

Service Tax & Cenvat Credit Applicability Analysis on Job Work :

Bullet Point of Analysis

- A. Service tax payable in case of activity does not amount to manufacture.
- B. Service tax payable in case of activity amounts to manufacture under Central Excise law.
- C. Important Points of CENVAT Credit in case of Job Work

A. Service tax payable in case of activity does not amount to manufacture.

Job Worker is not liable to service tax under notified taxable service of “Business Auxiliary Service” in both the situations when the activity amounts to manufacture and also when the activity does not amount to manufacture.

“Business auxiliary service” means any service in relation to production or processing of goods for, or on behalf of, the client but does not include any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

The attention is now invited to Service Tax Notification No.8/2005 as amended vide Notification No. 19/2005 which exempts production of goods or processing of goods when excise duty is payable.

Notification No. 8/2005-Service Tax dated 1st March 2005

“G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act:

Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

Expalantion.- For the purposes of this notification,-

(i) the expression “production of goods” means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(ii) “appropriate duty of excise” shall not include ‘Nil’ rate of duty or duty of excise wholly exempt.

[F. No. 334/1/2005-TRU]”

Amendment vide Notification No.19/2005

In the said notification,- (i)	for the words “production of goods on behalf of the client”, the words “production or processing of goods for, or on behalf of, the client” shall be substituted;
(ii)	in the proviso, for the words “produced”, occurring at two places, the words “produced or processed” shall be substituted;
(iii)	in the Explanation, in clause (i),-
	(a) for the words ‘ “production of goods” ’, the words ‘ “production or processing of goods” ’ shall be substituted;
	(b) for the words “production” occurring at two places, the words “production or processing” shall be substituted.

The attention is specifically invited to Explanation to Notification No. 8/2005 which provides as under:

“Expalantion.- For the purposes of this notification,-

(i) the expression “production or processing of goods” means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing , subject to the condition that **such production or processing does not amount to “manufacture”** within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);”

Therefore, those process which does not amount to manufacture under excise; are exempt from service tax. Thus job worker is not liable to pay service tax and payment of service tax by job worker is not warranted when the conditions of Notification No. 8/2005 as amended vide Notification No. 19/2005 are fulfilled.

A. Service tax payable in case of activity amounts to manufacture under Central Excise law.

Further, no service tax is payable when the activity amounts to manufacture under Central Excise law.

The reason No service tax is payable on 'any process amounting to manufacture or production of goods' by your job-worker, as that activity falls under the negative list under Section 66D (f) of the Finance Act, 1944. Also, S. No. 30 (c) of notification no. 25/2012-ST dated June 20, 2012 exempts 'carrying out any intermediate production process as job-work in relation to any goods on which appropriate duty is payable by the principal manufacturer'. S. No. 30 also covers certain other activities of job-work.

B. Important Points of CENVAT Credit in case of Job Work

1. Availment and utilization is not same thing. availment means you are booking cenvat credit in your books and utilization means you are adjusting the availed cenvat credit at the time of payment.
2. Goods cleared under job work exemption are not exempted goods, as ultimately duty is paid by the principal manufacturer.
3. The job worker is permitted to use his own capital goods/inputs/input services in the job work.
4. When the job worker uses his own capital goods/inputs/input services in job work, he is entitled to take credit of duty on those capital goods/inputs/input services. And this should have been used in providing the such output services.
5. In view of this I am of the opinion that the a job worker, in above said circumstances is eligible to take Cenvat Credit on inputs and input services used in doing job work, on which ultimately duty burden will be discharged by the principal manufacturer.
6. In case of job work in both the cases when activity amount to manufacture or does not amount to manufacture service tax is not payable due to Notification no 8/2005 of Service Tax or Notification no 214/86 of Excise.
7. Hence question of cenvat on inputs, capital goods & input services used by the job worker during job work can be availed or not. The answer is yes he can avail the cenvat credit but he can not transfer the cenvat credit to next manufacturer. Therefore a job worker not paying excise duty/service tax, event though takes credit, cannot transfer the same to the manufacturer. The point that ultimately manufacturer pays the duty is irrelevant as the job worker cannot transfer accumulated credit to the manufacturer.
8. If he wants to transfer the cenvat credit then he has to drop the benefit of notification no 8/2005 and he has to start paying service tax and then he can avail and utilize such cenvat credit.
9. Question he can avail cenvat credit on principal manufacturer goods or not answer is no because it is coming under a bond and through exchange of form where in he has to follow some system.

10. If he doesn't have own manufacturing activity, he can receive goods from the principal manufacturer on payment of duty (removal of goods as such) and pay duty using his own credit, passing on the credit to the principal manufacturer, in addition to what he received.
11. And also if the job worker has his own manufacturing, he can use the accumulated Cenvat Credit for payment of duty on his manufactured goods.

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