

CENVAT CREDIT RULES, 2002

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CENVAT CREDIT RULES, 2002

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), and in supersession of the CENVAT Credit Rules, 2001, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

1. Short title, extent and commencement :-

- (1) These rules may be called the CENVAT Credit Rules, 2002.
- (2) They extend to the whole of India.
- (3) They shall come into force on the 1st day of March, 2002.

2. Definitions :-

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Central Excise Act, 1944 (1 of 1944);
- (b) "capital goods" means, -
- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act;
 - (ii) pollution control equipment
 - (iii) components, spares and accessories of the goods specified at (i) and (ii) above;
 - (iv) moulds and dies;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof; and
 - (vii) storage tank, used in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office;
- (c) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);
- (d) "exempted goods" means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;
- (e) "final products" means excisable goods manufactured or produced from inputs, except matches;
- (f) "first stage dealer" means a dealer who purchases the goods directly from,-
- (i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
 - (ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;
- (g) "input" means all goods, except ¹["light diesel oil,"] high speed

diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1. - ²["The light diesel oil, high speed diesel oil"] or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. - Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

³ (h) "manufacturer" or "producer" in respect of "yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act", includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of Rule 12-B of the Central Excise Rules, 2002;

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

(j) "Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(k) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

(l) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

1. In Rule 2, in clause (g), the words shall be inserted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

2. In Rule 2, in Explanation, the words "The high speed diesel oil" shall be substituted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

3. In Rule 2, clause (h) shall be substituted by CENVAT Credit (5th Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No.

138, dt. 25.3.2003, p. 9-10.

3. CENVAT credit :-

(1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

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"(v) the National Calamity Contingent duty leviable under Sec. 136 of the Finance Act, 2001 (14 of 2001), as amended by Sec. 169 of the Finance Act, 2003 (32 of 2003);";

(vi) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above; and , paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002.

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act.

(vii) the additional duty of excise leviable under Sec. 157 of the

Finance Act, 2003(32 of 2003),

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

(3)²The CENVAT Credit may be utilized for payment :

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT Credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT Credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub-rule (2) of Rule 16 of Central Excise Rules, 2002.

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"Provided also that CENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notifications No. 39/2001-Central Excise, dt. 31.7.2001 [G.S.R. 565 (E), dt. 31.7.2001], No. 56/2002-Central Excise, dt. 14.11.2002 [G.S.R. 764 (E), dt. 14.11.2002], No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765 (E), dt. 14.11.2002], notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dt. 25.6.2003 [G.S.R. 513 (E), dt. 25.6.2003], and No. 71/2003-Central Excise, dt, 9.9.2003 [G.S.R. 717 (E), dt. 9.9.2003], shall respectively be utilized only for payment of duty on final products, in respect of which exemption under the said notifications No. 39/2001-Central Excise, dt. 31.7.2001, No. 56/2002-Central Excise, dt. 14.11.2002, No. 57/2-2-Central Excise, dt. 14.11.2002, No. 56/2003-Central Excise, dt. 25.6.2003, and No. 71/2003-Central Excise, dt. 9.9.2003, is availed of."

⁴"(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products 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 7"

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"(4-A) Notwithstanding any thing contained in these rules,-

(a) and first or second stage dealer, dealing exclusively in goods falling under Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 or 63 of the First Schedule to the Tariff Act, may, at his option, remove such goods, whether or not after undertaking activities such as packing, repacking, on payment of an amount equal to the duty of excise, which is leviable on such goods at the rate applicable on the date of removal and on the value determined for such goods under sub-sec. (2) of Sec. 3 or Sec. 4 of the Act, as the case may be. The provisions of the Central Excise Rules, 2002, in so far they relate to removal of goods on invoice, maintenance of accounts, filing of return, manner of payment or failure to pay such amount shall apply, as if such amount is a duty of excise liable to be paid by an assessee : Provided that such option once exercised by the said dealer, shall not be withdrawn during the remaining part of the financial year;

(b) the first or second stage dealer of goods referred to in clause (a), who avails of the option referred to in said clause, may take credit of duties referred to in sub-rule (1) of Rule 3 paid on such goods for utilizing the same for payment of such amount, as referred to in clause (a);

(c) the amount paid under clause (a) shall be eligible as CENVAT credit as if it were a duty paid by a person who removes such goods under sub-rule (4-A).".

(5) The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub- rule (4).

(6) Notwithstanding anything contained in sub-rule (1),-

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, - **6**

"(i) by a hundred per cent export oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park [other than a unit which pays excise duty levied under Sec. 3 of the Act read with serial numbers 3, 5, 6 and 7 of notification No. 23/2003-Central Excise, dt. 31.3.2003, (G.S.R.

266(E), dt. 31.3.2003)] and used in the manufacture of the final products in any other place in India, in case the unit pays excise duty under sec. 3 of the Act read with serial number 2 of the notification No. 23/2003-Central Excise, dt. 31.3.2003, [G.S.R. 266(E), dt. 31.3.2003], shall be admissible equivalent to the amount calculated in the following manner, namely : Fifty per cent of [X multiplied by (1+BCD/100) multiplied by (CVD/100)], where BCD and CVD denote ad valorem rates, in per cent, of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value."

(ii) in a Special Economic Zone, and used in the manufacture of the final products in any other place in India, shall be admissible equivalent to the amount calculated in the following manner, namely:- X multiplied by {(1+ BCD/100) multiplied by (CVD/100)}, where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value.

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"(b) CENVAT credit in respect of

(i) the additional duty of excise leviable under Sec. 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(ii) the National Calamity Contingent duty leviable under Sec. 136 of the Finance Act, 2001 (14 of 2001) as amended by Sec. 169 of the Finance Act, 2003 (32 of 2003);

(iii) the additional duty leviable under Sec. 3 of the Customs Tariff Act, equivalent to the duty of excise specified under sub- clauses (i) and (ii); and

(iv) the additional duty of excise leviable under Sec. 157 of the Finance Act, 2003 (32 of 2003),

Explanation. For removal of doubts, it is clarified that the credit of the additional duty of excise leviable under Sec. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)."

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Tariff Act shall be allowed to the extent of thirty rupees per square metre;

(d)⁸ [* * * * *]

1. Substituted by CENVAT Credit (Thirteenth Amendment) Rules, 2003.

2. In Rule 3, in sub-rule (3), shall be substituted by CENVAT Credit (3rd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 123, dt. 13.3.2003, p. 3.

3. THE PROVISIO SUBSTITUTED BY "The CENVAT Credit (Seventeenth Amendment) Rules, 2003 " [Noti. No. F. No. 356/56/2001-TRU (No. 65/2003-Central Excise (N.T), dt. 9.9.2003 Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 433, dt. 9.9.2003, p. 2.]

4. In Rule 3, in sub-rule (4), shall be substituted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

5. Inserted by the CENVAT Credit (7TH Amendment) Rules, 2003

6. SUBSTITUTED BY The CENVAT Credit (Eighteenth Amendment) Rules, 2003 (Noti. No. F. No. 201/6/2002-CX. 6 (Pt. 2), dt. 701'2003'-Central Excise (N.T.)}, dt. 15.9.2003 Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 449, dt. 15.9.2003, p. 4.]

7. Substituted by CENVAT Credit (Thirteenth Amendment) Rules, 2003

8. In Rule 3, in sub-rule (6), clause (d), shall be omitted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

4. Conditions for allowing CENVAT credit :-

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer:

¹Provided that in respect of the final products, namely, "yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act", the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who gets such final products manufactured on his account on job work subject to condition that the inputs are used in the manufacture of such final product by the job worker.

(2) (a) The CENVAT credit in respect of capital goods received in a

factory at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if the said capital goods are cleared as such in the same financial year.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, if the capital goods, other than components, spares and accessories,² [refractories and refractory materials, moulds and dies] and goods falling under heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act, are in the possession and use of the manufacturer of final products in such subsequent years.

Illustration. - A manufacturer received machinery on April 16, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(5)

(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back

within one hundred eighty days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory.

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.

(6) The Commissioner of Central Excise having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such inputs or partially processed inputs, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

1. In Rule 4, sub-rule (1), proviso shall be substituted by CENVAT Credit (5th Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 138, dt. 25.3.2003, p. 9-10.

2. SUBSTITUTED FOR THE WORDS "refractories and refractory materials" BY The CENVAT Credit (Eighteenth Amendment) Rules, 2003 (Noti. No. F. No. 201/6/2002-CX. 6 (Pt. 2), dt. 7.1.2003'- Central Excise (N.T.)}, dt. 15.9.2003 Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 449, dt. 15.9.2003, p. 4.]

5. Refund of CENVAT credit :-

Where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification:

Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995 , or claims a rebate of

duty under the Central Excise Rules, 2002, in respect of such duty.

6. Obligation of manufacturer of dutiable and exempted goods :-

(1) The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).

¹Provided the CENVAT credit on inputs shall not be denied to job worker referred to in Rule 12-B of the Central Excise Rules, 2002 on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.

(3) The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Tariff Act;

(ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;

(iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;

(iv)²[* * * * *]

(v) newsprint, in rolls or sheets, falling within heading No. 48.01 of the said First Schedule;

(vi) final products falling within Chapters 50 to 63 of the said First Schedule, the manufacturer shall pay an amount equivalent to the

CENVAT credit attributable to inputs used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(vii) Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;

³(viii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), namely :

(1) No .70/92-Central Excise, dated the 17th June, 1992, G.S.R. 595 (E), dated the 17th June, 1992;

(2) No. 62/95-Central Excise, dated the 16th March, 1995, G.S.R. 254 (E), dated the 16th March, 1995.

(3) No. 63/95-Central Excise, dated the 16th March, 1995, G.S.R. 255 (E), dated the 16th March, 1995;

(4) No. 64/95-Central Excise, dated the 16th March, 1995, G.S.R. 256 (E), dated the 16th March, 1995,";

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to eight per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

Explanation I. - The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer by debiting the CENVAT credit or otherwise.

Explanation II. - If the manufacturer fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 12, for recovery of CENVAT credit wrongly taken.

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

(5) The provisions of sub-rule (1), sub-rule (2), sub-rule (3) and

sub-rule (4) shall not be applicable in case the exempted goods are either-

(i) cleared to a unit in a free trade zone; or

(ii) cleared to a unit in a special economic zone; or

(iii) cleared to a hundred per cent. export-oriented undertaking; or

(iv) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(v) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number GSR. 602 (E), dated the 28th August, 1995; or

(vi) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002 .

4 (vii) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of Copper or Zinc by smelting.

1. In Rule 6, sub-rule (1), proviso shall be inserted by CENVAT Credit (5th Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 138, dt. 25.3.2003, p. 9-10.

2. In Rule 6, in sub-rule (3), clause (a), sub-clause (iv), shall be omitted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

3. In Rule 6, in sub-rule (3), clause (a), sub-clause (vii) and (viii), shall be inserted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

4. In Rule 6, in sub-rule (5), clause (vii), shall be inserted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

6A. Storage of inputs outside the factory of the manufacturer: :-

1 The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the inputs in respect of which CENVAT credit has been taken, outside-such factory, subject

to such limitations and conditions as he may specify :

Provided that where such inputs are not used in the manner prescribed in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs.

1. Rule 6A, shall be inserted by CENVAT Credit(2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No.95, dt. 1.3.2003, p. 185.

7. Documents and accounts :-

(1) The CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely :-

(a) an invoice issued by -

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, in terms of the provisions of Central Excise Rules, 2002 ;

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion

or any wilful mis-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include Challan or any other similar document evidencing payment of additional amount of additional duty of customs leviable under section 3 of the Customs Tariff Act;

(c) a bill of entry;

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office.

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(e) any of the documents referred to in clause (a) to (d), issued in the name of person,

(a) involved in purchase and sale of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act; or

(b) undertaking activities pertaining to manufacture of yarns or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58 or 60, readymade garments falling under Chapter 61 or 62 or made up textile articles falling under Chapter 63 of First Schedule to the Tariff Act, which is either fully exempt from duties of excise or are chargeable to "Nil" rate of duty or the said activity not amounting to manufacture, being endorsed in full for the entire consignment covered under the said document by the said person to any other manufacturer, producer, first stage dealer or second stage dealer.

Explanation. For the removal of doubt, it is clarified that the manufacturer, producer, first stage dealer or second stage dealer, as the case may be, in whose name such endorsement has been made, shall not be denied the credit merely on the grounds that the description of the goods mentioned in such an endorsed document has undergone a change on account of such an activity been undertaken by such person, as referred to in sub-clause (ii) of this clause on the said goods.';

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"(f) a challan, referred to in Rule 8-A.";

3(1A) CENVAT credit under Rule 3 shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse :

Provided that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer intending to take CENVAT credit is satisfied that duty due on the inputs has been paid and such inputs have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall record the reasons for not denying the credit in each case

(2) The manufacturer or producer taking CENVAT credit on inputs or capital goods shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken the CENVAT credit are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

Explanation. - The manufacturer or producer taking CENVAT credit on inputs or capital goods received by him shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier, as the case may be, issuing the documents specified in rule 7, evidencing the payment of excise duty or the additional duty of customs, as the case may be, either - (a) from his personal knowledge; or (b) on the strength of a certificate given by a person with whose handwriting or signature he is familiar; or (c) on the strength of a certificate issued to the manufacturer or the supplier, as the case may be, by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or the supplier has his place of business, and where the identity and address of the manufacturer or the supplier is satisfied on the strength of a certificate, the manufacturer or producer taking CENVAT credit shall retain such certificate for production before the Central Excise Officer on demand,

(3) The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that

the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(4) The manufacturer of final products shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been ⁴["procured"] is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit.

⁵(5) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified by notification by the Board within twenty days after the close of the quarter to which the return relates."

Explanation. - In respect of a manufacturer availing of any exemption based on the value or quantity of clearances in a financial year, the provisions of this sub-rule shall have effect in that financial year as if for the expression "month", the expression "quarter" was substituted.

5

"(6) A first stage or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified by notification by the Board."

1. Substituted by the CENVAT Credit (Sixth Amendment) Rules, 2003

2. Inserted by The CENVAT Credit (Fifteenth Amendment) Rules, 2003,

3. Rule 7, sub-rule (1A), shall be inserted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

4. Rule 7, sub-rule (4), the words "purchased" shall be substituted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India,

Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

5. SUBSTITUTED BY The CENVAT Credit (Eighteenth Amendment) Rules, 2003 (Noti. No. F. No. 201/6/2002-CX. 6 (Pt. 2), dt. 701'2003'-Central Excise (N.T.)}, dt. 15.9.2003 Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 449, dt. 15.9.2003, p. 4.]

8. Transfer of CENVAT credit :-

(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) The transfer of the CENVAT credit under sub-rule (1) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred alongwith the factory to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the ¹ ["Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be"].

1. Rule 8, sub-rule (2), the words "Commissioner" shall be substituted by CENVAT Credit (2nd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 95, dt. 1.3.2003, p. 185.

8A. Transfer of credit by exempted textile manufacturer :-

¹

(1) An independent weaver of fabrics, not subjected to any process, falling under Chapters 51, 52, 54, 55, 58 or 60 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter in this rule referred to as the First Schedule to the Central Excise Tariff Act) and which are exempted from the whole of the duty of excise leviable thereon under the said First Schedule to the Central Excise Tariff Act and the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), shall observe the following procedure for the purposes of transfer of the credit of duty paid on the inputs, falling under Chapter 51, 52, 54 or 55 of the First Schedule to the Central Excise Tariff Act, used in the manufacture of the said fabrics, to the buyer of the said fabrics, namely :

(i) the said independent weaver shall obtain a declarant code from the Superintendent of Central Excise having jurisdiction in this behalf, in terms of the provision contained in notification No. 36/2001-Central Excise (N.T.), dated the 26.6.2001 (G.S.R. 465 (E), dated the 26.6.2001);

(ii) the said independent weaver shall receive the said inputs on the basis of documents referred to under clause (a), (b), (c), (d) or (e) of sub-rule (1) of Rule 7;

(iii) the said independent weaver shall maintain records of receipt, disposal, consumption and inventory of the inputs in the same manner as specified in respect of manufacturers of final products in sub-rule (4) of Rule 7;

(iv) no such fabrics shall be removed from the factory except under an invoice (not to be considered to have been issued in terms of the provisions of Central Excise Rules, 2002 for the purposes of being a document under sub-rule (1) of Rule 7) and a challan, and the challan shall be in a format specified in the Annexure-1 to these rules as "CHALLAN FORM" and shall bear pre-pointed serial numbers and shall be in triplicate for the following purposes, namely :

(a) original - for buyer

(b) duplicate - for submission alongwith quarterly return

(c) triplicate - manufacturers office copy;

(v) the said independent weaver shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise having jurisdiction in this behalf, a statement in the format specified in Annexure-II to these rules, enclosing all duplicate copies of challan issued during the quarter in respect of such fabrics.

Explanation. For the purposes of this rule "independent weaver" means a weaver who works on his own, purchases the yarn for such work himself and sells the unprocessed fabrics manufactured out of such work.

1. Inserted by The CENVAT Credit (Fifteenth Amendment) Rules, 2003,

9. Transitional provision :-

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2001 , as they existed prior to the 1st day of March, 2002 and remaining unutilised on that day shall be allowable as CENVAT credit to such manufacturer under these rules, and be allowed to be utilised in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

9A. Transitional provisions for Textile and Textile Articles :-
1

(1) ²[A manufacturer, producer, first stage dealer or second stage dealer of goods falling under Chapters 50 to 63 of the First Schedule to the Tariff Act] shall be entitled to avail credit equal to the duty paid on inputs of such finished product, lying in stock or in process or contained in finished products lying in stock as on 31st day of March, 2003 upon making a written declaration of the description, quantity and value of the stock of inputs (whether lying in stock or in process or contained in finished products lying in stock) and subject to availability of the document evidencing actual payment of duty thereon.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer, producer, first stage dealer or second stage dealer, as the case may be. referred to in the said sub-rule, who is unable to produce the document evidencing actual payment of duty, shall be entitled to avail credit, calculated in a manner referred to in sub-rule (3), on inputs falling under Chapters 50 to 63 of the First Schedule to the Tariff Act, lying in stock or in process or contained in finished products lying in stock as on 31st day of March, 2003 upon making a written declaration of the description, quantity and value of the stock of each of such goods. The declaration made under this sub-rule shall exclude quantity of stock declared under

sub-rule (I).

(3)

(a) The credit of duty on each such input lying in stock and in process ³[shall be calculated on the basis of such rates] or in such manner as may be notified by the Central Government in this behalf, having regard to the average price of such inputs, and the applicable rate of duty and the quantity of input as declared by the assessee under sub-rule (2).

(b) ⁴[The credit of duty on inputs contained in fabrics or garments lying in stock as on the 31st day of March, 2003 shall be calculated in the following manner, namely:

(i) where the inputs and the finished products are covered under Notification No. 52/2001-Central Excise (NT), dated the 29th June, 2001, subject to such conditions as prescribed under the said notification, the credit shall be equal to such rate of credit as may be notified by the Central Government in this behalf, multiplied by the quantity of such finished product as declared by the assessee; or

(ii) where the inputs and the finished products are covered under Notification No. 54/2001-Central Excise (NT), dated the 29th June, 2001, or 6/2002-Central Excise (NT), dated the 1st March, 2002, subject to such conditions as prescribed under the said notifications, the credit shall be equal to the product of,

(A) the applicable percentage credits in terms of the said notifications;

(B) the value of such finished product declared by the assessee; and

(C) the duty rate applicable to such final product in terms of Notification No. 7/2003-Central Excise, ⁵[dated the 28th day of February, 2003.

Explanation. For removal of doubt, it is hereby clarified that the entire amount of credit as eligible under sub-rule (1) and/or (2) shall be calculated by the assessee himself who can take credit accordingly.

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(iii) in all other cases, in such manner as may be notified by the

Central Government in this behalf.

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"(4) The declaration referred to in this rule shall be made on or before the 26th day of May 2003 .";

9

"(5) Notwithstanding anything contained in sub-rule (1), sub-rule (2) or sub-rule (3),-

(a) in case the manufacturer, producer, first stage dealer or second stage dealer referred to in sub-rule (1), as the case may be, who has not made declaration of the goods referred to in the said sub-rule (1) or sub-rule (2) lying in stock as on the 31.3.2003, on or before the 30.4.2003, he shall make a declaration of goods referred to in sub-rule (1) or sub-rule (2), lying in stock as on the 1.4.2003, and upon making such declaration he shall be entitled to avail the credit in the similar manner as referred in sub-rule (1), sub-rule (2) or sub-rule (3) read with any notification issued thereunder;

(b) in case the manufacturer, producer, first stage dealer or second stage dealer, as the case may be, referred to in sub-rule (1), who has made declaration of the goods referred to in sub-rule (1) or sub-rule (2) lying in stock as on the 31.3.2003 and has availed credit in terms of the provision contained in this rule, on or before the 30.4.2003, he shall make a declaration afresh, of the stock of the said goods lying as on 1.4.2003 and upon making such declaration he shall be entitled to avail the credit in the similar manner as referred in sub-rule (1), sub-rule (2) or sub-rule (3) read with any notification issued thereunder. The manufacturer, producer, first stage dealer or second stage dealer, as the case may be, referred to in sub-rule (1) shall not be eligible for the credit availed, if any, on the basis of any declaration of the goods referred to in sub-rule (1) or sub-rule (2) lying in stock as on the 31.3.2003 made prior to the 30.4.2003: Provided that nothing contained in this clause shall apply if there is no difference in the description, quantity and value in declaration of the said goods lying in stock as on the 31.3.2003 and on the 1.4.2003, and the said manufacturer, producer, first stage dealer or second stage dealer, as the case may be, gives an intimation that the declaration made earlier may be taken as his declaration of the said goods lying in stock as on the 1.4.2003."

1. Inserted by the CENVAT Credit (Fifth Amendment) Rules, 2003
2. Substituted for the words "A manufacturer, producer, first state dealer or second stage dealer of yarn or fabrics falling under Chapter 50, 51, 52, 53, 54, 55, 58, 59 or 60 of the First Schedule to the Tariff Act " by the CENVAT Credit (12TH Amendment) Rules, 2003
3. Substitued for the words "shall be calculated on the basis of such rate" by the CENVAT Credit (Sixth Amendment) Rules, 2003
4. Substituted for the words "The credit of duty on inputs contained in fabrics lying in stock" by the CENVAT Credit (Sixth Amendment) Rules, 2003
5. Substituted for the words and figures "dated 28.2.2003" by the CENVAT Credit (Sixth Amendment) Rules, 2003
6. Inserted by the CENVAT Credit (Sixth Amendment) Rules, 2003
8. Substituted for for the figures and words "12th day of May, 2003 ", by the CENVAT Credit (12TH Amendment) Rules, 2003
9. Inserted by the CENVAT Credit (10TH Amendment) Rules, 2003

10. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East Region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim :-

¹ Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dt. 8.7.1999 [G.S.R. 508(E), dt.8.7.1999] or No. 33/99-Central Excise, dt. 8.7.1999 [G.S.R. 509(E), dt.8.7.1999] or No. 39/2001-Central Excise, dt. 31.7.2001 [G.S.R. 565(E), dt. 31.7.2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs No. 56/2002-Central Excise, dt. 14.11.2002 [G.S.R. 764(E), dt. 14.11.2002] or notification No. 57/2002-Central Excise, dated the 14.11.2002 [GSR 765(E), dt.14.11.2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dt. 25.6.2003 [G.S.R. 513(E), dt. 25.6.2003] or 71/2003-Central Excise, dt. 9.9.2003 [G.S.R. 717(E), dt. 9.9.2003, the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications."

1. INSERTED BY "The CENVAT Credit (Seventeenth Amendment) Rules, 2003 " [Noti. No. F. No. 356/56/2001-TRU (No.65/2003-Central Excise (N.T), dt. 9.9.2003 Gaz. of India, Exty., Pt.II-Sec. 3(i), No. 433, dt. 9.9.2003, p. 2.]

11. Power of Central Government to notify goods for deemed CENVAT credit :-

Notwithstanding anything contained in rule 3, the Central Government may, by notification declare the inputs on which the duties of excise, or additional duty of customs paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow CENVAT credit of such duty deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

12. Recovery of CENVAT Credit wrongly taken or erroneously refunded. :-

¹ Where the CENVAT Credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer and the provisions of Sees. 11-A and 11-AB of the Act shall apply mutatis mutandis for effecting such recoveries.

1. Rule 12, shall be substituted by CENVAT Credit (3rd Amendment) Rules, 2003, Gaz. of India, Exty., Pt. II-Sec. 3(i), No. 123, dt. 13.3.2003, p. 3.

13. Confiscation and penalty :-

(1) If any person, takes CENVAT credit in respect of inputs or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods has been paid as indicated in the document accompanying the inputs or capital goods specified in rule 7, or contravenes any of the provisions of these rules in respect of any inputs or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit has been taken or utilized wrongly on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Act.

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

14. Supplementary provision. :-

Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2001 by the Board, the Chief Commissioner or the Commissioner of Central Excise, and in force as on 28th February, 2002, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.