



COMMISSIONER OF CENTRAL EXCISE :: SHILLONG
Morello Compound, Shillong – 793001

[Tel:0364-2224751](tel:0364-2224751)

Fax:0364-2223428/2226215/2223030

E-mail:cexshill@excise.nic.in

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To

The Deputy/Asstt.Commissioner,
Central Excise,
_____ Division (All).

Sub: Eligibility Orders for the North East exemption benefit under the
Notification 32/99 CE and 33/99 CE-reg.

A review of the procedure followed under the north east exemption notification has been made. The Chief Commissioner has reminded you that the Notifications in this regard are self-operating and need not be further elaborated. The accountability and responsibility is already fixed at the Division level and it is all the more reason for Divisional Head to ensure that no lapses occur. Lapses do happening, but the major procedural lapses are emanating from the one-time. Eligibility orders issued by the Divisional officers for ten years, which has become the major stumbling block for taking remedial steps due to limitation of time factor in the Central Excise Act.

Present practice of sanction of the refund by way of:-

- i) Issuance of Eligibility order for ten years and
- ii) monthly refund order based on the above Eligibility order,
is prone to complications and revenue loss.

The systems in vogue has the inherent defects, as there is no counter mechanism for cross verification of the observation made in the eligibility orders, since the eligibility orders & refund orders are merely statements of facts and have no scope of modification and interpretation of law. There is no methodology to ascertain whether the parameters of substantial expansion are being maintained over the time, subsequent to issuance of eligibility orders, so as to continuance of the exemption to the beneficiary units. There is also no system to ascertain whether the new units coming up are genuinely new or at the expense of old units. Moreover, mischief of limitation of time makes corrective measures redundant after lapse of one year of passing the order on eligibility.

In order to make the system more accountable in consonance with the legal provisions, the following guidelines are issued for strict compliance.

- A. i) No one-time eligibility order shall be issued to any assessee in future for the exemption under the above notifications, since legal provisions do not provide the same. On receipt of a claim for the exemption, a Committee comprising of two Superintendents, preferably the jurisdictional Range Superintendent and the Superintendent (Anti Evasion) or any other Superintendent as may be decided, under the chairmanship of the Divisional Assistant/ Deputy Commissioner will decide the eligibility claim after such verification as may be necessary. A claim-wise Minutes shall be recorded which will be for internal use only. While drawing the Minutes for an assessee, care must be taken for strict adherence to the check list enclosed herewith. Minutes along with copies of all relevant records shall be forwarded to the Hqrs. Tech Branch for information. In no case the copy of the minute shall be made available to the assessee.

ii) In the case of rejection of an eligibility claim for not fulfilling the conditions as laid down in the Notification recorded in the minute, an appropriate show cause notice may be issued by the Divisional officer to the assessee concerned, explaining the grounds for such rejection and also intimate the final decision after extending the scope of the natural justice. Copy thereof shall be forwarded to the Appeals Branch for review.

- B. i) Monthly refund shall be settled on the basis of the Minute only. Since the Notifications do not provide any provision for issuance of any kind of eligibility order, but made provision that the Divisional officer after such verification, as may be deemed necessary shall refund the amount to the assessee, fulfilling the conditions of duty paid through PLA, less of Cenvat Credit availed of. The refund order should convey the accounting details and basic technical information. The copy of the order alongwith relevant documents may be made available to the Hqrs. Audit for pre-audit & post-audit, as the case may be.
- ii) Only final sanctioned refund will be examined under the provisions of the pre-audit and post-audit. The practice of provisional sanction of refund, in a routine manner, should be stopped forthwith. The para (c) of the Notifications unequivocally state that in case there is likely to be delay in the verification, refund shall be granted on provisional basis only on such cases. The same shall be settled in the subsequent months as defined in the exemption notifications. It may be noted that provisionally sanctioned refund of the previous month have to make it final in the current month after making adjustment, as may be necessary, from the refund amount of the current month or from the subsequent months, as deemed necessary. Once the adjustment is complete, the provisionally sanctioned refund shall be made final. There is no scope for pre-audit of the provisionally sanctioned refund; therefore all these claims can be pre-audited only after the final sanction of the refunds. The Audit branch of the Hqrs. will complete the pre-audit or post audit exercise within one-month time from the date of final sanction of the refund.
- iii) Any review of the sanction order/rejection order, passed on the basis of Show Cause Notice issued, will be undertaken by the Hqrs. Review Branch (Appeals). Only such orders be sent to the Review branch, which are issued in consequence of issuance of show cause notice under relevant provisions of the Central Excise Act & Rules.
- C. Before sanctioning the refund, valuation aspect should be carefully examined. In the event of detection of any inflated assessable value resorted by an assessee, separate steps may be taken under Section 4 of the Central Excise Act, 1944 to determine the correct assessable value, following the principle of natural justice. Based upon the correct determination of the assessable value, consequential affect shall follow so far as refund and Cenvat Credit are concerned.
- D. i) It is necessary to review the exemption granted to the old manufacturing units under substantial expansion, so as to ascertain whether the units are still maintaining their expanded installed capacity or not. The Divisional officer shall cause verification of such old units and recorded unit-wise Minutes by the committee formed in this regard. Any adverse decision should be followed by the issuance of the show cause notice, so as to follow the principle of natural justice. Minutes recorded for all the units should be forwarded to Hqrs. Tech. Branch immediately and the whole exercise shall be complete within four months.
- ii) Similarly exemption granted to the new units should also be examined and the Minutes should be recorded in order to prevent any misuse of the exemption Notifications. The Divisional officer shall follow the same procedures as mentioned in the para D(i) above and report accordingly.

Sd/-
(KARNAIL SINGH)
Commissioner