

Circular No. 940/01/2011-CX

**Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)**

New Delhi, dated the 14th January, 2011

Subject: Application of provisions of Section 5A(1A) of the Central Excise Act, 1944-reg.

Attention is invited to Board's circular No. 937/27/2010-CX dated 26.11.10 issued from F.No.52/1/2009-CX1 (Pt.), wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.

2. It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.

3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944 . Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004.

4. Trade & Industry as well as field formations may be suitably informed.

5. Receipt of this circular may kindly be acknowledged.

6. Hindi version will follow.

F.No.262/117/2010-CX8

Yours faithfully,

**(Amish Kumar Gupta)
OSD (CX-8)**