GC. No. 2/2009 CE

FAX : *0431 - 2411583* TELEPHONE : *0431 - 2411195.*

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
No.1, WILLIAMS ROAD, TRICHIRAPALLI – 620 001.

GENERAL CIRCULAR NO.: 02/2009 - CE. Dated: 27 .02.2009.

Sub:- C.Ex. – Communication of Board's letter F.No.167/38/2008-CX.4 dated 16.12.2008 regarding MRP based assessment-Clarification regarding the scope of entry No.97 of the Notification No. 2/2006-CE(N.T.) inserted vide the amending Notification No.11/06-CE(N.T.)(present entry no 107 in the notification No.14/08-CE (NT)), Board's Instruction in F.No.21/01/2006-CX.1 dated 19.01.2009 regarding Availability of cenvat credit of the duty paid on the inputs used in the manufacture of branded goods on which duty is paid by a manufacturer who has opted to avail exemption on payment of duty based on the value of clearance as per SSI exemption notification & Board's Circular No. 882/02/2009 in F.No. 9/1/08-CX.1dated 11.02.2009 regarding Classification of tea admixture containing rice flour, tapioca, vitamins, etc - Reg.

- - - - - -

Copy of Board's letter F.No.167/38/2008-CX.4 dated 16.12.2008 regarding MRP based assessment-Clarification regarding the scope of entry No.97 of the Notification No. 2/2006-CE(N.T.) inserted vide the amending Notification No.11/06-CE(N.T.)(present entry no 107 in the notification No.14/08-CE (NT)), Board's Instruction in F.No.21/01/2006-CX.1 dated 19.01.2009 regarding Availability of cenvat credit of the duty paid on the inputs used in the manufacture of branded goods on which duty is paid by a manufacturer who has opted to avail exemption on payment of duty based on the value of clearance as per SSI exemption notification & Board's Circular No. 882/02/2009 in F.No. 9/1/08-CX.1dated 11.02.2009 regarding Classification of tea admixture containing rice flour, tapioca, vitamins, etc is communicated herewith for information, guidance and necessary action.

(Issued from file C.No.C.No.IV/16/04/2009-C.Ex. Pol.)

Sd./-
(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER(T)

To
As per mailing list.

Copy of Board's letter F.No.167/38/2008-CX.4 dated 16.12.2008.

Subject: MRP based assessment-Clarification regarding the scope of entry No.97 of the Notification No. 2/2006-CE(N.T.) inserted vide the amending Notification No.11/06-CE(N.T.)(present entry no 107 in the notification No.14/08-CE (NT))-reg.

****

References have been received from the field formations regarding the scope of abovementioned entry. The entry reads as under:

S.No.	Chapter, heading, subheading or tariff item of the First Schedule	Description of goods	Abatement as a percentage of retail sale price
"97.	Any heading	Parts, components and assemblies of automobiles	33.5%

2.1 The first issue is regarding interpretation of term 'automobiles'. The said term has not been defined in the Notification, hence its general meaning needs to be considered.

In this regard, reference may be made to the **Circular No. 22/90-CX.4, dated 11-7-1990.** In this circular at para 2, it has been stated that automobiles are conveyances for transportation of passengers and goods on roads (Chapter 87) and that hydraulic excavators cannot be treated as automobiles.

2.2 Further, as per the Automobile Cess Rules (under the industries (Development and Regulation) Act, 1951), automobile is defined as follows:
'Automobile' means motor cars, buses, trucks, jeep type vehicles, vans, scooters, motorcycles, mopeds, and all other automobiles covered under the sub-heading (5) of Heading 7 'Transportation' of the First Schedule to the Act;

The relevant subheading 7(5) reads as follows:
7.Transportation
(5) Automobiles (motor cars, buses, trucks, motor cycles, scooters and the like)

2.3 It is also to clarify that the term 'automobiles' does not include animal driven or manual driven vehicles.
The above clarification/definition may be considered to interpret the scope of term 'automobile'.

3.1 Another issue that has arisen is the scope of the term 'parts' as used in the aforementioned entry. Chapter 87 of the Central Excise Tariff covers parts of different vehicles. Further, Section Note 2 of the Section XVII also defines the scope of 'parts' of goods falling in said section. Doubts have arisen as to whether 'parts' classified in Chapter 87 shall only be covered under the said entry or all parts irrespective of their classification should be covered.

3.2 The issue has been examined. The said entry provides that 'parts, components and assemblies' falling in any heading in the Tariff are covered. Therefore, it is logical that all 'parts, components and assemblies,' irrespective of their classification shall be covered. It is also important to note that there is no specific entry for 'components' or 'assemblies' of automobiles in the Tariff, therefore, this also supports the view that all goods which are commonly known and sold in the trade as 'parts, components and assemblies ' are covered by said entry, irrespective of their clarification in the Tariff.

Hence, the term ' parts, components and assemblies' of automobiles includes items like batteries, brake assembly, tyres, tubes and flaps, IC engines, ball bearing, etc.

4. The contents of this clarification may be brought to the notice of trade and industry.

Yours faithfully,

(Ashima Bansal)
Under Secretary to the Government of India

Copy of Board's Instruction in F.No.21/01/2006-CX.1 dated 19.01.2009.

Subject: - Availability of cenvat credit of the duty paid on the inputs used in the manufacture of branded goods on which duty is paid by a manufacturer who has opted to avail exemption on payment of duty based on the value of clearance as per SSI exemption notification.

****

Reference has been received from associations as well as field formations on the issue as to whether a manufacturer who has opted to avail exemption from payment of duty based on value of clearance as per SSI notification, can also avail credit of duty paid on inputs used in the manufacture of branded (others) dutiable goods.

2. SCNs have been issued citing the judgment of Apex Court in the case of Ramesh Food Products, 2004(174)ELT 310 (SC). In the case of Ramesh Food Products, it was held by the Supreme Court that under Notification No.175/86-CE, simultaneous availment of credit of duty paid on inputs used in the manufactured of branded (others) dutiable goods and availment of full exemption for non-branded goods is not permissible.

3. Subsequently, in the case of Nebulae Health Care Ltd vs. Commissioner of Customs, Chennai, 2006-TIOL-1380-CESTAT-Mad, the Tribunal has held that simultaneous availment of credit for inputs used in the manufacture of branded products and of full exemption for other products is permissible under the subsequent SSI exemption Notification Nos. 8/99, 9/99, 8/2000, 8/2001, 8/2002 and 8/2003. In the said judgment, the Tribunal discussed the Supreme Court judgment in Ramesh Food products case at length, and held that Supreme Court decision was not applicable to present case where the notifications under consideration were differently worded.

4. An appeal has been filed before the Supreme Court against the decision of the Tribunal in the case of M/s Nebulae Health Care Limited. This appeal has been admitted.

5. Now, since an appeal has been filed before the Supreme Court in the case of M/s Nebulae Health Care, the Board has decided that it would be appropriate to await the outcome of the Civil Appeal filed in the Supreme Court. Therefore, such cases may be kept pending in call book.

Yours faithfully,
Sd/-
(Ashima Bansal)
Under Secretary to the Government of India

Copy of Board's Circular No. 882/02/2009 in F.No. 9/1/08-CX.1dated 11.02.2009.

Subject: Classification of tea admixture containing rice flour, tapioca, vitamins, etc – regarding.

****

A dispute has been brought to the notice of the Board regarding classification of 'tea' fortified with micronutrients and with tapioca, jaggery, chicory, rice flour and vitamins. These additives may be to the extent of 30% with the remaining part being tea. Doubts have been raised as to whether such an admixture is classifiable under chapter 9 as flavoured tea or as a preparation with a basis of tea under chapter 21.

2 . The matter has been examined with reference to the HSN, the relevant Tariff entries and the Chapter notes and the earlier board circular No 622 of 2002 dated 21.02.02.

3. The tea admixture in the present case, containing rice flour, tapioca, vitamins, etc cannot be considered as flavoured tea particularly when the purpose of addition of various ingredients is to add to volume and to provide health benefits. Neither can these additives be considered as flavouring material.

4 The expression 'preparation' has been used in a number of Tariff items in Chapter 21 and has also been used to explain the scope of an entry in the Chapter notes and the supplementary notes. From these notes, it is clear that preparations would include products prepared by addition, mixing, or such other similar processes to the original commodity. Heading 2101 includes preparations with a basis of extracts, essences and concentrates of tea and preparations with basis of tea. Therefore, it is opined that the tea admixture is a preparation with a basis of tea and is classifiable under chapter Heading 2101 .

5 Hindi version will follow.

6 Receipt of this circular may be acknowledged

Yours faithfully,

Ashima Bansal
Under Secretary to the Govt. of India

ooooooOoOoOoOoooooo