Circular No. 988/12/2014-CX
Dated 20.10.2014

F.No.267/49/2013-CX.8
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
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The Chief Commissioners of Central Excise (All),
The Chief Commissioners of Central Excise and Customs (All),

Madam/Sir,
Subject: Determination of place of removal - reg.

Attention is invited to Notification No. 21/2014 - CE (NT) dated 11.07.2014 vide which the definition of "place of removal" has been inserted in the CENVAT Credit Rules, 2004 (CCR). Under these rules there are provisions that the credit of input services is available upto the place of removal. As the definition is now provided in the CCR, wherever Cenvat credit is available upto the place of removal, this definition of place of removal would apply, irrespective of the nature of assessment of duty.

2) The second associated issue is regarding ascertainment of place of removal. In this regard there are two circulars of the Board namely 37B order no 59/1/2003 dt 3-3-2003 and circular no 97/8/2007 dt.23.8.2007. The relevant paragraphs of these two circulars are reproduced below for ease of reference -

(i) Circular dt 3-3-2003 :" Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. 8. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods. "

(ii) Circular dt 23-8-2007…….. It : "8.2 is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the

transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 *as also* in terms of the provisions under the Sale of Goods Act, 1930 occurred at the said place."

3) The operative part of the instruction in both the circulars give similar direction and are underlined. They commonly state that the **place where sale takes place is the place of removal. The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer.** This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of Associated Strips Ltd Vs Commissioner of Central Excise , New Delhi [2002 (143) ELT 131 (Tri-Del)] . This principle was upheld by the Hon'ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)] .

4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board's circular and is also contrary to the legal position on the subject.

5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the

goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport , inclusion of transport charges in value , payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. **The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.**

7) Difficulty in implementing the circular may be brought to the notice of the Board. Trade may be kept suitably informed. Hindi version will follow.

(Shankar Sarma)
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