Notification
No. 11/2000-Central Excise (N.T.)

New Delhi, dated the1st March, 2000
11 Phalguna,1921(Saka)

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

1. (1) These rules may be called the Central Excise (Second Amendment) Rules, 2000.

(2) Save as otherwise provided they shall come into force on the 1st day of March, 2000.

2. In rule 2 of the said rules, in clause (7), for the word and figure "section 3", the words, figures and letter "section 3 or section 3A" shall be substituted;

3. In rule 57H of the said rules, after sub-rule (7), the following shall be inserted, namely:-

'(7A) An independent texturiser who has availed of the credit of duty paid on inputs, shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of inputs lying in stock, or used in any finished excisable goods lying in stock as on the 1st of March, 2000, and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export.

Explanation.- For the purposes of this sub-rule, "independent texturiser" shall mean a manufacturer engaged in the manufacture of texturised yarn of polyesters falling under sub-heading No. 5402.32, and who does not have the facility in his factory (including plant and machinery) for manufacture of partially oriented yarn of polyesters falling under sub-heading No. 5402.42.'

4. In rule 57 Q of the said rules, –

(i) in sub-rule (1), for the Table, the following Table shall be substituted, namely:-

"Table

S.No.	Description of capital goods falling within the First Schedule to the Central Excise Tariff Act, 1985 and used in the factory of the manufacturer.	Description of final products
(1)	(2)	(3)
1	1.All goods falling under Chapter 82, Chapter 84, Chapter 85 and Chapter 90; 2.Components, spares and accessories of the goods specified at S.No. 1 above; 3. Moulds and dies; 4.Refractories and refractory materials; 5.Tubes and pipes and fittings thereof, used	All goods specified in the First Schedule to the Central Excise Tariff Act, 1985, other than the following, namely:- (i) all goods falling under heading Nos. 36.05; (ii) ingots and billets of non-alloy steel falling under sub-heading Nos. 7206.90 and 72.07.90, manufactured in an induction furnace unit, whether or not any other goods are produced in such

	in the factory; 6. Pollution control equipment; 7.Grinding wheels and the like goods falling under sub-heading No. 6801.10; 8. Goods falling under heading No. 68.02; and 9. Lubricating oils, greases, cutting oils and coolants.	induction furnace, and hot re-rolled products of non-alloy steel falling under sub-heading Nos. 72.11.11, 7211.19, 7211.30, 7211.52, 7211.59, 7211.60, 7211.92, 7211.99, 7213.90, 7214.90, 7215.90, 7216.10 and 7216.90 on which duty is paid under section 3A of the Central Excise Act, 1944 ";

(ii) in sub-rule (3), the word, figures and sign " of 75%" shall be omitted.

5. For rules 57A to 57U of the said rules, the following rules shall be substituted with effect from the 1st day of April, 2000, namely:-

"AA. CREDIT OF DUTY PAID ON EXCISABLE GOODS USED AS INPUTS OR CAPITAL GOODS

57A. Definitions. – For the purpose of this section,-

(a) "capital goods" means-

(i) All goods falling under Chapter 82, 84, 85 or 90 of the First Schedule to the Central Excise Tariff Act, 1985 and used in the factory of manufacture of the final products whether directly for the manufacture of the final products or for research and development, quality control, testing, weighment or similar allied functions related to the production of final products, except office equipment; and

(ii) spare parts, components and accessories of the goods mentioned at (i) above, whether falling under the same Chapter or any other Chapter of the First Schedule to the Central Excise Tariff Act, 1985;

(b) "exempted goods" includes goods which are chargeable to "Nil" rate of duty;

(c) "final products" means finished excisable goods manufactured or produced by an assessee;

(d) "input" means all goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and whether used as packing material, or as fuel, or for generation of electricity or steam, except high speed diesel oil and motor spirit, commonly known as petrol.

Explanation.- The high speed diesel oil or motor spirit commonly known as petrol will not be deemed to be input for any purpose whatsoever.

57B. CENVAT credit . - A manufacturer or producer of finished excisable goods shall be allowed to take credit of duty of excise (hereinafter referred to as the CENVAT credit) of ,-

(a) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985, leviable under the Central Excise Act, 1944;

(b) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985, leviable under the Central Excise Act, 1944;

(c) the additional duty under section 3 of the Customs Tariff Act, 1975, equivalent to the duty of excise specified under clauses (a) and (b) above,

paid on any inputs or capital goods received and used in the factory. The CENVAT credit may be utilized for payment of duty of excise levied under the First Schedule on any final products manufactured by the manufacturer.

Explanation. – Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non-availability of credit of duty paid on any input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of the rules made under this section.

57C. Conditions for allowing CENVAT credit.- (1) The CENVAT credit in respect of inputs and capital goods may be taken immediately on receipt of the inputs in the factory of the manufacturer.

(2) The CENVAT credit in respect of capital goods received in a factory at any point of time in a given financial year shall, however, be taken only for an amount not exceeding fifty per cent. of the specified duty paid on such capital goods in the same financial year. The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer.

Illustration.- A manufacturer received machinery on April 16, 2000 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2000-2001, and the balance in subsequent years.

(3) The CENVAT credit of specified duty paid on the capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of specified duty on such capital goods, which the manufacturer claims as depreciation under section 32 of the Income-tax Act, 1961, or as revenue expenditure under any other provisions of the said Income-tax Act.

(4) The CENVAT credit shall be allowed even if any input or capital goods are sent to a job worker for further processing, testing, repair or any other purpose and it is established from the records, challans or

memos or any other document produced by the assessee availing the CENVAT credit that the goods are received back in the factory.

57D. Obligation of manufacturer of dutiable and exempted goods.- (1) Where a manufacturer avails of CENVAT credit of specified duty on any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty and exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods. The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are,-

(i) final products falling under Chapters 50 to 63 of the Schedule to the Central Excise Tariff Act, 1985 ;

(ii) tyres of a kind used on animal drawn vehicles or handcarts and their tubes, falling within Chapter 40;

(iii) black and white television sets, falling within Chapter 85;

(iv) newsprint, in rolls or sheets, falling within Chapter heading No.48.01,

the manufacturer shall debit an amount equivalent to the CENVAT credit attributable to inputs contained in such final products at the time of their clearance from the factory, or

(b) if the exempted goods are other than those described in clause (a) above,

the manufacturer shall debit an amount equal to eight per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

(2) The provisions of sub- rule (1) shall not be applicable in case the exempted goods are either,-

(i) cleared to a unit in a free trade zone; or

(ii) cleared to a hundred per cent. Export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Parks; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excises, dated 28th August, 1995; or

(v) cleared for export under bond in terms of the provisions of rule 13.

57E. Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer on the basis of invoice, bill of entry or any other document indicating the payment of duty.

(2) The manufacturer shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken the CENVAT credit are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

(3) The manufacturer of final products shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been purchased is recorded. The burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit.

57F. CENVAT credit admissible even if inputs or capital goods are purchased from a first or second stage dealer.- (1) The CENVAT credit shall be admissible even if the inputs or capital goods in respect of which credit is being taken have been purchased from a first stage dealer or a second stage dealer of the manufacturer of such inputs or capital goods.

Explanation,- For the purposes of this rule,-

(i) "first stage dealer" means a dealer who purchases the goods directly from –

(a) the manufacturer under the cover of an invoice issued under rule 52A or rule 100E or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer , under cover of an invoice.

(b) An importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

(ii) "second stage dealer" means a dealer who purchases the goods from a first stage dealer.

(2) The CENVAT credit in respect of inputs or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if the first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

57G. Transfer of credit.- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of the such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) The transfer of the CENVAT credit under sub-rule (1) shall be allowed to the extent of credit contained in stock of inputs as such or in process, or the capital goods are also transferred along with the factory.

57H. Transitional provision.- Any amount of credit earned by a manufacturer under rules 57A,57B or 57Q, as they existed prior to 1st day of April, 2000 and remaining unutilized on that day shall be allowable as CENVAT credit to such manufacturer.

57-I. Recovery of credit wrongly taken. – (1) Where the CENVAT credit has been taken or utilized wrongly, the same along with interest shall be recovered from the manufacturer and the provisions of sections 11A, 11AA and 11AB of the Act shall apply mutatis mutandis for affecting such recoveries.

(2) Where the CENVAT credit has been taken or utilized wrongly on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty under the provisions of section 11AC of the Act are to apply mutatis mutandis.".

6. For rule 96ZQ of the said rules, the following rule shall be substituted, namely:-

"96ZQ. **Procedure to be followed by an independent processor of textile fabrics**.- (1) An independent processor of textile fabrics falling under heading Nos. 52.07, 52.08, 52.09, 54.06, 54.07, 55.11, 55.12, 55.13 or 55.14, or processed textile fabrics of cotton or man-made fibres, falling under heading Nos. or sub-heading Nos. 58.01, 58.02, 5806.10, 5806.40, 6001.12, 6001.22, 6001.92, 6002.20, 6002.30, 6002.43 or 6002.93, of the First Schedule to Central Excise Tariff Act, 1985 (5 of 1986), shall debit an amount of duty of Rs. 2.0 lakhs per chamber per month, Rs. 2.5 lakhs per chamber per month, Rs. 3.0 lakhs per chamber per month or Rs. 3.5 lakhs per chamber per month, as the case may be, on the annual capacity of production as determined under the Hot-air Stenter Independent Textile Processors Annual Capacity Determination Rules, 2000.

(2) The amount of duty payable under sub-rule (1) shall be debited by the independent processor in the account current maintained by him sub-rule (1) of rule 173G of the Central Excise Rules, 1944.

(3) Fifty per cent. of the amount of duty payable for a calendar month under sub-rule (1) shall be paid by the 15th of the month and the remaining amount shall be paid by the end of that month.

(4) The independent processor shall continue to maintain records, and file returns, pertaining to production, clearance, manufacturing, storage, delivery or disposal of goods, including the materials received for or consumed in, the manufacture of excisable goods or other goods, the goods and materials in stock with him and the duty paid by him, as prescribed under the Central Excise Rules, 1944 and the notifications issued thereunder.

(5) If an independent processor fails to pay the amount of duty or any part thereof by the date specified in sub-rule (3), he shall be liable to, -

(i) pay the outstanding amount of duty along with interest at the rate of twenty-four per cent. per annum calculated for the outstanding period on the outstanding amount; and

(ii) a penalty equal to an amount of duty outstanding from him at the end of such month or rupees five thousand, whichever is greater.

(6) If an independent processor removes the processed textile fabrics referred to in sub-rule (1) without complying with any of the requirements contained in sub-rule (4), then, all such goods shall be liable to confiscation and the independent processor shall be liable to a penalty not exceeding rupees ten thousand.

(7) Where an independent processor does not produce or manufacture the processed textile fabrics specified in sub-rule (1) during any continuous period of not less than seven days and wishes to claim abatement under sub-section (3) of section 3A of the Act, the abatement shall be allowed by an order passed by the Commissioner of Central Excise of such amount as may be specified in such order, subject to fulfilment of the following conditions, namely :-

(a) abatement shall be applicable only on complete closure of the factory and not on closure of a hot-air stenter;

(b) the independent processor shall inform, in writing, about the closure to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least three days prior to the date of closure;

(c) the stenter or stenters shall be sealed in such manner as may be prescribed by the Commissioner of Central Excise;

(d) the independent processor, when he starts production again, shall inform in writing about the date of starting of production to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise, at least three days prior to the date of starting production, and get the seal opened in such manner as may be specified by the Commissioner of Central Excise before recommencing the production;

(e) the independent processor shall, while sending infomation under condition (d), declare that his factory remained closed for a continuous period starting from the hour and date to the hour and date, such hours and dates to be specified in the declaration;

(f) when the claim for abatement by the independent processor is for a period of less than one month, he shall be required to pay the duty, as applicable, for the entire period of the month and may subsequently seek such claim after payment of such duty;

(g) where the claim for abatement by the independent processor is for a period of one month or more, he shall not be required to pay the duty for that period in advance;

(h) If the claim for abatement by the independent processor has been disallowed by the Commissioner of Central Excise, by a written order made in this regard, the independent processor shall pay the duty, and interest if any applicable, prior to getting the stenter or stenters sealed under condition (c) reopened for resuming production;

Provided that the Commissioner of Central Excise, where he is satisfied that the delay in giving information under condition (b) was caused due to unavoidable circumstances, may, for reasons to be recorded in writing, condone such delay.

Explanation .- For the purposes of these rules, an "independent processor" means a manufacturer who is engaged primarily in the processing of fabrics with the aid of power and who also has the facility in his factory (including plant and equipment) for carrying out heat-setting or drying, with the aid of power or steam in a hot-air stenter and who has no proprietory interest in any factory primarily and substantially engaged in the spinning of yarn or weaving or knitting of fabrics, on or after the 10th December, 1998."

7. In rule 173 G of the said rules,–

(i) for sub-rule (1), the following sub-rule shall be substituted with effect from the 1st day of April, 2000, namely:-

" (1)(a) Every manufacturer shall discharge his duty liability in respect of clearances made during the first fortnight of the month, by the sixteenth day of that month, and in respect of clearances made during the second fortnight of the month, by the last working day of that month:

Provided that a manufacturer availing of the exemption under a notification based on value of clearances in a financial year may discharge his duty liability in respect of clearances made during a calendar month, by the fifteenth day of the succeeding month .

(b) The manufacturer shall maintain an account current with the Commissioner and shall discharge his duty liability by debiting such account-current, in the following manner :

(i) the manufacturer shall assess the duty due on the excisable goods intended to be removed, for each consignment and shall enter the particulars of such consignments in Form RG-I with the amendment in the said Form RG-I that for the words "On payment of duty", the words "Amount of duty payable" had been substituted;

(ii) the manufacturer shall indicate on each invoice, issued under rule 52A, the amount of duty payable.

(c) The duty of excise shall be deemed to have been paid on excisable goods, and the credit of such duty, as may be prescribed, under any rule, will be permissible.

(d) If the manufacturer fails to pay the amount of duty payable by the due date, he shall be liable to pay the outstanding amount along with interest at the rate of twenty four per cent. per annum on the

outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(e) If the manufacturer defaults on account of any of the following reasons, namely:-

(i) full payment of any one instalment is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year , or

(ii) the due date on which full payment of instalments are to be made is violated for the third time in a financial year, whether in succession or otherwise,

then the manufacturer shall forfeit the facility to pay the dues in instalments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in clause (b) and in the event of any such failure it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow." ;

(ii) for sub-rule (5), the following sub-rule shall be substituted, namely: -

"(5)(a) Every assessee shall furnish to the proper officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods.

Explanation.- For the purposes of this rule, –

(i) the expression 'records' shall include account, agreement, invoice, price-list, return, statement or any other source document ,whether in writing or in any other form;

(ii) the expression 'source documents' means all documents which form the basis of accounting of transactions and include sales invoice , purchase invoice, journal voucher, delivery challan and debit or credit note.

(b) Where an assessee maintains or generates such records by using computer, such assessee shall submit the following information to the proper officer, namely:-

(i) documentation including policy and procedure manuals, instructions to record the flow and treatment of transactions through accounting system, from the stage of initiation to closure and storage;

(ii) account of the audit trail and inter-linkages including the source document, whether paper or electronic, and the financial accounts; and

(iii) record layout, data dictionary and explanation for codes used and total number of records in each field alongwith sample copies of documents.

Whenever changes are made in the systems adopted by the assessee, he shall inform the proper officer and submit the relevant document.

(c) The assessee shall be responsible for keeping, maintaining, retaining, and safeguarding records.";

(iii) for sub-rule (6), the following sub-rule shall be substituted , namely : -

"(6) (a) Every assessee shall, on demand make available to the Central Excise Officer or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,-

(i) the records maintained or prepared by him in terms of clause (a) of sub-rule (5);

(ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956; and

(iii) the Income-tax audit report, if any, under section 44AB of Income-tax Act, 1961,

for the scrutiny of the officer or audit party, as the case may be.

(b) Every assessee who is having more than one factory and maintains separate records in respect of every factory for the purpose of audit then, he shall produce the said records for audit purposes.

(c) Where the Commissioner or the Comptroller and Audit General of India decide to undertake the audit of the records of any assessee, the said assessee shall be given notice thereof at least fifteen days before the commencement of such audit. The audit party deputed for the purpose shall also call for in writing the records, which are required to be produced by the assessee, either before or during the course of audit.

(d) Every assessee, who maintains or generates his records by using computer, shall provide the required records in the form of tapes or floppies or cartridges or compact disk or any other media in an electronically readable format as prescribed by the Commissioner at the time of audit. The copies of records, so furnished, shall be duly authenticated by the assessee.

(e) All records submitted to audit party in electronic format shall be used only for verification of payment of duties of excise or for verification of compliance of the provisions of the Central Excise Act, 1944 or the rules made thereunder and shall not be used for any other purpose without the written consent of the assessee.";

(iv) for sub-rule (9), the following sub-rule shall be substituted, namely :-

"(9) Every assessee shall preserve the records including books of accounts and source documents and data in any electronic media, where any document is generated on computer, for five financial years immediately after the financial year to which the records pertain.".

8. In rule 173GG of the said rules, in sub-rule (3) ,for the words "thirty per cent." the words "twenty four per cent." shall be substituted.

9. Rule 173 GG of the said rules shall be omitted on and from 1st April, 2000.

(T. R. Rustagi)
Joint Secretary to the Government of India

(F. No. 334/1 /2000-TRU)

Footnote.- The principal rules were published vide notification number IV D-C.E.,dated the 28th February, 1944 and were last amended vide G.S.R. 91(E), dated the 10th February,1999, G.S.R. 353(E), dated the 18th May, 1999.

Notification
No. 12/2000-Central Excise (N.T.)

New Delhi, dated the1st March, 2000
11 Phalguna,1921(Saka)

G.S.R. (E).- In exercise of the powers conferred by rule 57A of the Central Excise Rules, 1944, the Central Government being satisfied that it is necessary in the public interest so to do, hereby rescinds notification of the Government of India in the Ministry of Finance (Department of Revenue), number 24/94-Central Excise (N.T.) dated the 21st October, 1994.

(T. R. Rustagi)
Joint Secretary to the Government of India

(F. No. 334/1 /2000-TRU)