

# E-BOOK



## Concept of Deterrent Action against Tax Evaders under Central Excise Law

**Note:** In this E-book, attempts have been made to explain the concept of Deterrent Action against tax evaders under Central Excise Law. It is expected that it will help departmental officers in their day to day work.

2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: [rtinacenkanpur@yahoo.co.in](mailto:rtinacenkanpur@yahoo.co.in) or [goyalcp@hotmail.com](mailto:goyalcp@hotmail.com) (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.

3. If any officer is interested in preparing E-book on any topic relating to Customs, Central Excise or Service Tax, he may forward the E-book prepared by him to the Email addresses mentioned above. After necessary vetting, we will include the same in our e-book library for benefit of all Departmental officers.

**INDEX**

Concept of Deterrent Action against tax evaders under Central Excise law .....	3
1. Introduction.....	3
2. Rules made under Clause (xiiia) of Section 37 .....	3
3. Important Aspects .....	5
Specific Situations requiring Deterrent Action.....	5
Facilities to be withdrawn and imposition of restrictions.....	6
In case of Registered Importer/ dealer.....	7
In case of Merchant Exporter .....	7
Monetary Limit for taking deterrent Action.....	7
Procedure to be followed .....	7
Personal Hearing must before passing order .....	8
4. Proforma for Sending Proposal to Principal Chief Commissioner / Chief Commissioner of Central Excise .....	8
5. Text of Relevant Notification/ Circulars .....	8
5.1 Notification No. 16/2014 - Central Excise (N.T.), dated 21.03.2014.....	9
5.2 Instruction issued from F.No.224/40/2006 – CX 6, dated 30.12.2006.....	12
5.3 Instruction issued <i>vide</i> F.No. 224/40/2006-CX-6, dated 15.1.2007.....	14
6. Form and Format.....	15
7. Notifications issued in the past, but no longer relevant now. ....	16

## Concept of Deterrent Action against tax evaders under Central Excise law

### 1. Introduction

- 1.1. To deal firmly with the problem of planned and deliberate non-compliance of tax laws, and put in place deterrent provisions to discourage default, concept of deterrent Action against Tax Evaders was inserted under Central Excise Laws by incorporating Rule 12 CC under Central Excise Rules, 2002 [*vide notification No. 30/2006-CE (NT), dated 30.12.2006*] and Rule 12AA under CENVAT Credit Rules, 2004 [*vide notification No. 31/2006-CE (NT), dated 30.12.2006*]. Further, notification No. 32/2006-CE (NT), dated 30.12.2006 laid down specific situations where certain facilities given to manufacturer, dealers and exporter including merchant exporter can be withdrawn and restriction could be imposed.
- 1.2. While the above said rules were initially made under Section 37 of the Central Excise Act, 1944 using general rule making power of the Central Government, the specific legislative provision was incorporated in Section 37 of the Central Excise Act, 1944 *vide Finance Act, 2010* so as to enable the Central Government to make rules providing for deterrent action through the withdrawal of certain facilities to deal with evasion.
- 1.3. *Vide Finance Act, 2010, clause (xiiia)* was inserted in Section 37 of the Central Excise Act, 1944 [*vide section 68 of the Finance Act, 2010*] giving power to the Central Government to make rules to carry into effect for the purpose of,-

.....

*(xiiia) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on manufacturer or exporter of suspension of registration of dealer, for dealing with evasion of duty or misuse of CENVAT Credit.*

### 2. Rules made under Clause (xiiia) of Section 37

- 2.1 In exercise of the power under clause (xiiia) of Section 37 of the Central Excise Act, 1944, the Central Government has made two specific rules i.e. rule 12CCC of the Central Excise Rules, 2002 and Rule 12AAA of the CENVAT Credit Rules, 2004. The provisions of these rules are as under:

#### (a) Rule 12CCC of the Central Excise Rules, 2002

- 2.2 It empowers Central government to impose restrictions in certain types of cases and it reads as under:-

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

*Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of evasion of duty, nature and type of offences or such other factors as may be relevant, is of the opinion that in order to prevent evasion of, and default in payment of, excise duty, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, [a registered importer], first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including suspension of registration in case of an importer or a dealer, types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by [the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be].*

**Explanation:** *For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under notification no. 05/2012-CE (N.T.) dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly.”*

### Amendment History:-

- Earlier, this rule was initially inserted as Rule 12CC vide notification No. 30/2006-CE (NT), dated 30.12.2006.
- Vide notification No. 14/2014-CE (NT), dated 21.3.2014, the Rule 12 CC was substituted by Rule 12CCC. In the substituted provision, instead of Board, the power to issue order under the rule has been given to the Chief Commissioner of Central Excise and an explanation has also been added.
- Further, vide notification No. 23/2014-CE (NT), dated 6.8.2014, for the words “Chief Commissioner of Central Excise”, the words “Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise, as the case may be” have been substituted.
- Vide notification No. 8/2015-CE (NT), dated 01.03.2015, registered importer has also been included in the category of person against whom restrictions may be placed and registration may be suspended.

### (b) Rule 12 AAA of the CENVAT Credit Rules, 2004

- 2.3 It empowers Central government to impose restrictions in certain types of cases and reads as under:-

*Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, [registered importer], first stage and second stage dealer or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of [an importer or] a dealer and type of facilities to be withdrawn and procedure for issue of such order by the Principal Chief Commissioner or the Chief Commissioner of Central Excise, as the case may be.*

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

**Explanation:** For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under notification no. 05/2012-CE (N.T.) dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly.”

### Amendment History:-

- Earlier this rule was initially inserted as Rule 12AA vide notification No. 31/2006-CE (NT), dated 30.12.2006.
- Vide notification No. 3/2012-CE (NT), dated 12.03.2012, the Rule 12 CC was substituted as Rule 12AAA. At present, there is no rule 12AA under the CENVAT Credit Rules, 2004.
- Vide notification No. 15/2014-CE (NT), dated 21.03.2014, the powers to issue order under the rule has been given to the Chief Commissioner of Central Excise *instead of* Board and an Explanation has also been inserted in the said Rule.
- Further, vide notification No. 23/2014-CE (NT), dated 6.8.2014, for the words “Chief Commissioner of Central Excise”, the words “ Principal Chief Commissioner of Central Excise or the Chief Commissioner of Central Excise, as the case may be” have been substituted.
- Vide notification No. 6/2015-CE (NT), dated 01.03.2015, registered importer has also been included in the category of person against whom restrictions may be placed and registration may be suspended.

### 3. Important Aspects

- 3.1 In exercise of the powers given under the above said two rules, the Government has issued notification No. 16/2014-CE (NT), dated 21.3.2014 [*in supersession of erstwhile notification No. 5/2012-CE (NT), dated 12.03.2012*] laying down specific situations where certain facilities given to manufacturer, registered importer, dealers and exporter including merchant exporter can be withdrawn and restriction can be imposed. The salient features of these measures as under:-

#### Specific Situations requiring Deterrent Action

- 3.2 where a manufacturer, registered importer, first stage or second stage dealer, or an exporter including a merchant exporter is *prima facie* found to be knowingly involved in any of the following :-
- (a) removal of goods without the cover of an invoice and without payment of duty;
  - (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
  - (c) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;

---

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

- (d) taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;
- (e) issuing duty of excise invoice without delivery of goods specified in the said invoice;
- (f) claiming of refund or rebate based on the duty of excise paid invoice or other documents which a person has reason to believe as not genuine;
- (g) removal of inputs as such on which Cenvat credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the Cenvat Credit Rules, 2004,

### Facilities to be withdrawn and imposition of restrictions

3.3 In any one or more than one situations exists, then the Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be, may withdraw the facilities and impose restriction as mentioned below:-

3.4 If a manufacturer has committed any of the offence mentioned above from (a) to (g) of para 3.2 above, then:-

- (i) the monthly payment of duty of excise may be withdrawn and the assessee shall be required to pay duty of excise for each consignment at the time of removal of goods;
- (ii) payment of duty of excise by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay duty of excise without utilising the CENVAT credit;
- (iii) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken;
- (iv) the assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.

However, if a person is found to be knowingly involved in committing any one or more type of offences as mentioned above subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse.

**Explanation:** For the purposes of this paragraph, -

- (i) in case of restriction on use of CENVAT Credit, the person may continue to take CENVAT credit, but he would not be able to utilize the credit for payment of duty during the period specified in the said order.

## **Concept of Deterrent Action against tax evaders under Central Excise Law**

---

- (ii) “**principal inputs**” means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final product.
- (iii) if the assessee commits any offence specified above for the first time, the period of imposition of restrictions may not be more than 6 months. In case of repeat offence, the period of imposition of restrictions shall not be more than 1 year.

### **In case of Registered Importer/ dealer**

- 3.5 If a registered importer, first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e) of para 3.2 above, the Principal Chief Commissioner / Chief Commissioner of Central Excise may order suspension of the registration granted under rule 9 of the Central Excise Rules, 2002 for a specified period.
- 3.6 During the period of suspension, the said registered importer /dealer shall not issue any Central Excise Invoice. However, he may continue his business and issue sales invoices without showing duty of excise in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

### **In case of Merchant Exporter**

- 3.7 Where a merchant exporter is found to be knowingly involved in committing the type of offence specified in clause (f) of para3.2 above, the Principal Chief Commissioner / Chief Commissioner of Central Excise may order withdrawal of the self-sealing facility for export consignment and each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer:
- 3.8 If a manufacturer, registered importer, first stage dealer or second stage dealer or an exporter does anything specified in clause (f) of para3.2above, the Principal Chief Commissioner / Chief Commissioner of Central Excise may order withdrawal of the other facility available to them.

### **Monetary Limit for taking deterrent Action**

- 3.9 Deterrent action under Rule 12CCC of Central Excise Rules, 2002 or Rule 12AAA of the CENVAT Credit Rules, 2004 can be taken if **duty of excise or CENVAT Credit alleged to be involved in the above said situation exceeds Rs. Ten lakhs.**

### **Procedure to be followed**

- 3.10 The Principal Commissioner/ Commissioner of Central Excise / ADG, DGCEI after examination of records and other evidence, and after satisfying himself that the person has

## Concept of Deterrent Action against tax evaders under Central Excise Law

knowingly committed the offence as specified in para 3.2 above, may forward a proposal to the Chief Commissioner of Central Excise, to withdraw the facilities and impose restriction during or for such period, **within 30 days of the detection of the case**, as far as possible.

- 3.11 The Principal Chief Commissioner / Chief Commissioner of Central Excise is required to examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that the person has knowingly done or contravened anything specified above, may issue an **order specifying the type of facilities to be withdrawn or type of restrictions to be imposed, along with the period for which the said facilities will not be available or the period for which the restrictions shall be operative.**

### Personal Hearing must before passing order

- 3.12 The Principal Chief Commissioner / Chief Commissioner of Central Excise, before issuing the order, is required to give an opportunity of being heard to the person against whom the proceedings have been initiated and should take into account any representation made by such person before issuing the order.

## 4. *Proforma for Sending Proposal to Principal Chief Commissioner / Chief Commissioner of Central Excise*

*Vide* Instruction F.No. 224/40/2006-CX-6, dated 15.01.2007, the Board prescribed following two Proformas:-

- (a) For sending the proposals from Commissionerate/zonal unit of the DGCEI to the Chief Commissioner/DGCEI.
- (b) for sending the proposals by the Chief Commissioner/DGCEI to Member(CX). While Proforma mentioned at (a) above can still be used. Proforma mentioned at (b) is no longer required as Power of Board/Member (CX) has now been given to Principal Chief Commissioner/Chief Commissioner of Central Excise.

## 5. *Text of Relevant Notification/ Circulars*

Sl. No.	Notification/Circular/Instruction No. and date	Subject
5.1	Notification No. 16/2014-CE (NT), dated 21.03.2014	Deterrent against Tax Evaders-Restriction/withdrawal of Facilities from manufacturer /dealer/exporters
5.2	Instruction F.No. 224/40/2006-CX-6, dated 30.12.2006	Measures to provide deterrence for tax evaders in the manufacturing sector
5.3	Instruction F.No. 224/40/2006-CX-6, dated 05.01.2007	Forwarding of Proposal for taking deterrent action against tax evaders- to be send in prescribed format.

**5.1 Notification No. 16/2014 - Central Excise (N.T.), dated 21.03.2014**

G.S.R. (E).— In pursuance of rule 12CCC of the Central Excise Rules, 2002, and rule 12AAA of the CENVAT Credit Rules, 2004 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 05/2012-Central Excise (N.T.), dated the 12<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12<sup>th</sup> March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government hereby declares that where a manufacturer, <sup>1</sup>[registered importer], first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following :-

- (a) removal of goods without the cover of an invoice and without payment of duty;
- (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
- (c) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
- (d) taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;
- (e) issuing duty of excise invoice without delivery of goods specified in the said invoice;
- (f) claiming of refund or rebate based on the duty of excise paid invoice or other documents which a person has reason to believe as not genuine;
- (g) removal of inputs as such on which Cenvat credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the Cenvat Credit Rules, 2004,

the Principal Chief Commissioner or Chief Commissioner of Central Excise may order for withdrawal of facilities or impose the restrictions as specified in para 2 of this notification.

**2. Facilities to be withdrawn and imposition of restrictions.-**

- (1) Where a manufacturer is prima facie found to be knowingly involved in committing the offences specified in para 1, the Principal Chief Commissioner or Chief Commissioner of Central Excise may impose following restrictions on the facilities, namely:-
  - (i) the monthly payment of duty of excise may be withdrawn and the assessee shall be required to pay duty of excise for each consignment at the time of removal of goods;

---

<sup>1</sup> Inserted vide notification No. 10/2015-CE (NT), dated 1.3.2015

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

- (ii) payment of duty of excise by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay duty of excise without utilising the CENVAT credit;
- (iii) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken;
- (iv) the assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order:

Provided that where a person is found to be knowingly involved in committing any one or more type of offences as specified in para 1 subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse.

**Explanation:** For the purposes of this paragraph, it is clarified that-

- (i) a person against whom the order under sub-para (2) of para 4 has been passed may continue to take CENVAT credit, however, he would not be able to utilize the credit for payment of duty during the period specified in the said order.
  - (ii) “principal inputs” means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final product.
  - (iii) if the assessee commits any offence specified in para 1 for the first time, the period of imposition of restrictions may not be more than 6 months.
  - (iv) if the assessee commits any offence specified in para 1 subsequently, the period of imposition of restrictions shall not be more than 1 year.
- (2) Where a<sup>2</sup>[registered importer], first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e) of para 1, the Chief Commissioner of Central Excise may order suspension of the registration granted under rule 9 of the Central Excise Rules, 2002 for a specified period.
- (3) During the period of suspension, the said <sup>3</sup>[registered importer or] dealer shall not issue any Central Excise Invoice:

---

<sup>2</sup> Inserted vide notification No. 10/2015-CE (NT), dated 01.03.2015

<sup>3</sup> Inserted vide notification No. 10/2015-CE (NT), dated 01.03.2015

## **Concept of Deterrent Action against tax evaders under Central Excise Law**

---

Provided that he may continue his business and issue sales invoices without showing duty of excise in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

- (4) Where a merchant exporter is found to be knowingly involved in committing the type of offence specified in clause (f) of para 1, the Chief Commissioner of Central Excise may order withdrawal of the self sealing facility for export consignment and each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer:
- (5) If a manufacturer, <sup>4</sup>[registered importer], first stage dealer or second stage dealer or an exporter does anything specified in clause (f) of para 1, the Chief Commissioner of Central Excise may order withdrawal of the other facility available to them.

### **3. Monetary limit**

The provisions of this notification shall be applicable only in a case where the duty of excise or CENVAT Credit alleged to be involved in anything specified in para 1 exceeds rupees ten lakhs.

### **4. Procedure**

- (1) The Principal Commissioner of Central Excise / Commissioner of Central Excise or Additional Director General of Central Excise Intelligence, as the case may be, after examination of records and other evidence, and after satisfying himself that the person has knowingly committed the offence as specified in para 1, may forward a proposal to the Chief Commissioner of Central Excise, to withdraw the facilities and impose restriction during or for such period, within 30 days of the detection of the case, as far as possible.
- (2) The Principal Chief Commissioner of Central Excise / Chief Commissioner of Central Excise shall examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that the person has knowingly done or contravened anything specified in para 1, may issue an order specifying the type of facilities to be withdrawn or type of restrictions to be imposed, along with the period for which the said facilities will not be available or the period for which the restrictions shall be operative:

*Provided* that the Principal Chief Commissioner of Central Excise / Chief Commissioner of Central Excise, before issuing the order, shall give an opportunity of being heard to the person against whom the proceedings have been initiated and shall take into account any representation made by such person before he issues the order.

5. Proposals which are pending before the officer authorized by the Central Board of Excise and Customs or the Director General of Central Excise Intelligence in terms of notification

---

<sup>4</sup> Inserted vide notification No. 10/2015-CE (NT), dated 01.03.2015

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

no. 05/2012-Central Excise (N.T.), dated the 12<sup>th</sup> March, 2012, on the date of coming into force of this notification, shall be transferred to the Principal Chief Commissioner of Central Excise / Chief Commissioner of Central Excise, who shall decide the same in accordance with the procedure specified in paragraph 4 and the proposals pending before the Principal Chief Commissioner of Central Excise / Chief Commissioner of Central Excise shall also be decided accordingly.

[ Issued from F. No. 267/13/2013-CX.8]

**Note:** *The principal notification No. 16/2014-CE (NT), dated 21.03.2014 was issued vide number G.S.R.204(E) dated 21.03.2014 and was last amended vide notification No. 10/2015-CE (NT), dated 01.03.2015.*

### 5.2 Instruction issued from F.No.224/40/2006 – CX 6, dated 30.12.2006

#### Sub: Measures to provide deterrence for tax evaders in the manufacturing sector-reg

Attention is invited to the draft circular hosted by the Board wherein certain measures were proposed to deal firmly with the problem of planned and deliberate non-compliance of tax laws, and put in place deterrent provisions to discourage default. In this regard Notification Nos.30/2006-CE (NT) and 31/2006-CE (NT) both dated 30.12.2006 has been issued, inserting rule 12CC in the Central Excise Rules, 2002 and rule 12 AA in the CENVAT Credit Rules, 2004 and notification No.32/2006 C.E.(NT) has also been issued. The salient features of the provisions are enumerated below:

- 2.1. The following types of offences committed by a manufacturer or a first stage or second stage dealer or an exporter is considered to be serious to warrant the imposition of restrictions on the facilities detailed in the subsequent para.
  - i) Removal of goods without the cover of an invoice and without payment of duty;
  - ii) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
  - iii) Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
  - iv) Taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;
  - v) Issue of excise duty invoice without delivery of goods specified in the said invoice;
  - vi) Claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine.
- 2.2. Where a manufacturer is *prima facie* found to be knowingly involved in committing the offences as specified in Para 2.1, the following restrictions may be imposed on the facilities:

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

- i) the facility of monthly payment of duties may be withdrawn and the assessee shall be required to pay excise duty for each consignment at the time of removal of goods;
- ii) the payment of duty by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay excise duty without utilization of CENVAT credit;

However, it is clarified that a person against whom the order under sub-para (3) of para 4 of the notification has been passed may continue to take CENVAT credit, however, he would not be able to utilise the credit for payment of duty during the period specified in the said order. If the person is found to be knowingly involved in committing any one or more type of offences as specified in Para 2.1 for **the second time or subsequently**, every removal of goods from his factory will be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse. For second time or subsequent offence, the restriction specified in clauses (i) and (ii) may also be imposed.

- 2.3. Where a first stage or second stage dealer is found to be knowingly involved in committing the offence specified at clauses (iv) or (v) of para 2.1, the registration granted under rule 9 of the Central Excise Rules 2002 may be suspended for a specified period. During the period of suspension, the said dealer will not be able to issue any Central Excise Invoice. However, he can continue his business and issue sales invoices without indicating the excise duty component in the invoice, and no CENVAT credit shall be admissible to the recipient of such goods.
- 2.4. Where a merchant exporter is found to be knowingly involved in committing the offence specified at clause (vi) of para 2.1, the self sealing facility for export consignment will be withdrawn whereby each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer.
- 2.5. The provisions of this notification shall be applicable only in a case where the duty or CENVAT Credit alleged to be involved in the specified offences is more than Rs.10 lakhs.
- 2.6. Attention is invited to second proviso in para 2 of the notification, which provides that any other facility available to a manufacturer or a dealer or an exporter, which has been provided by way of a circular, or an order may also be withdrawn. In this connection, the facility of payment of 80% refund/rebate on provisional basis within 15 days of filing of refund claim (refer to Circular no . 828/5/2006-CX dated 20.4.2006) may be considered. Therefore, while forwarding the proposal, recommendations for withdrawal of these facilities may also be considered.
- 2.7. The procedure for initiating the proposal upto the issue of an order for withdrawal of facilities has been given in para 4 of the notification, which may be carefully gone through. It may be noted that the Commissioner/ADG should forward his proposal with all the relevant evidences to the Chief Commissioner within 30 days of the detection of the case, as far as possible. The Chief Commissioner should forward the comprehensive proposal to the Member (Central Excise) within 20 days of the receipt of the proposal, along with the copy of the record of the personal hearing conducted by the Chief Commissioner.
3. It is emphasized that the new provisions should not be invoked in a routine manner involving all types of cases where duty or CENVAT credit involvement is more than 10 lakhs. In fact the

## Concept of Deterrent Action against tax evaders under Central Excise Law

---

government has made it clear in the notification that only in cases where a person is found to be knowingly involved in committing the specified offences, only in such cases, these provisions should be invoked. Therefore, the records and evidence available for a case should be examined carefully before submitting any proposal to the Board. Further, the records and evidence should, prima facie, result in a sustainable case. In order to ensure uniformity in the submission of proposals, a proforma is being prescribed, and all proposals should be forwarded in the said proforma only. It is further emphasized that the Chief Commissioner or the Director General (Central Excise Intelligence) is expected to process the proposal received by them, and grant personal hearing to the party. The final proposal should then be forwarded to the Member (Central Excise), CBEC.

4. The Board will issue the order specifying the type of facilities to be withdrawn along with the period of such withdrawal. The copy of the order will be sent to the jurisdictional Commissioner, who will ensure its delivery. The implementation of the order will also be the responsibility of the jurisdictional Commissioner e.g. if the facility of monthly payment of duty is withdrawn, then the jurisdictional officer will ensure that all payments of duty is done on consignment basis. In case of any violation of the order, necessary action should be initiated, as any removal in contravention of the order issued under the new rules will be removal in contravention of the provisions of the rules.
5. \*Deleted.
6. Wide publicity may be given to the new legal provisions. The Chief Commissioners & the Commissioners must hold meetings with Industry and Trade representatives within the next fifteen days to explain these provisions and to clarify doubts, if any. Press release may also be given in the local newspapers.

***Note:** It may be mentioned here that initially, the power to issue order under Rule 12 CCC of Central Excise Rules, 2002 (Earlier Rule 12 CC) and Rule 12AAA of the Cenvat Credit Rules, 2004 was with the Board and now, it has been given to the Principal Chief / Chief Commissioner of Central Excise.*

### 5.3 Instruction issued *vide* F.No. 224/40/2006-CX-6, dated 15.1.2007

**Sub: Measures to provide deterrence for tax evaders in the manufacturing sector-reg.**

\*

In continuation of the letter of even number dated 30.12.2006 on the above subject, please find enclosed, two separate proforma for forwarding the proposals in terms of notification No. 32/2006-C.E.(NT) dated 30<sup>th</sup> December, 2006.

2. The first Proforma is for sending the proposals from Commissionerate/zonal unit of the DGCEI to the Chief Commissioner/DGCEI. The second Proforma is for sending the proposals by the Chief Commissioner/DGCEI to Member(CX). It may kindly be ensured that all the proposals are sent in these Proforma only.

## **6. Form and Format**

### **6.1 Proforma for Sending Proposal by Principal Commissioner/Commissioner/ADGCEI to the Principal Chief Commissioner/Chief Commissioner of Central Excise**

1. Name and address of the manufacturer/dealer/exporter
2. Range, Division & Commissionerate
3. ECC No.
4. Commodity manufactured/traded/exported
- 5.1 Dates of Search Operation
- 5.2. Date of detection of cases (other than search cases)
6. Brief nature of offence committed
7. Evidence/Records  
(Please specify major records, evidence including statements which have been relied upon and contents thereof).
8. Approximate amount of duty evasion and period involved.
9. Describe the facilities which are proposed to be restricted and the proposed period of restrictions along with justification
10. Views of the Commissioner/ ADGCEI as to whether records and evidence are sufficient to form a reasonable belief that the person has knowingly committed the specified offences

I have gone through the records and evidence relating to this case and satisfied that these are sufficient to form a reasonable belief that the person against whom the proceedings are initiated has knowingly committed the offence and action under notification No 32/2006 – CE (NT) should be initiated against them.

Principal Commissioner/Commissioner/ADGCEI

Date

Enclosures

**Note: 1) Wherever necessary a separate note may be enclosed.**

**7. Notifications issued in the past, but no longer relevant now.**

Sr. No.	Superseded notification No. and date	Superseding Notification No. and date
1.	32/2006-Central Excise (N.T), dated 30.12.2006	05/2012-Central Excise (N.T), dated 12.03.2012
2.	05/2012-Central Excise (N.T), dated 12.03.2012	16/2014- Central Excise (N.T), dated 21.03.2014

\*\*