

**F. No. 267/91/2007-CX 8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Circular No. 870/08/2008-CX

Dated 12th May, 2008

Subject : 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.

Sd/-
(Rahul Nangare)
Under Secretary to the Government of India