

INDIRECT TAXES UPDATE -31

CENVAT CREDIT RULES, 2004

Clarifications issued on few matters arising out of Budget , 2011 and Post-Budget amendments made in the CENVAT Credit Rules, 2004

Issue: Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under *Notification 1/2011- CE* is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?

Clarification: *As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011 -CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken, are exempted services [Rule 2(e)]. Hence, credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.*

Issue: Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?

Clarification: *The list is only illustrative. The principle is that CENVAT credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.*

Issue: How is the “no relationship whatsoever with the manufacture of a final product” to be determined?

Clarification: *Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression “no relationship whatsoever with the manufacture of a final product” must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.*

Issue: Is the credit of input services used for repair or renovation of factory or office available?

Clarification: *Credit of input services used for repair or renovation of factory or office is*

allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

Issue: Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression “activities related to business”?

Clarification: *The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously, it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.*

Issue: Can the credit of input or input services used exclusively in trading, be availed?

Clarification: *Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.*

Issue: What shall be the treatment of credit of input and input services used in trading before 1.4.2008?

Clarification: *Trading is an exempted service. Hence, credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Ru les.*

Issue: While calculating the value of trading what principle to follow - FIFO, LIFO or one to one correlation?

Clarification: *The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.*

Issue: Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?

Clarification: *Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.*

Issue: Does the expression “in or in relation” used in Rule 6 override the definition of “input” under Rule 2(k) for determining the eligibility of CENVAT credit?

Clarification: *The definition of “input” is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression “in or in relation” must be read harmoniously with the definition of “inputs”.*

Issue: Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?

Clarification: *The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premises, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.*

Issue: Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service

Clarification: *The credit on such service shall be available if its provision had been completed before 1.4.2011.*

[Circular No. 943/04/2011 CX dated 29.04.2011]

CUSTOMS

Instructions issued for Project Import Regulations, 1986

Instructions have been issued by the Board relating to Project Import Regulations, 1986 in view of the various shortcomings pointed out by the Comptroller & Auditor General of India (C&AG) in their Performance Audit Report No. PA 24 of 2009 -10. The audit review has revealed some systemic as well as compliance weaknesses relating to grant of project imports benefits and finalization of project imports cases. The C&AG has recommended for a comprehensive review of the working of the scheme including the internal control and monitoring mechanism in vogue which govern the project imports, and to further strengthen this mechanism.

[Circular No. 22/2011 Cus. dated 04.05.2011]

The complete text of the above circulars are available at www.cbec.gov.in.

Disclaimer

Information published in the newsletter are taken from publicly available sources and believed to be accurate. The Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the newsletter. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of ICAI.

Feedback

The Indirect Taxes Update is an endeavour of the Indirect Taxes Committee to apprise the readers about the amendments made in various central indirect tax laws vide significant notifications, circulars etc. We welcome your feedback on the Update and its contents.

Please email dtc@icai.org for feedback.

You can also write to:

Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.)India

Telephone Direct - +91 120 3045 906Telephone Board - +91 120 3045900 Ext. 906