Circular No.1065/4/2018-CX

F. No.116/23/2018-CX-3
Government of India
Ministry of Finance
Department of Revenue)
(Central Board of Indirect Taxes & Customs)

New Delhi, 8th June, 2018

To

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax and Central Excise (All)
The Principal Director Generals / Director Generals (All)
Webmaster, CBEC

Subject:- 'Place of Removal' under Section 4 of the Central Excise Act, 1944, the CENVAT Credit Rules, 2004 and the CENVAT Credit Rules, 2017 - reg.

Madam/Sir,

Attention is invited to Boards circular no. 97/8/2007-CX dated 23.08.2007, 988/12/2014-CX dated 20.10.2014 and 999/6/2015-CX dated 28.02.2015. Attention is also invited to the judgment of Hon'ble Supreme Court in the case of CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC), CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC), CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE & ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016. In this regard, references have been received from field formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.

2. In order to bring clarity on the issue it has been decided that Circular no. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of this circular.

3. General Principle: As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB *(Supra)* to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Honb'le Court in para 16 in this regard is significant as reproduced below

> "*16. It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof. Sub-clause (b) (iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of the premises is referable only the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises. "*

4. Exceptions:

(i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC). To summarise, in the case of FOR destination sale such as M/s Emco Ltd and M/s Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

(ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular no. 999/6/2015-CX dated 28.02.2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

5. CENVAT Credit on GTA Services etc: The other issue decided by Hon'ble Supreme Court in relation to place of removal is in case of CCE &ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment of in the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, effective from 01.03.2008, the service is treated as input service only 'up to the place of removal'.

6. Facts to be verified: This circular only bring to the notice of the field the various judgments of Hon'ble Supreme Court which may be referred for further guidance in individual cases based on facts and circumstances of each of the case. Past cases should accordingly be decided.

7. No extended period: Any new show cause notice issued on the basis of this circular should not invoke extended period of limitation in cases where an alternate interpretation was taken by the assessee before the date of the Supreme Court judgment as the issue is in the nature of interpretation of law.

8. Hindi version of the circular will follow.

(Mayank Sharma)
OSD (CX)