

F.No.201/51/2004-CX-6

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

26th July, 2006.

Subject: - The Taxation Laws (Amendment) Act, 2006.

1. The Taxation Laws (Amendment) Act, 2006 has come into effect from 13.07.2006. Certain amendments / insertions to section 11A, section 11DDA, section 35E, section 37E of the Central Excise Act, 1944 and rule 16 of the Central Excise Rules, 2002 have been effected.

2. Section 11A of the Central Excise Act, 1944 has been amended to introduce an optional scheme for enabling voluntary payment of duty by assessees, in full or in part, in cases involving fraud, mis-statement etc. along with interest and 25% of the duty amount as penalty within 30 days of the receipt of the show cause notice thereby dispensing with the rigours of adjudication procedure. This is an additional facility given to the Trade to settle the dispute at an early stage to reduce litigation and also aid in collection of tax dues more expeditiously. The scheme is optional and not compulsory. The assessee has the further option of using the proposed facility in full or in part. In case of part payment, the remaining amount will be subject to regular proceedings as per the law.

3. Section 35E of the Central Excise Act, 1944, authorizes a Commissioner of Central Excise to review the orders passed by an adjudicating authority subordinate to him and direct filing an appeal before the appellate authority. While sub-section (4) of the said Section speaks of filing such an appeal by adjudicating authority or the authorized officer, the erstwhile sub-section (2) only referred to the adjudicating authority and omitted reference of "the authorized officer". This lacuna has generated disputes and has attracted different interpretations by the Tribunal and the courts. Hence a corrective measure has been taken to amend section 35E (2) to authorize an authority other than an adjudicating authority to file appeals on behalf of the Commissioner.

4.1 Rule 16 of the Central Excise Rules, 2002 has been retrospectively amended to declare "wire drawing units" as assessees for the period 29.05.2003 to 08.07.2004, hereinafter referred to as the said period.

4.2 The process of drawing of wire from "wire rod" was held as not amounting to 'manufacture' by the Supreme Court in the case of M/s Technoweld Industries [2003-(155)-ELT-0209-SC]. Therefore, the benefit of availment of credit of duty on inputs by the "wire drawing units" was withdrawn on 29.5.2003 by a circular issued by the Board. However, certain wire drawing units continued to pay a sum representing duty, and continued to pass on the credit of amount paid as duty to the ultimate buyer of drawn wire for further manufacture. By an amendment in the Budget 2004, Note 10 was inserted in Section XV of the Central Excise Tariff Act, 1985 to declare the said process as amounting to 'manufacture'. However, as the said Section Note was effective from 9.7.2004, it did not resolve the problem for the said period.

4.3 Accordingly, Show Cause Notices were issued to wire drawing units for recovery of Cenvat Credit availed on inputs on the grounds that the process of wire drawing did not amount to manufacture for the said period. Show Cause Notices were also issued to the downstream buyers of "drawn wires" who availed Cenvat Credit of amount paid as duty on drawn wire, on the ground that the sum paid on clearance of "drawn wire" by wire drawing unit did not represent central excise duty. Such wire drawing units could also not claim the refund of amount paid as duty on

drawn wire, on the ground of unjust enrichment. In this regard, Board's letter dated 3rd January 2005 issued vide F. No. 139/3/2004-CX.4 may also be referred to.

4.4 The retrospective amendment in Rule 16 is aimed at facilitating "wire drawing units", which had paid a sum equal to the duty leviable on "drawn wire" after availing the credit of duty paid on inputs for the said period. It is aimed at regularizing availment of credits at two stages and payment of an amount representing duty at one stage. The purpose of the amendment is to regularize credit taken at the input stage (on wire-rod), credit taken by the downstream user of "drawn wire" and the amount paid as central excise duty on clearance of drawn wire. In other words, wire drawing units, which had paid a sum equal to duty leviable on drawn wire, would be eligible to avail the credit of duty paid on inputs and utilize the same for payment of duty on drawn wire for the period of amendment. The sum paid by the wire drawing unit in such cases will be treated as duty and shall be allowed as credit to the buyer of drawn wire, in terms of the amendment. This amendment would not create any additional liability on any wire drawing unit which did not pay duty on drawn wire during the period of amendment.

4.5 As the Taxation Laws (Amendment) Bill had been introduced in Parliament, Board had, vide a letter dated 20th July 2005, directed all field officers to keep all such cases in call book till the passage of Taxation Laws (Amendment) Bill. Now that the Bill has been passed, you are directed to take out all such cases from call book and decide them by 15th August 2006. A compliance report in this regard may be sent to the Board by 31st August 2006.

5. Two new sections namely, section 11DDA and section 37E have been incorporated in the Central Excise Act, 1944. Detailed instructions regarding these instructions shall be issued in due course.
