

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
THIRUCHIRAPALLI-1.

TRADE NOTICE : 41 / 2004

Dated: 18.5.2004

Sub: Reversal of CENVAT Credit on clearance of goods under rule 19(2) of Central Excise Rules, 2002 under notification 43 / 2001 - CE (NT) dated 26.6.2001- Regarding.

Copy of Board's Circular No.785 / 18 / 2004 – Cx. dated: 17.5.2004 (F.No.267 / 11 / 2002 – Cx.8) is communicated herewith.

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

(Issued from file C.NO.IV/16/ 4 /2004 - C.Ex.Pol)

//ATTESTED//

SUPERINTENDENT (T)

Sd/xxx
(D.P. NAIDU)
JOINT COMMISSIONER (Tech)

To
As per mailing list I, II & III /
All Sections in Hqrs., Trichy.

Copy of Board's Circular No.785 / 18 / 2004 – Cx. dated: 17.5.2004

Sub: Reversal of CENVAT Credit on clearance of goods under rule 19(2) of Central Excise Rules, 2002 under notification 43 / 2001 - CE (NT) dated 26.6.2001- Regarding.

I am directed to invite your attention to notification No. 43/2001-CE (NT) dated 26.6.2001 as amended issued under rule 19(3) read with rule 19(2) of Central Excise Rules, 2002 wherein procurement of excisable goods without payment of duty for the purpose of use in manufacture or processing of export goods and their exportation out of India has been provided subject to the conditions, safeguards and procedures mentioned therein. Doubts have arisen over application of sub-rule (1), (2) and (3) of rule 6 of CENVAT Credit Rules, 2002 relating to the clearances of excisable goods made by the supplier under notification No. 43/2001-CE (NT).

2. The matter has been examined by Board. As per sub-rule (1) of rule 6 of CENVAT Credit Rules, 2002, the credit is not available on inputs which are used in the manufacture of exempted goods. Sub-rule (2) and sub-rule (3) of the said rule gives an option to the manufacturer to maintain the separate inventory of inputs for use in exempted goods or pay an amount of 8 % of the price of the exempted goods (barring the exceptions mentioned therein) in case he chooses not to maintain separate inventory and to avail the credit on common inputs i.e. inputs used for both exempted and dutiable goods. Thus, the provisions of sub-rule (1), (2) and (3) are applicable to those manufacturers who manufacture both dutiable and exempted goods. Since notification No. 43/2001-CE (NT) has been issued under rule 19 of Central Excise Rules, 2002 which only prescribes conditions, safeguards and procedures, the goods procured under this notification does not attract the provisions of sub-rule (1), (2) and (3) of rule 6 of CENVAT Credit Rules, 2002.

3. However, a doubt was raised whether the exporter can claim Drawback in case the inputs are procured without payment of duty under the said notification and the resultant goods are exported under claim of drawback. It was also stated that since the exporter declares his intention while exporting the goods to avail duty drawback in Form ARE-2 {clause (d)}, the verification as to whether the exporter has procured the inputs without payment of duty or not can take place only at the time of sanction of drawback. In this connection, your attention is invited to clause (ii) of the second proviso to rule 3(1) of the Customs and Central Excise Duties Drawback Rules, 1995 which states that no drawback shall be allowed if the export goods are produced or manufactured using imported materials or excisable materials in respect of which the duties have not been paid. Accordingly, the exporter at the time of claiming of drawback is required to give a declaration that the facility under sub-rule (2) of rule 19 of Central Excise Rules, 2002 has not been or shall not be availed of i.e. no inputs procured without payment of duty have been used in the export goods. In other words, the exporter cannot claim Drawback in case any of the inputs has been obtained without payment of duty except to the extent and in the manner explicitly permitted under Customs and Central Excise Duties Drawback Rules, 1995 .

(Vijay Mohan Jain)
Under Secretary to the Govt. of India