

Cenvat credit of Clean Energy Cess paid

**-By CA Mahadev R &
Venkatanarayana GM**

Introduction

Finance Minister announced for imposition of Clean Energy Cess as a duty of excise on coal, lignite and peat which come into force from **1st July, 2010**. Notification No.1/2010-CE (Clean Energy Cess) dated 22.06.2010 was issued for this purpose. Clean energy cess would be imposed on coal produced in India or when imported into India from other countries. This is in line with the principle of "polluter pays", which are the basic guiding criteria for pollution management.

Levy

The cess would be computed on the gross quantity of raw coal, lignite or peat raised and dispatched from a coal mine. No deduction from this quantity is to be allowed for loss, if any, on account of washing of coal or its conversion into any other product/form prior to its dispatch from the mine. At the same time, cess would not be chargeable on washed coal or any other form ***provided the appropriate cess has been paid at the raw stage***. In order to provide for this, all goods covered by the Tenth Schedule other than raw coal, raw lignite and peat are being exempted from the cess (Notification No. 4/2010-CEC dated 22.06.2010) on the condition that appropriate cess has been paid at the raw stage.

Since Clean Energy Cess is being levied as a duty of excise, it would also apply to imported coal by virtue of Section 3(1) of the Customs Tariff Act in the form of additional duty of customs. As imported coal would not satisfy the condition regarding payment of appropriate cess at the raw stage, Clean Energy Cess would apply to all forms of imported coal including washed coal. This amount has to be paid in cash at the time of import of goods.

Administration

Section 83 of Finance Act 2010 provides that the Central Government may by notification in the official gazette declare that any of the provisions of Central Excise Act, 1944 relating to levy, exemption, refund etc. would be applicable in respect of Clean energy Cess. In pursuance of this power, Notification No. 2/2010-Clean Energy Cess dated 22.06.2010 has been issued to borrow the relevant machinery provisions of the Central Excise Act, 1944 for the collection and administration of the cess.

Whether manufacturers are entitled to avail Cenvat credit of clean energy cess paid on coal produced or imported in India?

As clean energy cess is levied as per section 3(1) of custom tariff act and the same shall be allowed as Cenvat credit. Rule 3 (vii) of the Cenvat credit Rules 2004 covers “the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)” as eligible credit. Therefore, it could be argued that the Cenvat credit of cess paid on coal imported in India shall be eligible as Cenvat credit.

Further, in respect of cess paid on coal produced in India also view could be taken that such cess is duty of excise and therefore, eligible for credit. Please note that the list of duties specified in the Cenvat credit provisions does not include the coal cess or other cess like sugar cess. However, in case of *The Commissioner of Central Excise, Belgaum Vs M/s Shree Renuka Sugars Limited 2014 – TOIL – 98- HC- KAR – CX* it was held that the assessee is entitled to claim Cenvat credit of sugar cess even though the same is not specified in the list of duties for credit as such cess is also duty of excise.

Conclusion:- As there is no specific bar in availing Cenvat credit of clean energy cess paid under Cenvat credit rules, it is hereby advisable to avail the benefit. However, it is advisable to seek clarification from the department with suitable letter before availing the credit. Early clarification is preferable considering the time limit of 1 year for availing the credit in the Cenvat Credit provisions.