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Allowability of Input Credit for Taxable and Exempt Services – Options, Contradiction and Confusion Galore

(Part 1 of a series of 2 Articles)

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Introduction:

1.0 Despite having various positive aspects, levying tax on the basis of value addition has its own set of problems. The tax structure has to take cognizance of certain special cases wherein tax cannot be charged for various reasons. An issue that arises in such cases is, how to deal with input credit (IC) availed in respect of such services. Since the Government is not deriving any revenue, it will be reluctant to permit IC on it. If the services dealt with are the only taxable item for the assessee, the things would have been much simpler. However, the issue arises in the case where both i.e. taxable and exempt, services are dealt with. Determination of IC attributable to exempt services raises various issues. Ideally the assessee can be asked to maintain separate records in respect of IC as applicable to taxable and exempt services and claim IC as applicable to taxable services only. To some extent it may be possible in the case of tangible goods. However, it may not be so in the case of services which are intangible. Apart from that, in real life, it may not be possible to maintain so much of detailed records. Even if one tries to do so the cost may outweigh the benefits derived.

Scenario before Budget 2008

2.0 Prior to 2008 the assessees were given two options viz. to maintain separate records with respect to inputs and Input Services (IS) for receipt and consumption etc. for Exempt Services (ExS). Rule 6(2) made detailed provisions in this respect. Another option as provided under rule 6(3)(i) was to keep the IC restricted to 20.00% of the ST payable. Under this arrangement, the assessee, despite having substantial IC entitlement, was required to pay ST. In the case of Service Providers (SP), having substantial volume of taxable services and low volume of ExS, this was turning out to be a loosing proposition as it involved cash-outflow. To some extent it was not logical in the sense that the assessee was required to pay tax while large amount of IC was forced to remain unutilised.

Post-budget Scenario:

3.0 Budget 2008 proposed drastic changes in this area. The assessee has been provided with more options. Without disturbing the provisions of rule 6(2), i.e. permitting the assessee to maintain detailed records for IC for ExS and ExG, erstwhile rule 6(3) has been replaced with new rule giving two more options to the assessee. Initially, while reading the Finance Minister's Budget Speech one was led to believe about pragmatic approach of the Revenue to the problems of the assessee. However, as it happens in the life wherein things can never be so simple, there is no reason for taxation to be the exception to the said rule. Even a cursory glance at the provisions of rule 6(3) will make the reader uncomfortable as it involves the terminology which looks the same every where. Secondly, the formula for computation which should have been put in mathematical format has been described in text format. An attempt has been made here to explain the provisions of rule 6 of Cenvat Credit Rules (CCrR) and certain other terminology associated with it. In the second part of the article issues related to cost-benefit analysis and procedural aspects will be discussed.

Understanding the Basic Terms

4.0 Before trying to understand the provisions of Rule 6, it will be appropriate to have basic understanding of certain terms used most frequently. They are "Exempt Goods", "Exempt Services", "Export of Goods / Services", "Services not liable to Tax" "Availment of CENVAT Credit", "Utilisation of CENVAT Credit".

Exempt Goods

4.1 The title of the Rule 6 - Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services – refers to the term "exempt". The term exempt can be easily appreciated by any layman. However, under the ST, it has many shades and aspects. Each shades and aspects have been used in different context and has its own implication when it comes to determination of tax liability.

The Rules define ExG and ExS slightly in a different way. CCr Rule 2(d) defines ExG as follow:

> *(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;*

The term ExG is applicable to the goods which are excisable under The Central Excise Act. In order to fall any goods under the category of exempt goods two criteria are important viz. it should be excisable under the Excise Act and, secondly, rate of duty levied thereon should be "nil" or should have been notified as exempt. Therefore, the goods which are not excisable under the said Act will not fall under this category even though ED will not be payable thereon. This is for the reason that such goods are not chargeable to ED at all. Secondly, they should be exempt from ED whether by notification or otherwise. Thirdly, it may so happen that rate of duty in respect of some of the items might have been fixed at "Nil". Its consequence will be that no ED will be payable on such items although the rate of ED has been prescribed. Since the Government is not getting any revenue form such goods, in order to keep it out of CCr ambit, they are being treated as ExG.

Export of Goods:

4.2 ED is not payable on export of goods. Does it mean that the provisions of Rule 6 will apply to it requiring the exporter to pay Cenvat Credit (CCr) attributable to the goods on which ED is not payable? No. Refer to CBE&C circular No. 278/112/96 dt. 11-12-96 wherein it is opined that export of goods are not exempt though ED is not payable. In fact, Rule 5 of CCr specifically provides for availing CCr on export of goods. See the rule below:

> ***5.*** *Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,*
>
> *(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or*
>
> *(ii)service tax on output service,*

In view of this, the question of applicability of Rule 6 to export of goods does not arise. All these may sound confusing. Let us see applicability of Rule 6 to each of these items.

Goods Not Exempt			Exempt Goods		
Goods **not** chargeable to ED i.e. **not** included in ED Tariff	Goods chargeable to ED i.e. included in ED Tariff		Exemption as provided under the Central Excise Act	Exemption through Notification	"NIL" rate of ED
	Goods cleared **with** payment of duty	Goods cleared **without** payment of duty i.e. export			
1	2	3	4	5	6
Applicable?	**Not** applicable	**Not** applicable - See Rule 5	Applicable	Applicable	Applicable

A question that may arise is whether goods falling into category under column (1) will be covered by the provisions of Rule 6 of CCr? At a first glance and, on strict interpretation of the wordings, it appears that the same are not applicable.

Exempt Services:

4.3 CCr Rule 2(e) defines it as follow

> *(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 section 66 of the Finance Act;*

Definition in the case of ExS is more or less on the same line as in the case of ExG except the later portion, which refers to applicability of S. 66 to certain services. In contrast to the provisions relating to ExG wherein there is no reference to chargeability of ED to certain goods, in the case of services, a specific reference to charging section has been made. It means the services which are not chargeable to ST will be considered as exempt. As we know, there are large numbers of services which have not been covered under ST applicability. Therefore, all such services are treated as exempt. As in the case of goods, applicability of Rule 6 can be seen from the following table.

Services Not Exempt			Exempt Services	
Services **not** chargeable to ST i.e. **not** included in S. 65(105)	Services chargeable to ST i.e. included in S. 65(105)		Exemption as provided under the Finance Act	Exemption through Notification
	Services subject to payment of ST	Services **without** payment of ST i.e. export		
1	2	3	4	5
Applicable	**Not** applicable	**Not** applicable - See Rule 5	Applicable	Applicable

In the case of services, SP may be a manufacturer, trader or SP only. Within the said category he may be providing taxable and / or exempt services. Applicability of Rule 6 in each of these cases can be seen from the following table.

Manufacturer			Trader			Service Provider		
Mfg. of dutiable and /or TxbleS only	Mfg. and		Trdg. only	Trdg. + Services		TxbleS only	ExS only	TxbleS & ExS
	Provider of ExS	Provider of TxbleS		Provider of ExS	Provider of TxbleS			
1	2	3	4	5	6	7	8	9
NA	Applicable	NA	NA	NA	Applicable	NA	NA	Applicable

Export of Services

4.4 As in the case of export of goods, Rule 5 also permits utilisation of IC in respect of inputs and IS. Therefore, services exported will not be part of exempt category and, therefore, there is no reason to club it with the amount of other exempt services. This is relevant particularly when proportionate amount of IC to be disallowed is to be computed. See the example below:

Exempt Output Services: Rs. 1,00,000 Local Output Services: Rs. 7,00,000

Export Output Services Rs. 2,00,000 Total Output services Rs. 10,00,000

Total IC for the month, say, Rs. 1,00,000

Computation-A- where export of services is treated as exempt

$$\text{IC to be disallowed} = \frac{2{,}00{,}000 + 1{,}00{,}000}{10{,}00{,}000} = \frac{3{,}00{,}000}{10{,}00{,}000} \times 1{,}00{,}000 = 30{,}000$$

Computation-B- where export of services is not treated as exempt

$$\text{IC to be disallowed} = \frac{1{,}00{,}000}{10{,}00{,}000} \times 1{,}00{,}000 = 10{,}000$$

As can be seen, in the case of "A", proportionate amount of IC to be disallowed will be Rs. 30,000 as against Rs. 10,000 in the case of "B". Therefore, if export of services are treated as exempt then the assessee will stand to loose in the form of higher disallowance of IC.

<u>What is availment of CCr?</u>

5 Before trying to learn the provisions of Rule 6, it will also be necessary to know about methodology adopted under CCr for availing benefit of IC. In terms of provisions of CCr Rules, benefit of IC can be had in two stages viz. availing / taking the credit and utilizing the same. Availment of IC depends on the source from which it is derived. In the case of inputs, it can be derived on receipt of the goods / material. In the case of services, IC can be taken on payment only. In the case of CG, only half of the IC can be taken in the year in which the same are received. Thus, the criteria for availing / taking credit are different. Utilisation of IC takes place out of these credits.

<u>Availment / taking of credit</u>

6 CCr is not consistent in using the terminology in this respect. At places, the term '*avail*' has been used while at many places the term used is '*taking*'. See provisions of some of the rules.

> ***Rule 1: Short title, extent and commencement***
> *(2) They extend to the whole of India :*
> *PROVIDED that nothing contained in these rules relating to <u>availment and utilization</u> of credit of service tax shall apply to the State of Jammu and Kashmir.*

Rule 3:

*(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*

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

*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 9801 of the First Schedule to the Customs Tariff Act.*

*(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:*

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:

***Rule 6**:*

*(2) Where a manufacturer or provider of output service **avails** of CENVAT credit in respect of any inputs or input services,*

Thus, "*availing*", "*taking*", "*allowing*" are used interchangeably but conveying the same meaning.

The Scheme of Rule 6 in Nutshell:

7 Broadly speaking the whole scheme is that under rule 6(2), the assessee cannot claim IC as applicable to ExS and it is subject to the assessee maintaining detailed records. Rule 6(3)(i) provides for payment of ST@ 8.00% of the value of ExS and avail full IC, without any reduction. As per rule 6(3)(ii), the SP can avail full IC and pay / reverse IC as applicable to ExS as computed under the formula provided therein. It can be summarized as follow:

	IC	Records for ExS	Payment of ST
Rule 6(2)	Not to claim IC as applicable to ExS	Detailed records required for receipt, consumption of inputs and IS	ST to be paid on TxbleS only
Rule 6(3)(i)	To claim full amount of IC	Detailed records as provided in 6(2) not required	ST to be paid on TxbleS ***plus*** @ 8.00% of the value of ExS
Rule 6(3)(ii)	To claim full amount of IC as and when becoming due but to pay proportionate amount as attributable to ExS	Detailed records as provided in 6(2) not required	ST to be paid on TxbleS only

Let us examine each sub-rule in detail.

Rule 6(1)

Rule 6(1) reads as follow:

> *6. (1) The CENVAT credit shall not be allowed on such quantity of input or input service which is* ***used*** *…. for provision of.. exempted services, except in the circumstances mentioned in sub-rule (2):*

Although the title of the Rule 6(1) says obligation of SP of taxable and exempted services, it principally addresses the issue in a different way. Instead, it offers options to SP for determining quantum of CCr on exempted inputs and IS. Rule 6(1) itself commences with the statement that CCr shall not be allowed on such quantity of input or IS which is used for provision of ExS.

Determining use of IS

8 An interesting issue arises here. Rule 6(1) says that CCr will not be allowed on such quantity of inputs or IS which is used for provision of ExS. Firstly, how to determine use of actual use of services for ExS? It is not possible at all. Secondly, the methodology used for availing CCr is such that it will be difficult to synchronise the condition of use of inputs and IS with availment of CCr.

Source of IC	Stages of Availing IC		
	Receipt	Use	Payment
1	2	3	4
Inputs	Yes	NA	NA
IS	NA	NA	Yes
16 IS	NA	NA	Yes

In the case of inputs, stage of receipt of goods is important. Now, it is not necessary that receipt and consumption of inputs be in the same month. There may be a time gap. For example, the goods are received in the month of April which will be used in say May. In this case, IC will be claimed in April only. In terms of provisions of rule 6(1), proportionate amount of IC as applicable to ExS will be disallowed in May. In the case of services, it may create a situation wherein the SP might not have availed the benefit of CCr at all. Let us consider the case of a SP who has availed the IS in April. Payment for the said services was made in June. He has rendered ExS in April. In terms of provisions of rule 6(1), amount attributable to ExS cannot be claimed. Here, the SP has not availed the benefit of CCr on IS at all as he will be entitled for the same in June only i.e. the month in which he has made the payment. Does it mean that for the month of April there cannot be any disallowance of CCr as there was no IC was attributable to ExS at all? Does it also mean that there cannot be any disallowance of IC in June as no ExS has been provided at all? In any case, this discussion is purely theoretical as the provisions of rule 6(2), 6(3)(i) and (ii) uses altogether different terminology.

Options and Options

9 In terms of the provision of sub-rule 6(1), the circumstance under which CCr for inputs and IS can be taken on ExS is as provided under sub-rule 2. It gives an impression that the only option open is to follow sub-rule 6(2). However, a combined reading of all the clauses of Rule 6 will show that there are other options available, and within those options also, sub-options have been provided for. This need not drive one to conclude that road ahead is smooth one. The more you go deep in other option, the more it is complex and confusing. Apart from that certain terminology used is confusing and, with respect to some of the provisions, they are contradictory to other provisions as well.

Panoramic View

10 Rule 6 contains various clauses laying down exclusion of inputs and IS for ExS and ExG - see clause no. 6(1) to (5). Since all these have been referred to at different places, it will be worthwhile to tabulise it and have a comprehensive view. It will look like as follow:

	Exclusive use for ExS	Used Partly for ExS
Inputs	CCr not permitted	CCr Permitted - Rule 6(3)
IS	CCr not permitted	CCr Permitted - Rule 6(3)
16 IS	CCr not permitted	CCr Permitted Fully–Rule 6(5)
CG	CCr not permitted	CCr Permitted Fully–Rule 6(4)
CG used for products exempt from ED based upon the value or quantity of clearances	CCr permitted- Rule 6(4)	CCr permitted

Rule 6(2) – the First Option

11 The first option relating to maintaining detailed records reads as follow:

> *(2) Where a …. provider of output service* ***avails*** *of CENVAT credit in respect of any inputs or input services and ……. provides such output service which are chargeable to duty or tax as well as exempted … services, then, the … provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use …in providing output service and the quantity of input meant for use in the … services and take CENVAT credit only on that quantity of input or input service which is intended for use …. in providing output service on which service tax is payable.*

Trigger point for Invoking Rule 6(2)

The first striking feature here is the term "avail". As compared to the provisions of rule 6(1), here the provision gets invoked only when the SP avails CCr. The question of availment of CCr arises only if the inputs have been received or payment has been made for the IS. Secondly, the SP is required to make the computation on monthly / quarterly basis and reduce the amount of CCr accordingly. However, as explained above, there is no clarity about time gap between rendering of ExS and availing of IC on IS. It is not necessary that ExS and corresponding IS should fall into the same month / quarter.

Separate Records for Taxable and exempt Services

12 The SP is required maintain separate records for taxable and ExS. These records should reflect receipt, consumption and inventory of inputs and IS as well. Requirements in this can be appreciated from the following table.

		TxbleS	ExS
Opening Stock	Inputs	Yes	Yes
	IS	Yes	Yes
	CG	No	Yes
Receipt	Inputs	Yes	Yes
	IS	Yes	Yes
	CG	No	Yes
Consumption	Inputs	Yes	Yes
	IS	Yes	Yes
	CG	No	Yes
Closing Stock	Inputs	Yes	Yes
	IS	Yes	Yes
	CG	No	Yes

Although, rule 6(2) does not refer to requirement for maintaining records for CG, rule 6(4) provides that CCr in respect of CG used exclusively for ExS cannot be claimed. It means that the assessee will have to identify such CG which are used exclusively for ExS.

Since there are four types of operations, three objects and two different types of services we get a complex matrix as shown above. If the assessee is in a position to maintain records on the above line then this is the most rational and advantageous method. This is for the reason that the assessee will not be permitted CCr in respect of which ST is not paid on related OS. No forms have been laid down nor any application / data is required to be submitted to the ST Department. The assessee will have on his own not to claim CCr related to ExS.

IC on CG

13 As far as inputs and CG are concerned, there may not be problem as the same being tangible identification is possible. However, problems may arise with respect to common inputs. Based on the past experience, and if supported by past documents, one can solve the said problem as well. The real problem will arise in the case of IS. There may be some services which are procured exclusively for ExS. But large number of services will be for common pool. Bifurcation on the basis of actual use may not be possible. It is for this reason the assessee will be forced to opt for other option.

Apportionment of IS

14 Now a day, under computerized system, fairly detailed accounting of receipt / consumption of tangible goods takes place. Therefore, receipt / consumption of inputs / CG are already taken care of. Only a portion of CCr related to consumption of service for ExS will require computation. Is it permitted to allocate consumption of services on the basis of proportion of TxbleS and ExS from the past records? As we know, services being intangible, it will not be possible to identify its utilisation for ExS and record accordingly. Does it mean that the provisions of Rule 6(2) are redundant as the same cannot be implemented in any circumstances? Can it be argued that when all the other records are available in respect of inputs and CG on actual basis, there should not be any problem for the ST Department for allocation of consumption of IS on the basis of proportion of TxbleS and ExS. In fact, a glance at the provisions of rule 6(3)(ii) will show that the basic principle for computation of CCr attributable to ExS as laid down therein is the same. If the methodology as laid in sub-rule 6(3)(ii) is followed for computing consumption of services for ExS, it should equally give fair result when applied for rule 6(2) as well.

Of course, not being specifically provided for in the rule, this methodology is bound to be challenged by the ST Department. However, it is more scientific and rational. If payment of ST @8.00% of value of ExS involves fairly large sum and one does not want to get involved into complex process of computation of CCr attributable to ExS as provided in rule 6(3)(ii)(b)and (c), a chance can be given to this approach. However, it should be kept in mind that this is prone to litigation.

Rule 6(3)

15 Second option is provided under rule 6(3).

> *(3) Notwithstanding anything contained in sub-rules (1) and (2), the .. provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:—*

Options Galore

Although not spelt out clearly, a combined reading of rule 6(2) and (3) shows that broadly there are two options viz. 6(2) and 6(3) and within 6(3) viz. 6(3)(i) and (63)(ii). Following table will make the things clear.

Option - I	Option –II	
	Sub-option –II(a)	Sub-option-II(b)
	Rule 6(3)(i)	Rule 6(3)(ii)
1	2	3
Rule 6(2) i.e. maintaining separate records for receipts, consumption etc. of inputs and IS	Paying ST @ 8.00% of value of ExS	Determining amount of IC attributable to ExS and paying the same

Rule 6(3) starts with term viz. “*Notwithstanding anything contained in sub-rules (1) and (2)*” meaning thereby overriding the provisions of rule 6(1) and 6(2). It refers to the assessee opting not to maintain separate accounts. However, rule 6(1) or 6(2) nowhere says that other options under rule 6(3) are available and the assessee has to opt for either 6(2) or 6(3). Neither any procedure nor any forms have been laid down for availing this option. Surprisingly, no time period has been laid down for which this option can be availed. Does it mean that the SP can exercise this option for the period only when the question of ExS arises? For example, if during the period April to September there are no ExS then the SP can exercise the option w.e.f. 1st October onwards and the provisions of rule 6(3)(ii) will be applicable to the said period only. It means that for the period April to September the question of disallowance of IC attributable to ExS should not arise.

Clause 6(3)(i)

It reads as follow:

*(*i*)* *……..the provider of output service shall pay an amount equal to eight per cent of value of the exempted services; or*

Clause (i) requires the assessee to pay ST @ 8.00% of the value of ExS. It means the assessee will be permitted to take full credit of IC in respect of all the inputs and IS whether related to TxbleS or ExS. ***Amount of ST paid @8.00% is considered as equivalent to CCr attributable to ExS.*** The wordings here are not appropriate for the following reasons.

When to make payment?

15.1 Firstly, it is said that the SP shall pay an amount of 8.00% of the value of ExS. As per the provisions of Service Tax Rules (STR), Rule 6 payment of ST is required to be made only when the consideration is received. Here, there is no reference to the time period when the SP should make the payment. Should it be in the month in which ExS are rendered or can it be in the month in which the consideration for the same is received? One can say that the amount payable is ST only it should be paid in the month in which the consideration is received. Compare this with the provisions of rule 6(3)(ii) wherein the SP is required to pay IC as attributable to ExS in the month in which it is availed. There is no reference to the time period in which consideration for ExS is received.

An interesting issue will arise is when consideration for ExS is not received at all. If provisions of STR Rule 6 are followed then the question of payment of St will not arise. However, the SP can avail full amount of IC as provided under rule 6(2).

Clause (i) and Export of Services

15.2 Clause (i) refers to 8.00% of value of exempted services. As we know the term "exempt service" as defined under rule 2(d) and (e) includes services in respect of which ST is not payable. In terms of Rule 5 no ST is required to be paid on export of services. Does it mean that ST @ 8.00% be paid on export of services also? Such an interpretation will defeat the very purpose of Rule 5 granting specific exemption. As explained above export of services cannot be considered as exempt.

Clause 6(3)(ii)

16 It reads as follow:

*(*ii*)* *……. provider of output service shall pay an amount equivalent to the CENVAT credit* ***attributable to inputs and input services*** *used in, or in relation to, …. for provision of exempted*

services subject to the conditions and procedure specified in sub-rule (3A).

Under clause (i) the assessee is permitted to avail full IC and pay ST @ 8.00% on value of ExS. As an alternative to it, Clause (ii) offers an option under which proportionate amount of CCr as attributable to ExS services are required to be reversed. The difference between rule 6(i) and (ii) lies in mode of computation. In clause (i) value of CCr attributable to ExS are presumed to be 8.00% of the value of ExS. As against it, under clause (ii), a mathematical formula is applied under which amount of CCr attributable to ExS is computed. Clause (ii) provides for computation of CCr attributable to inputs and IS as provided under rule 6(3)(a). It should be remembered that computation is required to be made for both i.e. inputs and IS separately.

<u>Comparative Analysis of clause (i) and (ii)</u>

16.1 A question may arise as to which option is beneficial to the assessee? In order to carry out cost-benefit analysis, a detailed working is required to be made which will be shown in the second part of the article. However, what is apparent is that in terms of paper compliances, clause (i) is much simpler as compared to clause (ii). Clause (ii) involves detailed calculation and procedural compliances. Therefore, unless there is sizeable volume of exempt services involving huge amount of CCr involved, one should not opt for clause (ii).

<u>Explanation I</u>

17 *If ….. the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all .. exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year*

Explanation puts a condition regarding not withdrawing the option for the remaining part of the financial year. However, this Explanation is applicable to option provided under sub-rule 6(3). It is not applicable to sub-rule 6(2). It means that the SP can opt for rule 6(2) for initial period of the year and switch over to 6(3) at a later phase. However, reverse will not be true. It may so happen that the assessee may be providing more than one type of exempt services. Not only that, within the same type of ExS, there may be series of transactions. Option once exercised as provided under clause (i) and (ii) will be applicable to all of them.

<u>For which services to exercise the option?</u>

17.1 An important point to be kept in mind is that the option has to be exercised for the services ***provided*** and not in respect of which the ***payment has been received***. Since ST is payable on receipt of consideration, one remains under an impression that provisions of rule 6 will be applicable from the said period. However, ST liability is determined with reference to the period in which the services are performed / rendered. Payment of ST on realization of dues is only for the convenience of tax payers. Therefore, the assessee need not wait for realization of consideration for ExS but should keep in mind the month / quarter in which it is provided.

Although no specific date has been laid down for exercising the option, it will be advisable to do so from the first of the relevant month / quarter as the quantum of data to be collected will make it difficult to do so from the odd date. Secondly, it will be more advantageous to do so only from the month in which rendering of ExS begin and there are confirm orders for the same on continuing basis. Exercising the option on execution of an isolated transaction may turn out to be loosing proposition.

Explanation II

18 *For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for …… provision of exempted service.*

Rule 6(1),(2) and (3) are applicable to the cases wherein inputs and IS are used partially for TxbleS and ExS. As far as exclusive use of inputs and IS are concerned the Explanation makes it clear that it shall not be permitted under any circumstances. This point has also been referred to in rule 6(2). However, it is in the context of applicability of it to the cases covered under the said rule only.

Clause 6(3A)

19 Clause 6(3A) reads as follow:

*(3A) For determination and payment of amount payable under clause (*ii*) of sub-rule (3), the ……. the provider of output service shall follow the following procedure and conditions, namely:—*

> *(*a*) while exercising this option, ……. the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:—*
>
> > *(i) name, address and registration No. of the …. provider of output service;*
> >
> > *(ii) date from which the option under this clause is exercised or proposed to be exercised;*
> >
> > *(iii)description of …. taxable services;*
> >
> > *(iv) description of … exempted services;*
> >
> > *(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;*

A classic feature of rule 6(3)(i) has been that for exercising option under 6(3)(i) no procedure has been laid down. Does it mean that those who have not opted for 6(2) will be presumed to have opted for 6(3)(i)? As far as 6(3)(ii) is concerned

6(3A) provides for intimation to the Superintendent of Central Excise giving the certain particulars. It is silent about exercise of option under rule 6(2) or 6(3)(ii). A noteworthy feature of intimation has been item no. (ii) under which the assessee has to intimate the date from which option under 6(3)(ii) is exercised. Thus, it can be opted for any odd date of the month or the quarter.

<u>Retrospective or prospective?</u>

19.1 Generally exercise of the option is applicable prospectively. However, Rule 6(3A)(a) (ii) provides one more option. Assessee is free to select the option retrospectively as well. Read the wordings viz. *exercised or proposed to be exercised.* Of course, there is no clarity about to which period one can go back in the past and opt for the method. It leaves ample avenue for the assessee to organize his affairs and manage tax liability economically.

<u>The cobweb of rule 6(3A)(b)</u>

19.2 *(*b*) the .. provider of output service shall, determine and pay, provisionally, for every month,—*

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to ***manufacture of exempted goods****, denoted as A;*

(ii) the amount of CENVAT credit ***attributable to inputs used*** *for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and* ***D denotes total CENVAT credit taken on inputs during the month minus*** *A;*

(iii) the amount ***attributable to input services used*** *in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and* ***G denotes total CENVAT credit taken on input services during the month;***

Rule 6(3A)(b) and (c) contains formula for computing provisional and final amount of CCr attributable to ExS. Instead of putting the formula in simple mathematical format it has been drafted in narrative text format making it the most complex. Terminology used is such that it looks alike what you have just read earlier, leading to confusion. However, for convenience an attempt has been made to explain it in simple format.

Sub-rule (i): *the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as **A**;*

Sub-rule (ii):

CCr attributable to **Inputs** used for ExS (provisional)	=	ExS in **PFY** (B) -- Dutiable Goods Manufactured + TxbleS + ExS in **PFY** (C)	X	CCr on **Inputs** in the **month** (D) *minus* A

Sub-rule (iii):

CCr attributable to **IS** for manufacture of **ExG** or **ExS** (provisional)	=	ExS+ ExG manufactured in **PFY** (E) --- TxbleS + ExS + Dutiable & ExG in **PFY** (F)	X	CCr on **IS** in the **month** (G)

19.3 **<u>Salient Features:</u>**

1) Sub-rule (i) expects the assessee to compile actual data with reference to inputs attributable to exempt goods manufactured. If it is so, what is the difference between 6(2) and 6(3)(ii)? Does it mean that sub-rule 6(3)(ii) is meant for determining amount attributable to IS only?
2) Two separate computations are required to be made viz. one for inputs and another for IS.
3) Data for inputs and IS are actual figures for the month.
4) Other data are actual data for the previous financial year.
5) Amount so derived is provisional as it is based on the ratio of TxbleS and TxbleG for the last year. Said ratio for the current year may differ. Difference will have to be computed and adjusted at the end of the year.

Let us examine the formula in detail. It raises certain interesting issues.

<u>Components of "E"</u>

19.3.1 As we have seen, export of services is not exempt. Hence, there is no reason to add the amount in this respect under "E".

<u>Components of "F"</u>

19.3.2 A controversy may arise in respect of amount in respect of services exported as no ST is payable thereon. However, as we have seen these services are taxable and, therefore, will have to be included herein. By excluding the same from computation of "F", the SP will be incurring losses in the form of higher disallowances of IC.

Components of "G"

19.3.3 Which amount of IC should be considered for the purpose of determining amount attributable to ExS? As per the rule "total CENVAT credit taken on input" be considered. However, looking to other provisions only a part of the IC be considered otherwise it will make provisions of those rule redundant. But before that let us see which are the components of IC and out of it which one should be considered.

13.9 Components of Input Credit

a) ED on Inputs meant exclusively for ExS received during the month
b) ED on Inputs meant exclusively for TxbleS received during the month
c) ED on Inputs meant for both TxbleS and ExS received during the month
d) ST paid on IS meant exclusively for TxbleS
e) ST paid on IS meant exclusively for ExS
f) ST paid on IS for both i.e. TxbleS and ExS
g) ST paid on 16 specified IS
h) 50.00% of ED on CG received during the month meant for both TxbleS and ExS
i) ED on CG meant exclusively for ExS

Amount of IC in respect of the following items need not be included in "G" otherwise it will amount to double disallowances.

- ED on Inputs meant exclusively for ExS received during the month / quarter
- ST paid on IS meant exclusively for ExS

As per rule the SP is not permitted to claim IC on IS which are meant exclusively for ExS. By adding the amount in this respect in "G" additional disallowance will take place. Although this may not be acceptable to ST Department but the SP is on sound reasoning for doing so. Unfortunately the rule in this respect has not been drafted appropriately.

In respect of the following two items Rule 6 itself consistently refers to inputs and IS only.

- 50.00% of ED on CG received during the month / quarter meant for both TxbleS and ExS
- ED on CG meant exclusively for ExS

In respect of IC on 16 IS as referred to in rule 6(5) if the amount in respect of the same is added in "G" then it will defeat the very reason for its existence in the statute book.

<u>IC on IS meant exclusively for Taxable Services</u>

20 Rule 6 consistently refers to IC on inputs and IS meant exclusively for ExS and disallowance thereof. However, it is silent about the inputs and IS which are meant exclusively for TxbleS only. Will it be fair to add amount in this respect in "G"? In the entire rule 6, there is no reference to inputs and IS which are ***used exclusively for TxbleS***. CCrR presumes that once goods or services are not exclusively meant for ExS, they will be used for both i.e. taxable exempt. However, there may be the cases wherein the ***IS or inputs may be used exclusively for TxbleS as well***. A noteworthy feature here is that the computation is required to be made in respect of all the IS which are used, even though out of all the services or inputs only some of them are used exclusively for TxbleS. Thus, for the purpose of computation of disallowance, inputs and IS used exclusively for ExS will be removed. However, as far as inputs and IS used exclusively for TxbleS will be considered for disallowance. Thus, to this extent the assessee may stand to loose. It is on this count that clause (ii) may hit harder. See table below:

<table>
<tr><td rowspan="2"></td><td colspan="2">Exclusive use for Exempted category</td><td colspan="2">Partial use for both i.e. exempt and taxable –</td><td>Exclusive use for Taxable category</td></tr>
<tr><td><u>entitled</u> for CCr</td><td><u>not entitled</u> for CCr</td><td><u>entitled for</u> CCr fully</td><td><u>entitled for</u> CCr partially</td><td></td></tr>
<tr><td>Inputs</td><td>No</td><td>Expl. –II to rule 6(3)</td><td>No</td><td>Rule 6(3)</td><td>????</td></tr>
<tr><td>Input Services</td><td>No</td><td>Expl. –II to rule 6(3)</td><td>No</td><td>Rule 6(3)</td><td>????</td></tr>
<tr><td>16 IS</td><td>No</td><td>Rule 6(5)</td><td>Rule 6(5)</td><td>Rule 6(5)</td><td>--</td></tr>
<tr><td>Capital Goods</td><td>No</td><td>Rule 6(4)</td><td rowspan="2">Not referred to anywhere in rule 6(1), (2) or (3) - hence permitted</td><td>Not Applicable</td><td>????</td></tr>
<tr><td>CG used for products exempt from ED based upon the value or quantity of clearances</td><td>Rule 6(4)</td><td></td><td>Not Applicable</td><td>?????</td></tr>
</table>

It is a weird provision wherein instead of taking holistic view of the issue, partial approach is adopted. Is it not necessary to take care of inputs and IS which are used for TxbleS only? Tax payers should not have any ground for complain for paying the tax for availing CCr for ExS. However, turning blind eye to the aspect which is beneficial to the assessee is equally unfair. Does equity not require that provision be also made for something which logically may be in favour of the tax payer?

Its implication can be appreciated from the example below:

			Case - A	Case - B
1	IC on IS meant exclusively for ExS	10,000	10,000	10,000
2	IC on IS meant exclusively for TxbleS	20,000	20,000	
3	IC on IS for both i.e. TxbleS & ExS	40,000	40,000	40,000
4	Total IC	70,000	70,000	50,000
5	ExS	2,50,000		
6	TxbleS & ExS	5,00,000		

Applying the formula under sub-rule (iii) in both the cases:

Case –A

CCr attributable to **IS** for manufacture of **ExG** or **ExS** (provisional) $= \frac{2,50,000}{5,00,000} \times 70,000 = 35,000$

Case - B

CCr attributable to **IS** for manufacture of **ExG** or **ExS** (provisional) $= \frac{2,50,000}{5,00,000} \times 50,000 = 25,000$

As can be seen disallowance under Case-A is higher at Rs. 35,000 as compared to Rs. 25,000 under Case-B.

Creating Additional Records

21 After making the computation, the assessee will have to compile the data in a tabular form for further computation at the end of the year. It can look like as follow:

Period	CCr on ExS attributable to inputs (Provi.)	CCr on ExS attributable to IS (Provi.)	Total CCr attributable ExS (Provi.) to be paid
1	2	3	4 = (2+3)

Sub-rule (c)

22 It is on the same line as sub-rule (b) with the difference being figures for the previous year are being replaced by actual figures for the current year. Its sub-clauses can be put in formula as follow:

Sub-clause (i)

The amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as ***H;***

Sub-clause (ii)

$$\text{CCr attributable to } \textbf{Inputs} \text{ used (Final)} = \frac{\text{ExS in } \textbf{FY} \text{ (J)}}{\text{Dutiable Goods Manufactured + TxbleS + ExS in } \textbf{FY} \text{ (K)}} \times \text{CCr on } \textbf{Inputs} \text{ in the } \textbf{FY} \text{ (L) } \textit{minus} \text{ H}$$

Sub-clause (iii)

$$\text{CCr attributable to } \textbf{IS} \text{ (Final)} = \frac{\text{ExS in } \textbf{FY} \text{ (M)}}{\text{Txble + ExS in } \textbf{FY} \text{ (N)}} \times \text{CCr taken on } \textbf{IS} \text{ in the } \textbf{FY} \text{ (P)}$$

After making the computation the assessee will have to compile the data in a tabular form for further computation at the end of the year. It can look like as follow:

Period	CCr on ExS attributable to inputs (Final)	CCr on ExS attributable to IS (Final)	Total CCr attributable ExS (Final) to be paid
1	2	3	4 = (2+3)

<u>Sub-rule (d)</u>

23 It requires the assessee to find out monthwise difference between both the computations made. Data as compiled above will have to be further processed as follow:

Period	Total CCr attributa-ble ExS (Provi.)	Total CCr attributa-ble ExS (Final)	Difference to be paid / credited to CCr account
1	2	3	4 = (3-2)

In terms of provisions of sub-clause (g), details of the difference between provisional and final figure is to be intimated on monthwise basis. Though not stated specifically, total amount payable or credited can be net amount for the whole year.

<u>Payment of ST on monthly basis – how to compute?</u>

24 Making computation under rule 6(3)(ii) is not an end. The SP will have to make further computation to arrive at the net liability of ST payable in the Table as shown below.

Period	ST payable on TxbleS	CCr on Inputs in the month	CCr on IS in the month	CCr on CG in the month	Total CCr attribu-table to ExS (Provi.)	Net CCr available	Net ST Payable
1	2	3	4	5	6	7 =(3+4+5-6)	8 = (2-7)

Data organized in the above format will also help while compiling data for Form ST-3.

<u>How to apply 6(3)(ii) in the case of a trader also providing TxbleS?</u>

25.0 A question will arise in the case of traders who are not liable for ED. However, they may be rendering services as well. What will happen to IC on services availed? How to apportion it? Certain portion of services will be utilized for trading activities as well. Provisions of rule 6(3) will not be applicable.

Relationship between volume of trading operations and services rendered will not give correct picture. With the proposed amendment in taxability of Information Technology Services this is going to be a major issue for the dealers in software.

<u>Advance Received:</u>

26.0 In terms of provisions of S. 67(i) of the Finance Act, the SP is required to pay ST on the amount of advance received against the services to be provided. In such cases, there may not be use of any inputs or IS as the services have not been rendered. However, apportionment of IC to be disallowed will have to be made. During the computation of provisional figures there will be wide variances. However, when final computation is made it may get even out. This is with the assumption that services in respect of advances received have already been provided before the end of the year.

<u>Services in respect of which consideration is not received:</u>

27.0 This is going to be a major issue. Since computation under 6(3)(ii) is required to be made in the month in which IS are used, in the case of non-receipt of consideration there will be a double blow.

<u>In Nutshell:</u>

28.0 Having seen various shades and aspects of rule 6(2), 6(3)(i) and 6(3)(ii) let us try to summarise it.

	Rule 6(2)	Rule 6(3)(i)	Rule 6(3)(ii)
Rationale	IC as applicable to ExS not to be claimed	IC permitted on ExS is considered equivalent to 8.00% of value of ExS.	Proportionate amount of IC as applicable to ExS is computed on provisional basis and at the year end with the actual data
IC	Not to claim IC as applicable to ExS	To claim full amount of IC	To claim full amount of IC as and when becoming due but to pay proportionate amount as applicable to ExS
Records for ExS	Detailed records required for receipt, consumption of inputs and IS	Detailed records as provided in 6(2) not required	Detailed records as provided in 6(2) not required
Payment of ST	ST to be paid on TxbleS only	ST to be paid on TxbleS ***plus*** @ 8.00% of the value of ExS	ST to be paid on TxbleS only

Payment / reversal of IC as applicable to ExS	Not required as IC is not claimed on ExS	Not required	Yes
Basis of computation	Availment of CCr	Receipt of consideration in respect of ExS	CCr attributable to inputs and IS **used** in the month / quarter
Methodology	Extract data in the month / quarter in which ExS is provided	Make payment of ST during the month / quarter when consideration is received	Make computation of IC attributable to ExS for the month in which ExS is provided
Intimation to ST Dept.	Not required	Not required	Required
Detailed computation of amount attributable to ExS	Not required	Not required	Required
Monthwise account at the year end	Not required	Not required	Required

Which one to choose?

29 Having gone through more than 8,300 words, still the vital question remains unanswered – which option to go for? By this time the reader must have exhausted mental energy to delve into arithmetic aspect of it. You will have to recharge yourself for it. Let it remain the subject matter of the next article.

(To be concluded)

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Allowability of Input Credit for Taxable and Exempt Services – Which one to Opt - _II

(Part 2 of a series of 2 Articles)

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Introduction:

1.0 As we have seen in the first part of the article (Service Tax Today, Volume 14 Part 3), the assessee is having three options under Rule 6. Option under rule 6(2) is strenuous and may not be amenable to large number of tax payers. Option under 6(3)(i) appear simple, but in terms of cost, appear prohibitive. CCr attributable to ExS are equated at 8.00% of the value of ExS. In many cases, proportion of IC may be low. One may, therefore, be tempted to opt for rule 6(3)(ii). It sounds more rational as only proportionate amount as attributable to ExS is required to be paid back. But it involves detailed computation for each month. Apart from that, as far as inputs are concerned, detailed records are required to be maintained. Assessee can have respite with respect to common IS in respect of which detailed records are not required to be maintained. Based on these factors, one will have to take a decision. A question still remains is opting between 6(3)(i) and (ii). Can there be any ready to use guidelines which can help in moving towards a particular direction? But, before going deep into it, let us understand the anatomy of the formula given under both the rules.

Rationale for 8.00%

2.0 Under what circumstances and for what reasons the rate of 8.00% has been fixed is not known. In order to know its justification, substantial volume of data in respect of IC availed by the SP and its composition is required, which only CBEC can have access to. The point is whether from the perspective of the SP, which option will be economical. But before doing so let us try to see how the whole things appear under different set of circumstances. Look at the table below.

	ExS as % of OS	Proportion of IS to OS							
		10	20	25	40	50	67	70	80
		A	B	C	D	E	F	G	H
1	**10**	0.680	0.560	0.500	0.320	0.200	-0.004	-0.040	-0.160
2	**15**	1.020	0.840	0.750	0.480	0.300	-0.006	-0.060	-0.240
3	**20**	1.360	1.120	1.000	0.640	0.400	-0.008	-0.080	-0.320
4	**25**	1.700	1.400	1.250	0.800	0.500	-0.010	-0.100	-0.400
5	**30**	2.040	1.680	1.500	0.960	0.600	-0.012	-0.120	-0.480
6	**35**	2.380	1.960	1.750	1.120	0.700	-0.014	-0.140	-0.560
7	**40**	2.720	2.240	2.000	1.280	0.800	-0.016	-0.160	-0.640
8	**45**	3.060	2.520	2.250	1.440	0.900	-0.018	-0.180	-0.720
9	**50**	3.400	2.800	2.500	1.600	1.000	-0.020	-0.200	-0.800
10	**55**	3.740	3.080	2.750	1.760	1.100	-0.022	-0.220	-0.880
11	**60**	4.080	3.360	3.000	1.920	1.200	-0.024	-0.240	-0.960
12	**65**	4.420	3.640	3.250	2.080	1.300	-0.026	-0.260	-1.040
13	**70**	4.760	3.920	3.500	2.240	1.400	-0.028	-0.280	-1.120
14	**75**	5.100	4.200	3.750	2.400	1.500	-0.030	-0.300	-1.200
15	**80**	5.440	4.480	4.000	2.560	1.600	-0.032	-0.320	-1.280
16	**85**	5.780	4.760	4.250	2.720	1.700	-0.034	-0.340	-1.360
17	**90**	6.120	5.040	4.500	2.880	1.800	-0.036	-0.360	-1.440
18	**95**	6.460	5.320	4.750	3.040	1.900	-0.038	-0.380	-1.520

2.1 All the figures are based on OS of Rs. 100. Column A to H represents relative importance of IC to OS. Since proportionate amount of IC as attributable to ExS is required to be disallowed, its relative weight has to be found out. Row No. 1 to 18 represents relative importance of ExS in total OS. Coordinate of the column and row will show relative benefit of option under rule 6(3)(i) as compared to (ii). Figures appearing as positive indicate advantage of opting for option under rule 6(3)(ii). Figures appearing as negative shows advantage of opting for rule 6(3)(i). Beyond the IC level of 67.00%, the figures turns into negative meaning thereby proportionate amount of CCr attributable to ExS is more than 8.00% of ST required to be paid. It means that, in such cases, it will be more advantageous to pay tax @ 8.00% rather than opting for 6(3)(ii).

2.2 The whole scheme is skewed in favour of outsourcing of services. Generally, in the case of services there is substantial value addition by SP. Relative importance of IS is low. Of course, there may be cases wherein due to typical characteristics or nature of the service substantial quantum of IS may be involved. However, in the absence of data it is difficult to say anything about number of such cases. Whether the rate of tax fixed @8.00% is reasonable or excessive is a matter of debate. It appears that the tax payers have not paid much attention to it. But looking to the general trend, it appears that the rate is on a higher side compelling many SP to opt for the rule 6(3)(ii).

2.3 As a result of such structuring, in majority of the cases, if option 6(3)(i) is opted for, as it being simple, the Government will get more revenue. In large number of cases, the SP will be at a loss. In order to reduce loss in the form of lower IC, the assessee will be forced to opt for option under rule 6(3)(ii) with all the additional cost of compliances.

2.4 All these computations are quite complex and require the SP to take view for the whole year in advance. Once having started paying the tax @ 8.00% it will not be possible to opt for retrospectively and claim the refund. Apart from that, as per the provisions of the scheme, it will also not be possible to change the option exercised for option under rule 6(ii).

<u>How to use the Table?</u>

3.0 The table shows the level at which one should consider switching the option. If the SP is having substantial amount of confirmed orders on hand relating to ExS and can determine relative importance of IC to OC, based on the two figures, coordinate will show level of profitability. In that case, one should opt for second option at an early date. If not done so, ST will be required to be paid @8.00%. It should be noted that option is with respect to sub-rule 6(3)(ii) only and, if not done so, rule 6(3)(i) will come into play automatically. Therefore, by implications, it is presumed that the SP is ready to pay ST @ 8.00% of value of ExS. If care is not taken and ST is paid on TxbleS only, the question of concealment and levying of penalty will arise.

3.1 The Table can also be sued for marginal costing analysis of new OS to be rendered. Having opted for the option under rule 6(3)(ii), the assessee will have to evaluate the cost of loosing IC. At times, marginal ExS may not be involving any new IS. However, its addition to total OS will change the amount attributable to ExS resulting into lower IC. Thus, what may appear to be profitable proposition may turn out to be a loosing one if care is not taken in making detailed working.

<u>Comparative Analysis</u>

4.0 On comparison with the earlier provision of rule 6(3) wherein the SP was required to keep the claim of IC restricted to 20.00% of the ST payable, one may have to bear additional burden as the amount paid @ 8.00% is a loss forever as the same being payment of tax. Even under the option 6(3)(ii), it is a loss forever as the right to claim IC is foregone. When looked in hindsight, one feels that under the erstwhile provision what one was loosing was interest on IC which could not be claimed temporarily.

4.1 Under the amended Sub-rule (i) the computation is simple i.e. @8.00% of value of ExS. However, under sub-rule (ii) computation gets impacted by two factors i.e. relative importance of ExS and IC vis-à-vis total OS. Thus, higher the relative importance of ExS in OS, amount of CCr attributable to ExS will be more. However, this may not be true if relative importance of IC is low when compared to OS. If both the factors move simultaneously, it becomes difficult to come to any conclusion. The problem becomes complex when these factors are evaluated with option under sub-rule (i). In any final analysis, in order to find out cost benefit, the figure derived under sub-rule (ii) should be at least equal to 8.00% of value of ExS. Put it differently, if the computation under sub-rule (ii) works out to be less than 8.00% then it will be advisable to opt for sub-rule (ii). However, the cost of human resources deployed for detailed computation will have to be factored into it. Therefore, unless there is substantial gap between the computation under (i) and (ii), one should not opt for sub-rule (ii).

Rule 6(3) and Filing of Periodical Returns

5.0 Rule 6(3) redefines / introduces various concepts viz. paying tax on something which is exempt, reducing claim for IC etc. All these complexities will create problem while filing of ST-3 return. Four types of issues will arise.

1) Disclosing the value of services
2) Disclosing the amount of ST payable on various services
3) Disclosing amount of ST paid
4) Disclosing Availment of IC
5) Disclosing Utilisation of IC

5.1 For better understanding all of them can be put in a table format.

	Rule 6(2)	Rule 6(3)	
		Sub-rule (i)	Sub-rule (ii)
	Maintaining detailed records for Inputs and IS and not claiming IC on ExS	Paying ST @8.00% on ExS	Determining IC attributable to ExS
Part – 3(I)-ST Payable			
(a) *Gross Amount Received*	No issues to arise as detailed records maintained will help in providing the data		
(i) Against services provided		To consist both i.e. TxbleS and ExS	To consist both i.e. TxbleS and ExS
(c) *Value on which ST is exempt*			
(ii) Amount received towards ExS		Amount received in respect of value of ExS	Amount received in respect of value of ExS
(e) *Taxable Value*		See Note No.1	See Note No. 6

(f) *ST Ratewise break-up of Taxable Value*			
(v) other rate, if any		See Note No. 2	NA
Part-3(II)-Taxable amount Charged			
(m) Amount charged for ExS provided		See Note No. 3	See Note No. 7
Part-4A(I)-ST etc. Paid	No issues to arise as ST is paid on TxbleS only.		No issues to arise as ST is paid on TxbleS only
(a)(i) ST Paid		See Note No. 4	
(d)(x) Any Other Amount Paid			
Part-5A- Whether Assessee providing Exempt Services			
(a) Whether Assessee providing Exempt Services	Yes	Yes	Yes
(b)Whether manufacturing any exempted goods	NA	NA	NA
(c) Whether maintaining separate records as provided under rule 6(2)	Yes	No	No
Part- 5B-CENVAT Credit Taken and Utilised			
(b)*Credit taken*	Detailed records maintained will help in filling these columns	Since tax is paid on ExS separately, entire amount available for IC will be reflected here	
(i) on Inputs			Amount of IC as computed under 6(3)(ii) be deducted from total entitlement of IC
(ii) on CG			Provisions of Rule 6 are not applicable to IC on CG. No need to disallow proportionate IC

(iii) on IS			Amount of IC as computed under 6(3)(ii) be deducted from total entitlement of IC
(c) *Credit Utilised*			
(i) For payment of ST		See Note No. 5	See Note 8

Note No.1 - (e) *Taxable Value*

5.2 As per ST-3 format, data to be placed here is simple arithmetic calculation. However, the question that will arise is whether the ExS in respect of which ST @ 8.00% is being paid can be considered as "Taxable Services" for the purpose of reporting. It should be kept in mind that total amount of taxable services to be reported in subsequent part (f) and (g) will have to match with the figures herein. Not only that total amount of ST paid as reported in part 4A(I) will have to match with part (g) as well. If the value on which 8.00% of ST paid is not considered as taxable then any of these figures will not match leading to confusion.

Note No. 2 - (v) other rate, if any

5.3 Since the rate of tax paid will not be the scheduled rate i.e. 12.00% the SP will have to use this column for reporting tax paid @8.00%.

Note No. 3 - (m) Amount charged for ExS provided

5.4 Title of the Par 3(II) and description of sub-clause (m) are contradictory. However, the SP should report here amount of bills raised for ExS.

Note No. 4 – 4(A)(I)(a)(i)-ST etc. Paid

5.5 An issue that may arise here is about the nature of amount paid @8.00%. Can it be called payment of ST? or it has to be clubbed under the heading "Other amount Paid"? Certainly it is not the payment of ST. Look at the provision of rule 6(3)(i). It only refers to the payment aspect. It requires the SP to pay an amount equal to 8.00% of the value of ExS. It nowhere labels the nature of payment. It is a fact that it is an amount paid towards payment of IC attributable to ExS. Therefore, it will be more appropriate to club it under 4A(I)(d)(x). But this may pose a problem while reporting data under 5(B)((I)(c) regarding utilisation of CCr. There is no provision therein for utilisation of CCr for payment of 8.00% of tax. Does it mean that CCr cannot be utilized for payment of tax @8.00%?

Note No. 5 - Cr. utilized_ For payment of ST

5.6 As explained in Note No. 4 if amount paid @ 8.00% is treated as ST then utilisation of the same against CCr will appear under 5B(I)(c)(i) there is no column “Other items” herein.

Note No. 6 (e) *Taxable Value*

5.7 Since, under rule 6(3)(ii) adjustments are made in IC, amount in respect of value of services provided, billed etc. should not pose any problem.

Note No. 7 (m) Amount charged for ExS provided

5.8 See comments in Note 6

Note No. 8 Cr. utilized For payment of ST

5.9 Since the amount of IC as attributable to ExS is deducted from total IC for the month it should not be reported here.

Conclusion:

6.0 It is said that one should not get carried away by packing. To get the total picture of the product, one should unwrap the packing paper, see the product and examine in detail. What appeared pragmatic approach initially, looks bewildering. Amended rule 6(3) may be having good intention but certainly not economical from the perspective of the taxpayers. The whole approach appears to be outcome of the mindset wherein it is always believed that benefit to the taxpayers is a loss to the Revenue. Unfortunately, it is not appreciated that it can be otherwise as well.

(Concluded)