G N LAW ASSOCIATES

ARTICLES 2008

www.gnlawassociates.com

CEILING IN RATE – SEALING OF FATE?

Author: G. Natarajan, S. Jaikumar

Area based exemptions are more mysterious than Mr. Alfred Hitchcock's plots. In the past, we all have read many interesting stories which are spun around the discretion in notifying the exemption areas and the last-minute extension of sunset clauses. No doubt, these area based notifications made over night billionaires who were well informed and bought acres in the notified areas. Like any other beneficial scheme, these area based notifications were also used, misused and abused. Over the years, the Government has been trying its best to plug the loopholes in the scheme and prescription of the mandatory availment of the Cenvat credit for the refund mode exemption schemes, is one of them. This time, the department has come out with another series of notifications, whereby, it has tried to put a cap for the amount of refund, by prescribing a notional "value addition" norms and restrict the refund entitlement to such "value addition" by virtue of Notification Nos. 16/2008 to 23/2008 CE Dated 27.03.2008. Let us try to understand the implications of these amendments.

As on date, the following region based notifications under refund mode are in vogue viz.,

S.No.	Notification	Coverage
1	32/1999	Specified areas in the North East States (sun set clause upto 31.03.2007)
2	33/1999	All areas of North East States (sun set clause upto 31.03.2007)
3	39/2001	Kutch of Gujarat (sun set clause upto 31.12.2005)
4	56/2002	Specified areas of Jammu and Kashmir
5	57/2002	All areas of Jammu and Kashmir
6	56/2003	Sikkim (sun set clause 31.03.2007)
7	71/2003	Specified areas of Sikkim (sun set clause 31.03.2007)
8	20/2007	North east states (sun set clause 31.03.2017)

So far, the exemption (refund) was available in respect of the **amount of duty paid by the manufacturer of the said goods, other than the amount of duty paid by utilisation of Cenvat credit".** Availment and utilisation of Cenvat credit has also been made compulsory in the notification. In other words, any duty paid through cash (PLA) would be refunded under this exemption notification after mandatory utilisation of Cenvat credit.

Now, as per the present notifications, it has been provided that the exemption would be in respect of **"the duty payable on value addition undertaken in the manufacture of the said goods by the said unit".** In effect, what is exempted is the duty paid on "value addition".

It may be observed that, once the availment and utilisation of Cenvat credit has been made compulsory, the additional duty paid through cash (PLA), over and above the Cenvat credit utilisation, shall only represent the duty paid by the manufacturer on his "value addition". But, the present Notifications proceed to lay down "value addition norms" for different goods, falling under different chapters.

As per the table under para 2 of these amending notifications, the duty payable on value addition is tabulated. For example, for the goods falling under Chapter Heading 29, the duty payable on value addition would be 29 % of the duty payable (strange coincidence!). For example, if an amount of Rs.1,00,000 is payable as duty on a commodity falling under Chapter Heading 29 (@ rate of duty applicable for the said Chapter), for a particular month, an amount of Rs.29,000/- shall represent the duty payable on value addition as per the present prescription. Thus an amount of Rs.29,000/- is entitled for refund.

But as per the proviso under para 2 of the Notification, if the duty payable on the "value addition" exceeds the duty paid by the manufacturer on the said excisable goods, other than the amount paid by utilisation of Cenvat credit, the duty payable on "value addition" shall be deemed to be equal to the duty so paid other than by Cenvat credit.

To illustrate the above proviso, in our given example *supra,* the duty payable on the value addition, as per the formulae prescribed in the notification is Rs.29,000/-. But, if the manufacturer has paid only Rs.25,000/- through cash (PLA) and Rs.75,000 by way of utilisation of Cenvat credit, then the refund entitlement shall be limited to Rs.25,000/- only. On the other hand, even if the manufacturer has paid a duty of Rs.35,000/- through cash (PLA) and Rs.65,000/- by way of utilisation of Cenvat credit, then his refund entitlement shall be limited to Rs.29,000/- only.

As per para 2 B (a) of the Notification, every manufacturer shall furnish a statement of total duty paid and duty paid through Cenvat credit, for each month, in respect of all commodities, as grouped in the table, by the 7th day of next month.

As per para 2 B (b) of the Notification, the jurisdictional AC/DC shall calculate the duty payable on value addition, as per the table and refund the same within 15th day of next month.

Though the option of taking self credit still continues the entitlement shall be calculated only as per the table.

Further if a manufacturer feels that the value addition norms laid down in the table is rather low when compared to the actual value addition done by him, he can make an application to the jurisdictional Commissioner for revising the rates. But, not every additional value addition can entitle a manufacturer to claim special rate. As per the relevant condition of the Notification under para 3 (1) thereof, if a manufacturer finds that four-fifths of the ratio of actual value addition in the production or manufacture of the said goods to the value of the said goods, is more than the rate specified in the said table expressed as a percentage, then only he is entitled to seek special rate. In other words, an application for fixation of special rate can be made only when the additional value addition is more than 25 % of the one prescribed in the table. Understanding the computational aspects of this provision is rather a nightmare, which we have tried to illustrate as below.

As per the present notifications, for the goods falling under Chapter Heading 74, the value addition norm prescribed is 15 %. In order to claim special rate, there has to be additional value addition of 25 % over and above the prescribed rate. In other words, in the given case, any application can be made only if the value of addition of a manufacturer is more than 18.75 % (25 % over and above the prescribed rate of 15 %)

For example, in the above instance under Chapter heading 74, if a particular manufacturer's value addition is 20 %, his additional value addition is more than the prescribed rate (15%) by 33.3% (over 25 %). Hence, he shall be entitled for a special value addition rate of 20 %.

Such an application for enhancement of the value addition norms shall be made within 60 days from the beginning of the financial year. A delay of further 30 days can be condoned by the Commissioner, if sufficient cause is shown. No doubt, understanding the provision can itself be cited as a sufficient cause.

Till the application for fixation of special rate of value addition is decided by the Commissioner (for which a time limit of six months has been prescribed), the manufacturer may claim provisional sanction of refund, based on the rates mentioned in the table. After the special rate is finalised, the additional refund would be sanctioned.

The special rate fixed by the Commissioner can be revoked by the Central Government. The manner in which the same shall be done is not known. Naturally, if the Commissioner denies the request for special rate, the manufacturer shall have appellate remedies.

Before parting....

After this notification, we are sure that the menace of Kutch, North-East and J&K would not be the devastating earthquake, spine-chilling ULFA and the anti-national Taliban but the **CBEC**!