

**Circular No.-1014/2/2016-CX**  
**Dated the 1<sup>st</sup> February, 2016**

**F. No. 6/14/2014-CX.I (Pt.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Excise & Custom**  
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New Delhi, dated the 1<sup>st</sup> February, 2016

To

Principal Chief Commissioner/ Chief Commissioner / Principal Commissioner of  
Central Excise and Customs (All)

Web-master, CBEC

Madam/Sir,

Subject: Inclusion of show cause notice's issued in relation to levy of CVD on  
vessels imported for breaking in the "Call-Book"-reg.

References have been received in the Board from trade and field formations in relation  
to Judgement of Hon'ble High Court of Gujarat passed in SCA No. 10607 of 1995  
filed by M/s Shivam Engineering Company and others reported as [2014-TIOL-1563-  
HC-AHM-CUS]. A SLP has been filed by the department in Hon'ble Supreme Court  
against this order.

2. In the said judgement, Hon'ble High Court has held that duty under Central Excise  
Act, 1944 can be levied, if the article has come into existence as a result of production  
or manufacture. Articles which are not produced or manufactured cannot be subjected  
to levy of excise duty. On the import of like article, no additional duty can be levied  
under section 3(1) of the Customs Tariff Act, 1975. Since the vessels and other  
floating structures for 'breaking-up' are not manufactured in India, no excise duty is  
leviable and consequently no additional duty under Section 3(1) of the Customs Tariff  
Act, 1985 can be levied on import of such goods. The reason for such conclusion by  
Hon'ble High Court is that when articles which are not produced or manufactured  
cannot be subjected to levy of excise duty, then on the import of like articles no  
additional duty can be levied under the Customs Tariff Act.

3. In view of above said judgement, trade are following two different practices as  
enumerated below and are being issued Show cause Notices according to the practice  
they follow:-.

(i) Show Cause Notices have been issued to importers who are not paying CVD demanding CVD from them as department has appealed against the order of the Hon'ble High Court of Gujarat.

(ii) Show Cause Notices for wrong availment of CENVAT credit have been issued to those importers who are paying CVD voluntarily and taking CENVAT credit and utilising the same for payment of Central Excise duty liability arising due to breaking of vessels.

4. The problem faced by the trade due to issue of Show Cause Notices in either situation has been examined in Board and it has been decided that all Show Cause Notices issued for non-payment of CVD [refer para3(i) above] shall be kept in call book till the SLP filed by the department in the Hon'ble Supreme Court is decided.

5. Show Cause Notice denying Cenvat Credit of CVD paid voluntarily by the importers at the time of import is not warranted. It is well settled position in law that a buyer may avail Cenvat Credit, if supplier has paid duty. In this regard following case law may be referred- CCE vs. CEGAT2006 (202) ELT 753(Mad HC DB), CCE vs Ranbaxy Labs Ltd. [2006(203) ELT 213(P&H HC DB)], Commissioner of Central Excise, Chennai-I vs CEGAT, Chennai reported as [2006(202)ELT.753(MAD.)]. Credit is accordingly admissible for duty paid voluntarily.

6. Thus, once the importer has paid CVD on import of ship, Cenvat Credit of that CVD cannot be denied for payment of Central Excise duty on breaking of that ship. Show Cause Notices already issued for denying Cenvat Credit may be decided in light of these instructions and in future such Show Cause Notices may not be issued.

7. Also vide Notification No. 1/2016- Central Excise(N.T.), dated 01.02.2016 in the CENVAT Credit Rules, 2004, in rule 3, in sub-rule (1), in clause (vii), the proviso has been omitted.

8. Proviso to rule 3(1)(vii) of CENVAT Credit Rules, 2004 was inserted vide Notification No. 3/2011-Central Excise(NT), dated 1.3.2011. In the breaking of ships, products of section XV(base metals and articles of base metal) are obtained which are deemed to be manufactured as provided in section note 9 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985. On the other hand, a number of used serviceable articles such as pumps, air conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a

manufacturing process. At the same time, ship breaking units are allowed to avail full credit of additional duty of customs paid on the ship when it is imported for breaking. This anomaly was resulting in excess utilization of CENVAT credit. Rule 3 of the CENVAT Credit Rules, 2004 was accordingly amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

9. Further, amendment in Rule 6 of CENVAT Credit Rules, 2004 was carried out in budget of 2015, to provide that now credit is required to be reversed even for non-excisable goods produced as byproducts in the process of manufacture of excisable goods. This amendment has brought non-excisable goods and exempt goods at par and no credit is now available on either of them. The explanation inserted in Rule 6 is as follows:-

Explanation1- For the purpose of this rule, exempted goods or final products as defined in clause (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

10. At present there is a conflict regarding reversal of credit in relation to non-excisable goods which emerge during breaking of ship viz. whether restriction/reversal of credit needs to be done under proviso to rule 3(i)(vii) of CENVAT Credit Rules, 2004 or under rule 6 of CENVAT Credit Rules, 2004. To resolve the conflict, the provision restricting CENVAT credit to 85% under proviso to rule 3(i)(vii) of Cenvat Credit Rule, 2004 has been deleted. Consequently ship breaking units would be entitled to avail 100% credit of the CVD paid with effect from 01.03.2015 but would also be required to follow provisions of rule 6 of CENVAT Credit Rules, 2004 with effect from 01.03.2015. This beneficial amendment of deleting proviso to rule 3(i)(vii) of CENVAT Credit Rules, 2004 has been done retrospectively with effect from 01.03.2015, that is the date from which reversal of Cenvat Credit for non-excisable goods was provided in rule 6 of Cenvat Credit Rules, 2004.

11. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board. Hindi version follows.

Yours faithfully

(Santosh Kumar Mishra)  
Under Secretary to the Government of India