



**Clarification with respect to eligibility of Cenvat  
Credit - Transit sale by dealer**

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In budget 2015-16, one of the amendments made to Rule 11(2) of Central Excise Rules, 2002 by way of Notification No. 8/2015 – CE (NT) dated 01.03.2015 applicable w.e.f 01.03.2015. The amendment was as follows:

**“Provided also that if the goods are directly sent to any person on the direction of the registered dealer, the invoice shall also contain the details of the registered dealer as the buyer and the person as the consignee, and that person shall take CENVAT credit on the basis of the registered dealer’s invoice:”**

The above amendment made to facilitate a registered dealer to issue cenvatable invoice without receipt of goods at his registered premises. As per the above provision the manufacture is required to issue the invoice with following details:

In place of buyer – the details of registered dealer

In place of consignee – Ultimate recipient of goods (person)

In this case the ultimate recipient of goods is required to avail the cenvat credit based on the dealer invoice issued and not based on the manufacturer’s invoice.

**Implication of Notification:**

1. As per this amendment all unregistered dealer carrying out trade is require to get registered under excise and allow the ultimate buyer to avail the credit based on the registered dealer invoice. As per the amendment the manufacturer invoice showing registered dealer as buyer is invalid for availing the credit.
2. The amendment has been made only in Central Excise Rules, 2002 however the corresponding amendment to Rule 9 of Cenvat Credit Rules, 2004 is not done. Hence as per Rule 9 of CCR, 2004 the ultimate recipient of goods can avail the cenvat credit on manufacturer invoice which is clearly clarified in Circular No. 96/7/95-CX dated 13.02.1995. However the same is not possible as per Rule 11 of Central Excise Rules.

3. It should be noted that for the purpose of taking credit the assessee need to follow the Cenvat Credit Rules and not Central Excise Rules (CER). As all the cenvat credit rules of CER is also referring to rules prescribed under CCR for availment and utilization of cenvat credit.

**Clarifications vide circular No: 1003/10/2015-CX, Dated: May 05, 2015**

Against the said notification, representation has been made to understand the scope and purpose of third and fourth proviso inserted in Section 11(2) of CER. Based on the representations made the CBEC has come with following clarifications with respect to third proviso inserted to section 11(2) of Central Excise Rules:

1. Case 1: **the registered dealer negotiates sale of an entire consignment from manufacturer or registered importer and orders direct delivery to consignee** – consignee can avail the credit on invoice issued by manufacturer or registered importer and no cenvatable invoice would be issued by registered dealer.
2. Case 2: **the registered dealer negotiates sale of goods from total stock ordered from manufacturer / registered importer to multiple buyers and orders direct transportation** – in this case also the consignee can avail the credit on invoice issued by manufacturer or registered importer only if, the manufacturer / registered importer issues individual invoices for each sale in favour of consignee for such individual sale.
3. Case 3: **registered dealer negotiates sale by splitting a consignment procured from manufacturer / registered importer and manufacturer / registered importer issued single invoice:** In this case the dealer is required to be registered under central excise and issue cenvatable invoice.
4. Case 4: **in case unregistered dealer negotiates sale of an entire consignment from a manufacturer / registered importer** – In this case the consignee can avail the credit based on the invoice issued by manufacturer / registered importer.
5. Case 5: **In case where goods are sold by registered importer to end-user (may be manufacturer) and avail credit on the basis of importer invoice:** in this case the importer is required to record the direct transport of goods to buyer's premises in the invoice raised by him.

**Conclusion:**

Even the unregistered dealer can order the manufacturer / registered importer to deliver the goods at consignee place where consignee can avail the credit on invoice of manufacturer /

registered importer. However in case where dealer order entire consignment and order the manufacturer to splitting the consignment and deliver to buyer and manufacturer issues a single invoice, then the dealer may require to get registered under central excise. This registered dealer can issue cenvatable invoice based on which consignee can avail the credit. Here one may refer to decision held in the **Darshan Industries Vs UOI 2014 (307) ELT 36 (Guj).**