

CIRCULAR NO 937/27/2010 -Central Excise

Dated: November 26, 2010

Sub: **Application of provisions of section 5A (1A) of the Central Excise Act**

References had been received from the field formations as well as trade to clarify the ambiguity arising out of simultaneous prevalence of two exemption notifications namely 29/2004-CE dated 9.7.2004 as amended by notification No. 58/2008-CE dated 7.12.2008 and another notification 59/2008-CE dated 7.12.2008. The period of dispute is from 7.12.2008 to 6.7.2009. During this period while one notification No. 29/2004-CE as amended granted full exemption to certain items of Textile Sector without any condition, the second notification 59/2008-CE prescribed a concessional rate of duty of 4% on these items, with the benefit of Cenvat Credit.

2. The dispute was with regard to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under notification No. 20/2004 - CE, as amended, during the period under dispute in terms of the provisions of section 5A(1A) of the Central Excise Act, 1944.

3. The matter was examined in the Board. As a substantial question of law was involved, the matter was referred to the Law Ministry for its opinion. The Ministry of Law has opined that the language used in said section 5A(1A) is unambiguous and principles of harmonious construction cannot be applied in the instant case in view of specific provision under sub-section (1A) of section 5A of the Central Excise Act. The Law Ministry has accordingly concluded that in view of the specific bar provided under sub-section (1A) of section 5A of the Central Excise Act, the manufacturer cannot opt to pay the duty under notification 59/2008-CE dated 7.12.2008 and he can not avail the Cenvat Credit of the duty paid on inputs.

4. The aforesaid opinion of Law Ministry has been accepted by the Board. Pending issues, if any, may be decided accordingly.

5. Trade may be informed suitably.

6. The receipt of this circular may be acknowledged.

7. Hindi version would follow in due course.

F.No.52/1/2009- CX.1 Pt

**Madan Mohan
Under Secretary (CX1)**