

TN – 10/2008OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NO.1, WILLIAMS ROAD, CANTONMENT, TRICHY-1.

TRADE NOTICE: 10/2008

DATED : 23.05.2008.

Sub: Communication of Ministry's Circular No. 869/07/2008-CX dated 16.05.2008 issued in F. No.268/24/2006-CX.8 regarding Procedure relating to sanction and post-audit of refund/rebate claims & Ministry's Circular No. 870/08/2008-CX dated 16.05.2008 issued in F. No.267/91/2007-CX 8 regarding Payment of amount under Rule 6 of the CENVAT Credit Rules, 2004- Reg.

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Copy of Ministry's Circular No. 869/07/2008-CX dated 16.05.2008 issued in F. No.268/24/2006-CX.8 regarding Procedure relating to sanction and post-audit of refund/rebate claims & Ministry's Circular No. 870/08/2008-CX dated 16.05.2008 issued in F. No.267/91/2007-CX 8 regarding Payment of amount under Rule 6 of the CENVAT Credit Rules, 2004 is communicated herewith.

2. The contents of the Trade Notice may be brought to the knowledge of all constituent members of Trade Associations / Chambers of Commerce

(Issued from file C.No.IV/16/2/2008 – C.Ex.Pol.)

Sd/-
(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER

To
As per mailing list II / III

Copy of Ministry's Circular No. 869/07/2008-CX dated 16.05.2008 issued in F. No.268/24/2006-CX.8

Subject: Procedure relating to sanction and post-audit of refund/rebate claims-Reg.

Attention is invited to the Board's circular No. 809/06/2005-CX dated 01.03.2005 on the above subject, and the subsequent modification carried out in the procedure relating to pre-audit of refund claims (involving amount more than Rs. 5 lakh) vide circular No. 857/15/2007-CX dated 02.11.2007. References have been received from the field formations to modify the procedure relating to post-audit on the lines of said circular dated 02.11.2007. In order to ensure parity and uniformity in the procedure of pre-audit and post audit of refund/rebate claims, the following instructions are issued in supersession of circular No. 809/06/2005-CX dated 01.03.2005.

2.1 All refund/rebate sanction orders must necessarily be issued as an Order-in-Original. A separate series with suffix 'R' for numbering of Orders-in-Original issued for sanction of refund/rebate claims may be used. However, in terms of risk to revenue, a monetary limit of Rs. 50,000/- has been fixed below which O-in-O may not be issued, if the rebate is sanctioned in full. This shall enable the department to focus on the cases where amount sanctioned is higher than Rs. 50,000/-.

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2.2 All refund/rebate claims involving an amount of Rs. 5 lakh or above should be subjected to pre-audit at the level of Deputy/Assistant Commissioner (Audit) in the Commissionerate Headquarter Office. In such cases, a suitable Order-in-Original shall be passed by Deputy/Assistant Commissioner of Central Excise. The Orders-in Original passed in this regard shall be subjected to review proceedings by Commissioner as per the provisions of section 35E of the Central Excise Act, 1944.

2.3 For refund/rebate claims above Rs. 50,000/- but less than Rs. 5 lakh, Orders-in-Original should be issued by Deputy/Assistant Commissioner. These O-I-Os should be subjected to compulsory post-audit at the level of Deputy/Assistant Commissioner (Audit). The Orders-in-Original shall also be subjected to review as per the provisions of section 35E of the Act.

2.4 In cases of refund/rebate claims involving an amount upto Rs. 50,000/-, no Order-in-Original need be passed, if the claim is sanctioned in full. However, in case the sanctioned amount is less than the claimed amount, O-in-O should invariably be issued. These sanction orders may be post-audited on the basis of the random selection by Deputy/Assistant Commissioner (Audit) in such a way that at least 25 percent of the claims are post-audited. As Orders-in-Originals are not being passed in such smaller cases (except when not sanctioned in full), it may not be necessary to subject these sanction orders to review under section 35E.

2.5 All refund/rebate claim papers should be sent by the Divisional Deputy/Assistant Commissioner to the Commissionerate Headquarters [Deputy/Assistant Commissioner (Audit)] for post-audit within a week of payment thereof, irrespective of the amount involved. The jurisdictional Commissioners of Central Excise may evolve a suitable mechanism to ensure that all documents in respect of the refund/rebate claim (including claims below Rs. 50,000/- where no O-in-O is issued) are received in Commissionerate Headquarters for pre-audit and post-audit as per para 2.2 and 2.3 above.

2.6 For the purpose of post-audit/pre-audit of refund/rebate claims, a cell comprising of Deputy/Assistant Commissioner (Audit), one Superintendent and Inspectors as required, may be constituted. The cell should complete the post-audit before the expiry of two months from the date of issue of the O-in-O. This cell shall also be responsible for maintaining the record of the Orders-in-Original issued by various rebate/refund sanctioning authorities. The cell would also monitor and point out any missing Orders-in-Original by tracking the serial number and other relevant details.

3. The field formations as well as trade and industry may be suitably informed.

4. Hindi version will follow.

Yours faithfully,
(Rahul Nangare)

Under Secretary to the Govt. of India

Sub.: Payment of amount under Rule 6 of the CENVAT Credit Rules, 2004 – Reg.

The undersigned is directed to refer to circular No. 599/36/2001-CX dated November, 2001, wherein the issue of the applicability of the provision of section 11D of the Central Excise Act, 1944 in cases of payments made under erstwhile rule 57CC (1) of the Central Excise Rules, 1944 was examined. It has been brought to the notice of the Board that there are some decisions of the Tribunal contrary to the said circular. Further, rule 6 of the CENVAT Credit Rules, 2004, has been amended w.e.f. 01.04.2008, necessitating re-examination of the circular of the circular in the light of these developments.

2. It is seen that the Larger Bench of the Tribunal in the case of Unison Metals Ltd. Versus Commissioner of Central Excise, Ahmedabad-I [2006(2004) E.L.T. 323 (Tri.-LB)] has held that section 11D provides that any amount which has been collected as excise duty and not paid to the credit of the Central Government shall be liable to be recovered. The scheme of the Law is that manufacturers shall not collect amounts falsely representing them as Central Excise duty and retain them, thus, unjustly benefiting themselves. However, in case of payments made under erstwhile rule 57CC(1), section 11D of the Act is not applicable since the amount of 8% or 10% has already been paid to the revenue and no amount is retained by the assessee. The said order of the Tribunal has been accepted by the Department.

3. The matter has been examined. Sub-rule (3) of rule 6 of the CENVAT Credit Rules, 2004 has been amended w.e.f. 01.04.2008 to provide for payment of an amount equal to 10% of **value** of the exempted goods, instead of 10% of the **price** of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

4. In the light of what is sated above, it is clarified that as long as the amount of 8% or 10% is paid to the Government in terms of erstwhile rule 57CC of the Central Excise Rules, 1944 or rule 6 of the CENVAT Credit Rules, the provisions of section 11D shall not apply even if the amount is recovered from the buyers. However, it may be noted that the CENVAT credit of the said amount of 8% or 10% cannot be taken by the buyer since such payment is not a payment of duty in terms of rule 3(1) of the CENVAT Credit Rules, 2004. Therefore, the said 10% amount should be shown in the invoice as "10% amount paid under Rule 6 of the CENVAT Credit Rules, 2004".

5. Board's circular No. 599/36/2001-CX dated November, 2001 stands withdrawn.

6. The field formations as well as trade and industry may be suitably informed.

7. Hindi version will follow.

Yours faithfully,
(Rahul Nangare)

Under Secretary to the Govt. of India
