

e-Exercise



Drafting of Show Cause Notice (**Central Excise**)

Drafting of Show Cause Notice (Excise)

Note:

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Show Cause Notice in Central Excise*. Though all efforts have been made to make this exercise book error free, but it is possible that some errors might have crept into it. If you notice any errors or if you have any suggestion to improve this exercise book, the same may be brought to our notice through email on the e-mail address rtinacenkanpur@yahoo.co.in. This may not be a perfect **e-Exercise Book** and all are requested to assist us to make it better.

Sd/-
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Class Exercise No.3 – Central Excise

Before doing this class exercise, the trainee may carefully go through the contents of the note given below.

Note for the trainees:

- This exercise on drafting of Show Cause Notice has been developed for purpose of teaching newly recruited officers of the rank of Inspectors and explains the basics of drafting of Show Cause Notice.
- This exercise can be used by trainers for the purpose of conducting class exercise of trainee officers while imparting training to such officers.
- It must be kept in mind that Show Cause notices issued in the field are much more detailed one.
- In this exercise, attempts have been made to explain four '**C's- Contraventions, Consequences, Charged persons and Charging paragraph**'. The proper understanding of four "C"s is must for the officers to draft good quality SCN.
- After reading the situation given, trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provisions; person to be charged in the SCN; and finally, draft Charging Paragraph of the SCN.
- After completion of the exercise, trainee officer may compare his /her answer with the model answer given at the end of this exercise.

Situation:

M/s MM Limited is engaged in the manufacture of “ABC” falling under Chapter heading XXXXXXXX of the Central Excise Tariff Act, 1985. They are registered with Central Excise Department vide registration No. YY....XM001.

They purchased Capital goods worth Rs. 2 cr. involving Central Excise Duty of Rs. 24 lakhs in the month of April, 2015 and took & utilized CENVAT Credit of entire duty paid in the same month. The said M/s MM Limited is neither a small scale manufacturer nor the Capital goods acquired are to be removed as such.

Is there any contravention of Central Excise Law and rules issued thereunder? If so, please prepare a show cause notice proposing appropriate action invoking appropriate provisions.

Answer:

A. Contraventions

Rule 4 of the Cenvat Credit Rules, 2004 as much as that they have taken credit of entire duty paid in one FY, 2015-16 instead of 50% of the total duty paid in the FY 2015-16.

It may be noted that Rule 4(2a) of the CENVAT Credit Rules, 2004 restrict CENVAT Credit to not exceeding 50% of the duty paid on such capital goods during the same financial year. The only exception is that when it is being availed by SSI Unit eligible for SSI exemption or capital goods are to be removed as such.

B. Consequences:

- Demand and Recovery of 50% of the CENVAT Credit in terms of **Rule 14 (1) (ii) of the CENVAT Credit Rules, 2004 read with section 11A of Central Excise Act, 1944**
- Demand and recovery of Interest on wrongly availed CENVAT credit in excess of 50% of the CENVAT Credit under Rule 14 (1) (ii) of CENVAT Credit Rules, 2004 read with Section 11 AA of the Central Excise Act, 1944.
- Imposition of penalty under rule 15 (1) of CENVAT Credit Rules, 2004.

C. Charged Person

- M/s MM Limited

D. Charging Paragraph

Now the said M/s MM Limited, ___are hereby required to Show Cause to the Joint / Additional Commissioner, ___ within 30 days of receipt of this notice as to why,-

- (1) CENVAT Credit amounting to Rs.12 Lakhs having availed wrongly in terms of Rule 4(2) (a) of the Cenvat Credit Rules, 2004 as explained in foregoing paragraphs should not be demanded and recovered from them under Rule 14 1(ii) of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944;
- (2) Interest on the CENVAT Credit so availed wrongly as mentioned in clause (i) above should not be demanded and recovered in terms of Rule 14(1) (ii) of CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944;
- (3) A penalty should not be imposed upon them under rule 15(1) of the CENVAT Credit Rules, 2004.

Model Draft Show Cause Notice

C. No.

Dated:

Draft Show Cause Notice

M/s MM Limited __ (Hereinafter also referred to as “the noticee”) is engaged in the manufacture of “ABC” falling under Chapter heading XXXXXXXX of the Central Excise Tariff Act, 1985.

2. They are registered with Central Excise Department vide registration No. YY.... XM001 and are also availing CENVAT Credit on inputs, input services and Capital Goods, in terms of provisions of the CENVAT Credit Rules 2004. [hereinafter, also referred to as CCR, 2004]

3. During the course of It has been found that during the month of April, 2015, the said M/s MM Limited have purchased Capital goods worth Rs. two Crores involving Central Excise duty of Rs. 24 Lakhs. They have taken and utilized CENVAT Credit of this entire duty paid of Rs. 24 Lakhs during this financial year i.e. 2015-16.

4. And whereas the provisions of Rule 4(2) (a) of the CCR, 2004 stipulate that CENVAT Credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken for an amount not exceeding fifty percent of duty paid on such Capital goods in the same financial year. Accordingly, they should have taken credit of Rs. 12 lakhs only in the financial year 2015-16.

5. And whereas by taking Cenvat Credit of Rs 24 lakhs which is in excess of 50% of the total duty paid on the Capital goods so received by the unit, during the same financial year i.e. 2015-16 when the capital goods were received in the factory, the CENVAT Credit amounting to Rs. 12 Lakhs appears to have been wrongly taken, hence liable to be recovered in terms of Rule 14 (1) (ii) of the CENVAT Credit Rules read with Section 11 A of the Central Excise Act, 1944, along with appropriate interest in terms of Rule 14 (1) (ii) section 11AA of the Central Excise Act, 1944.

6. Now, therefore, the said M/s MM Limited, __ are hereby required to Show Cause to the Joint / Additional Commissioner, __ within 30 days of receipt of this notice as to why,-

- (i) CENVAT Credit Rs. 12 Lakhs being wrongly taken in terms of Rule 4(2) (a) of the CENVAT Credit Rules, 2004 as explained in foregoing

Drafting of Show Cause Notice (Excise)

paragraphs should not be recovered from them under Rule 14 (1) (ii) of the CCR, 2004 read with Section 11A of the Central Excise Act 1944;

- (ii) Interest on the CENVAT Credit so availed wrongly as per clause (i) above should not be demanded and recovered in terms of Rule 14 (1) (ii) of CCR, 2004 read with Section 11AA of the Central Excise Act, 1944;
- (iii) A penalty should not be imposed upon them under rule 15(1) of the CENVAT Credit Rules, 2004 for contravention of the provisions of CENVAT Credit Rules, 2004 as explained in the foregoing paragraphs.

7. The noticee is further directed to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply whether they wish to be heard in person, or through their legal representative, before the case is adjudicated. If no mention of the same is made in their written reply, it shall be presumed that no personal hearing is desired by them and the case may be decided on the basis of the evidence available on record, without affording them any further opportunity in the matter.

8. If no cause is shown against the action proposed to be taken against them within the stipulated period as shown above, or if they fail to appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on the record.

9. This Show Cause Notice is issued without prejudice to any other action that may be taken against them or any other person concerned with the matter under the Central Excise Act, 1944, or any other Law for the time being in force.

10. List of RUDs and RUDs as per list are enclosed here.

Encls: List of RUDs and copies of documents as per List of RUDs

**[Joint/Additional Commissioner of
Central Excise,____]**

To,

1. The MM Limited,

Copy to:

- (i) The Commissioner of Central Excise, Kanpur
- (ii) Adjudication Section
- (iii) Concerned Central Excise Division
- (iv) Master File
