

# Technical Guide to CENVAT Credit



The Institute of Chartered Accountants of India  
*(Set up by an Act of Parliament)*  
New Delhi

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# Foreword

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Introduction of CENVAT credit rules across goods and services in the year 2004 was one of the major steps in indirect taxes reform process. Since then these rules have undergone significant changes as the Government has addressed issues and difficulties faced by tax payers and also taken steps to reduce cascading of taxes.

Union Budget 2016-17 has brought in plethora of changes in CENVAT Credit Rules, 2004. These cover expansion of definition of Exempted Services, Doing away with FIFO method for utilization of credit under Rule 14(2), allowing ISDs to distribute credit to outsourced manufacturing units, etc. A major change has taken place in process of reversal of credit wherein entire Rule 6 has been redrafted to make it unambiguous and practical. With these changes it can be gathered that the budget is much in line with the aim and vision of the Government to capitalize on the future with minimal changes in the legislation and maximum emphasis on the implementation.

We are pleased that Indirect Taxes Committee has thoroughly revised "Technical Guide to CENVAT Credit" with inclusion of changes made by Finance Act, 2016. We are sure that members will find this revised Guide immensely useful as new illustrations, case studies and recent judicial pronouncements have also been incorporated in the Guide to facilitate easy understanding of the provisions of CENVAT Credit Rules.

At this juncture, we would compliment CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee for revising the "Technical Guide to CENVAT Credit" and bringing out a well-articulated and thoroughly updated material.

We welcome the members to a fruitful and enriching experience.

CA. Nilesh S Vikamsey  
Vice-President  
ICAI

CA. M Devaraja Reddy  
President  
ICAI

Date: 16.06.2016  
Place: New Delhi



## Preface

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The journey of setting off the tax the paid on inputs started with Proforma Credit in 1986 followed by MODVAT in 1987 and then CENVAT Credit Rules, 2001. CENVAT Credit Rules, 2004 superseded the earlier set off schemes to provide cross sectional availment and utilization of credit under excise and service tax. The Cenvat Credit Rules, 2004 has always been an evolving area as far as the establishment of sustainable legislation is concerned. Ever since its introduction, these set of rules have been amended more than 60 times.

Union Budget 2016-17 has removed certain restrictions and extended the scope of credit by allowing credit on equipments and appliances used in office, wagons in case of railway etc. Capital goods valued upto ₹10,000 have been classified as inputs to provide for availability of 100% credit in the same year. Further Rule 6 dealing with reversal of Credit has been redrafted to make it more simple and reasonable. Further to facilitate ease of doing business, clarity on disputed issues and procedural relaxation have been provided for.

Considering the changes made by Finance Act 2016, the Committee thought it wise to revise the Technical Guide to CENVAT Credit to facilitate members to keep themselves updated and enjoy the professional edge. The Guide accordingly has been revised wherein new illustrations, case studies and recent judicial pronouncements have been incorporated to facilitate ease of understanding.

We would like to express our sincere gratitude to CA. Devaraja Reddy, President, ICAI and CA. Nilesch Vikamsey, Vice-President, ICAI for their guidance and encouragement to the initiatives of the Indirect Taxes Committee. We are grateful to CA. V. Raghuraman who devoted significant time for painstakingly revising this Guide with changes made by Finance Act 2016, CA. Jayesh Gogri for vetting and CA. Nehal Banthiya for finalizing this publication. Last but not the least we are thankful to all the members of the Committee for their supports and guidance.

We encourage you to make full use of this learning opportunity. We request you to share your feedback at [dtc@icai.in](mailto:dtc@icai.in) to enable us to make this guide more value additive and useful.

Welcome to a professionalized learning experience in Indirect Taxation.

**CA. Sushil Kumar Goyal**  
Vice Chairman  
Indirect Taxes Committee

**CA. Madhukar Narayan Hiregange**  
Chairman  
Indirect Taxes Committee

Date: 16.06.2016

Place: New Delhi

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# Chapter 1

## Introduction and Basic Concepts

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### 1.1 Background

The concept of Value Added Tax (VAT) was developed to avoid cascading effect of taxes. VAT mechanism allows setting off of taxes already paid on procurements which in turn result in levy of tax getting restricted to the value added portion. In other countries, VAT mechanism has been found to be transparent tax collection and with better administration, resulting in reduction in tax evasion and effective tax compliance.

In India as a step towards the VAT scheme, Modified Value Added Tax (MODVAT) was introduced in 1986 to allow credit / set off on specified inputs used in manufacture of excisable goods. The scheme was expanded and credit of duty paid on capital goods was also brought under the scheme in the year 1994. The scheme was renamed as CENVAT Credit scheme in the year 2000.

The Central Government introduced the levy of tax on services from the year 1994. With amendment to Section 94(2) of Finance Act, 1994 in the year 2002, giving powers to Central Government to make rules relating to credit of Service tax, Central Government introduced Service Tax Credit Rules, 2002 vide Notification no. 14/2002 dated 01.08.2002. This scheme was similar to CENVAT Credit scheme but was limited only to credit on input services used in providing taxable output services.

In the year 2004, consequent to enactment of Finance Act, 2004, the Ministry issued Notification 23/2004-C.E. (N.T.), dated 10-9-2004 where by the earlier CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002 were unified and new CENVAT Credit Rules, 2004 was introduced. The new CENVAT Credit Rules, 2004 contains 16 Rules wherein both manufacturers and service providers are allowed to take input credit on goods and services apart from capital goods. Under the CENVAT Credit Rules, 2004, both the schemes i.e., CENVAT credit scheme on inputs and capital goods for manufacturer and credit scheme on input services for service providers were unified by merging the provisions to allow cross sectoral availment and utilization of credit. Thus the scope of CENVAT Scheme has been enlarged

### *Technical Guide to CENVAT Credit*

to include credit not only to a manufacturer in respect of inputs and capital goods but also to cover the service providers. Thus now even the output service providers are allowed the benefit of credit of duty paid on inputs and capital goods along with service tax credit on input services used by them for providing any taxable output service.

## **1.2 Proposed integration of goods and services tax**

A Task Force Committee was formed under chairmanship of Dr. Vijay Kelkar on Implementation of Fiscal Responsibility and Budget Management Act. The Kelkar Committee submitted its report in July, 2004. The Committee strongly recommended introduction of 'Goods and Services Tax' (GST).

As a major step towards the introduction of GST Regime, Union Finance Minister, Shri P. Chidambaram, in Para 148 of his Budget Speech on 8.7.2004, stated as follows.

*"I propose to take a major step towards integrating the tax on goods and services. Accordingly, I propose to extend credit of service tax and excise duty across goods and services."*

To give effect to the above proposal, the revised CENVAT Credit Rules, 2004, have been issued and made effective from 10.9.2004.

## **1.3 CENVAT Credit Scheme**

- (a) Section 37 of Central Excise Act, 1944 (the Act), empowers the Central Government to make rules *inter alia* to:
- (i) provide for the credit of duty paid or deemed to have been paid on goods used in or in relation to the manufacture of excisable goods;
  - (ii) provide for giving of credit of sums of money with respect to the raw materials used in the manufacture of excisable goods;
  - (iii) provide for credit of service tax leviable under the Finance Act, 1994 (hereinafter referred to as Act) paid or payable on taxable services used in or in relation to the manufacture of excisable goods.

In exercise of these powers, the MODVAT Credit Scheme was introduced in 1986 vide Rules 57A to 57U. Since rules can be amended easily by Central Government, the Scheme remained flexible

### *Introduction and Basic Concepts*

and hence could be modified quickly as per changing requirements. CENVAT was introduced in place of MODVAT w.e.f. 1.4.2000, vide a new set of Rules 57AA to 57AK. Later, separate CENVAT Credit Rules, 2001, were introduced w.e.f. 1.7.2001. These were replaced by CENVAT Credit Rules 2002, which in turn were superseded by CENVAT Credit Rules, 2004 w.e.f. 10.9.2004.

- (b) Section 94 of the Finance Act, 1994 empowers the Central Government to make rules for providing credit of service tax paid on services consumed or duties paid or deemed to have been paid on goods used for providing taxable services.

Service Tax Credit Rules, 2002 were issued effective from 16.8.2002. Under the said Rules, initially credit availment was permitted vis-à-vis same services category. Thereafter, the said Rules were amended in 2004 to permit availment of credit across services.

- (c) With effect from 10.9.2004, Government notified CENVAT Credit Rules, 2004, in supersession of the following:

- (i) CENVAT Credit Rules, 2002; and
- (ii) Service Tax Credit Rules, 2002

CENVAT Credit Scheme introduced w.e.f. 10.9.2004, is an exceptional and unique one, inasmuch as it is a credit mechanism which covers two different laws governing central excise duty and service tax.

- (d) To put the CENVAT credit scheme in a simple perspective, CENVAT Credit Rules, 2004 permit availment of CENVAT credit across goods and services, broadly in the following manner:

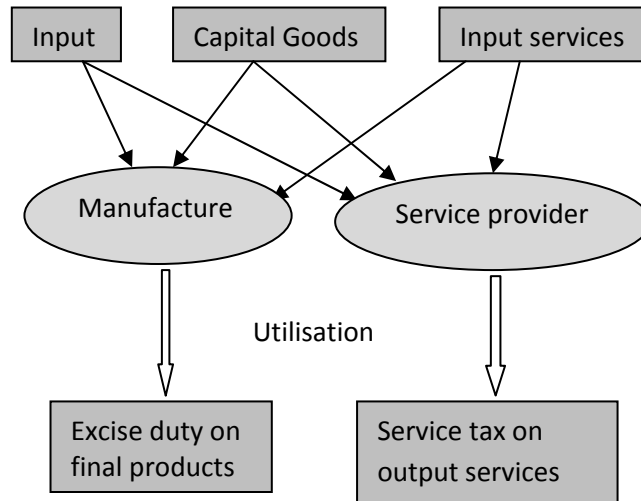
- Manufacturer can avail CENVAT credit of excise duty paid on input / capital goods; they are also entitled to avail CENVAT credit of service tax paid on input services which can be set off against excise duty payable on final products manufactured i.e., excisable products.
- Service provider can avail CENVAT credit of duties paid on inputs/capital goods along with service tax paid on input services which can be set off against service tax payable on output services i.e., taxable services.

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The present CENVAT Credit Rules, 2004 were amended w.e.f., 1-7-2012 to align the CENVAT provisions with the substantial changes made in Service Tax law consequent to introduction of 'Negative List of Taxation Scheme'.

**The Concept of CENVAT Credit**

The CENVAT credit scheme allows a manufacturer as well as a service provider to avail credit of duty of excise paid on inputs or capital goods and service tax paid on input services. Such credit could be utilized for payment of duty of excise on final products or service tax on the taxable output services provided by them. This could be illustrated by a flowchart as under:



The Concept of CENVAT scheme could be explained with the following example assuming Excise Duty is paid @ 12.5%:

Procurements	Value	Amount of duty/ tax
Raw Materials and other consumables	10,000	1,250
Other goods	25,000	0
Machinery	25,000	3,125 (assume it is 50% of tax paid)
Labour and other expenses	5,000	625
<b>TOTAL</b>		<b>5,000</b>
<b>Sales</b>	<b>Value of goods</b>	<b>Duty to be paid</b>
Sale of goods	50,000	6250

Set off procedure	
Duty to be paid on sales	6,250
Less: duty or tax already paid on input, input services and capital goods	5,000
Balance duty to be paid by Cash	1,250

Credit of duty is eligible only on the goods which qualify as capital goods or inputs and credit of service tax is eligible only on services which qualify as input services. The concept of capital goods, inputs and input services are discussed in detail in the ensuing Chapters.

The Supreme Court in the case of *Eicher Motors v. UoI*, 1999(106) E.L.T. 3 (S.C.) has observed that credit once validly taken by the manufacturer cannot be effaced.

Similarly, Supreme Court in *CCE, Pune Vs Dai Ichi Karkaria Ltd.*, 1999 (112) E.L.T. 353 (S.C.) has held that the excise duty paid on the raw material, if Modvatted, is not to be included in determining the cost of production of excisable product. Supreme Court referred to "Guidance Note on accounting treatment for Modvat" and observed that as the expression 'actual cost' had not been defined, it should be construed in the sense which no commercial man would misunderstand and therefore the 'cost' should be ascertained in accordance with the normal rules of accountancy prevailing in commerce and industry.

### **Supplementary provisions**

Rule 16 of CENVAT Credit Rules, 2004 provides 'transition provisions' by way of supplementary provisions as follows:

- (1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these Rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these Rules.
- (2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the

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commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

### SCHEME OF THE TECHNICAL GUIDE

The following table gives a synopsis of the technical guide Rule wise and Chapter wise.

Chapter #	Contents	Relevant Rule
1	Introduction and basic concepts	
2	Capital Goods	2(a)
3	Inputs	2(k)
4	Input Services	2(l)
5	Eligibility to credit and conditions or restriction on utilization of credit	Rule 3
	Duties and taxes eligible for credit	3(1) to 3(3)
	Conditions for utilization of credit	3(4) & 3(7)(b)
	Reversal of credit in certain specified cases	3(5) to 3(6)
	Restrictions on availment of credit on goods procured from EOU	3(7)(a)
6	Conditions for availment of credit	4(1) to 4(4) & 4(7)
7	CENVAT Credit Concepts Relating To Job Work	4(5) to 4(6)
8	Refund of CENVAT Credit	5, 5A and 5B
9	CENVAT impact where assessee has exempted activities along with taxable activities	6
10	Distribution of credit	7, 7A and 7B
11	Storage of inputs outside the factory	8
12	Documentation, Records and Returns	9 & 9A
13	Transfer of Credit and Transitional provisions	10, 10A and 11
14	Special facilities to specified locations, LTU & Miscellaneous provisions	Rule 12, 12A, Rule 12, 12AAA and 13
15	Recovery and Penal provisions	Rule 14, 15 & 15A
16	Accounting of CENVAT Credit	
17	CENVAT credit audit	

## Chapter 2

# Capital Goods

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Even though the MODVAT scheme was introduced with effect from 1-3-1986 which enabled the manufacturers to avail credit of duty paid on inputs used in or in relation to manufacture of the final products, the benefit of availing credit of the duties paid on 'capital goods' was extended only with effect from 1-3-1994.

### Definition

The term 'Capital goods' has been defined in Rule 2(a) of CCR, 2004 to mean -

*“(A) the following goods, namely:-*

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692] of the First Schedule to the Excise Tariff Act;*
- (ii) pollution control equipment;*
- (iii) components, spares and accessories of the goods specified at (i) and (ii);*
- (iv) moulds and dies, jigs and fixtures;*
- (v) refractories and refractory materials;*
- (vi) tubes and pipes and fittings thereof;*
- (vii) storage tank, [and]*
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],*

*used -*

- (1) in the factory of the manufacturer of the final products; or*

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*(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or*

*(2) for providing output service;*

*(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -*

*(i) providing an output service of renting of such motor vehicle; or*

*(ii) transportation of inputs and capital goods used for providing an output service; or*

*(iii) providing an output service of courier agency;*

*(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -*

*(i) transportation of passengers; or*

*(ii) renting of such motor vehicle; or*

*(iii) imparting motor driving skills;*

*(D) components, spares and accessories of motor vehicles which are capital goods for the assessee."*

### **Analysis of the definition**

Only those goods which are listed in the definition would qualify to be capital goods. The said goods are:

**A. Eligible/ineligible capital goods for both manufacturers and service providers:**

<b>Goods prescribed in the definition</b>	<b>Detailed description of such goods</b>
Goods falling under Chapter 82	Tools and implements
Chapter 84,	Machinery and mechanical appliances and parts of such machinery
Chapter 85,	Electrical and electronic machinery and equipment



*Capital Goods*

Chapter 90,	Measuring, checking, precision apparatus and its accessories
Heading 6805,	Abrasive powder or grain
Grinding wheels and the like, and parts thereof falling under heading 6804	Grinding wheels and its part
Wagons of sub-heading 860692	Railway Wagons - open with non-removable sides of a height exceeding 60 cms
Pollution control equipment	It may fall under any of the heading
Components, spares and accessories	Spares of goods falling under Chapters 82, 84, 85, 90, Headings 6804 and 6805 and pollution control equipment. The spares may fall under any heading.
Moulds and dies, jigs and fixtures	
Refractories and refractory materials;	
Tubes, pipes and fittings	
Storage tank	
Motor vehicles other than following would qualify as capital goods. Further, dumpers and tippers would also qualify as capital goods. Following capital goods are not eligible.	
8702	Motor vehicles meant for transport of 10 or more persons
8703	Motor car etc., designed to carry persons
8704	Motor vehicles for transport of goods
8711 and their chassis	Motor cycles
Chassis of the above vehicles	

It is relevant to note that w.e.f., 1.4.2016, Railway Wagons falling under tariff heading 860692 would qualify as capital goods.

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Further, w.e.f., 1.4.2016 the earlier restriction on office equipment / appliance has been removed by omitting the words "but does not include any equipment or appliance used in an office" in sub-clause (1) of Clause (A) of the definition. Accordingly, equipment or appliance (*viz.*, computers, printers etc) used in an office would also qualify as capital goods.

The above goods qualify as capital goods if such goods are used at any of the following specified places:

- (a) In the factory of manufacturer
- (b) For provision of output service
- (c) At a place outside factory for generation of electricity subject to condition that the electricity so generated shall be used within the factory
- (d) At a place outside factory for pumping water subject to condition that the water pumped shall be used within the factory.

#### **B. Eligible capital goods for service providers engaged in transport of goods, courier agency or hiring of transport vehicles:**

Vehicles designed to transport goods would qualify as capital goods for service provider engaged in providing services of transport of goods or courier agency services or hiring of such transport vehicles.

#### **C. Eligible capital goods for service providers engaged in transport of passenger or hiring of vehicles:**

Motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service to provide any of the following services:

- (a) transportation of passengers
- (b) renting of such motor vehicle
- (c) imparting motor driving skills

### **Important Decisions**

#### **(a) Capital goods used outside the factory:**

Supreme Court in *Vikram Cements v. CCE - 2006 (197) E.L.T. 145 (S.C.)* in the context of provisions of erstwhile Rule 57Q of Central Excise Rules, 1944, with regard to availment of Modvat/Cenvat credit on Capital goods

## *Capital Goods*

used in mines, held that if mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, then Modvat/Cenvat credit on such capital goods is available. However, if mines are not captive mines but they supply to various other cement factories of different assesseees, then Modvat/Cenvat credit on capital goods used in such mines is not available. A similar view has been expressed by the Supreme Court in *Madras Cements Ltd. v. CCE - 2010 (257) E.L.T. 321 (S.C.)*

Presently, the definition of 'capital goods' has a specific provision in sub-clause (1A) under clause (A) which specifically provide that any of the specified goods which is used 'outside the factory of the manufacturer for (a) generation of electricity and (b) pumping of water, would get covered under the definition of 'capital goods' subject to the condition that the electricity generated and water pumped is for 'captive use' within the factory.

### **(a) Components and parts**

The Supreme Court observed in the case of *Star Paper Mills v Collector of Central Excise (1989) 43 ELT 178 (SC)* that a component part of an article is an integral part necessary to the constitution of the whole article and, without it, the article will not be complete.

In the case of *Hindustan Sanitary ware & Industries Ltd. & Lakshmi Cement v CC (1999) 114 ELT 778 (SC)*, the Supreme Court observed that component parts are those which were initially used in the assembly or manufacture of a machine and spare parts were those parts which were used for the subsequent replacement of worn-out parts in such machine.

### **(b) Accessories**

The Supreme Court in case of *M/s. Mehra Brothers v Jt. Commercial Officer (1991) 51 ELT 173 (SC)*, observed that the correct test to determine whether the goods qualify as accessory would be whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance.

Similarly, in the case of *M/s. Pragati Silicons Pvt. Ltd. v CCE Delhi (2007) 211 ELT 534 (SC)*, the definition of the term "accessory" as defined in dictionaries was adopted and held that plastic name plate is an accessory to a car.

**(c) Distinction between components and accessories**

The Bombay High Court in the case of Precision Rubber Industries v CCE (1990) 49 ELT 170 (Bom) observed as below:

*'The word "component" means a constituent part 'or ingredient' such as the various components of electric motor. In the case of chemical system, it is used to denote an ingredient of a chemical compound. In another sense the word is used to denote smallest unit of classification. On the other hand, "accessory" has altogether different connotation. It signifies aiding or contributing in a secondary or subordinate way. It is used to denote a role or status which is supplementary or secondary to something of greater or primary importance. The word "accessory" is used to suggest that something or somebody is incidental to the main subject. In other words, accessory is something which is inessential and secondary or subordinate to another object. While "component" is always an essential element of a machine, an accessory is an aid to the machine.'*

**(d) Use of goods as spares/parts/accessories shall be identified with the machinery**

Where an assessee avails credit as parts or accessories or components, then in which machinery the said goods are used shall be identified. The Supreme Court in Madras Cements v CCE (2010) 254 ELT 3 (SC) held that in the absence of such identification, it is not possible for the authorities to come to a decision as to whether MODVAT Credit would be given in respect of the goods in question.

**(e) Credit on channels, angles etc., used in fabrication of plant or fabrication of support structures:**

The issue before Supreme Court in the case of CCE v Rajasthan Spinning and Weaving Mills Ltd. (2010) 255 ELT 481 (SC) was whether steel structural items used for fabrication of chimney to DG set would qualify as capital goods. The Court held that the chimney is an integral part of the Diesel generating set and particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, the steel fabrication items would qualify as capital goods. However, in the case of Saraswati Sugars Mills v CCE 2011 (270) ELT 465 (SC), the Supreme Court denied credit on iron and steel sheets and angles used for the fabrication of a plant as steel structures.

A Larger Bench of the Tribunal in the case of Vandana Global Ltd v CCE (2010) 253 ELT 440 (Tri-LB), held that the goods used for making structural support for plant and machinery cannot qualify either as capital goods or as inputs.

### **Clarifications issued by CBEC**

**(a) Parts, components etc. need not fall under Chapters 82, 84, 85 or 90**

It has been clarified vide *CBEC Circular No. 276/110/96 – TRU dated 12.1996* that components, spares and accessories need not fall in Chapter 82, 84, 85 or 90. They can fall in any Chapter. The only condition is that they should be a part, component or accessory of machinery specified in clause (i) of rule 2(a) (A) of CENVAT Credit Rules, 2004.

**(b) Clarification on admissibility of CENVAT credit on structural components of Boiler**

Vide *Circular No. 964/07/2012-CX., dated 2-4-2012*, it has been clarified that structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff and are eligible for credit.

**(c) Project Imports**

Goods (mainly machinery) imported under 'project imports' are classified under Chapter 98.01 of Customs Tariff Act, 1985 for customs purposes. Actually, the machinery / goods may be classifiable under different Chapter Heading as per Customs Tariff Act, 1985. There is no corresponding Chapter 98 in Central Excise Tariff Act, 1985. It has been clarified that even if imported goods are classifiable under Chapter 98 for customs purposes, they would be eligible for CENVAT credit.

If separate invoice of CIF value of eligible capital goods is not available, certificate of independent cost accountant should be obtained in prescribed form. Refer MF (DR) Circular No 351/67/97-CX dated 5.11.1997.

# Chapter 3

## Inputs

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As discussed in the earlier Chapters, with effect from 10-9-2004, the scope of the CENVAT scheme has been enlarged to include the 'service provider' along with manufacturer for being entitled to avail CENVAT credit on inputs, input service and capital goods. Thus, in the above context, we have to understand the definition and scope of the term 'input' as defined in CENVAT Credit Rules, 2004.

It is relevant to note that the present definition of 'input' was introduced w.e.f., 1.4.2011 vide Notification No. 3/2011-CE(NT) dated 1.3.2011 and subsequent amendments were made from time to time.

### Definition

Term 'input' has been defined in Rule 2(k) of CCR, 2004 to mean

- (i) *all goods used in the factory by the manufacturer of the final product; or*
- (ii) *any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or*
- (iii) *all goods used for generation of electricity or steam [or pumping of water] for captive use; or*
- (iv) *all goods used for providing any output service;*
- (v) *all capital goods which have a value upto ten thousand rupees per piece;*

*but excludes -*

- (A) *light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;*
- (B) *any goods used for -*
  - (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*

## *Inputs*

*(b) laying of foundation or making of structures for support of capital goods,*

*except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]*

*(C) capital goods, except when,-*

*(i) used as parts or components in the manufacture of a final product; or*

*(ii) the value of such capital goods is upto ten thousand rupees per piece;*

*(D) motor vehicles;*

*(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and*

*(F) any goods which have no relationship whatsoever with the manufacture of a final product.*

***Explanation.*** *For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;*

## **Analysis of the definition**

The term 'input' is defined under two different clauses, one being list of goods eligible as inputs and other being the goods which do not qualify as inputs i.e., exclusion list.

It is relevant to note that there has been substantial amendment in the scope of the term 'input' w.e.f., 1.4.2011 wherein the long standing definition of all goods which are used 'directly or indirectly and in or in relation to the manufacture of final products' has been done away with; instead it includes 'all goods which are used in the factory'. We can analyse the definition of 'input' in two parts, firstly those which are covered under 'inclusion part' and secondly those which are specifically excluded.

Input which are included in the definition:

(i) All goods used in the factory by the manufacturer of the final product.

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- (ii) Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products.

It is clarified in the Explanation that, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

- (iii) All goods used for generation of electricity or steam or pumping of water for captive use.
- (iv) All goods used for providing any output service; or
- (v) All capital goods which have a value upto ten thousand rupees per piece

As regards the interpretation of the definition of 'input', the Supreme Court in the case of *Maruti Suzuki Ltd. – (2009) 240 E.L.T. 641 (S.C.)* held that in order to qualify as input, all the three parts of the definition i.e. specific part, inclusive part as well as usage within factory have to be fulfilled. However, this interpretation has been doubted by the Supreme Court in *Ramala Sahkari Chini Mills Ltd. v. CCE, Meerut-I – (2010) 260 E.L.T. 321 (S.C.)* and while examining the scope of 'Inputs', it was held that the above view in the *Maruti Suzuki's* case is not acceptable as the scope of input cannot be restricted only to the items which are mentioned in the inclusive part and used in the manufacture of excisable goods and had referred the matter to the Larger Bench of the Supreme Court.

Recently, the Larger Bench of Supreme Court in *Ramala Sahkari Chini Mills Ltd, UP Vs. CCE, 2016-TIOL-20-SC-CX-LB* while agreeing with the order of the referral bench, held that word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. Accordingly, the decision of Supreme Court in *Maruti Suzuki* is no longer applicable and the credit cannot be restricted to the three classes of cases only as mentioned in *Maruti Suzuki's* judgement.

As per the dictionary, the word 'input' means 'what is put in', 'enter', 'enter system'. Supreme Court in *Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar (1994) 74 ELT 193 (SC)* analysed the use of this word in the context of the Bihar Finance Act and cited this dictionary meaning and observed that the 'use of the word was indicative that the benefit was



intended in respect of every item which was raw material in the widest sense'.

**Clause (i) 'All goods used in the factory by the manufacturer of final products':**

It is relevant to note that the definition of 'input' has been revised substantially wherein the new phrase "All goods used in the factory by the manufacturer" is used in the definition of 'input' w.e.f., 1.4.2011. For understanding the scope of this clause, it would be relevant to refer to the decision of Andhra Pradesh High Court in the case of CCE v Rashtriya Ispat Nigam Ltd. (2011) 271 ELT 338 (AP), where the Court held that Steel sheets and coal used for fabrication of capital goods and parts during the process of repair to machinery in the factory of the manufacturer fall within the ambit of the definition of capital goods as the same are used by the manufacturer in the factory. Even though the High Court dealt with the definition of 'capital goods', it distinguished between the words 'manufacturer' which is used in the definition of capital goods and the word 'manufacture', and has given a view that the essence under the definition is **used by the manufacturer within the factory** and not merely in the manufacturing activity. Therefore, presently under clause (i) of the definition, all goods which are used in the factory would get covered under the term 'input'.

However, it is relevant to note that the erstwhile requirement of 'in or in relation to manufacture' has been indirectly inserted by way of exclusion clause (F) which reads as follows:

"any goods which have no relationship whatsoever with the manufacture of a final product".

Therefore, though this clause in the new definition of input does not require any nexus or relationship to manufacture, it appears to expand the scope of the definition to include all goods used by the manufacturer within the factory. However, in view of the above referred specific exclusion stating any goods which have no relationship whatsoever with the manufacture of a final product, it is clear that indirectly, the nexus to manufacture has been brought in. Therefore in that manner more or less the scope of the new definition have the same characteristics as that of old provisions, with some specifics so as to cover those goods which are 'in or in relation to manufacture'.

In this context, one can refer to the decision of Supreme Court in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. S.T.O.* – (1997) 91 E.L.T. 34, wherein it was held that the expression "in the manufacture of goods" should normally

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encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process or activity is so integrally related to the ultimate manufacture of goods, so that, without that process or activity, manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the said process or activity would fall within the expression "in the manufacture of goods". They need not be ingredients of commodities used in the process, nor must they be directly and actually needed for turning out the creation of goods.

In CCE v. Rajasthan Chemical Works - 1991 (55) E.L.T. 444 the Supreme Court while deciding on the scope of the term 'in relation of manufacture' held that even processes like handling of raw materials would be a process in relation to manufacture if it is integrally connected with further operations leading to manufacture of end products.

In Indian Farmers Fertilizers Co-op. Ltd. v. CCE - 1996 (86) E.L.T. 177, the Supreme Court had to decide whether raw naphtha used in offsite plants to produce ammonia which is in turn used in water treatment plant, steam generation plant, effluent treatment plant and inert gas generation plant could be eligible for the benefits of exemption notification which was issued exempting ammonia used for manufacture of fertilizers. The Supreme Court specifically held that water treatment plant, steam generation and inert gas generation plant are necessary parts of the process of manufacture of urea. They also held that pollution control plant is a part and parcel of the manufacturing process, in view of the emphasis laid on environmental protection.

Hon'ble Supreme Court in Flex Engineering v. CCE 2012 (276) E.L.T. 153 (S.C.) reversed the decision of High Court and held that testing was inextricably connected with manufacturing process, and until it was carried out, manufacturing process was incomplete, and machines were not fit for sale and hence not marketable. Accordingly, goods used for testing machines were inputs used in relation to manufacture of final product and is eligible for credit.

**Clause (ii) – Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products;**

Under this clause, the accessories which are cleared along with the final product are eligible for CENVAT credit. The term 'accessory' is not defined in the Rules, and hence we can refer to the dictionaries for the same and the

term “accessories” is defined in the Oxford English Dictionary as something contributing in a subordinate degree to a general result or effect as distinguished from parts which are essential to make the commodity.

Presently, all those accessories are supplied along with the final product are covered provided their value is included in the value of excisable goods. Therefore, accessories which are cleared after clearance of the final products, will not be eligible for CENVAT credit. The Supreme Court has held in *CCE v. Jay Engg. Works Ltd.* – (1989) 39 E.L.T. 169, that the name plates affixed on fan are eligible input since they are essential for marketing the fans. This view was reiterated by the Supreme Court in *HMM Ltd. v. CCE* (1994) 74 E.L.T. 19, wherein it was held that metal screw cap put on Horlicks bottle is a component part of the finished product. In *Banco Products (India) v. CCE* (2009) 235 E.L.T. 636 (Tri.-LB) it was held that plastic crates used as material handling equipment were eligible to CENVAT credit on the ground that the only criteria for an object to be held as an accessory is that a particular item should be capable of being used with a machine and should advance the effectiveness of the working of that machine.

It is clarified in the Explanation that, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer. Therefore, these also will be eligible for credit.

**Clause (iii) - All goods used for generation of electricity or steam or pumping of water for captive use:**

This clause includes all goods which are used for generation of electricity or steam for captive use by the assessee and this has been there from 16.3.1995 under MODVAT scheme as well by way of Explanation to Rule 57A. In *Ballarpur Industries Ltd. v. CCE* (2000) 116 E.L.T. 312, the Larger Bench of the Tribunal and in *Reliance Industries Ltd. v. CCE* (1997) 93 E.L.T. 213 (T-WZB) held that furnace oil, light diesel oil and low sulphur heavy stock used as fuel in producing steam which in turn is used in the manufacture of final products is eligible for credit.

Presently, clause (iii) covers ‘all goods used for generation of electricity or steam for captive use’ and there is no condition that the term ‘all goods’ referred above should be used within the factory, what is required is that the electricity generated should be captively used. In this context, the Supreme Court in the case of *Jaypee Rewa Cement v. CCE* (2001) 133 E.L.T. 3 has held that even inputs used outside the factory premises but essential for the

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manufacturing process are eligible for CENVAT credit and referred to the Explanation contained in Rule 57A and held that it is merely meant to enlarge the meaning of the word 'input' and does not in any way restrict the use of the input within the factory premises nor does it require the inputs to be brought into the factory premises at any point of time and held that inputs even used in the manufacture of intermediate product which product is then used for the manufacture of a final product, is entitled for MODVAT credit. Similarly in *U.O.I. v. Hindustan Zinc Ltd.* (2002) 142 E.L.T. 289 the Supreme Court has held that explosives used in blasting operations for producing lime stone which is used to produce cement will be eligible for CENVAT even though used outside the factory premises where the cement is produced.

This view was affirmed by the Supreme Court in *Vikram Cements v. CCE* – (2006) 194 E.L.T. 3 (S.C.) wherein it was held that utilization only within factory premises is not necessary since there is no difference between the MODVAT and CENVAT schemes and overruled the Supreme Court's judgement in *J.K. Udaipur Udyog Ltd.*, 171 E.L.T. 289 and approved Jaypee Rewa Cement judgment. Further the Supreme Court interpreted the phrase 'within the factory of production' to mean that only such generation of electricity/steam which is used within factory would qualify as intermediate product and use of inputs in generation of electricity/steam is not qualified by the phrase 'within the factory of production'. The Apex Court reiterated the above view and followed the above decision in its subsequent judgement *Vikram Cements v. CCE* (2006) 197 E.L.T. 145 (S.C.).

Consequent to amendment of the definition of 'input' w.e.f., 1.4.2016, all goods used for pumping of water for captive use shall qualify as inputs even if located outside the factory. Accordingly, similar to generation of electricity / steam, all goods which are used for 'pumping of water' will also get covered under the definition of 'input' subject to the condition that the water so pumped is captively used by the manufacturer.

#### **Clause (iv) - All goods used for providing any output service:**

This clause covers all goods used for providing any output service and there is no requirement that the same should be used within the 'premises' of the service provider unlike the manufacturer.

The term 'output service' is defined in Rule 2(p) to mean any taxable service provided by the provider of taxable service excluding services -

- specified in section 66D of the Finance Act

## *Inputs*

- where the whole of service tax is liable to be paid by the recipient of service

### **Clause (v) - all capital goods which have a value upto ten thousand rupees per piece;**

It is relevant to note that under clause (v) w.e.f., 1.4.2016, all capital goods which have a value upto ten thousand rupees per piece would now qualify as inputs. Accordingly, under the exclusion list, Clause (C) has been amended to state that all 'capital goods' would be excluded from the definition of 'input' except the following:

- (i) used as parts or components in the manufacture of a final product; or
- (ii) the value of such capital goods is upto ten thousand rupees per piece;

In view of the above referred amendment, w.e.f., 1.4.2016 all capital goods having value up to ₹ ten thousand per piece have been included in the definition of inputs. In view of the aforesaid amendment, the assessee would be eligible to take whole credit (100%) on such capital goods in the same year in which they are received as far as the capital goods having value upto ₹10,000/-.

### **Exclusions:**

The following goods are excluded from purview of inputs -

- (A) Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol.
- (B) Any goods used for-
  - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) laying of foundation or making of structures for support of capital goods.

However, goods used for provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Finance Act, 1994 are eligible for credit.

- (C) Capital goods, except when,-
  - (i) used as parts or components in the manufacture of a final product; or
  - (ii) the value of such capital goods is upto ten thousand rupees per piece;

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- (D) Motor vehicles; (they are covered as capital goods already for certain purposes)
- (E) Any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- (F) Any goods which have no relationship whatsoever with the manufacture of a final product.

It is relevant to note that as the definition has both 'inclusive' and 'exclusive' part, as regards the specific exclusions, they would get excluded irrespective of the scope of 'means and includes' part of the definition. In this context, reference may be made to the decision of the Supreme Court in the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., AIR 1987 SC 1023. In the above referred case, Supreme Court had to interpret the definition of the term 'prize chit' which was defined only 'inclusively' for examining whether the Endowment Scheme piloted by the company falls within the definition of 'prize chit' which is banned under Section 3 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The term 'Prize Chit' was defined under section 2(e) to include certain types of transactions and for specified purposes which were listed in two clauses thereunder. Further, there was a specific exclusion at the end of the said definition stating *'but does not include a conventional chit'*. The Supreme Court observed that the word 'includes' was intended not to expand the meaning of 'prize chit' but to cover all transaction or arrangements of nature of prize chits but under different names. In the above background, The Supreme Court had stated that 'interpretation must depend on the text and the context as they are the bases of interpretation'. Hence, it can be concluded that when there is express exclusion clause, all such exclusions would get excluded irrespective of 'means and includes' part of the definition.

**Each of the above exclusions are dealt with in detail hereunder:**

**Clause (A) - Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol:**

Presently, under CENVAT Credit Rules, 2004 LDO, HSD, motor spirit commonly known as petrol and motor vehicle used for providing output services are excluded from the definition of inputs and hence no CENVAT credit shall be availed on the same as well.

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It is relevant to note that even though 'fuel' is one of the important raw material in the manufacturing activity, historically under MODVAT Rules there have been restriction on taking credit on fuel like HSD and subsequently the restriction was extended to Petrol and LSHS - Low Sulphur Heavy Stock.

*In Sangam Spinners Ltd. v. UOI* (2011) 266 E.L.T. 145 (S.C.), the issue was in relation to retrospective validation of denial of credit on HSD used in electricity generation from 16-3-1995 to 1-4-2000, by Finance Act, 2000. Notification Nos. 5/94-C.E. (N.T.) and 8/95-C.E. (N.T.) issued under Rule 57A specifically excluded HSD from list of eligible inputs credit. Though second proviso to Rule 57D allowed credit on inputs used in electricity generation, inputs like HSD were specifically excluded by another notification of the same date. However, the Supreme Court upheld the validity of retrospective amendment on the basis that the intention to not allow credit on HSD was very clear.

**Clause (B) - Any goods used for-**

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
- (b) laying of foundation or making of structures for support of capital goods

**Goods used for provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Finance Act, 1994 are eligible.**

It is relevant to note that from the beginning there were no express restrictions on the goods like cement and steel which were used in the construction of building or structure and there had been conflicting decisions of Tribunal regarding eligibility to avail CENVAT credit on cement and steel which are used in construction of building or laying of foundation for plant and machinery.

In order to put this matter to rest, vide notification No. 16/2009 C.E.(N.T.) dated 07.07.2009 the Central Government has amended the definition of inputs to exclude steel and cement articles used for construction of building, laying foundation or making support structures, from purview of inputs.

As regards the period prior to 7.7.2009, the Larger Bench of Tribunal in Vandana Global Vs CCE, Raipur 2010 (253) E.L.T. 440 (Tri. - LB) has held that the cement and steel items used for laying foundation and for building

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structural support are not covered under inputs even for period before amendment from 7-7-2009 on the basis that Explanatory Memorandum presented to Parliament, amending notification and departmental clarification showing that cement and steel items used for construction of shed, building or structure for support of capital goods were never intended to be included under "inputs".

However, the judgment of the Larger Bench in *Vandana Global Limited* (supra), is no longer a good law in view of the judgment rendered by the Supreme Court in the case of *Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Limited*, reported in [(2010) 255 E.L.T. 481 (S.C.)] and therefore the Tribunal in CCE, *Visakhapatnam-II v. A.P.P. Mills Limited*, reported in [2013 (291) E.L.T. 585 (Tri.-Bang.)], held that the Larger Bench decision of the Tribunal, in the case of *Vandana Global Limited* (supra), was no longer a good law in certain respects. The Calcutta High Court in *Surya Alloy Industries Ltd., v. Union of India* (2014) 305 E.L.T. 47 (Cal.) disapproved the decision of the Larger Bench of the Tribunal.

The definition of 'input' was recast w.e.f., 1.4.2011 vide Notification No. 3/2011-CE(NT) dated 1.3.2011 wherein the present form of definition was introduced and subsequently, w.e.f., 1.7.2012 this clause was amended to specifically provide that all goods which are used for:

- (a) construction or execution of a works contract of a building or a civil structure or a part thereof; or
- (b) laying of foundation or making of structures for support of capital goods

will not be eligible as inputs. However, goods used by the service provider engaged in 'Construction Services' and 'Execution of works contract services' is allowed to avail CENVAT credit on all goods used in construction services by making the above referred exclusion inapplicable to them. This will apply where they do not take the benefit of any exemption notification and discharge service tax on the entire value.

**Clause (C) - Capital goods except when, (i) used as parts or components in the manufacture of a final product; (ii) the value of such capital goods is upto ten thousand rupees per piece;**

This clause was introduced for the first time w.e.f., 1.4.2011 to specifically exclude availment of CENVAT credit on 'capital goods' under the category of 'input'. However, till 31.03.2016, there was only one exception regarding the



## *Inputs*

capital goods that are used as parts or components of a final product. Consequent to the amendment w.e.f., 1.4.2016, all capital goods whose value is upto ₹10,000/- also gets excluded and this an amendment corollary to inclusion of the capital goods (whose value is up to ₹10,000/-) under the definition of 'inputs' w.e.f., 1.4.2016.

Consequent to the above amendment, on a combined reading of the definition of capital goods and inputs, the following capital goods would be termed as 'input' and eligible for 100% credit in the year of receipt itself:

- (i) all capital goods which are used as component parts in the manufacture of final products;
- (ii) all capital goods whose value is upto ₹10,000/-.

Notwithstanding the above referred amendment, it is relevant to note that Hon'ble, Tribunal in *Digital Equipment's* case (1996) 86 E.L.T. 127 (T-SZB) held that small computers would be considered as a component part of large computers thereby, making them eligible for MODVAT credit as an input. Same was the view in *Waters India Pvt. Ltd. v. CCE* (2002) 147 E.L.T. 990 (T) wherein computers were held to be inputs used in the manufacture of HPLC.

### **Clause (D) - Motor vehicles:**

With reference to 'motor vehicles', readers may refer to the definition of 'Capital goods' as per Rule 2(a), wherein certain types of motor vehicles are covered as capital goods when used for certain purposes, while generally the same is excluded. This clause has specifically excluded the 'motor vehicles' as being termed as 'input' for availing CENVAT credit.

**Clause (E) - Any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee.**

This clause which was introduced w.e.f., 1.4.2011 excludes all goods viz., foods items and other goods which are used in:

- (a) guesthouse,
- (b) residential colony,
- (c) club or a recreation facility and
- (d) clinical establishment

when such goods are used primarily for personal use or consumption of any employee.

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It should be noted that in case the above referred places are located within the factory premises, then all the goods consumed at these places such as food items, house-keeping items, medicines etc. would have been covered under the definition of 'input' as per clause (i) of Rule 2(k) which specifically includes all goods which are used within the factory of manufacturer of final product. It appears that this amendment can only apply to such goods as are given to the employee as part of his salary package and if the cost is completely met by the company, the CENVAT credit would still be allowed. However, this interpretation has to be tested in a court of law.

#### **Clause (F) Any goods which have no relationship whatsoever with the manufacture of a final product.**

This is a residual exclusion wherein any goods which has no relationship whatsoever with the manufacture of final product would get excluded.

As mentioned in the discussion under clause (i) above, this particular exclusion indirectly brings back the nexus with the manufacture of final product. Therefore, the words 'in or in relation to manufacture' which was there prior to 1.4.2011 and the plethora of decisions on the above would be relevant. Therefore, it would be relevant to refer to Supreme Court decision in *Collector of Central Excise v. Solaris Chemtech Limited* (2007) 214 E.L.T. 481 (S.C.) while interpreting the phrase "in or in relation to the manufacture of final products" under Rule 57A of erstwhile Central Excise Rules, 1944 held that the words must be given a wide connotation. The Supreme Court held that the words "in relation to" which find place in Section 2(f) of Central Excise Act, 1944 have been interpreted to cover processes generating intermediate products and it is in this context that it has been repeatedly held that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods.

Further, the Supreme Court in *Jaypee Rewa Cement v. CCE* (2001) 133 E.L.T. 3 held that even inputs used outside the factory premises but essential for the manufacturing process are eligible for CENVAT credit.

## Other Important Decisions

In *CCE v. Ballarpur Industries Ltd.* (1989) 43 E.L.T. 804 (S.C.), the Supreme Court held that sodium sulphate used for chemical reaction at pulp stage is treated as raw material used in the manufacture of paper even though, sodium sulphate is burnt up and does not retain its identity in the end product. The Court specifically held that the test would be to see whether without the presence of the said raw material it would be possible to manufacture the end product.

The Madras High Court in *Ponds India Ltd. v. Collector* (1993) 63 E.L.T. 3 (Mad.) has held that the words "in relation to" must be given an extended meaning. Consequently, all processes which are preparatory in nature, but without which the manufacturing process cannot be carried on would also be in relation to manufacture.

In the case of *CCE v. Bharat Heavy Electricals Ltd.* (2004) 167 E.L.T. 265 (M.P.) it was held that in respect of foundry chemicals used in the manufacture of sand moulds which in turn are used in the manufacture of the final product, MODVAT credit will be allowed. It was held that the foundry chemicals need not necessarily be used in the manufacture of final product, but, they are definitely used 'in relation to the manufacture' of the final product.

In *M/s. West Coast Industrial Gases Ltd. v. Commissioner of Central Excise - 2003* (155) E.L.T. 11 (S.C.) in case of removal of durable containers / packing material on which CENVAT credit has been availed, Supreme Court held that reversal of credit either on proportionate basis or otherwise is not required as the utilization of input on which credit has been taken is not in dispute. The Board vide *Circular No 721/37/2003-CX., dated 6-6-2003* has also clarified that no duty shall be payable and no reversal of credit is also warranted on waste package/containers used for packing inputs, on which credit has been taken, when cleared from the factory of the manufacturer availing MODVAT/CENVAT credit.

The Patna High Court observed that, while the expression 'in manufacture of' denotes direct participation of the inputs in the manufacturing process resulting in the emergence of the final product, the words 'in relation to manufacture' convey the meaning of the indirect participation of the inputs in the manufacture of final product, subject to the condition that the indirect participation is essential to the manufacture of the final product. [*Tata Engineering and Locomotive Co. Ltd. vs. UOI* (1994) 72 ELT 525 (PAT)].

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In a fairly elaborate discussion and by taking into account the previously decided cases on the issue about the true scope of the expression 'in relation to manufacture', a Larger Bench of the Tribunal observed in *Union Carbide India Ltd. v. CCE (1996) 86 ELT 613 (New Delhi – CEGAT, LB)* as follows:

".....The wide impact of the expression "used in relation to the manufacture" must be allowed its natural play. Raw materials (as commonly understood) are used in the mainstream of entire process of converting raw materials into finished products or any other process integrally connected with the ultimate production of finished products. The purpose is certainly to widen the scope, ambit and content of "inputs" so as to attract the goods which do not enter directly or indirectly into the finished product but are used in any activity concerned with or pertaining to the manufacture of finished goods....."

## Chapter 4

# Input Service

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As discussed earlier, along with the definition of 'input', the definition of 'input service' was also recast w.e.f., 1.4.2011 vide *Notification No. 3/2011-CE(NT) dated 1.3.2011*. Subsequently, the same was amended w.e.f., 1.7.2012 in order to align it with the changes made in Service Tax law consequent to introduction of 'Negative List Scheme of Taxation'.

### Definition

The term 'input service' has been defined in Rule 2(l) of CCR, 2004, to mean "any service -

- (i) *used by a provider of [output service] for providing an output service; or*
- (ii) *used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

*and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;*

*but excludes, -*

- (A) *service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -*
  - (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*

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- (b) laying of foundation or making of structures for support of capital goods,  
except for the provision of one or more of the specified services; or*
- (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or*
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -*
  - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
  - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or*
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;*

*[Explanation.- For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]*

## **History and Analysis of the Definition:**

**From 10.9.2004 to 31.03.2011:**

Rule 2(l) defines "input services" to mean any service,-

- (i) used by a provider of output service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products [upto the place of removal] [upto 31-3-2008 read as "from the place of removal"],

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control,

### *Input Service*

coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

Further the definition includes a number of services provided in relation to the following :

- Setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,
- Advertisement or sales promotion,
- Market research,
- Storage upto the place of removal,
- Procurement of inputs,
- Activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security,
- Inward transportation of inputs or capital goods and outward transportation upto the place of removal.

It is pertinent to note that the definition of input service had a very broad scope prior to its amendment w.e.f. 01.04.2011 as there was specific clause namely 'activities relating to businesses' in the definition.

The Bombay High Court in the case of Coca Cola India Pvt. Ltd. (2009) 15 STR 657 (Bom.) has held as follows:

- The expression business is an integrated/continuous activity and is not confined or restricted to mere manufacture of a product. Activity in relation to business can cover all activities related to functioning of a business.
- The term business cannot be given a restricted definition to say that the business of a manufacturer is to manufacture products only. Business is of a wide import in fiscal statutes.
- CENVAT Credit on input stage goods and services is admissible as long as a connection between such goods and services is established. Any input service that forms a part of the value of final product should be eligible for CENVAT credit.

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- The definition of input service contains five categories/limbs and credit will be admissible if any one of the limbs is satisfied.
- The scope of the phrase "activity relating to business" is widened by the words "relating to". Qualifying words like "main activities or essential activities" are not employed in the Rule and any activity relating to business is covered under Input services subject to there being relation between manufacture of the final product and the activity.

In the context of 'input service' as it existed prior to 1.4.2008, in the case of ABB Ltd v. CCE, (2009)CESTAT830-(Bang.-LB), the Larger Bench of the Tribunal held that input services could fall into following five categories:

- (a) Services used by manufacturer whether directly or indirectly, in or in relation to the manufacture of final products
- (b) Services used by manufacturer whether directly or indirectly, in clearance of final product
- (c) Services used in relation to setting up or modernization of factory or office etc.
- (d) Service used in relation to advertisement, sales promotion activity etc.
- (e) Services used in relation to activities relating to business

Further, the Tribunal observed that each of the above categories is independent and that the assessee can avail the benefit under any of the above categories and it is not restricted that it should be used directly in relation to manufacture or provision of services. The above decision dealt with the eligibility of outward transportation as 'input services' and it was held that the definition of 'input service' has to be interpreted in the light of the requirements of business and it cannot be read restrictively so as to confine only upto the factory or upto the depot of the manufacturers. Further, it was held that the term 'activities relating to business' has a wide import and it includes both essential and auxiliary services.

The above decision of the Larger Bench of the Tribunal has been upheld by the High Court of Karnataka in CCE & ST, Bangalore v. M/s ABB Ltd (2011)-TIOL-395-HC-KAR-ST wherein it has been held that outward transportation of finished goods from the place of removal is covered by the definition of 'input service' upto 31.03.2008 and the service tax paid thereon is eligible for CENVAT Credit during the relevant period. But on certain aspects, the High Court differed with the Tribunal.



### *Input Service*

Consequent to the substitution of the definition of input services vide *Notification No. 3/2011-C.E. (N.T.), dated 1-3-2011* and its subsequent amendment w.e.f., 1.7.2012, we have to analyze the scope of the same.

It is relevant to note that similar to the definition of 'input', the definition of 'input service' has both 'inclusive' as well as 'exclusive' part apart from the 'means' part.

As the said definition of 'input service' has been primarily defined by way of 'means and includes' with certain exclusions, we have to examine the scope of such types of definitions. In this context, we can refer to the decision of Supreme Court in *Jagir Singh v. State of Bihar AIR 1976 SC 997* wherein it was held that where a definition has both 'means' and 'includes' then such definition is exhaustive as held with regard to the definition of 'owner' in Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 which is defined as both 'means and includes', it was held that such definition could not be applied to exclude the actual owner. It is clear that means part of the definition cannot be restricted by the inclusive part of the definition.

In this context, there are a plethora of decisions holding that 'means' part of the definition cannot be restricted by 'inclusive' part of the definition and reliance is placed on the following decisions of the Apex Court:

- (i) In *Black Diamond Beverages v. Commercial Tax Officer AIR 1997 SC 3550*, the Supreme Court held that the natural meaning of the 'means' part of the definition is not narrowed down by the 'includes' part.
- (ii) In *State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610* it was stated thus: "It is obvious that the words used in an *inclusive definition* denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restricted interpretation upon terms of wider denotation.
- (iii) In *CIT, AP v. Taj Mahal Hotel, Secunderabad AIR 1972 SC 168*, Supreme Court held: "*The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include*".

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- (iv) In *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union* [(2007) 4 SCC 685], the Supreme Court held that *'when the word "includes" is used in the definition, the legislature does not intend to restrict the definition. It makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise'*

Therefore, as the definition has both 'inclusive' and 'exclusive' parts, as regards the specific exclusions, they would get excluded irrespective of the scope of 'means' and 'inclusive' parts of the definition. In this context, reference may be made to the decision of the Supreme Court in the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*, AIR 1987 SC 1023 already discussed in the previous Chapter on inputs.

**Analysis of the definition of 'input service' after substitution w.e.f 1-4-2011 and its subsequent amendments:**

For the purpose of better understanding we have to analyze the newly substituted definition of 'input service' under the following three limbs:

- (i) Means part;
- (ii) Inclusion part;
- (iii) Exclusion part.

**The 'means' part:**

Following are considered as input services :

- (i) Services used by a provider of output service for providing an output service; or
- (ii) Services used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

In the above definition, the first clause deals with the definition of 'input services' with regard to provider of output services. It is provided that all the services which are used for providing the output services would be eligible for availment of CENVAT credit under CENVAT Credit Rules, 2004. In this context, it would be relevant to understand the definition of 'output service' as given in Rule 2(p) of CENVAT Credit Rules:

### *Input Service*

As per Rule 2 (p), "Output service" means any service provided by a provider of service located in the taxable territory but shall not include a service, -

- (1) specified in section 66D of the Finance Act; or
- (2) where the whole of service tax is liable to be paid by the recipient of service.

As the 'negative list' of services listed in Section 66D and those services in respect of which the whole of service tax is liable to be paid by 'recipient of service' (services where 'recipient of service' is liable to tax on reverse charge basis) are clearly excluded from the definition of 'output service', no CENVAT credit could be availed on those input services which are used for providing those services which are not liable to service tax as being in the 'Negative List' as well as those services which are subject to full 'reverse charge'.

It is relevant to note that the restriction on utilizing CENVAT credit for payment of service tax payable by 'recipient of service' under reverse charge has been introduced w.e.f., 1-7-2012. This restriction has been expressly introduced w.e.f., 1.7.2012 in order to restrict the utilization of CENVAT credit for payment of service tax on any taxable services notified under section 68(2) of Finance Act, 1994. Though initially there was possibility for the service receivers who were also made liable to pay service tax to utilize the CENVAT credit for making payment of their tax liability, which was also upheld by number of decisions, an explanation was introduced in Rule 3(4) of the rules to say that CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. This was due to the fact that Rule 2(r) defines "provider of taxable service" to include a person liable for paying service tax. Rule 2(q) states that "person liable for paying service tax" has the meaning as assigned to it in clause (d) of sub-rule (1) of Rule 2 of the Service Tax Rules, 1994.

The second clause provides that the manufacturer of excisable goods can avail the credit on 'input services' if such services are covered by the above definition which defines any services which are used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal (prior to 1.4.2008 'from the place of removal'). This clause is similar to the erstwhile definition of 'input' (prior to 1.4.2011) which covered all inputs having nexus with manufacture of final products and therefore all the landmark decisions which were discussed therein regarding 'in or in relation to manufacture of final products' would equally apply for 'input service' as well.

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In *Commr. of C. Ex. & Service Tax, LTU, Bangalore v. Micro Labs Ltd.* (2011) 270 E.L.T. 156 (Kar.) it was held by the Karnataka High Court that merely because services are not specified in input service definition, credit is not deniable. Service tax paid on all those services which the assessee has utilised directly or indirectly in or in relation to manufacture of final product is eligible as credit under Rule 2(l) of CENVAT Credit Rules, 2004.

Hon'ble Bombay High Court in the case of *Deepak Fertilizers and Petrochemicals Corpn Ltd., Vs CCE, Belapur 2013 (32) S.T.R. 532 (Bom.)* while disagreeing with the decision of Tribunal, held that the scope of the definition 'input service' wherein the words 'directly or indirectly' and 'in or in relation to' used are words of width and amplitude, hence the Rule 2(l) *ibid* must be read in its entirety, and no interpretation can be given which is contrary to its plain and literal meaning. It was more so as this broad and comprehensive meaning had to be read with Rule 3(1) *ibid* wherein only stipulation is that input service should be received by manufacturer of final product. High Court held that the subordinate legislation has advisedly used a broad and comprehensive expression while defining the expression 'input service'. Rule 2(l) initially provides that input service means any services of the description falling in sub-clauses (i) and (ii). Rule 2(l) then provides an inclusive definition by enumerating certain specified services. Among those services are services pertaining to the procurement of inputs and inward transportation of inputs. The inclusive part of the definition enumerates certain specified categories of services. However, it would be farfetched to interpret Rule 2(l) to mean that only two categories of services in relation to inputs viz. for the procurement of inputs and for the inward transportation of inputs were intended to be brought within the purview of Rule 2(l). Rule 2(l) must be read in its entirety. The input services in the present case were used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products.

It is clear from the above referred decision of Bombay High Court that the definition of 'input service' has to be read in its entirety and must be read with the broad and comprehensive meaning of the expression 'input service' in Rule 2(l) within the ambit of the 'means part' of the definition of input services where they are used by the appellant whether directly or indirectly, in or in relation to the manufacture of final products.

#### **The 'inclusive' part:**

Apart from the above, input services includes

- Services used in relation to modernization, renovation or repairs of a factory or office or premises relating to such factory

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- Services used in relation to modernization, renovation or repairs of premises of service provider or office relating to premises of service provider.
- Advertisement or sales promotion, market research,
- Storage upto the place of removal, procurement of inputs,
- Accounting, auditing, financing, recruitment and quality control,
- Coaching and training, computer networking, credit rating, share registry,
- Security, business exhibition, legal services,
- Inward transportation of inputs or capital goods and outward transportation upto the place of removal;

It is pertinent to note that the services relating to 'setting up' of factory or office as the case may has been omitted w.e.f., 1.4.2011 and services relating to modernisation, renovation or repairs of a factory or office or premises would continue to get covered under the definition. Therefore, presently, all services relating to 'setting up' of a factory or office premises are not covered under the definition of 'input service.

Similarly, the terminology "activities relating to business such as" is conspicuous by its absence w.e.f, 1.4.2011. With this deletion, the broad and all-embracing clause has been removed. However, the main clause of the definition is still wide enough to cover all input services used in or in relation to manufacture of final products or used for providing output services.

As regards 'sales promotion', an Explanation has been inserted w.e.f., 3.2.2016 stating that 'sales promotion includes services by way of sale of dutiable goods on commission basis'. This explanation enables the manufacturer to avail Cenvat credit on the service tax paid on 'sales commission' to overcome the decision of Gujarat High Court in Commissioner v. Cadila Healthcare Ltd. — 2013 (30) [S.T.R.](#) 3 (Guj.) wherein it was held that Commission paid not being related to sales promotion, appellant was not eligible to avail Cenvat credit.

#### **The 'exclusive' part:**

The definition specifically excludes following services from the ambit of input services :

**Sub-clause (A): Service portion in the execution of a works contract and construction services including services listed under clause (b) of**

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section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part of thereof; or
- (b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services;

This exclusion is similar to the one made in 'input' definition in Rule 2(k), this exclusion under 'input service' was introduced for the first time from 1.4.2011 and subsequently amended w.e.f., 1.7.2012 to align with 'Negative List of Taxation'.

All services which are used for 'construction or execution of works contract of a building or civil structure' or 'laying of foundation or making structure for support of capital goods' have been specifically excluded. It is relevant to note that there is no list of services which are mentioned, and hence, it includes all those services which are used for the above referred services.

As regards the services used for providing specified services of 'construction or execution of works contract' or 'laying of foundation', this exclusion will not apply to those service providers who are engaged in providing the very same services of 'construction or execution of works contract of a building or civil structure' or 'laying of foundation or making structure for support of capital goods' when they pay service tax on the entire value without availing benefits of exemption notifications.

**Sub-clause (B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods.**

It is relevant to note that prior to the amendment w.e.f., 1.4.2011, Rent-a-cab services was clearly covered under 'input service' as per the definition as it existed during the period up to 31.03.2011 and the same is supported by a number of precedents applicable to the period prior to 1.4.2011.

However, w.e.f., 1.4.2011, Notification No. 3/2011-C.E. (N.T.), dated 1-3-2011 has substituted the definition of 'input service', wherein clause (B) of the definition would be applicable to the Rent-a-cab services which initially read as follows:

*"(B) Specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods or;"*

The services which are mentioned in exclusion clause (B) are as follows:

- Rent-a-Cab operator services (o)
- Supply of tangible goods (zzzzj)

Consequent to amendment of clause (B), it appears that 'Rent-a-cab services' falling under sub-clause (o) would get excluded only when the motor vehicle is not a 'capital good'.

Subsequently, the above referred sub-clause (B) was substituted by sub-clauses (B) and (BA) vide Notification No.18/2012-CE (NT) dated 17.03.2012. Further these two sub-clauses were amended vide Notification No.28/2012-CE (NT) dated 20.06.2012 w.e.f., 1.7.2012 and the exclusion relating to 'cab services' is contained in sub-clause (B) reads as follows:

***(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or***

It is clear from the above that the exclusion of 'cab services' has been retained even after the above referred amendments and it appears from the last amendment w.e.f., 1.7.2012 that the intention of this clause is to exclude 'renting of motor vehicle' in so far as they relate to a motor vehicle which is not a capital goods.

For understanding this, it is relevant to examine the meaning of 'capital goods' as per Rule 2(a) sub-clauses (B) and (C) which read as follows:

*(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -*

- (i) providing an output service of renting of such motor vehicle; or*
- (ii) transportation of inputs and capital goods used for providing an output service; or*
- (iii) providing an output service of courier agency;*

*(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -*

- (i) transportation of passengers; or*
- (ii) renting of such motor vehicle; or*
- (iii) imparting motor driving skills;*

It appears that the credit on 'renting of motor vehicle' would be available only to those service providers who are entitled to avail CENVAT credit on motor

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vehicles as capital goods. All other assessee who are not qualified to avail credit on motor vehicle as capital goods are not entitled to avail input service credit on 'renting of motor vehicle'.

Even though sub-clause (B) has not been drafted clearly, it appears that the intention is to restrict CENVAT credit on 'renting of motor vehicles' to all except the 'service provider' who have got the motor vehicle registered in their name and using the vehicle for transportation of passengers or renting of motor vehicle or imparting motor driving skills.

Therefore, it appears that in the case of manufacturers and services providers (neither being cab operator nor having motor vehicles registered in their name) they are not eligible to avail CENVAT credit of service tax paid on transportation services received from cab operators or tour operators. Hence, the Cab operators / Tour operators would be eligible for credit on 'renting of motor vehicle' provided the said vehicles are registered in their own name and they are providing the above mentioned services.

**Sub-clause (BA) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -**

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person;

The services of 'general insurance business', servicing, repair and maintenance relating to a motor vehicle which is not a capital goods has been excluded.

It is clear from the definition of 'capital goods' that motor vehicle is termed as 'capital goods' in specified cases only:

Clause (viii) provides that motor vehicles other than those falling under Tariff Headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers] could be termed as 'capital goods'.

The above mentioned 'motor vehicles' qualify as capital goods if such goods are used in any of the following specified cases:

- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -
  - (i) providing an output service of renting of such motor vehicle; or



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- (ii) transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of courier agency;
- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -
  - (i) transportation of passengers; or
  - (ii) renting of such motor vehicle; or
  - (iii) imparting motor driving skills;

Therefore, CENVAT credit on general insurance service, servicing, repair and maintenance services on motor vehicle which is not a capital goods as defined above (i.e., manufacturers and service providers other than specified above who are not eligible to take credit on 'motor vehicle'), is not available to the assesses except the following:

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person;

**Sub-clause (C) Services such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or for consumption of any employee.**

This clause which was introduced for the first time w.e.f., 1.4.2011 provides that certain specified services as listed above are excluded from the definition of 'input services' **when such services are used primarily for personal use or for consumption of any employee.** Hence, all such services which are used **primarily for the personal use of any employee** such as services in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession have also been specifically excluded from the scope of the definition of input services.

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Following services are excluded when they are used primarily for personal use or for consumption of any employee:

- (i) Outdoor catering
- (ii) Beauty treatment
- (iii) Health services
- (iv) Cosmetic and plastic surgery
- (v) Membership of a club
- (vi) Health and fitness centre
- (vii) Life insurance & health insurance
- (viii) Travel benefits extended to employees on vacation such as Leave or Home Travel Concession.

In this context, it is relevant to note that in the case of *CCE v. Stanzen Toyotetsu India (P) Ltd.* (2001) 23 STR 444 (Kar) the High Court of Karnataka while holding that CENVAT credit would be available on outdoor catering services, transportation charges, rent-a-cab scheme and group insurance service, it was observed that as regards the CENVAT credit on "Group insurance services" – since the Workmen's Compensation Act, 1923 as well as the Employees' State Insurance Act cast an obligation on the employer to provide insurance to the employees, the same although a welfare measure is a statutory obligation cast upon the manufacturer and is hence cenvatable.

On the contrary, in Clause (C) 'health services' and health insurance have been specifically excluded if they are used primarily for personal use or consumption of any employee. On the basis of Karnataka High Court's decision, wherever there is a statutory requirement to provide the health services and health insurance, it appears that CENVAT credit could be taken.

Similar view was also taken in *CST v. M/s Team Lease Services Pvt Ltd* (2014)-TIOL-510-HC-KAR-ST wherein the High Court of Karnataka by following the two judgments of the Division Bench of Karnataka High Court in case of *Micro Labs Ltd.* (2011) (270) E.L.T. 156 (Kar.) and *Stanzen Toyotetsu India (P) Ltd.* (supra), held that CENVAT credit on health insurance being the Service tax paid on the Group Personal Accident and Group Medical Policies for the employees, is an Input service for a provider

of 'Manpower recruitment or Supply agency services'. However, the dispute related to the period prior to 1.4.2011.

Notwithstanding favourable decisions, in view of the specific exclusion clause under clause (C) of Rule 2(l) of CCR, 2004 w.e.f, 1.4.2011, no input service credit could be availed on the specified services if they are meant for personal consumption of the employees. However, it would be pertinent to note that what is disallowed seems to be such expenditure which forms part of the cost to the employees and not such expenditure incurred by the company on its own. Therefore, if the expenditure is incurred by the company, credit should be allowable.

In this context, it is relevant to note that Hon'ble Tribunal in the case of Hindustan Coca Cola Beverages Pvt Ltd., Vs. CCE, Nashik 2015 (38) S.T.R. 129 (Tri. - Mumbai) wherein the outdoor catering services were used by the assessee in relation to business activities, Revenue contended that the services are primarily used for personal use or consumption of any employee and is excluded under clause (C) of Rule 2(l) of Cenvat Credit Rules, 2004, Hon'ble Tribunal referred to the Board Circular No. 943/4/2011-CX., dated 29-4-2011, specifically used words such as "used primarily for personal use or consumption of any employee" and the outdoor catering service used in relation to business activities and the cost of such services was admittedly borne by appellant and not by the employee and therefore held that the appellant is eligible to avail Cenvat credit on 'outdoor catering services'.

### **Credit on outward freight - Position upto 31-3-2008**

Initially, clause (ii) in the 'means' part of the definition of input services was ending with the phrase 'clearance of final products from the place of removal' and hence there was no doubt regarding inclusion of outward transportation in the definition of 'input service'.

On the issue of eligibility of manufacturers to claim CENVAT credit on 'outward transportation', it has been held by Delhi Bench of the Tribunal in Gujarat Ambuja Cements Ltd. v. CCE., Ludhiana (2007) 212 E.L.T. 410 (Tri.-Del.) that input credit is not admissible on Goods Transport Agency services used to transport goods from factory or depot to customers premises. The Tribunal observed that freight is different from the activity of manufacture and hence credit on outward transportation is not admissible since it is beyond the point of place of removal.

However, the above view was disagreed by the Bangalore Bench of the Tribunal in India Cements v. CCE., Tirupati (2007) 216 E.L.T. 81 (Tri.-Bang.)

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which observed that in view of the definition of 'input service' which includes all services that are either directly or indirectly used in or in relation to manufacture and 'clearance' of goods from the place of removal, even the outward transportation would be covered under the term 'input services'. Further, it was observed that considering the inclusive nature of the definition of 'input service', its scope cannot be limited by the first limb of definition and hence credit on outward transportation is also admissible as input credit. However, in view of the conflicting views, the matter was referred to a larger Bench of the Tribunal.

On reference to Larger Bench in India Cements case (supra) regarding eligibility of input credit on outward transportation, the Larger Bench in the case of *ABB Ltd. v. CCE*. – (2009) 15 S.T.R. 23 (Trib. - LB) held that service tax paid on outward transportation of goods is also eligible for credit. The Larger Bench observed that input services have to be interpreted in the light of business requirements and cannot be read restrictively so as to confine it only upto factory or upto the depot of the manufacturer.

Finally, as regards the CENVAT credit on 'Outward transportation' for the period prior to 1.4.2008, the position now seems settled with the decision of the Karnataka High Court in *CCE v. ABB Ltd.* (2011) 23 S.T.R. 97 (Kar.) where it was held that credit is available on outward GTA for the period up to 31-3-2008. However, the Calcutta High Court has taken a contrary view in *CCE v. Vesuvius India Ltd.* (2014) 34 S.T.R. 26.

### **Credit on outward freight - Position after 1-4-2008**

In the background of a number of decisions favouring eligibility to avail CENVAT credit on 'outward transportation', there was an amendment of the term 'input service' w.e.f from 1-4-2008 wherein the 'means' part of the Input service definition in Rule 2(l) has been amended to limit the eligibility of credit relating to clearance activity of final products only up to the place of removal.

Therefore w.e.f. 1-4-2008 service tax paid on outward freight from the place of removal would not qualify as input service credit. Though the larger Bench of Tribunal had taken a view in the case of *ABB Ltd.*, that even the said activity was covered within the scope and term "activities relating to business", the High Court in *CCE v. ABB Ltd.* (2011) 23 S.T.R. 97 (Kar.) did not concur with the said view.

However, there is an interesting interpretation which was originally clarified by Department in Master Circular issued under Service Tax vide No.

97/8/2007-S.T., dated 23-8-2007, with reference to availability of credit on 'outward transportation', where it was clarified that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement

- (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
- (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and
- (iii) the freight charges were an integral part of the price of goods.

In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

Further in the case of *Ambuja Cements v. Union of India* (2009) (236) E.L.T. 431 (P & H), the High Court of Punjab and Haryana observed that Credit on outward freight is admissible if ownership of goods remain with seller till delivery at customer's doorstep. In this case the transit insurance was borne by appellant and property in goods did not get transferred to buyer till delivery to the buyer and freight charges formed part of value of excisable goods and borne by appellant as sale on FOR destination basis.

### **Insertion of new definition of 'place of removal'**

*Notification No.21/2014-CE (N.T.) dated 11.07.2014* has been issued for amendment of CENVAT Credit Rules, 2004 wherein one of the amendment is insertion of new definition of 'place of removal' under clause (qa) to Rule 2 to mean as under:

(qa) "place of removal" means-

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- (i) a factory or any other place or premises of production or manufacture of the excisable goods;*
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;*
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,*

*from where such goods are removed;*

It is clear from the above that the definition of 'place of removal' as per Section 4(3)(c) of Central Excise Act, 1944 has been reproduced in CENVAT Credit Rules, 2004. It appears that this insertion of the term 'place of removal' was necessitated due to the decision of Tribunal in the case of *Ultratech Cement Ltd v. Commissioner of Central Excise* (2014)-TIOL-478-CESTAT-DEL, wherein the CESTAT held that when duty is chargeable at specific rates, and not at ad-valorem rates under Section 4 of the Central Excise Act, 1944, the definition of 'place of removal' as given in Section 4(3)(c) of the Central Excise Act is not applicable and the 'place of removal' will be the factory gate. In such cases, CENVAT Credit cannot be allowed on service tax paid on GTA Service availed for outward transportation of the goods from the factory to Depot/Dump or the Customers' Premises.

By virtue of Circular No. 988/12/2014-CX dated 20.10.2014, the Board has clarified that place of removal would remain the place from which the goods are sold, which may mean factory gate or otherwise.

Further, vide Circular No. 999/6/2015-CX, dated 28-2-2015, it has been clarified that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

### **Eligibility of various services as upheld by Tribunal and Courts**

One of the earliest disputes under 'input services' is with regard to admissibility of CENVAT credit on 'mobile phones' which was mainly based

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on the erstwhile provisions of Service Tax Credit Rules, 2002, where it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises, read with the clarification to this effect issued vide Circular No. 59/8/2003-S.T., dated 20-6-2003 [2003 (155) E.L.T. T7]. However, this issue has been finally settled by the Tribunal in *Indian Rayon & Industries Ltd. v. CCE* (2006) 4 S.T.R. 79 (Tri.-Mumbai) which held that CENVAT credit of service tax paid on mobile phones is available as credit to eligible providers of output service and manufacturers in the absence of any express provision under the CENVAT Credit Rules, 2004" and also that "the Board's earlier Circular No. 59/8/2003 cannot be pressed into service against appellants. This view is also reiterated by the Department in Master Circular No. 97/8/2007-S.T., dated 23-8-2007.

A Larger Bench of the Tribunal in the case of *CCE. v. GTC Industries* (2008) 12 S.T.R. 468 (Trib. - LB) while holding that 'canteen' services are 'input services' for a manufacturer, also observed that all the activities relating to business are eligible as input service under the provisions of CENVAT Credit Rules, 2004. In the above case, Larger Bench of the Tribunal affirmed the view taken by the Tribunal in *Victor Gaskets India Ltd. v. CCE.*, (2008) 10 S.T.R. 369 (Tri. - Mumbai). Similar views were also expressed in the case of *Indian Card Clothing Co. Ltd. v. CCE* (2008) 11 S.T.R. 175 (Tri. - Mumbai). After the amendment of 1.4.2011, the position still gave rise to disputes. Further in the case of *Commissioner of C. E., Bangalore-III v. Tata Auto Comp Systems Ltd.* (2012) 277 E.L.T. 315 (Kar.), it was held that transportation service provided in the factory of assessee, to its staff for pick up and drop from their residence to the factory and vice versa, is an input service, in or in relation to manufacture, whether directly or indirectly of the final products within the meaning and comprehension of Rule 2(i) of CENVAT Credit Rules, 2004. Further in the case of *CCE., Nasik v. Cable Corporation of India Ltd.* (2008) 12 S.T.R. 598 (Tri.-Mumbai), the Tribunal while allowing the input credit on Rent-a-Cab service used for bringing employees to work in the factory of manufacture of goods, held that any facility provided to employees will result in greater efficiency and promotion of business. Since the definition of input service covers a plethora of other services relating to business, any facility provided to employees would get covered under the definition of input service. However, these decisions are of academic interest now as there is specific exclusion of 'renting of motor vehicle' w.e.f., 1.4.2011 vide clause (B) which is discussed below.

In the case of *Metro Shoes Pvt. Ltd. v. Commissioner of Central Excise, Mumbai* - 2008 (10) S.T.R. 382 (Tri.-Mumbai) it was observed that agent's

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commission, GTA, advertising, clearing and forwarding, telephone, internet and courier charges are eligible as input services. The Court further held that any input service used by the manufacturer whether directly or indirectly in or in relation to manufacture and clearance from the place of removal is covered by the definition is and eligible for credit.

In the case of *Deloitte Tax Service India Pvt. Ltd. v. CCE, Hyderabad* - 2008 (11) S.T.R. 266 (Tri.-Bang) it was observed that the definition of input service has a very broad scope. Services such as equipment hiring charges, professional consultation service, recruitment services, security services, telephone services, transport services, training services, facility operation service, courier services, cafeteria service, other input services like advertisement service, recruitment service and security service are clearly eligible as input service and qualify for CENVAT credit.

In the case of *Victor Gaskets India Ltd. v. CCE* (2008) 10 S.T.R. 369 (Tri. - Mumbai) it was held that although coaching and training, credit rating, catering service are not directly or indirectly related to manufacturing activity, they qualify as input credit since they are incurred in relation to business. It was further observed that the expression 'such as' in Rule 2(1) of CENVAT Credit Rules, 2004 means stipulated activities that follow the expression are only illustrations and not limitations and therefore any service which is used in relation to business qualifies as input credit irrespective of whether they are directly or indirectly used in relation to manufacture /providing out service or not.

In the case of *Wiptech Pheriperals Pvt. Ltd. v. CCE, Rajkot* (2008) 12 S.T.R. 716 (Tri.-Ahmd.), it was held that cell-phone, landline telephone, courier services are essentials for providing maintenance service and service tax paid on the same is eligible for credit.

The Tribunal in the case of *CCE., Rajkot v. Rolex Rings P. Ltd.* (2008) 230 E.L.T. 569 (Tri.-Ahmd.) held that CHA and Surveyors' services are utilized at the time of the export of the goods and the exporter would continue to remain the owner of the goods in question till the same are exported. As such, it can be reasonably concluded that the place of removal in case of exported goods is the port area and the service of CHA and Surveyor would be eligible as input service.

In *CCE v. Mankgarh Cement* (2009)-TIOL-614 (CESTAT-Mum) CENVAT Credit on input services such as repairs and maintenance, civil construction, manpower recruitment, cleaning services, etc. provided for residential colony was allowed. Unfortunately, this decision was set aside by the Bombay High



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Court as reported in (2011) 20 S.T.R. 456 (Bom.) on the ground that welfare activities are not related to business and it was held that service tax paid on services of repair, maintenance and civil constructions used in the residential colony is not admissible as these expenses do not have nexus with the business of the assessee. The court observed that establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(l) of CENVAT Credit Rules, 2004 refers to activities which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

On the contrary, it is relevant to note that the Karnataka High Court in *Toyota Kirloskar Ltd. v. CCE* (2011) 24 S.T.R. 645 and *CCE v. Stanzen Toyetsu Ltd.* (2011) 23 S.T.R. 444 considered in detail why staff welfare and other expenses are necessary. Further, there is a favourable decision by AP High Court in *CCE v. ITC Ltd.* (2013) 32 S.T.R. 288 (A.P.) which held that the CENVAT credit on various services relating to maintenance of residential colony could be availed.

In the case of *Millipore India Ltd. v. Commissioner of Central Excise, Bangalore-II*, (2009) 236 E.L.T. 145 (Tri.-Bang.) the Tribunal held that medical and personal accident policy, group personal accident policy, insurance, accident policy, personal vehicle services, landscaping of factory garden, catering etc. would also qualify as input services. These expenses are business expenses and are considered as costs of product as per the CAS-4. The Tribunal further observed that even modernization, renovation and repair etc. of office premises and landscaping around the factory are included in the Input services. This decision was maintained by Karnataka High Court in *CCE, Bangalore-II v. Millipore India Pvt Ltd.*, (2012) 26 S.T.R. 514 (Kar.).

In *CCE v. Ultratech Cement Ltd.* (2011) 21 S.T.R. 297 (Tri.-Mumbai) it was held that in the definition of the 'Input Service' in rule 2(l) of the CCR, 2004, nowhere it is mentioned that input service credit is not available for the services utilized outside the factory premises. Therefore, repair and maintenance service used for running a water pump situated at the bank of the Wardha river was held to be an input service. Similarly, it was held that the credit on account of services used for construction, erection, installation

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and other services like maintenance and repairs of the Fly Ash Plant situated outside the factory premises was admissible in *CCE v. Ultratech Cement Ltd.* (2012) 278 E.L.T. 523 (Tri.-Mumbai) = (2010) 20 S.T.R. 683 (Tri.-Mumbai).

In *KPMG v. CCE*, New Delhi (2014) 33 S.T.R. 96 (Tri. - Del.) the Tribunal did not accept the Revenue's contention that the functional utility and integral nexus of input to final product to be considered for entitlement to CENVAT credit in view of the difference between the definition of 'Input' and 'Input service' under CENVAT Credit Rules, 2004. It was held that input service is defined illustratively and not restrictively; Further, the Tribunal referred to CBEC Circular dated 29-4-2011 where it is clarified that the restriction incorporated on availment of CENVAT credit is only with effect from 1-4-2011 which is subsequent to the period in dispute.

In *DSCL Sugar v. CCE*, Lucknow (2014) 34 S.T.R. 58 (Tri. - Del.) the Tribunal held that in the context of CENVAT credit on 'input' vis-à-vis 'input services', the standard of nexus to be judged between input and manufactured goods will be different from the standards for input services because inputs are tangibles and input services are intangible.

In case of *Goodyear India Ltd. Vs. CCE*, Delhi IV 2015 (321) ELT 320 (Tri. – Del.) in the context of input services received towards car parking availed by appellant at their Head office for parking of cars of management, Tribunal held that the activity is directly related to the business of manufacturing of appellant and hence Cenvat credit is admissible.

In *ZF Steering Gear (India) Ltd. Vs. CCE*, Pune-III 2015 (317) ELT 580 (Tri. – Mumbai) wherein the services of Annual Maintenance of Wind Mill, installed outside factory by assessee for use of electricity generated by it, on transfer through State Electricity Board, therefore Tribunal held that the assessee was entitled to take Cenvat credit on annual maintenance charges of wind mill as it was not disputed that electricity so generated was used by assessee in course of business of manufacturing. Department plea that as electricity was given to State Electricity Board, and only equivalent electricity was taken from it, electricity generated by wind mill was not used for manufacturing of final product was rejected by Tribunal.

## Chapter 5

# Duties and Taxes Eligible for Credit

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Rule 3 of CENVAT Credit Rules, 2004 provides that a manufacturer or provider of output service shall be allowed to take CENVAT credit of any of the following duties paid on inputs or capital goods and service tax paid on input services:

Sl. No.	Duties and Taxes on which CENVAT credit is available
1.	Duty of Central Excise levied in terms of First Schedule to Central Excise Tariff Act
2.	Additional duties of excise in terms of Second Schedule to Central Excise Tariff Act
3.	Additional excise duty under Additional Duties of Excise (Goods of Special Importance) Act, 1957( GSI) & TTA
4.	Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978); TTA
5.	National Calamity Contingent Duty
6.	The additional duties of Customs levied in terms of Section 3 of Customs Tariff Act, (CVD) equivalent to 1-6 above
7.	Special Additional duty of customs (SAD) levied in terms of Section 3(5) of Customs Tariff Act
8.	Service tax paid in terms of Section 66,66A or Section 66B of Finance Act, 1994
9.	Krishi Kalyan Cess on taxable services is eligible to service provider

Essentially, only the assessee who are either engaged in the activity of manufacture of goods or provider of taxable services would be eligible to avail CENVAT credit.

### Important aspects under Rule 3(1), (2) and 3(3)

#### (a) Certain restrictions under Rule 3(1) for availment of credit

The credit availment of the above duties or taxes is subject to following restrictions:

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- Credit of duty of excise shall not be allowed in respect of :
  - (a) goods on which the benefit of an exemption under *Notification No. 1/2011-C.E., dated the 1<sup>st</sup> March, 2011* is availed;
  - (b) goods specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under *Notification No. 12/2012-C.E., dated the 17<sup>th</sup> March, 2012* is availed;
- Service provider shall not be allowed to avail credit of additional duty of customs paid under Section 3(5) of Customs Tariff Act.

#### **(b) Credit on goods used by job worker manufacturing intermediate products**

Rule 3(1) provides for availment of credit of the above referred duties paid by the principal manufacturer on inputs and input services used by the job worker who avails exemption under Notification No. 214/86-CE. Such availment of credit would be permitted on receipt of the intermediate goods for further manufacture by the principal manufacturer.

#### **(c) Provider of output services can avail Cenvat credit on Krishi Kalyan Cess**

New sub-rule (1a) has been inserted w.e.f., 1<sup>st</sup> June 2016 to provide that a provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016).

#### **(d) Credit on goods lying in the stock when goods / services become taxable**

Rule 3(2) and Rule 3(3) provide that where goods / services were not liable or exempt but are brought to tax from a specific date, then in such case, manufacturer / service provider could avail credit on inputs lying in the stock as on the date from when the duty/ tax attracts.

### **Utilisation of Credit**

**Rule 3(4)** outlines the various ways in which the CENVAT credit taken can be utilized. As per Rule 3(4) CENVAT credit so availed can be utilized for payment of-

- (a) Excise duty on any final product
- (b) CENVAT credit reversal on removal as such – inputs and capital goods

- (c) an amount under Rule 16(2) of Central Excise Rules, 2002; or
- (d) Service tax on any output service

**Credit as at the end of the month / quarter shall be utilized**

It should be noted that, the credit as available as at the end of the month/quarter as the case may be utilized for the payment of duty or tax. In other words, even though the date of payment of tax or duty is 5<sup>th</sup> day of next month, the credit that could be utilized would get restricted to the amount of credit as available as at the end of the previous month.

**Whether 'One to one' correlation is required between availment and Utilisation?**

**A. Credit on inputs and input service can be utilized for payment of duty on other goods**

In general, no 'one to one' correlation is required between availment and utilisation except as mentioned in rule 3. The Proviso also states that the CENVAT credit of the duty of excise or service tax paid on the inputs or input services used in the manufacture of final products cleared after availing of the exemption under following notifications shall be utilized only for payment of duty on final products cleared after availing of the exemption under such notifications:

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]

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Consequent to introduction of 'Infrastructure Cess' vide Finance Act, 2016 w.e.f., 1.3.2016, it is specifically provided that Cenvat credit shall not be utilized for payment of Infrastructure Cess.

It is relevant to note that Swachh Bharat Cess was notified w.e.f., 15<sup>th</sup> November 2015 under Section 119 of Finance Act, 2015 vide 21/2015-ST dated 6.11.2015. Consequently, new proviso has been inserted w.e.f., 3.2.2016 to Rule 3(4) stating that the Cenvat credit of any duty specified in sub-rule (1) of Rule 3 shall not be utilised for payment of Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015.

Similarly, after introduction of new cess called Krishi Kalyan Cess vide Finance Act, 2016, new proviso has been inserted w.e.f., 1.6.2016 to Rule 3(4) stating that the Cenvat credit of any duty specified in sub-rule (1) of Rule 3 shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016 (28 of 2016).

**B. Credit of certain duties to be utilized for payment of such duties or taxes:**

Credit availed in respect of following duties shall be utilized only for payment of respective duties on final products and not for other duties or taxes:

- (i) additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (ii) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
- (iii) additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
- (iv) additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
- (v) additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005),
- (vi) Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016) shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016.

However, credit availed in respect of education Cess on goods could be utilized for payment of education Cess on service tax and vice versa. Similarly, Secondary and Higher education Cess on goods could be utilized

### *Duties and Taxes Eligible for Credit*

for payment of Secondary and Higher Education Cess on service tax and *vice versa*.

In terms of the amendments made by Finance Act 2015, the rate of excise duty on goods has been increased from 12 to 12.5 and education Cess as well as Secondary and Higher Education Cess have been exempted.

In lieu of the above, Rule 3(7)(b) of CENVAT Credit Rules has been amended vide *Notification No. 12/2015-Central Excise (N.T.), Dated: April 30, 2015* to provide that Education Cess / Higher Education Cess on the inputs or capital goods or input services received on or after 1.3.2015 could be utilized towards payment of duty of excise.

The said proviso would be applicable only for the credit of goods or services availed on or after 1.3.2015. However, as of today, there is no such scheme to allow utilization of credit of these Cesses available as opening balance as on 1.3.2015 which seems to be an unintended error.

Thereafter, Notification No.22/2015-CE(NT) dated 29.10.2015 inserted new proviso stating that the credit of Education cess and Secondary and Higher Education cess paid on inputs and capital goods received in premises of the service provider on or after 1<sup>st</sup> June 2015 can be utilized for payment of service tax on any output service.

### **Restriction on utilization of credit**

**(a) For payment of duty payable in terms of Notification 1/2011-CE**

CENVAT Credit shall not be utilized for payment of duty of excise on goods which are liable to 2% duty in terms of Notification No. 1/2011-C.E., dated the 1st March, 2011.

**(b) CENVAT Credit cannot be utilized for payment under reverse charge or joint charge**

An explanation states that CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. Hence, w.e.f. 1.7.2012, no CENVAT credit could be used for payment of service tax.

### **Effect of removal of inputs as such or as scrap or writing off of inputs**

Rule 3(5) deals with the CENVAT credit on the inputs or capital goods removed as such from the factory or premises of the provider of output

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service. Similarly, rule (5A) provides the procedure on removal of used capital goods and rule (5B) provides for procedure for writing off of inputs or capital goods. Summary of provisions relating to impact on CENVAT credit on removal of inputs and capital goods under Rule 3(5) to Rule 3(7) is detailed in the table below:

Sub rule	Applicable to	When the rule applies	What shall be done										
(5)	Both manufacturers and service providers	Removal of inputs or capital goods as such on which credit is availed	<p>⇒ Pay an amount equal to the credit availed in respect of such inputs or capital goods.</p> <p>⇒ Clear such goods under cover of Invoice.</p>										
First proviso to sub rule (5)	Service providers	Removal of inputs or capital goods for providing output services	⇒ Such reversal is not required where goods are removed outside the premises of the provider of output service for providing the output service.										
Second Proviso to sub-Rule (5)	Manufacturers	Removal of inputs as warranty replacements	⇒ Reversal of credit not required.										
(5A)	Both manufacturer and service providers	Capital goods cleared after use	<p>⇒ Pay amount equal to credit availed after considering following depreciation.</p> <p>⇒ Computer Peripherals:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Rate/quarter</th> </tr> </thead> <tbody> <tr> <td>I</td> <td>10%</td> </tr> <tr> <td>II</td> <td>8%</td> </tr> <tr> <td>III</td> <td>5%</td> </tr> <tr> <td>IV</td> <td>1%</td> </tr> </tbody> </table>	Year	Rate/quarter	I	10%	II	8%	III	5%	IV	1%
Year	Rate/quarter												
I	10%												
II	8%												
III	5%												
IV	1%												



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Sub rule	Applicable to	When the rule applies	What shall be done
			⇒ Other capital goods - 2.5% per Quarter If the amount computed is less than the duty payable on 'transaction value', then amount equal to duty on transaction value has to be paid.
		Removed after use as scrap or waste	Pay an amount equal to duty leviable on transaction value of such scrap or waste
(5B)	Both manufacturers and service providers	Writing off of inputs or capital goods fully or partially or providing for fully or partially of the value of capital goods or inputs	⇒ Pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods
Proviso to (5B)	Both manufacturers and service providers	If such capital goods or inputs are subsequently used for manufacture or providing service	⇒ Could avail the credit again.
(5C)	Only to manufacturer	Where on any goods payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002	⇒ Credit taken on the inputs used in the manufacture or production of said goods shall be reversed

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Sub rule	Applicable to	When the rule applies	What shall be done
⇒			Amount payable under sub-rules (5), (5A), and (5B) and (5C), shall be paid within the 5 <sup>th</sup> day of next month or quarter and in case of transactions relating to the month of March, by end of March. The said amounts shall be recovered, in the manner as provided in rule 14
⇒			Rule 3(6) provides that amounts paid under sub rule (5) and (5A) could be availed as credit by the recipient unit.

The question before the larger Bench of the Tribunal in the case of *Modernova Plastic Limited v CCE* (2008) 232 ELT 29 (Tri-LB), was whether removal as such would also cover removal of used capital goods for the purpose of Rule 3(4)(c) and Rule 4(5) of CENVAT Credit Rules, 2004. Brief facts of the case are that the assessee removed certain used capital goods for repairs and reversed the credit under Rule 3(4). Subsequently, claiming the benefit of Rule 4(5) which allows removal of goods up to 180 days without payment of duty for testing, repair etc., the assessee claimed refund of the credit already reversed which was rejected by adjudicating authority and the Appellate authority on the ground that said rule is applicable only to original goods and not to used goods. The Tribunal in this connection held that the phrase as such should be interpreted to include the goods put to use also as the said word would mean 'of the same form without any alteration or addition etc.' further as such does not mean it shall be original only. The Tribunal based on the above held that the assessee could adopt Rule 4(5) for removal of capital goods for repair. However, this decision is now contrary to the decision in *CCE v Khalsa Cotspin P Ltd* (2011) 270 ELT 349, wherein the Punjab & Haryana High Court held that where used capital goods are removed prior to the amendments in rule 3(5), no reversal needs to be done. Further, the Larger Bench in *CCE v. Navodhaya Plastic Industries Ltd* (2013) 298 ELT 541 has held that during that period the adoption of depreciation as prescribed by the circulars was adequate and reversal of credit could be done on that basis only if the capital goods were actually used and they could not be treated as "removal as such."

### **Credit availment on goods procured from EOU**

Rule 3(7) (a) has specified the amount of credit that could be availed on inputs or capital goods procured from EOU/STP/EHTP.

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In terms of the said provisions, in respect of dispatches from units in EOU/STP/EHTP other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of *Notification No. 23/2003-C.E., dated 31<sup>st</sup> March, 2003* and used in the manufacture of the final product or in providing an output service in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003-Central Excise, dated the 31<sup>st</sup> March, 2003* shall be admissible equivalent to the amount calculated in the following manner, namely :-

X multiplied by [(1+BCD/200) multiplied by (CVD/100)].

New proviso has been inserted in Rule 3(7) w.e.f. 7-9-2009 vide *Notification No. 22/2009-C.E. (N.T.), dated 7-9-2009* which reads as follows:

“Provided further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

- (A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the *Notification No. 23/2003-Central Excise, dated 31st March, 2003* [G.S.R. 266(E), dated the 31st March, 2003]; and
- (B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

shall be the aggregate of -

- (I) that portion of excise duty referred to in (A), as is equivalent to -
  - (i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;
  - (ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and

In sum and substance, credit on goods procured from EOU would be restricted as under:

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- (a) Where the EOU pays duty by availing exemption under SI No. 2 of Notification No. 23/2003-CE, then credit is restricted to amounts equivalent to additional duties of customs (CVD and SAD) and cess on such duties.
- (b) In all other cases, full amount of duties charged.

**Conditions under notification/ other rules granting exemption or rebate override the provisions of this rule**

It should be noted that the Explanation to Rule 3 provides that where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

It should also be noted that *Notification No. 26/2012-S.T., dated 20-6-2012* provides for partial exemption from payment of service tax on certain services such as GTA services, renting of hotels, transportation of passenger by air etc., subject to condition of non availment of CENVAT credit on inputs/ input services or both. While availing such abatement or exemption, the service provider shall ensure the conditions are met and shall not avail credit under the CENVAT scheme.

**Important decisions under rule 3**

- (a) **Duties even if excess paid by seller, would be eligible:**

The High Court in *V.G. Steel Industry v CCE (2011) 271 ELT 508 (P&H)*, held that even if the duty has been paid in excess of what is to be paid, unless the excess duty paid has been refunded, the purchaser assessee could claim credit of the duties actually paid and department cannot deny the same.

In *Mahaveer Surfactants (P) Ltd. v. CCE, (2009) 233 E.L.T. 109 (Tri. - Chennai)* where the price of the product was reduced subsequent to availment of credit, the Department sought to deny credit on the ground that Rule 3(1) credit could be taken only to the extent duty was 'leviable', it was held that CENVAT credit on inputs is available to a manufacturer of final products to the extent of the duty leviable on such inputs and paid by the input-manufacturer/supplier.

- (b) **Restriction of month end credit is not application to earlier dues**

In the case of *Arjay Apparel Industries Ltd. v. CCE, (2008) 232 E.L.T. 662 (Tri.*

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– Chennai), the Tribunal held that the bar for using CENVAT credit for payment of duty due for removal of goods in a month using the credit earned in the subsequent months does not apply in a case for payment of short paid, unpaid or defaulted amounts.

**(c) Education cess could be paid by utilizing CENVAT credit**

The Tribunal in CCE v. Balaji Industries, (2008) 232 E.L.T. 693 (Tri.-Ahmd.) held that education cess can be paid by utilizing the CENVAT credit of basic excise duty.

**(d) Duties paid by job-worker**

The High Court in Commissioner Vs Ranbaxy Labs Ltd. 2006 (203) ELT 213 (P&H), held that where there is no dispute on payment of duties by the job worker, there is no need to deny the credit.

**(e) Whether insurance claim received on account of destruction of capital goods on which credit was availed would amount to double benefit and hence assessee is required to reverse the credit**

The issue before the Karnataka High Court in CCE v TATA Advanced Materials Ltd. (2011) 271 ELT 62 (Kar) was whether the assessee is required to reverse credit availed on capital goods which were destroyed by fire where the assessee recovered the cost of such capital goods, including the duties, from insurance company. The High Court held that credit validly availed cannot be directed to be reversed as there is no provision under the credit rules requiring such reversal. On the issue of insurance amount, the High Court observed that there is no double benefit to the assessee as what is received is only the insurance value.

**(f) No restriction on utilisation of credit on inputs used for manufacture towards payment service tax on taxable service**

The Tribunal in the case of CCE v. Lakshmi Technology & Engineering Indus. Ltd, (2011) 23 S.T.R. 265 (Tri. – Chennai), held that that the CENVAT credit rules permit taking of credit under a common pool and permit use of the credit from the common pool for different purposes, and there is no restriction placed to the effect that credit accounts should be maintained for use for manufacture of excisable goods and for providing services separately.

## Chapter 6

# Conditions for Availment of Credit

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Rule 4 of CENVAT Credit Rules, 2004 deals with the provisions relating to timing of availment of credit and the conditions attached to such availment. The provisions are summarized below:

### A. Capital Goods

When credit could be availed.	On or after the date of receipt of capital goods.
How much credit could be availed	50% of amount of credit on or after the date of receipt of capital goods.  Balance 50% could be availed in any financial year subsequent to the financial year in which goods were received.  Balance 50% would be allowed only where the assessee is in possession of such capital goods.  However, the condition of possession is not applicable to components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [Heading 6805, grinding wheels and the like, and parts thereof falling under Heading 6804] of the First Schedule to the Excise Tariff Act.
What are the conditions to be followed	Depreciation under section 32 of Income Tax Act 1961 shall not be availed on the amount of credit – Rule 4(4)
Whether credit is available on the capital goods acquired on lease, hire etc.	CENVAT credit on capital goods shall be allowed even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company – Rule 4(3)
Other conditions	100% credit could be availed in the year of receipt where the capital goods are removed as such after receipt in the same financial year.

*Conditions for Availment of Credit*

	Full credit of SAD paid in terms of Section 3(5) of Customs Tariff Act, could be availed in the year of receipt
	<p>In the case of a unit eligible to avail the benefit of exemption based on value of clearances (SSI benefit), such unit could avail full credit in the year of receipt.</p> <p>The assessee shall be eligible to avail the above benefit if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.</p>
Condition regarding SSI exemption for jewellery manufacturers	The assessee engaged in manufacture of articles of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of First Schedule to CETA shall be eligible to avail the above benefit if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees twelve crore.
	* Credit on capital goods would be available to the manufacturer or service provider even if the same is delivered to job worker premises directly. Credit availment shall be after receipt of goods by job worker

\* Notification No. 6/2015-Central Excise (N.T.), Dated: March 1, 2015

## **B. Inputs**

### **When credit on inputs could be availed**

Credit on inputs could be availed on or after receipt of goods in the factory or premises of output service provider or premises of job worker where inputs are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be.

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**Time limit for availment of credit on inputs**

Credit on inputs shall be availed within one year of the date of issue of the document on the basis of which the credit is availed. However, this condition has been amended vide Notification No. 24/2016 C.E. (N.T.) dated 13.4.2016 which has carved out an exception in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource. Consequently, the CENVAT Credit of the Service Tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 years.

**Other conditions:**

- (a) Credit inputs in respect of final products, namely, articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be] of the First Schedule to the Excise Tariff Act, may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.
- (b) The output service provider could avail CENVAT credit in respect of inputs even when the inputs are delivered to such provider at a place other than his registered premises, subject to maintenance of documentary evidence of delivery and location of the inputs.

**C. Credit on input services- as applicable w.e.f. 1.4.2015**

Sl. No.	Nature of services	Conditions for availment of credit
I	Services other than Reverse Charge and Joint charge) where 100% tax is paid by service provider	
A	When credit could be availed	On after the date of receipt of invoice. No credit shall be availed after 1 year from the date of invoice
B	Effect of non-payment of value of service beyond 3	To pay an amount equal to credit availed.



*Conditions for Availment of Credit*

Sl. No.	Nature of services	Conditions for availment of credit
	months from the date of invoice	
C	Effect of non-payment of value of service beyond 1 year from the date of invoice when credit is already reversed.	Can CENVAT be re-availed when payment is made beyond 1 year? Yes as what is reversed is only an amount. Clarified vide <i>Circular No.990/14/2014-CX</i> dated 19.11.2014.
II	<b>Reverse charge (100%) recipient (including import of service from Associated Enterprises)</b>	
A	When credit could be availed	Avail credit only after the date of remittance of tax. No credit shall be availed after 1 year from the date of challan evidencing payment of tax
B	Effect of non-payment of value of service beyond 3 months from date of invoice	Date of expiry of 3 months from date of invoice shall be deemed as point of taxation and ST needs to be deposited in such month and credit could be availed on the basis of payment made.
III	<b>Joint charge</b>	
A	When credit could be availed	
	Service Providers portion	Immediately on receipt of invoice
	Service recipient's portion of tax	After remittance of service tax
B	Effect of non-payment of value of service beyond 3 months from date of invoice	Reverse credit availed on service provider's portion of service tax and retake only when payment made. No impact on the service recipient portion

### **Other conditions**

- (a) Where any payment or part of the payment, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited.
- (b) The reversal of credit on account of non-payment of value by service recipient within 3 months or refund of amount shall be made within the 5<sup>th</sup> day of the following month/quarter in which such events take place. However, for the month of/ quarter ending March the reversal shall be made by 31<sup>st</sup> March.
- (c) In case of non-payment/non reversal the same shall be recovered in terms of provisions of Rule 14 of CENVAT Credit Rules.

#### Reversal of credit would amount to non availment

The scheme allows for availment of credit instantly after receipt of inputs and capital goods. If the assessee wants to reverse such credit taken and avail the benefits of the exemption notification which stipulates non-availment of MODVAT as a condition for taking the benefits of the exemption notification, the question arises as to whether the initial availment of MODVAT credit would debar the assessee from taking the benefit of exemption notification. The Supreme Court has held in *Chandrapur Magnet Wires Pvt. Ltd. v. CCE* (1996) 81 E.L.T. 3 that the assessee can reverse the MODVAT availed prior to clearance and take the benefit of the exemption notification. Further it is held by the Allahabad High Court in the case of *Hello Minerals Waters Pvt. Ltd. v. UOI* – (2004) 174 E.L.T. 422 (All.) that reversal of MODVAT credit can be made even subsequent to clearance of final products and such reversal of MODVAT credit amounts to non-availing of credit on inputs. Further the Supreme court in *CCE., Mumbai v. Bombay Dying & Mfg. Co. Ltd.*, (2007) 215 E.L.T. 3 (S.C.) while deciding the eligibility of exemption under Notification No. 14/2002, held that credit taken but reversed before utilisation amounts to not taking credit. A similar view has been taken by the High Court of Karnataka in the case of *CCE v. ETA Technology Pvt. Ltd.*, (2010) TIOL 569 HC-KAR-CX.

### **D. Reversal of CENVAT credit when final product is subsequently exempt**

CENVAT credit is taken as soon as inputs are received in the factory of the manufacturer of final products / service provider or input services are paid

### *Conditions for Availment of Credit*

for. Final product may be cleared later. It may happen that the final product may be subsequently exempt. At that time, some inputs (on which CENVAT has been availed) may be in stock. These inputs will be used for the manufacture of exempted final product. In such cases, one issue arises as to whether CENVAT credit on stocks is required to be reversed. This aspect has been subjected to some amount of litigation in the past.

In *Ashok Iron & Steel Fabricators v. CCE* (2002) 140 ELT 277 (CEGAT - 5 member bench) and later maintained by the Supreme Court (2003) 156 ELT A212), it was held that if CENVAT credit is availed on inputs and duty on final product is subsequently exempt, CENVAT credit on inputs lying in stock or inputs contained in final products as on the date of exemption need not be reversed, as there is no provision for reversal of such a credit.

However, in *Albert David v. CCE* (2003) 151 ELT 443 (CEGAT) a contrary view has been taken. The same has been affirmed by the Supreme Court in 158 ELT A 273 (SC).

Attention is drawn to a recent Larger Bench Ruling in the case of *HMT v. CCE* (2008) 232 ELT 217 (Tri – LB) wherein the following was held with regard to CENVAT Credit Rules, 2002 which existed prior to the introduction of CENVAT Credit Rules, 2004.

*“As to whether CENVAT Credit Rules, 2002 provide for reversal of the credit on the input taken when final product was dutiable and subsequently became exempt, it was held that, Rule 57-1 of Central Excise Rules, 1944 corresponding to Rule 57 AH and Rule 12 of CENVAT Credit Rules, 2002 applicable where credit taken or utilized wrongly – Credit taken or its utilization for the clearance of dutiable final products not objected to by Revenue in impugned case. The Supreme Court has held that the credit legally taken and utilized is not demandable unless a specific provision exists therefor – No one to one correlation in credit scheme – Credit taken and utilized correctly when the final product was dutiable – No requirement to reverse credit on final product becoming exempt subsequently and such a credit not recoverable.”*

The matter has been settled now with the amendment made to Rule 11 of CENVAT Credit Rules, 2004 with effect from 01.03.2007 whereby a manufacturer of final products/service provider would be required to pay an amount equivalent to the CENVAT credit taken in respect of inputs received for use in the manufacture of the said final product/provision of taxable service which is lying in stock or in process or is contained in the final product lying in stock/taxable service pending to be provided if he opts for

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exemption from payment of excise duty/service tax. The balance credit remaining after such a payment would lapse.

**E. Illustration explaining how the CENVAT Credit is to be availed on Service Tax paid for assignment of right to use natural resources: [Ref: Circular No. 192/02/2016-Service Tax, Dated-April 13, 2016:**

Government of India assigns right to use spectrum for a period of 20 years in an auction held in May 2016. The Notice Inviting Application (NIA) for auction of spectrum specifies that the successful bidders would have two payment options -

- (a) Full upfront payment:
  - to make full upfront payment of full auction price (bid amount) by, let's say, 25.6.2016; or
- (b) Deferred payment:
  - (i) An upfront payment of 33% of the final bid amount shall be made by 25.6.2016;
  - (ii) There shall be a moratorium of 2 years for payment of balance amount of one time charges for the spectrum, which shall be recovered in 10 equal annual instalments of ₹ 131.94 including interest for deferred payment.
  - (iii) The 1st instalment of the balance due shall become due on the third anniversary of the scheduled date of the first payment. Subsequent instalment shall become due on the same date of each following year.
  - (iv) The applicable rate of interest under deferred payment option shall be 10%.

**CASE 1:**

Company ABC becomes the successful bidder. The spectrum is assigned to ABC for a total consideration of ₹ 1000/-. ABC chooses to make full upfront payment on the due date. The Service Tax liability and eligibility of the CENVAT Credit in this case would be as follows:

- (i) The amount of ₹ 1000/-will become due on 25.6.2016. Thus, according to rule 7 of the Point of Taxation Rules, 2011 the point of taxation shall be 25.6.2016.

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- (ii) According to rule 6(1) of the Service Tax Rules, 1994, the liability to pay Service Tax liability of ₹ 150/- on the consideration of ₹ 1000/- paid or payable would be required to be discharged by 6.7.2016.
- (iii) According to the sixth proviso to rule 4(7) of the CENVAT Credit Rules, the CENVAT Credit in respect of the Service Tax paid would be spread over 3 years as follows:

Financial Year	Amount of CENVAT Credit eligible to be taken (1/3 of total Service Tax paid)
2016-17	₹ 50/-
2017-18	₹ 50/-
2018-19	₹ 50/-

Refer to Circular No. 192/02/2016-Service Tax, Dated-April 13, 2016 for other illustration involving different case studies.

**Important decisions**

- (a) **Eligibility of credit on capital goods – to be examined at the time of receipt of capital goods or at future date:**

The Larger Bench of the Tribunal in the case of Spentra International v CCE (2007) 216 ELT 133 (Tri-LB), held that the eligibility of credit shall be decided on the date of receipt of capital goods and not based on any future date when it is used.

- (b) **Whether installation of capital goods necessary to avail balance 50% credit:**

In BPCL Ltd. v CCE (2012) 277 ELT 353 (Tri-LB) the Large Bench of the Tribunal held that since the terminology used in the rules is “possession and in use” even if capital goods are yet to be installed but lying in the factory, the balance credit could be availed.

## Chapter 7

### Job-work

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Rule 2(n) defines the term “job work” to mean processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly.

The term ‘Job work’ has been explained in Notification No. 214/86. According to the said notification “Job work” means processing or working upon of raw materials or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.

Whether a job worker can be called the manufacturer and whether the process results in manufacture of a product known distinctly in the market or not depends on the nature of the process undertaken. It would be pertinent to note that under Rule 57F of erstwhile Central Excise Rules, 1944, the job worker can complete manufacture of the product and return it to the principal manufacturer without payment of duty since the ultimate manufacturer will be discharging the duty liability on the final products. It was held by the Tribunal in the case of *Kailash Auto Builders Ltd. v. C.C.E., Bangalore* (2004) 117 ECR 868 (Tri. - Bang.) that in respect of inputs received from principal manufacturers the duty has to be charged on the principal manufacturer and not on the job worker as otherwise clause 2 of Rule 57F(4) becomes superfluous inasmuch as the duty will be charged twice on the same goods. [Ratio of judgment in *Commissioner of Central Excise, Jaipur v. Tirupati Fabrics and Industries Ltd.* (2001) 98 ECR 353 (T)].

Similar view was expressed by the Tribunal in the case of *Harsha Industries v. C.C.E., Bangalore* (2004) 117 ECR 991 (Tri. - Bang.) where in it was held that when the goods are cleared under Rule 57F(4) the Job worker is under no obligation to pay duty and it is the principal manufacturer who is to discharge the duty liability as per the ratio of judgment in *M. Tex & D.K. Processors (P) Ltd. v. C.C.E.* (2001) 136 E.L.T. 73 (Tri. - Del.). This was maintained in (2002) 146 E.L.T. A309 (S.C.).

This position continues under the new rule 4(5) also.

Rule 4(5) and Rule 4(6) of Cenvat Credit Rules, 2004 deal with the procedure, as regards Cenvat credit, to be followed where inputs or partially processed goods or capital goods are removed for various processes. The provisions are summarized below:

Rule 4(5) (a):

Credit on inputs or capital goods shall be allowed even if such inputs or capital goods as such or partially processed goods are removed to a job-worker for the purpose of following activities:

- (i) further processing,
- (ii) testing,
- (iii) repair,
- (iv) re-conditioning or
- (v) for the manufacture of intermediate goods necessary for the manufacture of final products or
- (vi) any other purpose

The said removals could be made without reversal of credit or payment of duty.

**Conditions and procedure to be followed:**

- (a) Such goods which are cleared as above shall be returned to the factory within 180 days of such removal in case of inputs and 2 years in case of capital goods.
- (b) The manufacturer or service provider shall establish from the records, challans or memos or any other document that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker.
- (c) If the inputs or the capital goods are not received back within one hundred eighty days/ 2 years as the case may be , the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise.
- (d) The manufacturer or provider of output service can take back CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

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- (e) Inputs or capital goods cleared to job-work or directly delivered to job worker by supplier, could be sent directly from job-worker premises to another job worker for further processing without reversal of credit. In effect there is no requirement of reversal where goods reach back the factory or premises of service provider within 180 days from date of removal to the first job-worker.

Rule 4(5) (b):

The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies or tools falling under Chapter 82 of First Schedule to CETA sent by a manufacturer of final products to,

- (i) another manufacturer for the production of goods; or
- (ii) a job worker for the production of goods on his behalf,

according to his specifications.

Further, a proviso has been inserted to provide that Cenvat credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of First Schedule to CETA are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises.

Rule 4(6):

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for three financial years, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

The period of one year validity has been extended to 3 years from 1.4.2016. This enables manufacturers to clear final products from job workers premises itself, subject to such procedure that are to be followed.

Suggested procedures under Rule 4(5) (a)

The provisions relating to removal of inputs to job worker for test, repairs, or carrying out any other operation for the purposes of manufacture of intermediate products/final product are contained in Rule 4(5) (a). The procedures are as under:



*Job-work*

1. It is advisable to have pre-printed challans for the purpose of job-work removals. The challan shall contain information such as name and address of the Manufacturer, in book form, pre-numbered, by the Manufacturer.
2. The assessee shall maintain register to record the details of the removals to job-worker and receipt of goods from job-worker
3. The assessee shall remove the goods under the cover of challan referred above. The Challan shall be prepared in triplicate (one for job-worker, one for the assessee and one for the transporter which shall be received back after obtaining acknowledgement from the job-worker.
4. The Challan shall contain the quantity of inputs sent, its tariff classification, the process for which it is sent and the value of the inputs/semi-finished goods.
5. The goods sent to the job worker should be received back after processing within 180 days. If delayed beyond this period the amount of duty credit availed on the inputs involved in the JW is to be reversed.
6. The accounts/stores should keep a memorandum of such reversals along with challan under which initially sent.
7. The goods from the job worker should come back along with duplicate copy of challan i.e., duly filled for the process carried out, quantity of processed goods being returned and quantity of waste or scrap returned. The scrap generated and not returned could also be specifically indicated.
8. After receiving all the goods the credit of duty debited if any after lapse of 180 days may be taken in the register maintained under Rule 7 of CCR, Credit proportionate to the quantity received may be availed. Entry in duty reversed control memorandum may be made.

## Chapter 8

# Refund of CENVAT Credit

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Rule 5 of CENVAT Credit Rules, 2004 provides that where an assessee is exporting goods or services without payment of duty, then such an assessee shall be allowed refund of CENVAT credit as determined in the formula.

### **Refund of CENVAT credit [Rule 5] prior to April 2012**

Exports upto 31<sup>st</sup> of March 2012 were governed by the old provisions.

Rule 5 dealt with utilization and refund of the CENVAT credit availed on the inputs or input services used in the manufacture of final products or used in providing output service which are exported as an incentive measure.

This rule allowed CENVAT credit to be availed on final products or intermediate products exported under bond or letter of undertaking. Credit on inputs used for such exports under bond of final products or intermediate products can be used to discharge duty on any end products cleared for home consumption or for export on payment of duty or for payment of service tax on output service. If this is not possible, refund is to be claimed as per procedure to be specified by the Central Government by notification. No drawback or rebate should have been claimed in respect of such duty. It is provided further that no credit of the additional duty shall be utilised for payment of service tax on any output service. [See Notification No. 13/2005-C.E. (N.T.), dated 1-3-2005]. The Explanation to the said sub-rule clarifies that for the purpose of this rule, the words 'output services which are exported' would mean any output service in respect of which payment is received in India in convertible foreign exchange and the same is not repatriated from, or sent outside India. The Explanation to Rule 5 provides that 'export service' means a service which is provided as per Rule 6A of the Service Tax Rules, 2004.

It is clear from the above that these provisions are similar to rule 6(6) (v) which excludes all exports from the application of Rule 6 (1), (2), (3) and (4) of CENVAT Credit Rules, 2004. Therefore the provisions of Rule 6(1) would not be applicable in case of export of services even though such services are exempted. Therefore, one can avail CENVAT credit on the input services used in providing such output services which are exported.

### *Refund of CENVAT Credit*

With regard to the above referred 'refund' of CENVAT credit on input services by the service provider, *Notification No. 11/2002-C.E. (N.T.), dated 1-3-2002* has been rescinded and new procedure for claiming the refund was set out in *Notification No. 5/2006-S.T., dated 14-3-2006*.

Under the above Notification, the Central Government can grant the refund of CENVAT credit in respect of :

- (a) input or input service used in the manufacture of final product which is cleared for export under bond or letter of undertaking;
- (b) input or input service used in providing output service which has been exported without payment of service tax,

However, such refund of CENVAT credit is subject to the following safeguards, conditions and limitations, set out in the Appendix to the above referred notification:

1. The final product or the output service is exported as per Central Excise Rules, 2002, or the Export of Services Rules, 2005, as the case may be.
2. The claims for such refund are submitted not more than once for any quarter in a calendar year. However, in case of EOUs and units having average exports of more than 50% of total clearances, refund claim can be made on monthly basis.
3. The manufacturer or provider of output service, shall submit the refund application in Form A to the DC/AC of Central Excise, in whose jurisdiction,-
  - (a) the factory from which the final products are exported is situated, along with the Shipping Bill or Bill of Export, duly certified by the officer of customs to the effect that goods have in fact been exported; or
  - (b) the registered premises of the service provider from which output services are exported is situated, along with a copy of the invoice and a certificate from the bank certifying realization of export proceeds
4. The refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit allowed under rule 3 of the said rules against goods exported during the quarter or month to which the claim relates.

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One important feature of this notification is contained in Condition (5) wherein the refund of unutilised input service credit is restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.

Maximum refund = Total CENVAT credit taken on input services during the given period × Export turnover ÷ Total turnover

*Illustration :*

*If total credit taken on input services for a quarter = ₹ 100*

*Export turnover during the quarter = ₹ 250*

*Total Turnover during the quarter = ₹ 500*

*Refund of input service credit under Rule 5 of the CENVAT Credit Rule, during the quarter =  $100 \times 250 / 500$  i.e. ₹ 50*

*Explanation :* For the purposes of condition no. 5, -

1. "Export turnover" shall mean the sum total of the value of final products and output services exported during the given period in respect of which the exporter claims the facility of refund under this rule.
2. "Total turnover" means the sum total of the value of,
  - (a) all output services and exempted services provided, including value of services exported;
  - (b) all excisable and non-excisable goods cleared, including the value of goods exported;
  - (c) value of bought out goods sold, during the given period.

It is clear from the above notification that the 'refund' of CENVAT credit on input services would be available in proportion to export turnover with the total turnover.

In a recent decision by the Bangalore Tribunal in *Apotex Research Ltd v CCE 2014 TIOL 1836*, the following issues were decided:

**Issue:** In the case of refund under Rule 5 the place of removal has been a subject matter of dispute in several cases.

**Decision:** Place of removal is taken as port/airport/land customs station and

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all the services utilized up to the stage would become eligible for refund under Rule 5.

**Issue:** Whether CENVAT credit can be refunded under Rule 5 when there was no notification prior to 14.03.2006.

**Decision:** YES

**Issue:** The stand taken by the Revenue that in respect of 100% EOUs, the CENVAT credit cannot be taken at all since the finished goods are exempt.

**Decision:** After 10.09.2004 CENVAT credit cannot be denied on the ground that the unit availing the credit is a 100% EOU and hence refund has to be given.

**Issue:** The activity of provision of service is in India and therefore the claim for refund on the ground that service has been exported cannot be accepted.

**Decision:** Board has issued a clarification vide Circular No. 111/5/2009-ST dated 24.02.2009. In this circular in paragraph 3 the Board has accepted that for category (iii) services (As per Export of Services Rules), it is possible that export of service may take place even when all the relevant activities take place in India so long as benefits of these services accrue outside India.

**Issue:** Nexus between the input services and the output services.

**Decision:** It is nobody's case that there is no need to establish the relation between the input services and the business of manufacture/ service rendered.

**Issue:** Foreign Inward Remittance Certificate

**Decision:** In certain cases, the lower authorities have taken a view that production of foreign inward remittance certificate by the claimant to claim refund is not sufficient. A certificate from the bank certifying that the amount in the invoice has been received specifically with reference to the invoice has to be made available. What is required to be established by an exporter is that in respect of Invoices raised by him, consideration in foreign currency has been received.

**Issue:** Can clearance to a 100% EOU be considered as export?

**Decision:** YES; this issue is no longer *res integra* and is covered by the decision in the case of *NBM Industries & Shilpa Copper Wire Industries*.

**Issue:** Proof of payment of service tax

**Decision:** In some cases, the authorities sanctioning the refund are insisting

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that the claimant should produce proof of payment of service tax by the service provider. This is not required.

**Issue:** Condonation of omissions in documents as per the provisions of Rule 9 of CENVAT Credit Rules, 2004.

**Decision:** Rule 9(2) of CENVAT Credit Rules provides that if the document does not contain all the particulars but contains details of duty or service tax payable, description of goods, etc., CENVAT credit may be allowed.

**Issue:** Rejection of refund claim on the ground that output service is not taxable.

**Decision:** Decisions in cases where credit has been denied or refund has been denied on the ground that export is not made under Bond or Letter of Undertaking cannot be sustained.

**Issue:** CENVAT credit without registration

**Decision:** Provisions of Rule 3 of CENVAT Credit Rules, 2004 show that credit can be taken by a manufacturer or a provider of output service and there is no requirement of registration under Rule 3 of the CCR, 2004 at all.

**Issue:** Taxability of output service and admissibility of CENVAT credit.

**Decision:** The admissibility of CENVAT credit is not relevant for the purpose of determination whether refund is admissible under Rule 5 of CCR or not.

**Issue:** Relevant date for filing refund claim.

**Decision:** Provisions of Section 11B of Central Excise Act, 1944 for the purpose of limitation would be applicable.

**Issue:** Method for calculation of relevant date.

**Decision:** the relevant date should be the date on which the consideration has been received where the claimant is service provider and consideration paid where the claimant is service receiver.

### **Applicability of limitation of 1 year under Section 11B for Rule 5 refunds**

On the issue of applicability of limitation of 1 year as prescribed under section 11B of Central Excise Act, 1944 to refunds under Rule 5, the M.P. High Court in *STI India Ltd. v CCE Indore* (2009) 236 ELT 248 (MP), held that merely because refund application was not filed strictly within the time limit specified in Clause 6 of Appendix read with section 11B, the refund cannot be denied. Refund claim in question did not fall strictly within the four

corners of section 11B but within four corners of clause 6 of Appendix to notification issued under Rule 57F of erstwhile Central Excise Rules, 1944. Hence, the limitation under section 11B cannot strictly be made applicable to CENVAT refunds under Rule 5. Hon'ble High Court of Karnataka in the case of *Portal India Wireless Solutions P.Ltd vs C.S.T.Bangalore 2012 (27) S.T.R. 134 (Kar.)*, wherein insofar as refund of Cenvat credit is concerned, it has been held that the limitation under Section 11B does not apply for refund of accumulated Cenvat credit.

However, the notification presently contains a provision that the refund claim should be submitted within the time specified in section 11B. However, it would still be a moot point as to what is the starting period for this limitation-whether taking of credit or its non-utilization. The Madras High Court in the case of *CCE v GTN Engineering (I) Ltd. (2012) 281 ELT 185 (Mad.)* took a different view. It held that the limitation contained in section 11B of the Central Excise Act, 1944 would be applicable in case of CENVAT credit refund even though Rule 5 of the CENVAT Credit Rules, 2004 makes no mention of the same since the refund claim could not be filed without applying the provisions of Notification 5/2006 dated 14.03.2006 which stipulates application of the said limitation. It was also held that the relevant date for calculating the said limitation would be the date on which the final products are cleared for export.

### **Whether refund of credit could be sought on export of exempted goods**

Where the assessee was engaged in the manufacture of packaged software, stationery which attract duty and printed books which attract nil rate of duty, claimed refund of unutilized credit on export of printed books, the refund was denied on the ground that credit cannot be availed on exempted goods and only dutiable goods could be exported under bond and hence Rule 6(5) of CENVAT Credit Rules, 2002 [present Rule 6(6)] cannot be made applicable to exempted goods. On this issue, the High Court in *Repro India Limited v UOI 2009 (235) ELT 614 (Bom)*, held that the words used in Rule 6(6) of CENVAT Credit Rules, 2004 make it very clear that if excisable goods are cleared for export, the credit is allowable on inputs used for manufacture of such excisable goods and there is no bar on claiming refund under Rule 5.

A similar question came up before the High court of Karnataka in the case of *CCE v ANZ international (2009) 233 ELT 40 (Kar)*, wherein the assessee was an EOU engaged in the manufacture of agricultural equipment which were

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chargeable to NIL rate of duty. They claimed refund of input credit under rule 5 which was denied on the ground that no credit could be availed in manufacture of exempted goods. The High Court held that even though the goods are exempt they are exported under bond and hence in terms of Rule 5 and 6 of CENVAT credit Rules, 2004 credit is admissible and refund is allowable.

### Refund Claims from 1.4.2012

It shall be noted that in the light of the various problems that were being faced by exporters of goods and services in receiving refund of CENVAT credit, a new set of Rules governing refund on export of goods and services have been formulated under Rule 5. Circular No. DOF 334/1/2012 dated 16.3.2012 states that no more will an exporter be asked whether an input service has been used in export to claim a CENVAT refund. The New Rules would be applicable for exports made on or after 1.4.2012.

The following formula has been prescribed for calculating the refund due:

*Refund=*

$$\frac{\text{Export turnover of goods+ Export turnover of services}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

The provisions of the Rule and the formula could be explained as below:

Terms used in the rule	Explanation
Refund amount	Maximum amount of refund that is admissible in terms of this rule
Net CENVAT credit	Total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider. However, reversal of credits on remission of duty shall be reduced. It should be kept in mind that credit on capital goods would not be eligible for refund under this rule.
Export turnover of goods	Means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking



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Export turnover of services	Payments received during the relevant period for export services +(plus) export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – (minus) advances received for export services for which the provision of service has not been completed during the relevant period
Total Turnover	Sum total of the value of - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported; (b) export turnover of services as determined above, during the relevant period; (c) the value of all other services, during the relevant period and (d) all inputs removed as such in terms of Rule 3(5), during the relevant period
Other conditions	No refund would be allowed where drawback is claimed on such exports
	Export of services means exports as provided under Rule 6A of Service Tax Rules 1994.
	Value of service for the purpose of this rule shall be, value as determined in Rule 6(3) and 6(3A)
Relevant Notification	Notification No. 27/2012(CE-NT) dated 18th June 2012
Valuation of service for refund	
Taxable service	In terms of section 67 of Finance Act, 1994 read with valuation rules
Trading:	The difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles

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	without including the expenses incurred towards their purchase) or 10 % of the cost of goods sold, whichever is more
Other Exempted service	Actual value of service
Export goods (inserted w.e.f. 1.4.2015)	means any goods which are to be taken out of India to a place outside India Implications would be that deemed exports will not get covered under rule 5 anymore. This would get over the judgement of the Gujarat High Court in CCE vs Shilpa Copper Wire Industries case 2011 (269) ELT 17.
Time limit:	(i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944. (ii) in case of service provider, before the expiry of one year from the date of - (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

**Conditions prescribed under Notification No. 27/2012 CE (NT) dated 18.6.2012**

Refund of CENVAT Credit under rule 5, shall be subjected to the following safeguards, conditions and limitations, namely:-

- (a) Refund claim shall be made in each quarter. However, a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.
- (b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under :

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- (i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);
- (ii) in case of service provider, before the expiry of one year from the date of -
  - (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or
  - (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice."

The decision of Andhra Pradesh High Court in CCE vs Hyundai Motors 2015 (39) STR 984 (AP) had held that the relevant date for calculating the time-limit for grant of refund would be the date of receipt of consideration and not the date when the services were provided. The above referred amendment recognizes this decision.

- (c) The value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.
- (d) The total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.
- (e) In respect of services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.
- (f) For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.
- (g) The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.
- (h) The amount that is claimed as refund under rule 5 shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

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- (i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

**3. Procedure for filing the refund claim.**

- (a) The manufacturer or provider of output service, as the case may be, shall submit an application in **Form A** (refer Annexure-I), to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, within whose jurisdiction,-
  - (i) the factory from which the final products are exported is situated.
  - (ii) the registered premises of the provider of service from which output services are exported is situated.
- (b) The application in Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).
- (c) The application for the refund should be signed by-
  - (i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;
  - (ii) any partner in case of a partnership firm;
  - (iii) a person authorized by the Board of Directors in case of a limited company;
  - (iv) in other cases, a person authorized to sign the refund application by the entity.
- (d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.
- (e) The refund claim shall be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.
- (f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

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- (g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be.

Further, it must be noted that Rule 5A grants refund of CENVAT credit for certain units availing Notification 20/2007-CE dated 25.4.2007.

### Refund under Rule 5B

New Rule 5B has been inserted which provides for refund of CENVAT credit to service providers who are rendering services taxed on reverse charge basis. The provisions of the rule are as under:

Scope	Refund of credit of CENVAT credit to service providers providing services taxed on reverse charge basis
Who is eligible for refund	Service providers providing services taxed on reverse charge and joint charge basis
When refund eligible	Where credit on input and input services cannot be adjusted towards payment of service tax on other output services

*Notification No. 12/2014 –CE (NT) dated 03.03.2014* prescribes following procedure and conditions for claiming refund under this rule:

- (a) The refund shall be claimed in respect of unutilized CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services namely :-
- (i) renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;
  - (ii) ;\*\*\*<sup>1</sup>
  - (iii) service portion in the execution of a works contract;
- (hereinafter the above mentioned services will be termed as partial reverse charge services).

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<sup>1</sup> Omitted w.e.f 19.05.2015 vide *Notification No. 15/2015-CE (NT)*. it was read as 'supply of manpower for any purpose or security services'

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Explanation: - For the purpose of this notification,-

Unutilized CENVAT credit taken on inputs and input services during the half year for providing partial reverse charge services = (A) - (B)

Where,

A = CENVAT credit taken on inputs and input services during the half year X turnover of output service under partial reverse charge during the half year / total turnover of goods and services during the half year

B = Service tax paid by the service provider for such partial reverse charge services during the half year.

- (b) The refund of unutilized CENVAT credit shall not exceed an amount of service tax liability paid or payable by the recipient of service with respect to the partial reverse charge services provided during the period of half year for which refund is claimed.
- (c) The amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim.
- (d) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned.
- (e) The claimant shall submit no more than one claim of refund under this notification for every half year.
- (f) The refund claim shall be filed after filing of service tax return as prescribed under rule 7 of the Service Tax Rules for the period for which refund is claimed.
- (g) No refund shall be admissible for the CENVAT credit taken on input or input services received prior to the 1st day of July, 2012.

*Explanation.* For the purposes of this Notification, half year means a period of six consecutive months with the first half year beginning from the 1st day of April every year and second half year from the 1st day of October of every year.

### **Procedure for filing the refund claim**

- (a) The provider of output service, shall submit an application in Form A (See Annexure – I below), along with the documents and enclosures specified therein, to the jurisdictional Assistant Commissioner of

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Central Excise or Deputy Commissioner of Central Excise, as the case may be, before the expiry of one year from the due date of filing of return for the half year.

Provided that the last date of filing of application in Form A, for the period starting from the 1st day of July, 2012 to the 30th day of September, 2012, shall be the 30th day of June, 2014;

- (b) If more than one return is required to be filed for the half year, then the time limit of one year shall be calculated from the due date of filing of the return for the later period;
- (c) The applicant shall file the refund claim along with copies of the return(s) filed for the half year for which the refund is claimed;
- (d) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim;
- (e) At the time of sanctioning the refund claim, the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the refund claim and that the refund claim is complete in every respect;

**Annexure-I**

**I. Format of application and CA certificate for claiming refund under Rule 5**

**1. Application for claiming refund**

**FORM A**

**Application for refund of CENVAT Credit under rule 5 of the CENVAT Credit Rules, 2004 for the Quarter ending**

d	d	m	m	y	y	y	y
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To,

The Assistant Commissioner or Deputy Commissioner of Central Excise,

.....

Sir,

I/We have exported, the final products or output services during the Quarter

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and am/are claiming the refund of CENVAT Credit in terms of Rule 5 of the CENVAT Credit Rules, 2004 as per the details below:

S. No.	Description	Amount in ₹
1.	Total value of the goods cleared for export and exported during the quarter.	
2.	Export turnover of the services determined in terms of Clause D of sub-rule (1) of rule 5.	
3.	Total CENVAT Credit taken on inputs and input services during the quarter.	
4.	Amount reversed in terms of sub-rule (5C) of rule 3	
5.	Net CENVAT Credit = (3) - (4)	
6.	Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export.	
7.	Export turnover of services and value of all other services, provided during the said quarter.	
8.	All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter.	
9.	Total Turnover = (6) + (7) + (8)	
10.	Refund amount as per the formula = (1) * (5)/ (9), in respect of goods exported.	
11.	Refund amount as per the formula = (2) * (5)/ (9), in respect of services exported.	
12.	Balance of CENVAT Credit available on the last day of quarter.	
13.	Balance of CENVAT Credit available on the day of filing the refund claim.	
14.	Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services]	
15.	Amount debited from the CENVAT account [shall be equal to the Amount claimed as refund (14)]	



*Refund of CENVAT Credit*

2. *Details of the Bank Account to which the refund amount to be credited:*  
Refund sanctioned in my favour should be credited in my/ our bank account.

Details furnished below:

- (i) Account Number :
- (ii) Name of the Bank :
- (iii) Branch (with address):

**3. Declaration**

- (i) I/We certify that the aforesaid particulars are correct.
- (ii) I/We certify that we satisfy all the conditions that are contained in rule 5 of the CENVAT Credit Rules, 2004 and in Notification No. .... /2012-C.E. (N.T.), dated \_\_\_ June, 2012.
- (iii) I/We am/are the rightful claimant(s) of the refund of CENVAT Credit in terms of rule 5, the same may be allowed in our favour.
- (iv) I/We declare that no separate claim for drawback or refund has been or will be made under the Customs and Central Excise Duties Service Tax Drawback Rules, 1995 or for claim of rebate under Central Excise Rules, 2002 or the Export of Services Rules, 2005 or under Section 93 or 93A of Finance Act, 1994( 32 of 1994).
- (v) I/We declare that we have not filed or will not file any other claim for refund under rule 5 of CENVAT Credit Rules, 2004, for the same quarter to which this claim relates.

Date d d m m y y y y *Signature of the*  
*Claimant* .....

*Name of the Claimant* .....

*Registration Number* .....

*Address of the*  
*Claimant* .....

**4. Enclosures:**

- (i) Copies of Customs Certified ARE-1 form along with the copies of shipping bill and bill of lading in case of the export of goods.
- (ii) Copies of the Bank Realization Certificates for the export of services. [Refer 3(d)]

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- (iii) Certificate in Annexure A-I from the Auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services. [Refer 3(e)]

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**5. Refund Order No.**

Date 

d	d	m	m	y	y	y	y
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The refund claim filed by Shri/Messrs. \_\_\_\_\_ has been scrutinized with the relevant Central Excise/ Service Tax records. The said refund claim has been examined with respect to relevant enclosures and has/has not been found in order. A refund of ₹ \_\_\_\_\_ (Rupees \_\_\_\_\_) is sanctioned/the refund claim filed is rejected.

Assistant Commissioner or Deputy Commissioner of Central Excise Forwarded to-

- (i) The Chief Accounts officer, Central Excise, for information and necessary action.
- (ii) The Commissioner of Central Excise.

Assistant Commissioner or Deputy Commissioner of Central Excise

- 
- (i) Passed for payment of ₹ \_\_\_\_\_ (Rupees \_\_\_\_\_) the amount is adjustable under Head "0038 - Union Excise Duties - Deduct Refunds/0044 - Service tax - Deduct Refunds".
- (ii) Amount credited to the account of the claimant as per the details below:

Amount refunded	
Account Number	
Reference No. of transfer	
Name of the Bank	
Address of the Branch	

Date 

d	d	m	m	y	y	y	y
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 Chief Accounts officer

Format of Chartered Accountant Certificate

Annexure A-I

It is certified that:

- (a) I am a qualified auditor to audit the books of account of M/s. \_\_\_\_\_
- (b) I have audited the books of account of M/s. \_\_\_\_\_ for the quarter ending \_\_\_\_\_
- (c) The value of the export turnover of services and total turnover of services mentioned at S. No. 2 and 7 in the table in Form A.
- (i) Is correct as per the books of account and relevant records of M/s \_\_\_\_\_
- (ii) Is in accordance with the provisions of rule 5 of the CENVAT Credit Rules, 2004.

Date 

d	d	m	m	y	y	y	y
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 Auditor

II. Format of application and CA certificate for claiming refund under Rule5B

FORM A

Application for refund of CENVAT Credit under rule 5B of the CENVAT Credit Rules, 2004 for the half year beginning from 1st of April/1st of October

To,  
The Assistant Commissioner or Deputy Commissioner of Central Excise,  
.....

Sir,  
I/We have provided taxable services where service recipient is also liable to pay service tax in terms of sub-section (2) of section 68 of the Finance Act, 1994. Accordingly the refund of CENVAT Credit in terms of Rule 5B of the CENVAT Credit Rules, 2004 (as per the details below) may be sanctioned.

- (a) Particulars of output services provided and service tax liability of the service provider and the service recipient during the period of half year for which refund is claimed :-

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Sl. No.	Description of service	Value of output services provided during the half year	Total Service tax liability during the half year	Service tax liability discharged by the provider of output service during the half year	Service tax liability of the receiver of such output service during the half-year [Column 3 - Column 4]
	(1)	(2)	(3)	(4)	(5)
1	Renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business				
2	Omitted w.e.f 19.05.2015				
3	Service portion in the execution of a works contract				
Total					

(b) Particulars of the amount eligible for refund at the end of the half year:

Period beginning from 1st April/1st October	Service tax liability of the receiver of such output service during the half-year (total of column 5 of above table)	Amount of unutilized CENVAT Credit taken on inputs or input services during the half year for providing services taxable under partial reverse charge [as calculated in para 1(a) of the notification].	The eligible refund amount (minimum of column 2 and 3)
(1)	(2)	(3)	(4)

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(c) I/we have debited the CENVAT credit account by ₹ ..... for seeking refund.

2. **Details of the Bank Account to which the refund amount to be credited:** Refund sanctioned in my favour should be credited in my/our bank account.

Details furnished below;

- (i) Account Number:
- (ii) Name of the Bank:
- (iii) Branch (with address):
- (iv) IFSC Code:

**3. Declaration**

- (i) I/We certify that the aforesaid particulars are correct.
- (ii) I/We certify that we satisfy all the conditions that are contained in rule 5B of the CENVAT Credit Rules, 2004 and in Notification No. 12/2014-C.E. (N.T.), dated 3rd March, 2014.
- (iii) I/We am/are the rightful claimant(s) of the refund of CENVAT Credit in terms of rule 5B, the same may be allowed in our favour.
- (iv) I/we have been authorized as the person to file the refund claim on behalf of the assessee.
- (v) I/We declare that we have not filed or will not file any other claim for refund under rule 5B of CENVAT Credit Rules, 2004, for the same half year to which this claim relates.

Date d d m my y y y *Signature of the Claimant (proprietor/karta/partner/any other authorized person)* .....

*Name of the Claimant* .....  
*Registration Number Address* .....  
*of the Claimant* .....

**4. Enclosures:**

- (i) Copy of the ST-3 returns for the half year.

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**5. Refund Order No.**

Date 

d	d	m	m	y	y	y	y
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The refund claim filed by Shri/Messrs. \_\_\_\_\_ has been scrutinized with the relevant Central Excise/Service Tax records. The said refund claim has been examined with respect to relevant enclosures and has/has not been found in order. A refund of ₹ \_\_\_\_\_ (Rupees \_\_\_\_\_) is sanctioned/the refund claim filed is rejected.

Assistant Commissioner or Deputy Commissioner of Central Excise

Forwarded to-

- (i) The Chief Accounts officer, Central Excise, for information and necessary action.
- (ii) The Commissioner of Central Excise.

Assistant Commissioner or Deputy Commissioner of Central Excise

- 
- (i) Passed for payment of ₹ \_\_\_\_\_ (Rupees \_\_\_\_\_). The amount is adjustable under Head "0044 - Service tax - Deduct Refunds".
  - (ii) Amount credited to the account of the claimant as per the details below:

Amount refunded	
Account Number	
Reference No. of transfer	
Name of the Bank	
Address of the Branch	
IFSC code	

Date 

d	d	m	m	y	y	y	y
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Chief Account's officer

## Chapter 9

# Proportionate Credit Mechanism and Other Issues under Rule 6

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The concept of CENVAT credit was introduced in order to overcome the burden of cascading effect of taxation. However, in situations where the duty paid inputs and input services are used in the manufacture of final products which are exempt from payment of duty or services which are exempt from taxation, then the cascading effect may not arise. In order to address such situation of inputs or input services being used in manufacture of exempted goods or provision of exempted services as well as in the taxable activities, the provisions relating to adjustment of credit were introduced.

### Meaning of exempted goods and exempted services

#### Exempted goods

The term 'Exempted goods' has been defined in Rule 2(d) of the rules as to mean those excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes

- (a) goods which are chargeable to "Nil" rate of duty and
- (b) goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed

W.e.f. 1.4.2015, even non excisable goods shall be treated as exempted goods for this rule and their value should be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

#### Exempted services

The term 'Exempted service' has been defined in Rule 2(e) to mean

- (1) taxable services which are exempt from the whole of the service tax leviable thereon, or
- (2) services on which no service tax is leviable under section 66B of the Finance Act (the services which are covered under negative list) or
- (3) services whose part of value is exempted on the condition that no

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credit of inputs and input services, used for providing such service, shall be taken.

but shall not include a service-

- (a) which is exported in terms of rule 6A of Service Tax Rules, 1994;  
or
- (b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India;

Therefore, the services which shall qualify to be exports in terms of Rule 6A of Service Tax Rules, 1994 would not be considered as exempted services. Further, transportation of goods by a vessel which are cleared from customs station in India to place outside India are also not considered as exempted services.

### **When the provisions of Rule 6 would apply:**

Where an assessee is engaged in taxable activities (manufacture of dutiable goods or provision of taxable services) as well as exempted activities (manufacture of exempted goods or provision of exempted services), provisions of Rule 6 would come into play.

### **Summary of the provisions**

#### **A. Rule 6(1)**

Rule 6(1) provides that a manufacturer or service provider shall not avail the CENVAT credit on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services. The credit which is not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3) of Rule 6.

The said provisions shall not be applicable to clearance of goods without payment of duty by job-worker of jewellery unit, in terms of Rule 12AA of Central Excise Rules, 2002.

#### **B. For the purpose of this rule:**

- (a) Exempted goods shall include non excisable goods cleared for consideration from factory. Value of such goods shall be invoice value or where such invoice value is not available, then such reasonable



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value as determined in terms of principles of valuation contained Central Excise Act,

- (b) Exempted services include an activity which is not a service in terms of Section 65B(44) of Finance Act, 1994. Value of such service shall be invoice value or the value determined in terms provisions relating valuation of services, where invoice value is not available.
- (c) Manufacturer or service provider having exempted clearances or providing exempted services shall follow the following procedure
  - (a) Where the manufacturer or service provider has only exempted clearances or provision of only exempted service, no credit of inputs or input services shall be availed.
  - (b) Where the manufacturer manufactures dutiable as well as exempted goods or a service provider provides both taxable as well as exempted services, then following options are available:
    - (i) To pay 6% of value of exempted goods and 7% of value of exempted services subject to maximum of opening balance of Cenvat credit availed at the beginning of the period and credit taken during the relevant period
    - (ii) To pay an amount as determined in terms of the provisions of Rule 3A
  - (c) If any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable as 6% of exempted goods or 7% of exempted services.
  - (d) If any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 7% of the value so exempted. However, these persons can also avail the option under sub rule (3A).
  - (e) In case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to 2% of value of the exempted services or the option under sub rule 3A.
  - (f) Any of the above two options availed shall be availed for all exempted goods or all exempted services and such option shall not be withdrawn during the remaining part of the financial year.

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- (g) No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

**C. Explanation 3 to Rule 6(3) of CCR, 2004 defines certain terms for the purposes of this sub-rule and sub-rule (3A) as under:**

- (a) "non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;
- (b) "exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;
- (c) "non-exempted services" means the output services excluding exempted services.]

It is interesting to note that in the case of *Mayur Colours Ltd. v. CCE, Mumbai (2001) 136 E.L.T. 1111(Tri.)* the Tribunal held that where the appellant is maintaining separate accounts of inputs which are used in the manufacture of final products some of which are dutiable and others are exempt, the physical segregation of the inputs is neither required nor expedient in addition to having a separate account. Similar view was held in the case of *Sri Ramachandra Paper Boards Ltd. v. CCE. (2007) 218 E.L.T. 386 (Tri.- Bang)*.

**D. Manner of determination of amount attributable to exempted goods or exempted services:**

- (a) From the total credit segregate credit attributable exclusively to exempted goods or exempted services
- (b) From balance credit segregate credit attributable exclusively to dutiable goods or taxable services.
- (c) Balance Cenvat Credit remaining after (a) and (b) above, shall be apportioned between Exempted goods / services and dutiable goods / taxable services based on the Turnovers of taxable and exempted goods / services of previous year. If no final products were manufactured or services were provided in the previous year, 50% is deemed as ineligible credit and has to be reversed on monthly basis.
- (d) This procedure shall be adopted on monthly basis and reverse the credit attributable to exempted clearances within due date for payment of taxes. If such payment is not made, the same

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shall be liable to be paid with interest of 15% PA till date of payment

- (e) The above procedure shall be repeated annually after the end of Financial year based on the turnovers of the said Financial Year. Based on revised computation, excess credit reversed may be taken back as credit and if short reversed, the same shall be paid within 30<sup>th</sup> June of succeeding Financial Year. If such payment is not made, the same shall be paid with interest of 15% PA till date of payment.
- (f) Payment or adjustment shall be intimated to jurisdictional authority within 15 days of such payment or adjustment.

**E. Manufacture/Service provider shall intimate in writing to the department the following information:**

- (i) name, address and registration number of the manufacturer of goods or provider of output service;
- (ii) date from which the option under this clause is exercised or proposed to be exercised;
- (iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;
- (iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

**F. Particulars that shall be submitted to department after the end of Financial year is as follows:**

- (i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b) of Section 6(3A);

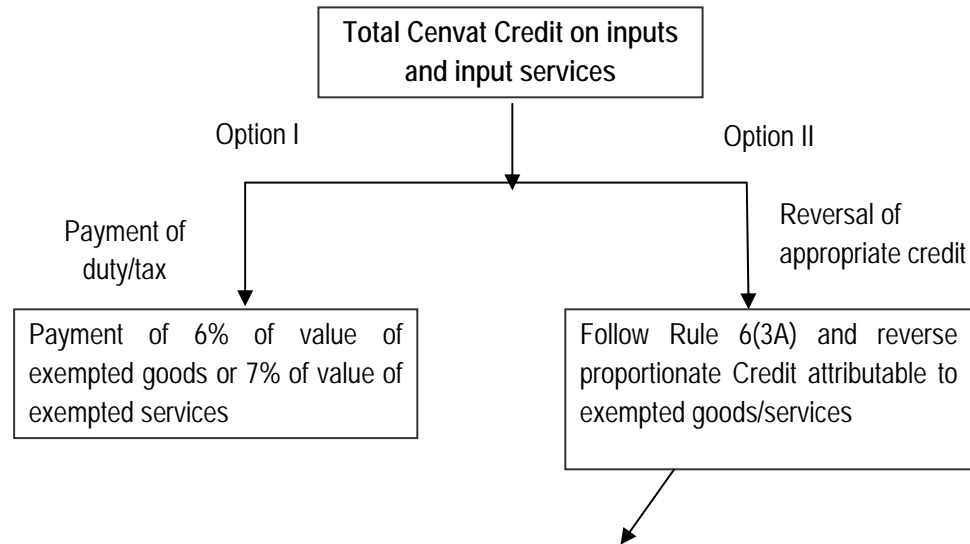
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- (ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);
  - (iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;
  - (iv) interest payable and paid, if any, determined as per the provisions of clause (e); and
  - (v) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.
- G. For Banking Company or NBFC or Financial institution, they can follow the above provisions or in lieu of the above provisions, they may reverse 50% of total credit availed in a specified period.
- H. For the Financial year 2015-16, the assessee who were following erstwhile provisions of Rule 6(3A), shall compute and pay / adjust credit as per the said provisions only.
- I. Where an assessee does not follow any of the options, then the adjudicating authority may give option to such assessee to pay the amounts in terms of Rule 6(3A) along with interest of 15% PA till the date of payment
- J. Valuation of exempted goods or exempted services in terms of Rule 6(3D) remains un-changed

W.e.f. 1.4.2015, final products and exempted goods shall include value of non-excisable goods cleared for a consideration. Value of non-excisable for this purpose shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder. This would result in reversal of credit on input services to the extent of non-excisable goods also.

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The provisions of Rule 6(3) of CCR could be summarized pictorially as below:



**PROCEDURE**

- ⇒ Segregate credit of input or input services used exclusively for exempted activity- Reverse the same (A)
- ⇒ From balance segregate credit of input or input services used exclusively for taxable activity – avail the same (B)
- ⇒ From the balance, arrive at the common credit attributable to exempted activities based on the value of turnover of exempted and taxable activities of previous year. This shall be done monthly.  $C = \text{Total Credit (T)} - (A+B)$
- ⇒ the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -  
 $D = (E/F) \times C;$   
where E is the sum total of –
  - (a) value of exempted services provided; and
  - (b) value of exempted goods removed, during the preceding financial year;where F is the sum total of-

- (a) value of non-exempted services provided,
- (b) value of exempted services provided,
- (c) value of non-exempted goods removed, and
- (d) value of exempted goods removed, during the preceding financial year

- ⇒ Reversal shall be made within due date for payment of duty. If not paid pay along with interest @ 15%PA
- ⇒ Follow the same procedure for entire year after the end of financial year. If excess credit has been reversed on monthly basis, avail the excess. In case short credit has been reversed, pay within 30<sup>th</sup> June of next FY.
- ⇒ If not paid within said date pay along with 15% PA interest

### **Credit on capital goods used for manufacture of exempted goods or provision of exempted services – Rule 6(4):**

Sub-rule (4) of rule 6 provides that CENVAT credit on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services shall not be allowed for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt on account of value of clearance or value of services (SSI benefit).

However, where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.

It appears that Cenvat credit can now be availed after a period of two years even though fully exempted products are being manufactured.

Prior to 1.4.2011 Rule 6(5) provided for 100% credit for certain input services. However, this rule has been deleted.

### **Rule 6(6): Certain clearances are not considered as exempt clearances**

It is interesting to note here that clearance of goods made without payment of duty, would not be considered as exempt goods for the purpose of application of provisions of sub-rule (1) to (4), if such clearances of goods

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are made to EOU, unit in a EHTP, STP, SEZ, developer of SEZ unit or developer or supplied to the UNO or international organization for their official use or supplied to projects funded by them or cleared for Exports.

#### **Rule 6(7): Service to SEZ units or Developers not be considered as exempt service to apply Rule 6**

Sub-rule (7) provides for non-application of sub-rules (1), (1), (2), (3) and (4) when taxable services are provided, without payment of service tax to SEZ units or developer of SEZ for their authorized operations. This would mean that credit can be retained for such supplies and need not be reversed as per the formulae laid down.

Rule 6(8) - Services exported but the consideration is not received within the specified period shall not be treated as exempt services. This rule would require better wording to actually give credit rather than take away the same upon non realization.

#### **Important decisions**

A. Reversal of Credit amounts to non availment:

The Supreme Court in Chandrapur Magnet Wires Pvt. Ltd. v CCE (1996) 81 ELT 3, held that the assessee can reverse the MODVAT availed prior to clearance and take the benefit of the exemption notification. In view of the above decision, reversal of credit amounts to non availment.

B. Reversal of credit relating to scrap or wastage / by- product:

- (i) In the case of UOI v M/s Hindustan Zinc Ltd., (2014) 303 ELT 321(S.C.) the Supreme Court held that no input was used to manufacture sulphuric acid and therefore, if the entire input of zinc ore was used to manufacture zinc, the question of payment of proportionate credit on inevitable by-product does not arise.
- (ii) The Supreme Court in CCEX v Gas Authority of India Ltd. (2008) 232 ELT 7 (SC), held that lean gas which is generated during extraction of LPG from natural gas, is a by-product and removal of the same does not attract reversal of credit under Rule 57CC(provision similar to Rule 6)
- (iii) In the case of Balrampur Chini Mills Ltd. v Union Of India, (2014) 300 E.L.T. 372 (All.), the High Court observed that Rule

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6 is not applicable to waste generated in the course of manufacture and held that though bagasse may be marketable, it is not a manufactured product but a waste generated in the process of extraction of juice from sugarcane.

- C. Whether 6%/7% of exempted goods/ services could be collected and retained by assessee:

A Larger Bench of the Tribunal in the case of Unison Metals Ltd. v CCE (2006) 204 ELT 323, held that irrespective of whether the assessee had paid 8% (as it then was) or not, there was no requirement to pay the amounts collected from the customer and section 11D would not be applicable since the collections are not by way of duty.

- D. Applicability of Rule 6 to clearances of goods without payment of duty on job-work / goods consumed captively:

In the case of CCE v Jainsons Wool Combers Ltd. (2011) 268 ELT 360 (P&H) held that clearing goods at intermediate stage manufactured on job-work basis, cannot be equated with clearing of exempted goods and hence credit for inputs used for manufacture of intermediate goods cannot be denied as the finished goods ultimately are cleared on payment of duty.

- E. Cost of final product

On the question as to whether cost of final product for the purpose of determination of assessable value shall include taxes paid on inputs on which manufacturer could claim credit, the Supreme court in *CCE v Dai Ichi Karkaria Ltd.* (1999) 112 ELT 353 (SC), held that since Modvat element is not reckoned as a cost of the raw materials by men of commerce, the question of including the same in the assessable value of the final product does not arise.

**Important clarifications issued by CBEC in connection with Rule 6**

- (a) Circular No. 868/6/2008-CX dated 09.5.2008

	Question	Answer
1.	Whether an assessee availing option (i) or option (ii) under rule	Yes, the credit on such inputs and input services is allowed.



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	<p>6(3) is allowed to take CENVAT credit of the duty paid on inputs and input services which are used for both dutiable and exempted goods or service?</p>	<p>However, an <u>assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of the duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services</u> [refer to Explanation II of rule 6(3)].</p> <p>For the purpose of the calculation of amount under the formula given under rule 6(3A), the total CENVAT credit taken on inputs and input services does not include the excise duty paid on inputs or the service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.</p>
<p>2.</p>	<p>Whether an assessee availing option (i) in respect of certain exempted goods/ services can also avail option (ii) in respect of other exempted goods or services simultaneously?</p>	<p>An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. <u>Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year.</u> [Explanation I to Rule 6(3)].</p>
<p>3.</p>	<p>An assessee opting for option (i) is required to pay an amount equivalent to 10% (5% w.e.f.</p>	<p>The value of the exempted goods is the transaction value as determined in terms of Section 4</p>

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	7.7.09) of the value of exempted goods or 8% (6% w.e.f. 7.7.09) of value of exempted services. What is the scope of term "value" for the said purpose?	of the Central Excise Act, 1944, or the value determined under Section 4A. However, in case of goods chargeable to specific rate of duty, the value shall be the transaction value to be determined under section 4. The <u>Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].</u>
4.	What is the accounting code to be followed by the assessee who is required to pay 8% (6% w.e.f. 07.07. 09) or other amount for the exempted service under Rule 6(3)?	For the present, the assessee can pay the said amount under the accounting code [0044] applicable for service tax.
5.	Whether input services distributor can also opt for option (i) or option (ii)	As ISD does not provide any service, and is like a trader, the question of availing either of the options would not arise.
6.	<u>Whether export of service without payment of service tax under Export of Service Rules shall be treated as exempted service for the purpose of rule 6(3)?</u>	<u>No; exports of services without payment of service tax are not to be treated as exempted services.</u>
7.	What is the manner for calculation of CENVAT credit amount attributable to inputs used in or in relation to the manufacture of exempted goods?	It is required to be done on the basis of actual consumption of the inputs used and the quantification may be made based upon the stores/production records maintained by the manufacturer. Further, a certificate from Cost Accountant/Chartered Accountant giving details of the quantity of the inputs used in the manufacture of exempted goods, value thereof

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		and CENVAT credit taken on these input may be submitted at the end of the year.
8.	Whether credit in respect of input services covered by rule 6(5) would be required to be taken into account for determination the of amount payable as per formula provided in rule 6(3A).	No, the <u>credit attributable to services mentioned in sub-rule (5), shall not be taken into account for determination of the amount under rule 6(3A).</u>

(b) CBEC Circular No. 870/8/2008 – CX dated 16.5.08

1. The undersigned is directed to refer to Circular No. 599/36/2001 – CX dated November, 2001 [2001 (134) ELT T29], wherein the issue of the applicability of the provision of section 11D of the Central Excise Act, 1944 in cases of the payments made under erstwhile rule 57CC(1) of the Central Excise Rules, 1944 was examined. It has been brought to the notice of the Board that there are some decisions of the Tribunal contrary to the said circular. Further, rule 6 of the CENVAT Credit Rules, 2004, has been amended w.e.f. 1.4.2008, necessitating a re-examination of the circular in the light of these developments.
2. It is seen that the Larger Bench of the Tribunal in the case of Unison Metals Ltd. v. Commissioner of Central Excise, Ahmedabad – I (2006) 204 ELT 323 (Tri. LB)] has held that section 11D provides that any amount which has been collected as excise duty and not paid to the credit of the Central Government shall be liable to be recovered. The scheme of the Law is that manufacturers shall not collect amounts falsely representing them as central excise duty and retain them, thus, unjustly benefiting themselves. However, in case of the payments made under erstwhile rule 57CC (1), Section 11D of the Act is not applicable since the amount of 6% or 5% has already been paid to the revenue and no amount is retained by the assessee. The said order of the Tribunal has been accepted by the Department.
3. The matter has been examined. Sub-rule (3) of rule 6 of the CENVAT Credit Rules, 2004, has been amended w.e.f. 1.4.2008 to provide for the payment of an amount equal to 5% of the

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value of the exempted goods, instead of 5% of the price of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

4. In the light of what is stated above, it is clarified that as long as the amount of 6% or 5% is paid to the Government in terms of erstwhile rule 57CC of the Central Excise Rules, 1944 or rule 6 of the CENVAT Credit Rules, 2004, the provisions of Section 11D shall not apply even if the amount is recovered from the buyers. However, it may be noted that the CENVAT credit of the said amount of 6% or 5% cannot be taken by the buyer since such a payment is not a payment of the duty in terms of rule 3(1) of the CENVAT Credit Rules, 2004. Therefore, the said 5% amount should be shown in the invoice as "5% amount paid under Rule 6 of the CENVAT Credit Rules, 2004".

(c) Board's Letter F. No. 137/72/2008 – CX dated 21.11.08

The issue of restriction on utilisation of accumulated CENVAT credit in terms of erstwhile Rule 6(3) (c) of CENVAT Credit Rules, 2004 has been examined. The following points emerged during its consideration

- Prior to 1.4.2008 [before the amendment in rule 6(3)] the option available to the taxpayer under Rule 6(3), was that, he was allowed to utilize credit only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. However, there was no restriction in taking CENVAT credit and also there was no provision about the periodic lapse of balance credit. This resulted in accumulation of credit in many cases.
- W.e.f 1.4.2008, under the amended rule 6(3), the following options are available to the taxpayers not maintaining separate accounts;
  - (i) Option No. 1 – In respect of exempted goods, he may pay an amount equal to 10% (5% w.e.f 7-7-09) of the value of exempted goods; and in respect of exempted / nontaxable services, he may pay an amount equal to 8% (6% w.e.f. 7-7-09) of the value of such exempted / non – taxable service.

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- (ii) Option No. 2 - He may pay an amount equivalent to CENVAT credit attributable to inputs and input services attributable to exempted goods/dutiable goods and exempted services.
  - As stated earlier, many taxpayers had accumulated CENVAT credit balance as on 1.4.2008. The matter to be considered was whether this credit balance should be allowed to be utilized for payment of service tax after 1.4.2008.
  - As no lapsing provision was incorporated and that the existing Rule 6(3) of the CENVAT Credit Rules does not explicitly bar the utilization of the accumulated credit, the department should not deny the utilization of such accumulated CENVAT credit by the taxpayer after 1.4.2008. Further, it must be kept in mind that taking of credit and its utilization is a substantive right of a taxpayer under value added taxation scheme. Therefore, in the absence of a clear legal prohibition, this right cannot be denied.
- (d) Circular No. 187/6/2015-S.T., dated 10-11-2015 - Speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2004: The Circular has been modified vide *Circular 296/51/2016-CX.9 dated 08-03-2016 : Tax Administration Reform Commission - Implementation of Recommendations*
- (i) **Applicability of the scheme:** All refund claims which have been filed on or before 31-3-2015, and which have not been disposed of as on date of the issue of this circular.

(ii) **Additional documents to be submitted:** Annexure 1 - A certificate from the statutory auditor in the case of companies, and from a chartered accountant in the case of assessee who are not companies.

Annexure 2 - An undertaking from the claimant.

(iii) **Operation of the scheme:** On receipt of the above referred documents, the jurisdictional Deputy/Assistant Commissioner will give a dated acknowledgement to the claimant. *He will then make a provisional payment of 80% (eighty per cent) of the amount claimed as refund, within five working days of the receipt of the documents.*

After making the provisional payment, the jurisdictional Deputy/Assistant Commissioner shall undertake checking the correctness of the refund claim in terms of the relevant notification.

## Case Study

### Facts

- (a) X is an output service provider providing taxable as well as exempted services. Turnover of services of X during the year ended 31.3.2016 is as under:

(i)	Value of exempted services	40,00,000
(ii)	Value of taxable services	60,00,000
	<b>Total</b>	<b>1,00,00,000</b>

- (b) Details of CENVAT credit likely to be availed by X during the month of April' 2016 are as under:

(i)	CENVAT credit on input services	50,000
(ii)	The above CENVAT credit on input services includes the following:	
	(b) Credit on input services exclusively used for provision of exempted services	10,000
	(c) Credit on input services exclusively used for provision of taxable services	10,000

- (c) Turnover during the month of April, 2016 of X is likely to be as under:

(i)	Exempt services	4,00,000
(ii)	Taxable services	6,00,000
	<b>Total</b>	<b>10,00,000</b>

What would be X's entitlement to CENVAT credit?

1. Option I: payment of 7% of the value of exempted services

7% of 4,00,000	28,000
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CENVAT Credit position after above payment

(B)	Option of payment of 7%	Amount
	Credit on input services [as per (b)(ii)]	50,000
	<u>Less:</u> Credit for exempted service	10,000
	<u>Less:</u> Payment on exempted services	28,000
	<b>CENVAT credit balance available for set off</b>	<b>12,000</b>

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2. Option II: Proportionate reversal under Rule 3A

CENVAT credit on input services attributable to rendering of exempted services during April, 2016

<b>Particulars</b>
<u>40,00,000* 30000</u> 1,00,00,000 [See Note below] = 12,000
<b>Note</b>
➤ 10,000 is deducted for exempted services ➤ 10,000 is deducted for input services exclusively used for /provision of taxable services
This view would be appropriate as credit attributable exclusively towards exempted services and taxable services cannot be brought under this formula. This formula is only for other services.

3. Total amount of CENVAT credit to be reversed by X for the month of April, 2014

	Amount
CENVAT credit on the inputs services attributable to exempted services [as per Point 1 above]	28,000
<b>Add:</b> CENVAT credit on input services used exclusively for provision of exempted services	10,000
<b>Total</b>	<b>38,000</b>

4. CENVAT credit balance position under both the options

(A)	Particulars	View 1 7% Reversal	View 2 Proportionate Credit
	Credit on inputs services [as per (b)(i)]	50,000	50,000
	<b>Less:</b> Reversal [as per 3 above]	38,000	22,000
	<b>CENVAT credit balance available for set off</b>	<b>12,000</b>	<b>28,000</b>

## Chapter 10

# Dealers, Input/Input Services Distributors and CENVAT Credit

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### Definition of First Stage Dealer & Second Stage Dealer

Rule 2(j) defines First Stage Dealer to mean “a dealer who purchases the goods directly from :-

- (i) The manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under the cover of an invoice; or
- (ii) An importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

The definition of First Stage Dealer has put the position of the importer equal to the manufacturer extending a stage of passing on the CENVAT credit in case of imported goods.

Rule 2(s) defines “second stage dealer” to mean a dealer who purchases the goods from a first stage dealer.

A registered dealer (first stage or second stage dealer) could procure goods from a manufacturer or importer and pass on the credit of specified duties. It shall be noted that dealer cannot charge and collect duties but he can only pass on the duties paid by the manufacturer or importer.

It is to be noted that where the dealer clears only part of the consignment he procured, he could pass only proportionate amount of credit attributable to goods cleared.

### Importer who passes on credit

It shall be noted that credit could also be availed on the basis of invoice issued by an importer. In this connection, such importer who passes on credit shall get himself registered under the provisions of Rule 9 of Central Excise Rules, 2002 and the invoicing procedures in terms of Rule 11 of Central Excise Rules, 2002 and provisions relating to maintenance of records



in terms of Rule 9(4) of Cenvat Credit Rules, 2004 would also be applicable to such importer.

### **Manner of distribution of credit by input service distributor**

An input service distributor is defined thus:

Rule 2(m): "Input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider or an outsourced manufacturing unit, as the case may be;

It is common that an assessee could have a factory at one place and head office /corporate office at a different location. An assessee may also have more than one factory situated at different place or branches or office providing services at different places. It is also common that the assessee may receive certain common services at one office/ branch and such branch or office may not be in a position to utilize such credit. In order to allow the assessee to transfer such credits to other units, Rule 7 has been introduced.

For example, the audit bill of the company which consists of 10 factories may be received at the head office. In such cases, the head office would become the input service distributor to the factories.

In terms of the amendment, ISD could also distribute the credit to outsourced manufacturing unit. Such unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned.

The term 'outsourced manufacturing unit' is defined in Explanation 4 to Rule 7: For the purposes of this rule, "outsourced manufacturing unit" means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.]

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Rule 7 allows an input service distributor to distribute the total credit which he has availed at an office to the factories or other branches providing services through an invoice. Input service distributors are essentially those who may receive services relating to other locations which may render the services or manufacture goods.

Credit can be distributed under this rule subject to the following conditions:

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;
- (c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;
- (d) The credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;
- (e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;
- (f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

Explanation. - The provision of this clause shall, mutatis-mutandis, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016;

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- (g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

For the purposes of this rule, "unit" includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit.

Total turnover shall be determined in the same manner as determined under rule 5. However, the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

The credit shall be distributed in following manner:

Credit is attributable to	Manner of distribution
Only one unit	Distribute entirely to such unit
More than one unit but not to all units	Distribute to such units to which the credit is attributable. Distribution shall be based on the value of turnover of such units during the relevant period
Credit is attributable to all units	Distribute to all units on pro rata basis based on the value of turnover of said period.

The term 'relevant period' shall be, -

- (a) if the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case maybe, the said financial year; or;
- (b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

**Rule 7A – Distribution of credit on inputs by service provider**

This rule allows an office of the service provider to distribute credit earned on inputs and capital goods. It needs to be noted that previous rule 7 only

### *Technical Guide to CENVAT Credit*

allowed distribution of input services. This rule effective 1.4.2008 is an extension of the rule 7. The offices now need to be registered if they want to avail this facility. Rule 7A applies only to service providers and not manufacturers as the latter are already eligible to avail input and capital goods credit upon receipt into factory.

### **Rule 7B – Distribution of credit on inputs by warehouse of manufacturer**

Under this rule, the manufacturer having one or more factories could avail credit of inputs on an invoice issued by a warehouse, similar to First Stage Dealer or Second Stage Dealer,

The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, mutatis mutandis, apply to such warehouse of the manufacturer.

### **Important decisions under Rule 7**

The Karnataka High Court in the case of CCE v ECOF Industries Ltd. (2011) 271 ELT 58 (Kar), was dealing with the issue relating to distribution of credit by head office to manufacturing units. In this connection it was held that Rule 7 provides for this type of transfer of credit and the conditions prescribed under said rule do not restrict the transfer of credit to a unit where the input service was not received and utilized. As the procedure and conditions under the law are satisfied, credit cannot be denied.

It should be noted that this decision was rendered based on the provisions as applicable prior to amendment made in 2012, during which period there was no restriction of transfer of credit to single unit.

In case of SKF India Ltd., Vs. CCE, Pune-I 2016 (41) S.T.R. 737 (Tri. - Mumbai) in the context of credit distributed by Input Service Distributor (ISD), Tribunal held that ISD is not an assessee under Service Tax law since ISD is only a distributor and ISD neither provides any service nor pays any Service Tax as provider of output service. There is no question of assessment or self-assessment of ISD and the Returns filed by ISD only given details of credit received and distributed, hence, it cannot be called as a self-assessment. Therefore, the Appellant's contention that credit is not deniable without setting aside assessment of distribution of credit made at ISD, is not sustainable.

## **Important Clarifications**

*Circular No. 178/4/2014-S.T., dated 11-7-2014*

Doubts have been raised regarding the manner and extent of the distribution of common input service credit in terms of amended rule 7 [especially rule 7(d)] of the CENVAT Credit Rules, 2004 (CCR). Rule 7 provides for the mechanism of distribution of common input service credit by the Input Service Distributor to its manufacturing units or to units providing output services. An amendment was carried out vide Notification No. 5/2014-C.E. (N.T.), dated 24th February, 2014, amending inter alia rule 7(d) providing for distribution of common input service credit among all units in their turnover ratio of the relevant period. Rule 7(d), after the amendment, reads as under:

'Credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period'

2. These doubts have arisen with respect to the meaning of the words 'such unit' used in rule 7(d). It has been stated in the representations that due to the use of the term 'such unit', the distribution of the credit would be restricted to only those units where the services are used. It has been interpreted by the trade that in view of the amended rule 7(d) of the CCR, the credit available for distribution would get reduced by the proportion of the turnover of those units where the services are not used.

3. Rule 7 was amended to simplify the method of distribution. Prior to this amendment there were a few issues raised by the trade regarding distribution of credit under rule 7 such as determining the turnover of each unit for each month and distributing by following the nexus of the input services with the units to which such services relate. The amendment in the said rule was carried out to address these issues. The amended rule 7(d) seeks to allow distribution of input service credit to all units in the ratio of their turnover of the previous year. To make the intent of the amended rule clear, illustration of the method of distribution to be followed is given below.

4. An Input Service Distributor (ISD) has a total of 4 units namely 'A', 'B', 'C' and 'D', which are operational in the current year. The credit of input service pertaining to more than one unit shall be distributed as follows:

$$\text{Distribution to 'A'} = \frac{X}{Y} * Z$$

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X = Turnover of unit 'A' during the relevant period

Y = Total turnover of all its unit i.e. 'A'+ 'B'+ 'C'+ 'D' during the relevant period

Z = Total credit of service tax attributable to services used by more than one unit

Similarly the credit shall be distributed to the other units 'B', 'C' and 'D'.

**Illustration:**

An ISD has a common input service credit of ₹ 12000 pertaining to more than one unit. The ISD has 4 units namely 'A', 'B', 'C' and 'D' which are operational in the current year.

Unit	Turnover in the previous year (in ₹)
A (Manufacturing excisable goods)	25,00,000
B (Manufacturing excisable and exempted goods)	30,00,000
C (providing exclusively exempted service)	15,00,000
D (providing taxable and exempted service)	30,00,000
Total	1,00,00,000

The common input service relates to units 'A', 'B' and 'C', the distribution will be as under:

(i) Distribution to 'A'	= $12000 \times 2500000 / 10000000$ = 3000
(ii) Distribution to 'B'	= $12000 \times 3000000 / 10000000$ = 3600
(iii) Distribution to 'C'	= $12000 \times 1500000 / 10000000$ = 1800
(iv) Distribution to 'D'	= $12000 \times 3000000 / 10000000$ = 3600

The distribution for the purpose of rule 7(d), will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or only in some of the units,

## Chapter 11

# Storage of Inputs outside the Factory of the Manufacturer

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Rule 8 of CENVAT Credit Rules, 2004 provides for storage of inputs outside the factory of the manufacturer with the specific permission from the central excise officer.

The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, allow storage of inputs outside the factory, by a specific order in this regard. The permission may be subject to such limitations and conditions as he may specify.

The Proviso to the rule specifies that where such inputs are not used in the manner prescribed in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs.

It should be noted that this provision applies to the inputs on which credit was availed. However, in case the inputs are stored outside the factory before they are moved inside the factory and credit was not availed there is no restriction on such storage. This provision would not apply to such cases.

## Chapter 12

# Documents and Records

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Rule 9 specifies the documents on the basis of which CENVAT may be taken and contains the requirements of proper records to be maintained by the assessee without specifying any format for the same.

### Documents on the basis of which credit could be availed

Sub-rule 1 of rule 9 allows credit on the basis of the following documents:

Nature of document	Copy
1. (a) Invoice issued by manufacturer from his factory, his depot, premises of his consignment agent, any other premises from where the goods are sold by or on his behalf under Rule 7 of Central Excise Rules, 2002. (including for the goods removed as such under Rule 3) for clearance of input or capital goods. (b) Invoice issued by a service provider for clearance of input or capital goods	Any copy
2. Invoice issued by an importer	Any copy
3. Invoices issued by an importer from his depot, premises of his consignment agent, if they are registered under Rule 9 of Central Excise Rules, 2002.	Any copy
4. Invoice issued by a first stage dealer or second stage dealer	Any copy
4a. Invoice issued by a registered importer	Any copy
5. Bill of Entry	Any copy
6. Supplementary invoice issued by manufacturer or importer or service provider, provided it is not paid in pursuance of demand invoking extended period under proviso to Section 11A. Challans or other similar documents evidencing the payment of additional duty of customs also eligible.	Any copy



*Documents and Records*

Nature of document	Copy
7. Certificate issued by the appraiser of customs for imports through foreign post office.	Any copy
8. Challan evidencing payment of service tax by the service recipient as the person liable to pay service tax;	Any Copy
9. An invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004	Any Copy
10. An invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.	Any Copy
11. A consignment note issued by Goods Transport Agency as defined under Explanation to Rule 4B of Service Tax Rules, 1994	Any Copy
12. A service tax certificate for Transportation of goods by Rail (STGG certificate) issued by the Indian Railways, along-with photocopies of railway receipts	

Rule 9(2) provides that no CENVAT credit will be allowed to be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or Service Tax Rules, 1994 are mentioned in the documents specified in Rule 9(1). However, if the said document does not contain all the particulars but contains the following details, then Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise may allow the CENVAT Credit if he is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver:

- (a) duty or service tax payable,
- (b) description of the goods or taxable service,
- (c) assessable value,
- (d) Central Excise or Service Tax registration number of the person issuing the invoice,
- (e) name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service.

## **Records**

### **(a) Record of inputs and capital goods**

The manufacturer of final products/service provider is required to maintain proper records for the receipt, disposal, consumption and inventory of the inputs/capital goods. The record should contain information regarding the following:

- (i) Value of input/capital goods
- (ii) Duty paid (specify types of duties, EC, SHEC etc.)
- (iii) Person from whom inputs / capital goods have been procured.
- (iv) Nature and description of goods.

### **(b) Record of input services**

The manufacturer of final products / service provider/ ISD is required to maintain proper records for the receipt and consumption of the input services. The record should contain information regarding the following:

- (i) Value of service
- (ii) Tax paid (specify ST, EC, SHEC etc.)
- (iii) Person from whom input service has been procured
- (iv) Nature and description of services.

Rule 9(6) of the CENVAT Credit Rules, 2004 specifically prescribes the maintenance of records for receipt and consumption of services.

### **(c) CENVAT credit record**

CENVAT credit record should be maintained on the lines of Personal Ledger Account (PLA). It is a current account of CENVAT credit received, credit utilized and credit balance. This should give details of the following:

- (i) Credit availed against each input/capital goods
- (ii) Credit availed for input services
- (iii) Credit utilized against the clearance of final products or removal of input as such or after processing or removal of capital goods as such
- (iv) Credit utilized against output service
- (v) Balance credit available.

It is preferable if the details of the input credits, capital goods credits and

input service credits are segregated in the CENVAT register so that each segment can be quantified and identified separately.

**(d) Format of records**

CENVAT Credit Rules, 2004, as such does not prescribe any format in which records are to be maintained by a manufacturer of final products/service provider.

Proforma/specimen of formats in which records may be maintained are given in the Annexures as under:

(i)	CENVAT Stock Account (Inputs)	Annexure 12.2
(ii)	CENVAT Credit Account (Inputs)	Annexure 12.3
(iii)	CENVAT Stock Account (CG)	Annexure 12.4
(iv)	CENVAT Credit Account (CG)	Annexure 12.5
(v)	Record of CENVAT Credit Availed Service Tax	Annexure 12.6
(vi)	CENVAT Credit Account (Service Tax Summary)	Annexure 12.7

It needs to be expressly noted that, formats/specimen set out in the Annexures as above, are only illustrative in nature. The same would have to be suitably modified depending upon the activities/requirements of a manufacturer of final products/service provider and the reporting capabilities that have been developed and exist within the organization.

Generally, organizations which have adopted ERP software should not have difficulties in meeting the requirements as long as the required data is available and can be put in a reportable format.

Problems could arise where a manufacturer of final products/service provider uses more than one software package within the organization for transaction recording or the system is partially computerized. Unless and until there is a software which can satisfactorily meet the reporting requirements under Central Excise Act, 1944 or under service tax provisions, it would be better to maintain the records off line or manually especially in case of SMEs.

**(e) Preservation of records**

Though no specific mention is made under CENVAT Credit Rules, 2004, it would appear that records maintained for the purposes of CENVAT credit availment and the utilization should be preserved for a period of 5 years immediately after the financial year for which such record pertains.

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In cases where there are disputes, it would be advisable to preserve records till the dispute is finally resolved.

#### **(f) Onus for maintenance of records**

Under CENVAT Credit Rules, 2004, the onus as to the maintenance of records is on the manufacturer of final products/service provider availing CENVAT credit. Hence, it is absolutely essential for the manufacturer of final products/service provider to ensure that appropriate records are maintained for CENVAT credit availed/utilized and should the need arise, enable him to reply to the central excise/service tax authorities in case of audit, enquiry etc., satisfactorily.

## **Returns**

Rule 9(7) provides that the manufacturer shall have to file returns on monthly basis. However, SSI units are required to file the returns on quarterly basis.

#### **(a) Returns by a manufacturer of final products**

<b>Form of return</b>	<b>Description</b>	<b>Who is required to file</b>	<b>Time limit for filing return</b>
ER – 1 [Rule 12(1) of Central Excise Rules, 2002]	Monthly return by large units	Manufacturers not eligible for SSI concession	10 <sup>th</sup> of the following month
ER – 2 [Rule 12(1) of Central Excise Rules, 2002]	Return by EOU	EOU units	10 <sup>th</sup> of the following month
ER – 3 [Proviso to Rule 12(1) of Central Excise Rules, 2002]	Quarterly return by SSI Units	Assessees availing SSI concession	10 <sup>th</sup> of next month of the quarter

*Documents and Records*

Form of return	Description	Who is required to file	Time limit for filing return
Annual Return [Rule 12 of CER, 2002]	Annual Return [To be notified]	Manufacturer	Annually by 30 <sup>th</sup> November of the succeeding year
Annual Return [Rule 9A(1) and 9A (2) of CENVAT Credit Rules, 2004] Rule 12 of CER, 2002	Annual Return of Cenvat [To be notified]	Manufacturer or Service provider.	Annually, by 30 <sup>th</sup> November of the succeeding year.

**(b) Return by a first stage dealer / second stage dealer**

Form of Return	Description	Who is required to file	Time limit
Return under Rule 9(8) of CENVAT Credit Rules, 2004	Quarterly Return	First stage/second stage dealer/importers	15 days from the end of quarter

**(c) Return by a service provider**

Form of Return	Description	Who is required to file	Time limit
In terms of Notification No. 33/2005-C.E. (N.T.), dated 20-10-2005 ST-3 return would be the return to be filed under Rule	Half yearly return	Person liable to pay service tax	25 <sup>th</sup> day from end of half year that is 25 <sup>th</sup> October or 25 <sup>th</sup> April

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9(9) of CENVAT Credit Rules, 2004]			
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**(d) Return by ISD**

Form of Return	Description	Who is required to file	Time limit
Form ST 3 [Rule 9(10) of CENVAT Credit Rules, 2004]	Half yearly return	ISD	25 <sup>th</sup> October or 25 <sup>th</sup> April

**(e) E-filing of returns**

For all the assessee (manufacturers, service providers, first stage dealer and second stage dealer) it is mandatory to file the returns online electronically.

CBEC has issued comprehensive *Circular No. 919/091/2010 CX dated 23.3.2010* outlining the procedure for electronic filing of excise and service tax return and electronic payment of taxes under their project of Automation of Central Excise and Service Tax (ACES).

### **Some judicial rulings**

- (a) The Supreme Court in the case of *UOI v Marmagoa Steel Ltd. (2008) 229 ELT 481 (SC)*, held that once the assessee produces bills of entry indicating that the duty has been paid by importer at the time of clearance, credit is admissible and there is no necessity of issuing an invoice by the importer. This decision would be valid only for the period when importers were not required to be registered.
- (b) The Gujarat High Court in *CCE v Steelco Gujarat Ltd., (2010) 255 ELT 518 (Guj)*, on the issue of availment of credit on the photocopy of the document which is attested by jurisdictional superintendent, held that where the assessee has established beyond doubt that the duty stands paid on the goods and the goods stand received by him, denial of credit on this procedural irregularity would not be justified.
- (c) The Supreme Court examined the issue of onus cast on manufacturer under rule 9 in the context of Notification No. 58/97-C.E. issued under Rule 57A(6) of erstwhile Central Excise Rules, 1944 in the case of

CCE, Jalandhar v. Kay Kay Industries (2013) 295 E.L.T. 177 (S.C.) and held that all that the persons should take reasonable care before taking credit and when once that was done, there was no further requirement to ensure that the supplier of inputs had actually paid the duty

## **Annexure 12.1**

### **LIST OF TAX / DUTY PAID DOCUMENTS**

- (a) An invoice issued by –
  - (i) A manufacturer for the clearance of –
    - (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
    - (II) inputs or capital goods as such;
  - (ii) an importer;
  - (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
  - (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or
- (b) A supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 or the rules made thereunder with the intent to evade payment of duty.

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Explanation - For the removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of Customs Tariff Act.

- (bbb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax additional amount of tax became recoverable from the provider of service on account of any non-levy or non- payment or short-levy or short payment by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of the Finance Act or the rules made thereunder with the intent to evade payment of service tax; or
- (c) A bill of entry; or
- (d) A certificate issued by an appraiser of customs in respect of the goods imported through a foreign post office; or as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in charge of the customs airport];
- (e) A challan evidencing the payment of the service tax by the person liable to pay service tax under sub – clauses (iii), (iv) (v) and (vii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994; or
- (f) An invoice, a bill or challan issued by a provider of input service on or after the 10<sup>th</sup> day of September, 2004; or
- (fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or]
- (g) An invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.



**Annexure 12.2**

CENVAT STOCK ACCOUNT (Inputs)								
Sr. No.	Date of receipt in the factory premises	Description of inputs	Quantity received	Details of Invoice/Challan/Bill of Entry etc.	Name of the Supplier	Excise Control Code No. of Supplier	Issued for use for Manufacture of Finished Product	
							Chit No.	Qty.
1	2	3	4	5	6	7	8	9

Issued for clearance as such				Balance Quantity	Remarks
On payment of duty		Otherwise			
Invoice/Challan No. and Date	Qty.	Document particulars	Qty.		
10	11	12	13	14	15

**Note**

The above format can be suitably modified for a service provider. A manufacturer of final products can even have a conventional stock account showing quantitative details of materials received, issued and consumed provided the details of the receipt and issue document are available and their reference as well as reference as to production report, has been quoted on the CENVAT credit register.

### Annexure 12.3

CENVAT CREDIT ACCOUNT (Inputs)								
Sr. No.	Date	Opening balance		Document particulars of fresh credit allowed		Amount of duty credited		
		Balance of excise duty and CVD	Other duties * (Specify)	Invoice/Challan /Bill of Entry / Other Approved Document Details	Excise Control Code No. of Buyer	Basic Excise Duty	CVD	Other Duties * (Specify)
1	2	3a	3b	4a	4b	5a	5b	5c

Total Credit Available		Debits			Balance of Credit		
Basic excise duty and CVD	Other duties* (Specify)	Invoice Challan/Bill of Entry/ Other Approved Document Details	Basic Excise Duty	Other Duties * (Specify)	Basic Excise duty and CVD	Other Duties* (Specify)	
6a	6b	7	8	9	10a	10b	11

**Note**

The above format can be suitably modified for a service provider.

\*EC, SHEC etc.

**Annexure 12.4**

CENVAT STOCK ACCOUNT (Capital Goods)									
Sr. No	Date of receipt in the factory premises	Description of capital goods recd.	Identification Marks and Brand Name	Qty. Recd	Details of Invoice/ Challan/ Bill of Entry, etc.	Name of Supplier	Excise Control Code No. of Supplier	Issued for installation / use for manufacturer of final products	
								9	10
1	2	3	4	5	6	7	8	9	10

Place and Date of Installation / Use in factory			Removal of capital goods as such				Balance Quantity	Corresponding Folio and Entry No. in CENVAT Credit A/c	Remarks
			On payment of duty		Otherwise				
Place	Date of Installation	Date of Starting of use							
11	12	13	14	15	16	17	18	19	20

**Note**

The above format may be suitably modified for a service provider.

## Annexure 12.5

### CENVAT CREDIT ACCOUNT

(Capital Goods)

Sr. No.	Date	Op Balance		Particulars of Fresh Credit Allowed				Total Credit available
		Balance Excise Duty and CVD	Other duties* (Specify)	Invoice/ Challan/ Bill of Entry/ Other Approved Document Details	Excise Central Code No. of buyer	Basic Excise Duty and CVD	Other Duties* (Specify)	
1	2	3a	3b	4a	4b	5a	5b	6

Debit			Balance of Credit		Remarks
Invoice / Challan / Bill of Entry / Other Approved Document Detail	Basic Excise Duty and CVD	Other Duties * (Specify)	Basic Excise Duty and CVD	Other Duties * (Specify)	
7a	8a	8b	9a	9b	10

- EC, SHEC etc.

### Annexure 12.6

#### RECORD OF CENVAT CREDIT AVAILED

(Service Tax)

Sr. No.	Service Tax Invoice No.	Details of Input Service Provider		Services Category
		Name	Address	
(1)	(2)	(3a)	(3b)	(4)

Gross amount for Taxable Service	Service Tax	EC	SHEC	Total	Date of payment with payment reference
(5)	(6)	(7)	(8)	(9)	10

**Annexure 12.7**  
**CENVAT CREDIT ACCOUNT**  
*(Service tax summary)*

Date	On Balance			Credit Availed during the month		
	Service Tax	EC	SHEC	Service Tax	EC	SHEC
(1)	(2a)	(2b)	(2c)	(3a)	(3b)	(3c)

Credit utilized during the month			Closing Balance		
Service Tax	EC	SHEC	Service Tax	EC	SHEC
(4a)	(4b)	(4c)	(5a)	(5b)	(5c)

## Chapter 13

# Transfer of CENVAT Credit

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Rule 10 provides for transfer of accumulated credit from one factory to another factory where there is a shifting of factory or change in the ownership on account of sale, merger etc.

Sub-rule (1) provides for transfer of credit from one factory to another factory subject to the permission of the Commissioner. Such transfer can take place subject to following conditions:

- (a) Manufacturer is having accumulated credit
- (b) The transfer of the credit is due to:
  - (i) change in ownership or
  - (ii) change in the site of the factory from one site to another or
  - (iii) sale, merger, amalgamation,
  - (iv) lease or transfer to a joint venture.
- (c) All the inputs, capital goods and work in progress shall be transferred to the new factory. Such inputs or capital goods shall be duly accounted in the books of new factory.
- (d) All the liabilities of the old factory must also be transferred to the new factory.

Consequent to the induction of service providers into the Cenvat circle, sub-rule (2) was inserted whereby it is provided that where a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business then he is allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business

Sub-rule (3) states that credit will be allowed under sub-rule (1) or (2) only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory to the new site or ownership and the inputs or capital goods are duly accounted for to the satisfaction of the Assistant Commissioner or Deputy Commissioner of Central Excise as the case may be.

## **Important decisions**

- (A) *Whether credit could be transferred only to the extent of inputs or capital goods transferred:*

In the case of *CCE v CESTAT* (2008) 230 ELT 209 (Mad), the Madras High Court held that provisions of the rule does not requires transfer of credit corresponding to quantum of inputs transferred to new factory. The rule allows transfer of available credits along with inputs and capital goods in stock.

- (B) *Whether credit could be transferred even if no inputs are there in stock:*

In the case of *CCE v CESTAT* (2009) 240 ELT 367 (Mad), the High Court held that credit could be transferred even if there was no stock of inputs or work in progress.

- (C) In *CCE Bangalore v M/s Tata Auto Components Systems Ltd.* (2011)-TIOL-703-HC-KAR-CX it was held that the unutilized credit lying in the books can be transferred even though there was no stock of inputs as on the date of transfer.

- (D) In *Sheil Industries v. CCE*, (2011) 263 E.L.T. 436 (Tri.-Ahmd.) where one unit was closed down and all inputs and capital goods were shifted to the factory of another unit. it was held that merely because two units are owned by one person there is no ground to treat both of them as the same unit when both units were separate manufacturing units located in two different sites and were separately registered with Central Excise Department; It was further held that rule 10 would not be applicable for transfer of unutilized credit of one such unit and therefore, transfer of unutilized credit was disallowed. It should be noted that the unit could have opted for transferring the capital goods and inputs on invoices issued under rule 9.

- (E) *Commr., of Cus., Bangalore Vs. Hewlett Packard India Sales Ltd.* 2012 (279) E.L.T. 203 (Kar.) where there was amalgamation of two units of assessee, one unit that had stopped its production was transferring to the other unit its unutilized credit, which it had availed under Cenvat Credit Rules, 2002. Revenue objected to the transfer since after amalgamation and before stopping of production, the unit that had closed down, it had started to avail General Exemption No. 52 under Notification No. 6/2003-C.E. Hon'ble High Court held that ssuch transfer of credit was permissible under Rule 10 of Cenvat Credit



### *Transfer of CENVAT Credit*

Rules, 2004 in as much as the Notification referred above did not relate to either value or quantity of goods and therefore Sub-rule (1) of Rule 11 has no application to the Exemption Notification. In that view, High Court held that the transfer of credit could not be rejected under Rule 11(1) of Cenvat Credit Rules, 2004.

### **Transfer of unutilized credit of additional duty leviable under Section 3(5) of the Customs Tariff Act - Rule 10A**

Rule 10A was inserted to facilitate the manufacturer or producer of final products, having more than one registration to transfer unutilised CENVAT credit of additional duty leviable under Section 3(5) of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises.

This can be done by making an entry for such transfer in the documents maintained under Rule 9 and issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i). The recipient premises may take CENVAT credit on the basis of the transfer challan.

The manufacturer or producer who is doing so, has to submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

However this facility is not available if the transferring and recipient registered premises are availing the benefit of the following notifications:-

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

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- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003];
- (viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]; and
- (ix) No. 1/2010-Central Excise dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010].

## Chapter 14

# Special Facilities and Procedures to Large Taxpayer Units (LTU) and Other Provisions

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### Large Taxpayer Units (LTU)

'Large Taxpayer' is defined in Rule 2(na) to have the meaning assigned to it in the Central Excise Rules, 2002, which reads as follows :

"Large taxpayer" means a person who,-

- (i) has one or more registered premises under the Central Excise Act, 1944 (1 of 1944); or
- (ii) has one or more registered premises under Chapter V of the Finance Act, 1994 (32 of 1994);

and is an assessee under the Income Tax Act, 1961 (43 of 1961), who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.

*Notification 20/2006-CE (NT) dated 30.9.2006* fixes the following criteria as to who could be considered as large taxpayer.

- (i) duties of excise of more than rupees five hundred lakhs in cash or through account current; or
- (ii) service tax of more than rupees five hundred lakhs in cash or through account current; or
- (iii) advance tax of more than rupees ten hundred lakhs, under the Income Tax Act, 1961(43 of 1961),

Further, Rule 12BB of Central Excise Rules, 2002 provides for procedure and facilities for large taxpayer which will be applicable to LTUs notwithstanding anything contained in Central Excise Rules, 2002.

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Similarly, Rule 2(cc) of Service Tax Rules, 1994 adopts the definition of Large taxpayer as defined in the Central Excise Rules, 2002. Further, Rule 10 of Service Tax Rules, 1994 also specifies certain facilities and procedures as applicable to Large Tax payer units rendering services.

Under CENVAT Credit Rules, 2004, Rule 12A has been inserted to grant certain facilities and also prescribe procedures as applicable to LTUs. The facilities and procedures as below:

**A. Removal of inputs as such to their other units without reversal of credit**

Rule 12A(1) allows an LTU to remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified Rule 3(5) of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (the recipient premises), for further use in the manufacture or production of final products in recipient premises.

The above facility is subject to the condition that the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon or exported without payment of duty under bond within a period of six months, from the date of receipt of the inputs in the recipient premises;

However, where final products are either not cleared on payment of duty or not exported within stipulated time, then the recipient unit is required to pay, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under Rule 14.

The Second Proviso to the above rule provides that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under Rule 14 of these rules.

However, the above rule shall not be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

*Special Facilities and Procedures to Large Taxpayer Units (LTU) ...*

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003];
- (viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307 (E), dated the 25th April, 2007]; and
- (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]

Further it is also provided that nothing contained in this sub-rule shall be applicable to a EOU or an unit located in EHTP or STP.

Sub-rule (2) provides that the first recipient premises may take CENVAT credit of the amount paid under first Proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

**B. Transfer of credit between units**

Sub-rule (4) provides that LTU may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other registered premises by, -

- (i) making an entry for such transfer in the record maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i).

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Under the above circumstances, it is provided that such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii), subject to the condition that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of Rule 3.

It should be noted that w.e.f. 11.7.2014, sub-rule (4) has been amended, wherein credit availed on or before 10.07.2014 could be transferred. Therefore, the said provision would not be applicable to the credits availed after 10.07.2014.

### **C. Other provisions**

Sub- rule (5) provides that an LTU shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

Sub- rule (6) provides that any notice issued but not adjudicated by any of the Central Excise Officer, immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, the Large Tax Payer Unit, shall be deemed to have been issued by Central Excise officers.

Sub-rule (7) provides that the other provisions of CENVAT credit rules, insofar as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply to a LTU.

## Chapter 15

# Miscellaneous Provisions

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This Chapter covers certain miscellaneous provisions relating the following aspects:

- A. Special provisions relating to units located in the state of J&K, North East region, Kutch district in the State of Gujarat- Rule 12
- B. Power to impose restrictions in certain types of cases – Rule 12AA/Rule 12AAA
- C. Power of Central Government to notify goods for deemed CENVAT credit- Rule 13

### **A. Rule 12 - Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim**

In terms of the schemes to encourage the manufacturing activity in the above specified areas, certain exemptions were granted to the manufacturers, wherein manufacturers are required to first pay the duty in cash and claim refund of such duties.

Under this rule where a manufacturer has cleared any inputs or capital goods from any area specified under exemption notifications then the user would be eligible to take CENVAT credit on such inputs or capital goods as if no portion of the duty paid on such goods was exempted under the notification specified.

It is intended that the user of such inputs on which the exemption is availed should get the full CENVAT Credit including the portion of duty refunded to the manufacturer.

### **B. Rule 12AA/Rule 12AAA - Power to impose restrictions in certain types of cases**

In order to discourage the planned and deliberate non-compliance of tax laws, and put in place deterrent provisions by taking stringent measures, *Notification Nos. 30/2006-C.E. (N.T.) and 31/2006-C.E. (N.T.) both dated 30-*

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12-2006 which inserted Rule 12CC in the Central Excise Rules, 2002 and Rule 12AA in the CENVAT Credit Rules, 2004 and Notification No. 32/2006-C.E. (N.T.) were issued. Later in substitution of the same, new Rule 12AAA was inserted w.e.f. 12-3-2012.

Rule 12AAA of CENVAT credit Rules, 2004 provides that notwithstanding anything contained in the above Rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse by the assessee and other factors, was of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it was necessary in the public interest to provide for certain measures including restrictions on a manufacturer, registered importer first stage and second stage dealer, provider of a taxable service or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of an importer or a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.

### **C. Rule 13 - Power of Central Government to notify goods for deemed CENVAT credit**

This Rule seeks to empower the Government by notification to declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid to be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of output service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the output service.

Thus Central Government is empowered to deem duty to be paid on nature of inputs or input services and allow such credit to the manufacturers or to the providers of output services. This Rule is necessary since processed textile fabrics, readymade garments and texturized yarn sectors take credit and pay duty by the deeming method. Consequently, Notification Nos. 52, 53, 54 and 55/2001-C.E. (N.T.), dated 29-6-2001 has been issued. However Notification No. 53/2001-C.E. (N.T.) was rescinded and superseded by



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Notification No. 6/2002-C.E. (N.T.), dated 1-3-2002. Amendment has been made to Notification Nos. 52/2001-C.E., 54/2001-C.E. and 6/2002-C vide Notification No. 8/2003-C.E. (N.T.), dated 1-3-2003 whereby the above said notifications were made effective only up to and inclusive of the 31st day of March, 2003.

# Chapter 16

## Recovery and Penal Provisions

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### **Wrongful / irregular availment of credit**

If CENVAT credit has been taken and utilized wrongly, the same becomes payable along with interest. Provisions of Sections 11A and 11AB of Central Excise Act, 1944 (in respect of excisable goods) and Sections 73 and 75 of the Act (in respect of services) shall apply mutatis mutandis for effecting the recovery – Rule 14 of CENVAT Credit Rules, 2004.

Section 11A of Central Excise Act, 1944 and Section 73 of the Act provide for the recovery of excise duty and service tax respectively.

### **Interest on wrongly taken credit which is unutilized**

- (a) Sometimes CENVAT credit is wrongly taken by the assessee in their records but the same is not utilized for discharging duty liability. Only an entry of credit remains in the books of account. Accordingly, Rule 14 of CENVAT Credit Rules, 2004 provides that:

“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 provider of the output service and the provisions of the 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.”

However, Notification No. 13/2016-CE(NT) dated 1.3.2016 has omitted Sub rule 2 of rule 14 which had prescribed the FIFO method for calculating interest. Therefore, interest would be payable only if the credit is utilised and will now have to be determined based on the past returns. If the assessee has sufficient balances in Cenvat account over and above what is recoverable, it would mean he has not utilised the credit.

### **Interest on erroneous availment and utilization of CENVAT credit:**

It is clear from the above that where the CENVAT credit has been taken and utilized wrongly or erroneously refunded, the same shall be recovered along with applicable interest.

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As regards wrong availment and utilization of CENVAT credit on inputs and capital goods wherein credit relates to excise duties paid, the interest for delayed payment of duty is imposed under Section 11AA of Central Excise Act, 1944. Presently, under Central Excise Act, the rate of interest prescribed is 18% vide Notification No. 5/2011-CE (N.T.) dated 1st March, 2011.

As regards wrong availment and utilization of CENVAT credit on 'input services' wherein the credit is that of 'service tax' paid, the interest on delayed payment of service tax is imposed under Section 75 of Finance Act, 1994. It is relevant to note that for the period up to 30<sup>th</sup> September 2014, the rate of interest prescribed was 18% vide Notification No. 14/2011-ST dated 1st March, 2011.

With effect from 1.10.2014, the basic rate of interest was 18% and further the interest rate was increased on the basis of the period of delay vide Notification No.12/2014-ST dated 11.07.2014. However, w.e.f., 1.3.2016, this notification has been superseded by Notification No. 13/2016-ST dated 1.3.2016 which has revised 'interest' as follows:

Sl. No.	Situation	Rate of simple interest
1.	Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due.	24 %
2.	Other than in situations covered under serial number 1 above.	15%

The Supreme Court in UOI v. Ind-Swift Laboratories Ltd (2011) 265 ELT 3 dealt with the issue of interest on irregular credit whether arising from date of availing such credit or date of utilization under the provisions of Rule 14 of CENVAT Credit Rules, 2004 and held that it is specifically provided in Rule 14 that the interest when CENVAT credit taken or utilized wrongly or erroneously refunded hence interest on irregular credit arises from date of taking such credit. The Supreme Court disagreed with the High Court's order which proceeded by reading down Rule 14 to mean that interest payable from date of utilization of irregular credit and credit availment by itself does not

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creates liability to pay excise duty and observed that the High Court misread and misinterpreted Rule 14 *ibid* and wrongly read it down without properly appreciating the scope and limitation thereof. Therefore, the Supreme Court held that Rule 14 was clear and unambiguous and there is no reason to read the word "or" appearing in Rule 14 between the expressions 'taken' or 'utilized wrongly' or 'has been erroneously replaced' as "and" by way of reading it down.

However, the above decision was distinguished by Karnataka High Court in *CCE & ST, Bangalore v. Bill Forge Pvt Ltd.*, (2012) 26 S.T.R. 204 (Kar.) where the assessee accepted its mistake and immediately reversed the entry before the credit was taken or utilized, and it was held that since the assessee had not taken benefit of wrong entry in their account books, there was no liability to pay interest and if the entry was reversed, it is as if that CENVAT credit was not available. Further, the High Court rejected the Revenue's plea that assessee had liberty to utilize the credit immediately after making the entry, and that it was case of wrong taking of credit with intention to avoid payment of Excise duty.

It is relevant to note that the said decision of Supreme Court was rendered in the light of evasion of taxes by availing credit on invoices without goods being received. In the light of this fact, the Supreme Court held that interest would be chargeable and not where goods are received. Moreover, in the case before the Supreme Court, the question of reversal of credit could not have been considered as the matter was before the Settlement Commission.

It may be noted that erstwhile Rule 57 I of the Central Excise Rules, 1944 did not specifically provide for any interest payment along with reversal of wrongly taken credit while present Rule 14 provides for payment of interest along with reversal of wrongly taken credit.

However, this issue is of academic interest since Rule 14 stands amended with the insertion of the phrase 'taken and utilized wrongly' in the place of taken or utilized wrongly' vide Notification No.18/2012-CE (N.T.) Dated 17.3.2012.

- (b) It is relevant to note that the Supreme Court in the case of *Commissioner of C. Ex., Mumbai I v. Bombay Dyeing & Mfg. Co. Ltd.*, (2007) 215 E.L.T. 3 (S.C.) held that reversal of credit before utilisation amounts to non-taking of credit. Similar views were also held in the

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case of Chandrapur Magnet Wires(p) Ltd. Vs. CCE., (1996) 81 E.L.T. 3 (S.C.).

- (c) In *Pratibha Processors v Union of India*, (1996) 88 ELT 12 (SC) = (1996) 11 SCC 101, it was held that interest is compensatory in nature and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is linked to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. It is compensatory and different from penalty which is penal in character. Similarly, in *Commissioner of Customs v. Jayathi Krishna & Co.* (2000) 119 ELT 4(SC) (2000) 9 SCC 402, it was held that interest on warehoused goods is merely an accessory to the principal and if principal is not payable, so is it for interest on it. In view of the aforesaid principle, no liability of payment of any excise duty arises when the petitioner availed CENVAT credit. The liability to pay duty arises only at the time of utilization. Even if CENVAT credit has been wrongly taken, that does not lead to levy of interest as liability of payment of excise duty does not arise with such availment of CENVAT credit by an assessee. Therefore, interest is not payable on the amount of CENVAT credit availed of and not utilized.

W.e.f. 1.4.2015, provisions relating to *recovery of CENVAT credit wrongly taken or erroneously refunded* has been amended as below:

- (i) Credit availed but not utilized could be recovered in terms of provision of Section 11A of Central Excise Act or Section 73 of Finance Act, 1994 without payment of interest.
- (ii) Credit availed and utilized could be recovered along with interest in terms of provision of Section 11A and 11AA of Central Excise Act or Section 73 and 75 of Finance Act, 1994.
- (iii) Credit utilisation for the purpose of this rule shall be determined as below:
  - (a) the opening balance of the month has been utilized first;
  - (b) credit admissible in terms of these rules taken during the month has been utilized next;
  - (c) credit inadmissible in terms of these rules taken during the month has been utilized thereafter.

## **Issue of show cause notice (SCN) for recovery of CENVAT credit wrongly taken / utilized**

### **(a) Time Limits**

#### **(i) Normal Period:**

**Section 11A of Central Excise Act, 1944 - Within two year** - Where excise duty has not been levied or paid or has been short levied or short paid or erroneously refunded, within two year (before 14.05.2016 one year) from the relevant date, the Assistant Commissioner/Deputy Commissioner of Central Excise is required to serve a notice on the person chargeable to the excise duty, which has not been paid or levied or short paid, requiring him to show cause as to why he should not be liable to pay the amount specified in the notice.

**Section 73 of Finance Act, 1994 – Within thirty months** - Where service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, within 30 months (before 14.05.2016 18 months) from the relevant date, the Assistant Commissioner/Deputy Commissioner of Central Excise is required to serve a notice on the person chargeable to service tax, which has not been paid or levied or short paid, requiring him to show cause as to why he should not be liable to pay the amount specified in the notice.

#### **(ii) Within five years** - If any excise duty/service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion, willful misstatement, suppression of facts or contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade the payment of excise duty/service tax.

The above would apply for the recovery of CENVAT credit wrongly taken / utilized.

### **(b) Invocation of Extended Period**

The extended period of 5 years, can be invoked in terms of proviso to Section 11A of Central Excise Act, 1944 / Section 73 of the Finance Act 1994, if excise duty / service tax has not been levied or has been short levied or short paid by reason of:

- fraud or
- collusion or
- any willful misstatement or

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- suppression of facts or
- contravention of any of the provisions of the Act or Rules

with an intent to evade the payment of tax / duty. Hence, the existence of any of the above circumstance is absolutely essential and a prerequisite for invocation of extended period in terms of proviso to Section 11A of Central Excise Act, 1944 / Section 73 of Finance Act.

Further, it is clearly laid down principle that, in cases where the excise department / service tax authorities wish to invoke the extended time limit of 5 years for issuing show cause notice (SCN), it can be done only if an assessee is guilty of willful misstatement or collusion or suppression of facts or contravention of any of the provisions of Central Excise / Service Tax Rules with an intent to evade the payment of duty. The elements of willfulness, collusion and suppression of facts with an intent to evade the payment of duty all belong to the domain of criminal jurisprudence having an element of *mens rea* i.e. existence of guilty mind. Therefore, the onus is on the central excise / service tax department to prove that one or other of these elements is present, so as to justify the issue of SCN by availing the extended time-limit.

The Supreme Court in *Uniworth Textiles Ltd., vs. CCE, Raipur* (2013) 288 E.L.T. 161 (S.C.) held that mere non-payment of duties is not equivalent to collusion or wilful mis-statement or suppression of facts, otherwise, there would be no situation for which ordinary limitation of six months would apply. In case of inadvertent non-payment is covered under the normal limitation of six months, whereas deliberate default faces limitation of five years since for the latter, positive action betraying negative intention of wilful/deliberate default is mandatory prerequisite. The use of "willful" introduces mental element, requiring look into mind of noticee by gauging their actions.

In this regard recourse could be made to extensive precedents of Supreme Court under central excise [for example – *Tamil Nadu Housing Board v. CCE 74 ELT 9(SC)*; *Pushpam Pharmaceuticals Company v. CCE 78 ELT 401 (SC)*, *Cosmic Dye Chemical v. CCE 75 ELT 721 (SC)*].

It has also been a settled position under central excise that, where duty has not been paid by an assessee due to a *bona fide* belief that no duty was required to be paid, extended period of 5 years cannot be invoked. (The said principle is applicable for service tax as well).

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In this regard one may also note the Supreme Court Rulings in Padmini Products v. CCE (1989) 43 ELT 195 (SC) and CCE v. Surat Textile Mills Ltd. (2004) 167 ELT 379 (SC – 3 Member Bench). Collector of Central Excise v. Chemphar Drugs & Liniments 1989 (21) E.C.R. 182.

Further, where the Department proceeds to issue second and subsequent show cause notice, the extended period of limitation cannot be invoked as held by Supreme Court in the case of Nizam Sugars Factory Vs Collector of Central Excise, A.P., (2006) 197 E.L.T. 465 (S.C.) and also in ECE Industries Ltd. v CCE 2004 (164) ELT 236.

### **Penalty for wrong availment of credit**

- (a) Penalty is leviable under Rule 15(1) of CENVAT Credit Rules, 2004 for wrongful availment or utilisation of CENVAT credit on inputs / capital goods /input services as under:
  - (i) confiscation of goods and
  - (ii) monetary penalty in terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be.

Where the credit has been taken or utilized wrongly on inputs/capital goods/input services on account of fraud, wilful misstatement, collusion or suppression of facts, or contravention of any provision of Central Excise Act or of the rules made thereunder with the intent to evade duty, penalty provisions of section 11AC of Central Excise Act, 1944 would apply.

- (b) Under rule 15(2) and (3) of the CENVAT Credit Rules, 2004 where credit has been taken or utilized wrongly on inputs/capital goods/input services on account of fraud, willful misstatement, collusion or suppression of facts, or contravention of any provision of these rules or of Excise Act / the Finance Act, 1994 or of the rules made thereunder with an intent to evade tax, penalty in terms of provisions of clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act. / Provisions of sub-section (1) of section 78 Finance Act, 1994 would apply.
- (c) Attention is drawn to the important ruling of the Supreme Court in CCE v Gujarat Narmada Fertilizer Co Ltd. (2009) 240 ELT 661 (SC) wherein the following observations were made in para 13 :



"It may be noted that litigation on interpretation of CENVAT Credit Rules has arisen on account of conflicting decisions given by the various Benches of CESTAT, the reason being that the Rules have not been properly drafted. In the circumstances, we are of the view that no penalty is leviable....."

- (d) With effect from 1.3.2008, Rule 15A has been inserted in CENVAT Credit Rules, 2004, to provide that any person who contravenes the provisions of CENVAT Credit Rules, 2004 for which no penalty has been provided under CENVAT Credit Rules, 2004, shall be liable to penalty which may extend upto ₹5000.

### **Some judicial rulings**

- (a) Maruti Suzuki India Ltd., Vs. CCE., Delhi, (2009) 240 ELT 641(S.C) Supreme Court held that as there has been continuous changes to CENVAT credit provisions and also circulars issued by the board, causing confusion on the aspect of taxability, classification and availability of exemption, no allegation could be made as to intention to evade. Huge litigation stands generated on account of repeated amendments in CENVAT Credit Rules hence penalty is not leviable, particularly on account of conflict of views expressed by various Tribunals/High Courts, in large number of other cases where assessee also succeeded. No penalty could be imposed in such interpretational issues. Therefore, no penalty could be imposed due to frequent amendments to CENVAT credit scheme.
- (b) CCE v. HMM Ltd. (1995) 76 ELT 497 (SC) – The Supreme Court held that the question of imposition of penalty would arise only if duty liability is sustained. Where there is no liability to pay duty / service tax, the question of imposition of penalty would not arise.
- (c) CCE, Chandigarh v Pepsi Foods Ltd, (2010) TIOL-109 (SC-CX-LB) – The Supreme Court held that it is well settled law that when the statutes create an offence and an ingredient of the offence is a deliberate attempt to evade duty either by fraud or misrepresentation, the statute requires 'mens rea' as a necessary constituent of such an offence. But when factually no fraud or suppression or mis-statement is proved by the revenue imposition of penalty under Section 11 AC is wholly impermissible.
- (d) Union of India Vs. Rajasthan Spinning and Weaving Mills, (2009) 238 E.L.T. 3(S.C.) – The Supreme Court held that every short payment or

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nonpayment would not attract penalty. In order to attract penalty the conditions as mentioned in Section 11AC of Central Excise Act, 1944 (such as fraud, intention to evade payment of duty) should exist and then only penalty could be imposed.

- (e) In a categorical decision in the case of *UOI v Dharamendra Textile Processors* (2008) 231 ELT 3 (SC) the Supreme Court dealt with the provisions relating to imposition of mandatory penalty holding that lesser penalty was not imposable in such cases as there was no discretion available regarding the quantum of penalty under section 11AC of the Central Excise Act, 1944. Further, it was observed that:

"... in the absence of specific reference to mens rea in Section 11AC of Central Excise Act, 1944 the contention of the assessee cannot be accepted as the use of the expression "assessee shall be liable" proves the existence of discretion, it would lead to a very absurd result. In fact in the same provision there is an expression used i.e. "liability to pay duty". It can by no stretch of imagination be said that the adjudicating authority has even a discretion to levy duty less than what is legally and statutorily leviable".

The Explanations appended to section 272(1) (c) of the IT Act were also noticed and it was observed that the said provision entirely indicated the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. It was also held that the judgment in *Dilip N. Shroff's* case had not considered the effect and relevance of section 276C of the I.T. Act. The object behind the enactment of section 271(1) (e) read with its explanations would indicate that the said section had been enacted to provide for a remedy for loss of revenue. The penalty under that provision was a civil liability. Wilful concealment was not an essential ingredient for attracting civil liability as would be the case in the matter of prosecution under section 276C of the I.T. Act.

It shall be noted that with effect from 14th May 2015, penalty provisions for wrong availment of credit have been aligned with the penal provisions proposed in Section 11AC of the Central Excise Act, 1994 or Section 76 of the Finance Act as the case may be.

# Chapter 17

## Accounting for CENVAT Credit

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### Introduction

#### Service Tax – Date of Payment and date of availment of CENVAT credit on input services:

From the inception, service tax was payable on receipt basis and this position continued till 31.03.2011. With effect from 1.4.2011, Rule 6 of Service Tax Rules, 1994 was amended to provide that service tax has to be remitted to the government within the 5th or 6th ,as the case may be, of immediately following the calendar month in which service is deemed to be provided as per the rules framed in this regard. Therefore, service tax is payable on accrual basis except for persons having turnover of ₹50 lakhs or less. For the purpose of determining when and how the services are deemed to be provided the Central Government issued Point of Taxation Rules, 2011 (herein after referred to as 'PTR, 2011') w.e.f. 1.4.2011.

Consequently, w.e.f., 1.4.2011 onwards the availment of CENVAT credit as provided in Rule 4(7) of CENVAT Credit Rules, 2004 could be summarized as follows:

SI No.	Nature of services	Conditions for availment of credit
I	Services other than Reverse Charge and Joint charge) where 100% tax is paid by service provider	
	CENVAT availment date	On / after the date of receipt of invoice. No credit shall be availed after 12 months from the date of invoice
	Effect of non-payment of value of service beyond 3 months from date of invoice	To pay an amount equal to credit availed.
	Effect of non-payment of	CENVAT credit could be re-availed

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SI No.	Nature of services	Conditions for availment of credit
	value of service beyond 12 months from date of invoice when credit is already reversed.	after the payment is made beyond 12 months since what is reversed is only an amount. Refer to Circular No.990/14/2014-CX dated 19.11.2014 allowing credit in such cases.
II	<b>Reverse charge (100%) recipient (including import of service from Associated Enterprises)</b>	
	CENVAT availment date	Avail credit only after date of remittance of tax. No credit shall be availed after 12 months from the date of challan evidencing payment of tax
	Effect of non-payment of value of service beyond 3 months from date of invoice	Month of expiry of 3 months from date of invoice shall be deemed as point of taxation and ST needs to be deposited in such month
III	<b>Joint charge</b>	
	POT and CENVAT availment date	Two views possible Avail credit only after payment of value of service and service tax to the service provider; Or Avail credit on that portion where receiver is liable to pay after payment; avail credit on portion where service provider pays immediately; No credit shall be availed after 12 months from the date of challan evidencing payment of tax
	Effect of non-payment of value of service beyond 3 months from date of invoice	Cannot avail credit till payment to service provider Or

SI No.	Nature of services	Conditions for availment of credit
		Credit availed on portion where liability to tax already discharged needs no reversal; Credit availed on that portion where service provider is liable to pay to be reversed;

### **Excise duty – Date of payment and date of availment of CENVAT credit on inputs**

So far as central excise duty is concerned, liability to pay excise duty arises on the date and at the time of removal of the goods from the place of removal which could be the factory of the manufacturer, a depot or a warehouse, as the case may be. On the same lines, input credit in respect of excise duty paid to the supplier of the excisable goods can be availed immediately on receipt of the goods in the factory/premises of the service provider.

### **Capital Goods**

CENVAT credit in respect of capital goods is required to be availed in two instalments: 50% in the year of receipt of capital goods in factory of the manufacturer/premises of the service provider and balance 50% in the subsequent year.

It is clear from the above that in case of 'input' and 'input service', the assessee has to adopt the accrual basis of accounting for the availment and utilization of CENVAT credit; As regards capital goods, even though the accounting of CENVAT credit availment is on accrual basis, the same has to be availed in two installments: 50% in the year of receipt of capital goods in factory of the manufacturer/premises of the service provider and balance 50% in the subsequent year.

### **Accounting entries for availment and utilization of CENVAT credit:**

Following are indicative accounting entries for availing and utilization of CENVAT credit on 'input', 'input service' and 'capital goods' by the manufacturer (on the assumption that he is engaged in manufacture of dutiable goods) / service provider (on the assumption that he is providing only taxable service).

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**Illustration:**

Assessee is a service provider who has provided services for ₹ 10, 00,000/- on which service tax is payable @ 14% i.e., service tax of Rs 1, 40,000/- ,

**Input:**

Assessee has purchased input worth ₹1, 12,500/- wherein excise duty is ₹12, 500/-

**Input service:**

Further, he has received input services of ₹ 4, 00,000/- and the service tax, thereon is ₹ 56,000/-,

**Capital goods:**

He has purchased capital goods for ₹ 5, 00,000/- on which excise duty @ 12.5% amounting to ₹62, 500/-

**1. At the time of purchase of inputs – credit availed**

	Purchase A/c	Dr.	1,00,000.00	
	CENVAT on Inputs A/c	Dr.	12,500.00	
	To S. Creditors /Cash/Bank A/c (being purchase of inputs)			1,12,500.00

**2. On receipt of invoice for input services – credit availed**

	Expense A/c	Dr.	4,00,000.00	
	CENVAT on input services A/c	Dr.	56,000.00	
	To Service Provider A/c / Cash / Bank (being the value of input services)			4,56,000.00

**3. Where value of input service and service tax is not paid to the service provider within 3 months of the date of invoice:**

	To Service Tax Recoverable A/c	Dr.	56,000.00	
	CENVAT on input services A/c	Cr.		56,000.00

*Note: In case of subsequent payment of value of inputs service and service tax amount, assessee can re-avail the CENVAT credit by reversing the above entry.*

**4. At the time of purchase of asset**

	Assets A/c	Dr.	5,00,000.00	
	CENVAT on capital goods Recoverable A/c	Dr.	62,500.00	
	To S. Creditors/ Cash/ Bank A/c (being purchase of capital goods)			5,62,500.00

**5. To claim 50% of credit of excise duty on capital good in the year of purchase**

	CENVAT on capital goods A/c	Dr.	31,250.00	
	Deferred CENVAT Credit on Capital Goods A/c	Dr.	31,250.00	
	To CENVAT on capital goods Recoverable A/c	Cr.		62,500.00

**6. Availment of balance 50% CENVAT credit on Capital goods in the next year:**

	CENVAT on capital goods A/c	Dr.	31,250.00	
	Deferred CENVAT Credit on Capital Goods A/c	Cr.		31,250.00

An assessee is not eligible to claim twin benefits on the excise duty paid on capital goods as also depreciation. The assessee can either claim benefit (in the form of depreciation) under Income Tax Act by capitalizing the amount of excise duty or it can claim 100% credit of excise duty (50% in the first financial year and 50% in the succeeding year) under CENVAT credit provisions.

**7. Adjustment of CENVAT with Service Tax payable - Total service tax payable is ₹1, 40, 000/-**

- i. Adjust input service credit of ₹ 56,000/-*
- ii. Adjust input credit of ₹12,500/-*
- iii. Adjust capital goods credit of ₹ 31,250/-*
- iv. Balance of ST payable of ₹ 40,250/- paid by cash*

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(i)	Service Tax Payable A/c	Dr.	56,000.00	
	To CENVAT on Input Services A/c			56,000.00
(ii)	Service Tax Payable A/c	Dr.	12,500.00	
	To CENVAT Credit on Inputs A/c			12,500.00
(iii)	Service Tax Payable A/c	Dr.	31,250.00	
	To CENVAT on capital goods A/c			31,250.00
(iv)	Service Tax Payable A/c	Dr.	40,250.00	
	To Cash / Bank (being balance of ST paid in cash through challan)			40,250.00

In case the service provider and/or manufacturer is providing both exempt and taxable services and/or is manufacturing exempt and dutiable goods, availment would need to be determined based on the prevailing law and the option exercised by the tax payer. The relevant provisions have already been discussed in the preceding Chapters.



# Chapter 18

## CENVAT Credit Audit

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### Introduction

Liberalized self-assessment procedures under central excise and service tax have, on the one hand, increased the responsibility of the assessee by shifting the onus to the assessee to determine correct excise duty / service tax liability and, on the other hand, created need for exercising greater vigilance on the part of the tax authorities. Audit is thus an important tool for both assessees and tax authorities.

Audit for CENVAT credit, unlike tax audit under Income- tax Act, 1961, is not prescribed compulsorily for assesses under central excise or service tax law at present. However, considering complexities of law and changing procedures, it has been found to be a very important part of internal / management audit. Tax department too conducts audits on regular basis.

### Departmental audit

The central excise / service tax department has its internal audit wing which conducts selective audit of the manufacturing concerns / service providers. Selection, as well as frequency of the audit usually depends upon revenue potential and suspect status of the unit. An audit party, usually consisting of one Superintendent and two or three Inspectors, spends two to seven days at concerned locations for audit depending upon the volume of work involved.

The Revenue Department, in the year 2000 introduced a system of central excise/service tax audit using professional, financial, accounting and audit principles to replace the then existing system which was more of a mechanical checking of prescribed records. Excise Audit Manual and Audit Programme has been replaced with the assistance from the Department of Revenue, Canada. The officers have been trained in using the course materials so prepared. Professional technique of "Risk Management" i.e. assessment of the risk to revenue in the selection of companies for this purpose has been developed. This system of audit is based, in case of companies, on company's records required to be maintained under the Companies Act, 1956.

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In M/s. Travelite (India) [2014-TIOL-1304-HC-DEL-ST = 2014 (35) S.T.R. 653 (Tri.-Del.)] the Delhi High Court has held that the powers to conduct audit as envisaged in rule 5A (2) of the Service Tax Rules, 1994, does not have appropriate statutory backing and therefore quashed the rule. The rules have been amended now to incorporate that an assessee has to produce documents to a Chartered Accountant or Cost Accountant involved in audit under Section 72A of the Act.

However, Central Board of Excise and Customs vide Circular No. 986/10/2014-CX, dated 9-10-2014 clarified that officers of Central Excise shall continue to conduct audit, as provided in the statute by way of rule 22 thus flows from clause (x) of section 37(2) and the general rule making powers under section 37(1) of the Central Excise Act, 1944. Clause (x) of section 37(2) empowers the Central Government to make rules for verification of records and returns to check the correctness of levy and collection of duty which in the present regime of self-assessment would mean verification of correctness of self-assessment and payment of duty by the assessee.

Further, as regards the Audit by Comptroller and Auditor General of India (CAG) Kolkata High Court in the case of SKP Securities Ltd., v. Deputy Director (RA-IDT) 2013 (29) S.T.R. 337 (Cal.) held that in absence of any enabling provision empowering CAG to audit accounts of non-government company, the plea that Sections 14(2) and 16 ibid enables it to do so, is rejected. Further, the Companies Act, 1956, Income Tax Act, 1961, Central Excise Act, 1944 or Finance Act, 1994, do not have any provision for audit by CAG of a company incorporated or existing under Companies Act, 1956, except a government company within meaning of Section 619 of Companies Act, 1956. Therefore, obligation of assessee under Rule 5A of Service Tax Rules, 1994 and Rule 22 of Central Excise Rules, 2002, to provide records to audit party deputed by CAG is subject to CAG Act, when CAG audit is on request of Governor of State or President of India, as indicated above; it does not oblige assessee to agree to unauthorized audit of its accounts by CAG.

In Mega Cabs Pvt. Ltd. Vs UoI, 2016-TIOL-1061-HC-DEL-ST, before Hon'ble Delhi High Court, the Petitioner challenged the provisions of Rule 5A(2) of Service Tax Rules, 1994 as amended vide Notification dated 5.12.2014 which provides for demand of documents by departmental audit party and C&AG for audit and also challenged the provisions of Rule 94(2)(k) of Finance Act, 1994 which grants power to Central Government to frame

rules relating to submission of information. The challenge was also made on the CBEC instruction dated 30.04.2015 which provided guidelines for audit by departmental officers. Hon'ble High Court analysed the provisions of Section 94 & 72A of Finance Act, 1994 and the Rule 5A of Service Tax Rules, 1994 and held that:

- (i) Rule 5A(2) to the extent it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand is ultra vires the statutory provisions and therefore has strikes down the said rule to that extent.
- (ii) The expression 'verify' used in Section 94 (2) (k) of the Finance Act, 1994 cannot be construed as audit of the accounts of an Assessee and, therefore, Rule 5A(2) cannot be sustained with reference to Section 94(2)(k) of the Finance Act, 1994.
- (iii) Circular No. 181/7/2014-ST dated 10.12.2014 declared to be ultra vires the provisions of Finance Act and strikes down the same.
- (iv) Declared that the CBEC Circular No. 995/2/2015-CX dated 27.02.2015 which provided for guidance / instructions for Central Excise and Service Tax Audit norms to be followed by the Audit Commissionerates and the Central Excise and Service Tax Audit Manual 2015 issued by the Directorate General of Audit of the CBEC are ultra vires the provisions of Finance Act, 1994 does not have any statutory backing and cannot be relied upon by the department justify the audit undertaken by officers of the Service Tax Department.

Accordingly, High Court observed that there is a distinction between auditing and verifying the records. Audit is a special function which has to be carried out by duly qualified persons like a Cost Accountant or a CA. It cannot possibly be undertaken by any officer of the Service Tax Department.

CBEC Circular /instructions regarding central excise / service tax audit issued earlier are set out as **Annexure 17.1** for reference.

### **Statutory CENVAT audit**

Section 14AA of Central Excise Act provides that if the Commissioner of Central Excise has reasons to believe that manufacturer of final products has availed or utilized credit of the duty under CENVAT Credit Rules which is not within the normal limit having regard to nature of excisable goods produced or manufactured, the type of inputs used and other relevant factors as he

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may deem appropriate or has availed the duty by reason of fraud, collusion or willful mis-statement or suppression of facts, he may direct such a manufacturer of final products to get the accounts of his establishment audited by a Cost Accountant nominated by him. The Cost Accountant so nominated is required to submit the report for such audit, duly signed and certified by him, to the Commissioner of Central Excise.

With effect from 19.08.2009, the Finance (No. 2) Act, 2009 has amended section 14AA to provide that a Chartered Accountant may also be nominated for such audit.

### **Internal audit by manufacturer of final products / service provider**

In view of the introduction of reforms in central excise procedures / simplified service tax procedures and consequent shifting of the responsibility from central excise/service tax department to the assessee for the determination of correct excise duty / service tax liability, the conduct of regular audits by assessee itself has gained increased significance. This could also involve audits by professionals who report directly to the management. While the general coverage could focus on revenue as well as areas for savings in tax costs, specific areas which require the focus from the management's perspectives are also covered.

#### **Significance of CENVAT credit audit**

The significance of CENVAT credit audit arises on account of the following factors, in particular:

- (a) Since CENVAT is now extended to almost all the excisable products, and all taxable services, financial implication in the context of any manufacturer of final products / service provider would be significant. The CENVAT Credit Rules, under which CENVAT credit is permitted across goods and services, have added a new dimension to the increased significance of CENVAT audit.
- (b) CENVAT credit scheme is essentially a beneficial scheme and hence, it becomes important for any manufacturer of final products / service provider to ensure that the maximum benefits to which he is entitled to are properly availed.
- (c) CENVAT Credit Rules prescribe elaborate compliances for availment, utilization etc. under the scheme. For misuse of CENVAT credit facility, a mandatory penalty equivalent to amount of credit wrongly

availed can be levied under the CENVAT Credit Rules. Hence, proper statutory compliance of CENVAT Rules by a manufacturer of final products / service provider is very essential.

- (d) CENVAT credit scheme involves co-ordination among different departments of a manufacturer of final products / service provider viz. purchases, stores, commercial, excise, service tax, finance and accounts etc.
- (e) According to Rule 4(4) of the CENVAT Credit Rules, credit of specified duty paid on capital goods is not allowable, if manufacturer of final products / service provider claims depreciation u/s 32 of Income Tax Act, 1961 on the amount of specified duty paid on such capital goods. [Hence, in the case of capital goods, before availing credit under CENVAT credit scheme, an evaluation may have to be carried out with the help of an audit to ascertain what would be beneficial: availment of CENVAT or depreciation under Income Tax].
- (f) In the context of new projects, several issues could arise as to the liability to central excise duty / service tax and entitlement to CENVAT credit benefit and the financial implications could be significant. In such cases an auditor would have to identify issues, analyze each issue in detail and give feedback thereon to the manufacturer of final products / service provider to enable him ensure that the maximum benefit to which he is entitled is properly availed and litigations are minimized.

### **Types of CENVAT credit audit**

Some of the types of audits that can be conducted by a manufacturer of final products / service provider in relation to CENVAT credit scheme are as under:

- (a) Internal Audit  
This could be continuous, one time or specific area /activity related.
- (b) New Projects Audit  
This would cover all aspects relating to a specific project with a focus on capital goods.
- (c) Documentation Audit  
This could be conducted with a special focus on all aspects relating to specified documents for the availment of CENVAT credit. The efficiency of the MIS can also be judged here.

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(d) Physical Verification Audit

This could be conducted to ascertain / cross check balances as per statutory stock records vis-a-vis physical stocks and other related items.

(e) Audit of Registered Dealers

This would cover the documents and records maintained and returns filed by dealers.

(f) Audit of Input Service Distributor

This would cover the documents and records maintained by an input service distributor for receipt and distribution of CENVAT credit.

(g) Refunds Audit

This can be conducted in cases where manufacturer of final products / service provider have significant exports. Audit could cover ascertainment of refund entitlement as to duties / taxes paid in regard to exports, evaluation of options available and its selection, etc.

### **Internal audit methodology**

Any internal CENVAT credit audit would generally involve the following broad steps:

- (a) Ascertainment of information as to internal control systems and review thereof
- (b) Identification of documents / records to be verified
- (c) Preparation of audit programme
- (d) Preparation of audit plan
- (e) Conduct of audit
- (f) Submission of audit report
- (g) Discussions of audit findings with the management

## Annexure 18.1

CBEC CIRCULAR F No. 381/145/2005 Dt. 6.6.06

REVISION OF THRESHOLDS FOR FREQUENCY OF AUDIT IN  
RESPECT OF CENTRAL EXCISE AND SERVICE TAX AUDITS

1. I am directed to say that the frequency for audit of central excise and service tax assesseees, currently prescribed in the respective Audit Manuals, is as under:

FOR CENTRAL EXCISE		
S.No	Quantum of annual duty payment in cash	Frequency of audit
1.	Units paying more than ₹ 1 crore	Every year
2.	Units paying between ₹ 10 lakhs and ₹ 1 crore	Once in two years
3	Units paying below ₹ 10 lakhs	Once in five years
Besides, all Export Oriented Units (EOU's) are required to be audited mandatorily every year. For the categories at s. nos. 2 and 3 above, the selection of units is to be based on a combination of unit wise rupee risk calculations circulated by DG (Audit) and local risk parameters.		
FOR SERVICE TAX		
S.	Quantum of annual duty payment (in cash + CENVAT credit)	Frequency of audit
1.	Taxpayers paying more than ₹ 10 lakhs	Every year
2.	Taxpayers paying below ₹ 10 lakhs	Not prescribed
The selection of taxpayers at S. No. 2 above is to be done on the basis of risk parameter S1 and local risk parameters listed in the Service tax Audit Manual. However, in the absence of adequate data for their computation, it has been prescribed in the manual that the top 2 assesseees from the top 20 duty paying services in each Commissionerate should be selected for audit each year, as an interim measure.		

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Owing to the fact that payment of duty through CENVAT credit is quite substantial in many industries, a more representative selection can be achieved in central excise using the total duty payment (i.e. cash and CENVAT credit taken together) as the basis for selection. A view was also expressed that the existing norms yield a workload that is not in sync with the availability of audit staff. As a result, the stress of audit effort has shifted to quantity (i.e. number of audits) rather than quality.

2. In the light of all these factors and in order to achieve more focused targeting of units, Board has decided to revise frequency norms with immediate effect. The revised frequencies are as under:

CENTRAL EXCISE		
S.N	Quantum of annual duty payment (in cash + CENVAT credit)	Frequency of audit
1	Units paying more than ₹ 3 crores	Every Year
2.	Units paying between ₹ 1 crore and ₹ 3 crores	Once every two years
3	Units paying between ₹ 50 lakhs and ₹ 1 crore	Once every five years
4	Units paying below ₹ 50 lakhs	10% of the units every years

For the categories mentioned at s nos. 2 to 4 of the table above, the selection of units would continue to be based on the unit-wise rupee risk calculations circulated by DG (Audit) combined with local risk parameters, if any.

3. In respect of EOUs the Board has decided that about 500 EOUs should be audited mandatorily all over the country. It has also been decided that the selection of these units should be made as per the criteria circulated by DG (Audit). Based on the data available with this Directorate it is observed that this target would be achieved if each Commissionerate audits about 25% of the EOUs engaged in the manufacture of excisable goods that are registered and functioning. Within this category, the selection may be made on the basis of the 'total value of inputs and capital goods received by the EOU without payment of duty' during the last financial year. This figure is available



in column of s. no. 5 of the ER 2 return filed by the unit and would have to be aggregated for the full year for each unit. All such EOUs in the Commissionerate should be arranged in descending order of this total value and the top 25% should be selected for audit from the list. Thus, EOU's with a higher value of inputs / capital goods received in a year should be given priority over a EOUs having a lower value. EOUs manufacturing non-excisable goods (such as primary produce or software) need not be audited mandatorily. However, the order of selection obtained by this method may be circumvented in case it is felt that there are overarching local risk factors (such as past compliance history, recent closure etc.) that apply in individual cases. In the latter situation, a unit may be audited on priority even though it does not figure in the top 25% by the total value of duty – free inputs and capital goods. The remaining EOUs may be taken up for audit depending on the availability of staff.

4. The revised norms for service tax would be as under:

<b>SERVICE TAX</b>		
S.No.	Quantum of annual total duty payment in (in cash + CENVAT credit)	Frequency of audit
1.	Taxpayers paying more than ₹ 50 lakhs	Every year
2.	Taxpayers paying between ₹ 25 lakhs and ₹ 50 lakhs	Once in two years
3.	Taxpayers paying between ₹ 10 lakhs and ₹ 25 lakhs	Once in five years
4.	Taxpayers paying below ₹ 10 lakhs	2% of the total number every year

For the categories mentioned at s. nos. 2 to 4 the selection of assessee would be based on S1 parameter and local risk parameters mentioned in the Service Tax Audit Manual.

5. The revised frequency norms may be implemented with immediate effect. However, units those have already been audited during the first quarter of this financial year need not be audited again even if they are due as per the revised norms. Any difficulties encountered in the implementation of these norms may be brought to the notice of this Directorate.