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Return of the Dragon



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Central Excise Rules took a new and a young outlook with the advent of Central Excise Rules 2000 (now 2002), of which Rule 16 was claimed to be a revelation. Under the provisions of Central Excise Law, goods once cleared on payment of duty from a factory cannot be brought back, but for the situations such as repair, reconditioning, refining, etc. Earlier, Rule 173 H of the then Central Excise Rules, 1944 dealt the various situations under which duty paid goods could be brought inside a factory for various purposes. Rule 16 of the present Rules, substituted the earlier Rule 173 H, bringing about a rational sea change.

Rule 16 inherits three subrules in it viz. 16 (1), (2) and (3) *ibid*. Rule 16 (1) provides for availment of CENVAT credit of the duty paid on the goods which are brought into the factory deeming them as inputs under CENVAT credit rules and utilisation of such credit accordingly. Rule 16 (2) lays down that if the activity / process carried out on such received goods amounts to manufacture, then appropriate duty shall be paid on such goods upon their removal and if the activity / process carried out on such received goods does not amount to manufacture, then an amount equal to the CENVAT credit availed on such returned goods has to be paid upon their removals. Rule 16 (3) was mainly a trouble shooter. It stated that, in case there is a bottleneck in following the provisions as contained in Rule 16 (1) / (2), then the assessee shall receive the goods, do the required processing and subsequently remove such goods, subject to the conditions as may be specified by the jurisdictional Commissioner.

From the above, the following emerge:

1. A manufacturer can bring back duty paid goods inside his factory for the purpose of repair, reconditioning, refining, etc.
2. He shall avail CENVAT credit on such received goods and utilise the credit, treating them as inputs under CENVAT Credit Rules.
3. To enable availment of the CENVAT credit, such goods have to be accompanied with a duty paid invoice.
4. In case, if the person who is returning the goods has availed CENVAT credit on the goods he will raise his invoice on which duty would have been paid and in case, if the person who is returning the goods has not availed CENVAT credit, he will return the original duty paid documents of the supplier.
5. In both the cases, the manufacturer who has brought back such goods can avail the CENVAT credit either on the strength of the Invoice raised by the opposite or on the strength of his own invoice, as the case may be.
6. There can also be a case where part of the consignment is returned back for repair / rectification. Even in such cases the receiver of such goods may not face any difficulty if he is able to correlate and establish with the duty paid document and still can avail the CENVAT credit on pro rata basis without taking recourse to Rule 16 (3).
7. Thus, recourse to Rule 16 (3) has to be sought only in cases of real difficulties, such as the goods are received without of any duty paying documents, etc. where the receiver will not be in a position to correlate the duty paid nature of such goods.

The Chennai I Commissionerate vide its Trade Notice No. 08/2002 dated 04.01.2002 has clearly laid down a procedure for such situations, wherein recourse to Rule 16 (3) has to be sought to protect the interest of the revenue. For situations under Rule 16 (3), repeat, **only for 16 (3)** the said trade notice has prescribed the following:

1. No prior permission for receipt of goods

2. On receipt, an intimation under prescribed Annexure-1 has to be filed with the Range Officer within 24 hours.
3. Goods can be brought back within one year or the guarantee / warranty period whichever is greater. Necessary permission from AC/ DC to be obtained to bring back the goods after the expiry of the above said period.
4. Assessee not to claim any CENVAT credit on such goods.
5. The goods shall be re-despatched within six months from the date of receipt after repair/ rectification. In case of delay, necessary permission from AC/ DC to be obtained to send the goods after the expiry of the above said period.
6. CENVAT credit on inputs used / utilise in repairing / rectifying has to be expunged.
7. If the process done on such received goods amounts to manufacture appropriate duty has to be paid, notwithstanding the fact that, no credit has been availed upon receipt of such goods. In such cases, there is no requirement of reversal of any CENVAT credit in respect of the inputs used, as specified in point no.6.
8. Receipt and despatch have to be accounted in the prescribed Annexure-2 format.
9. Stock and Sale (Trading) of similar goods can also be permitted by the Commissioner.

Such a detailed and comprehensive Trade notice, has to be hailed as one among the best. The said Trade notice protected both the interest of the revenue as well as resolved the bottleneck of the assessee.

Much to the contrary, several other Commissionerates have issued Trade notices prescribing self styled procedures for receipt of duty paid goods under Rule 16 of Central Excise Rules 2002. Though such trade notices are stated to be aimed to resolve the difficulties expressed by the trade, instead of removing the difficulty, they have only increased them by volumes. Such Trade Notices have completely misconstrued the provisions of Rule 16 and have gone to prescribe certain stringent and neolithic conditions even for the receipt of duty paid goods under normal circumstances wherein there is no difficulty envisaged by the assessee. Such Trade Notices have laid plethora of arbitrary conditions to the whole of Rule 16 which are much beyond the scope of Rule 16. The conditions imposed by such Trade Notices apply for all the cases (be it brought back with duty paid invoice or not) such as,

- (i) The goods should be brought back within one year from the date of clearance or within the guarantee / warranty;
- (ii) An intimation to the Range Officer and AC / DC within 24 hours upon receipt of the said goods.
- (iii) Assessee to wait for 48 hours, for departmental inspection of such goods, before taking up any process thereon.
- (iv) The brought back goods, on completion of processing, shall be cleared within a period of 90 days from the date of receipt (save another 90 days extension by AC / DC and further 90 days by the Commissioner upon valid reasons).
- (v) A separate monthly return showing the opening balance quantity receipt, etc.
- (vi) Prohibiting bringing of similar goods for trading purposes.

These conditions which universally apply to all receipt of goods under Rule 16, travel beyond the scope of Rule 16, much against the intentions of the legislature and will completely defeat the purpose of simplification. In an era of onward thrust based on trust, such conditions can only be rated as a reverse gear.

