Cenvat Credit as amended by F A 2008 and notifications up to 31.12.2008

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Chennai

Every attempt is made free from errors and omissions
Any error or omission found it is unintentional

Cenvat credit introduction

Ram Manufacturer of Material X	Rs	Shyam Manufacturer of Y (purchase X from Ram)	Rs
Ram Material)	100	Raw material	200
Labour and Overhead	80	Excise paid on Raw material	24
Profit	20	Labour and Overhead	140
Selling Price (AV)	200	Profit	36
Excise duty 12%	24	Selling Price (AV)	400
Invoice total	224	Excise duty 14%	56

Duty payable by Shyam on final product Y is Rs. 56,

However he had already paid Rs. 24 on purchase of X from Ram. Hence he can avail credit of 24 and pay only balance of Rs. 32.

Cenvat Credit Highlights

- Cenvat Credit Rules, 2004 with effective from. 10-9-2004.
- Integration of Central Excise and Service tax
- Applicable for Manufacturer, Service provider
- Manufacturer can take credit for excise duty and Service tax
- Service provider will take credit for service tax and Excise duty
- Credit of duty paid on inputs and Service tax paid on input services
- The input/Input service may be used directly or indirectly in or in relation to manufacture of final product or providing output service
- No input credit if final product/output service exempt from duty/ service tax –
- Credit for specified duties
- Availment of Credit of duty only duty based on documents
- Records to be maintained and returns to be furnished

Definitions

Exempted Goods

- *Excisable goods fully exempted from duty*
- *Excisable goods Charged to Nil duty*

Exempted Service

- *Services Where no service tax payable;*
- *Taxable service wholly exempted from tax*

Final Product

- *Excisable goods manufactured or produced using input or input service*

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Definitions

First Stage Dealer

- *Dealer who purchases goods directly from Manufacturer from his factory, depots, Consignment agent with invoice*

Second Stage Dealer

- *Dealer who purchases goods directly from First Stage dealer*

Output service"

- *any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person*

Inputs

- First part Of definition
  - All material Except Petrol/Diesel (HSD/LSD Motor spirit)
- Second part list of Inputs- inputs used as
  - Packing material
  - Fuel
  - Consumables
  - Parts Spares Accessories
  - Inputs used in Labelling Printing,
  - Inputs used in Generation Distribution of Electricity

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Inputs contd.,

- Inputs should be used in the factory.
- If Inputs used outside factory, no credit
- Inputs can be used directly or indirectly
- Inputs may or may not present in final product
- Input output one to one correlation not necessary
- Credit on input process loss will also be allowed
- No credit if inputs destroyed during transit or before issue for production
- Credit can be availed if inputs destroyed during the process/in the course of manufacture.

Illustrations on inputs eligible for cenvat credit

- Process losses and handling loss are allowable
- Inputs required for quality control tests are eligible
- Repeated use is not a bar for availing Cenvat credit
- Defective final product is 'input' for purpose of availing Cenvat credit

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Input Service

- Any Service Used by service Provider for Providing Output service
- Service used in Advertisement sales promotion Market research
- Used by manufacturer for Manufacture / Clearance of Final product
- Storage up to the Place of removal Procurement of Inputs
- Used in setup, Repair, renovation Modernisation of Factory/premises
- Accounting, Auditing, Financing, Quality Control, coaching & Training
- Computer networking, Share Registry & Security
- Inward transport Of inputs and CG/ Outward transport Up to place of removal

There is no condition that input service should be used/ received in the factory

Capital Goods

- All Goods fall Under Chapter 82,84 & 85,90
- Goods Falling Under Chapter 68.04, 6805 (grinding wheels)
- Pollution Control Equipment Components/ Spares/ Accessories Of goods listed
- Moulds/dies/ Refractoriness Tubes & Pipe Fittings used In factory
- Storage tank
- Motor Vehicles Owned by Courier, transport Travel Agents

Capital goods Contd.,

- All Office equipments/Appliances are not capital goods for manufacturer
- Office equipments can be capital goods for service provider if they use in providing output service.
- Capital Goods should be received in the factory of manufacturer/Service provider

Cenvat Credit Rule 3

Who can avail Cenvat Credit

- Manufacturer
- Service provider
- *E O U when they clear goods to DTA*

Cenvat credit system for manufacturer of final product

Source of procurement

Manufacturer factory /Depot/ Agent

Importer/FSD /SSD

Input service Provider

Input service Distributor

Inputs

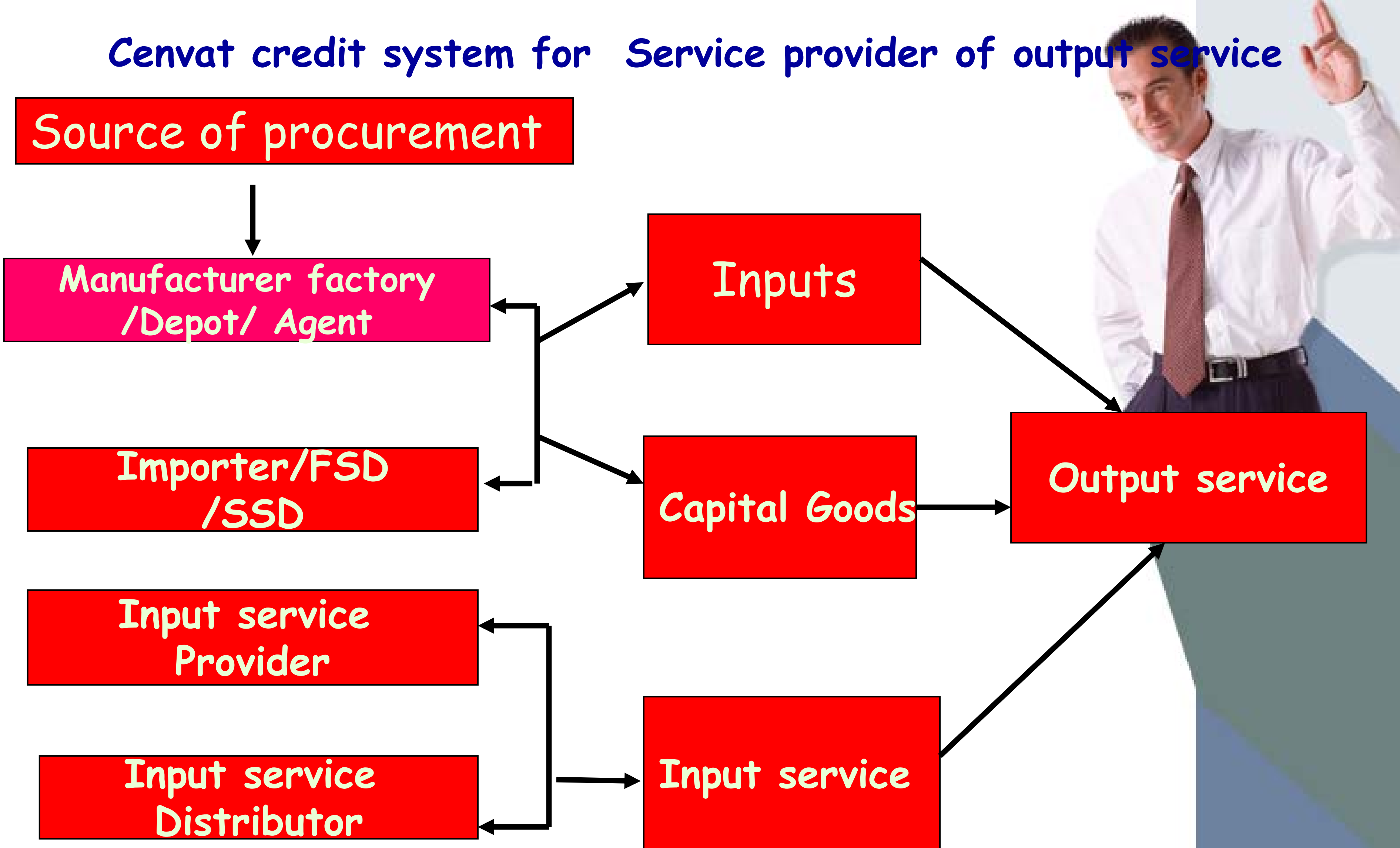
Capital Goods

Input service

Final Product

Inputs, Capital goods & Input service used for Manufacture of dutiable Final Product. If used for exempted FP No cenvat credit

Cenvat credit system for Service provider of output service



Inputs, Capital goods & Input service used for taxable service
If used for exempted Service No cenvat credit

Duties on which credit can taken

- 1.Basic excise duty – First Schedule of CETA
- 2.Special excise duty- Second Schedule of CETA
- 3. Additional Excise Duty Of GSI (Service provider cannot avail)
- 4.Additional Excise Duty of Textile Articles
- 5.Additional Excise Duty Clause 85 of Finance Bill 2005 (Payable on tobacco Products)
- 6.National Calamity Contingent Duty

- 7. Education cess on duty of all above
- 8. Additional Customs Duty (CVD) equivalent to 1 to 6
- 9. Education cess Levied on imports equal to above 1 to 6
- 10, Additional Customs Duty (Service provider cannot avail credit) U/s 3(5) of CUTA
- 11 Service tax paid on input Services
- Credit for 4 to 6 and corresponding CVD will be utilized only for payment of respective duties
- Additional Excise Duty Of GSI credit can be utilised only for same duty as well as Basic excise duty and special excise duty
- Credit on Education cess will be available only for payment of EC

Utilization of Cenvat Credit Rule 3(4)

The Credit of Cenvat can be utilized for the following- for the payment of

- duty on final product by manufacturer
- an amount equal when inputs removed as such or after partial processing
- amount when capital goods cleared as such
- an amount when goods cleared after repairs

- an amount when inputs sent for Job work not returned with in 180 days
- an amount When payment of 10% on the exempted value of goods
- For reversal of Cenvat credit when common inputs used for dutiable and exempted products
- For payment of Service tax by service provider

Duty/Service tax payable on 5th of subsequent month

When duty payable

Credit can be availed only up to month end supplies/ services

Credit cannot be taken on inputs & Capital goods received / input services paid up to 4th

Cenvat credit contd.,

Cenvat Credit When F P ceases to exempt and dutiable- Rule 3(2)

Cenvat credit can be taken on

- Input lying in stock
- Input present in process and final product

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Removal of Inputs/Capital goods As such Rule 3(5)

- When manufacturer/Service provider removes inputs/ Capital goods" as such" after availing Credit-
- An amount equal to cenvat credit availed should be paid
- (as such means- with out using)

Removal of Capital goods after use Rule 3(5A)

Removal of Capital goods use

Removed after using (As second hand Machinery)

Amount to be paid =
Credit availed minus 2.5% per qtr or part there of credit availed
From the date of availment.

Removed as Scrap (After Useful Life)

Duty payable based On Transaction Value

when amount paid on capital goods, inputs removed as such or capital goods removed after use or scrap The buyer eligible to take cenvat credit

Written off of inputs and Capital goods in books of account before use

Rule 3 (5B)

- If the value of any,
- Input, or
- Capital goods before being put to use,
- Written off or provision made to write off
- an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods should be paid

- If the said input or capital goods is subsequently used
- manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier

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Reversal of Cenvat Credit in case of Remission of duty Rule 3 (5C)

- Where Remission of granted under rule 21 of the C ER, 2002,
- the CENVAT credit taken on the inputs said goods shall be reversed."

Reversal of cenvat Credit in case of discount after removal/reduction in duty

- When manufacturer availed credit on duty on the based on invoice
- Subsequently the supplier gives discount by way of reduction of price, but duty was not reduced , no need to reverse of cenvat credit availed,
- However supplier gives discount in reducing the duty also, the manufacturer can avail cenvat credit only the duty amount paid to supplier.
- The reduced amount of duty should be reverse
- CBEC Circular No. 877/15/2008-CX Dated 17/11/2008

Cenvat Credit in respect of EOU/STP/EHTP/FTZ Rule 3(7)

- When goods cleared to DTA Cenvat credit can be availed as below
- $X \times \{(1+BCD/200) \times (CVD/100)\}$
- where X is the assessable value,
- BCD is the basic customs duty and
- CVD is the additional duty of customs.
- **Notification No. 48/2008 CE (N.T.) dated 05.12.2008.**

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Cenvat Credit When dutiable F P become to exempt and no duty payable Rule 11(3) & 11(4)

- When the dutiable product becomes exempt by virtue of notification u/s 5 A of Central Excise Act or
- where the manufacturer /service provider is availing conditional exemption, **The manufacturer or service provider should be reverse or pay an amount equal to cenvat credit availed on**
- Input lying in stock
- Input present in process and final product
- There is no necessity to reverse or pay on cenvat credit availed on input service.

- Similar Provision also applicable in case of SSI units
- who is not availing the benefit of exemption notification and
- decided to avail exemption notification

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When Credit can be availed Rule 4

Input	Immediately after receiving in to factory/premises
Capital goods	Immediately after receiving in to factory/Premises
Input service	Only after payment of bill. Part payment of bill- credit to the extent of part Advance payment- at the time of payment (Bill to be received) No need to wait till receipt of service

Quantum of Credit

For Inputs- Full (100%)

For input service- full-(100%)

Quantum of credit

In case of Capital goods- 50% in the First year and Balance in next years

When Capital goods cleared in the same year full 100% credit can be availed.

No Cenvat credit on duty amount if manufacturer claims depreciation on duty u/s 32 of Income tax Act

CENVAT credit can also be availed even capital goods acquire on lease, hire purchase or loan agreement.

If inputs, Capital goods, can be sent to job worker.

- No need to reverse the credit availed when sending for job work.
- They should be returned back with in 180 days.
- If not returned ,an amount equal to cenvat credit is payable.
- Credit can be taken after they receive back.
- Jigs, fixtures, moulds, jigs can also be sent to job worker   no provision to return in 180 days.

Clearance of goods from Job worker place

- Prior approval of commissioner
- Approval for each job worker in one financial year
- Bond to be executed if required
- Commissioner can impose any restrictions.
- he shall pay duty (rule 8) on such excisable goods and prepare an invoice, (rule 11) except for mentioning the date and time of removal of goods on such invoice.
- The original and the duplicate copy of the invoice so prepared shall be sent by him to other premises, where goods intended to clear.

Removal from Job worker place

- The processor shall fill up the particulars of date and time of removal of goods before the clearance of goods
- and after such clearance the processor shall intimate to the said person,
- the date and time of the clearance of goods for completion of the particulars by the said person in the triplicate copy of the invoice.
- The processor shall clear the goods after filling in invoice the time and date of removal and authentication of such details.
- The rate of duty on such goods shall be the rate in force on date of removal of such goods from the premises of the processor and
- no excisable goods shall be removed except under the invoice.

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Refund of Cenvat Credit Rule 5

Where any input or input service is used in the final products/providing output service which is cleared for export under bond or letter of undertaking, the CENVAT credit in respect of the input or input service shall be utilized towards payment of,

- (i) Duty of excise on any final products cleared for home consumption or for export on payment of duty; or
- (ii) Service tax on output service,

And where for any reason such adjustment is not possible,

- the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations.
- No refund in case of duty paid on Capital goods.
- Cenvat refund not eligible for Exports to Nepal/Bhutan
- No Cenvat if goods exported and exporter claims duty drawbacks. However customs portion will be paid.

Example Rule 5

Input A
5000 units
Duty paid
Rs. 10000

Output B
5000
units

3000 units
cleared for
Exports
under bond
(No duty)

2000 units
Cleared for
home
consumption
Duty payable

No duty payable when cleared for Export of 3000 units

When duty payable on 2000 units cleared for home consumption, credit can be taken on inputs used in manufacturing 3000 units

Example rule 5

Input A 5000 units
Duty paid
Rs.20000

→

Output X 5000
units Cleared for
Home consumption

Input B 4000 units
Duty paid Rs.
30000

→

Output Y 4 000 units
Cleared for Export

No duty payable on Y when cleared for Export

Hence when duty payable on X cleared for home consumption, credit can be taken on duty paid on inputs B used in manufacturing of Y

Refund of Cenvat Credit in case of goods cleared to North eastern states Rule 5 A

- Similar to Rule 5
- Instead of Exports goods cleared to North east to be substituted.

Cenvat credit in case of exempted goods and services Rule 6

Final Product

Input/Input Service

Output Service

Exempted goods

Exempted Service

Preferential removals (7)

All Other removals

No credit

Credit available Rule 6(6)

No Credit Rule 6(1)

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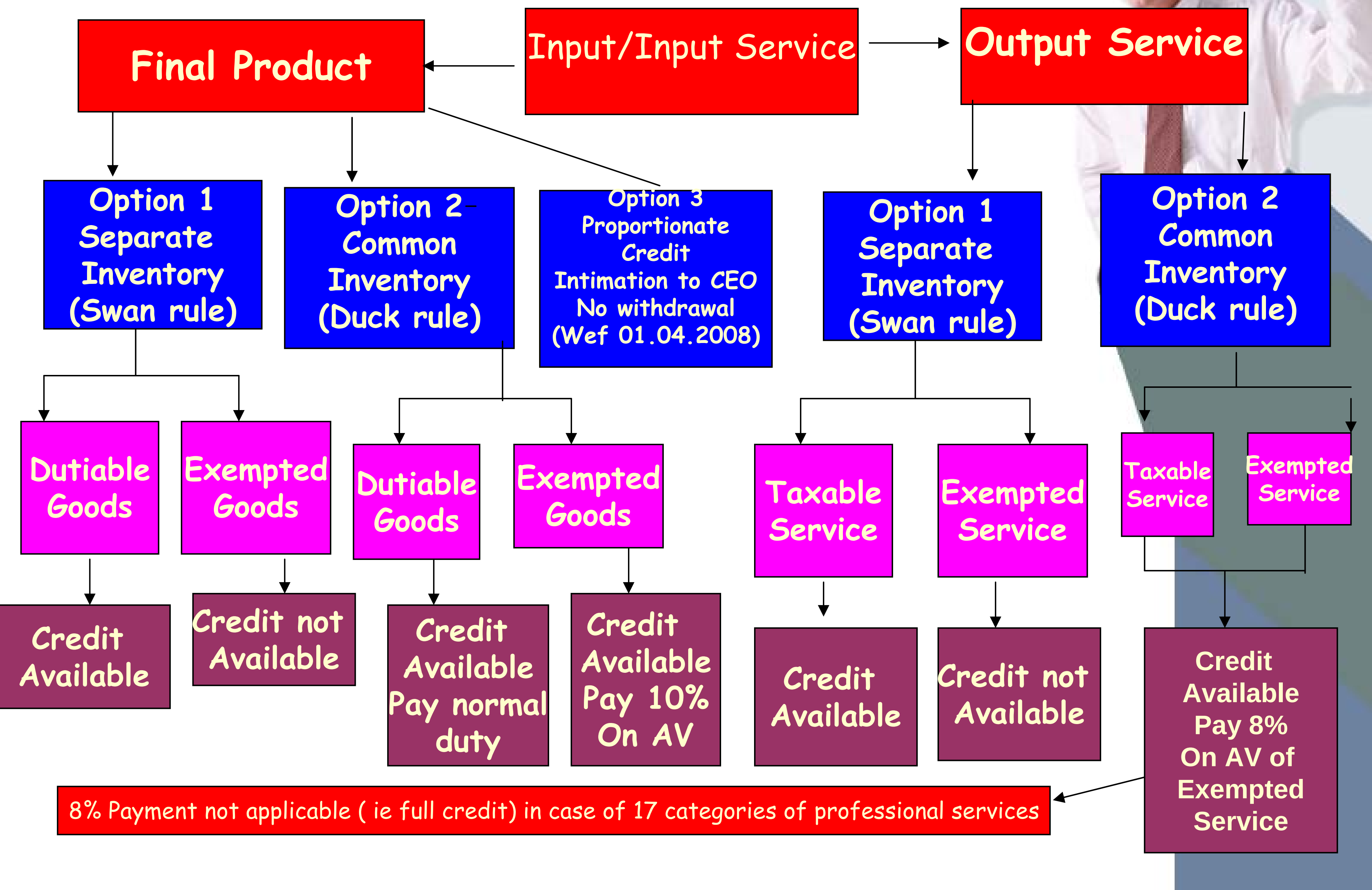
Preferential removals (credit available) Removals Without payment of ED

- Cleared to unit in SEZ or to a developer of a special economic zone for their authorized operations;, .
- Cleared to 100% EOU,
- Cleared to to EHTP or STP
- Cleared to United Nations or an international organisation for their official use or supplied to projects funded by them, which are exempt from duty.
- When final product is exported under bond without payment of duty
- Gold or silver arising in course of manufacture of copper or zinc by smelting.
- Goods supplied against International Competitive Bidding

Common inputs/input service for dutiable/ exempted goods service



Common inputs for dutiable and exempted goods (mixed variety) Rule 6

Same inputs/input services are used partly for manufacture of dutiable goods / taxable services and partly for exempted goods/services.

In such cases, the

manufacturer/ Service provider has 3 options

service provider has two options –

Option 1

- Maintain Separate books for all inventory used for exempted goods/Services and dutiable goods and taxable service (Swan Rule)
- Credit can be availed on inputs used in dutiable goods
- No Cenvat available on inputs used in exempted goods/exempted services

Option 2

- Where there is no separate books (Duck rule)
- Manufacturer has to pay an amount at 10% on the assessable value of Exempted goods and he can avail credit on all inputs
- Service provider has to pay an amount at 8% on the assessable value of Exempted Services and he can avail credit on all inputs

Example:

- Input A quantity purchased 2000 units and duty paid Rs. 50,000 and it is used for Manufacture of two Products X and Y, where X is dutiable and Y is exempted. In such cases
- The manufacturer has three options as below

Option 1

- Maintained separate records How much quantity of A was used to X and How much quantity of A was used to Y and avail credit only duty paid on Quantity used to manufacture A

Option 2

- If separate records are not maintained, pay an amount of 10% on the Assessable value of Y and credit can be taken on all units of A

Option 3

If separate records are not maintained credit can be availed Proportionate credit

Option 3 in case of manufacturer/Service provider

- Manufacturer/service provider has to pay amount of cenvat credit attributable to inputs/input service used in exempted goods/exempted service
- An intimation to be send to CEO for exercising these option giving details of product/services cenvat credit balance on the date of exercising the option

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- Option to be exercised for all exempted goods/all exempted services by manufacturer or service provider.
- Once option exercised it cannot be withdrawn during the FY
- Amount to paid is to be determined using Complicated mathematical formulas

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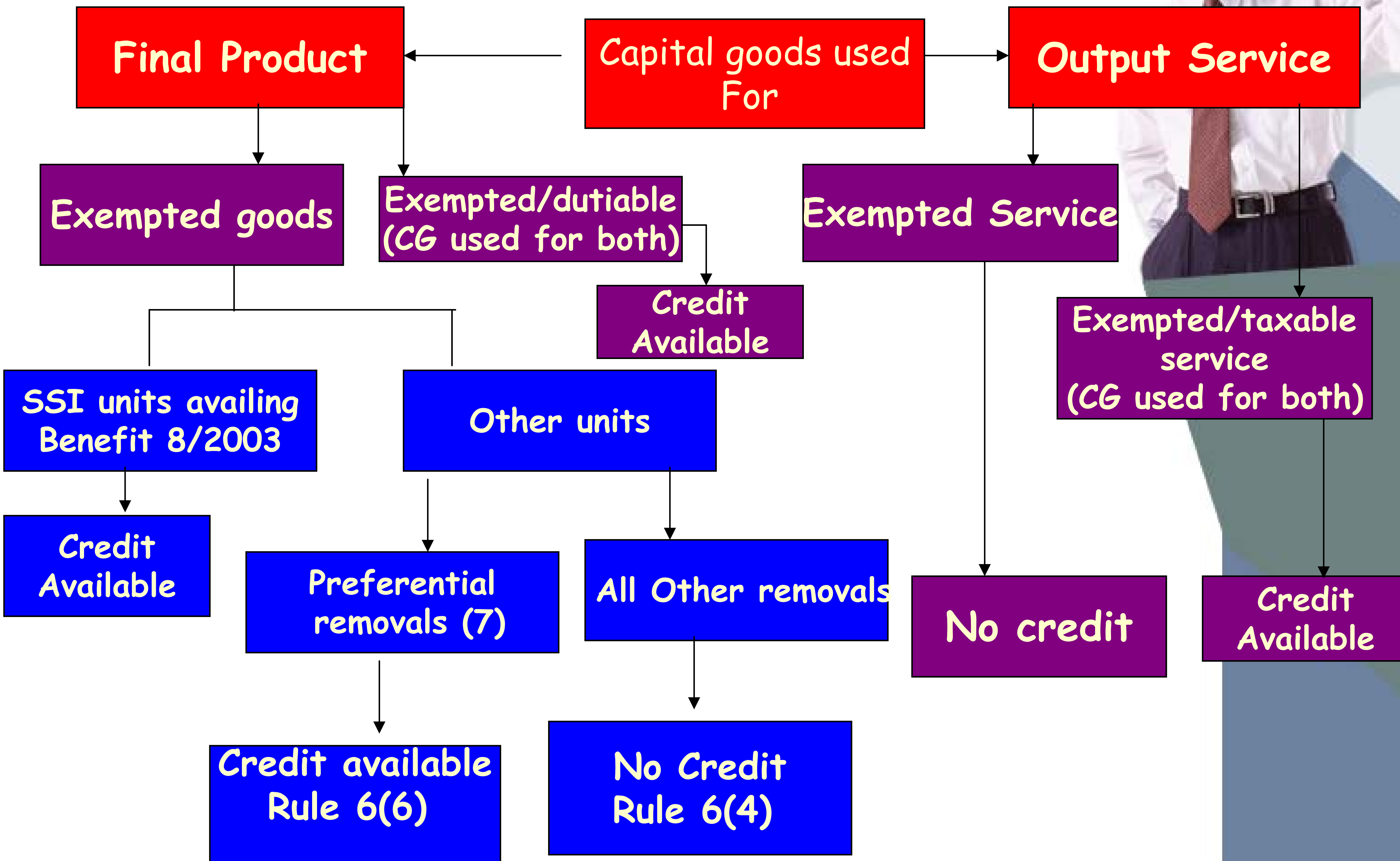
- In case of service provider who is rendering general insurance services 8% is optional and he can follow other prescribed procedure,

Payment of 8% not Applicable

17 categories of service tax such as (Repairs & maintenance, Installation, inspection, consultancy, interior decoration, Real Estate agency , Auditing etc)

These service should not be used exclusively for exempted services .They can be used partly for exempted service/taxable service

Cenvat credit on Capital goods in case of exempted goods and services Rule 6



Distribution of Credit by
Input Service Distributor- Rule 7

Input service distributor means, a person

- Managing Office of business of manufacturer/Service Provider
- Which receives invoices under service tax rules and
- who distribute the credit through bill, invoice Challan

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Example

An adverting agency renders service for a company Head office and for its various branches

Ad agency raises bill on Head office and charges service tax of Rs. 3 lakhs on the bill

Head office can distribute this service tax to head office and various braches based on suitable proportion, by way of challan

Braches can take credit on the basis of challan issued by Head office

Conditions

- Credit can be availed only when input service bill was paid
- Total amount of distribution of credit should not exceed the amount of Service tax paid
- Credit of service tax cannot be distributed when the input service was used exclusively for exempted service

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Storage of inputs outside factory Rule 8

- AC/DC under exceptional Circumstances
- Considering the
- Nature of goods
- Shortage of space in factory
- By order
- permit manufacturer to store inputs outside the factory
- Cenvat credit can be availed in respect of these inputs
- AC/DC can impose restrictions/Conditions/Limitations
- If these inputs are not used as per rules, the manufacturer shall pay an amount equal to cenvat credit availed

Documents for Availing cenvat credit Rule 9

Cenvat Credit can be only based on the following documents

<u>For Excise Duty / CVD</u>

- An invoice of the manufacturer factory/deport/consignment agent place
- An invoice of the importer
- An invoice of the First / Second Stage Dealer
- A supplementary Invoice
- A bill of entry
- A certificate issued by an appraiser of customs

Documents for Availing cenvat credit Rule 9

Service Tax

- Invoice / bill / challan of the service provider
- Invoice / bill / challan of the input service distributor
- Service tax paid Challan

Documents for Availing cenvat credit Rule 9

Essential Requirements of Documents (Mandatory particulars)

- Payment of duty or service tax
- Description of goods or taxable service
- Assessable value
- Excise/ ST Reg No.
- Name and address of the factory Manufacturer service provider

- Cenvat Credit can be taken only
- if document contain all details as prescribed in Rules (rule 11 of excise and service tax rules) are available. Rule 9(2)
- even one detail is missing (other than the mandatory) permission from AC/DC will be required
- AC/DC can condone defect in the document (other than mandatory)

- In case of invoice issued by FSD/SSD,
- credit can be taken only,
- the invoice should indicate duty suffered or
- prorata duty suffered in case proportionate stock is sold

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Records and Returns in Cenvat credit .,

- For Inputs and Capital Goods: -

  The Manufacturer/ provider of output service shall maintain proper records containing the following details:
  - Receipt;
  - Disposal;
  - Consumption;
  - Inventory of Input and Capital Goods;
  - Value of input / capital goods;
  - Duty paid ;
  - Cenvat Credit Taken;
  - Cenvat Credit Utilized; and
  - Particulars of Suppler of input or capital goods.

Records and Returns in Cenvat credit Contd.,

- For Input Services: -

  The provider of output service shall maintain proper records containing the following details;

  - Receipt of input services;
  - Consumption of input services;
  - Value of input services;
  - Tax Paid;
  - Cenvat Credit Taken;
  - Cenvat Credit Utilized; and
  - Particulars of provider of service

Returns under Cenvat Credit

- Monthly return by manufacturer within 10 days from close of Month [rule 9(7]
- Quarterly return by SSI within 20 days from close of quarter [rule 9(7)]
- Quarterly return by first stage/second stage dealer within 15 days from close of quarter [rule 9(8)]
- Half yearly return within 25 days from close of half year, by provider of output services [rule 9(9)]

- Half yearly return within 25 days from close of half year, by Input Service Distributor [rule 9(10)]
- Monthly return by manufacturer in respect of principal inputs within 10 days from close of Month [rule 9A]
- Output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return

Transfer of Cenvat Credit- Rule 10

If a manufacturer shifts his factory to another site, transfer his business/ provider of output service transfers his business by way of

- Change of ownership
- Sale, lease
- Merger, Amalgamation
- Manufacturer/Service provider can transfer unutilsed Cenvat Credit

Transferee can avail the cenvat credit When only

- Transfer was with the specific provision for transfer of liabilities
- The transferor transfers Inputs, Inputs in process and Capital goods
- Transferee should account credit properly to the satisfaction of AC/DC

Procedure for LTP units Rule 12 A

LTP Can Avail the following facility-

- Can remove excisable goods, except petrol and diesel oil without duty to any person registered premises except FSD/SSD
- Removal should be with invoice or transfer challan
- The goods can be cleared for Home consumption or export with in 6 months from the date of sending the material
- If not cleared the recipient premises has to pay duty will interest u/s 11 AB
- The transfer challan or invoice should contain similar particulars of invoice Rule 11

Procedure for LTP units

- A large taxpayer shall submit the monthly returns, as for each of the registered premises.
- A large taxpayer, on demand, may be required to make available all records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification as may be necessary.
- Availment of LT P scheme is optional
- A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

Power to impose restrictions in certain types of cases.

Central Government, if necessary in the public interest to provide for certain measures

Consideration for taking measures

- Extent of evasion of duty,
- Nature and type of offences or
- Such other factors as may be relevant

Measures:

- May place restrictions on a manufacturer, FSD/SSD or exporter, specify nature of restrictions including suspension of registration in case of a dealer
- Types of facilities to be withdrawn
- Procedure for issue of such order by an officer authorized by the Board.

Power to impose restrictions

The circumstances under which the restrictions are place

- Removal of goods without the cover of an invoice and without payment of duty;
  removal of goods with out Correct Value
- Excess sale price realized not accounted;
- Availing CENVAT Credit without the receipt of goods/ specified documents
- Availing CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine
- issue of excise duty invoice without delivery of goods specified in the said invoice;
- claiming of refund or rebate which are not genuine

Restrictions include When evasion exceeds Rs. 10 lakhs

- Withdrawal of monthly payment , restrictions on availing credit

Recovery of Cenvat Credit Wrongly taken or erroneously refunded- Rule 14

- Where the CENVAT credit has been taken or utilized wrongly has been erroneously refunded
- same along with interest shall be recovered from the manufacturer/Service provider
- sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply

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Confiscations and Penalty Rule 15

- If any person, takes CENVAT credit in respect of input/ capital goods/input service wrongly
- contravenes any of the provisions of these rules

Consequences

- Goods are liable for Confiscation
- Penalty- Duty payable or Rs. 2000 which ever is higher

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Confiscations and Penalty Rule 15

- CENVAT credit in respect of input/capital goods or input service has been taken or utilized wrongly on account of fraud, willful mis-statement, collusion or suppression of facts,
- contravention of any of the provisions of the Excise Act/Service tax Act rules with a intention to Avoid duty
-
- Penalty provision of sec 11 AC will apply
- - Penalty equal to duty
- If duty and Interest paid with in 30 days penalty reduced to 25% of duty

Non reversal of CENVAT credit. Sec 5 B of Central excise Act

- When assessee pays duty on final product and availed cenvat credit
- Subsequently Court held the process is not manufacture
- Central government by order notify non reversal of cenvat credit,
- The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him:

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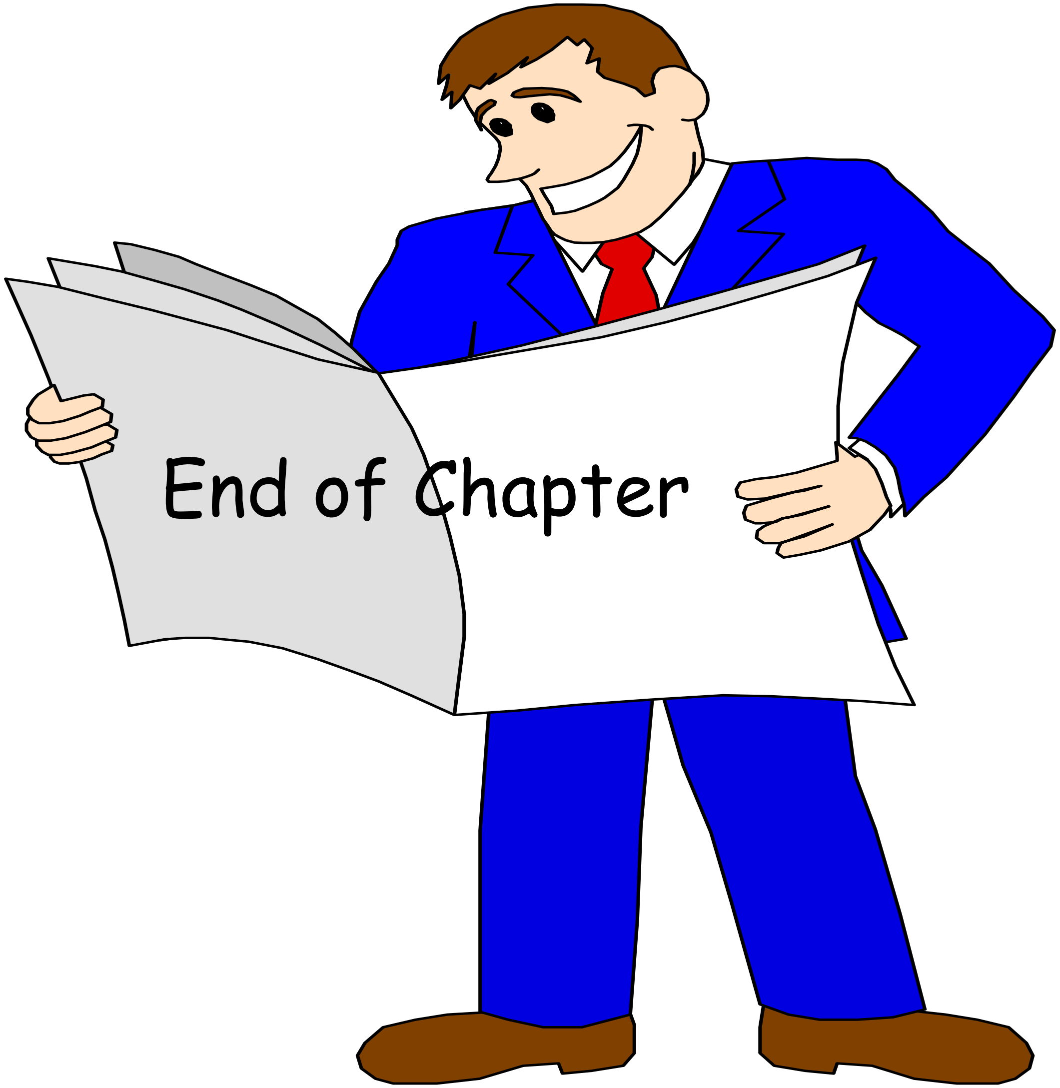

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