Rule 15 of CCR, 2004 requires amendment : 23-02-2015

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RULES 14 and 15 of the Cenvat Credit Rules, 2004 reads:

14. Recovery of CENVAT credit wrongly taken or erroneously refunded .- Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

15. Confiscation and penalty.- (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3)shall be issued by the Central Excise Officer following the principles of natural justice.

A combined reading of these Rules suggests that while under Rule 14 of the CCR, interest can be levied only if the CENVAT credit has been taken and utilized wrongly, for purposes of levy of penalty under Rule 15 (1), penalty can still be levied on the manufacturer or service provider who has wrongly availed of the CENVAT credit, even if the wrongly availed credit is not utilized.

There seems to be some dichotomy here, inasmuch as, while interest can be levied only in cases involving utilization of the wrongly availed

credit, penalty can still be levied under Rule 15, if credit is wrongly availed, even if it is not utilized.

I have come across instances wherein SCNs have been issued to exporters who have filed refund claims, invoking Rule 15 of the CCR, seeking to impose penalty for wrong availment of CENVAT credit covered by the refund applications, notwithstanding the fact that such credit has not been utilized. To my mind, it seems extremely difficult to comprehend as to how penalty can levied when interest is not leviable.

One must compliment the Government for amending Rule 14, vide Notification No. 18/2012-CE(NT) dated 17 th March, 2012, by substituting the words 'taken and utilized' in the place of the words 'taken or utilized'. It seems that the Government missed out in carrying a similar amendment in Rule 15 of the CCR.

Given the ingenuity of the Department, assessees in general and exporters in particular, are likely to go through a lot of trouble in handling SCNs that are getting issued under Rule 15(1) of the CCR, unless the Government amends this Rule by substituting the words 'taken or utillized' with the words 'taken and utilized'. A similar amendment is also required in Sub-Rules (2) and (3) of Rule 15 of CCR, 2004.