

ECONOMIC STIMULUS - CURSE IN DISGUISE FOR TEXTILE EXPORTS ?

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It is always fascinating to watch the long love tale between the duo, textiles and excise. In the recent past, we have seen an active phase of their life, when duty of excise was reintroduced on all textile goods with effect from 01.04.2003, giving birth to Rule 12 B. It entered the next phase when the sector was once again exempted substantially with effect from 09.07.2004, of course, with an option to continue the "relationship" under Notification 29/2004!

As per Notification 29/2004 CE Dated 09.07.2004, an optional levy of 4 % or 8 %, as the case may be was imposed on specified textile articles, while Notification 30/2004 CE Dated 09.07.2004 exempted specified articles from payment of duties of excise, subject to non availment of cenvat credit on inputs. One of the irritant in the relationship as to whether the benefit of both the above notifications can be claimed simultaneously, was also clarified in affirmative, by the CBEC.

Thereafter the textile sector has been, by and large, following the exemption route (Notification 30/2004) for their domestic clearances and opted to pay duty (Notification 29/2004), for their export clearances out of the Cenvat Credit earned on capital goods and inputs used thereon and claimed cash rebate of the same.

Now comes the next phase of the relationship.

In its resolve to give a "stimulus" to the economy, the Union Government has made, an across-the-board reduction of excise duty rates, by 4 % on all goods, barring the petroleum sector and issued Notifications 58/2008 and 59/2008, dated 07.12.2008 to this effect. Notification 59/2008 prescribes an effective rate of 4 % for various commodities, including several textile articles. Simultaneously, notification 29/2004 has also been amended to reduce the existing option rate of 4 % to NIL and 8 % to 4 %. But, interestingly, nothing has been done to Notification 30/2004, which granted full exemption, subject to non-availment of cenvat credit on inputs.

It may be observed that many of the textile articles having an effective rate of duty of 4 % under Notification 59/2004 are also eligible for NIL rate of duty, under Notification 29/2004. At the same time, they are also eligible for complete exemption under Notification 30/2004, subject to non-availment of cenvat credit on inputs. Since the exemption provided under Notification 29/2004 itself is unconditional, both the effective rate of 4 % prescribed under Notification 59/2008 as well as the complete exemption contained under Notification 30/2004 are redundant.

Now to the crux of this piece. As per the provisions of sub-section 1 A of Section 5 A of the Central Excise Act, 1944, where an exemption under sub section (1) in respect of any excisable goods from the whole of the duty leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods. Now, even if any exporter opt to pay duty @ 4 % on the goods

covered by Notification 59/2004, the same may be objected by the department, on the basis of the sub-section supra citing Notification 29/2004 as an absolute exemption and as a result, any rebate of such duty paid, can be denied by the department. CERTAINLY A CURSE IN DISGUISE!

So, let us gear up to watch the next episode of this romantic couple!

Before parting....

Getting into the roots further, it has to be seen whether the exporters would be entitled to claim Cenvat credit on the exported final products. In view of the absolute exemption provided under Notification 29/2004, the textile goods would become exempted goods and the department may tend to deny the Cenvat credit, on this ground. But, such denial would not be proper in view of various decisions on the subject. In the case of **Punjab Stainless Steel Industries Vs CCE – 2008 (226) ELT 587**, it has been held on the basis of the provisions of rule 5 and 6 of the Cenvat Credit Rules, that cenvat credit would be admissible, even if the exported goods are exempted. Similar view has been held in the following cases also.

Medispan Limited VS CCE – 2004 (178) ELT 848.

Jobelle Vs CCE – 2006 (203) ELT 627

CCE VS Global Pharmatech (P) Limited – 2008 (229) ELT 313.