

Finance (No. 2) Act, 2004

Section 88 - Amendment of the Cenvat Credit Rules, 2002

(1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944(1 of 1944), in rule 3, in sub-rule (6), in clause (b), the Explanation shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said Explanation shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said Explanation as amended by this sub-section had been in force at all material times. .

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944(1 of 1944), retrospectively, at all material times.

(3) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times.

(4) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944(1 of 1944), shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

1 [(5) Notwithstanding anything contained in sub-section (4), the following procedure shall be followed for the recovery of the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times (hereinafter referred to in this section as the amount of credit), namely:--

- (i) the Central Excise Officer shall, on or before the 25th day of May, 2005, serve notice on the person from whom the recovery is to be made (hereinafter referred to as the assessee), requiring the assessee to declare the amount of credit utilised by him on different dates for payment of duty of excise (hereinafter referred to as the CENVAT duty) leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);
- (ii) the assessee shall furnish the declaration as required under clause (i) on or before the 31st day of May, 2005;
- (iii) the Central Excise Officer shall, after considering the declaration made by the assessee under clause (ii), determine the amount of credit utilised on different dates for payment of CENVAT duty;

(iv) the Central Excise Officer shall separately determine the amount of interest on the amount of credit (hereinafter referred to as the amount of interest) utilised for paying the CENVAT duty, in accordance with the provisions of clause (v);

(v) the amount of interest on amount of credit utilised for paying the CENVAT duty shall be at a rate of thirteen per cent. per annum for the period beginning on and from the day when each time the amount of credit was so utilised and ending on the 10th day of September, 2004;

(vi) the Central Excise Officer shall, on or before the 15th day of June, 2005, inform the assessee, in writing, the amount of credit and the amount of interest so determined under clauses (iii) and (iv);

(vii) the assessee shall pay an amount equal to one-thirty sixth part of each of the amount determined under clauses (iii) and (iv) by the fifth day of every month, commencing from the month, following the month of receipt of information of the amount determined by the Central Excise Officer;

(viii) the assessee may make payment on his own towards the amount of credit or, as the case may be, the amount of interest, in excess of the amount required to be paid upto a particular month;

(ix) where the assessee pays the total amount of credit and the amount of interest so determined under clauses (iii) and (iv), respectively, the Central Excise Officer shall issue an order confirming the payment of credit and the amount of interest and discharging the assessee from any recovery of the amount of credit;

(x) for the purposes of this sub-section, it is hereby clarified that the amount of credit has been fully utilised first towards payment of the CENVAT duty before utilising the CENVAT credit of additional duty leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957) paid on or after the 1st day of April, 2000 for payment of the CENVAT duty.

(6) Where the assessee fails to furnish the declaration as required under clause (i), or has furnished the declaration but failed to pay the amount by the day as specified in clause (vii), of sub-section (5), the provisions of sub-section (4) shall apply subject to the modification that the notice, requiring the assessee to show cause why he should not pay the amount specified in the notice, shall be served upon him within three months from the date of his such failure.]

Explanation 1.--For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Explanation 2.--For the purposes of this section, the expression "CENVAT credit" has the meaning assigned to it in the CENVAT Credit Rules, 2002.

1. Inserted by the Finance Act, 2005, w.e.f 13.05.2005.