

**Is excise duty on "manufacture" or on "lease?" – A doubt after more than
60 years of existence of the levy.
(By swamy associates)**

The Trade Notice number 8/2004 issued by the Commissioner of Central Excise, Coimbatore is the subject matter of this article. The said trade notice (a copy of which is appended below) has been issued in exercise of powers conferred upon the Commissioner, under Rule 31 of the Central Excise Rules, 2002.

It has been observed in the trade notice that certain instances have come to the notice of the Commissioner's office wherein Central Excise Registrants who were running the factory on lease basis have defaulted in payment of Government dues and vacated the premises. Later, fresh registration has been sought for the same premises by new lessees. As the department was not able to recover the dues from the earlier occupants of the premises, the present trade notice has been issued, prescribing certain conditions.

It has been required that whenever any manufacturing activity is proposed to be undertaken in a leased premises, the manufacturer (lessee) shall file a legal undertaking jointly signed by the lessee and lessor undertaking to pay the duty liability with interest for the manufacturing activity carried out by the lessee.

It has also been required that in all existing cases of manufacturing activity being undertaken in leased premises, such a joint undertaking by the lessor and lessee shall be filed.

We are not able to appreciate the logic behind implicating the lessor for any evasion of duty committed by the lessee. If such an undertaking is insisted upon, the result would only be a direction by the lessor to the lessee to vacate the premises. Duty of excise is payable by the manufacturer and the same cannot be enforced against any third person. As such, the above directions contained in the trade notice are without the authority of law. Instead of finding out an effective mechanism to collect the Government dues, the Commissioner should not have chosen to target the hapless lessors, who merely rented out the premises.

The above trade notice has already created ripples among the assessee community and it is hoped that better sense would prevail and the unreasonable directions would be withdrawn immediately.

Text of the Trade Notice.

Notification 35/2001 CE (NT) Dated 26.06.201 as amended, issued in terms of Rule 9 of the Central Excise Rules, 2002, provides for conditions, safeguards and procedures for registration of a person under the said rules.

2. Condition (5) of the said Notification provides for de-registration and condition (4) provides for issue of fresh registration in the case of transfer of business.

3. Instances have come to the notice of this office, wherein the Central Excise registrants who were running the factory on lease basis defaulted in payment of

government dues but not applied for de-registration at the same time, a new lessee applying for registration for the same premises. In such cases, the department is not able to recover the dues from the lessee nor from the lessor apart from de-registering the earlier registration and issue a new registration to the new lessee. Hence, for the purposes of de-registration and issue of new registration certificate for the same premises in the above circumstances, the following supplementary instructions are issued in terms of powers conferred upon me under Rule 31 of Central Excise Rules, 2002 for strict compliance by the central excise assesseees and the departmental officers.

4. When a person applies for Central Excise registration for carrying out a manufacturing activity in the premises acquired on lease basis, he should file a legal undertaking jointly signed by the lessee and the lessor, undertaking to pay the duty liability with interest for the manufacturing activity carried out by the lessee.

5. In respect of cases where the existing registration (lessee) files the declaration for de-registration, unless all the dues are paid in full, the lessee will not be de-registered and no fresh registration will be issued for the same premises.

6. In respect of past cases where a new lessee has been granted new registration certificate, he has to furnish a legal undertaking from both lessee and lessor jointly undertaking to pay the duty liability for the manufacturing activity by the lessee.

7. In case of difficulties in following the above procedure, the Divisional / Range officers should obtain clarification from the office of the Commissioner of Central Excise, Coimbatore.

8. All the Chambers of Commerce and Industry are requested to bring the contents of this supplementary instructions to the notice of their member constituents.