

Transition of Exempted Assesseees to GST-Clarity Needed

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Introduction

1. The pace of the governmental activities to meet the deadline of April, 2017 for implementation of GST is commendable. However, at the same time the government should endeavour to remove the shortcomings of the Model GST Law so that the twin objective of timely implementation of GST with minimum of flaws is achieved. The present article is an attempt at anticipating the problems that may be faced by the assesseees that are presently engaged in manufacture of exempted goods during their course of switching over to GST regime according to the provisions contained in section 145 of the Draft Goods and Services Law.

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The transitional provisions contained in Section 145 of Draft GST Law



2. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations are recapitulated as follows:-

A registered taxable person who was not liable to be registered under earlier law, or who was engaged in the manufacture of exempted goods under the earlier law but which are liable to taxed under GST Act, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock on the appointed day subject to following conditions:-

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- (i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said taxable person was eligible for the Cenvat credit on receipt of such inputs and/or goods under the earlier law but for his not being liable for registration or the goods remaining exempt under the said law;
- (iii) the said taxable person is eligible for input tax credit under this Act;
- (iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / tax under the earlier law in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day; and
- (v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

It is also provided that the amount of credit available to assesseees shall be calculated in accordance with generally accepted accounting principles in such manner as may be prescribed. Furthermore, the amount taken as credit shall be recovered as an arrear of tax under this Act from the taxable person, if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law. The above provisions are similar for CGST and SGST laws.

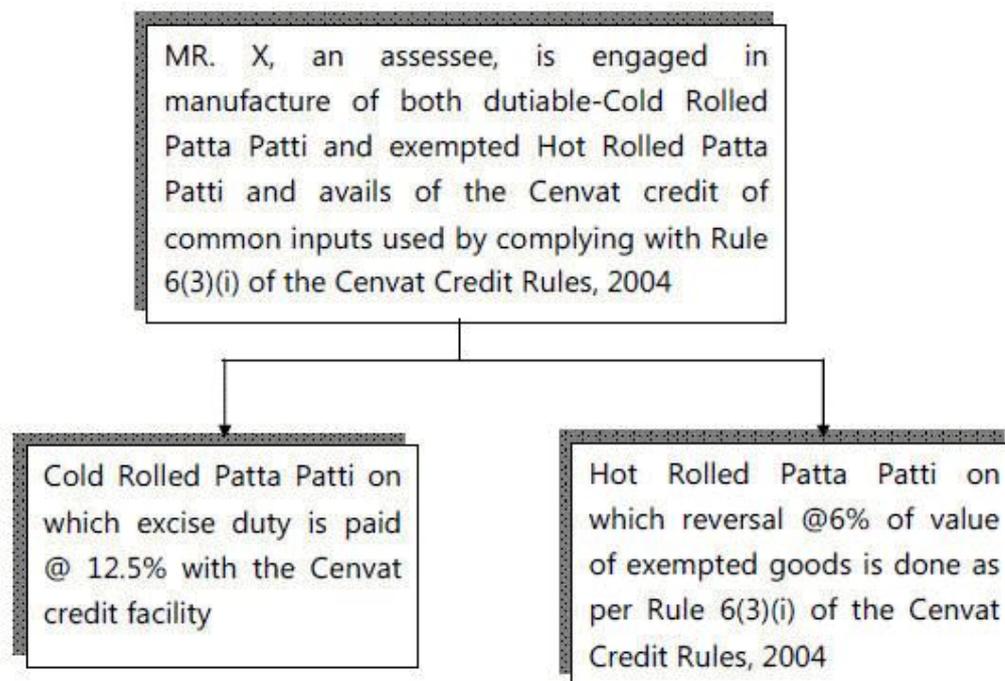
The above stated provisions are applicable in case of person engaged in manufacture of 'exempted goods' under the earlier law. It is pertinent to note that

there is an Explanation in the CGST Law wherein meaning of 'eligible duties and taxes' has been clarified but there is no clarification as regards meaning of exempted goods. Consequently, one may say that the definition of 'exempted goods' given under Rule 2(d) of the Cenvat Credit Rules, 2004 may be referred to which reads as follows:-

Exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to 'NIL' rate of duty and goods in respect of which the benefit of an exemption under [Notification No. 01/2011-C.E., Dated 01.03.2011](#) or under entries at Serial No. 67 and 128 of Notification No. 12/2012-CE, dated 17.02.2012 is availed.

It is clarified that [Notification No. 01/2011-C.E., Dated 01.03.2011](#) specifies excise duty rate as 2% for certain goods on the condition that no Cenvat credit on inputs or input services is availed. This has the consequence that, although 2% excise duty is being paid on certain goods, yet such goods are treated as exempted goods. Whether the transitional provision contained in section 145 will apply to goods covered by Notification No. 1/2011-C.E. is not clear.

Another question that arises is whether the provision of section 145 applies to assessee engaged solely only in the manufacture of exempted goods or also applies to assessee engaged in manufacture of taxable and exempted goods both? The provision also applies to assessee engaged in manufacture of taxable and exempted goods both, because the opening language of sub-section uses 'OR'. It is stated that a registered taxable person who was not liable to be registered under the earlier law OR who was engaged in the manufacture of exempted goods under the earlier law. If the provision was intended to be applied to assessee solely engaged in manufacture of exempted goods, the Legislature would have used 'AND'. Consequently, the provision of section 145 also applies to assessee engaged in the manufacture of both taxable and exempted goods. Now, the next question that arises is whether provisions contained in section 143 allowing Cenvat credit carried forward in a return to be allowed as input tax credit are also applicable to assessee also availing of benefit of provisions of section 145 of the GST Act, 2016? Section 143 of the GST Act provides that a registered taxable person shall be entitled to take the Cenvat credit carried forward in a return furnished under the earlier law by him to his electronic credit ledger in GST regime. Furthermore, there is no embargo on availing of benefit of section 143 along with section 145 in the Model GST Law and, as such, an assessee engaged in the manufacture of taxable and exempted goods is entitled to claim the Cenvat credit reflected in return for the taxable goods as per section 143 and also entitled to claim credit of inputs pertaining to manufacture of exempted goods and inputs contained in stock on the appointed day as per provision of section 145. However, it will be tremendously difficult situation in case common inputs are being used by the assessee. This can be explained with the help of an illustration as follows:-



Since Mr. X is manufacturing taxable goods, being Cold Rolled Patta Patti on which excise duty is paid at full rate and also manufacturing Hot Rolled Patta Patti which is exempted, Mr. X is also availing of the Cenvat credit on the common inputs like flats used by him in the manufacture of both dutiable and exempted final products, Mr. X is also complying with the provisions of Rule 6(3)(i) of the Cenvat Credit Rules, 2004. In this case, while as Mr. X is eligible to avail of the balance of the Cenvat credit carried forward in his return immediately preceding the appointed date according to section 143 of the GST Law, he is also eligible for availing of the Cenvat credit of inputs contained in stock of Hot Rolled Patta Patti on the appointed day as per provision of section 145 of the GST Act. This may lead to absurd situation as Mr. X is liable to reverse 6% at the time of clearance of Hot Rolled Patta Patti on **clearance** of said goods as per current Central Excise Laws whereas he has already availed of entire credit on common inputs and reflected it in return. Furthermore, the revenue department will not allow him to take the credit of inputs contained in stock of exempted goods as he has already taken the entire Cenvat credit and reflected it in his return. Also, revenue authorities may object to that the reversal of 6% has been done only for hot rolled patta patti already cleared while as no reversal has been done on stock of exempted goods pending for clearance. Furthermore, it may not be practically possible to ascertain the Cenvat credit of common inputs being flats attributable to Hot Rolled Patta Patti.

Conclusion

3. The transitional provisions are silent on the admissibility of the Cenvat credit on stock of goods on which excise duty @2% is paid under Notification No. 1/2011-C.E. under the GST regime. Moreover, there is no clarity as regards simultaneous availment of benefit under sections 143 and 145 of the GST Act, 2016 and manner of computation of credit in case of common inputs. Even the conditions specified under section 145 such as credit should be admissible both under earlier law and GST law is difficult to comply with on account of different credit provisions under both laws. Furthermore, the condition of possession of invoices that have not been issued earlier than twelve months will also be a hurdle in claiming the credit post GST regime. The complexities in smooth transition of assesseees to GST regime will only be unearthed on actual

implementation but government should make earnest efforts to overcome shortcomings of the provisions contained in the Model GST Law so that scope of litigation in the GST regime is minimized to the best possible extent.

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