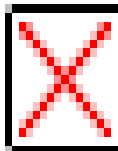


**Notification No. 34/2015-CE causes mighty problems for Notfn. 30/2004-CE**

**JULY 21, 2015**

**By Keshav Maloo, CA**



**YARN**

and textile fabrics specified in Notification No. 30/04-CE were until now exempt from duty subject to the condition that no credit is taken on corresponding inputs. The proviso prescribing this condition is reproduced herebelow for the sake of ready reference:

***"Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2002"***

The above said proviso has now been amended by Notification No. 34/2015-CE dated 17.07.2015 which reads as under:

***"Provided that the said excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid and no credit of such excise duty or additional duty of customs on inputs has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the CENVAT Credit Rules, 2004."***

Accordingly, until 16.07.2015 exemption was available under Notification No. 30/04-CE subject to satisfying the condition that credit on inputs is not taken. **It was not relevant whether inputs were duty paid, exempt or chargeable to nil rate of duty or whether purchased from trader.**

However, with this amendment, one more additional condition has been added and now w.e.f. 17.07.2015, a manufacturer wishing to avail exemption under Notification No. 30/04-CE, as amended, would be required to additionally satisfy and establish that inputs used by him are those on which appropriate duty of excise has been paid.

**It is a settled law that 'appropriate duty of excise has been paid' would not include those inputs which are exempt or chargeable to nil rate of duty.** In other words, payment of appropriate duty requires to establish that duty has been paid on the inputs and that the same are not exempt nor chargeable to nil rate of duty.

The issue has been dealt in detail by Hon'ble S.C. in the case

**COLLECTOR OF C. EX., VADODARA Versus DHIREN CHEMICAL INDUSTRIES - [2002-TIOL-83-SC-CX-CB](#)** and it was held that ***"emphasis must be given to the words 'has already been paid' meaning thereby that where the raw material is not liable to excise duty or such duty in nil, no excise duty is, as a matter of fact, paid upon it- to goods made out of such material, the notification will not apply"***.

The crux of the judgment is reproduced hereinbelow:

Exemption (Central Excise) - Notification issued exempting the final products from duty when manufactured from raw material on which duty is already paid - Notification issued to give relief from cascading of excise duty - Provisions of Notification will not apply when raw material is not liable to excise duty or such duty is nil and no excise duty is paid - Usha Martin Industries case - [2002-TIOL-400-SC-CX-LB](#) overruled. (Paras 5,6,7,8)

There is no cascading effect when no excise duty is payable upon the raw material and the hardship that the notification seeks to alleviate does not arise. (Para 8)

Further, after the declaration of above judgment by Hon'ble S.C., the C.B.E.C also modified its earlier stand and followed the judgement by issuing Circular No. [667/58/2002-CX](#), dated 26-9-2002 in which it was clarified that 'duty paid goods-expression "**appropriate duty of excise**" not to include nil duty'. Accordingly, now, in our opinion, the exemption under Notification No. 30/04-CE as amended, by Notification No. 34/2015-CE dated 17.07.2015 would be available only if following two conditions are satisfied:

1. The manufacturer receives inputs on payment of duty and further keeps in possession the duty paying documents issued by manufacturer of inputs. Further, the duty should not be exempt or nil.

In case, inputs are purchased from trader, in that case, traders are suggested to be registered in Central excise so that they can mention authentically the duty paid particulars of the manufacturer.

Further, this would apply to all the inputs.

2. No credit of such duty paid on inputs is taken.

Practically, the above amendment means that textile would come out of the optional duty regime and would be forced to come into duty chain.

Further, the Board's Circular No. [680/71/2002-CX](#), dated 10-12-2002 issued in the context of Notification No. 14/2002 and the judgement in the case of **SUDITI INDUSTRIES LTD. Versus COMMISSIONER OF C. EX., BELAPUR reported at - 2013-TIOL-1020-CESTAT-MUM** also delivered in the context of Notification No. 14/2002-CE, would not apply to the present amendment in Notification because of the reason that the explanation II in Notification No. 14/2002-CE had a totally different wordings. This explanation in the earlier Notification was clarifying that textiles fibres, yarns and fabrics brought from the market were deemed to have been duty paid. There is no such explanation in the present case.

Unless amended or clarified contrary, in our opinion, exemption is not available in Notification No. 30/04-CE, if the above two conditions are not satisfied.

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