

# Duty deposit cannot be treated as Cenvat Credit



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**We are importing from a related party. The Customs at Chennai Port and Bangalore ICD enhance the assessable value by 5 per cent and charge duty, whereas Bangalore Air Customs ask for 5 per cent of the assessable value as extra duty deposit. What are the correct instructions? Secondly, can we take Credit of the extra duty deposit?**

CBEC Circular no. 11/2001-Cus. dated 23.02.2001 deals with the procedures to be followed in case of related party import transactions. The procedures stipulate provisional assessment against a duty deposit of 1 per cent of the value of the goods and submission of replies to the prescribed questionnaire. In case the questionnaire is not submitted within 30 days of receipt of the questionnaire, further provisional assess-

ment and clearances are to be made against a duty deposit of 5 per cent of the value till the questionnaire is submitted. The investigation and finalisation of the assessment must be completed within four months from the date of reply to the questionnaire. If no decision is taken within four months, the extra duty deposit should be discontinued. Any loading of value at the time of final assessment can be done only on the basis of orders of the Special Valuation Branch (SVB). The amount deposited as duty deposit is only a security deposit and cannot be taken as Cenvat Credit.

In your case, it appears that there is already a SVB order for 5 per cent loading on value. If so, all the customs houses must follow the same order. If there is no SVB order, duty deposit of 5 per cent against provisional assessment is in order, if you have not replied to the questionnaire within the stipulated time limit.

**I refer to the Customs notification no. 112/2009 dated 11.09.2009 relating to deemed exports. It refers to availing or not availing facility of Rule 18 of Rule 19(2) of Central Excise Rules, 2002. Does it mean that the facilities mentioned in the said Rules are available even for manufacture of goods**

**to be supplied as deemed exports?**

The Central Excise non-tariff notifications no. 19/2004 and 21/2004, both dated 6.9.2004, issued under Rule 18, as well as notification no. 43/2001 dated 26.06.2001, issued under Rule 19(2), refer only to physical exports. Notification no. 44/2001 dated 26.6.2001 issued under Rule 19(2) refers to supplies to advance licence/authorisation holder, which is treated as deemed exports but the authorisation/license holder who procures the intermediates under this notification must physically export the final products.

**We export agricultural products under free shipping bill. CBEC circular no. 860/18/2007-CX mandates self-sealing for exports under free shipping bills. We can't afford delays at the ports for examination by Customs, because of short shelf life of the goods. Is there any way to overcome this problem?**

CBEC Circular 892/12/2009-CX dated 23.07.2009 clarifies that in case you don't claim any export incentive, the Customs will not open/examine the self-sealed containers at the port of export, except when they get intelligence or information about any mis-declaration, concealment, etc.