

Circular No. 999/6/2015-CX

F. No. 267/13/2015 – CX.8
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

New Delhi, dated the 28th February, 2015

To

1. All Principal Chief Commissioners, Central Excise & Service Tax/Customs
2. All Chief Commissioners, Central Excise and Service Tax/ Customs.
3. Chief Commissioner (AR), CESTAT, New Delhi.
4. All Principal Commissioners of Central Excise & Service Tax/Customs.
5. All Commissioners of Central Excise, Service Tax and Customs
6. All Commissioners (AR), New Delhi, Mumbai, Chennai, Kolkata, Bangalore & Ahmadabad
7. Webmaster

Sub: Clarification regarding place of removal – reg.

Attention is invited to Circular No. 988/12/2014-CX dated 20.10.2014 issued from F. No. 267/49/2013-CX.8 on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

2. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.

3. The matter has been examined. It is seen that section 23 of the Sale of Goods Act, 1930 provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the

buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant exporter.

6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

7. In the case of export through merchant exporters, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 supra, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of notification no. 19/2004-Central Excise (N.T.) dated 6.9.2004, etc.

8. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ICD/CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly.

(Shankar Prasad Sarma)
Undersecretary to the Government of India