

G.S.R. (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2005.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (n), the following clause shall be inserted, namely:-
' (na) "manufacturer" or "producer" in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002; '
3. In rule 3 of the said rules,-
 - (A) in sub-rule (1),-
 - (I) after clause (vii), the following clause shall be inserted, namely:-
“(viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, as substituted by clause 72 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law:
Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;”;
 - (II) after clause (x), the following clause shall be inserted, namely:-
“(xi) the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law.”;
 - (B) in sub-rule (4), after the second proviso, the following provisos shall be inserted, namely:-
“Provided also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, as amended by clause 72 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of law, shall be utilised for payment of service tax on any output service:
Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under clause 85 of the said Finance Bill, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of law, shall not be utilised for payment of said additional duty of excise on final products:”
- (C) in sub-rule (7), for clause (b), the following clause shall be substituted, namely:-
“(b) CENVAT credit in respect of -
 - (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
 - (ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
 - (iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);
 - (iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
 - (v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
 - (vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
 - (vii) the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of law,

shall be utilized only towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004, additional duty of excise leviable under section 157 of the Finance Act, 2003, or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No.2) Act, 2004, or the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service:

Provided that the credit of the education cess on excisable goods and education cess on taxable services can be utilised, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services.

Explanation.-For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act;”.

4. In rule 4 of the said rules,-

(A) in sub-rule (1), the following proviso shall be inserted, namely:-

“Provided that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.”;

(B) in sub-rule (2), in clause (a), after the proviso, the following proviso shall be inserted, namely:-

“Provided further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, as amended by clause 72 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931, the force of law, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.”.

5. In rule 5 of the said rules, after the proviso, the following proviso shall be inserted, namely:-

“Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, as amended by clause 72 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill, under the Provisional Collection of Taxes Act, 1931, the force of law, shall be utilised for payment of service tax on any output service.”.

6. In rule 6 of the said rules, in sub-rule(1), the following proviso shall be inserted, namely:-

“Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.”.

[F.No. 334/1 /2005-TRU]

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Note: The principal rules were notified *vide* notification No. 23/2004-Central Excise (N.T.), dated the 10th September, 2004, and published in the Gazette of India Extraordinary *vide* number G.S.R.600 (E), the 10th September, 2004 and last amended *vide* notification No. 3/2005-Central Excise (N.T.), dated the 28th January, 2005 and published *vide* number G.S.R. 47 (E), dated the 28th January, 2005.