# Analysis of Amendments in Cenvat Credit Rules, 2004


*The Hon'ble Finance Minister presented the Union Budget for 2015-16 on 28th February, 2015. He claimed that "The credibility of the Indian economy has been re-established". In the taxation front, with this budget also, it can be seen that most of the announcements are made keeping in mind the proposals for introduction of GST with effect from 1st April, 2016. We have made an attempt to compile the changes in the Cenvat Credit Rules, 2004 made through this budget vide Notification No. 6/2015 – Central Excise (N.T.) dated 1stMarch, 2015 and its probable effects. The Cenvat Credit Rules, 2004 has been a grey area, so far as the establishment of sustainable legislation is concerned. Ever since its introduction, these set of rules have been amended more than 60 times. This budget also has brought in certain substantial amendments by way of insertion of new clauses, explanations or explanations to enhance the scope of applicability of the said rules and to clarify the existing intention of the legislation.*

The Rule-wise changes are as follows:

## Rule 4 – Conditions for Allowing Cenvat Credit:

Rule 4 of the Cenvat Credit Rules, 2004 is the main pillar of the set of rules. The amendments in this rule have somewhat revamped the whole rule itself. These changes have been made keeping in mind the omissions that were noticed in these rules throughout and the anomalies have been addressed now. In this rule, the changes can be categorised as under:

- ***Inputs at Premises of the Job Worker***

  Sub-rule 1 of Rule 4 specifies the location of receipt of inputs and the point of time at which the Cenvat Credit of duty paid on inputs may be availed. Earlier, such Cenvat Credit of duty paid on inputs could be availed on receipt of such inputs in the factory of the manufacturer or in the premises of the output service provider. With effect from 1st March, 2015, this sub-rule has been amended to include "the premises of the job worker" as an eligible location for receipt of inputs and subsequent availment of the CENVAT Credit of duty paid on such inputs on receipt of the inputs in the premises of the job worker in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be.

  Further, the erstwhile Clause (a) of Sub-rule 5 of Rule 4 prescribed that the Cenvat Credit on inputs shall be allowed even if the inputs are, as such or after being partially processed, sent to a job worker for further processing, testing, repairing, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose and the said inputs are received back by the manufacturer or the service provider

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**With effect from 1st March, 2015, the Clause (a) of Sub-rule 2 of Rule 4 has been amended to also include "the premises of the job worker" as an eligible location for receipt of capital goods and subsequent availment of the CENVAT Credit of duty paid on such capital goods in case such capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be.**

within 180 days of being sent to the job worker.

The said clause is substituted and the scope of eligible CENVAT Credit availment is amplified. As per the newly inserted Sub-clause (i) of Clause (a) of Sub-rule 5 of Rule 4, the CENVAT on inputs shall be available in case such inputs are as such or after being partially processed sent to the job worker and even if it is subsequently sent to another job worker from there and likewise for further processing, testing, repairing, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose and is received back by the manufacturer or the provider of output service within one hundred and eighty days of being sent to the job worker.

It has also been specified by way of *proviso* to the said sub-clause that the CENVAT Credit on such inputs shall also be allowed even if any inputs are directly sent to the job worker without being first brought to the premises of the manufacturer or the provider of the output service, as the case may be, and in such a case, the period of 180 days shall be counted from the date of receipt of the inputs by the job worker.

- ***Capital Goods at Premises of the Job Worker***

Clause (a) of Sub-rule 2 of Rule 4 specifies the location of receipt of capital goods and extent and point of time at which the CENVAT Credit of duty paid on Capital Goods may be availed. Earlier, such CENVAT Credit could be availed only to the extent of 50 % of duty paid at any point of time in a given financial year in which such Capital Goods is received in a factory or in the premises of the output service provider or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory. With effect from 1st March, 2015, this clause has been amended to also include "the premises of the job worker" as an eligible location for receipt of capital goods and subsequent availment of the CENVAT Credit of duty paid on such capital goods in case such capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be.

Further, the erstwhile Clause (a) of Sub-rule 5 of Rule 4 prescribed that the CENVAT Credit on capital goods shall be allowed, even if such capital goods are sent to a job worker for further processing, testing, repairing, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose and the said capital goods are received back by the manufacturer or the service provider within 180 days of being sent to the job worker.

The said clause is substituted and the time limit for receiving back the capital goods is increased. As per the newly inserted Sub-clause (ii) of Clause (a) of Sub-rule 5 of Rule 4, the CENVAT on capital goods shall be available in case such capital goods are sent to the job worker for further processing, testing, repairing, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose and is received back by the manufacturer or the provider of output service within two years of being sent to the job worker.

It has also been specified by way of *proviso* to the said sub-clause that the CENVAT Credit on such capital goods shall also be allowed even if any capital goods are directly sent to the job worker without being first brought to the premises of the manufacturer or the provider of the output service, as the case may be, and in such a case, the period of two years shall be counted from the date of receipt of the inputs by the job worker.

- ***Reversal and Re-credit***

The erstwhile Clause (a) of Sub-rule 5 of Rule 4 prescribed that the CENVAT Credit so availed on inputs and capital goods shall have to be reversed in case such inputs or capital goods are not received back at the factory of the manufacturer or the premises of the output

service provider within 180 daysof being sent to the job worker.

This provision has been modified and sub-clause (iii) of Clause (a) of Sub-rule 5 of Rule 4 now provides that the CENVAT Credit so availed on inputs and capital goods shall have to be reversed in case such inputs or capital goods are not received back in the factory of the manufacturer or the premises of the output service provider within 180 days or two years respectively, of being sent to the job worker. Further, such CENVAT Credit reversed may be taken back again when the inputs or capital goods, as the case may be, are received back in the factory of the manufacturer or the premises of the output service provider.

- ***Time Limit for initial availment of CENVAT Credit***

  With effect from 1st September 2014, it was provided that the manufacturer or the provider of output service shall not take CENVAT credit of inputs or input services after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9, which in general is the invoice. This time limit for availing the CENVAT Credit has now been extended to one year instead of six months with effect from 1st March, 2015. This change has been made considering the hardship faced by the tax payers owing to procedural difficulties.

- ***Partial Reverse Charge***

  The erstwhile second *proviso* to sub-rule 7 of rule 4 of the said rules provided that in case of an input service where partial (or joint) reverse charge is applicable, service recipient could avail the CENVAT Credit on such services only after payment of the value of the taxable service, service tax payable as to the service provided as indicated in the invoice and the service tax liable to be paid directly as a recipient of the service.

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The first and second *proviso* to this sub-rule have been substituted by a single *proviso* and with effect from 1st April, 2015, CENVAT Credit of service tax paid under partial reverse charge by the service receiver shall be allowed without linking it with the payment to the service provider as was in case of services where full reverse charge is applicable. Accordingly, CENVAT Credit of service tax liable to be paid directly to the government exchequer by the service recipient, in case of full as well as partial reverse charge, shall be allowed as soon as the said tax is paid with effect from 1st April, 2015.

The erstwhile third *proviso* to sub-rule 7 of rule 4 of the said rules provided that except in a case where whole of service tax is payable by the service recipient *(i.e.* full reverse charge), if the value of input service and the service tax paid or payable as indicated in the invoice or the challan referred to in rule 9, is not paid within three months of the date of invoice, bill or challan; the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT Credit availed on such input service. With effect from 1st April, 2015, this proviso has been substituted to scoop out the part of service tax payable by the service recipient even in case of partial reverse charge from the reversal criteria. Accordingly, service tax paid directly by the recipient of service and taken as CENVAT Credit shall not be required to be reversed even if the payment of the invoice is not made within three months.

## Rule 5–Refund of CENVAT Credit:

Rule 5 of the CENVAT Credit Rules, 2004 prescribes the procedure and conditions for refund of CENVAT Credit to an exporter. In the said rule, by way of insertion of clause (1A) to the Explanation 1, "Export Goods" is definedas "any goods which are to be taken out of India to a place outside India".

Accordingly, for the purposes of refund of CENVAT Credit, sale of goods to EOU or SEZ shall not be considered as export.

## Rule 6–Obligationof manufacturer or producer of final products and a provider of taxable services:

Sub-rule 1 of Rule 6 of the CENVAT Credit Rules, 2004 prescribes that CENVAT Credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or

for provision of exempted services, or input service 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 except in circumstances as mentioned in other sub rules.

After this sub-rule, two explanations have been inserted. As per Explanation 1, exempted goods or final products as defined in clauses (d) and (h) of rule 2 respectively, shall include non-excisable goods cleared for a consideration from the factory.

Further, Explanation 2 states that the value of non-excisable goods for the purpose of this rule, 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.

The insertion of explanations are effective from 1st March, 2015 and consequently, the payment or reversal of CENVAT Credit required to be made as per Rule 6(3) of CENVAT Credit Rules, 2004 shall be affected.

### Rule 9–Documents and Accounts:

Sub-rule 4of Rule 9 of the CENVAT Credit Rules, 2004 prescribes that the CENVAT Credit in respect of inputs or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such dealer had maintained records that such supply has been made from the stock on which duty was paid by the producer and the invoice being issued by him indicates only such duty on a pro-rata basis.

The scope of applicability of this sub-rule has been extended to an importer who issues an invoice on which CENVAT Credit can be taken.

### Rule 12AAA–Power to impose restrictions in certain types of cases

Rule 12AAA of the said rules enables the Chief Commissioner of Central Excise to impose restrictions upon a manufacturer, dealer or exporter so as to safeguard the misuse of CENVAT Credit.

This power has been extended to cover registered importers under its scope.

### Rule 14–Recoveryof CENVAT Credit:

The erstwhile Rule 14 of the said rules provided that CENVAT Credit wrongly taken and utilised or having been erroneously refunded, shall be recovered along with interest and penal provisions and limitation periods as prescribed under Sections

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11A and 11AA of the Excise Act or Sections 73 and 75 of the Finance Act shall apply *mutatis mutandis* for effecting such recoveries.

With effect from 1st March, 2015, this rule has been amended and divided into two portions, one being 'credit taken wrongly but not utilised' and the other 'credit taken and utilised wrongly'. It is provided that even if CENVAT Credit has been wrongly taken but not utilised, the same shall be recovered and penal provisions and limitation periods as prescribed under Sections 11A of the Excise Act or Sections 73 of the Finance Act shall apply *mutatis mutandis* for effecting such recoveries. It may here be noted that interest liability shall not arise if such wrongly availed CENVAT is not utilised.

### Rule 15–Confiscation and Penalty:

Rule 15 of the said rules prescribe the penalty that shall be applicable in case of contravention of the provisions of the rules.

With the assent of the President and the Finance Bill, 2015 coming into effect, this rule shall be amended so as to link the penal provisions in consonance with the amended provisions of Section 11AC of the Excise Act or Sections 76 and 78 of the Finance Act, 1994, as the case may be.

With these changes in the CENVAT Credit Rules, 2004 it can be gathered that the budget is much in line with the aim and vision of the Government to capitalise on the future with minimal changes in the legislation and maximum emphasis on the implementation. ■