Monogram on Guidance Note Certification by Cost Accountant under Rule 6 of Cenvat Credit Rules

Chapter 1

1. Background

Cenvat credit Rules provide for availment of credit of excise duty paid on inputs and capital goods and service tax paid on input services utilised for payment of excise duty on final products and service tax on taxable output services.

As per basic principle of VAT, credit of duty or tax can be availed only for payment of duty on final product or output services. As a natural corollary, if no duty is payable on final product or output services, credit of duty/tax paid on inputs or input services cannot be availed.

As per Rule 6(1) of Cenvat Credit Rules, Cenvat credit is not admissible on such quantity of input or input service which is used in manufacture of exempted goods or provision of exempted services [see annexure for text of rule 6 of Cenvat Credit Rules].

Thus, if inputs and input services are partly used in exempted final product/output service, Cenvat credit of that portion of input/input service will not be available.

Partial manufacture/provision of exempted products/services – Cenvat credit of inputs and input services is not available if final product/output service is exempt from excise duty/service tax. In case of manufacturer manufacturing both exempt and dutiable goods (or service provider providing taxable as well as exempt services), it may happen that same inputs/input services are used partly for manufacture of dutiable goods/taxable services and partly for exempted goods/services.

In such cases, the manufacturer/service provider has following three options (w.e.f. 1-4-2008)–

(a) Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services – Rule 6(2) of Cenvat Credit Rules.

(b) Pay amount equal to 5% of value of exempted goods (if he is 'manufacturer) and/or 6% of value of exempted services (if he is service provider) if he does not maintain separate inventory and records – Rule 6(3)(i) [The 'amount' payable was 10% of value of exempted goods and 8% of exempted value of exempted services during the period 1-4-2008 to 6-7-2009. Prior to 1-4-2008, in case of service provider, there was restriction in availing Cenvat credit to the extent of 20% of service tax payable on output services].

(c) Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services – Rule 6(3)(ii) w.e.f. 1-4-2008.

[see annexure for text of rule 6 of Cenvat Credit Rules].

Cenvat credit on capital goods – If capital goods are partly used for exempted goods and party for dutiable final products, entire Cenvat credit of duty paid on capital goods is available. Cenvat credit of duty on capital goods is not allowable only when it is *exclusively* used for manufacture of final products [rule 6(4)].

No reversal or payment of amount in certain cases – If excisable goods are removed to SEZ unit, SEZ Developer, EOU, EHTP, STP, UN agencies or for exports or removal of gold or silver arising in manufacture of copper or zinc by smelting, payment of 10% 'amount' is not required [rule 6(6)].

1-1 Options available to manufacturer manufacturing both dutiable and exempt goods and service provider providing taxable as well as exempt services

The manufacturer/service provider has three options –

Maintain separate inventory and accounts - Maintain separate inventory and accounts of receipt and use of inputs and input services used for exempted goods/exempted output services. In such cases, he should not avail Cenvat credit of the inputs and input services which are used in exempted final services at all – Rule 6(2) of Cenvat Credit Rules.

Pay prescribed 'amount' on value of exempted goods or value of exempted services if separate inventory and records not maintained - If the manufacturer/service provider opts not to maintain such separate accounts, he has to pay an amount equal to 5% of the 'value' of such exempted goods or 6% of the value of 'exempted services' [Rule 6(3)(i) w.e.f. 1-4-2008 [The 'amount' payable was 10% of value of exempted goods and 8% of exempted value of exempted services during the period 1-4-2008 to 6-7-2009.].

(Such payment can be made by debit to Cenvat credit account or PLA [*explanation* II to rule 6(3A)].

The manufacturer/service provider cannot utilise Cenvat credit of inputs/input services utilised exclusively for manufacture or exempted final product or exempted output services, as is clarified in *Explanation* II to rule 6(3) inserted w.e.f. 1-4-2008- reiterated in para 1 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

Such option has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year– *Explanation* I to Rule 6(3) inserted w.e.f. 1-4-2008 - reiterated in para 2 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

Pay proportionate amount attributable to Cenvat credit utilised for exempted final product/ exempted output services–The manufacturer/service provider can opt to pay an 'amount' which is proportional to Cenvat credit availed on exempted final product/exempted output services [rule 6(3)(ii) w.e.f. 1-4-2008]

The manufacturer/service provider cannot utilise Cenvat credit of inputs/input services utilised exclusively for manufacture or exempted final product or exempted output services, as is clarified in *Explanation* II to rule 6(3) inserted w.e.f. 1-4-2008- reiterated in para 1 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

For small service providers and small manufacturers, it may be difficult to maintain elaborate records and make calculations.

If manufacturer/service provider wants to exercise this option, he has to inform details as prescribed in rule 6(3A) of Cenvat Credit Rules to Superintendent of Central Excise.

Such option has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year – *Explanation* I to Rule 6(3) inserted w.e.f. 1-4-2008 - reiterated in para 2 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008. .

1-2 Meaning of exempted goods

As per Rule 2(d) of Cenvat Credit Rules, 'exempted goods' means goods which are exempt from whole of duty of excise leviable thereon and includes goods which are chargeable to 'Nil' rate of duty. Thus, 'exempted goods' for purpose of Cenvat cover (a) Goods chargeable to 'Nil' duty as per Tariff and (b) Goods which are exempt by a notification issued under section 5A.

Exempted goods do not mean non-excisable goods - Goods which are not mentioned in Tariff are not 'exempted goods' as they are neither 'goods chargeable to 'Nil' duty as per Tariff' nor 'goods which are exempt by a notification issued under section 5A'.

1-3 Meaning of 'exempted services'

As per rule 2(e) of Cenvat Credit Rules, "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of Finance Act.

Services on which no tax is payable are also 'exempt services' - - For purpose of the definition of 'exempted services', services on which no service tax is leviable are also 'exempted services'. Thus, if a particular service is not taxable under present provisions of Finance Act, 1994, it will be 'exempted service' for purpose of rule 6.

It has been clarified that export of service will not be treated as exempted service for rule 6 of Cenvat Credit Rules - para 6 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

1.2 Exceptions to provisions of payment of amount

Following are the exceptions to provision of proportionate removal of Cenvat credit or payment of 5%/6% 'amount'.

1.2-1 Dis-allowance of Cenvat of capital goods only if used exclusively for exempted final product/services

Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible [rule 6(4)].

1.2-2 *Some services eligible even if partly used for manufacture of exempted goods/output services*

Rule 6(5) of Cenvat Credit Rules provides that in case of specified services, full Cenvat credit of input service is available even if these services are partly used in manufacture of exempted final product/output services.

The services are –

- Consulting Engineer [section 65(105)(g)]
- Architect [section 65(105)(p)]
- Interior decorator [section 65(105)(q)]
- Management consultant [section 65(105)(r)]
- Real Estate Agent [section 65(105)(v)]
- Security Agency Services [section 65(105)(w)]
- Scientific or technical consultancy [section 65(105)(za)]
- Banking and Financial Services [section 65(105)(zm)]
- Insurance Auxiliary Services concerning life insurance business [section 65(105)(zy)]
- Erection, commissioning and Installation [section 65(105)(zzd)]
- Maintenance or repair [section 65(105)(zzg)]
- Technical testing and analysis [section 65(105)(zzh)]
- Technical inspection and certification [section 65(105)(zzi)]
- Foreign Exchange Broker [section 65(105)(zzk)]
- Construction Service [section 65(105)(zzq)]
- Intellectual property services [section 65(105)(zzr)]

In case of these services, reversal of Cenvat or payment of 'amount' is not required, if these services are even partly used for providing output service or manufacture of dutiable final product. Cenvat credit will be dis-allowed only when these services are used *exclusively* in manufacture of exempted final product or exempted output service. Rule 6(5) has been given overriding effect over rule 6(1), 6(2) and 6(3).

1,2-3 Supply to EOU/SEZ, export of goods, deemed exports or gold manufacture

Rule 6(6) of Cenvat Credit Rule states that provisions of rules 6(1), 6(2), 6(3) and 6(4) are not applicable , if excisable final product is despatched without payment of duty, in following cases –

(a) Final product is despatched to SEZ unit, EOU, EHTP or STP and to SEZ developer for their authorised operations (Actually, supply to SEZ is 'export' and not 'deemed export') [The words 'SEZ Developer for their authorised operations' were added w.e.f. 31-12-2008].

(b) Final product is supplied to United Nations or an international organisation for their official use or supplied to projects funded by them, which are exempt from duty.

(c) When final product is exported under bond without payment of duty

(d) Gold or silver arising in course of manufacture of copper or zinc by smelting.

(e) Goods supplied against International Competitive Bidding in terms of Notification No. 6/2006-CE dated 1-3-2006 or earlier Notification No. 6/2002-CE dated 1-3-2002, if such goods are exempt from customs duty when imported in India

(f) Goods supplied to a power project from which power supply has been tied up through tariff based competitive bidding or to a power project awarded to a developer through tariff based competitive biddings in terms of Notification No. 6/2006-CE dated 1-3-2006 (inserted w.e.f. 27-2-2010).

(g) Goods supplied for use of foreign diplomatic missions or consular missions or career counselling offices or diplomatic agents in terms of Notification No. 6/2006-CE dated 1-3-2006 [inserted w.e.f. 1-7-2010].

In such case, assessee need not reverse Cenvat credit or pay any 'amount'.

1.3 Payment of 'amount' on exempted final product/exempt services

Assessee can opt to pay 'amount' of 5% of 'value of exempted final product or 6% of 'value of exempted services [rule 6(3)(i) w.e.f. 1-4-2008] [The 'amount' payable was 10% of value of exempted goods and 8% of exempted value of exempted services during the period 1-4-2008 to 6-7-2009. Prior to 1-4-2008, in case of service provider, there was restriction in availing Cenvat credit to the extent of 20% of service tax payable on output services].

Option of payment of 10% ‘amount’ on exempted goods was also available earlier, but in case of service tax, the provision upto 31-3-2008 was that tax Cenvat credit was restricted to 20% of service tax payable on taxable output services.

Nature of the payment of ‘amount’ - The payment of ‘amount’ is really in nature of reversal of Cenvat credit availed on inputs/input services which have been used for manufacture of exempted goods or provision of output services.

1.4 Proportionate reversal of Cenvat Credit w.e.f. 1-4-2008

If assessee intends to pay amount on proportionate basis as provided in rule 6(3)(ii) (w.e.f. 1-4-2008), the ‘amount’ is to be calculated as provided in rule 6(3A) of Cenvat Credit Rules. He has to pay ‘amount’ provisionally on monthly basis. At the yearend, he has to calculate exact amount and pay difference if any or adjust excess amount paid.

1.4-1 Inform option to Superintendent

The assessee should inform following details to Superintendent, while exercising the option of proportionate reversal [Rule 6(3A)(a) inserted w.e.f. 1-4-2008] -

(i) name, address and registration No. 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 dutiable goods or taxable services.

(iv) description of exempted goods or exempted services.

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

Such option has to be exercised in respect of all exempted goods manufactured and all exempted output services provided. The option once exercised shall not be changed in remaining part of financial year – *Explanation* I to Rule 6(3) inserted w.e.f. 1-4-2008.

If assessee intends to pay 10%/8% ‘amount’(not 5%/6% w.e.f. 7-7-2009) on exempted final products/exempted final services, such intimation is not required.

1.4-2 Mode of calculations of proportionate reversal

The mode of calculation is as follows –

Assessee should first take entire Cenvat credit of inputs and input services used in exempted as well as taxable final products and exempted as well as taxable services.

Calculation of amount to be reversed- At the end of month, assessee should calculate Cenvat credit attributable to exempted final products and exempted services on provisional basis, as follows –

Amount to be reversed at end of month		
(1)	Rule 6(3A)(b)(i)	Inputs used for exempted final products
(2)	Rule 6(3A)(b)(ii)	Inputs used for exempted services (On proportionate basis, based on ratio of previous year)
(3)	Rule 6(3A)(b)(iii)	Input services used for exempted final products and exempted services (On proportionate basis based on ratio of previous year).
	Total	1+2+3 = amount to be reversed every month on provisional basis

Calculations at the end of the year - At end of the year, assessee should calculate the ratios on actual basis and make fresh calculations and pay difference, if any, before 30th June. If it is found that he had paid excess amount based on provisional ratio, he can adjust the difference himself by taking credit.

Reversal in first year of production or service only at the end of year - In the first year of production or provision of services, ratios of previous year will not be available. In that case, the calculations need not be made for the whole year. However, calculations should be made after the year is over and amount attributable to Cenvat credit on exempted final products and exempted services should be calculated and paid.

The basic idea behind the mode of calculations is sound and correct as per Vat principles. However, calculations are not easy and are prone to litigation.

There is no provision to calculate input services used exclusively for exempted services. This has to be done on ratio basis only.

1.4-3 Calculation of 'amount' on provisional basis every month

The manufacturer of goods or the provider of output service shall determine and pay, provisionally, for every month –

Inputs used for exempted final products - The amount equivalent to CENVAT credit attributable to inputs used in or in elation to manufacture of exempted goods during the month, denoted as A.

This has to be done on basis of actuals (if possible) or input-output ratio or on some reasonable technical estimate basis.

As per para 7 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008, calculation of Cenvat credit attributable to inputs used in relation to manufacture of exempted final products shall be made on basis of stores/production records maintained by the manufacturer. A certificate from Cost/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and Cenvat credit taken on these inputs may be submitted at the end of the year.

Inputs used for exempted services - The amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) is to be calculated as follows-

B	Total value of exempted services provided during the preceding financial year
C	Total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year
D	Total CENVAT credit taken on inputs during the month minus A (i.e. credit taken on inputs for manufactured final products)
(B/C) x D	Amount to be reversed every month on provisional basis as per rule 6(3A)(b)(ii)

Input services used in or in relation to manufacture of exempted goods or provision of exempted services - The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) is calculated as follows -

E	Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year
F	Total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year

G	CENVAT credit taken on input services during the month
(E/F) x G	Amount to be reversed every month on provisional basis as per rule 6(3A)(b)(iii)

1.4-4 Calculation of 'final amount' after year end

The manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner [Rule 6(3A)(c) inserted w.e.f. 1-4-2008] -

Inputs used for exempted final products - The amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods during the financial year, denoted as H [Rule 6(3A)(c)(i)].

This has to be done on basis of input-output ratio and/or on basis of formula similar to the one applicable in case of inputs for exempted services on actual basis.

As per para 7 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008, calculation of Cenvat credit attributable to inputs used in relation to manufacture of exempted final products shall be made on basis of stores/production records maintained by the manufacturer. A certificate from Cost/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and Cenvat credit taken on these inputs may be submitted at the end of the year.

Inputs used for exempted services- The amount of CENVAT credit attributable to inputs used for provision of exempted services is to be calculated finally on actual basis as follows -

J	Total value of exempted services provided during the financial year
K	Total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year
L	Total CENVAT credit taken on inputs during the financial year minus H (i.e. credit taken on inputs for manufactured final products)

(J/K) x L	Amount to be reversed finally as per rule 6(3A)(c)(ii)

Input services used in or in relation to manufacture of exempted goods or provision of exempted services - The amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services is to be calculated on actual basis as follows -

M	Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year
N	Total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year
P	CENVAT credit taken on input services during the financial year
(M/N) x P	Amount to be reversed finally at end of year as per rule 6(3A)(c)(iii)

Amount of Cenvat credit to be reversed for whole year - Amount of Cenvat credit attributable to exempted goods and exempted services is to be determined at the end of financial year. The amount is to be calculated as follows

Total amount of Cenvat credit attributable to exempted goods and exempted services for the financial year		
(1)	Rule 6(3A)(c)(i)	Cenvat on Inputs used for exempted final products
(2)	Rule 6(3A)(c)(ii)	Cenvat Credit on Inputs used for exempted services (On proportionate basis, based on actual ratio of financial year)
(3)	Rule 6(3A)(b)(iii)	Cenvat Credit on input services used for exempted final products and exempted services (On proportionate basis based on actual ratio of financial year).
(4)	Rule 6(5)	Cenvat credit on services specified in rule 6(5), which are exclusively used for exempted goods or exempted services
	Total	1+2+3+4 = Total amount attributable to exempted final products and exempted services

1.4-5 Payment of difference if short payment was made

At the year end, the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per rule 6(3A)(c) and the aggregate amount determined and paid as per Rule 6(3A)(b), on or before the 30th June of the succeeding financial year, if the amount provisionally paid was lower than the amount finally determined at the year end [Rule 6(3A)(d) inserted w.e.f. 1-4-2008].

Interest payable if amount was short paid - In addition to the amount short-paid, the assessee will be liable to pay interest at the rate of twenty-four per cent per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date.

Thus, no interest is payable if difference is paid by 30th June of the following year [Rule 6(3A)(e) inserted w.e.f. 1-4-2008].

1.4-6 Intimation of details to Range Superintendent

The manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, the following particulars -

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally

(ii) CENVAT credit attributable to exempted goods and exempted service for the whole financial year, finally determined

(iii) amount short paid determined alongwith the date of payment of the amount short-paid

(iv) interest payable and paid, if any, on the amount short-paid [Rule 6(3A)(g) inserted w.e.f. 1-4-2008].

1.4-7 Self adjustment of excess amount was paid

If at the year end, it is found that the amount provisionally paid was more than the amount finally determined, the manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount [Rule 6(3A)(f) inserted w.e.f. 1-4-2008].

Intimation of details to Range Superintendent - The manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, the following particulars -

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally

(ii) CENVAT credit attributable to exempted goods and exempted service for the whole financial year, finally determined

(iii) amount excess paid

(iv) credit taken on account of excess payment, if any [Rule 6(3A)(g) inserted w.e.f. 1-4-2008].

1.4-8 If assessee did not manufacture dutiable goods or did not render taxable in previous year

If assessee does not manufacture dutiable final products or taxable output service, he can take credit but is not required to pay proportionate amount on provisional basis as provided in rule 6(3A)(b). However, at year end, he should pay amount on proportionate before 30th June [Rule 6(3A)(h) inserted w.e.f. 1-4-2008].

The provision applies in case of production in first year when ratios of the previous year are not available to calculate Cenvat attributable to exempted products and exempted services.

If the amount is not paid by 30th June, interest is payable @ 24% after 1st July [Rule 6(3A)(i) inserted w.e.f. 1-4-2008].

1.4-9 Calculation of 'Value' of exempt goods or exempt services

"Value" for the purpose of rules 6(3) and 6(3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder [*Explanation* I to rule 6(3A)]

Thus, value is to be calculated as per provisions of Central Excise Act (in case of manufactured products) and Finance Act, 1994 (in case of service tax).

In case of goods chargeable to specific rate of duty, value shall be determined under section 4. In case of (partially)exempted services, value shall be gross amount charged for providing exempted services, without abatement - para 3 CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

1.4-10 Cenvat credit in case of export of services

If the services are exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of duty on other products or service tax on other services. If this is not possible, he can get refund [see rule 5 of Cenvat Credit Rules].

Meaning of export of services – As per *Explanation* to rule 5, 'output services which are exported' means any output service exported in accordance with the Export of Services Rules, 2005.

Chapter 2

Issues involved in applying the formulae under Rule 6

Various issues are going to arise while calculating the credit to be reversed proportionately.

2-1 Rule 6(2) and 6(3) should be taken as complimentary and not mutually exclusive

The words used in rule 6(3) are ‘nothwithstanding anything contained is rule 6(1) and 6(2), the manufacturer of goods or provider of output service, opting not to maintain separate accounts, shall follow either of the following options as applicable to him’.

Fair interpretation is that rule 6(3) should apply in cases of common inputs and common input services where assessee is not in a position to maintain separate accounts. Thus, rule 6(2) and 6(3) are complimentary.

In costing, there is concept of ‘allocation’ and ‘apportionment’. The costs which can be allocated directly to a particular product should be so allocated, while costs which cannot be directly allocated to any particular product/service, should be apportioned on a reasonable basis.

This principle can be applied here. The input goods/services which can be directly allocated to taxable goods/services and exempt goods/services should be allocated under rule 6(2). Full credit should be allowed of Cenvat credit allocable to taxable goods/services and no credit should be allowed for Cenvat credit allocable to exempt goods/services.

The remaining input credit/input services should be apportioned between taxable goods/services and exempt goods/services on the basis of formulae given in rule 6(3A). This should give best possible and most fair results.

2-2 Treatment of traded goods

A manufacturer and/or service provider may also be trading in goods. The trading may be in respect of goods manufactured under his own brand name or other goods. The sale may be within India or outside.

For example, authorised service station of automobiles is also selling spare parts. A brand name owner manufactures some goods and also gets similar goods manufactured from ancillary units.

Obviously, there will be many common input services. Now, traded goods are not ‘exempt goods’. It is also not ‘service’.

In *Orion Appliances* v. *CST* (2010) 27 STT 319 (CESTAT), it was held that trading activity is not a service and hence cannot be considered as an exempt service. Hence, rule 6 or 3 of Cenvat Credit Rules. There is no provision in law to cover a situation where assessee is providing taxable service and is undertaking an activity which is neither a service nor manufacture. In such situation, the only correct legal provision is to ensure that once in a quarter or once in six months, the quantum of input service tax credit attributed to trading activities according to standard accounting principles is deducted ands the balance is only availed.

Including the entire value of turnover of traded goods into numerator (above line) will be highly unfair to assessee since the services attributable to such traded goods will certainly not be proportional to value of the traded goods, in cases where assessee is both manufacturer/service provider as well as trader.

As the formulae stand today, turnover of traded goods can neither be included in denominator (below the line) nor the numerator (above the line). This would give higher Cenvat credit to assessee.

It would be fair to first allocate expenses which can be directly allocated to traded goods (e.g. commission) and no credit should be taken.

In case of common input services, value added in traded goods (i.e. difference between sales realisation and purchase price) should be deemed to be value of 'exempt service' to be added in numerator.

2-3 Cenvat credit in case of export of manufactured goods

As per rule 5 of Cenvat Credit Rules, if the final products are exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of duty on other products. If this is not possible, he can get refund.

Thus, exported goods are not 'exempt goods'. Hence, value of export of goods should be taken in denominator i.e. below the line to give correct and fair results. If these are ignored or taken in numerator (above the line), it will amount to reversal of Cenvat credit attributable to these goods, which certainly is illogical.

Supplies to SEZ are 'exports' - Supplies to SEZ unit or developer are 'exports' as per section 2(m)(ii) of SEZ Act. Section 51 of SEZ Act provides that provisions of SEZ Act have overriding effect. Hence, irrespective of provisions of rule 6(6) of Cenvat Credit Rules, supplies to SEZ unit or developer are to be treated as 'exports'.

2-4 Cenvat credit in case of export of services

As per rule 5 of Cenvat Credit Rules, if the output services are exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of duty on other products or service tax on other services. If this is not possible, he can get refund. As per *explanation* to rule 5, 'output services which are exported' means any output service exported in accordance with the Export of Services Rules, 2005.

As per rule 2(e) of Cenvat Credit Rules, service on which no tax is payable is also 'exempt service'. Thus, exported service is also exempt service. However, as per rule 5, Cenvat credit on exported service is not required to be reversed.

Hence, applying principle of harmonious construction, export of services should be taken in denominator i.e. below the line to give correct and fair results. If these are taken in numerator (above the line), it will amount to reversal of Cenvat credit attributable to the exported services, which certainly is illogical.

CBE&C vide para 6 of Circular No. 868/6/2008-CX dated 9-5-2008, has confirmed that export of service without payment of service tax are not to be treated as exempted services for purpose of rule 6 of Cenvat Credit Rules.

2-5 Calculation of value of common inputs in case of exempted final products

The formulae as given in rule 6(3A) are only in respect of Cenvat credit attributable to (a) inputs used for provision of exempted services and (b) input services used in or in relation to manufacture of exempted goods or provision of exempted services.

There is no formula to calculate Cenvat credit attributable to value of inputs used in manufacture of exempted final product, when inputs are common. In any case, consumables, fuel, dies, toolings etc. will be 'common inputs' in most of the cases.

In absence of any formula, the only option with assessee is to calculate the same either on basis of input-output ratio, or on the basis of formula similar to the one applicable for calculation of inputs used for provision of exempted services.

The principle of allocation and apportionment as applied in costing should apply i.e. credit of inputs directly allocable to exempt final products should be excluded fully and credit of inputs allocable directly to taxable goods should be allocated fully.

In case of balance common inputs, the Cenvat credit to be reversed may be calculated on basis of formulae given in rule 6(3A).

Certificate of Cost/Chartered Accountant regarding Cenvat credit attributable to exempted goods - As per para 7 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008, calculation of Cenvat credit attributable to inputs used in relation to manufacture of exempted final products shall be made on basis of stores/production records maintained by the manufacturer. A certificate from Cost/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and Cenvat credit taken on these inputs may be submitted at the end of the year.

2-6 Supplies to EOU, SEZ etc.

Supplies from DTA to EOU are entitled to Cenvat credit of service tax paid – para 6.11(v) of FTP.

Rule 6(6) of Cenvat Credit Rules states that provisions of rules 6(1) to 6(4) shall not apply in case of excisable goods removed to SEZ, EOU, EHTP, STP, UN agencies or for exports or removal of gold or silver arising in manufacture of copper or zinc by smelting.

According to strict interpretation, this turnover shall not come either in denominator or in numerator. This would be unfair. It will give absurd results, particularly when sales to SEZ, EOU etc. are large, as amount to be reversed will be very heavy.

Further, supplies to SEZ are 'exports' as per section 2(m)(ii) of SEZ Act. Section 51 of SEZ Act provides that provisions of SEZ Act have overriding effect. Hence, irrespective of provisions of rule 6(6) of Cenvat Credit Rules, supplies to SEZ are to be treated as 'exports'.

Hence, sales to SEZ, EOU etc. should appear in denominator (below the line), as per correct Vat principles to give fair results.

2-7 Services specified in rule 6(5)

As per rule 6(5) of Cenvat Credit Rules, in case of specified 16 services, full Cenvat credit of input service is available even if these services are partly used in manufacture of exempted final product/output services. This rule has not been amended even if rule 6(3) of Cenvat Credit Rules has been recast w.e.f. 1-4-2008.

Cenvat credit in relation to these services shall not be taken into account for determination of amount under rule 6(3A) - para 8 of CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

Thus, the credit will be outside the calculations made as per rule 6(3A) and entire credit will be available, without any reversal.

2-8 Service tax paid under reverse charge method

In cases where service tax is paid under reverse charge method (e.g. GTA services and sponsorship services), what would be the treatment? As per amended rules, at least in case of GTA service, this amount should be paid by

GAR-7 challan and not by cash w.e.f. 1-3-2008. However, this is not ‘output service’ as per amended rule 2(p).

This amount is ‘input service’ and will be ‘service tax paid’. It will neither appear in numerator nor in denominator. It will be ‘Cenvat credit taken on input service’ and proportional reversal will be made.

The same principle should apply to other services also where tax is paid under ‘reverse charge’ method. The reason is that all these are actually ‘input services’ of service receiver, even if he is liable to pay service tax.

2-9 Abatement subject to condition that Cenvat should not be availed

In some cases, abatement from service tax is available subject to condition that Cenvat credit of input services is not availed (e.g. construction services, mandap keeper services etc.). In case of some manufactured products, full/partial exemption is available subject to condition that Cenvat credit is not availed.

In such case, the fair interpretation is that these should be treated as ‘exempt services’ or ‘exempt goods’ in the formulae to arrive at fair results.

Value when abatement is available - Where abatement is available, ‘value’ will be gross amount charged for providing exempted services, without abatement- para 3 CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

2-10 Job work under Cenvat provisions

Job worker undertaking job work under Cenvat provisions are exempt from service tax as well as excise duty.

It has been held that the job worker can use his own material while undertaking job work. He can avail Cenvat credit of duty paid on such material, even if he clears the final products after job work without payment of duty to person who had supplied the material. The reason is that goods on which job work is under Cenvat provisions are not ‘exempted goods’ [case law discussed under job work].

However, since service tax on job work is exempt, the job worker may be liable to pay 6% ‘amount’ if he uses common inputs or input services.

2-11 Distribution of Credit by Input Service Distributors

Rule 7 of Cenvat Credit Rules provides that ‘Input Service Distributor’ may distribute Cenvat Credit in respect of service tax, among its manufacturing units or providing output service. The credit distributed should not be more than the service tax paid. If an input service is attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing exempted services, the credit of such credit of service tax shall not be distributed.

These are the only restrictions on distribution of Cenvat credit by Input Service Distributor. No proportional or pro-rata distribution of Cenvat credit is required. New rule 6 does not affect this provision.

Once this credit is distributed to any particular factory/service providing unit, that credit may be apportioned between exempt goods/service and taxable goods/service on basis of formulae prescribed in rule 6(3A).

Rule 6(3) does not apply to Input Service Distributor - As per para 5 of CBE&C circular No. 868/6/2008-CX dated 9-5-2008, ISD does not provide any service and is like a trader. Hence, question of availing either of option [of rule 6(3)(i) or rule 6(3)(ii) of Cenvat Credit Rules] does not arise.

2-12 Value when abatement is available for payment of service tax

In case of some services, partial abatement is available (e.g. 67% in case of construction services under Notification No. 1/2006-ST). In such case, the 'value' continues to be the gross value. The 'value' is not reduced due to the partial abatement. Hence, full value should be considered for calculations in the formulae.

2-13 Assessee having multi-locations of factories and service stations

In case of manufacturer having multiple factories and/or service provider providing service from multiple locations, the principles discussed above should *mutadis mutandis* apply here also.

2-14 Practical illustration

Mr. A, who is a service provider, has provided services of Rs 1,60,00,000 in 2008-09. Out of this, Rs 1,20,00,000 are taxable output services and Rs 40,00,000 are exempt output services. Service tax paid on his input services (excluding education cess and SAH education cess) is Rs 10,00,000 (Rs ten lakhs) which do not include any service specified in rule 6(5) of Cenvat Credit Rules. Rate of basic service tax (without education cess and SAHE cess) is 10%. In such case, Mr. A has following choices –

(a) Analyse his input services and bifurcate them between those used for providing taxable output services and those used for providing exempt output services (There should be direct relation between input service and output service i.e. on actual basis and not on basis of ratio). Assume that he does so and finds that out of Rs ten lakhs of service tax paid on his input services, Rs 3.50 lakhs are in respect of exempt output services and Rs 6.50 lakhs pertain to taxable output services. In such case, he should avail Cenvat credit of only Rs 6.50 lakhs. Service tax payable on taxable services of Rs 1,20,00,000 is Rs 12,00,000. Cenvat credit available with him is Rs 6,50,000. Hence, he is required to pay Rs 5,50,000 by GAR-7 challan [Rs 12,00,000 – 6,50,000] {***Rule 6(2) of Cenvat Credit Rules***}.

(b) If Mr. A does not analyse his input services and does not bifurcate them into those used for providing exempt services and those used for providing taxable output services, he has following two options –

Option of paying 6% 'amount' on exempt services – In this option, Mr. A can take entire credit of Rs 10 lakhs. Service tax payable on taxable services of Rs 1,20,00,000 is Rs 12,00,000. 'Amount' payable on exempt services of Rs 40,00,000 @ 6% is Rs 2,40,000. Thus, total payable is – Service tax Rs 12,00,000 and 'amount' Rs 2,40,000 – Total Rs 14,40,000. Cenvat credit available with him is Rs 10 lakhs. Hence, Mr. A is required to pay Rs 4,40,000 by GAR-7 challan {***Rule 6(3)(i) of Cenvat Credit Rules***}.

Option to pay 'amount' equal to proportionate Cenvat Credit on exempted output services – In this option, Mr. A will take entire credit of Rs 10 lakhs. He will then calculate ratio of exempt services/total output services. In this case the ratio is 25% [Rs 40,00,000/1,60,00,000]. Thus, he is required to pay 'amount' of Rs 2,50,000 [25% of Rs 10,00,000]. Service tax payable on taxable services of Rs 1,20,00,000 is Rs 12,00,000. 'Amount' payable is 2,50,000. Thus, total payable is Rs 14,50,000. Cenvat credit available is Rs 10,00,000. Hence, Mr. A is required to pay Rs 4,50,000 by GAR-7 challan {***Rule 6(3)(ii) of Cenvat Credit Rules***}.

Notes -

(1) Mr. A has to analyse his input services to see if he is able to properly bifurcate input services between those used for taxable output service and exempt output service on actual basis (and not ratio basis). Then only he can use option under rule 6(2) of Cenvat Credit Rules.

(2) If he cannot bifurcate input services as above, then he should analyse ratio of his exempt services to total output services to decide whether option of payment of 6% 'amount' is suitable or payment of 'amount' on basis of ratio of exempt services to total output services is suitable.

(3) Option once exercised cannot be changed during the financial year. He can change option from 1st April of next financial year only.

(4) If Mr. A decides to avail option to pay 'amount' equal to proportionate Cenvat Credit on exempted output services, he is required to calculate 'amount' payable provisionally based on ratio of previous year. At the end of the financial year, Mr. A should calculate actual ratio between exempt service and total service and calculate 'amount' payable on exempt services. If amount already paid by him is less than the amount found payable on basis of final calculations at the year end,

difference should be paid before 30th June, as provided in rule 6(3A)(d) of Cenvat Credit Rules.

On the other hand, if ‘amount’ already paid is more that ‘amount’ found payable on basis of calculations on actual basis, he can adjust the excess amount on his own (i.e. by taking credit himself), as provided in rule 6(3A)(f) of Cenvat Credit Rules.

Mr. A is manufacturing goods with other's brand name. Mr. A has manufactured goods of Rs. 90,00,000 in the FY 2009-10. Out of this, Rs. 70,00,000 are taxable final products and Rs. 20,00,000 are exempt final products. Excise duty paid on his inputs (excluding education cess and SAH education cess) is Rs. 10,00,000. Rate of basic excise duty on final products is 14%. [Ignore education cess and SAH education cess.] What are the options available to Mr. A for availment of Cenvat credit, if he is not able to bifurcate inputs between those used for exempt goods and taxable final products. Calculate Cenvat credit available to him under different options and explain which option is beneficial to him

Answer – The excise duty payable on Rs 70,00,000 @ 14% is Rs 9,80,000. Mr. A has two options – (a) Avail entire Cenvat credit of Rs 10,00,000 and pay 5% ‘amount’ on Rs 20 lakhs i.e. Rs 1,00,000 Thus, he has to pay Rs 10,80,000 (duty Rs 9,80,000 plus ‘amount’ Rs 1,00,000) and available credit is Rs 80,000. Hence, he has to pay Rs 80,000 by cash i.e. GAR-7 challan. (b) Alternatively, he can avail Cenvat credit on proportionate basis i.e. (70,00,000 x 10,00,000)/90,00,000 i.e. Rs 7,77,777.78. In that case, he has to pay duty of Rs 2,02,222.22 (9,80,000 less 7,77,777.78).

Thus, first option is economical for Mr. A.

Chapter 3

Certification by Cost Accountant

Following are the general guidelines to be followed -

* The guidelines above have tried to cover issues which are normally likely to arise. Where specific rule or guidelines are not available, the assessee may take a view based on the principles stated above, giving reasons for his views. If Auditor does not agree with the view, the reasons for the same and quantum of Cenvat credit involved should be reported in the Auditor's certificate.

* Any deviation from the rules and guidelines made while preparing the statement shall be quantified and reported in the Auditor's Certificate.

* The tables in the statements may be prepared in vertical or horizontal format, as may be found to be suitable and convenient.

* 'Materiality concept' shall be applied while preparing and certifying the statements.

3-1 Certification by Cost Accountant

CERTIFICATE RELATING TO ALLOCATION AND APPORTIONMENT OF CENVAT CREDIT

AUDIT REPORT OF COST ACCOUNTANT

1) We have audited the attached statement (marked Annexure A) of allocation and apportionment of Cenvat credit taken by M/s . . . . . (assessee) for the period . . . . to . . . . ., annexed thereto.

2) The attached statement (marked Annexure A) is the responsibility of the assessee. Our responsibility is to express an opinion on the statement based on our audit.

3) We conducted our audit in accordance with auditing standards generally accepted in India. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes (a) examining, on a test basis, evidence to support the statement amounts and disclosures in the statement (b) assessing the principles used in the preparation of statements (c) assessing significant estimates made by the assessee in the preparation of the statement and (d) Evaluating overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

4) We have obtained all the information and explanations which, to the best of our knowledge and belief, were necessary for the purposes of our audit.

5) In our opinion, proper records as required by law, have been kept by the assessee so far as appears from our examination of the assessee.

6) In our opinion, the statement complies with Cenvat Credit Rules, read with the guidelines issued by Institute of Cost and Works Accountants of India (ICWA).

7) Wherever, specific provision in rules or ICWAI guidelines were not available, view taken and assumptions made while preparing the statement have been stated at appropriate places (Auditor should draw attention to specific issues, if any)

8) In following cases, deviations have been made while preparing the statement. This has resulted in less reversal of Cenvat/higher reversal of Cenvat of Rs . .. ____..

In our opinion, the deviations are with intention to give correct results of amount of Cenvat to be reversed (Or, in our opinion, the deviations do not result in correct quantification of reversal of Cenvat credit of Rs .____.____.____. ((Keep as appropriate).

9) In our opinion and to the best of our information and according to the explanations given to us, the attached statement, together with other notes thereon (and subject to paras 7 and 8 above), give a true and fair computation of Cenvat credit allocable to exempt output services and exempt final products of the assessee.

Signature

ICWAI Membership Number

Place -

Date -

Annexure A

Name of Assessee -

Address -

Excise Registration Number -

Service tax Registration Number -

Financial year -

Summary of Cenvat Credit attributable to exempted goods and exempted services for the financial year . . . .

(1)	Rule 6(3A)(c)(i)	**Cenvat on Inputs used for exempted goods**	Amount Rs	Sub-Total Rs
		Cenvat credit on inputs allocated to exempted goods - Table No. 1		
		Cenvat credit on inputs apportioned to exempted goods - Table No. 2		
			Sub-Total	
(2)	Rule 6(3A)(c)(ii)	**Cenvat Credit on Inputs used for exempted services**		
		Cenvat credit on inputs allocated to output services - Table 3		
		Cenvat credit on inputs apportioned to output services - Table 4		
			Sub-Total	
(3)	Rule 6(3A)(c)(iii)	**Cenvat Credit on Input services used for exempted final products and exempted services**		
		Cenvat credit on input services allocated to exempt output services and exempted goods - Table 5		
		Cenvat credit on input services apportioned to exempt output services and exempted goods - Table 6		
			Sub-Total	
(4)	Rule 6(5)	Cenvat credit on services specified in rule 6(5), which are exclusively used for exempted goods or exempted services - Table 7		

	Total	1+2+3+4= Total amount attributable to exempted final products and exempted services		

Table Number 1

Cenvat credit on inputs allocated to exempted goods

Sr No.	Description of Input	Unit of measure	Quantity	Input/Output Ratio (where applicable)	Total Cenvat Credit	Cenvat Credit allocated to exempt goods	Cenvat Credit allocable to taxable goods
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Total							

Remarks (If any) -

Table Number 2

Cenvat credit on inputs apportioned to exempted goods

(i)	Total value of exempted goods manufactured during the preceding financial year	
(ii)	Total value of dutiable goods manufactured and removed plus the total value of exempted goods manufactured during the preceding financial year	
(iii)	Total CENVAT credit taken on inputs during the preceding year minus credit allocated as per Table 1	
((iii) x (i)/(ii)	Amount to be reversed on inputs utilised for exempted final product	

1. Detailed breakup of value of exempted goods

2. Detailed Breakup of value of dutiable goods

3. Reconciliation with figure of income appearing in Annual Accounts of assessee

Table Number 3

Cenvat credit on inputs allocated to output services

Sr No.	Description of Input	Unit of measure	Quantity	Input/Output Ratio (where applicable)	Total Cenvat Credit	Cenvat Credit allocable to exempt services	Cenvat Credit allocable to taxable services
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Total							

Table Number 4

Cenvat credit on inputs apportioned to output services

		Amount Rs
H	Cenvat Credit attributable to inputs used for exempted goods (Table 1 and 2)	
J	Total value of exempted services provided during the financial year	
K	Total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year	
L	Total Cenvat credit taken on inputs during the financial year *minus* H	
(J/K) x L	Amount to be reversed finally as per rule 6(3A)(c)(ii)	

1. Detailed breakup of value of exempted services

2. Detailed Breakup of value of taxable services

3. Reconciliation with figure of income appearing in Annual Accounts of assessee

Table Number 5

Cenvat credit on input services allocated to exempted goods and exempted services

Sr No.	Description of exempted goods and exempted services	Description of Input Service	Total Cenvat Credit	Cenvat Credit allocated to exempt goods and exempt services	Cenvat Credit allocated to taxable goods and services
1	**2**	**3**	**4**	**5**	**6**
Total					

Table 6

Cenvat credit on input services apportioned to exempted goods and exempted services

	Description	Rs
M	Total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year	
N	Total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year	
P	CENVAT credit taken on input services during the financial year	
(M/N) x P	Cenvat credit attributable to exempt goods and exempt services as per rule 6(3A)(c)(iii)	

Table 7

Cenvat credit on services specified in rule 6(5), which are exclusively used for exempted goods or exempted services

Sr No.	Description of exempted goods and exempted services	Description of Input Service	Total Cenvat Credit	Cenvat Credit of input services used exclusively for exempt goods and exempt services	Balance Cenvat Credit available for utilisation
1	**2**	**3**	**4**	**5**	**6**
Total					

<u>Annexure</u>

Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.

Rule 6 (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of] exempted services, except in the circumstances mentioned in sub-rule (2): Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:—

(*i*) the manufacturer of goods shall pay an amount equal to five per cent of value of the exempted goods and the provider of output service shall pay an amount equal to six per cent of value of the exempted services; or

(*ii*) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

Explanation I.—If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.—For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.

(3A) For determination and payment of amount payable under clause (*ii*) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:—

(*a*) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:—

(*i*) name, address and registration No. 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 dutiable goods or taxable services;

(*iv*) description of exempted goods or exempted services;

(*v*) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(*b*) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,—

(*i*) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(*ii*) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(*iii*) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(*c*) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:—

(*i*) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(*ii*) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(*iii*) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = (M/N) multiplied by P, where L denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year;

(*d*) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (*c*) and the aggregate amount determined and paid as per condition (*b*), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (*c*) is more than the amount paid;

(*e*) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent per annum from the due date, *i.e.,* 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(*f*) where the amount determined as per condition (*c*) is less than the amount determined and paid as per condition (*b*), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(*g*) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (*d*) and (*f*) respectively, the following particulars, namely:—

(*i*) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (*b*),

(*ii*) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (*c*), (*iii*) amount short-paid determined as per condition (*d*), alongwith the date of payment of the amount short-paid,

(*iv*) interest payable and paid, if any, on the amount short-paid, determined as per condition (*e*), and

(*v*) credit taken on account of excess payment, if any, determined as per condition (*f*);

(*h*) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (*b*), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (*c*) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(*i*) where the amount determined under condition (*h*) is not paid within the said due date, *i.e.,* the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent per annum from the due date till the date of payment.

Explanation I.—"Value" for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

Explanation II.—The amount mentioned in sub-rules (3) and (3A), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III.—If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3) or as the case may be sub-rule (3A), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

(5) Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clauses (*g*), (*p*), (*q*), (*r*), (*v*), (*w*), (*za*), (*zm*), (*zp*), (*zy*), (*zzd*), (*zzg*), (*zzh*), (*zzi*), (*zzk*), (*zzq*) and (*zzr*) of clause (*105*) of section 65 of the Finance Act shall be allowed unless

such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services.

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either—

(*i*) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations; or

(*ii*) cleared to a hundred per cent export-oriented undertaking; or

(*iii*) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(*iv*) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602(E), dated the 28th August, 1995; or

(iv-a) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. 6/2006-Central Excise, dated the 1st March, 2006, Number GSR 96(E), dated the 1st March, 2006; or

(*v*) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(*vi*) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting ; or

(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,— (a) against International Competitive Bidding; or (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of Notification No. 6/2006-Central Excise, dated the 1st March, 2006.