

Changes in Cenvat Credit Rule 4(1) and Rule 4(7) after 10.7.2014 and its applicability with provision applicable before with respect to point of taxation- Rule 7 .

Rule 4(1)

Cenvat credit in respect of input to be claimed within six months from the duty paying document with effect from 01.09.2014. [Notification no. 21/2014- Central Excise dated 11.07.2014]- insertion of third proviso to rule 4(1).

“Provided also that the manufacturer or the provider of output services shall not take CENVAT credit after six months of the date of issue of the documents specified in rule 9(1)”.

The documents specified in rule 9(1) are outlined below for instant use:

1. an invoice issued by the manufacturer, importer, first stage dealer; or
2. a supplementary invoice ; or
3. a bill of entry ; or
4. certificate issued by an appraiser of custom in respect of goods imported through Foreign post office ; or
5. a challan evidencing payment of service tax , by the service recipient as the person liable to pay service tax ; or
6. an invoice , bill or challan issued by provider of input service on or after the 10th day of September,2004 ; or
7. an invoice , bill or challan issued by input service distributor under Rule 4A of the Service Tax Rules,1994.

It is important to highlight here that there was no time limit for availing CENVAT for the period 10.9.2004 to 31.8.2014.

Rule 4(7)

- (i) CENVAT Credit on Accrual Basis: According to rule 4(7)[substituted Vide Notification No. 13/2011- Central Excise (N.T.) dated 31.03.2011] with effect from 01.04.2011 CENVAT Credit shall be allowed on or after the day on which the invoice, bill or challan is received. In simple words, with effect from 01.04.2011 CENVAT Credit shall be allowed on accrual basis on the line of claim of duty.
- (ii) CENVAT Credit on Payment Basis in certain cases: However, according to first proviso to substituted Rule 4(7) in case of an input service where service tax is paid

on reverse charge by the recipient of the service, the CENVAT Credit in respect of such input service 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 the invoice, bill or as the case may be, challan referred in Rule 9.

- (iii)** Consequences of not making payment within three months of the date of the invoice: In order to ensure that facility of CENVAT Credit on accrual basis is not mis-utilised, a time limit of three months has been fixed for making payment of value of input service tax along with applicable service tax thereon vide second proviso to substituted Rule 4(7). Accordingly, foregoing second proviso to Rule 4(7) provides that in case the payment of the value of input service and service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in Rule 9 is not paid within three months of the date of the invoice, bill or challan, the service provider who has taken credit on such input service shall pay an amount equivalent to the CENVAT Credit availed on such input service.
- (iv)** Re-eligibility to CENVAT Credit: To take care of business contingencies and with a view to ensure that the concerned manufacturer or service provider does not suffer permanently on account of not making the payment of invoice service together applicable service tax, it has been provided in the second proviso to substituted Rule 4(7) that after making the aforesaid payments, he will become re-eligible to take CENVAT Credit paid by him earlier subject to other provisions of these Rules.
- (v)** Effect of Refund or Receipt of Credit Note on CENVAT Credit: According to third proviso to substituted Rule 4(7) if any payment or part thereof made towards an input service is refunded or a credit note is received by the service provider after availing the CENVAT Credit on such input service, then he shall be required to pay an amount equal to the CENVAT Credit availed in respect of the amount so refunded or credited. In other words, in case of refund or Receipt of Credit Note, the proportionate amount of CENVAT Credit is to be reversed by the service recipient.
- (vi)** Mode & Time-limit of Payment: According to Explanation I to substituted Rule 4(7) wherever any amount is required to be paid either by the manufacturer or service provider in pursuance of this Rule, the same can be paid either by Debiting the CENVAT Credit or otherwise [i.e. by cash] on or before the 5th day of the following month except for month of March when such payment is to be made on or before 31st March. Further, according to explanation II to Rule 4(7) if the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT Credit wrongly taken.

Similarly, Explanation III to substituted Rule 4(7) provides that if a service provider happens to be an individual or proprietary firm or partnership firm, then amount is required to be paid on or before the 5th day of the following quarter excepting for quarter ending with the month of March when such payment is to be made on or before 31st March.

- (vii) CENVAT Credit in respect of input services to be claimed within six months from the date of duty paying document with effect from 01.09.2014 and other amendments in rule 4(7) with effect from 11.07.2014 – [Notification No. 21/2014-Central Excise (N.T.) dated 11.07.2014]

With effect from 11.07.2014 first and second proviso shall be substituted by the following proviso, namely:-

“Provided that in respect of an input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:- In case Full Reverse Charge

Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service 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, bill or, as the case may be, challan referred to in rule 9:- In case of Partial Reverse charge

Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of the service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an equal amount to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:”

A perusal of above mentioned three proviso alongwith fourth and fifth proviso reveals as under:

(A) Where 100% service tax liability is of service recipient

According to substituted first proviso to Rule 4 (7) of CCR, 2004 the CENVAT Credit of service tax paid under reverse charge mechanism shall be allowed after date of payment of such service tax, irrespective of the fact whether or not payment of value of services has been made to service provider or not.

Example : Advocate - A raised bill of Rs. 10000 to B & Co. on 1.10.2014 . B & Co. deposited service tax of Rs. 1236 under reverse charge on 15.10.2014. B & Co. can claim CENVAT of Rs. 1236 immediately without making the payment of input services of Rs. 10000 to A.

(B) In case of partial reverse charge i.e. where both service recipient and service provider are liable to discharge service tax liability on their respective share on the same transaction .

With effect from 11.07.2014 according to substituted second proviso to Rule 4(7) of CCR, 2004 CENVAT Credit, in case of an input service where service tax is required to be paid under partial/joint reverse charge basis by the recipient of the service, cenvat in respect of such service shall be allowed only after date of payment of value of services and service tax thereon.

Example: A has supplied man power to B Private Ltd. of the value of Rs. 10000 where under reverse charge B Private Ltd. has to pay 75% of the service tax amount which is Rs.927 . Service provider A has to pay Rs. 309 being 25% of the ST amount. In this case B Private Ltd. can claim the CENVAT only after payment of Rs. 11236 which is payment of Input service plus service tax.

(C) Consequences of not making payment within three months of the date of the invoice- where service provider is liable to discharge service tax liability

In this case there is no change in the legal position before or after 11.07.2014. Newly inserted third proviso to Rule 4(7) provides that if the value of input service as well as service tax thereon is not paid within a period of three months from the date of the invoice, the manufacturer or the service provider who has taken credit on such input service on accrual basis has to make payment of an amount equal to the CENVAT Credit availed on accrual basis. It is further clarified that said payment may be made by cash or through debiting Cenvat credit. This amendment is consequential to accommodate changes which will take place after substituting first provision with two newly inserted provisions as explained hereinabove.

(D) Effect of Refund or Receipt of Credit Note on CENVAT Credit- fourth proviso to Rule 4(7)

According to fourth proviso [third proviso for the period 01.04.2011 to 10.07.2014] to Rule 4(7) with effect from 11.07.2014 if any payment or part thereof made towards an input service is refunded or a credit note is received by the service provider after availing the CENVAT Credit on such input service, then he shall be required to pay an amount equal to the CENVAT Credit availed in respect of the amount so refunded or credited. Thus, in case of refund or Receipt of Credit Note, the proportionate amount of CENVAT Credit is to be reversed by the service recipient.

(E) Six months time bar for availment of Cenvat Credit on input services- sixth proviso to Rule 4(7) inserted with effect from 01.09.2014

Sixth proviso to Rule 4(7) has been inserted with effect from 01.09.2014. The aforesaid proviso reads as under:

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9."

A careful perusal of above proviso reveals that Cenvat credit of service tax in respect of input service shall not be allowed after the stipulated period of 6 months of the date of issue of duty paying document specified under Rule 9(1). Thus, assessee has to avail Cenvat credit within 6 months of the date of issue of duty paying document specified under Rule 9(1). For instance, XYZ Ltd. receives input service invoice amounting Rs. 1,00,000/- where service tax is of Rs. 12,360/- dated 05.09.2014 in the month of September, 2014. In the instant case, Cenvat credit of service tax of Rs 12,360/- can be availed on or before 04.03.2015.

Besides, there is no change in Explanation I, II and III to Rule 4(7) as mentioned hereinabove

Changes made effective from 1.10.2014 in Point of Taxation

Rule 7 [Notification No. 13/2014-Service Tax dated 11.07.2014]

Notwithstanding anything contained in rules 3,4, or 8, the Point of Taxation in the respect of specified services or persons shall be determined in the following manner:

Relevant Clause and Rule	Nature of specified services/persons	Point of Taxation along with reasoning, if any
Rule 7 read with first proviso to Rule 7	Persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under section 68(2) of the Act	With effect from 01.10.2014 Date on which payment is made. If the payment is not made with a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months, whichever is earlier.
Second Proviso to Rule 7	In case of "associated enterprises" where the service provider is located outside India	Earlier of the following two dates: (i) Date of debit in the book of account of the person receiving the service; or (ii) Date of making the payment.

Departmental Clarification-D.O.F. No. 334/15/2014-TRU dated 10.07.2014

Point of Taxation Rules: [Notification No.13/2014-ST]

The first Proviso to rule 7 of the Point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed (new rule 10 of POTR).

Transitional Rule 10 – [Inserted with effect from 01.10.2014 vide Notification No. 13/2014- Service Tax dated 11.07.2014]

Consequent upon substitution of first proviso to Rule 7 with effect from 01.10.2014, transitional Rule 10 has been inserted in Point of Taxation Rules, 2011 with effect from 01.10.2014. The aforesaid Rule 10 is reproduced below:

“10. Notwithstanding anything contained in the first proviso to rule 7, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall,-

- (a) If payment is made within a period of six months of the date of invoice, be the date on which payment is made;
- (b) If payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist.”

To say it differently if the invoice is issued prior to 01.10.2014, point of taxation shall be determined as per old rule 7 i.e. date of payment and if the payment is not made within six months from the date of invoice as if this rule does not exist i.e. rule 3 which is a general rule.

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