Budget should address issues relating to Rule 6 of CCR, 2004

By Sunil Achutan

WITH
all the publicity that Rule 6 is getting at the hands of the assessees and the department alike, I feel that Union Budget 2008 should address some of the issues ailing rule 6 of the Cenvat Credit Rules, 2004.

No doubt, had it not been for the varied & scintillating decisions being reported almost on a daily basis we would not have had any idea as to which way the rule was being interpreted.

The most common grudge is that rule 6 plays havoc in those situations where the credit availed & utilized on the common inputs is only a miniscule one.Â

Since the assessee finds it unworkable & sometimes impossible to maintain separate records, they reverse the quantum of credit availed on these almost inconsequential common inputs but they are saddled with a demand under rule 6(3)(b) which on occasions is nearly thousand times the credit reversal.

Obviously the tax rules cannot be so queer that they fail to take into account the ground realities.

It is in this context that the Apex Court decision in Chandrapur Magnet Wires **[**2002-TIOL-41-SC-CX**]** finds a mention, but then not all authorities are magnetized by this decision!

On the other hand, if the assessee after weighing the pros and cons opts for payment of duty on these exempted goods, he faces the Great Wall in the form of Section 5A(1A) of the CEA'44 which prohibits voluntary duty payment.

In the case of Philips India **[**2006-TIOL-589-CESTAT-MUM**]**, the Tribunal held that since rule 6 does not provide for a situation where it is not possible to segregate the inputs, it is reasonable enough if the proportionate credit is reversed. The Tribunal also observed that it was unjust to demand huge amount of Rs.1.09 crores u/r 57AD @8% when the inadmissible credit is only Rs.87,569/-.

If this be so, why should there be a stipulation for reversing cenvat credit in respect of listed exempted products [rule 6(3)(a)] and payment of 10% amount [rule 6(3)(b)] in respect of others?

Since at the end of the day, the Apex Court decision comes on the scene, rule 6(3)(b) has failed to serve the purpose for which it was drafted apart from increasing litigation under the Cenvat Rules or for that matter under Section 11D of the CEA'44.

There is, therefore, an urgent need to do away with the same.

Assuming that rule 6(3)(b) is going to continue, it is not known as to why the amount of payment to be made has remained stagnant over the past three years at ten percent.

A peep into history reveals –

- It is not that utilization of common inputs to manufacture dutiable and exempted final products was a new phenomenon that began in the year 1996.
- The phenomenon existed right since the days the Modvat Rules came into being on 01.03.1986, if not earlier.
- As early as in April 1986, vide Board's F. No. B. 22/3/86-TRU, dated the 10th April, 1986,Â it was clarified -

Modvat credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along withÂ dutiable final products, final products which would be exempted from duty by a notification (e.g. an end-use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products.

- Board by circular No. 5/87, dated 7-1-1987 invited reference to the Board's instructions dated 10.4.1986 & sought a report as to whether the instructions were followed.

- Seven years later vide Circular No. 5/93-CX-8, dated 26-5-1993 Board once again reiterated the instructions contained in its earlier Circular 5/87.

- Finding that Circulars were not producing any salutary effect & there was considerable loss of revenue being reported by Audit parties, Board felt it was high time a specific rule be inserted to tackle such situations.

- As is the norm, drafting a rule catering to an issue took time & thus was born the controversy ridden rule 57CC [the precursor to the current rule 6 of CCR, 2004] proposed to be inserted w.e.f 01.08.1996 [Notification 14/96CE(N.T) dated 23.07.1996] & where the payment required was 20% of the value of exempted goods.Â

- Unfortunately that rule saw a still birth in the sense that the 20% payment was considered too high by manufacturers & a very responsive Government, byÂ Notification No. 20/96-C.E. (N.T.), dated 31-7-1996 [Central Excise (Third Amendment) Rules, 1996], that is just a day before the rule was to come into force, delayed rule 57CC's arrival by a month.

- Finally, after a lot of urgent report seeking from Commissionerates & Industry Associations, another Notification No. 26/96-C.E. (N.T.), dated 31-8-1996 [called Central Excise ***[(Third Amendment) Amendment]***
  Rules, 1996] was issued & the earlier proposed rule 57CC was replaced by a new rule 57CC effective 01.09.1996.Â This new rule saw the amount payable being reduced from the earlier proposed 20% to 8% & which was to be calculated on the price (excluding sales tax and other taxes, if any, payable on such exempted goods) of the exempted goods.

- The entire Modvat rules were amended (along with rule 57CC of course) by Notification No. 6/97-C.E. (N.T.), dated 1-3-1997 and a corrigendum M.F. (D.R.) F. No. B-42/1/97-TRU, dated 10-3-1997 wherein too the amount payable under rule 57CC was retained at 8%.

- The Modvat Rules 57A to 57V were substituted with a new set of rules 57AA to 57AK vide notification 27/2000CE(N.T) dated 31.3.2000 [w.e.f 01.04.2000].

- The earlier Rule 57CC in the new lingo came to be known as Rule 57AD & it also retained the amount payable as eight per cent. Â
- Shedding its allegiance to the CER, 1944, rule 57AD began its voyage in a new avatar as Rule 6 of the Cenvat Credit Rules, 2001 (w.e.f 01.07.2001). Here also the amount stood at 8%.Â

- CCR, 2001 was short lived & in came CCR, 2002 w.e.f 01.03.2002 wherein rule 6 still continued with eight per cent amount payment.

Union Budget 2004 saw introduction of 2 per cent Education Cess on all excisable goods manufactured & imported.Â This is effective since 9th July 2004.

The CCR, 2002 also went into oblivion on 10.09.2004 when the Cenvat Credit Rules, 2004 came on to the scene & which continues to hold sway.Â It was only on this day that the rule 6(3)(b) warranted payment of ten per cent amount.

It cannot be that the quantum of payment in rule 6(3)(b) of CCR, 2004 was enhanced by two percentage points consequent upon introduction of two per cent Education Cess on manufactured/imported goods for the following reasons –

- Education Cess of 2% is on the quantum of excise duty levied & collected;

- Education Cess was already in force from 09.07.2004.

So, if at all rule 6(3)(2) has not taken into account the 2% Education Cess component that is availed on common inputs/capital goods, the same needs to be done & at the same time note is also to be made of the one percentage Secondary & Higher Education Cess introduced by the Union Budget 2007 w.e.f 01.03.2007.

We hope that these issues will certainly be taken care of in the Union Budget.

(The views expressed are strictly personal)