CENVAT Documents and Related Issues

- By CA Sudhir VS &
- CA Sandeep Kumar Baheti

Background:

MODVAT scheme came into existence in 1986 and over a period of 28 years lot of amendments took place, even got renamed as CENVAT, which became effective from 01.04.2000 late the cross availment of credit with service tax and central excise was introduced with effective from 10.09.2004.CENVAT scheme was mainly introduced to avoid cascading effect of tax for making the product competitive in that in the domestic market as well as in international market, indigenous goods, the end user does not pay the price which is including tax paid at multiple stages.

CENVAT Scheme under Central Excise and service tax allows credit of specified duties/ service tax paid on eligible Inputs, Capital goods and Input services. CENVAT credit can be availed by Manufacturer of dutiable goods and provider of taxable output service. It can be availed on physical receipt of Inputs and Capital Goods in the factory of manufacturer/ premises of Service provider with specified duty paying documents and input service received with prescribed invoice after receipt of service or on receipt of advances for the services to be provided.

Since the CENVAT can be availed on duty paying document, such documents plays a very vital role in availment of the credit, in the opinion of the paper writer the document on which the credit is being availed is as goods a currency note and hence one has to take a special care on the documents on which the credit is intended to be availed. This article aims to giving an overview on the documentation for CENVAT.

Rule 9(1) of CENVAT Credit Rules, 2004, specifies the documents on which the CENVAT credit shall be availed by the manufacturer or the provider of output service or input service distributor as the case may be, namely:-

a. An **invoice issued by a manufacturer** for clearance of inputs or capital goods from his factory or depot or from the premisesof the consignment agent of the said manufacturer or from any otherpremises from where the goods are sold by or on behalf of the said manufacturer orinputs or capital goods as such.

b. An **invoice issued by a first stage dealer or a second stage dealer**, as the case may be, in terms ofthe provisions of Central Excise Rules, 2002.
c. **A supplementary invoice**, or a bill or a challan or any other document evidencing payment of additional amount of duty, issued by a manufacturer or importer of inputs orcapital goods or provider of output service in terms of the provisions of Central Excise Rules, 2002 or under section 3 of theCustoms Tariff Act, or in terms of the provisions of Service Tax Rules, 1994(however in case such supplementary invoice is given by the service provider or a manufacturer on account of any non-levy or short levy by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any provisions of Excise Act or Customs Act,1962 or Finance Act, 1994 or the rules made thereunder with an intent to evade payment of duty).
d. A **bill of entry,**a document which is used for paying customs duty, which is a declaration by an importer or exporter of the exact nature, quantity and value of goods that have landed or are being shipped out which is being prepared by a qualified customs clerk or broker &examined by customs authorities for its accuracy and conformity with the tariff and regulations.
e. A**certificate by an appraiser of customs,** where goods are imported in a letter mail bags or boxes. Postmaster will scrutinize the same under the supervision of the Customs with a view to identify all packets containing dutiable articles. Such packets are to be detained and presented to the Customs Appraiser with letter mail bill and assessment memos for assessment. After examining them, if the contents of any parcel or packet are found mis-declared or the value understated or consisting of prohibited goods, such parcels or packets must be detained. The duties as assessed by the Customs Appraiser are noted in the Parcel Bill or letter mail bill and the same shall be recovered by post office from the addressee at the time of delivery along with fine and penalty if any. The credit for the total amount of duty certified by the Customs Appraiser at the end of each bill is given by the Post Office to the Customs Department in accordance with procedure prescribed there under.
f. A service tax certificate for Transportation of goods by Rail herein after referred to as **STTG Certificate**issued by Indian Railways specifying the total amount collected by the railway authorities on the basis of railway receipts issued and submitted in prescribed annexure along with photocopies of railway receipts by the assessee to the Railway authorities.

g. A**challan** evidencing payment of service tax, by the service recipient as theperson liable to pay service tax. (in certain cases as notified under Notification 30/2012-ST dated 20.06.2012 the service recipient has been made partially or fully liable to make the payment of service tax, challan paid to this extent is an eligible document to availe the credit)
h. An invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004.
i. An invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

However it is to be noted that the credit of additional duty of customs levied under sub-section (5)of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if theinvoice or the supplementary invoice, as the case may be, bears an indication to the effectthat no credit of the said additional duty shall be admissible. This is in view of refund eligibility to the seller of the imported goods under notification 102/2007-Cus dated 14.09.2007, in case the buyer avails the credit the there would be a double benefit, to this extent.

However it is also important to note that Rule 9(2) requires that a document on which the credit is being availed should be having all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document.

As per Rule 4A of Service Tax rules, 1994, a service invoice should contain the following particulars:

Particulars	**Requirement of content**
Invoice No. and date	Mandatory
Name and Address of the service provider	Mandatory
Name and address of the service receiver	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Service Tax Registration number of the service provider	Mandatory
Description and value of taxable service	Mandatory

Service tax payable thereon	Mandatory

As per Rule 11 of Central Excise Rules, 2002 a document on which CENVAT credit is taken shall contain the following particulars:

Particulars	**Requirement of content**
Invoice No. and date	Mandatory
Registration Number	Mandatory
Address of the concerned Central Excise Division	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Name of the consignee	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Description of the goods	Mandatory
Classification of the goods	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Time and date of removal	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Mode of transport and vehicle registration number	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Rate of duty	Mandatory
Quantity and value of goods and the duty payable thereon	Mandatory
In case of a proprietary concern or Hindu Undivided Family Name of proprietor or Hindu Undivided Family,	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004

As per above, even though few particulars of invoice are not mandatory, credit can still be allowed by the Deputy Commissioner of Central Excise or the Assistant Commissioner of

Central Excise, as the case may be, on being satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver. The procedure to be followed in this regard is as follows:

- Intimation shall be given to the Assistant Commissioner or Deputy Commissioner containing the details like-
  - The background of the assessee or profile of the company
  - Details of goods manufactured and output service(s) provided by the assessee
  - Details of majorly required inputs and input services for the provision of above mentioned service(s)or manufacture of goods.
  - Details of agreement entered into with the vendor, who has issued that document or invoice.
  - Proper justification should be given for missing that particular field on document or invoice.
- Nexus between the input service(s) or input as described on such document with the output service or manufacture should be established and proved.
- Enclose all the necessary documents to prove the nexus.
- In addition to above it should also be proved that no credit on such document has been availed by any other person like by obtaining declaration from a Chartered Accountant or any other competent person.

If theAssistant Commissioner or Deputy Commissioner is satisfied, then he **may**allow the CENVAT Credit on the same.

We shall proceed to discuss some of the common issues that arises while availing CENVAT credit

- **Most of my purchases are from VAT Dealers. Can I get CENVAT Credit on the goods purchased from VAT Dealers?**

  In many cases it is observed that goods purchased from VAT dealers under VAT invoice, since the VAT dealer gives a commercial invoice which is not a prescribed document as discussed above would not eligible for CENVAT credit. At the same time it has to be noted that the price paid by the buyer is inclusive of excise duty.For example: If the value of good “x” isRs.100, excise duty on it say is Rs.20,after adding a profit of say Rs.20 and VAT liability of Rs 10, the same will be sold by vat dealer at Rs.150.On purchase of the same from VAT dealer under VAT invoice the credit of Rs.20 already paid as excise duty is not available to the buyer.

Therefore such buyer ends up paying the excise duty but not in a position to availed the same due to lack of the prescribed document.

In such a case, CENVAT credit of excise duty already paid on such goods can be availed by the buyer under the following circumstances:

- By making the VAT dealer to register under excise/ service tax as first stage dealer or second stage dealer and pass on the credit by issuing CENVAT invoice or
- If the dealer makes an arrangement to consign the goods directly from manufacturer to the buyer under excise invoice, though the actual purchase is made on the name of dealer, then also buyer can avail the credit.
- Sometimes even the purchase documents issued by manufacturer & dealers can be linked up with each other through unique element like unique number or code or id and CENVAT credit can be availed for example: Where Motor vehicles are removed from factory under excise invoice to Dealers and Dealers issues VAT invoice to buyers (mostly Dealers are not registered under Excise/service Tax). CENVAT can still be availed by buyer by linking “chassis number” (which will be unique number)displayed on VAT invoice with chassis number referred on excise invoice, which needs to be obtained from Dealer.

This is possible only if dealer is not availing CENVAT on the invoice obtained from manufacturer and he is ready to share excise invoice along with VAT invoice.

❖ **Can I take the CENVAT Credit on expense incurred before registration (Pre-registration expenses)**

In commencementof any business whether as a manufacturer or service provider requires huge investment in capital.These costs could be capital in nature as well as revenue in nature. Various fixed assets, goods & services would be procured for setting up the unit. Generally registration of the business unit will take some time, for example, if the business unit is service provider, in such a case, requirement to register will be within 30 days from the date of providing the service and in case of manufacturing unit, if unit is availing SSI exemption after crossing 150 lakhs of turnover. So registration will take place later however expenses will incurred before requirement of registration arises, in such cases, CENVAT Credit paid on the procurement of capital goods and services can be availed is a big time question? Yes, the CENVAT Credit before commencement of business can also be availed as there is an intension to provide the service or manufacturing taxable goods.In case of **Showa India (P) Ltd Vs CCE Faridabad, Service Tax (2012) (275)ELT128–CESTAT, Delhi,** it was held thatCENVAT credit should also be allowed on invoices which were issued prior to the registration of company as commencement of business should not be construed as actual production of goods. It would commence from the time the preparation commences for the establishment of manufacturing unit as the party is entitled to avail credit even prior to actual commencement of production.

- **Name of my company got changed but still Invoicesare received in the old name of the company. Can I avail CENVAT Credit on the invoices issued in the old name of the company?**

  Many a times we see the companies/ organization will apply for the change in name of the company/ organization, for example, motor vehicle giant, Hero Honda changed its name to Hero Motor Corp, in such cases, most of the time we see that invoices are still received in the old name of company, may be because of any reason like master file in database not updated etc.., in such cases, CENVAT Credit on those invoices can be availed by the company with new name? In view of paper writer, yes, CENVAT Credit can be still availed though one of the essential conditions to be satisfied to avail the CENVAT credit is that the invoice should be in the name of the buyer of goods or service receiver. However if the invoice is issued in the name of company's old name or there is change in the name of the company and invoice is issued in the old name of company, then benefit of CENVAT credit can be availed by the new company. In case of **Showa India (P) Ltd Vs CCE Faridabad, Service Tax (2012) (275)ELT128–CESTAT, Delhi,** it was held that mere change in the name of company from Evergreen Autocomp India Pvt. Ltd to Showa India, CENVAT credit cannot be denied to the assessee.

- **Contract/ agreement are not in my name but all the benefits accruing from it are availed by me and all the obligations & formalities are met by me. Can I get CENVAT Credit on invoice which is not in my name but in the name of the service provider/Manufacture which is the original Contractee?**

In some case it may so happen that a contract is awarded to one person but actually it is performed or carried out by some person either partially or fully, especially in case of government tenders or contracts, where contract or tender is awarded to one person but due to some reason it was performed by other person. For Example: In case of transportation of goods via rail where tender of boggie space or slot to be used is bagged by one person say “X” for a period of 3 years however if “X” is unable to utilize space or not providing transportation of goods via rail and at the same time “Y” has the requirement of boggie space or order to transport the goods via rail but does not have agreement or tender to use such space then in such a case “Y” utilizes “X” space and provide the service and discharges the liability to Railway department then in such a case CENVAT credit cannot be denied to “Y”. However as per Rule 9(5) of CENVAT Credit Rules, 2004 the burden to prove credit is on assessee availing the credit, the assessee should prove that the actual space is used by him. In our case “Y” should prove the actual utilization of space. In the paper writer’s view “Y” should also obtain a declaration or endorsement from “X” that the benefit is actually utilized by them and no credit is availed by “X” so as to ensure smooth credit and less or no intervention of Department.

In case of **Akshar Courier service Vs CCE, Vadodara (2013)** 410 CESTAT, (Ahmd) it was held that name of service recipient is not an essential requirement for the availment of CENVAT Credit.So CENVAT Credit can be availed by the person who is actually consuming or utilizing the service subject to proving its eligibility.

- **If the invoice is received in the name of Head office/ administrative office, Can the CENVAT Credit be availed by Manufacturing/ factory unit?**

  If the invoice is issued in the name of Head office and if the company has only one factory or manufacturing unit then Head office should not register itself as input service distributor, factory or manufacturing unit can even avail the CENVAT credit of invoice received at head office address. However if the assessee has more than one manufacturing unit then it should register itself as input service distributor and pass on the credit to its unit. However if invoice is received in the name of one unit and the same used by other unit and also availed CENVAT credit on it then the credit availed by other unit cannot be denied. In case of **CCE Vs ChemplastSanmar**(2007) 5 STR 18 ELT 208 CESTAT, Chennai, it was held that the invoice in the name of Plant II while inputs were received and used in Plant I. It was held that CENVAT credit can be availed by Plant I so long as there is no dispute about receipt of use of material.

- **Does the Ownership of goods is essential requirement to avail CENVAT Credit on them.**

  In some cases it may so happen that capital goods or inputs are used by service provider/contractor in a works contract/jobwork, and then CENVAT credit on the same cannot be availed by the service receiver/manufacturer. In order to avail the same the goods procured by the service provider/contractor though billed on its name should be consigned to service receiver/manufacturer. In other words if the goods are consigned in the name of service receiver/manufacturer though purchased by service provider/contractor then also CENVAT credit of the same can be availed by the service receiver/manufacturer. In case of **RajarambapuPatil SSK Ltd Vs CCE 2007** (208) ELT 372 CESTAT, it was held that components and equipments required for sugar plants were purchased/ manufactured by contractor in the name of manufacturer and brought to the factory of manufacturer & used such components and parts for setting up the sugar plant in the assessee's premises. It was held that assessee should be entitled to CENVAT credit paid on such components and partswhich are used in the manufacture of sugar plant installed in their premises.It is also held that it is immaterial whether the payment for the components/accessories has been made by the contractor or the manufacturer of finished goods as it is the factory of the manufacturer of finished goods in whose premises components/parts of machinery is installed which in turn is used for the manufacture of finished dutiable goods

- **I don't have original CENVAT Credit Copy but I have triplicate of the same. Can the triplicate copy be considered for CENVAT Credit?**

  Earlier credit was allowed only on the basis of invoice copy marked as "Duplicate for transport", now there is no such requirement. Credit is allowed on both original and duplicate copy of invoice marked for buyer or for transport. There are some case laws like **BAPL Industries Ltd Vs CCE, Coimbatore** (2006)(198)ELT 587 or **Dhananiwala Textiles (P) Ltd Vs CCE, Hyderabad**2006 (199) ELT 850 (CESTAT) it was held that CENVAT can be taken on the basis of triplicate copy of invoice. However no credit shall be allowed on Xerox or carbon copy of invoice.

In **CCE Vs AmalRasayan Ltd** 1993 (68) ELT 446 (CEGAT), it was held that vital question is the receipt of inputs and their use in the manufacture of final products. When these two conditions are satisfied, CENVAT credit cannot be denied for lapse of any procedural matters. Similar view in case of **CCE,VAPI VS DNH Spinners (2009)(244) ELT 65** (CESTAT) was also followed.

- **Can I get CENVAT Credit on endorsed or EDI generated Bill of Entry**

  CENVAT credit is also available even if the bill of entry is provisionally assessed and finally assessed. If the bill of entry is in the name of head office or where the bill of entry is generated through Electronic data interchange system where there will be no signature on the bill of entry, then CENVAT can be availed on the same if there is a declaration made by the importer of goods to transfer the goods manufacturer and such declaration should be countersigned by the Customs officer. However the endorsement of Bill of entry by Customs Officer has been discontinued as per public bearing no 16/2006 dated 22.3.2006. As per the rule 9(5) of CENVAT Credit Rules,2004 the burden of proof is on manufacturer, there should be proper documentation with regard to receipt and utilization of imported goods needs to be maintained in order to avail the credit.

- **Can I take CENVAT Credit on Tour & Travelling Expenditure incurred for official purpose**

  It has been observed that a CENVAT Credit on most of expenditure incurred on tours & travelling will remain unclaimed or has not been availed by the organizations on account of doubt whether CENVAT credit can be availed or not, whether expenditure on tour & travels will be eligible of CENVAT credit & so many other reasons. In view of writer, the same can be availed provided if proper records in respect to that expenditure are maintained, then eligibility of credit cannot be denied. It has been observed that about 80%-85% of tour & travels are planned well in advance, in such a case, if records like minutes of meeting relating to travel, place and expected date or month of travel are recorded separately and further updating it with precise place, dates, person and days of tour & travel along with details of hotels, ticket details & others then credit cannot be denied as the details and records will prove that expenditure incurred for official purpose. Nexus between expenditure and taxable service/ excisable goods has to be proved before department. As per 9(5) of CENVAT Credit Rules, 2004, burden of proof is in on assessee claiming the credit, proving the nexus cannot deny the credit to the assessee.

As per Rule 9(2) if all the particulars as specified under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, but contains only duty payable, description of goods or taxable service or assessable value or registration number under excise or service, name and address of the factory or first stage or second stage dealer or provider of output service, the AC or DC must be satisfied that goods or services covered by the said documents have been received and accounted for in the books of account of receiver and he may allow CENVAT credit.

The above are some of the issues covered by this article. In view of Paper writer it is better to intimate the department in case of any discrepancies or issue arises while availing credit before availing the same.

(For Feedback or queries mail to sandeep@hiregange.com or sudhir@hiregange.com)