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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No.28/2012-Central Excise (N.T)

New Delhi, the 20th June, 2012

G.S.R. (E).-In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Sixth Amendment) Rules, 2012.
- (2) They shall come into force on the 1st day of July, 2012.
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, —
 - (a) in clause (a), -
 - (i) in sub-clause (A), in item(viii), after the words, “their chassis” the words “but including dumpers and tippers” shall be inserted;
 - (ii) for sub-clause (B), the following sub-clause shall be substituted, namely:—

“(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”
 - (iii) for sub-clause (C), the following sub-clause shall be substituted, namely:—

“(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”
 - (b) for clause (e), the following shall be substituted, namely:-

“(e) “exempted service” means a-

 - (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
 - (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
 - (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.’
 - (c) in clause (k), for sub clause (B), the following sub-clause shall be substituted, namely:-

“(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, 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;”

(d) in clause (l),-

(i) for the words “taxable service”, the words “output service” shall be substituted;

(ii) in sub-clause (ii), for the words “but excludes services”, the words “but excludes” shall be substituted;

(iii) for sub-clause (A), the following sub-clause shall be substituted, namely:-

“(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

(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”;

(iv) in sub-clause (B), for the words, brackets, letters and figures “specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act”, the words “services provided by way of renting of a motor vehicle” shall be substituted;

(v) for sub-clause (BA), the following sub-clause shall be substituted, namely: —

“(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”;

(e) for clause (p), the following clause shall be substituted, namely:-

‘(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.’

3. In rule 3 of the said rules,-

(a) in sub-rule (1),-

(i) for the words, “provider of taxable service”, wherever they occur, the word “provider of output service” shall be substituted;

(ii) after item (ixa), the following item shall be inserted, namely:-

“(ixb) the service tax leviable under section 66B of the Finance Act;”,

(iii) after item (xi), in item (i), for the words “premises of” the words “by” shall be substituted;

(b) after sub-rule (4) of the said rules, following shall be inserted, namely:-

“Explanation. - 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”

(c) in the proviso to sub-rule (5B), for the words “taxable services” the words “output services” shall be substituted;

4. In rule 5,-

(i) in sub-rule (2), in the second proviso, for the words and figures “Export of Services Rules, 2005” the words and figures, “Service Tax Rules, 1994” shall be substituted;

(ii) in Explanation 1, for the words and figures “the provisions of Export of Services Rules, 2005, whether the payment is received or not” the words, figures and letter “rule 6A of the Service Tax Rules 1994” shall be substituted;

5. In the said rules, after rule 5A, the following rule shall be inserted, namely:-

“5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.- A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

6. In the said rules, in rule 6,-

(i) in the marginal heading, for the words “ provider of taxable service” the words, “ provider of output service” shall be substituted;

(ii) in sub-rule (3), after the second proviso, the following proviso shall be inserted, namely:-

“Provided that 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 per cent. of value of the exempted services.”

(iii) in sub-rule (3A), in clauses (a), (b), (c) and (h), for the words “taxable” wherever they occur, the words, “output” shall be substituted;

(iv) in sub-rule 3(B), for the words, brackets, letters and figures “providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act” the words, “engaged in providing services by way of extending deposits, loans or advances” shall be substituted;

(v) in sub-rule 3(D), for the Explanation I, the following Explanation shall be substituted, namely:-

“Explanation I. - “Value” for the purpose of sub-rules (3) and (3A),—

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;
or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more.

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;”

(vi) for sub-rule (6A), the following sub-rules shall be inserted, namely:-

“(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported,

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.”

7. In the said rules, in rule 7,-

(i) for clause (d), the following clause shall be substituted, namely:-

“(d) credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.”

(ii) after Explanation 2, the following Explanation shall be inserted, namely:-

“*Explanation 3.* - (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

(b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.

(c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available.”

8. In the said rules, in rule 9, in sub-rule (2), in the proviso, for the words, “provider of taxable service”, the words “provider of output service” shall be substituted;

9. In the said rules, in rule 13, for the words “taxable service” wherever they occur, the words, “output service” shall be substituted.

[F. No. 334/1/2012-TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide notification number 23/2004-Central Excise (N.T.), dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10th September, 2004] and was last amended vide notification number 25/2012- Central Excise (N.T.), dated the 8th May, 2012, vide number G.S.R. 341 (E), dated the 8th May, 2012.