Handbook on

CENVAT Credit Rules, 2004

PROBLEMS AND SOLUTIONS

Author

Atul Kumar Gupta

B. Com (H), FCA, AICWA,
AMIMA, CIQA, PGDEMM

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ABOUT THE AUTHOR

Atul Kumar Gupta

- Commerce Graduate from Delhi University in 1994
- Passed ICWAI Examination in 1995
- Passed ICAI Examination in 1999 (All India Rank holder)
- Certified Internal Quality Auditor & PGDEMM
- Remained Chairman of NIRC of ICWAI (2005-06)
- Jt. Convener of North Ex CPE Study Circle of NIRC of ICAI - Awarded for Best commendable performance (2004-05)
- Awarded by NIRC of ICAI for contribution towards Professional Development (2003-04)
- Member of
  - All India Management Association
  - Delhi Management Association
  - Institute of Internal Auditors (Delhi)
- Member of Regional Advisory Committee of Central Board of Excise and Custom
- Member of Special Task Force (Service Tax) of ASSOCHAM
- Author of Ready Reckoner on Service Tax (5th Edition in Market) & Hand Book on e-TDS
- Published Articles in leading Newspapers, Magazines & Professional Newsletters
- Speaker in ICAI, ICWAI, JIMS, IP University & many others Corporates' Seminar
- Advisor (Service Tax) in leading Pvt. & Public Sector Companies

HAND BOOK

ON

CENVAT
CREDIT RULES
2004

(Useful for CAs,CWAs, CSs, Tax Practioners, Advocates, Corporates, Assessees & Students)

Author :

Atul Kumar Gupta

B.Com(H), AICWA, FCA
AMIMA,CIQA, PGDEMM

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Dedicated to
Lord Ganesha

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CHAPTER –1

INTRODUCTION

Today, we have entered in that phase of global economy where competition defines the policies of not only corporates but also of a nation as a whole. In Indian economy Service Sector contributes 54% of the GDP. Seeing the potential Government of India initiates the Service Tax regime in 1994 and start charging service tax on few services with a rate of 5%. Later on the aspiration increases and the new services got added in the kitty with increased rate of tax.

This phenomenon start pinching the manufacturing sector especially when their cost of production have a definite impact of services being used for their productions. In a general survey, it is assumed that a normal cost of production has more 20% of cost from overheads, which are of service nature. Now, if a manufacturing organisation is paying at a rate of 10% (taken for Financial Year 2005-06) on these 20% cost of production, their cost of production will certainly increase by 2% (i.e. 10% of the 20% Cost of production related to Service overheads). This undesirable increase not only makes their product uncompetitive in national level but also Global level.

Moreover, a issue further generated that the organisation may incurred certain expenses along with Service tax liability at head office/branch offices where they does not have any output liability of Excise/Service Tax to set off their Credit available. These particular expenses remain a burden on their overall Cost of Production.

These issues generate a hue and cry among them and force the Government to take immediate steps to have proper balance between the revenue generation and business growth model.

Government of India in 2002 initiated the concept of Input Credit for the same line of output service, but that could not answer their issues. Later on Government came up with three new provisions to answer these issues, namely

1. PROVISION OF CENTRALISED REGISTERATION
2. PROVISION OF INPUT SERVICE DISTRIBUTOR
3. PROVISION OF CENVAT CREDIT RULES 2004

1. Centralized Registration

In Centralized Registration, an organisation can have a single registration for its head office and branches on the satisfaction of either of the one condition, i.e.

1. The organisation should have centralized billing system, and/or
2. The organisation should have centralized accounting system

There is a certain procedure mention in the Finance Act 1994 and its amendment thereof through which one can have a centralized registration to set off the service tax input credit available to meet their output liabilities.

Still the issue remain pending for the organisation where neither of the two condition could be followed. In this circumstance, the organisation may opt for registration as Input Service Distributor.

2. Input Service Distributor

As mentioned above certain organisation incurs huge expenses at Head office/Branch office along with Service Tax. These particular Head Office/Branches may not have any output liability on account of Excise or Service Tax to set off their credit available. To avoid the bearing of the same on overall cost of production and to utilize the credit available at these locations, the organisation may opt for Input Service Distributor registration. The Government has prescribed and issued certain notification for them to get registered under "Special Category of Person".

Now the organisation get themselves registered as Input Service Distributor and issue necessary notes to its branches/head office to claim the Credit available (Subject to certain provisions) and can reduce their cost of production/Services.

Notification for the Input Service Distributor is attached herewith 7th June, 2005.

NOTIFICATION NO.

27/2005-Service Tax

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement

(1) These rules may be called the Service Tax (Registration of Special Category of Persons) Rules, 2005.

(2) They shall come into force on the 16th day of June, 2005.

2. Definitions

In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the Act, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon under section 66 of the Act under any notification other than Notification No. 6/2005-Service Tax, dated the 1st March, 2005 [G.S.R. 140 (E), dated the 1st March, 2005];

(c) "input service distributor" shall have the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004.

3. Registration

(1) The input service distributor shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later.

(2) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds three lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thirty days of exceeding the aggregate value of taxable service of three lakh rupees.

(3) The provisions of sub-rules (2) to (7) of rule 4 of Service Tax Rules, 1994 shall be applicable to the persons or class of persons who make an application for registration under the provisions of these rules, with such modifications and alterations as may be prescribed by the Board.

4. Furnishing of returns.-

The input service distributor shall furnish a return to the jurisdictional Superintendent of Central Excise in such form and at such frequency as prescribed under sub-rule (10) of rule 9 of CENVAT Credit Rules, 2004.

F. No. B1/6/2005-TRU

(Ajay)

Under Secretary to the Government of India

3. CENVAT Credit Rules 2004

The most important change came in the shape of CENVAT Credit Rules 2004 effective from 10th September 2004. According to these rules, a Manufacturer or Service Provider can claim certain credit of Service Tax/ Excise Paid on Input, Capital goods and Input Services to meet its output liabilities. This Provision came with cross adjustment in which the liability of Services Tax can be adjusted with Excise or vice se versa. Certainly several provision has to follow and lot of amendments through notification and circular made them so cumbersome that one has to devote lot of time to clarify his understanding. Here the efforts are put in to give a simple understanding of provisions in the shape of Question and answer and Practical Illustration thereafter. Initial Process will start from the CENVAT Credit Rules 2004.

CHAPTER- 2

THE CENVAT CREDIT RULES, 2004

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), and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

Rule 1. Short title, extent and commencement-

(1) These rules may be called the CENVAT Credit Rules, 2004.

(2) They extend to the whole of India:
Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir

(3) They shall come into force on the 10-09-2004.

Rule 2. Definitions- In these rules, unless the context otherwise requires,-

(a) "capital goods" means,-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the excise Tariff Act;

(ii) pollution control equipment

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, Jigs & Fixture;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank, used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1994 (1 of 1944)

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;

(e) "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 the Section 66 of the Finance Act;

(f) "Excise Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986)

(g) "Finance Act" means the Finance Act, 1994 (32 of 1994);

(h) “final products” means excisable goods manufactured or produced from inputs, or using input services;

(ij) “first stage dealer” means a dealer who purchases the goods directly from,-

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

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

(k) “input” means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

(l) “input service” means any service

(i) used by a provider of taxable services providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal;

Explanation.- Input service includes services used in relation to setting up a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, procurement of inputs, activities relating to management of business, such as accounting, auditing, financing, recruitment and quality control.

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

(n) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be constructed accordingly;

(na) "manufacturer" or "producer" in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) and rule 12AA of the Central Excise Rule, 2002.

(o) “notification” means the notification published in the Official Gazette;

(p) “output service” means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and expressions 'provider' and 'provided' shall be construed accordingly;

(q) “person liable for paying service tax” has the meaning as assigned to it in clause (d) of sub-rule(1) of rule 2 of the Service Tax Rules, 1994;

(r) “provider of taxable service” include a person liable for paying service tax;

(s) “second stage dealer” means a dealer who purchases the goods from a first stage dealer;

(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

Rule 3. CENVAT credit-

(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi) above;

(viia) the addtional duty leviable under section sub-section (5) of section 3 of the Customs Tariff Act :

Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise leviable under Section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; and

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and

(xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005) paid on -

(i) any inputs or capital goods received in the factory of manufacture of final profuct or premises of the provider of output service on or after the 10-09-2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after 10-09-2004, including the said duties, or tax, paid on any inputs or input services, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the 10-09-2004.

Explanation- For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of septemeber 2004 on which the any service ceases to be an exempted service & used for providing such services.

(4) The CENVAT credit may be utilized for payment of -

a. any duty of excise on any final product; or

b. an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

c. an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

d. an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

e. service tax on any output service:

Provided that while paying duty or service tax, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or service tax relating to the month or the quarter as the case may be:

Provided further that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the notification of Government of India in the Ministry of Finance (Department of Revenue)

(i) 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(vi) 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and

(vii) 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003],

shall respectively be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of.

Provided also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilised for payment of service tax on any output service.

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under section 85 of Finance Act 2005 (18 of 2005) shall not be utilised for payment of said additional duty of excise on final products.

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs are removed outside the premises of the provider of output service for providing the output service:

Provided further that such payment shall not be required to be made when any capital goods are removed outside the premises of the premises of the provider of output service for providing the output service and the capital goods are brought back to the premises within 180 days or such extended period not exceeding 180 days as may be permitted by the jurisdictional deputy commissioner of central excise or Assitant Commissioner of central excise as the case may be of their removal.

(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to theduty leviable on transaction value.

(6) The amount paid under sub-rule (5) and sub-rule (5A) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (5) and sub-rule (5A).

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4)

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section3 of the Act read with serial numbers 3,5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, {G.S.R. 266(E), dated the 31st March, 2003}and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely:-

Fifty per cent. of [X multiplied by {(1+BCD/100) multiplied by (CVD/100)}], where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value.

Provided that the CENVAT credit in respect of inputs and capital goods cleared on or after Ist March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notifictaion no. 23/2003-Central Excise dated 31st March, 2003 [G.S.R. 266(E), dated 31-03-2003] shall be equal to X multiplied by [(1+BCD/400) multiplied by (CVD.100)].

(b) CENVAT credit in respect of

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(iii) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004) ;

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii) and (iii) above;

(v) the additional duty of excise leviable under Section 157 of the Finance Act, 2003 (32 of 2003);and

(vi) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004), and

(vii) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005)

shall be utilised only towards payment of duty of excise leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, or the the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001, as amended by Section 169 of the Finance Act, 2003 which was amended by Section 3 of the Finance Act, 2004, or the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2)Act, 2004, , the Education Cess on taxable services leviable under section 91 read with section 95 of Finance (No.2) Act, 2004 (23 of 2004), respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed or any output service.

Provided that the credit of education cess on excisable goods and education cess on taxable services can be utilised, either for payment of education cess on excisable goods or for the payment of education cess on taxable services.

Explanation- For removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April, 2000, may be utilized towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Tariff Act.

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Tariff Act shall be allowed to the extent of thirty rupees per square metre;

Explanation- Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non availability of credit of duty paid on any input or capital goods, or service tax paid on input services, the provisions of such other rule or notification shall prevail over the provisions of these rules.

Rule 4. Conditions for allowing CENVAT credit- (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service

Provided that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule of the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

(2a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or input service distributor at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if the said capital goods are cleared as such in the same financial year.

Provided further that the CENVAT credit of the additional duty leviable under sub-section (5) of the section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacture.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service or input service distributor, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act, are in the possession of the manufacturer of final products or provider of output service in such subsequent years.

Illustration.- A manufacturer received machinery on April 16, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer or provider of output service or input service distributor even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service or input service distributor claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(5a) The CENVAT credit shall be allowed even 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 any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service or input service distributor taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service or input service distributor shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service or input service distributor can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the output service.

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.

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

(7) The CENVAT credit in respect of input services shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice or bill or challan referred to in rule 9.

Rule 5. Refund of CENVAT credit- Where any inputs or input services are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, or used in providing output services which are exported, the CENVAT credit in respect of the inputs or input services so used shall be allowed to be utilized by the manufacturer 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 as may be specified by the Central Government by notification:

Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002 in respect of such duty or claim rebate of service tax under Export of Service Rules, 2005, in respect of such tax.

Provided further that no credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.

Explanation: For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rule, 2005.

Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services. - (1) The CENVAT credit shall not be allowed on such quantity of inputs or input services which is used in the manufacture of exempted goods or exempted services, except in the cirsumstances mentioned in sub-rule(2).

Provided that the CENVAT credit on inputs shall not be denied to to job worker referred to in rule 12AA of the Central Excise Rules, 2002 on the ground that the said input 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 services which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or the provider of output service shall maintain separate accounts for receipt, consumption and inventory of inputs and input services meant for use in the manufacture of dutiable final products or output services and the quantity of inputs meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of inputs or input services which is intended for use in the manufacture of dutiable goods or in providing output services on which service tax is payable.

(3) Notwithstanding anything contained in sub-rule (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts shall follow

either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Tariff Act (here inafter in this rule reffered to as the said 1st schdule;

(ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;

(iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;

(iv) Naphtha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity

(v) newsprint, in rolls or sheets, falling within heading No.48.01 of the said First Schedule;

(vi) final products falling within Chapters 50 to 63 of the said First Schedule,

(vii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), namely:-

(1) No. 70/92-Central Excise, dated the 17th June, 1992, G.S.R. 595 (E), dated the 17th June, 1992;

(2) No. 62/95-Central Excise, dated the 16th March, 1995, G.S.R. 254 (E), dated the 16th March, 1995;

(3) No. 63/95-Central Excise, dated the 16th March, 1995, G.S.R. 255 (E), dated the 16th March, 1995;

(4) No. 64/95-Central Excise, dated the 16th March, 1995, G.S.R. 256 (E), dated the 16th March, 1995,

(viii) Liquefied Petroleum Gases (LPG) falling under tariff items 2711 12 00, 2711 13 00 and 2711 19 00 of the said First Schedule

(ix) Kerosene falling within heading 2710 of the said First Schedule for ultimate sale through public distribution system.

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

(c) the provider of output service shall utilise credit only to extent of an amount not exceeding 20% of the amount of service tax payable on taxable output services.

Explanation I.- The amount mentioned in conditions (a) (b) and (c) shall be paid by the manufacturer or provider of output service by debiting the CENVAT credit or otherwise.

Explanation II.- If the manufacturer or provider of output service fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 12, for recovery of CENVAT credit wrongly taken.

Explanation III.- For the removal of doubts, it is hereby clarified that the credit shall not be allowed on inputs and inputs services used exclusively for the manufacture of exempted goods or exempted services.

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or 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-clause (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 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-rule (1), sub-rule (2), sub-rule (3) and sub-rule (4) shall not be applicable in case the exempted goods are either-

(i) cleared to a unit in a special economic zone; 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

(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 exempted from duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India and supplied agaisnt International Competitive Bidding in terms of notification No. 6/2002-Central Excise dated 1-3-2002 or notification No. 6/2006-Central Excise dated 1-3-2006, as the case may be.

RULE 7 Manner of distribution of credit by input service distributor. - The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, n amely

(a) the credit distributed agaisnt a document referred to in rule 9 does not exceed the amount of service tax paid thereon, or

(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

RULE 8. Storage of inputs outside the factory of the manufacturer - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the inputs in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

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

Rule 9. Documents and accounts- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, in terms of the provisions of Central Excise Rules, 2002;

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made thereunder with intent to evade payment of duty.

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

(c) a bill of entry;

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv) and (vii) of clause (d) of sub-rule (1) of rule (2) of

Service Tax Rule 1994; or

(f) an invoice or bill or challan issued by a provider of input service on or after the 10-09-2004. or

(g) an invoice issued by a input service distributor under rule 4A of the Service Tax Rules, 1994

(2) CENVAT credit shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty or service tax, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or provider of input service:

Provided that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer or provider of output service or input service distributor intending to take CENVAT credit is satisfied that duty or service tax due on the inputs or input services has been paid and such inputs or input services have actually been used or are to be used in the manufacture of final products or provision of output services, and such Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall record the reasons for not denying the credit in each case.

(3) The manufacturer or producer or provider of output service or input service distributor taking CENVAT credit on inputs or capital goods or input services shall take all reasonable steps to ensure that the inputs or capital goods or input services in respect of which he has taken the CENVAT credit are goods or services on which the appropriate duty of excise or service tax as indicated in the documents accompanying the goods or relating to input services, has been paid.

Explanation- The manufacturer or producer or provider of output service or input service distributor taking CENVAT credit on inputs or capital goods or input services received for distribution of input services shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier or provider of input service, as the case may be, issuing the documents specified in subrule (1), evidencing the payment of excise duty or the additional duty of customs or service tax, as the case may be, either-

(a) from his personal knowledge; or

(b) on the strength of a certificate given by a person with whose handwriting or signature he is familiar; or

(c) on the basis of a certificate issued to the manufacturer or the supplier, as the case may be, the provider of input service by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or the supplier or provider of output has his place of business or where the identity and address of the manufacturer or the supplier or the provider of input service has paid the service tax

and where the identity and address of the manufacturer or the supplier or the provider of input service is satisfied on the basis of a certificate , the manufacturer or producer or provider of output service taking CENVAT credit or input service distributor distributing CENVAT credit shall retain such certificate for production before the Central Excise Officer on demand.

(4) The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records in which the relevant information regarding the Sl. No. and date of document on which CENVAT credit is availed, service tax registration No. and name of the input service provider, description and value of input service, service tax credit availed, service tax credit utilized for payment of service tax on output service or utilized for distributing such credit shall be recorded. The burden of proof regarding the admissibility of CENVAT credit shall lie upon the person taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified by notification by the Board within twenty days after the close of the quarter to which the return relates.

(8) A first stage or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified by notification by the Board.

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Supreintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by the notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Supreintendent of Central Excise, not later than the last day of the month following the half year period.

Rule 9A. Information relating to principal inputs. - (1) A manufacturer of final products shall furnish to the Supreintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of theexcisable goods manufactured or to be manufactured by him,the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products;

Provided that for the year 2004-05, such information shall be furnished latest by 31-12-2004

(2) If a manufacturer of final product intends to make any alternation in the information so furnished under sub-rule(1), he shall furnish information to the Superintndent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule(1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintndent of Central Excise, a monthly return in the Form specified, by a notifiation, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in sucy notificaiton, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

Explanation : - For the purposes of this rule, “principal inputs”, means any input which is used in the manufacture of final products where the cost of such input constitues not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final products.

Rule 10. Transfer of CENVAT credit- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rule (1) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred alongwith the factory or business to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

Rule 11. Transitional provision- (1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10-09-2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10-09-2004, and remaining unutilised on that day shall be allowable as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilised in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise

leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

Rule 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim- Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99- Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99- Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs No.56/2002- Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002]or notification No.57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R.717 (E), dated the 9th September, 2003, the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

Rule 13. Power of Central Government to notify goods for deemed CENVAT credit - Notwithstanding anything contained in rule 3, the Central Government may, by notification declare the inputs or inout services on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if, in the case of inputs, the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products or as the case may be, used in providing the taxable service.

Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded- Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer and the provisions of sections 11A and 11AB of the Act and sections 73 and 75 of the Service Tax Act, shall apply mutatis mutandis for effecting such recoveries.

Rule 15. Confiscation and penalty- (1) If any person, takes CENVAT credit in respect of inputs or capital goods or input services, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods or appropriate service tax on the said input services has been paid as indicated in the document accompanying the inputs or capital goods or input services specified in rule 7, or contravenes any of the provisions of these rules in respect of any inputs or capital goods or input services, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit has been taken or utilized wrongly on account of

(i) fraud,

(ii) willful mis-statement,

(iii) collusion or

(iv) suppression of facts, or

(v) contravention of any of the provisions of the Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer and provider of output service shall also be liable to pay penalty in terms of the provisions of section 11AC of the Act and section 78 of the Service Tax Act, respectively.

(3) If any person, takes CENVAT credit in respect of input services, wrongly or without taking reasonable steps to ensure that appropriate service tax on the said input services has been paid as indicated in the document accompanying the input services specified in rule 9, or contravenes any of the provisions of these rules in respect of any input service, then, such person, shall be liable to a penalty which may extends to an amount not exceeding ten thousand rupees.

(4) In a case, where the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion, willful mis-statement, suppression of facts, or contravention of any of the provisions of the Finance Act or of the rules made thereunder with intention to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act.

(5) Any order under sub-rule (1), sub-rule(2), sub-rule (3) or sub-rule(4) shall be issued by the Central Excise Officer following the principles of natural justice.

Rule 16 Supplementary provision- (1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excisxe or the Commissioner of Central Excise, and in force at the commencement of these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

(2) References in any rule, notification, circular, instruction, standing order, trade notice or to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be constructed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

[Notification No. 23/2004 - C.E. (N.T.), Dt. 10.09.2004 as amended]

CHAPTER- 3

QUERIES & SOLUTIONS

Q.1 What is CENVAT?

Ans. Cenvat is Central Value Added Tax, which is based on the VAT system of taxation where in credit of duty paid on input, input services and capital goods can be claimed by service provider or manufacturer. New Cenvat Credit Rules, 2004 extends the credit of service tax and excise duty across goods and services. It means that input credit shall be available across the board on both goods and services including the capital goods. It is note that Cenvat credit rules are not mandatory. It is open to an assessee to opt for Cenvat credit scheme or not.

Q.2 What is the Jurisdiction and effective date of new Cenvat Credit Rules, 2004?

Ans. Cenvat Credit Rules 2004 have been made applicable to whole of India except the State of Jammu & Kashmir. Cenvat Credit Rules, 2004 are applicable w.e.f. 10th September 2004, i.e., provision of service should be on or after 10th September 2004. As per Rule 3(1), no credit for input service could be availed for service rendered prior to 10Th September 2004 even when bill is raised or payment is effected after 10th September 2004.

Q.3 On what basis one can claim Cenvat credit?

Ans. Documentary evidence shall be the basis for availing CENVAT credit. The manufacturer or output service provider or input service distribution shall avail CENVAT credit or the basis of invoice issued by a manufacturer/importer/ first stage dealer, supplementary invoice, challan, bill of entry, certificate issued by appraiser of customs, invoice/bill/challan issued by input service provider or input service distributor.

Q.4 What are the duties and taxes which are eligible for availing Cenvat Credit?

Ans. Providers of a taxable service shall be allowed to take credit of the following -

A) Basic excise duty [paid on goods specified in first schedule to CETA].

B) Special excise duty [paid on goods specified in second schedule to CETA].

C) Additional Excise Duty paid under Additional Duties of Excise (Goods of Special Importance) Act [AED (GSI)].

D) Education cess on manufactured excisable goods and CVD equal to education cess on imported goods. This credit can be utilised only for payment of education cess on final product or output services

E) Additional Excise Duties paid on textile and textile articles [AED (TTA)].

F) National Calamity Contingent Duty (NCCD) leviable under section 136 of Finance Act, 2001 and corresponding CVD paid on imported goods. This credit can be used for payment of NCD on outputs only and not for any other duty.

G) Additional Excise Duty (Tea and Tea Waste) levied under section 157 of Finance Act, 2003. This credit can be utilised only for payment of AED (TTW) on final product.

H) Service tax on input services.

I) Education cess paid on service tax. This credit can be utilised only for payment of education cess on final product or output services.

J) Additional duty under section 157 of the Finance Act, 2003.

Credit of basic duty, AED(GSI) and special excise duty can be utilised for payment of basic excise duty on final products and vice versa.

Basic duty, SED service tax on inputs and AED(GSI) are inter-changeable, i.e., Credit of duty paid under one head can be utilised for payment of duty under other head.

Q.5 Mention the purposes for which Cenvat credit can be utilised?

Ans. Cenvat credit can be utilised for -

(i) For paying excise duty on the final product.

(ii) For paying excise duty equal to Cenvat credit taken on inputs when the inputs are removed as such or after being partially processed.

(iii) For paying excise duty equal to Cenvat credit taken on capital goods when the inputs are removed as such.

(iv) For paying under sub-rule (2) of rule 16 of Central Excise Rules, 2002.

Q.6 Whether Cenvat Credit of Education Cess can be utilised for payment of Service Tax?

Ans. No, Cenvat Credit of Education Cess can be utilised only for payment of Education Cess and cannot be utilised for payment of other taxes.

Q.7 Can education cess be appropriated against excise duty or service tax?

Ans. No, credit of education cess can be utilised for payment of education cess only and not against any other duty or service tax. Likewise Cenvat Credit of other taxes cannot be utilised for payment of Education Cess.

Q.8 What is deemed Cenvat credit?

Ans. Rule 13 gives power to the Central Government to declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate as specified in the notification.

Q.9 Define Capital Goods?

Ans. Capital Goods means the following goods, namely :

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule of the Excise Tariff Act; e.g., tools, hand tools, knives, machinery, electrical machinery, measuring checking and testing machines, grinding wheels and the similar machines;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (t) and (n);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory material

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank.

Q.10 Whether Cenvat credit is available on capital goods?

Ans. Yes, Cenvat credit on capital goods for providing output taxable services will be available. Credit of duty paid on machinery, plant, spare parts of machinery, tools, dies, etc., is available but however, up to a maximum 50% credit is available in current year and balance in subsequent financial year or years.

Q.11 Whether Cenvat credit is available on motor vehicles for all service providers?

Ans. Cenvat Credit on motor vehicles is allowed only to the service providers of following services -

(1) Courier services

(2) Tour operator services

(3) Rent-a-cab operator

(4) Cargo handling agency

(5) Out door caterer

(6) Pandal and Sharrdana Operator

(7) Goods transport agency.

This is so because motor vehicles are not considered as capital goods or input for manufacturer or other service providers.

Q.12 Can depreciation also be claimed for Cenvat portion in case of capital goods purchased?

Ans. No, if service provider is availing Cenvat credit in case of Cenvat paid on capital goods, he cannot claim depreciation under the Income-tax Act, 1961.

Q.13 What are the other conditions for claiming Cenvat credit for capital goods?

Ans. (I) 50% Cenvat credit will be available the first year and remaining Cenvat credit can be availed in subsequent year.

(II) In case of capital sent out for providing output services, it should be brought back within 180 days.

(III) Capital goods must be used for providing output service.

Q.14 Whether Cenvat Credit can be availed in respect of capital goods where the service provider provides both, exempted and taxable services?

Ans. Yes, in this case, Cenvat Credit can be availed in respect of capital goods used providing exempted as well as taxable services. However, if the capital goods are used wholly for providing exempted services, then Cenvat Credit will be not allowable.

Q.15 If Capital goods obtained under Lease/Hire purchase/Loan agreement then are they eligible for taking Cenvat Credit?

Ans. Yes, the Cenvat Credit in respect of the capital goods is also allowed to a manufacturer/provider of output services even if the Capital Goods are acquired by him on leave/hire purchase or loan agreement from a finance Co.

Q.16 Who is a First Stage Dealer?

Ans. First Stage Dealer means a dealer, who purchases the goods directly from, -

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

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

Q.17 What is the meaning of a second stage dealer?

Ans. Second stage dealer refers to a dealer who purchases excisable goods from a first stage dealer and the invoice issued by it (second stage dealer) is treated as one of the duty paying documents for the purposes of Cenvat credit

Q.18 Whether capital goods purchased from first stage or second stage dealer will allow take Cenvat credit?

Ans. The Cenvat credit in respect of input or capita! goods purchased from a first stage dealer or second stage dealer, as the case may be, shall be allowed only if the dealer has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

Q.19 What is meant by final products?

Ans. Final products are those excisable goods which are manufactured or produced from input or by using any input service.

Q.20 What is meant by input?

Ans. Input includes the following -

(I) all goods used in or in relation to manufacture of final product, whether directly or indirectly and whether included in final product or not within the factory. This will include lubricating oils, greases, cutting oil, coolants, accessories of final products cleared with final product, goods used as paint or packing material or fuel or for generation of electricity or steam used for manufacture of final product. Input would however exclude light diesel oil, high speed diesel and petrol.

(II) all goods except light diesel oil, high speed diesel oil, and petrol and motor vehicles used for rendering any output service.

(III) Motor vehicles used for providing output services in relation to courier agency, tour operator, rent-a-cab scheme operator and goods transport agency.

Q.21 What is the basic test for input to qualify for credit?

Ans. The **'usership'** test is the only test, which is required to be proved. Service provider must be satisfied that input is used for providing or rendering output service. Consumption of service is not much relevant as was in earlier rules. The use of services could be direct or indirect and in any manner. Thus, proving the nexus with the output service is also not the intention of law.

Q.22 What is meant by principal inputs?

Ans. According to explanation to newly inserted rule 9A in Cenvat Credit Rules, 2004, principal inputs mean any input, which is used in the manufacture of final products where the cost of such input constitutes at least 10 per cent of the total cost of raw materials for the manufacturer of the given final products.

Q.23 What is meant by input service?

Ans. Input service would mean any service which is received and consumed by service provider in relation to providing an output service, or which is used by manufacturer, directly or indirectly in relation to manufacture of final products and clearance of final products from the place of removal. Thus, input services could be used by a output service provider or a manufacturer in relation to providing service or manufacturing a final product. Input, service will also include services used in relation to any one or more of the following -

(a) setting up of a factory

(b) setting up of a premises of output service provider

(c) setting up of a office relating to any factory or premises

(d) market research, advertisement or sales promotion

(e) procurement of inputs

(f) activities relating to management of business (say, business auxiliary services) such as-

- accounting
- auditing
- financing
- recruitment
- quality control
- Coaching and training
- Credit rating
- Inward/outward transportation ,
- Share registry and security.

All activities relating to business would fall under the eligible category. The definition is a inclusive and illustrative definition.

Q.24 Who is an input service distributor?

Ans. Input service distributor is an intermediary or an office, which manages the business of manufacturer or producer of final products or output service provider and undertakes to perform or performs the following -

(I) Receives invoice issued under Service Tax Rules toward purchase of input services.

(II) Issues invoice/bill/challan for the purpose of distributing the credit of service tax paid on such services to manufacturer/producer or service provider.

Q.25 What is the role of Input Service Distributor?

Ans. In case of service providers having head offices or Zonal/Regional offices may receive input services at head office or Zonal/Regional office level, bui may ultimately used for providing output services at branch/unit level. In tills case the Head office or Zonal/Regional office may issue invoice to branches/ units to avail Cenvat Credit of input services received and paid at Head office or Zonal/Regional office level.

Q.26 What are the documents required to be issued by input service distributor for availing Cenvat Credit?

Ans. As per rule 9(1) of the Cenvat Credit Rules 2004, Input Service distributor have to issue invoice, bill or challan for taking Cenvat Credit.

Q.27 At times, in group companies, common bills are received for some services and then distributed among group companies by way of debit notes. Can input service distributor distribute such costs and can credit be availed?

Ans. No. As each company is a separate legal entity and have separate set of accounts it is not possible. Though in the Cenvat Credit Rules, 2004 the input service distributor can distribute the common costs of same company or service provider. For example, BHEL as input service distributor can distribute and claim Cenvat credit by distributing common costs among other departments liked System Study, Management Consultancy etc.,

Q.28 What are the basic requirements for availing Cenvat Credit?

Ans. Following requirements are to be complied with for availing Cenvat credit - .

(i) Input Service Distributor to distribute Cenvat Credit among branches/units providing output services.

(ii) The credit distributed should not exceed the service tax paid.

(iii) If the branch/unit is exclusively engaged for providing output services which are exempt from service tax, no credit should be not distributed.

(iv) Input Service Distributor shall issue an invoice/challan/bill on a monthly basis.

Q.29 What is time limit for submitting Return for Input Service distributor?

Ans. Input Service distributor is required to submit half yearly return giving the details of credit received and distributed during the said half year to the Superintendent of Central Excise within one month from the close of the half year, i.e., within one month of April-September and October-March.

Q.30 What is the time limit for filing Cenvat credit return?

Ans. The time limit for filing Cenvat credit return, in case of various assessees is as under -

(a.) Service tax distributors - Shall submit a half-yearly return by the end of the month following the half year.

(b) Output service provider availing Cenvat credit - Submit a half-yearly by the end of the month following particular, month/quarter (i.e., Sept. and March).

(c) First stage/second stage dealer - Submit return within fifteen days from the close of each quarter.

(d) Manufacturer of Final product' A monthly return shall be submit within 10 days from the close of each month. (However, if the manufacturer is availing exemption on the value or quantity of clearance in a financial year shall file a quarterly within 20 days after the close of each quarter.)

Q.31 What is meant by output services?

Ans. Output service means any taxable service rendered by service provider and provided to any - customer,- client,- subscriber,- policy holder, or- any other person.

Q.32 Whether Cenvat credit is available if output services are exempt from service tax?

Ans. No credit will be available if output services are exempt from service tax or not taxable to service tax.

Q.33 Can service providers providing both, taxable services and exempted services avail Cenvat credit?

Ans. Yes, Service providers providing both, taxable services and exempted services can avail Cenvat credit in relation to tax paid on input/services in relation to the taxable services only.

Q.34 What is the criteria for availing Cenvat credit in relation to service providers providing taxable services and exempted services?

Ans. Service providers providing taxable services as well as exempted services should maintain separate sets of accounts for the use of inputs/services for providing exempted output services and Cenvat credit will not be allowable in case of identifiable exempted services. However, there is an exception to this under which only a fixed percentage may be allowed as credit.

Q.35 What is the remedy if assessees do opt not to maintain separate sets of accounts while providing taxable and exempted services?

Ans. In this case, assessees can take credit of only up to 20% of the Service Tax payable on output Services as Cenvat credit.

Q.36 To what extent Cenvat Credit can be availed by an assessee?

Ans. The credit available in the service tax credit account as on the last day of the month/quarter or up to the service tax payable for the respective month/ quarter. Although the tax-can be paid on or before 5th of the next month of month/quarter but credit will be determined up to the last day of the month/ quarter for which services tax on output services is payable.

Q.37 Whether the Cenvat Credit can be availed before paying of the value of input services received?

Ans. No, Cenvat credit can be availed only after payment of the value of input services and the service tax payable thereon as shown in the invoice/bill.

Q.38 Whether mere payment of Service Tax portion only as shown in the invoice/bill would make eligible an assessee to take credit of Cenvat Credit?

Ans. No, Cenvat credit in respect of input services shall be allowed only after the payment is made for the entire value of inputs/services and the Service Tax thereon.

Q.39 What are the obligations of assessees under Cenvat credit system?

Ans. Assessees are under obligation to comply with the following requirements-

(a) Registration of dealer, service provider or input service distributor.

(b) Maintaining records of input and capital goods.

(c) Maintaining records of credit received and utilised-

(d) Maintaining records of credit carried forward.

(e) Maintaining separate records where out services include both taxable and non-taxable/exempt services.

(/) Submission of Cenvat Credit details in monthly or quarterly returns (Form ER-1 or ER-3) to the Central Excise Department.

(g) Submission of returns by dealers, service providers and input service distributors.

Q.40 What are the documents which are eligible for taking Cenvat Credit?

Ans. Credit can be taken on the basis of following document -

Invoice of Manufacturer from factory.

Invoice of manufacturer from his depot or premises of consignment agent.

Invoice issued by registered importer.

Invoice issued by importer from his premises or consignment registered with Central Excise.

Invoice issued by registered first stage or second stage dealer.

Supplementary Invoice.

Bill of Entry.

Certificate issued by an appraiser of customs in respect of goods imported through foreign post office.

Challan of payment of tax where service tax is payable by other than input service provider.

Invoice, bill or challan issued by provider of input service on or after 10-9-2004.

Invoice, Bill or Challan issued by input service provider under rule 4A of Service Tax Rules.

Q.41 What would happen to Cenvat Credit if any manufacturer/service provider shifts his factory/establishment/business to another site on account of change of ownership, sale, merger, amalgamation, lease or transfer of the factory to a joint venture?

Ans. If a manufacturer/service provider shifts his factory/establishment/ business to another site on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory Lo a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer/service provider shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory/ establishment/business.

Q.42 What is the condition for transfer of CENVAT credit if any manufacturer/ service provider shifts his factory/establishment/business on account of change of ownership, sale, merger, amalgamation, lease or transfer of the factory to a joint venture to another site?

Ans. The transfer of the CENVAT credit shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commission of Central Excise or as the case may be, the Assistant Commissioner of Central Excise.

Q.43 Whether credit can be availed for telephone bills of mobile phones used by employees for business purposes or for payment/reimbursement of telephone bills which are primarily used for business/service purposes?

Ans. Yes, the assessee can claim such costs as input service cost provided that it is proved to the satisfaction of revenue authorities that such expenditure is for carrying out business or for rendering of taxable output service. In absence of any prohibition, it is felt that such credit will be allowed.

Q.44 Whether Service Tax Credit lying unutilised as per Service Tax Credit Rules, 2002 existing on 09.09.2004 can be utilised for the payment of service tax/ excise duty?

Ans. Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output: service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th Day of September, 2004, and remaining unutilised on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service, and be allowed to be utilised for the payment service tax/ excise duty.

Q.45 Can assessee carry forward the credit outstanding under old Cenvat Credit Rules?

Ans. The credit accrued under the Cenvat Credit Rules, 2002 can be continued and carried forward and utilized under new Cenvat Credit Rules (Rule 11).

Q.46 Whether Cenvat credit balance can be carry forward to next month/ quarter?

Ans. Unutilised balance outstanding in Cenvat credit for input/input services used can be carry forward to next month or next quarter. Even it can be carry forward to next financial year if any balance is outstanding at the end of the 31st March.

Q.47 Can credit be availed for all services in respect of services where for some of the services separate accounts are maintained and for some other services for which separate records are not maintained for input output services?

Ans. It appears that an assessee can simultaneously avail credit in respect of such services under rule 6(2) rule 6(3) as there is no rule which prohibits this.

Q.48 What would be the situation for availing credit if amount of service tax is not disclosed separately in the invoice?

Ans. It is recommended that amount of service tax and education cess should be separately disclosed on invoices/bills. This would facilitate availment of Cenvat credit. If the invoice mentions that the amount shown in the bill is inclusive of service tax, Cenvat credit can still be claimed as amount is ascertain able. However, credit may not be available if invoice does not mention service tax separately or does not indicate that the amount is inclusive of service tax.

Q.49 Whether the credit can be availed inspite of inputs are still not used?

Ans. An assessee can avail input credit on duty paid on inputs immediately after the inputs are received in his premises without waiting for its use or consumption for providing output service.

Q.50 Can refund be obtained for excess unutilised credit?

Ans. There is no provision for refund of excess credit in the present Cenvat credit rules except in case of export of services.

Q.51 Can assessee exit from Cenvat credit system?

Ans. The nature of Cenvat system is optional as it is not mandatory. An assessee is allowed to exit from Cenvat Credit Scheme any time but it may be noted that there is no provision for excess credit balance left with the assessee. Refund of credit is not permissible.

Q.52 How the Input Service distributer will get Registered.

Ans. The input service distributor shall make an application to the jurisdctional Superintendent of central Excise in such form as may be specified, by notification, the 16th day of June, 2005, whichever is later. Any provider of taxable service whose aggregate vaue of taxable service in a financial year exceeds three lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thrity days of exceeding the aggregate value of taxable service of three lakh rupees. The provisions of sub-rules (2) to (7) of rule 4 Service Tax Rules, 1994 shall be applicable to the persons or class of persons who make an application for registration under the provisions of these rules, with such modifications and alterations as may be presceibed by the Board.

Q.53 What is the feature of Cenvat Credit Rules?

Ans. New Cenvat Credit Rules, 2004 extends the credit of service tax and excise duty across goods and services. It means that input credit shall be available across the board on both goods and services including the capital goods.

Q 54 Whether the cenvat rules mandatory?

Ans. No, Cenvat credit rules are not mandatory. It is open to an assessee to opt for Cenvat credit scheme or not.

Q 55 What is the scheme of Cenvat Credit under Cenvat Credit Rules, 2004?

Ans. Service tax credit is available as under :

Credit Availer	Credit Available
Service provider	Service tax paid on Input Services
Service provider	Cenvat paid on goods i.e. inputs and capital goods, used for providing output service
Manufacturer	Service Tax paid
Manufacturer	Cenvat paid on inputs and capital goods

Q 56 Mr X is providing output services but these services are exempt from service tax, whether cenvat credit is available or not?

Ans. No, Mr X cannot claim cenvat credit on the output services provided by them as these services are exempt from service tax.

Q 57 What is the meaning of exempted services?

Ans. Exempted services are those services which are exempt from the whole of service tax levied/leviable on such services. The services which are not taxable services under section 66 of the Finance Act, 1994 are also included in exempted services.

Q 58 Who is provider of taxable service?

Ans. The person who renders the taxable service and the person who is liable to pay service tax would be covered under this category.

Q 59 Mr X wants to claim cenvat credit on capital goods. What are the conditions for claiming cenvat credit on capital goods?

Ans. If Mr X wants to claim cenvat credit on capital goods following conditions are applied:

(a) 50% Cenvat Credit will be available in the first year and remaining Cenvat credit can be availed in subsequent year.

(b) In case of capital sent out for providing output services, it should be brought back within 180 days.

(c) Capital goods must be used for providing output service.

Q 60. What is the meaning of Input Service Distributor?

Ans. Input service distributor means an office of the manufacturer or producer of final products or provider of an output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

Q 61. Mr X wants to utilize cenvat credit of other taxes for the payment of education cess, Whether he can do so?

Ans. No, Mr X cannot utilize cenvat credit of other taxes for the payment of Education cess.

Q 62. MTNL/BSNL issued telephone bills but these bills does not contain registration number of the service provider. Whether cenvat credit can be denied to the subscriber or not?

Ans. As per rule 9(2) mention of registration number is not an essential condition for availing cenvat credit. Though service provider may be penalized for issuing an improper invoice, a receiver of service i.e telephone subscriber cannot be denied Cenvat Credit merely because service tax registration number of service provider is missing from the invoice. Service availars should insist on such mention of registration number, both from government and private service providers.

Q 63. For availing cenvat credit what accounting entries are required to be made?

Ans. When value for input service is paid, value of service (net of service tax) should be debited to relevant expense account, service tax portion should be debited to Cenvat credit receivable (service tax) account and education cess portion should be debited to cenvat credit receivable (education cess) account. For utilization of credit amounts Cenvat credit receivable (service tax) account to be transferred to service tax payable account and cenvat credit receivable (education cess) account should be transferred to education cess payable account. This entry could be made on monthly/quarterly basis as duty is payable once at the end of the month.

Q 64. In case of banking companies or input service distributor of banking companies, whether serial number on bill etc is necessary or not?

Ans. No, Such service providers or input service distributors have been exempted from mentioning serial number on the invoice, bill or challan or any other document.

Q 65. What should a bill/invoice contain?

Ans. The invoice or bill should contain the following particulars of tax/duty :

(a) description of goods or taxable service

(b) assessable value

(c) amount of duty or service tax

(d) name and address of factory or manufacturer or service provider of input/ input service

Besides above, the particulars of receiver of service, date and invoice number are also required to be mentioned.

Q 66. Service tax on outward freight paid to transporter is eligible for Cenvat Credit or not?

Ans. Yes, Cenvat credit can be taken in case of outward freight, as it is input service used by provider of service or manufacture. But this is per provisions it is restricted upto the place of Depot Godown etc. from where goods in all finally remove to purchaser. Accordingly, invoice as per rule 4A of service tax rules will be documentary evidence for claiming cenvat credit.

Q 67. Whether TR-6 challan can be used as a documentary evidence for claiming Cenvat Credit?

Ans. Yes, TR-6 challan is a prescribed document for availing cenvat credit (Rule 9).

Q 68. Whether cenvat credit and exemption under service tax can be claimed simultaneously or not?

Ans. No, Vide notification no. 12/2004-ST, dated 10-4-2004, exemptions/abatements under following notifications would not be available if Cenvat Credit is availed on input or capital goods :

Notification no.	Dated	Relating to
21/1997	26-09-1997	Mandap keeper
39/1997	27-08-1997	Tour Operators
40/1997	27-08-1997	Tour Operators
12/2001	20-12-2001	Mandap Keepers
12/2003	20-06-2003	Credit availed on sale of goods/material
19/2003	20-06-2003	Erection, Commissioning & installation
02/2004	05-02-2004	Tour Operators
09/2004	09-07-2004	Tour Operators
10/2004	09-07-2004	Rent a Cab Operators
32/2004	03-12-2004	Goods Transport Operators
06/2005	01-03-2005	Small Service Providers
18/2005	07-06-2005	Construction of Complex

Thus, in the aforesaid cases, either of the credit or exemption could be availed and to that extent, in all such cases, abatement would be conditional subject to non-availment of Cenvat Credit and exemption on account of sale of goods or materials. The same would apply to goods transport booking services also.

Q 69. What is the meaning of inter-sectoral credit?

Ans. Inter-sectoral credit means credit between two sectors. For our purpose, it implies credit between the two sectors of goods and services. Thus, a manufacturer of goods can avail credit of both, excise duty on goods and service tax on input services. Similar credit is allowed to service provider.

Q 70. Who is required to file ER-1 return and what are the information to be furnished in the return?

Ans. As per rule 9(7) of the Cenvat Credit Rule, 2004, manufacturer of excisable goods should be required to file a monthly return in relation to removal excisable goods and availment of Cenvat Credit for the month.

Q 71. What is the time limit for filing ER-1 and ER-2 return?

Ans. ER-1 & ER-2 return should be filed within 10 days from the end of the relevant month for which the return relates.

Q 72. Who is required to file ER-3 return?

Ans. A manufacturer availing exemption under a notification under a notification based on the value or quantity of clearances in a financial year shall furnish ER-3 return in relation to removal of excisable goods and availment of Cenvat Credit.

Q 73. What is the duration for and time limit for filing ER-3 return?

Ans. As per rule 9(7) Cenvat Credit Rules, 2004, ER-3 return shall be submitted on quarterly basis within 20 days from the end of the relevant quarter for which the return relates.

Q 74. To whom these ER returns are to be submitted and from where these forms can be made available?

Ans. The returns are to be submitted to the jurisdictional Superintendent of Central Excise and these forms can be downloaded from Central Excise and Customs Department's Website www.cbec.gov.in

Q 75. Whether cenvat credit can be availed in respect of service tax paid on goods transport services?

Ans. Yes,

Any consignor or consignee paying service tax on goods transport services for transportation of goods by road can avail Cenvat Credit in respect of service tax so paid as receiver of service. This can be used for payment of excise duty on manufacture of final products or for payment of service tax on any taxable output service as per Cenvat Credit Rules, 2004.

CHAPTER- 4

PRACTICAL ILLUSTRATIONS

Input material/capital goods/Motor Vehicles

Illustration 1

M/s Ansals, who are providing Construction Services to its clients are required to pay service tax of Rs. 1,00,000/-. Ansals have used various inputs and capital goods in their construction company for which they have paid the following amounts as excise duty:

	Items	**Duty Paid**
(a)	Input material	Rs. 35,000/-
(b)	Paint	Rs. 20,000/-
(c)	Electrical Machinery	Rs. 50,000/-
(d)	Storage Tank	Rs. 20,000/-

Besides the above inputs and Capital Goods they have also paid Rs. 50,000/- towards the Motor Vehicles.

Calculate the amount of credit which M/s Ansals are eligible to claim out of the above duty paid and state the reasons also?

Solution

M/s Ansals, who are providing Construction Services are required to pay Rs. 1,00,000/- as Service Tax. They can claim the following amounts as Cenvat Credit :

(a)	Input Material (As the output service provider can claim 100% credit of the duty paid on input material used)	Rs. 35,000/-
(b)	Paint (100% credit can be claimed on the duty paid on the input material used by the output service provider)	Rs. 20,000/-
(c)	Electrical Machinery (50% credit can be claimed on the Capital Goods in the 1st year and remaining 50% can be claimed in the subsequent year. Therefore the output service provider can claim 50% of Rs. 50,000/- ie. Rs. 25,000/- credit can be claimed in the 1st year)	Rs. 25,000/-
(d)	Storage Tank (Storage Tank is the Capital Equipment, therefore 50% credit can be claimed in the 1st year and remaining in the 2nd year)	Rs. 10,000/-

(e)	Motor Vehicles (no credit can be claimed by them as the Output Service Provider who are providing Construction Services are not allowed to take credit on Motor Vehicles)	Nil
		---------------------
	TOTAL CENVAT CREDIT AVAILABLE	**Rs. 90,000/-**
		=============

Since M/s Ansals are required to pay Service Tax of Rs. 1,00,000/- on the output services provided by them whereas to their credit they have Rs. 90,000/-. Therefore, they will get credit of Rs. 90,000/- and will be required to pay service tax of Rs. 10,000/- only.

Input Material/Input Services/ Motor Vehicles

Illustration 2

M/s Lajawab who are providing outdoor catering services received gross amount of Rs. 5,00,000/- from its clients and are required to pay service tax of Rs. 50,000/- for the month of December 2005. M/s Lajawab have already paid the following amounts towards excise duty and input service tax.

	Item	**Amount paid towards excise Duty and input service tax**
(a)	Procurement of Input Material	Rs. 10,000/-
(b)	Advertisement	Rs. 24,000/-
(c)	Grating Machinery	Rs. 14,000/-
(d)	Motor Vehicles	Rs. 15,000/-

Calculate the amount of cenvat credit that can be availed by them out of the above mentioned amounts stating the reasons?

Solution

M/s Lajawab, an outdoor catering service provider can claim following amounts as Cenvat Credit:

(a)	Procurement of input material (100% credit is available of the duty paid on input material used by the output service provider)	Rs. 10,000/-
(b)	Advertisement (As Advertisement are the input services therefore, 100% credit is available on the service tax paid for the input services)	Rs. 24,000/-
(c)	Grating Machine (Grating Machine is a Capital Equipment and therefore 50% Credit is available in the 1st year And remaining 50% is available In the subsequent year)	Rs. 7,000/-

(d)	Motor Vehicles (100% credit is available on the motor vehicles to the Outdoor Catering Service Providers)	Rs. 15,000/-
		----------------------
	TOTAL CENVAT CREDIT AVAILABLE	**Rs. 56,000/-**
		=============

M/s Lajawab, can claim cenvat credit of Rs. 56,000/- whereas they are required to pay output service tax of Rs. 50,000/-. Therefore remaining Rs. 6,000/- lying at their credit can be utilized by them later.

Input Service Distributor

Illustration 3

M/s X Services Ltd, who are the input service distributor, have paid following amounts as input service tax for the various input services used by them :

	In put Services	**Input Service Tax paid**
(a)	Auditors fee	Rs. 18,000/-
(b)	Management Consultants Fee	Rs. 15,000/-
(c)	Advertisement	Rs. 15,000/-
(d)	Recruitment	Rs. 12,000/-
		Rs. 60,000/-
		=========

Therefore, an amount of Rs. 60,000/- is lying at the credit of the input service distributor. The following three units of the input service distributor, who are providing output services are operating from 3 different places and are required to pay service tax as follows :

(a)	Unit A	Rs. 2,00,000/-
(b)	Unit B	Rs. 3,00,000/-
(c)	Unit C	Rs. 1,00,000/-

How much amount from the amount of cenvat credit lying with the input service distributor can be transferred to the above units?

Solution

M/s X Services ltd., can transfer the amount of Rs. 60,000/- lying at its credit on the pro-rata basis of the value of services as follows to its output service providers:

Output Service Provider	**Required to pay**	**Credit transferred from Input Service distributor on prorata basis**
Unit A	Rs. 2,00,000/-	Rs. 20,000/-
Unit B	Rs. 3,00,000/-	Rs. 30,000/-
Unit C	Rs. 1,00,000/-	Rs. 10,000/-

Therefore, the above amounts transferred by the input service distributor to its output service providers can be utilized by them and remaining amount of Service Tax is to be paid by the output service providers themselves.

As Unit A, Unit B, Unit C will pay remaining amount of Service Tax of Rs. 1,80,000/-, Rs, 2,70,000/- and Rs. 90,000/- respectively.

Input Service Distributor/Totally Exempted Services

Illustration 4

M/s P Services Ltd, who are the input service distributor, have paid following amounts as input service tax for the various input services used by them :

	Input Services	**Input Service Tax paid**
(a)	Consultants fee	Rs. 14,000/-
(b)	Auditors fee	Rs. 16,000/-
(c)	Advertisement	Rs. 5,000/-
(d)	Market Research	Rs. 10,000/-
		Rs. 45,000/-

The above amount of Rs. 45,000/- is lying at the credit of the input service distributor. The following three units of the input service distributor are providing the output services and are operating from 3 different places and are required to pay following amounts as Service tax. Unit Z is providing totally exempted services :

(a)	Unit X	Rs. 2,00,000/-
(b)	Unit Y	Rs. 4,00,000/-
(c)	Unit Z	Rs. 1,00,000/-

How much amount from the amount of cenvat credit lying with the input service distributor can be transferred to the above units?

Solution

M/s P Services ltd., can transfer the amount of Rs. 45,000/- lying at its credit on the pro-rata basis of the value of services as follows to its two input service providers i.e. Unit X and Unit Y but no input service tax can be transferred to unit Z as this unit is providing totally exempted services. Therefore, the amount of Rs. 45,000/- will be transferred to only two Units in the ratio 2:4

Output Service Provider	**Required to pay**	**Credit transferred from Input Service distributor on prorata basis**
Unit X	Rs. 2,00,000/-	Rs. 15,000/-
Unit Y	Rs. 4,00,000/-	Rs. 30,000/-
Unit Z	Rs. 1,00,000/-	Nil

Therefore, the above amounts transferred by the input service distributor to its output service providers can be utilized by them and remaining amount of Service Tax is to be paid by the output service providers themselves.

As Unit X, Unit Y, Unit Z will pay the amount of Service Tax i.e. Rs. 1,85,000/-, Rs, 3,70,000/- and Rs. 1,00,000/- (total) respectively.

Inputs used partially for exempted & partially for taxable services (when separate accounts are maintained)

Illustration 5

M/s Ritu Fashion Designing Co, is providing fashion designing services & have paid for input services and excise duty amount of Rs. 50,000/-

As the separate accounts are maintained by M/s Ritu, they have used the inputs to the extent of 30% for partially exempted services and 70% for the taxable services.

How much credit can be availed by them?

Solution

M/s Ritu Fashion Designing Co., are eligible to avail 70% credit as only 70% of the inputs are used towards taxable services :
Therefore,

70% of Rs. 50,000/- = Rs. 35,000/- credit can be availed by them

Inputs used partially for exempted & partially for taxable services (when no separate accounts are maintained)

Illustration 6

M/s Patron, providing management consultancy to its client do not maintain any separate accounts and have paid Rs. 1,00,000/- as service tax and excise duty towards input services and input material/capital goods used by them.

They have used the inputs for partially exempted and partially taxable services. They are now providing the output services for which current service tax liability is Rs.1,40,000/-.

How much credit out of Rs. 1,00,000/- can be availed by them for paying output service tax liability if they do not maintain any separate accounts?

Solution

M/s Patron are providing the consultancy services to its clients and have paid Rs. 1,00,000/- towards service tax and excise duty on input services and input material but as they have utilized these inputs for partially exempted and partially taxable goods and no accounts are maintained by them they cannot avail the cenvat credit of Rs. 1,00,000/- on proportionate basis.

Whereas, as per the rule they can take full credit but can avail credit upto 20% of the current service tax liability. Therefore, they can take full credit of Rs. 1,00,000/- but can avail following credit :

20% of current service tax liability on output services i.e
20% of Rs. 1,40,000/- = Rs. 28,000/-

In this case, out of Rs. 1,40,000/- M/s Patron will pay output service tax of Rs. 1,12,000/- and will avail credit of Rs. 28,000/-.

Remaining Credit available with M/s Patron will be Rs. 72,000/- (i.e Rs.1,00,000 - Rs.28,000)

Depreciation on Capital Goods

Illustration 7

M/s Prem Photo Studio who are providing Photography Services to its clients have paid following amounts as excise duty on the following Capital goods purchased by them :

	Capital Goods	**Excise Duty paid**
(a)	Photo Machine	Rs. 20,000/-
(b)	Developing Machine	Rs. 5,000/-
(c)	Printing Machine	Rs. 9,000/-
		Rs. 24,000/-

M/s Prem have taken claimed depreciation on the above capital goods. Whether they can avail cenvat credit of Rs. 24,000/- or not?

Solution

M/s Prem Photo Studio cannot claim cenvat credit of Rs. 24,000/- paid by them as excise duty on the Capital Goods as they have claimed depreciation on the capital goods.

Therefore, as per the rule if a service provider claims depreciation on the capital goods then he cannot avail cenvat credit on the excise duty paid by them for these capital goods.

Export of Services

Illustration 8

M/s X is a output service provider and is providing export services is having Rs. 20,000/- lying at its credit.

Whether they can get refund of this Rs. 50,000/- lying at their credit or not as they are not required to pay any service tax on the export services which are used by them?

Solution

M/s X an output service provider if is providing export services to its clients for which he is receiving payment in India in Convertible foreign exchange then he is not required to pay service tax on the export of services.

But as Rs. 50,000/- is lying at their credit and cannot be utilized by them in future they can get refund of this Rs. 50,000/-.

Education Cess

Illustration 9

M/s Zen providing Video Tape Production services to its clients have paid education cess of Rs.5,000/- on the input material used by them in providing the input services.

They are required to pay Rs. 10,000/- towards the service tax on the output services provided by them to their clients.

Whether they can utilize the credit of Rs. 5,000/- (education cess credit) lying with them or not for paying this Rs. 10,000/- service tax on the output services?

Solution

No, M/s Zen who are providing the Video Tape Production Services cannot utilize the amount of Rs. 5,000/- paid by them as education cess on the input material used by them.

As per the Cenvat Credit Rule, Cenvat Credit of Education Cess can be utilized only for payment of Education Cess and cannot be utilized for payment of other taxes.

Now, in this case as the output service provider is required to pay output service tax of Rs. 10,000/- and is not paying the education cess therefore, Rs. 5,000/- credit of Education cess lying with them cannot be utilized.

Telephone Bills of Mobile Phones

Illustration 10

M/s Express Courier Services have given mobile phones to its employees who use them for providing the services to their clients.

Whether M/s Express courier services can avail credit for the telephone bills of Rs. 10,000/- used by the employees for business purposes or not ?

Solution

Yes, M/s Express Courier Services can claim such costs as input service cost provided that it is proved to the satisfaction of revenue authorities that such expenditure is for carrying out business or for rendering of taxable output service.

Therefore, M/s Express Courier can avail credit of Rs. 10,000/- for these telephone bills which are used by the employees for business purposes.

Notes

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