

Provisional Assessment

Introduction

Normally, duty is payable on removal of goods. Rule 4 of the Central Excise Rules, 2002 (hereinafter referred to as the said Rules) provides that every person who produces or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rule 8 of the said Rules or under any other law. No excisable goods, on which any duty is payable, shall be removed without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided.

Provisional Assessment eligibility

Notwithstanding anything contained in sub-rule (1) of Rule 4, the Commissioner may, in exceptional circumstances, taking into consideration the nature of goods and shortage of space at the premises of the manufacturer where the goods are made, permit a manufacturer to store his goods in any other place outside such premises, without payment of duty subject to such conditions as he may specify.

Sometimes it is not possible for the assessee to determine the duty at the time of clearance. In such a case he may opt for the provisional assessment available under central excise.

An assessee can request for provisional assessment in the following circumstances:

- The Assessee is unable to determine the value of excisable goods in terms of section 4 of CEA on account of non-availability of any document or information.
- The Assessee is unable to determine the rate of duty applicable.

[Written request to Divisional Deputy/Assistant Commissioner of Central Excise](#)

Wherever an assessee finds that final assessment is not possible, in situations mentioned in rule 7 of the said Rules, he will make a detailed request in writing to the Divisional Deputy/Assistant Commissioner of Central Excise, indicating:

- Specific grounds/reasons, and the documents or information, for want of which, the final assessment cannot be made.
- Period for which provisional assessment is required.
- The rate of duty or the value or both, as the case may be, proposed to be applied by the assessee, for Provisional Assessment.
- He undertakes to appear before the Assistant/Deputy Commissioner of Central Excise within 7 days or such dates fixed by him, and furnish all relevant information and documents within the

time specified by the Assistant/Deputy Commissioner of Central Excise in his order, so as to enable the proper officer to finalise the provisional assessment.

Divisional Deputy/Assistant Commissioner of Central Excise orders provisional assessment

Where the Deputy/Assistant Commissioner of Central Excise is satisfied with the genuineness of the assessee request, he will issue a specific order directing provisional assessment clearly stating:-

- The grounds on which Provisional Assessment has been ordered.
- The rate and /or value, as the case may be, at which duty has to be provisionally paid.
- The amount of differential duty for which bond is to be executed covering the period, if any, during which assessee paid duty provisionally under the deeming provisions, after applying the rate and/ or value specified in (b) above.
- The amount of security or surety as may be fixed by Assistant/ Deputy Commissioner keeping in view the instructions issued by the Board from time to time.

The assessee is required to mark the E.R.1, E.R.2, E.R. 3 (monthly/quarterly return)and documents covered under Provisional Assessment as “**PROVISIONALLY ASSESSED**” vide Order No dated ” There is a declaration in E.R.-1/E.R.-2/E.R.-3 wherein the assessee has to mention that the goods under ‘provisional assessment’.

All cases of provisional assessment have to be finalised by the Deputy/Assistant Commissioner of Central Excise, within a maximum period of 6 months. This period can be extended a further 6 months by the Commissioner and even further, without any time limit, by the chief commissioner.

The amount of each differential duty shall be paid along with interest at the rate specified by the Central Government by a Notification Issued under Section 11AA or 11AB of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof [rule 7(4)]. If excess amount is paid, it is refundable with interest [rule 7(5)]. The refund is subject to provision of unjust enrichment.

Bond Requirements

The bond is equal to the difference between the duty payable on provisional assessment basis and the probable duty payable by applying the highest rate/value applicable to such goods, for a period of 3 months. If the assessment cannot be completed in 3 months and more time is required, e.g. a period of one year, in appropriate cases, the differential duty likely to arise shall be the basis. It should be backed by 25% security or bank guarantee.

[Department cannot order provisional assessment](#)

Rule 7 of the said Rules does not provide for the Department, suo moto, issuing directions for resorting to provisional assessment.

Therefore, when the Central Excise Officers, during scrutiny or otherwise, find that self-assessment is not in order, the assessee may be asked for all necessary documents, records or other information for issue of duty demand for differential duty, if any, after conducting inquiry. Where the assessee fails to provide the records or information and the Department is unable to issue demand, 'Best Judgment' method may be used to raise demand based on collateral evidences. The onus will be on the assessee to provide information for appropriate re-determination of duty, if any.

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