

## CHAPTER IV EXEMPTIONS

Under section 5A(1) of the Central Excise Act, 1944, the Government is empowered to exempt goods attracting excise duty from the whole or any part of the duty leviable thereon, either absolutely or subject to such conditions, as may be specified in the notification granting the exemption. A few illustrative cases of incorrect allowance of exemptions from levy of duty totalling ₹ 3.23 crore are mentioned in the following paragraphs. These observations were communicated to the Ministry through five draft audit paragraphs. The department had accepted (till December 2010) the audit observations in one draft audit paragraph with a financial implication of ₹ 74.18 lakh.

### **4.1 Exemption on goods supplied to a project financed by international organisations**

Notification dated 28 August 1995, as amended, exempts excise duty on goods supplied to projects approved by the Government of India and financed by international organizations, subject to the production of prescribed certificate from the appropriate authority before the clearance of such goods.

**4.1.1** M/s Hindustan Vidyut Products Ltd., Gwalior, in Indore commissionerate, engaged in the manufacture of conductors, availed exemption on electrical conductors supplied for two projects financed by the World Bank. We observed that the certificate that was used for claiming exemption was not in the name of the assessee but in the name of M/s Hindustan Vidyut Products Ltd. New Delhi. Moreover, the jurisdictional Assistant Commissioner, Gwalior had in April 2009, rejected a request for clearance of the conductors under the aforesaid notification. However, the assessee disregarded the decision of the AC and cleared conductors valuing ₹ 6.59 crore from January 2009 to March 2009 without payment of duty quoting aforesaid notification. This resulted in incorrect availing of exemption and applicable duty of ₹ 63.50 lakh was recoverable with interest penalty.

When we pointed this out (July 2009), the department stated (October 2009) that a show cause notice for ₹ 1.38 crore was being issued.

The reply of the Ministry had not been received (December 2010).

**4.1.2** M/s Indian Oil Corporation Ltd., in Haldia commissionerate, engaged in the manufacture of petroleum products, cleared bitumen to various projects approved by Government of India and financed by international organisations and availed of the exemption from duty under the aforesaid notification. We observed that goods were cleared on the basis of certificates whose validity had expired. This resulted in incorrect availing of exemption of ₹ 74.18 lakh during 2008-09, which was recoverable with interest and penalty.

When we pointed this out (September 2008), the department admitted the audit observation and reported (May 2010) that the show cause cum demand notice was under issue.

The reply of the Ministry had not been received (December 2010).

## **4.2 Exemption on goods captively consumed**

**4.2.1** Notification dated 16 March 1995 as amended by notification dated 1 March 2003 provides exemption to all capital goods and specified inputs captively consumed within factory of production, from the whole of the duty of excise. The clause (vi) of the above notification provides that the benefit of the exemption can be taken by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in Rule 6 of the Cenvat Credit Rules.

Rule 6 of the Cenvat Credit Rules, envisages that where an assessee manufactures final products, part of which are chargeable to duty and part of which are exempt but avails of credit of duty on inputs and input services meant for use in both the categories of final products, it has to exercise option either to maintain separate accounts of inputs used or pay an amount equivalent to ten per cent of the value of exempted goods.

M/s Dhampur Sugar Mills Ltd., Dhampur, in Meerut II commissionerate, engaged in the manufacture of V.P. Sugar, molasses, rectified spirit and chemicals, cleared 1,44,184 quintals of molasses for captive consumption between April 2008 and June 2009. The molasses were utilised in the production of 30,42,000 liters of rectified spirit which was sold at nil rate of duty. We observed that the assessee availed cenvat credit of ₹ 1.27 crore during 2008-09 on common input services like security agency services, telephone, insurance, technical consultancy, transportation, repair and maintenance etc. but did not maintain separate accounts for input services which were used in the manufacture of dutiable and exempted goods. The assessee did not pay an amount equal to 10 per cent of the value of the rectified spirit which was required to avail exemption under the notification mentioned above. The exemption availed of ₹ 1.08 crore was therefore recoverable with interest.

We pointed this out to the department/Ministry in September 2009/October 2010; their reply had not been received (December 2010).

**4.2.2** Excisable goods produced and used for the manufacture of final goods are exempt from payment of duty under a notification dated 16 March 1995 provided that the final product is chargeable to duty.

M/s Bakewell Agro Ltd., Saharanpur in Meerut I commissionerate, produced sugar syrup (excisable) and consumed it in the manufacture of biscuits (exempted) during the period from March 2007 to May 2008. The assessee did not pay duty on sugar syrup availing aforementioned exemption. Since biscuits were exempt from duty, the exemption availed on sugar syrup was not correct. The assessee was liable to pay duty of ₹ 7.05 lakh which was recoverable with interest of ₹ 1.82 lakh (up to March 2010).

When we pointed this out (November 2007), the department intimated (December 2009) that a show cause notice was being issued.

The reply of the Ministry had not been received (December 2010).

### **4.3 Exemption linked to production**

The Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008, provides that the duty payable on production of pan masala for a particular month is to be based on the number of operating packing machines in the factory during the month. In case a factory does not produce during any continuous period of 15 days or more, the duty calculated on a proportionate basis shall be abated in respect of such period.

M/s Dharampal Satyapal Ltd., (Shed no. 39 & 37A), Guwahati in Guwahati commissionerate, engaged in the manufacture of Rajnigandha Pan Masala {1.6 gm pouch, Tulsi Royal Gold 1.75 gm pouch (retail sale price: ₹ 2.50 per pouch} paid excise duty amounting to ₹ 1.30 crore (at ₹ 26 lakh per machine) for five packing machines during the month of February 2009 and thereafter, took abatement for ₹ 68.92 lakh for that month although the factory did not stop their production for a continuous period of 15 days or more during February. Thus, the abatement of ₹ 68.92 lakh was not admissible and the amount was recoverable with interest.

When we pointed this out (February 2010), the department stated (May 2010) that the said irregularities were detected by its internal audit party in April 2009 and protective demand had also been issued.

However, the follow up action was not taken for around one year and show cause notice was issued in March 2010 only after the issue was raised by CERA. The departmental reply did not explain who was responsible for the delay in raising demand.

The reply of the Ministry had not been received (December 2010).