

Central Excise(No.2)Rules, 2001

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Central Excise(No.2)Rules, 2001

In exercise of the powers conferred by Sec. 37 of the Central Excise Act, 1944 (1 of 1944), and in supersession of the Central Excise

Rules, 1944, the Central Government hereby makes the following rules, namely

1. Short title, extent and commencement :-

(1) These rules may be called the Central Excise(No.2) Rules, 2001.

(2) They extend to the whole of India.

(3) They shall come into force on the 1st day of July, 2001.

2. Definitions :-

In these rules, unless the context otherwise requires,

(a) "Act" means the Central Excise Act, 1944 (1 of 1944);

(b) "assessment" includes self-assessment of duty made by the assessee and provisional assessment under Rule 7;

(c) "assessee" means any person who is liable for payment of duty assessed or a producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored and includes an authorized agent of such person;

(d) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);

(e) "duty" means the duty payable under Section 3 of the Act;

(f) "notification" means the notification published in the Official Gazette;

(g) "proper form" means the appropriate form as may be notified by the Board;

(h) "warehouse" means any place or premises registered under Rule 9; and (i) words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Appointment and jurisdiction of Central Excise Officers :-

(1) The Board may, by notification, appoint such person as it thinks fit to be Central Excise Officer or to exercise all or any of the powers conferred by these rules, on such officer.

(2) The Board may, by notification, specify the jurisdiction of a Chief Commissioner of Central Excise, Commissioner of Central

Excise or Commissioner of Central Excise (Appeals) for the purposes of the Act and the rules made thereunder.

(3) Any Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under the Act or these rules on any other Central Excise Officer who is subordinate to him.

4. Duty payable on removal :-

(1) Every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law, and no excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided:

Provided that the goods falling under Chapter 62 of the First Schedule to Central Excise Tariff Act, 1985 (5 of 1986) produced or manufactured by a job worker may be removed without payment of duty leviable thereon and the duty of excise leviable on such goods shall be paid by the person referred to in sub-rule (3), as if such goods have been produced or manufactured by him, on the date of removal of such goods from his premises registered under Rule 9:

Explanation. It is hereby clarified that where such person has authorized the job worker to pay the duty leviable on such goods under sub-rule (3), such duty shall be paid by the job worker on the date of removal of such goods from his registered premises.

(2) Notwithstanding anything contained in sub-rule (1), where molasses are produced in a khandsari sugar factory, the person who procures such molasses, whether directly from such factory or otherwise, for use in the manufacture of any commodity, whether or not excisable, shall pay the duty leviable on such molasses, in the same manner as if such molasses have been produced by the procurer.

(3) Notwithstanding anything contained in sub-rule (1), every person who gets the goods, falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1986 (6 of 1986), produced or manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as may be specified under these rules, whether the payment of such duty be secured by bond or otherwise, as if such goods have

been manufactured by such person : Provided that such person may authorise the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorised undertakes to discharge all liabilities and comply with all the provisions of these rules.

Explanation 1. For the purposes of this sub-rule, the expression "job worker" shall be deemed to mean the person who undertakes the process or processes that brings into existence the finished goods, complete in all respects, falling under Chapter 62 of the said First Schedule, in his factory. For the removal of doubt, it is further clarified that the job-worker may also get part of the processing required for the manufacture of the said goods done by another person but should bring back the same for the completion of the manufacturing process in his factory.

Explanation II. For the purposes of this rule, excisable goods manufactured in a factory and utilised, as such or after subjecting to any process, for the manufacture of any other commodity, in such factory shall be deemed to have been removed from such factory immediately before such utilisation.

5. Date for determination of duty and tariff valuation :-

(1) The rate of duty or tariff value applicable to any excisable goods, other than khandsari molasses, shall be the rate or value in force on the date when such goods are removed from a factory or a warehouse, as the case may be.

(2) The rate of duty in the case of khandsari molasses, shall be the rate in force on the date of receipt of such molasses in the factory of the procurer of such molasses. Explanation. If any excisable goods are used within the factory, "the date of removal of such goods" shall mean the date on which the goods are issued for such use.

(3) The rate of duty in the case of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), produced or manufactured on job work, shall be the rate in force on the date of removal of such goods by the person referred to in sub-rule (3) of Rule 4 from his premises registered under Rule 9.

6. Assessment of duty :-

The assessee shall himself assess the duty payable on any excisable

goods Provided that in case of cigarettes, the Superintendent or Inspector of Central Excise shall assess the duty payable before removal by the assesses.

7. Provisional assessment :-

(1) Where the assessee is unable to determine the value of excisable goods or determine the rate of duty applicable thereto, he may request the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in writing giving reasons for payment of duty on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, may order allowing payment of duty on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of duty on provisional basis may be allowed, if the assessee executes a bond in proper form with such surety or security in such amount as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, deem fit, binding the assessee for payment of difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed.

(3) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall pass order for final assessment, as soon as may be, after the relevant information, as may be required for finalizing the assessment, is available, but within a period not exceeding six months from the date of the communication of the order issued under sub-rule (I):

Provided that the period specified in this sub-rule may, on sufficient cause being shown and the reasons to be recorded in writing be extended by the Commissioner of Central Excise for a further period not exceeding six months and by the Chief Commissioner of Central Excise for such further period as he may deem fit.

(4) The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3), at the rate of twenty four percent per annum from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

(5) Where the assessee is entitled to a refund consequent to order

for final assessment under sub-rule (3), subject to sub-rule (6), there shall be paid an interest on such refund at the rate of fifteen percent per annum from the first day of the month succeeding the month for which such refund is determined, till the date of refund.

(6) Any amount of refund determined under sub-rule (3) shall be credited to the Consumer Welfare Fund: Provided the amount of refund, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to

(a) the duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person, or

(b) the duty of excise borne by the buyer, if he had not passed on the incidence of such duty to any other person.

8. Manner of payment :-

(1) The duty on the goods removed from the factory or the warehouse during the first fortnight of the month shall be paid by the 20th of that month and the duty on the goods removed from the factory or the warehouse during the second fortnight of the month shall be paid by the 5th of the following month : Provided that in the case of goods removed during the second fortnight of the month of March, the duty shall be paid by 31st day of March : Provided further that where an assessee is availing of the exemption under a notification based on the value of clearances in a financial year, the duty on goods cleared during a calendar month shall be paid by the 15th day of the following month. Explanation. For removal of doubts, it is hereby clarified that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date.

(2) The duty of excise shall be deemed to have been paid for the purpose of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty allowed, as provided by or under any rule.

(3) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount alongwith interest at the rate of twenty four per cent. per annum on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(4) If the assessee defaults,

(i) in payment of any one instalment and the same is discharged beyond a period of thirty days from the date on which the installment was due in a financial year, or

ii) in payment of installment by the due date for the third time in a financial year, whether in succession or otherwise, then, the assessee shall forfeit the facility to pay the dues in installments under this rule for a period of two months, starting from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard or till such date on which all dues are paid, whichever is later, and during this period the assessee shall be required to pay excise duty for each consignment by debit to the account current and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

9. Registration :-

(1) Every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods, shall get registered: Provided that a registration obtained under Rule 174 of the Central Excise Rules, 1944 shall be deemed to be as valid as the registration made under this sub-rule for the purpose of these rules.

(2) The Board, may, by notification, and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons who may not require such registration.

(3) The registration under sub-rule (1) shall be subject to such conditions, safeguards and procedure as may be notified by the Board.

10. Daily stock account :-

(1) Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

(2) The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent.

(3) All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

11. Goods to be removed on invoice :-

(1) No excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorized agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory.

(2) The invoice shall be serially numbered and shall contain the registration number, description, classification, time and date of removal, rate of duty, quantity and value, of goods and the duty payable thereon.

(3) The invoice shall be prepared in triplicate in the following manner, namely-

(i) the original copy being marked as ORIGINAL FOR BUYER;

(ii) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER;

(iii) the triplicate copy being marked as TRIPLICATE FOR ASSESSEE.

(4) Only one copy of invoice book shall be in use at a time, unless otherwise allowed by the Assistant Commissioner of Central Excise, or the Deputy Commissioner of Central Excise, as the case may be, in the special facts and circumstances of each case. CS-OCT.-60

(5) The owner or working partner or Managing Director or Company Secretary shall authenticate such foil of the invoice book, before being brought into use.

(6) Before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent, of Central Excise having jurisdiction.

12. Filing of return :-

Every assessee shall submit to the Superintendent of Central Excise

a monthly return in proper form, of production and removal of goods and other relevant particulars, within ten days after the close to the month of which the return relates : Provided that where an assessee is availing of the exemption under a notification based on the value of clearances in a financial year, he shall file a quarterly return in proper form, of production and removal of goods and other relevant particulars, within twenty days after the close of the quarter to which the return relates.

13. Duty on matches :-

The duty on matches shall be paid by affixing to each box or booklet a Government Central Excise Stamp of a value appropriate to the rate of duty, and where such boxes or booklets are issued in packages, each package shall be reckoned by the manufacturer as his minimum unit of distribution and shall bear the manufacture's trade label and a mark clearly showing the class of matches contained in the package.

14. Procedure for procurement of central excise stamps and maintenance of records for production and removal of matches :-

The Board may, by notification specify the procedure for procurement, accounting and disposal of Central Excise Stamps and matters pertaining to production, storage, control, removal and payment of duty on matches.

15. Special procedure for payment of duty :-

(1) The Central Government may, by notification, specify the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of such factors as may be relevant to production of such goods and at such rate as may be notified for this purpose.

(2) The Central Government may also specify by notification the manner of making an application for availing of the special procedure for payment of duty, the abatement, if any, that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.

16. Credit of duty on goods returned to the factory :-

(1) Where any goods on which duty has been paid at the time of removal thereof are subsequently returned to the factory for being re-made, refined, re-conditioned or for any other reason, the

assessee shall state the particulars of such return in his records and shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT credit Rules, 2001 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before returning does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods returned under sub-rule (1) at the rate applicable on the date of removal and on the value determined under Section 4 or Section 4A of the Act, as the case may be.

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner.

17. Removal of goods by a unit in the Free Trade Zone or by a Hundred per cent. Export-Oriented undertaking or by a unit in the Special Economic Zone for Domestic Tariff Area :-

(1) Where any goods are removed from a unit in a Free Trade Zone or a hundred per cent, export-oriented unit or a unit in the Special Economic Zone, to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in Rule 11, and on payment of appropriate duty before removal of goods by debiting the account current required to be maintained for this purpose.

(2) The unit shall maintain in proper form appropriate account relating to production, description of goods, quantity removed, duty paid and each removal shall be made on an invoice.

(3) The unit shall submit a monthly return to the Superintendent of Central Excise, within ten days from the close of the month to which the return relates, in respect of the goods removed to domestic tariff area in such form as may be notified by the Board for this purpose.

18. Rebate of duty :-

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or

duty paid on materials used in the manufacture or processing of such-goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Explanation. "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

19. Export without payment of duty :-

(1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.

(2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

(3) The export under sub-rule (1) or sub-rule (2) shall be subject to such conditions, safeguards and procedure as may be notified by the Board.

20. Warehousing provisions :-

(1) The Central Government may by notification, extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty.

(2) The facility under sub-rule "(1) shall be available subject to such conditions (including penalty and interest), limitations (including limitation with respect to the period for which the goods may remain in the warehouse) and safeguards and procedure (including in the matters relating to dispatch, movement, receipt, accountal and disposal of such goods) as may be specified by the Board in this behalf.

(3) The responsibility for payment of duty on the goods that are removed from the factory of production to a warehouse or from one warehouse to another warehouse shall be upon the consignee.

(4) If the goods dispatched for warehousing or re-warehousing are not received in the ware- house, the responsibility for payment of duty shall be upon the consignor.

21. Remission of duty :-

Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing: Provided that where such duty does not exceed one thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Superintendent of Central Excise" has been substituted: Provided further that where such duty exceeds one thousand rupees but does not exceed two thousand five hundred rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be," has been substituted: Provided further that where such duty exceeds two thousand five hundred rupees but does not exceed five thousand rupees, the provisions of this rule shall have effect as if for the expression "Commissioner", the expression "Joint Commissioner of Central Excise or Additional Commissioner of Central Excise, as the case may be," has been substituted.

22. Access to a registered premises :-

(1) An officer empowered by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of all the records prepared or maintained by the assessee for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods.

(3) Every assessee shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,

(i) the records maintained or prepared by him in terms of sub-rule (2);

(ii) the cost audit reports, if any, under Section 233B of the Companies Act, 1956 (1 of 1956); and

(iii) the Income-tax audit report, if any, under Sec.44-AB of Income-tax Act, 1961 (43 of 1961); for the scrutiny of the officer or audit party, as the case may be.

23. Power to stop and search :-

Any Central Excise Officer, may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

24. Power to detain goods or seize the goods :-

If a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

25. Confiscation and penalty :-

(1) Subject to the provisions of Section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or registered dealer,

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under Section 6 of the Act; or

(d) contravenes any of the provisions of these rules on the notifications issued under these rules with intent to evade payment of duty, then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or rupees ten thousand, whichever is greater.

(2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.

26. Penalty for certain offences :-

Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever ever is greater.

27. General penalty :-

A breach of these rules shall, where no other penalty is provided herein or in the Act, be punishable with a penalty which may extend to five thousand rupees and with confiscation of the goods in respect of which the offence is committed.

28. On confiscation, property to vest in the Central Government :-

(1) When any goods are confiscated under these rules, such thing shall thereupon vest in the Central Government.

(2) The Central Excise Officer adjudging confiscation shall take and hold possession of the things confiscated, and every Officer of Police, on the requisition of such Central Excise Officer, shall assist him in taking and holding such possession,

29. Disposal of goods confiscated :-

Goods of which confiscation has been adjudged and in respect of which the option of paying a fine in lieu of confiscation has not been exercised, shall be sold, destroyed or otherwise disposed of in such manner as the Commissioner may direct.

30. Storage charges in respect of goods confiscated and redeemed :-

If the owner of the goods, the confiscation of which has been adjudged, exercises his option to pay fine in lieu of confiscation, he may be required to pay such storage charges as may be determined by the adjudicating officer.

31. Power to issue supplementary instructions :-

The Board or the Chief Commissioner or the Commissioner, may issue written instructions providing for any incidental or supplemental matters, consistent with the provisions of the Act and these rules.

32. Transitional provisions :-

Any circulars, instructions, standing orders, trade notices or other orders issued under the Central Excise Rules, 1944 by the Board, the Chief Commissioner or the Commissioner of Central Excise, and in force as on 30th June, 2001, shall, to the extent they are relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

33. Rescinding of rules :-

The Central Excise Rules, 2001 is hereby rescinded.