CAG officers are visiting the manufacturing premises for the purpose of audit. On their part the Central Excise officers are in any case statutorily responsible for ensuring the correctness of the duty payment and also visit the manufacturing units for conduct of the audit. The repeat visit for the same job by the CAG officers upsets the work programme of the tax payer. Reportedly it is also undesirable as it increases interface and gives rise to unhealthy practices.

13.2 In this regard it is seen that in terms of the Constitutional provisions, the responsibility of the CAG centers upon the Consolidated Fund only. Furthermore CAG has not been likewise authorized to visit the tax payers both on the Customs and the Income Tax side. It is learnt that originally this provision was not there in the central excise law also. Taking into account all factors and the endeavour to reduce contact points to the minimum, it appears desirable that CAG should not conduct audit at the premises of private manufacturers. This would be a welcome step allowing the tax payer to concentrate on his business activities.

**13.3 It is recommended that Rule 22(3) of the Central Excise Rules, 2002 may be amended to exclude reference to audit party deputed by the Comptroller and Auditor General of India.**

#### **14. Arrest**

14.1 Arrest provision in central excise as contained in Section 13 of the Central Excise Act, 1944 has been reported to be misused to the detriment of tax payer confidence. Reportedly there are many cases when the officers at the cutting edge have threatened the tax payer with the use of this provision for their personal gain. There is no doubt that a tax evader deserves no leniency but the finding is that the vast body of the honest tax payers remain in constant fear of the misuse of this provision. There is, accordingly, a need to review the provision.

14.2 In this regard an attempt was made to ascertain the best international practices. By and large it was seen that the law is severe on the tax evader. Accordingly, it was also examined whether in our context certain safeguards could be built into the provisions so that the honest tax payer is not harassed and the provision is not misused. One safeguard could be that the arrest is made with the written sanction of the Commissioner and another that the Citizen Charter clearly indicates the rights of the arrested person. However, due cognizance was given to the fact that

the large number of the taxpayers and the potential tax payers particularly in the small scale sector do not have access to the information and the provision could still be misused. In this background, keeping in mind all factors of which the most important is to restore tax payer confidence in the tax administration it is the view that the power to sanction arrest should not be exercised by the departmental officer. This is also in line with the best international practices.

**14.3 It is recommended that the arrest in central excise cases, if warranted, should be made with the sanction of a Magistrate. This would require suitable amendment to the Central Excise Act, 1944.**

## **15. Tax Clinics for Small Scale Sector Manufacturers**

15.1 A critical element of tax payer facilitation is the proper dissemination of information and guidance in the compliance of the legal provisions. This is all the more necessary in respect of our small scale manufacturers who are typically one-man shows and cannot keep abreast of the changes in the law and procedures. In fact, it is the absence of healthy interaction between the taxpayer and the tax administrators that often leads to compliance issues. It is desirable that the confidence of the small scale manufacturer should be restored for which an institutionalized mechanism is necessary. Importantly, it is the tax administrators who must reach out to the small scale manufacturers. Expecting a small scale manufacturer to leave his business and enter the portal of the Commissionerates may not yield results as the mentality is that he would rather avoid the interaction. The interaction which is now proposed would be a step towards educating the small scale manufacturers about their legal responsibilities, guiding them in the conduct of their tax matters and breaking the communication wall which has distanced the small manufacturers for the tax administrators.

**15.2 It is recommended that by 1<sup>st</sup> April 2003 each Central Excise Commissionerate should establish one Tax Clinic for the Small Scale Sector, under the charge of a Superintendent and the overall supervision of the Deputy/Assistant Commissioner to guide small scale manufacturers. This Cell should closely coordinate with the Small Scale Manufacturers Associations. The number of such Clinics can be increased later based upon the experience.**

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