

REPAIR THE GUTTER

(By Swamy Associates)

No doubt, the Central Excise Rules are "Loosely worded legislations". By way of amending notifications and circulars, the mandarins of North Block, further make the already loose-knit fabric, more punctured, torn and mutilated.

In this article, we try to spot a major crater in the construction of a Rule, which may turn into a Grand Canyon!

Rule 4 of Central Excise Rules, 2002 and its subsequent amendment Notification 24/2003 – CE(N.T) dated 25.3.2003 are the feedstock of this article.

Sub Rule (3) of Rule 4 of Central Excise Rules, 2002 had 2 tail piece Explanations by way of Explanation I and II, by its original construction.

The opening sentence of these Explanations read as "For the purposes of this Rule.", which means that the said Explanations are meant for the entire Rule and not for the sub rule (3) alone. Even though these Explanations deal with the entire Rule, for the wisdom best known to the Law makers, these 2 Explanations were placed in between sub rule (3) and sub rule (4) of Rule 4 of Central Excise Rules 2002, thus placing the backyard gutter in between the drawing room and the dining hall.

Now to the crux of the issue :

Explanation II of Rule 4 of the said Rules read as under :-

"For the purposes of this rule excisable goods manufactured in the factory and utilized, as such or after subjecting to any process, for the manufacture of any other commodity, such goods shall be deemed to have been removed from such factory immediately before such utilization".

This Explanation is nothing but the erstwhile Rule 49 of the then Central Excise Rules, 1944, which dealt with the "deemed removals" within the factory for further manufacture.

Dating back to the history, one may find that numerous cases have been created, curated and cremated around this fiction of "deemed removal". Such a very vital and critical Explanation, has now been misplaced by this ridiculous construction.

With the advent of Notification 24/2003 dated 25.03.2003, Rule 4 of Central Excise Rules, 2002 has been amended, wherein sub rule (3) was omitted, creating the present panic.

The omission of the sub-rule leads to an ambiguous and chaotic situation that , whether with the omission of sub rule (3), the 2 Explanations appended to the said sub rule will also be omitted or not. This funny question emanates because of the reason that these 2 Explanations were placed in between sub rule (3) and sub rule (4). Had these Explanations were placed at the end of the Rule {i.e after sub rule (4)}, then there would have been no confusion. But this crazy construction of placing the 2 Explanations in between the two sub rules, has led to this quizzical

situation. As these Explanations have dealt with the entire Rule and not with the sub rule, one could derive a logical conclusion that those 2 Explanations have not been omitted, but still survive.

There was a similar apathy which happened to Cenvat Credit Rules, 2002 sometime back in March 2003. By Notification 18/2003-CE(N.T) dated 13.03.2003, sub rule (3) of Rule 3 of Cenvat Credit Rules, 2002 was substituted. Earlier, sub rule (3) of Rule 3 of Cenvat Credit Rules, 2002, had 3 provisos. While substituting sub rule (3), by Notification 18/2003 – CE(N.T), the Department made a blunder by not including the provisos in the new sub rule (3) of Rule 3 of the said rules. Prima facie, it gives a reasonable impression that the new sub rule(3) does not contain any provisos.

Later, came a greater blunder. The Department came out with a Notification 57/2003 –CE(N.T) dated 05.06.2003, substituting the 3rd Proviso of sub rule (3) of Rule 3 of the said Rules, which was non-existent. This has ignited a heated debate that whether a proviso will die with the extinction of the Rule or will live even after the death of the Rule!!! The Department by way of its corrigendum F. no.201/9/2003-Cx.6 dated 15/10/2003, tried to save its face and rectify the blunder.

We wish the department comes out with another face saving corrigendum immediately to rectify the above said Rule 4 anomaly. As the Portugese proverb goes, "Better repair the gutter than the whole house",.

Before parting.....

The Penguin of Central Excise publications, the CENTAX, has come out with appropriate editorial remarks highlighting the above said anomaly (Notification 18/2003-CE(N.T) dated 13.03.2003) in sub rule (3) of Rule 3 of Cenvat Credit Rules, 2002. But it has missed out in the case of Rule 4 of Central Excise Rules,2002(Notification 24/2003 dated 25.03.2003)!!! The subsequent editions neither carry the Explanations nor there is an editorial remark!!! The Master has missed one!!! As it is said, there can be a slip even to an elephant, we sincerely feel that one has to be extra-extra-careful while printing the Holy Bible!!!

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