



**OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS,  
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**C.No. IV/16/24/2014-CC-HZ-Tech(P.F-I)**

**DATE: 14.11.2014**

**MINUTES OF THE MEETING OF THE REGIONAL ADVISORY COMMITTEE,  
HYDERABAD ZONE HELD ON 26.09.2014**

A meeting of the Regional Advisory Committee (RAC) of Hyderabad Zone was held on 26.09.2014 at 15.30 hrs, at Hyderabad, which was presided over by Ms.R.Shakuntala, Chief Commissioner of Customs, Central Excise & Service Tax, Hyderabad Zone, Hyderabad and was attended by the following members :-

1. Shri Karunendra Jasti, The Federation of A.P.Chambers of Commerce & Industry (FAPCCI).
  2. Shri Ashok Surana, All India Manufacturers Organisation.
  3. Shri. K. Radha Krishna Murthy, Representative of Bulk Drug manufacturers Association.
  4. Shri. R.K.Agarwal, Representative of Bulk Drug manufacturers Association.
  5. Shri. Jayaprakash, Representative of Cigarette Manufacturers.
  6. Shri C.S. Narendar, President, Customs House Agents Association.
  7. Shri K.K.Rao, Representative of The Institute of Cost Accountants of India
  8. Shri V.S. Sudheer, Representative of The Andhra Pradesh Tax Bar Association.
  9. Shri. Lalith Mohan Chandna, representative of The Institute of Company Secretaries of India.
  10. Shri.M.S.V.Krishna, Medak Small Scale Entrepreneurs' Association.
  11. Dr.V.H.Rao, Federation of Andhra Pradesh Small Industries Association.
2. Following Departmental Officers were also present:-
1. Shri. M. Srinivas , Commissioner, Hyderabad-I Commissionerate
  2. Shri. M.K.Singh, Commissioner, Hyderabad-II Commissionerate
  3. Shri.B.Ravichandran,Commissioner,Hyderabad-III Commissionerate.
  4. Shri. G.V.Krishna Rao, Commissioner, Hyderabad-IV Commissionerate
  5. Shri S.N.Saha, Commissioner, Commissioner (Appeals I & III).
3. The Chief Commissioner welcomed all the members of the RAC. Thereafter the following Agenda points were taken up for discussion:-

3.1 Points raised by Representative of The Institute of Company Secretaries of India, Hyderabad:

**Point No.1**

At the time of claiming rebate for the goods exported, department has been asking for two declarations, which are reproduced below:

i. Declaration about market rate:

We hereby declare that the value declared on ARE1 No.08/14-15 & 06/14-15 dated 17.05.2014 & 13.05.2014 under Section 4 of the Central Excise Act, 1944, has been arrived at as per the Market Rate prevailing at the time of payment of duty in respect of goods exported under above ARE1 No.08/14-15 & 06/2014-15 dated 17.05.2014 & 13.05.2014.

We also declare that in respect of ARE1 No.08/14-15 & 06/14-15 dated 17.05.2014 & 13.05.2014, there are no domestic clearances. Hence, the value adopted in the ARE1 may be treated as Market Rate.

ii. Declaration about no claim of separate Rebate / Drawback etc.:

Refund against ARE1 No.08/2014-15 & 06/2014-15 dated 17.05.2014 & 13.05.2014, for an amount of Rs.4,71,392/- (Rupees Four lack seventy one thousand three hundred and ninety two only). We hereby declare that no separate claim for rebate of duty has been or will be made to Central Excise authorities under Rule 12 of central Excise Rules 1944 and no claim for drawback of duty has been or will be made under the Customs and Central Excise duties wherever available have been paid on the raw materials used in the manufacture of the goods.

We hereby undertake to refund to the Dy./Asst. Commissioner of Central Excise, Hyderabad, on demand wherever made for any excess payment erroneous payment of rebate made to us.

The industry though giving the declarations is not able to appreciate the "purpose" of such declarations. Sometime department is asking to submit the sale price of 'same' goods, when sold in Domestic market. Secondly, All Exporters have been claiming 'Drawback' under All Industry Rate (AIR) category in addition to claiming rebate under Rule 18. Some Divisional Asst. Commissioners are saying both rebate and Drawback is not allowed. Please give clarifications on all the points. Also please clarify whether such declarations have been prescribed under any Circular or Board Instructions etc.

**Reply:**

- a) With regard to declaration of market value the same is required to be given to satisfy the conditions and limitations prescribed at Sl.No.2 (e) of Notification No.19/2004-Central Excise (NT) dt.06.09.2004.
- b) Regarding the query on declaration to the effect of not claiming draw back in respect of rebate claims -
- i) It is clarified that for export of goods under claim of rebate, ARE1 is a document /Application prescribed under Notification No.19/2004-CE(NT) dt. 06.09.2004(para 3(iv)) for removal of goods for export. Therefore, the ARE1 and the declaration to be given therein are part of the Statute. In the said Form one of the declaration is regarding 'claiming of duty Draw back under Customs and Central Excise duties drawback Rules, 1995". Therefore, such declaration is statutorily required to be given on the ARE1.
- ii) It is also clarified that for claim of rebate of duty on excisable goods used in goods exported, as per para (1) the manufacturer is required to file a declaration as per Annexure-24 and as per para (5), ARE2 is a document prescribed under Notification No.21/2004-CE(NT) dt.06.09.2004 for removal of goods for export (para5). In the said forms as at declaration at (d) of ARE 2 and Sl.No.5(v) of form of declaration under Annexure 24 the said declaration is required to be given. In these cases no claim of drawback of duty paid on inputs is allowed.

**Point No.2**

A dealer is registered in Hyderabad. He buys goods on invoice. He takes credit of the duties paid in his books. Later on, some of the goods are "transferred" to his own 'branch' in Chennai. He reverses the credit in his books and makes a dealer invoice and gives to his own branch in Chennai. Chennai Branch is also registered as a Dealer with Excise department. Chennai Dealer takes the credit based on invoice issued from Hyderabad Office. Chennai dealer, in turn, sells the goods locally and issues dealers invoice based on which the customer takes credit.

questions:

1. Whether the procedure followed by Hyderabad dealer is correct?

2. The dealer at Chennai is to be treated as first stage dealer or stage (second) stage dealer. Please note that both the dealers belong to one company and it is 'stock transfer' from Hyderabad to Chennai.

Reply:

Definition under Cenvat Credit Rules,2004 reads as follows:

- (j) "first stage dealer" means a dealer, who purchases the goods directly from,-
- (i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice;
- (s) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

In view of the above definition, the Hyderabad dealer is 'first stage dealer' as he bought the goods from the manufacturer and the Chennai dealer is 'second stage dealer' as the goods are received from the first stage dealer. No stock transfer is envisaged with regard to dealer in Central Excise Act, 1944 rules made there under. As the registration of the premises is different, may it belongs to same company /firm/proprietor, it has no effect on status of dealership Further, from first stage dealer to second stage dealer the goods are to be cleared under an invoice prescribed under Rule 11 of Central Excise Rules,2002, so as to enable the second stage dealer to avail credit.

**Point No.3**

A unit Registered under Excise wants to convert itself into an EOU as most of the sales are for export. He has huge accumulated credit in his Cenvat account. He wants to know as to whether (a) on conversion whether credit can be transferred to EOU (b) whether such credit could be refunded to him in cash (c) whether he has to apply for new registration or not? Please clarify.

Reply:

In this connection, it was advised to apply for Advance Ruling as these circumstances are not covered under Cenvat Credit Rules,2004.

**Point No.4**

Many assessees are not receiving the copies of the "final audit report", after an audit has been conducted. Please inform whether there are any guidelines for issuance of audit report?

**Reply:**

Circular No.985/09/2014-CX dated 22.09.2014 at 5.9 reads as follows: Audit should be completed expeditiously and as soon as the Final Audit Report is prepared,it should be ensured that a copy including 'NIL' report is dispatched or provided to the assessee under acknowledgement to be kept in Assessee Master File. Hence, the Commissionerates were directed to furnish the copy of Final Audit Report including NIL report to the assessee.

**Point No.5**

Under the new law effective from 06.08.2014, every appellant has to pre-deposit 7.5% or 10% (as the case may be) before an appeal is filed. As in the past, can the pre-deposit be made by debiting the amounts from Cenvat Account? Please clarify.

**Reply:**

As per the prevailing practice, appeals Commissioners/Tribunals are accepting payment of Pre-deposit through Cenvat Credit account. Therefore pre-deposit of central excise duty can be made through Cenvat Credit account. However, pre-deposit of penalty amount shall be made through challans/through e-payment only.

**Point No.6**

In the Minutes of the RAC meeting held on 21.03.2014, it was stated that respective Commissioners "will issue trade facilities, with regard to 'check list' for acceptance of LUT as well as for B1 Bond". It is observed that no such trade facility has been issued so far.

**Reply:**

Commissioners were directed to issue the said Trade Facility immediately under intimation to this office.

**Point No.7**

Further, during the meeting one of the members raised a point that the audit officers are insisting for payment of Central Excise duty/Service Tax/interest/penalty on account of audit objections.

Reply: In this connection the members were advised that wherever the audit objections are accepted the payment along with interest and 1% penalty can be paid immediately under Central Excise Law and Service Tax Law to avoid undue litigation, more interest and payment of mandatory penalty.

**Point No.8**

One of the members raised a point that the department is insisting for submission of BRC s in respect of exports under Bond/LUT and at the time of renewal of LUT.

Reply: In this connection, it was informed that this issue will be discussed in the next meeting.



**(R.SHAKUNTALA)  
CHIEF COMMISSIONER**

To  
All the RAC members by e-mail.

Copy to the Commissioner, Customs, Central Excise & Service Tax, Hyderabad- I, II, III & IV Commissionerates and Appeals-I & II, Hyderabad with a request to give wide publicity.