

Cenvat Credit

Cenvat Credit Highlights

- Cenvat Credit Rules, 2004 with effective from. 10-9-2004.
- Integration of Central Excise and Service tax
- Applicable for Manufacturer, Service provider
- Manufacturer can take credit for excise duty and Service tax
- Service provider will take credit for service tax and Excise duty
- Credit of duty paid on inputs and Service tax paid on input services providing output service
- The input may be used directly or indirectly in or in relation to manufacture
- No input credit if final product/output service exempt from duty/ service tax –
- Cenvat Credit Rules do not require input-output correlation to be established
- Credit for specified duties
- Credit of duty service tax only based on documents
- Records to be maintained and returns to be furnished

Important Definitions

Exempted Goods

- Excisable goods fully exempted from duty
- Excisable goods Charged to Nil duty
- and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed (1% duty goods)

Exempted Service

- Services Where no service tax payable;
- Taxable service wholly exempted from tax
- include taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken
- and include trading (Notification No 3/2011 dt 01.03.2011)

Final Product

- Excisable goods manufactured or produced using input or input service

First Stage Dealer

- Dealer who purchases goods directly from Manufacturer from his factory, depots, Consignment agent with invoice

Second Stage Dealer

- Dealer who purchases goods directly from First Stage dealer

Output service“

- any taxable service provided by the provider of taxable service, except by a goods transport agency, in relation to transport of goods by road in a goods carriage;
- Explanation.- For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service

Inputs (New definition--- notification no 3/2011 dated 01.03.2011

Input" means-

all goods used in the factory by the manufacturer of the final product;

Input Inclusions

- Accessories, cleared along with the final product, the value of which is included in the value of the final product
- goods used for providing free warranty for final products
- all goods used for generation of electricity or steam for **captive use**

- all goods used for providing any output service;

Input Exclusions –

- light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- any goods used for construction of a building or a civil structure or a part thereof;
- Any goods used for laying of foundation or making of structures for support of capital goods, except for the provision of any taxable services such as port services, Airport services, Other port Services, Construction in respect of commercial or industrial buildings or civil structures, Construction services in respect of residential complexes, Works contract services
- capital goods except when used as parts or components in the manufacture of a final product
- motor vehicles;
- any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and
- Any goods which have no relationship whatsoever with the manufacture of a final product.

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

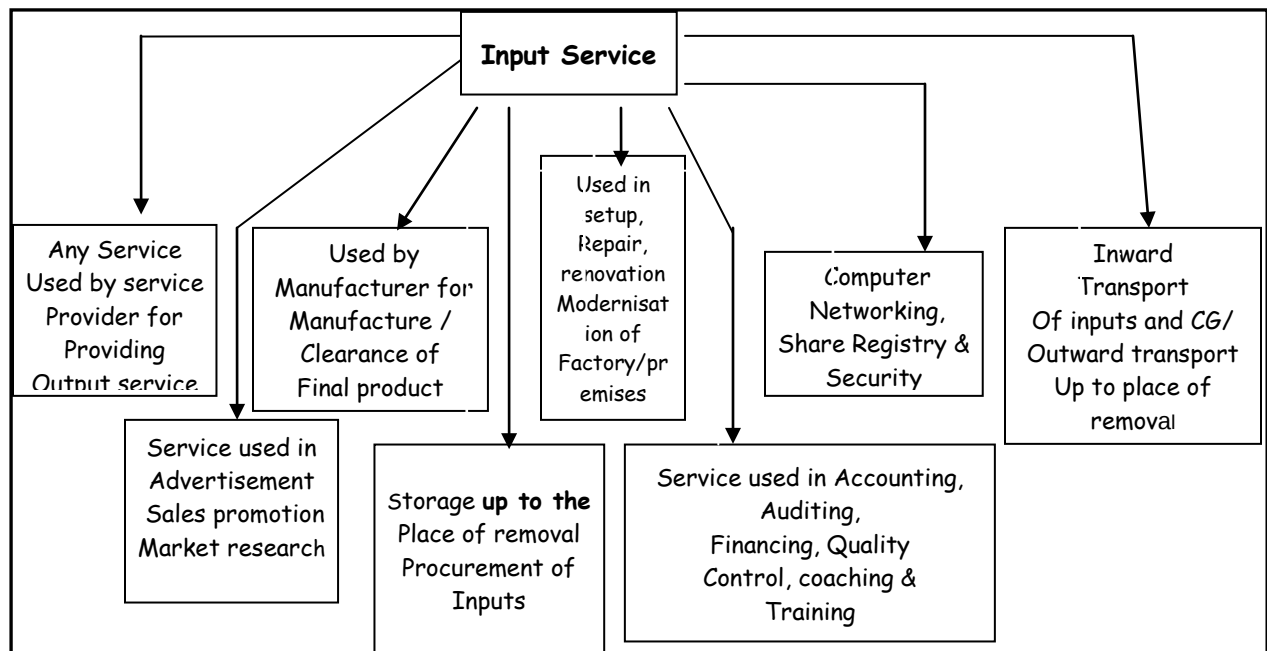
Illustrations on inputs eligible for cenvat credit

- Process losses and handling loss are allowable
- Loss of inputs during handling eligible
- Excessive loss also permissible
- Inputs required for quality control tests are eligible
- Repeated use is not a bar for availing Cenvat credit
- Inputs used in effluent treatment plant eligible
- Defective final product is 'input' for purpose of availing Cenvat credit
- all goods used in the factory by the manufacturer of the final product, except those specified in the negative list and goods having no relationship whatsoever with the manufacture of final product, would qualify for treatment as inputs

Furniture and stationary used in factory eligible for Cenvat:

Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.- Para 3 of MF(DR) TRU(I) letter D.O.F. No. B-1/3/2011-TRU dated 25-3-2011.

Input Service –New definition -Notification No 3/2001 dated 01.03.2011



Exclusions in Input Service

(A) Following specified services, in so far as they are used for construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services:-

- Architect's services, Port services,
- Other port services, Airport services,
- Construction in respect of commercial or industrial buildings or civil structures,
- Construction services in respect of residential complexes
- Works contract services

(B) Following specified services, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods:-

- General insurance business,
- Rent-a-cab scheme operator's services,
- Service Stations' services, Supply of tangible goods services

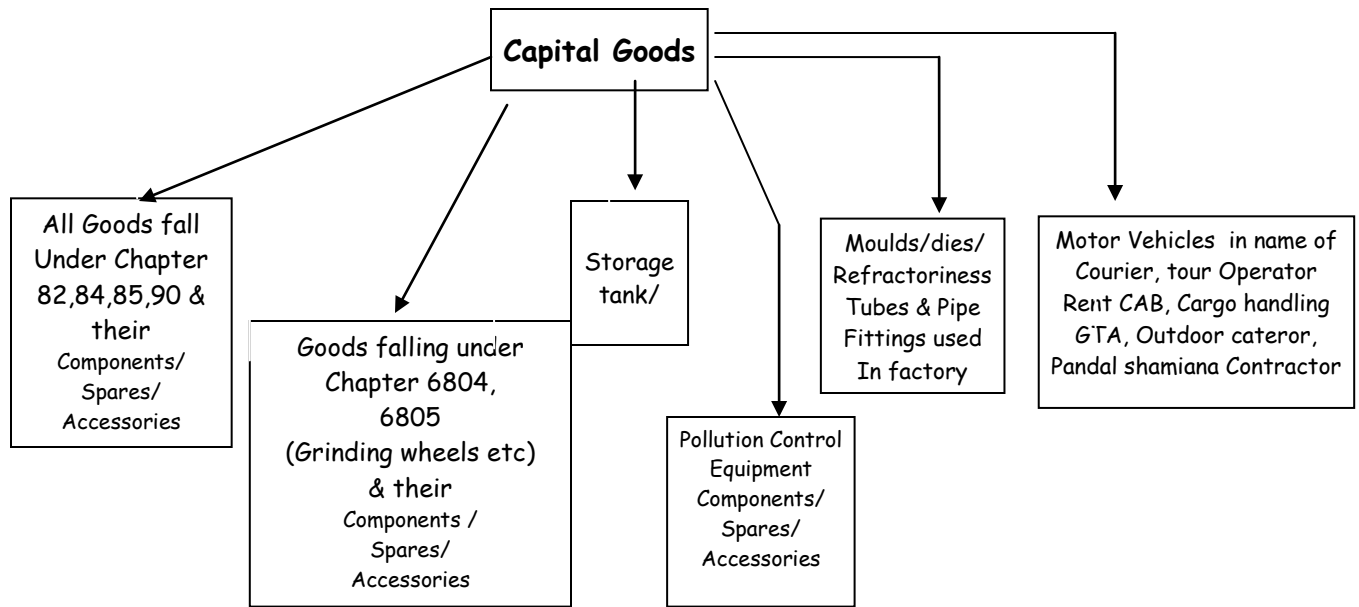
(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and

travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee

Clarification

In respect of the aforesaid amendment, D.O.F.No.334/ 3/2011-TRU dated 28.02.2011 clarifies as follows:-

- 1.The distinction between goods and services is diminishing and many goods can be received as services. Accordingly the definition of “input service” has been aligned with the definition of “input” such that goods that do not constitute “input” do not qualify as “input service”. For instance, goods used for construction have been excluded from inputs while construction services, works contract service, and other specified services in so far as they are used for construction have been kept out of the purview of input services..
- 2.Similarly services relating to motor vehicle i.e. rent-a-cab, use of tangible goods, insurance or repair of vehicle shall not constitute an “input service” except in respect of output services where credit on motor vehicle is permitted as “capital goods”.
- 3.On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.
- 4.Expression “activities relating to business” has been deleted and Business exhibition and legal services added in the list of services.



The above Capital goods should be used with in the factory for manufacture of final product or used outside factory of the manufacturer of the final products for generation of electricity for captive use within the factory(Notification No 3/2011 dt.01.03.2011 or Used for providing output service to avail cenvat credit.

Office equipment/Appliances are not capital goods for manufacturer. Service provider can take credit on office equipment and appliance if they use for providing output service Capital Goods should be received in the factory of manufacturer/premises of service provider to avail cenvat credit

Dumpers or tippers, falling under Chapter 87 of the First Schedule to the CETA is the Capital goods for the services (1) site formation and clearance, excavation and earthmoving and demolition and such other similar activities & ,(2) mining of mineral, oil or gas Services (WEF 01.04.2010)

Items used in Ceramic industry such as alumina balls/ ceramic pebbles & bolting cloth/ screens/ silicon cylinders are the parts and Components of Machines, hence they are capital goods *Circular No. 920/10/2010 - CX dated 01.04.2010*

Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services such as Courier, tour Operator Rent CAB, Cargo handling GTA, Outdoor cateror, Pandal shamiana Contractor site formation and clearance, excavation and earthmoving and demolition and such other similar activities & ,(2) mining of mineral, oil or gas Services Notification No. 29/2010-CE (NT) Dated 24/9/2010

Cenvat Credit Rule 3

Who can avail Cenvat Credit?

- Manufacturer
- Service provider

- E O U when they clear goods to DTA

Duties on which credit can taken 3(1)

- 1. Basic excise duty – First Schedule of CETA (Except BED 1% paid on Notified goods Notification No 1/2011 dt. 01.03.2011)
- 2. Special excise duty- Second Schedule of CETA
- 3. Additional Excise Duty Of GSI
- 4. Additional Excise Duty of Textile Articles
- 5. Additional Excise Duty Clause 85 of Finance Bill 2005 (Payable on tobacco Products)
- 6. National Calamity Contingent Duty
- 7. Education cess on duty of all above
- 8. Additional Customs Duty (CVD) u/s 3(1) & 3(3) of CETA equivalent to 1 to 6, However in respect of ships, boats and other floating structures for breaking up- credit allowed only to the extent of 85% of duty paid. Notification No 3/2011 dt. 01.03.2011
- 9. Additional Customs duty CVD u/s 3(5) (service provider cannot avail)
- 9. Education cess and secondary/higher education cess Levied on imports equal to above 1 to 6
- 10. Service tax paid on input Services

Note

- Credit for 4 to 6 and corresponding CVD will be utilized only for payment of respective duties
- Additional Excise Duty Of GSI credit can be utilised only for same duty as well as Basic excise duty and special excise duty
- Credit on Education cess will be available only for payment of EC

The credit of additional duty of customs under 3(5) of the Customs Tariff Act, 1975 shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

There is provision for refund of CVD u/s 3(5) if cenvat credit was not availed, when sales tax was paid on the removals

Cenvat Credit When F P ceases to exempt and dutiable Rule 3(2)

Cenvat credit can be taken on

- Input lying in stock
- Input present in process and final product

Cenvat Credit When Output Service ceases to exempt and taxable Rule 3(3)

Cenvat credit can be taken on

- Input lying in stock

Utilization of Cenvat Credit Rule 3(4)

The Credit of Cenvat can be utilized for the following- for the payment of

- duty on final product by manufacturer
- an amount equal when inputs removed as such or after partial processing
- amount when capital goods cleared as such
- an amount when goods cleared after repairs
- an amount when inputs sent for Job work not returned within 180 days
- an amount When payment of 10% on the exempted value of goods
- For reversal of Cenvat credit when common inputs used for dutiable and exempted products
- For payment of Service tax by service provider

By product, waste scrap and Intermediate product is treated as final product for availing cenvat credit
Credit can be availed only up to month end supplies

Cenvat credit of any duty cannot be utilized for payment Clean energy cess WEF 01.07.2010
Cenvat credit of any duty cannot be utilized for payment 1% Basic Excise duty levied as per notification No 1/2011 dt.01.03.2011

Cenvat Credit When dutiable F P become to exempt and no duty payable Rule 11(3) & 11(4)
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When the dutiable product becomes exempt by virtue of notification u/s 5 A of Central Excise Act or where the manufacturer /service provider is availing conditional exemption,

The manufacturer or service provider should be reverse or pay an amount equal to cenvat credit availed on

- Input lying in stock
- Input present in process and final product

There is no necessity to reverse or pay on cenvat credit availed on input service.

Similar Provision also made in case of SSI units who is not availing the benefit of exemption notification and decided to avail exemption notification

Removal of Inputs/Capital goods Rule 3(5)& (5A)
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When manufacturer/Service provider removes inputs/ Capital goods" as such" after availing Credit- (as such means- without using)An amount equal to cenvat credit availed should be paid.

All such removals are to be made by cover under invoice

Such payment is not required when service provider removing inputs or capital goods for providing Output service.

Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing **free warranty for final products Notification No 3/2011 dt.01.03.2011**

- If capital goods removed after use an amount equal to cenvat credit availed is reduced by points calculated on the straight line method @ 2.5 % per quarter of **from the date of availment** is to be paid. In case of computers and peripherals , the amount reduced will be for each quarter in the first year @ 10%, (ii) for each quarter in the second year @ 8% (iii) for each quarter in the third year @5% (iv) for each quarter in the fourth and fifth year @1% (Notification No 6/2010 dated 27.02.1010. wef 01.04.2010

- If capital goods removed after use as a scrap duty should be paid based on transaction value

Written off of inputs and Capital goods in books of account before use Rule 3 (5B)

If the value of any,

- (i) Input, or
- (ii) Capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

If the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules."

Written off of finished goods and Work in progress Circular No. 907/27/2009
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CX dated 07.12.2009

In case, finished goods are written off in the books of accounts:-

- (i)

S.No.	Excise duty on the finished goods under rule 21 of the Central Excise Rules, 2002 has	Treatment
1.	Not been remitted (No waiver of duty)	The manufacturer would be liable to pay excise duty. Thus, he need not reverse the CENVAT credit taken on inputs.
2.	been remitted (waiver of duty)	The manufacturer would be required to either:-reverse the credit on the inputs used, or pay the excise duty.

(ii) In casework in Progress are written off in the books of accounts:-

S.No.	Stage of Completion of WIP	Treatment
1.	It can be considered as manufactured goods	same treatment as applicable to finished goods in point (i) mentioned above
2.	It cannot be considered as manufactured goods	Treat it as inputs and reversal of Cenvat credit is required

Breakage loss of inputs –reversal of Cenvat credit:

In case of breakage loss of input, which is fully written off in the books of account, credit availed is required to be reversed as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004.

Circular No. 930/20/2010-CX dated 9.7.2010

Reversal of Cenvat Credit in case of Remission of duty Rule 3 (5C)

Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed."

Cenvat Credit in respect of amount paid on Capital goods removed Rule 3 (6)

The amount paid when inputs capital goods removed as such) when capital goods removed after use under rule 3(5) or When duty paid when capital goods removed as scrap under Rule 5(a), The buyer of this goods is eligible for Cenvat credit

Cenvat Credit in respect of EOU/STP/EHTP Rule 3(7)

When goods cleared to DTA Cenvat credit can be availed as below

- $X \times \{(1 + \text{BCD}/200) \times (\text{CVD}/100)\}$
- where X is the assessable value,
- BCD is the basic customs duty and
- CVD is the additional duty of customs. [Notification No. 48/2008 CE (N.T.) dated 05.12.2008.]

Cenvat Credit in case of Buyer of goods from EOU/STP/EHTP

The buyer who purchases goods from the EOU/STP/EHTP can avail cenvat credit on CVD (additional Customs duty) paid u/s 3(1) and Special CVD u/s 3(5) – ie 4% - Notification No 22/2009 dt 07.09.2009

Reversal of Cenvat Credit in case of discount after removal/reduction in duty
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- When manufacturer availed credit on duty on the basis of invoice
- Subsequently the supplier gives discount by way of reduction of price, but duty was not reduced, no need to reverse of cenvat credit availed,
- However supplier gives discount in reducing the duty also, the manufacturer can avail cenvat credit only the duty amount paid to supplier.
- The reduced amount of duty should be reversed
- CBEC Circular No. 877/15/2008-CX Dated 17/11/2008

Direct despatch from manufacturer to final buyer, but sale is through dealer i.e. Transit sale - If whole consignment is despatched to buyer from manufacturer, Cenvat will be permissible, if name of the final buyer is shown as consignee. (Invoice will be in name of dealer). The consignee can avail Cenvat on the basis of duplicate copy of manufacturer issued under Rule 11 (*that time Rule 52A*). In such cases, the goods need not be brought to the premises of registered person. Invoice of Registered person (dealer) is not required for availing Cenvat by the consignee -**CBE&C Circular No. 96/7/95-CX dated 13-2-1995**.

Cenvat credit on capital goods used in manufacture of exempt intermediate product - It may happen that capital goods may be used in manufacture of an exempt intermediate product, but final product may be dutiable. In such case, Cenvat credit is available on such capital goods, if final product is chargeable to duty. - **CBE&C circular No. 665/56/2002-CX dated 25-9-2002**.

Conditions for availing credit Rule 4
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When Credit can be availed

In case of Inputs Rule 4(1):

Immediately after receiving in to factory, No need to wait till utilization

In case of Inputs for articles of Jewellery, after receiving in registered premises of a person (person on whose behalf job worker do the work)

In Case of Capital goods: Rule 4(2)

After receiving in to factory of manufacturer/Premises of service provider

After receiving outside factory of manufacturer of the final products for generation of electricity for captive use within the factory- Notification No 3/2011 dt. 01.03.2011

Quantum of Credit

For Inputs- Full on all eligible duties

In case of Capital goods- 50% in the First year and Balance in next years

When Capital goods cleared in the same year as such full 100% credit can be availed. However reversal of credit is required.

In case of an SSI, Full credit of 100% in the first year can be availed in respect of capital goods

(Notification No 6/2010 dated 27.02.2010 wef 01.04.2010)

CENVAT credit can also be availed even capital goods acquire on lease, hire purchase or loan agreement.

-Rule 4(3)

No Cenvat credit on duty amount, if manufacturer claims depreciation on duty amount u/s 32 of Income tax Act -rule 4(4)

Cen vat credit in case of Inputs/Capital goods sent to Job worker by manufacturer/Service provider- Rule 4(5)

Cenvat Credit can be availed, if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose.

The Cenvat credit in respect of above can be availed only, when the manufacturer/service provider should establish from the records that they should be returned back within 180 days. If not returned within 180 days, an amount equal to cenvat credit availed is payable. Credit can be taken after they receive back.

Cenvat credit can be availed on Jigs, fixtures, moulds, and, dies when they send to another manufacturer for the production of goods; or (ii) a job worker for the production of goods on his behalf, There is no provision to return back in 180 days Notification No 6/2010- dated 27.02.2010 wef 01.04.2010

Approval by order if goods are removed from Job worker place Rule 4(6)

In case of inputs sent to job worker, if the processed inputs are removed from job worker, the AC/DC by an order valid for one year may impose conditions, restrictions considering interest of revenue, including the duty levied and paid.

Cenvat Credit in case of Input services -Rule 4 (7) - Notification No 3/2011 dt.01.03.2011

Cenvat Credit in respect of service tax paid on input service is available on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received, subject to the following:

- In case of reverse charge of service tax, where the service tax is payable by the service recipient, credit is available only after input service is paid.
- If the service tax is not paid within 3 months of the date of invoice, the manufacturer or service provider who availed the credit, shall pay an amount equal to credit availed. Credit can be availed again after bill is paid.
- any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:
- In case of invoice dated before 01.04.2011, credit can be taken only after the bill is paid.

In case of amount payable, it is to be paid with due dates specified in CER Rule 8. If the amount is not paid, it is recoverable as per Rule 14 of CCR 2004.

Refund of Cenvat Credit Rule 5

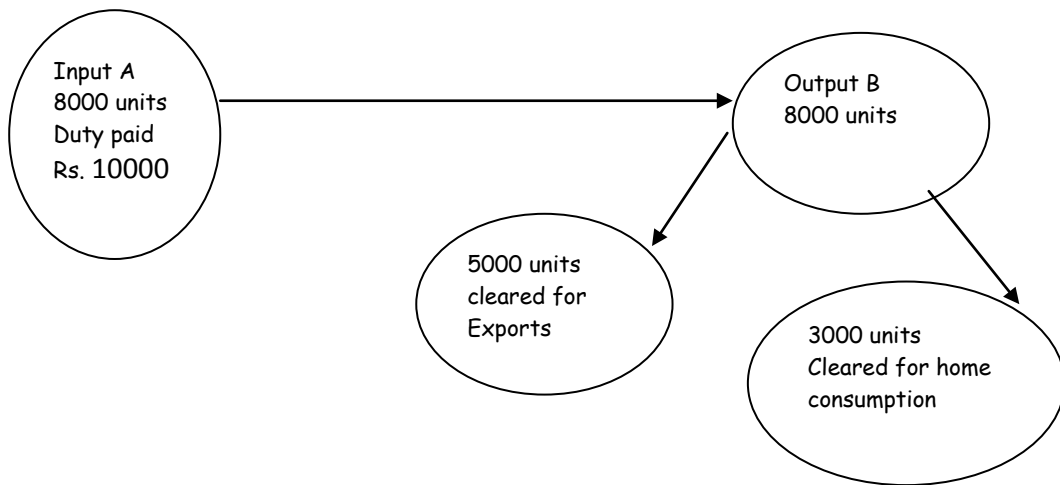
Where any input or input service is used in the final products/providing output service which is cleared for export under bond or letter of undertaking, or any input used in intermediate product which is cleared for export the CENVAT credit in respect of the input or input service shall be utilized towards payment of,

- (i) Duty of excise on any final products cleared for home consumption or for export on payment of duty; or
- (ii) Service tax on output service,

And where for any reason such adjustment is not possible,

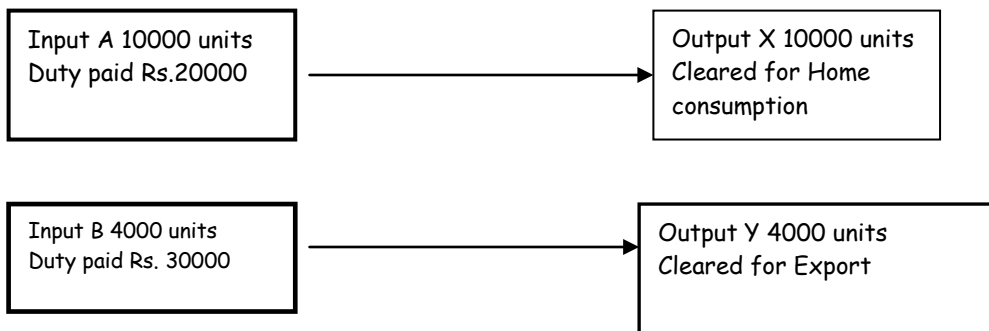
- The manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations.
- Cenvat refund not eligible for Exports to Nepal/Bhutan
- No Refund, under this rule, if manufacturer/service provider claim duty drawback under customs law and rebate of excise under Excise rules.

Example 1



Credit of duty paid on inputs used in 5000 units of product exported, can be utilised on while paying duty on 3000 units cleared for home consumption.

Example 2



While paying duty on X, credit can be utilised on the duty paid on Input A as well as Input B

**Refund of Cenvat Credit in case of goods cleared to North eastern
states Rule 5 A**

The new rule provides that the Central Government may allow refund of CENVAT credit of duty taken on inputs used in the manufacture of dutiable final products cleared to North eastern states, if the manufacturer unable to adjust the credit in respect of clearances for other part of country for home consumption.

**Obligation of a manufacturer or producer of final products and a provider of
taxable service / (Common inputs for dutiable and exempted goods/services)
Rule 6**

Notification No 3/2011 dated 01.03.2011

Where any input which is exclusively used in or in relation to manufacturing of exempted final product or exempted service- no Cenvat credit

Where any input service which is exclusively used in or in relation to manufacturing of exempted final product and up to the place of removal / or provision of exempted service- no Cenvat credit

CENVAT credit on inputs shall not be denied to job worker of readymade garments/Jewellery as per rule 12AA of the CER 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty

Where the manufacturer avails cenvat credit on inputs/input services are used for manufacture of goods charged to duty /taxable services and for exempted goods/services.

(a)He has to Maintain Separate records for receipt /Consumption and balance of inventory of inputs used for, in or in relation to manufacture of exempted goods and dutiable goods and exempted service/taxable service. No Cenvat available on inputs used in exempted goods/exempted services

(b) He has to Maintain Separate records for receipt and use of input service for, in or in relation to manufacture of exempted goods and their clearance up to the place of removal/ dutiable goods and their clearance up to the place of removal.

If the manufacturer or service provider does not maintain separate records he has, three options as below:

Option 1. Rule 6(3)(i)

•Manufacturer/Service provider has to pay an amount at 5% on the value of Exempted goods/exempted service as below:

Particulars	Amount Rs.
5% of value of the exempted goods and/or exempted services	xxxx
Less: Duty of excise, if any, paid on the exempted goods	<u>xxxx</u>
Amount payable under rule 6(3)(i)	<u>xxxxxx</u>

if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 5% of the value so exempted.

For example, if the abatement on certain service is 60%, the amount required to be paid shall be 3% (5% of 60) of the full value of the exempted service.

Value Means

in case of manufactured products Value as per Central excise Act/Rules and in case of Service tax Value as per Finance Act, 1994/Service tax rules.

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 CBE&C Circular No. 868/6/2008-CX dated 9-5-2008.

The maintenance of separate records/payment of 5% on exempted product/service or denial of cenvat credit in case of capital goods, will not applicable (Credit can be availed) in case of (Preferential removals) Rule 6(6) clearances to

- Final product is dispatched to SEZ unit or developer of SEZ unit, EOU, EHTP or STP.
- 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.
- When final product is exported under bond without payment of duty
- Gold or silver arising in course of manufacture of copper or zinc by smelting.
- Goods supplied against International Competitive Bidding
- 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 of section 3 (1) of the said Customs Tariff Act when imported into India and are supplied, Notification No 6/2010 dated 27.02.2010 WEF 01.04.2010
- (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
- supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents (WEF 01.07.2010)
- In case of taxable services provided , without payment of Service tax to SEZ or developer of SEZ for their authorized operation Rule 6(6A)-

Eligibility of Cenvat Credit on 5% amount: It is an amount and not duty, hence no EC payable. The amount to be paid within due dated specified in rule 8. In addition the amount of 5% should be shown separate column mentioning duty nil. **No cenvat credit** to the buyer on 5% of the amount CBEC Circular No 870/08/2008 dated 16.05.2008.

Overriding special provisions for payment of 'amount' in respect of banking and insurance services Rule 6 (3C)

In respect of banking service [section 65(105)(zm)], the Bank or NBFC is required to pay 'amount' equal to 50% of Cenvat Credit availed on inputs and input services .

In respect of general insurance services [section 65(105)(zx)] and life insurance service [section 65(105)(zzza)], 'amount' payable is equal to 20% of Cenvat credit availed on inputs and input services in the month .

Option 2	Rule 6(3)(ii)
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Pay an 'amount' equal to proportionate Cenvat credit attributable to exempted final product/ exempted output services, based on complicated mathematical formula

This option should be informed in writing to CEO for all exempted goods/all exempted service. Once option is exercised, it cannot be withdrawn during financial year.

Option 3	Rule 6(3)(iii)
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Maintain separate accounts **only for inputs** and pay 'amount' equal to proportionate Cenvat credit attributable to exempted services on the complicated mathematical formula.

This option should be informed in writing to CEO for all exempted goods/all exempted service. Once option is exercised, it cannot be withdrawn during financial year

Cenvat Credit in respect of Capital goods -Rule 6(4)

Capital goods used exclusively for manufacture of exempted goods or providing exempt service are not eligible for Cenvat Credit.

If capital goods are partly used for taxable services or dutiable final products, and partly for exempted goods and exempted service, Cenvat credit will be available.

SSI can avail Cenvat Credit on the capital goods even, if they used capital goods for manufacture of turnover up to first 150 lakhs. Even no duty payable on this turnover. But utilization of cenvat credit only after crossing turnover of 150 lakhs.

Distribution of Credit by Input Service Distributor
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Rule 7

Input service distributor Meaning

- Managing Office of business of manufacturer/Service Provider
- Which receives invoices under service tax rules and who distribute the credit through bill, invoice Challan

Conditions

- Total amount of distribution of credit should not exceed the amount of Service tax paid
- Credit of service tax cannot be distributed when the input service was used exclusively for exempted service

Example

- An adverting agency renders service for a company Head office and for its various branches
- Ad agency raises bill on Head office and charges service tax of Rs. 3 lakhs on the bill
- Head office is known as input service distributor
- Head office can distribute this service tax to head office and various braches based on suitable proportion, by way of challan
- Braches can take credit on the basis of challan issued by Head office

Distribution of inputs by the office or any other premises of output service provider
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Rule 7 A

A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods

Storage of inputs outside factory Rule 8

- AC/DC under exceptional Circumstances
- Considering the
- Nature of goods
- Shortage of space in factory
- By order

- permit manufacturer to store inputs outside the factory
- Cenvat credit can be availed in respect of these inputs
- AC/DC Can impose restrictions/Conditions/Limitations
- If these inputs are not used as per rules, the manufacturer shall pay an amount equal to cenvat credit availed

Documents for Availing cenvat credit Rule 9
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Cenvat Credit can be availed only based on the following documents

For Excise Duty / CVD

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry
- A certificate issued by an appraiser of customs in case of goods imported through post office

For Service Tax

- Invoice / bill / challan of the service provider
- Invoice / bill / challan of the input service distributor
- Where the specified persons are liable to pay Service Tax on the basis of challan

Essential Requirements of Documents to avail cenvat credit

- Payment of duty or service tax
- Description of goods or taxable service
- Assessable value
- Registration Number of Central excise or service tax
- Name and address of the factory or warehouse or provider of input service.
- New rule 9(2) of Cenvat Credit Rules provides that Cenvat Credit can be taken only if document contain all details as prescribed in Rules (rule 11 of excise and service tax rules) are available. If even one detail as required under Rules is missing, permission from Assistant/ Deputy Commissioner will be required.
- In case of invoice issued by FSD/SSD, credit can be taken only, the invoice should indicate duty suffered or prorated duty suffered in case proportionate stock is sold.

Records and Returns in Cenvat credit.

▪For Inputs and Capital Goods: -

The Manufacturer/ provider of output service shall maintain proper records containing the following details:

- Receipt;
- Disposal;
- Consumption;
- Inventory of Input and Capital Goods;

For Value of input / capital goods;

- Duty paid ;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of Supplier of input or capital goods.

For Input Services: -

The provider of output service shall maintain proper records containing the following details;

- Receipt of input services;
- Consumption of input services;

- Value of input services;
- Tax Paid;
- Cenvat Credit Taken;
- Cenvat Credit Utilized; and
- Particulars of provider of service

Returns under Cenvat Credit

- Monthly return by manufacturer within 10 days from close of Month [rule 9(7)]
- Quarterly return by SSI within 20 days from close of quarter [rule 9(7)]
- Quarterly return by first stage/second stage dealer within 15 days from close of quarter [rule 9(8)]
- Half yearly return within one month from close of half year, by provider of output services [rule 9(9)]
- Half yearly return within one month from close of half year, by Input Service Distributor [rule 9(10)]
- Monthly return by manufacturer in respect of principal inputs within 10 days from close of Month [rule 9A]
- Output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return

Transfer of Cenvat Credit	Rule 10
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If a manufacturer shifts his factory to another site, transfer his business/ provider of output service transfers his business by way of

- Change of ownership
 - Sale, lease
 - Merger, Amalgamation
 - Manufacturer/Service provider can transfer unutilised Cenvat Credit
- Transferee can avail the cenvat credit when only
- Transfer was with the specific provision for transfer of liabilities
 - The transferor transfers Inputs, Inputs in process and Capital goods
 - Transferee should account credit properly to the satisfaction of AC/DC

Procedure for LTP units Rule 12 A
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LTP can avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export within 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty will interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11

Procedure for LTP units

- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LTP scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases

Central Government, if necessary in the public interest to provide for certain measures

Consideration for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer

Types of facilities to be withdrawn

- Procedure for issue of such order by an officer authorized by the Board.

Power to impose restrictions

The circumstances under which the restrictions are place

- Removal of goods without the cover of an invoice and without payment of duty; removal of goods without Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- issue of excise duty invoice without delivery of goods specified in the said invoice;
- claiming of refund or rebate which are not genuine
- If a manufacturer, first stage or second stage dealer, or an exporter is found to be knowingly involved in the removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs i

Restrictions include, when evasion exceeds Rs. 10 lakhs

- Withdrawal of monthly payment , restrictions on availing credit
- the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken
- the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order

Recovery of Cenvat Credit wrongly taken or erroneously refunded
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Rule 14

- Where the CENVAT credit has been taken or utilized wrongly has been erroneously refunded
- same along with interest shall be recovered from the manufacturer/Service provider
- sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply

Liability of interest where CENVAT credit was wrongly taken but reversed by assessee before utilization

Interest shall be recoverable when credit has been wrongly taken, **even if it has not been utilized**, in terms of the wordings of the present Rule 14. P&H high court ruling in the case of CCE, Maruti Udyog Ltd. [2007] and supreme court order was in case of old rule 57 I was not relevant now. **Circular No. 897/17/2009-CX Dated 3/9/2009**

The said issue has been re-examined. It is clarified that the matter has been conclusively decided by the judgment under UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.) wherein it is held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in

between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances, such credit becomes recoverable along with interest. In effect, therefore, the view taken by the Board in circular dated 3-9-09 has now been endorsed by the Apex Court. **[Circular No. 942/3/2011-CX. dated 14-3-2011]**

Confiscations and Penalty Rule 15 (new wef 01.04.2010)

• If any person, **takes** CENVAT credit in respect of input/ capital goods/*input services* wrongly or in contravention of the rules the goods are liable for confiscation and penalty will equal to duty payable on goods, *tax payable on services* or Rs. 2000 whichever is higher.

• If any person, takes CENVAT credit in respect of input/ capital goods/input service on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made there under with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act (penalty equal to duty or service tax If duty and Interest paid with in 30 days penalty reduced to 25% of duty)/sec 78 of service tax (Penalty equal to twice the amount of Service tax)

• Before issuing SCN on above, the rules of natural justice should be followed

Non reversal of CENVAT credit. Sec 5 B of Central excise Act

"Where an assessee has paid duty of excise on a final product and has been taken credit of the duty or tax or cess paid on inputs, capital goods and input services used in making of the said product, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for **non-reversal** of such credit allowed to the assessee subject to such conditions as may be specified in the said notification:

The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product."

Clarifications on various issues arising out of Budget 2011 amendments. [Circular No.943/04/2011-CX dated 29.04.2011]

The CENVAT Credit Rules 2004 were amended along with the Budget 2011 announcements vide *Notification 3/2011-CE (NT) dated 1.3.2011*. A few changes were further effected vide *Notification 13/2011-CE (NT) dated 31.3.2011*. Accordingly the following clarifications are presented on few issues in a tabular format:-

S.	Issue	Clarification
1	Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under Notification 1/2011- CE is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?	As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service shall be taken are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.
2	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that CENVAT credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3	How is the “no relationship whatsoever with the manufacture of a final product” to be determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression “no relationship whatsoever with the manufacture of a final product” must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.
4	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

5	Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"?	The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.
6	Can the credit of input or input services used exclusively in trading, be availed?	Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.
7	What shall be the treatment of credit of input and input services used in trading before 1.4.2008?	Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Rules.
8	While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation?	The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.
9	Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?	Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/refunded may not be included. Discounts are to be included.
10	Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of CENVAT credit?	The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation" must be read harmoniously with the definition of "inputs".

