

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Notification No. 23/2008-Central Excise

Dated 27th March, 2008

G.S.R.(E).- In exercise of the powers conferred by Sub-Section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), read with Sub-Section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Sub-Section (3) of Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978, (40 of 1978) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 71/2003-Central Excise, dated the 9th September, 2003 which was published in the Gazette of India, Extraordinary, vide number G.S.R. 717 (E) dated the 9th September, 2003 namely :-

In the said Notification,-

- I. In the preamble, for the words and figures, "to the amount of duty paid by the manufacturer of the said goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2002", the words "to the duty payable on value addition undertaken in the manufacture of the said goods by the said unit" shall be substituted;
- II. for paragraphs 2, 3 and 4 the following shall be substituted, namely :-
 - '2. The duty payable on value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in column (3) of the Table below (hereinafter referred to as the said Table) and falling within the Chapter of the said First Schedule as are given in the corresponding entry in column (2) of the said Table, at the rates specified in the corresponding entry in column (4) of the said Table :

TABLE

<i>S. No.</i>	<i>Chapter of the First Schedule</i>	<i>Description of goods</i>	<i>Rate</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
1.	29	All goods	29
2.	30	All goods	56
3.	33	All goods	56
4.	34	All goods	38
5.	38	All goods	34
6.	39	All goods	26
7.	40	Tyres, tubes and flaps	41
8.	72 or 73	All goods	39
9.	74	All goods	15
10.	76	All goods	36
11.	85	Electric motors and generators, electric generating sets and parts thereof	31
12.	Any chapter	Goods other than those mentioned above	36

Provided that where the duty payable on value addition exceeds the duty paid by the manufacturer on the said excisable goods, other than the amount paid by utilization of CENVAT credit during the month, the duty payable on value addition, shall be deemed to be equal to the duty so paid other than by CENVAT credit.

- 2A. In cases where all the goods produced by a manufacturer are eligible for exemption under this Notification, the exemption contained in this Notification shall be subject to the condition that the manufacturer first utilizes whole of the CENVAT credit available to him on the last day of the month under consideration for payment of duty on goods cleared during such month and pays only the balance amount in cash.
- 2B. The exemption contained in this notification shall be given effect to in the following manner, namely :-
- (a) the manufacturer shall submit a statement of the total duty paid and that paid by utilization of CENVAT credit, on each category of goods specified in the said Table and cleared under this Notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 7th of the next month in which the duty has been paid;
 - (b) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification as may be deemed necessary, shall refund the duty payable on value addition, computed in the manner as specified in paragraph 2 to the manufacturer by the 15th of the month following the one in which the statement as at clause (a) above has been submitted.
- 2C. Notwithstanding anything contained in sub-paragraph 2B above,-
- (a) the manufacturer at his own option, may take credit of the amount calculated in the manner specified in paragraph 2 in his account current, maintained in terms of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs. Such amount credited in the account current may be utilized by the manufacturer for payment of duty, in the manner specified under rule 8 of the Central Excise Rules, 2004, in subsequent months, and such payment shall be deemed to be payment in cash;
 - (b) the credit of the refund amount may be taken by the manufacturer in his account current, by the 7th of the month following the month under consideration;
 - (c) a manufacturer who intends to avail the option under clause (a) shall exercise his option in writing for availing such option before effecting the first clearance in any financial year and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;
 - (d) the manufacturer shall submit a statement of the total duty payable as well as the duty paid by utilization of CENVAT credit or otherwise and the credit taken as per clause (a), on each category of goods manufactured and cleared under the notification and specified in the said Table, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, by the 15th of the month in which the credit has been so taken;
 - (e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after such verification, as may be deemed necessary, shall determine the amount correctly refundable to the manufacturer and intimate to the manufacturer by the 15th day of the next month to the month in which the statement under clause (d) has been submitted. In case the credit taken by the manufacturer is in excess of the amount determined, the manufacturer shall, within five days from the receipt of the intimation, reverse the said excess credit from the account current maintained by him. In case, the credit taken by the manufacturer is less than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount;
 - (f) in case the manufacturer fails to comply with the provisions of clauses (a) to (e), he shall forfeit the option, to take credit of the amount calculated in the manner specified in sub-paragraph 2 in his account current on his own, as provided for in clauses (a) to (c);

(g) the amount of the credit availed irregularly or availed of in excess of the amount determined correctly refundable under clause (e) and not reversed by the manufacturer within the period specified therein, shall be recoverable as if it is a recovery of duty of excise erroneously refunded. In case such irregular or excess credit is utilised for payment of excise duty on clearances of excisable goods, the said goods shall be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.

Explanation.- For the purposes of this paragraph, duty paid by utilisation of the amount credited in the account current, shall be taken as payment of duty by way other than utilisation of CENVAT credit under the CENVAT Credit Rules, 2004.

3 (1) Notwithstanding anything contained in paragraph 2, the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the 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. For the said purpose, the manufacturer may, within sixty days from the beginning of a financial year, make an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, for determination of such special rate, stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods :

Provided that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days :

Provided further that the manufacturer supports his claim for a special rate with a certificate from his statutory auditor containing an estimate of value addition in the case of goods for which a claim is made, based on the audited balance sheet of the unit, for the preceding financial year;

- (2) On receipt of the application referred to in sub-paragraph (1), the Commissioner of Central Excise or Commissioner of Customs and Central Excise, as the case may be, after making or causing to be made such inquiry as he deems fit, shall fix the special rate within a period of six months of such application;
- (3) Where the manufacturer desires that he may be granted refund provisionally till the time the special rate is fixed, he may, while making the application, apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, in writing for grant of provisional refund at the rate specified in column (4) of the said Table for the goods of description specified in column (3) of the said Table and falling in Chapter of the First Schedule of the Central Excise Tariff Act, 1985 (5 of 1986) as in corresponding entry in column (2) of the said Table, and on finalization of the special rate, necessary adjustments be made in the subsequent refunds admissible to the manufacturer in the month following the fixation of such special rate.
- (4) Where the Central Government considers it necessary so to do, it may-
 - (a) revoke the special rate or amount of refund as determined under sub-paragraph (2) by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, or
 - (b) direct the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, to withdraw the rate so fixed.

Explanation : For the purpose of this paragraph, the actual value addition in respect of said goods shall be calculated on the basis of the financial records of the preceding financial year, taking into account the following :

- (i) Sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods;
- (ii) Less : Cost of raw materials and packing material consumed in the said goods;

- (iii) Less : Cost of fuel consumed if eligible for input credit under CENVAT Credit Rules, 2004;
- (iv) Plus : Value of said goods available as inventory in the unit but not cleared, at the end of the financial year;
- (v) Less : Value of said goods available as inventory in the unit but not cleared, at the end of the financial year preceding that under consideration.

Special rate would be the ratio of actual value addition in the production or manufacture of the said goods to the sale value of the said goods excluding excise duty, Value Added Tax and other indirect taxes, if any, paid on the goods.

- (5) The manufacturer shall be entitled to refund at the special rate fixed under sub-paragraph (2) in respect of all clearances of excisable goods manufactured and cleared under this notification with effect from the date on which the application referred to at sub-paragraph (1) was filed with the Commissioner of Central Excise or Commissioner of Central Excise and Customs, as the case may be.
- (6) Where a special rate is fixed under sub-paragraph (2), the refund payable in a month shall be equivalent to the amount calculated as a percentage of the total duty payable on such excisable goods, at the rate so fixed :

Provided that the refund shall not exceed the amount of duty paid on such goods, other than by utilization of CENVAT credit.'

2. This Notification shall come into force with effect from the 1st day of April, 2008.

Sd/-
(S. BAJAJ)

[F. No. 334/1/2008-TRU]

Under Secretary to the Government of India

Note : The principal Notification No. 71/2003-Central Excise, dated 9th September, 2003 was published in the Gazette of India, Extraordinary, vide number G.S.R. 717(E), dated the 9th September, 2003 and was last amended vide Notification No. 21/2007-Central Excise, dated 25th April, 2007 published vide number G.S.R. 308(E), dated the 25th April, 2007.

Member-exporters can avail the Notification No. 71/2003-Central Excise, dated the 9th September, 2003 and Notification No. 21/2007-Central Excise, dated the 25th April, 2007 from the following Website :

<http://www.cbec.gov.in/excise/cx-act/notfns-2k3/ce71-2k3.htm>

<http://www.cbec.gov.in/excise/cx-act/notfns-2k7/ce21-2k7.htm>