

Excise Duty on Branded Readymade Garments

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In Recent times the Rollback of Excise Duty Exemption on Branded Readymade Garments has been a Subject Matter of big protest from Industry. Despite all the efforts and rows the government looks in no mood to give any relaxation on the same. Excise duty at the rate of 10% shall now apply to ready-made garments and made-up articles of textiles falling under Chapters 61, 62 and 63 of the Central Excise Tariff when they bear or are sold under a brand name. The duty shall be applicable from 01.03.2011.

What is Excise Duty?

Excise Duty is a tax attracted by the event of manufacture but collected at some convenient stage which may be after the said event, which is only for administrative convenience. It is a duty levied up on goods manufactured and not up on sales or the proceeds of sale of goods.

From the above definition it can be said that excise duty shall be levied only when the activity is a manufacture and only when it is leviable the same shall be collected at the time of sale.

Major Issues

This article aims to discuss several issues that require clarity for the industry and are presented as hereunder:

a) Why and how is Excise Duty Calculated on Retail Sale Price in case of Branded Readymade Garments when the excise duty is leviable on manufacture?

If Ideally the excise duty is leviable on event of manufacture then the base for computing the tax shall be manufacturing cost instead of retail sale price. Why is that in case of Branded Readymade Garments the calculation of excise is based on retail sale price?

Retail sale price means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement,

delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration of such sale.

As Per Section 3(2) of Central Excise Act,1944, the Government may notify such categories of goods to which the revised principle of excise valuation would apply. The revised principle would require payment of excise duty on the basis of the said tariff value. Thus the goods, which are covered under this new principle, would be required to discharge excise duty on the basis of the tariff value as notified instead of the basis of the wholesale selling price. Readymade Garments valuation is covered by this principle only. Duty is to be paid on a tariff value equal to **45% of the retail sale price**.

Based on the Same the Computation of Value for Excise shall be As Follows:

Particulars	Amount
Retail Sale Price	100/-
Tariff Value Notified (45%)	45/-
Excise Duty Payable at the Rate of 10.3% (45 x 10.3%)	4.64/-

b) What are the exempted Categories?

Articles not bearing a Brand Name

The Articles not bearing a brand name are exempted from the applicability of excise duty. The exemption is based on the condition that no CENVAT credit shall be taken.

Thus readymade garments, not bearing a brand name are exempted from payment of Central Excise duty. Further, the manufacture has an option to pay duty @ 5% on cotton items and 10% on others and take CENVAT credit.

Brand name or Trade name : means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

SSI Exemption

For evaluating the eligibility of a Small Scale Industry, under Central Excise Act, the following conditions must be satisfied:

- a. The turnover of the Unit must **not exceed rupees One Hundred and Fifty Lakhs** made on or after the 1st day of April in any financial year and
- b. The turnover of the Unit must **not exceed rupees Four Hundred Lakhs** in the **preceding financial year**.

For the Purpose of Computing the Exemption limit it is very pertinent to know the finance minister's statement on the floor of the house as Quoted hereunder:

“While initiating debate on the Finance Bill-2011 the Finance Minister said that the garment traders had criticised the proposed 10 per cent excise duty on readymade garments saying it would hurt the small business. He added

*1) “To address this concern, I propose to enhance the abatement of **40 per cent to 55 per cent** on the retail sale price.*

*2) With this relief a unit will continue to be eligible for SSI exemption in 2011-12 even if it had a turnover based on **retail sale price of Rs 8.90 crore in the current year**”, the Minister said. (Current year means 31-03-2011)”*

Many persons thought that there is no excise duty now until you reach a turnover of Rs. 8.90 Crores instead of Rs. 1.50 Crores presently available to SSI. **It is not the case.** Let us See how

At present under the scheme of excise for SSI, an SSI which does not have a turnover of Rs. 4.00 Crores during the year ending 31-03-2011 will not be liable to excise duty until he reaches a turnover of Rs. 1.50 Crores during the period ending 31-03-2012. If at any moment during the period ending 31-03-2012 the turnover crosses Rs.1.50 Crores, his liability to excise starts notwithstanding the fact that his turnover during the year ending 31-03-2012 is less than Rs. 4.00 Crores. However he would become eligible to the SSI benefit for the year ending 31-03-2013 if the turnover was less than Rs. 4.00 Crore for 31-03-2012.

Illustration:

(a)	Maximum turnover permissible for normal SSI Rs. Lakhs	400
(b)	Taxable value of new product after abatement of 55%	45%
(c)	Permissible turnover for a taxable value of 45% of normal turnover	(a) X 100 (b)
	That is	400 X 100 45
(d)	Permissible value in Rs. Lacs	888
(e)	Rounded off to Rs. Crore	8.90

(The Important Jinx in the statement of finance minister was “retail sale price”(as bolded above). No Doubt finance minister knows the correct words to put at correct place to be politically superior.)

Other Conditions for availing SSI benefit

a. The SSI scheme is Optional.

i. Option 1: Pay the normal rate of duty on the goods cleared and avail CENVAT credit on the inputs.

ii. Option 2: Avail the exemption scheme and forgo the claim of CENVAT Credit on inputs till you reach the turnover of Rs. 150 Lakhs.

iii. In both the cases the option shall be exercised before effecting the first clearances at the normal rate of duty. Such option shall not be withdrawn during the remaining part of the financial year.

iv. However the manufacturer can take the credit on capital goods and use the same for payment of normal duty after he crosses the basic exemption limit of Rs. 150 Lakhs.

Provisions for Clubbing of Turnover

i. Sales by the same manufacturer from different factories: Where goods are cleared from one or more factories by the same manufacturer, the turnover of the factories will be clubbed to determine the exemption limit of Rs. 400 Lakhs/150 Lakhs and not separately for each factory.

ii. Sales by different manufacturers from the same factory: Where the specified goods are cleared by one or more manufacturers from the same factory, the exemption shall apply to the aggregate value of clearances of all the manufacturers from that factory.

Where one factory is used by one manufacturer for some part of the year and by another manufacturer for the remaining part of the year then their turnover will be clubbed to determine their SSI status.

Exemption to Job Worker:

Job worker is exempted from payment of duty and following Central Excise duty procedure if duty liability is being discharged by the principal manufacturer. However, the job worker may be authorized to follow central excise procedure and pay duty.

Exemption On Uniforms, Blankets Etc.

No excise duty on uniforms or made-up articles like quilt, blankets, towels, linen etc bearing the name or logo of a school, security agency, company, hotel or airline etc., it is clarified that such products **would not merit treatment** as “branded” products merely because the name of the school, institution or company or their logo is either printed, embroidered or etched on them. This is equally true of made ups such as towels, linen etc bearing the name of a hotel, restaurant or airlines. In all these cases, there is no nexus between such a name or logo & the product at the time of its sale which is essential ingredient in the definition of the term “brand name”. Unless such garments/made- ups also bear a brand name in addition to the name or logo of the school, security agency, hotels, airlines and company, such goods would not attract the excise duty.

It is also gathered that in some cases, apart from the name or logo of such organisations, the name of the tailor or manufacturer is affixed on such garments. However, mere affixing of name of the tailor or manufacturer would not constitute a brand name.

Another related issue is the applicability of the mandatory excise duty to blankets which are supplied to the defence establishment, armed forces, police forces etc against tenders that stipulate that the name of the manufacturer should be clearly indicated or marked on the product. As pointed out above, affixing the name of the manufacturer on such goods would not, by itself, bring them within the ambit of branded goods.

c) Whether the Service tax Input received on various services can be claimed as CENVAT Credit against the Excise Duty Payable?

As per Cenvat Credit Rules -“input service” means any service,—

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion,

market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal but excludes services certain service when used in some specific instances.

Since there is no one to one Correlation required in CENVAT utilisation, So if nature of input service falls within definition ambit the CENVAT of input service can be very much utilised against excise amount payable, thereby reducing the funds (PLA) outflow.

About the Author

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