

e-Exercise



Drafting of Show Cause Notice (**Central 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/-
(C. P. Goyal)
Additional Director General
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Class Exercise No.2 – 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 very 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.

Situation:

M/s XYZ Pvt. Ltd., a small scale unit operating under Notification No.08/2003-CX, dated 1.4.2003 is also working under CENVAT credit scheme.

During the Financial year 2014-15, they had clearances worth 2.5 cr. The unit management decided to opt for full exemption with effect from 1.4.2015 under aforesaid notification. As on 31.3.2015, they had a closing balance of CENVAT credit of Rs.3,50,000/- against inputs (in RG-23A, Part-II account) and Rs.1,50,000 against capital goods (in RG-23C, Part-II Account), totaling Rs.5,00,000/-.

On 1.4.2015, they had an opening balance of inputs involving a CENVAT credit of Rs.2,20,000/-. The CENVAT credit involved in the input contained in the final product lying in balance and in the inputs contained in work in process (WIP) is Rs.1,25,000/- and Rs.50,000/- respectively. With effect from 1.04.2015, they brought forward a CENVAT credit of Rs.1,50,000/- in their capital goods account (RG-23C Part II) and reversed the credit of Rs.3,50,000/- in input credit account (RG-23A, Part II).

Please examine whether there is any infringement of statutory provisions and if so, draft a SCN invoking appropriate provisions.

Answer:

A. Contraventions

What are the legal provisions of the Central Excise Act, 1944 and rules issued thereunder, contravened in this case?

Rule 11 (2) of CENVAT Credit Rules, 2004 which provides as under:-

Rule 11 (2): A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

B. Consequences:

What are the consequences of the contravention of legal provisions contained in the Central Excise Act, 1944 and CENVAT Credit Rules, 2004?

(i) Excess availment of CENVAT Credit:

- Demand of CENVAT Credit under Rule 14 of the CENVAT Credit Rules, 2004 read with section 11 A of the Central Excise Act, 1944
- Demand of interest on excess CENVAT Credit wrongly availed, under section 11AA of the Central Excise Act, 1944.

(ii) Penal Action for contravention of provisions of the CENVAT Credit Rules, 2004

- Imposition of penalty under Rule 15 of the CENVAT Credit Rules, 2004

C. Charged Person

- M/s XYZ Limited

D. Charging Paragraph of the SCN

Now, therefore, the said M/s XYZ Pvt. Ltd... is hereby required to Show Cause to the Assistant Commissioner of Central Excise, within 30 days of receipt of this notice, as to why,-

- (i) an amount of Rs.45,000/- payable in terms of Rule 11(2) of the CENVAT Credit Rules, 2004, should not be recovered from them in terms of Rule 14 ibid read with Section 11A of the Central Excise Act 1944, along with appropriate interest in terms of Section 11AA of the Central Excise Act, 1944;
- (ii) a penalty should not be imposed upon them in terms of Rule 15 (1) of the CENVAT Credit Rules 2004.

Model Draft Show Cause Notice

Office of the Commissioner of Central Excise, _____

.....

.....

C. No.

Dated:

Show Cause Notice

M/s XYZ Pvt. Ltd., (hereinafter referred to as “the noticee”) engaged in the manufacture of, an excisable commodity falling under the Heading of the First Schedule to Central Excise Tariff Act, 1985, are registered with the department vide Registration No..... XM They are a small scale unit operating under notification No. 08/2003-CX, dated 1.03.2003. They were availing benefit of Cenvat Credit on inputs and Capital goods during the financial year 2014-15.

2. And whereas it has been found that the said M/s XYZ have opted for full exemption under notification No. 8/2003-CE dated 01.03.2003 w.e.f. 01.04.2015, for a clearance value upto Rs.1.5 Crores. On the date of option of full exemption, they had a balance of Rs.3,50,000/- of input Cenvat Credit .

3. And whereas, as per Rule 11(2) of the CENVAT Credit Rules,2004, a manufacturer who opts for exemption from the whole of the duty of excise leviable thereon the goods manufactured by him, under a notification based on the value or quantity of clearances in a financial year and who has been taking CENVAT Credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT Credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final product lying in stock on the date when such option is exercised, and after deducting the said amount from the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods whether cleared for home consumption or for export.

4. And whereas it appears that as per the above said rule, the above M/s XYZ were required to pay the following amount:-

Sl. No.	Item	Credit Amount
(i)	Credit involved in inputs	Rs.2,20,000
(ii)	Credit involved in inputs contained in the Final Product	Rs.1,25,000
(iii)	Credit involved inputs contained in W.I.P	Rs.50,000
Total		Rs.3,95,000

However, as they had a closing balance credit of Rs.3,50,000/- on the date of option of full exemption for payment of duty, they were required to pay Rs.(395,000-350,000=45000/-) in cash which has not been paid by them and they have simply debited the earlier balance of Rs.350,000/-

Drafting of Show Cause Notice (Excise)

5. Whereas it appears that they have contravened the provisions of Rule 11 of Cenvat Credit Rules and therefore, an amount of Rs. 45000/- as explained above, appears to be recoverable from the noticee under Rule 14 of CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 along with interest under Section 11 AA of the Central Excise Act, 1944. Further, for contravention of the provisions contained in Rule 11 (2) of CENVAT Credit Rules, 2004, penalty appears to be imposable on M/s XYZ Private Limited under Rule 15 of the CENVAT credit Rules, 2004.
6. Now, therefore, the said M/s XYZ Pvt. Ltd..... is hereby required to Show Cause to the Assistant Commissioner of Central Excise, within 30 days of receipt of this notice, as to why
 - (i) an amount of Rs. 45,000/- payable in terms of Rule 11(2) of the Cenvat Credit Rule 2004, may not be recovered from them in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act 1944, along with appropriate interest in terms of Section 11AA of the Central Excise Act, 1944;
 - (ii) Penalty should not be imposed upon them in terms of Rule 15 (1) of the CENVAT Credit Rules, 2004.
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

**[Assistant Commissioner of
Central Excise,___]**

Drafting of Show Cause Notice (Excise)

To,

1. The XYX Pvt Limited, __
2.

Copy to:

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