

Wide coverage of input services – The words used in the definition in relation to manufacturer are ‘in relation to’. ‘In relation’ expands the scope of coverage. It is not restrictive.

Service need not be received in factory or premises from where output service provided – In case of inputs and capital goods, Cenvat credit is eligible to manufacturer only if these are received in the factory. However, in case of input service, there is no such requirement. Input service need not be received in factory or premises of service provider.

In case of service provider, even there is no requirement that inputs and capital goods should be received in premises of service provider.

Input service should have relation to ‘manufacture’?

Definition of ‘input service’ is very wide. Any service in relation to business is input service. So far, there was no resistance from industry for service tax, since they had a feeling that they will be able to avail Cenvat credit of service tax paid by them on all their input services.

However, in recent Tribunal decisions, a restrictive view is being taken that ‘input service’ should have relation with manufacture.

In *Colgate Palmolive P Ltd. v. CCE* (2008) 12 STT 269 = 7 STR 294 (CESTAT), a *prima facie* view was expressed that credit of input services which are common to manufactured as well as exempted / traded goods is not available. A *prima facie* view was also expressed that even services in the inclusive part of definition should be in relation to manufacture.

In *Coca Cola India v. CCE* (2007) 7 STR 529 (CESTAT), assessee was manufacturing concentrate for cold drinks. He was incurring expenditure for advertisement of aerated water and not concentrate. It was held that advertisement expenses is not his ‘input service’ since it is not related to manufacture of ‘concentrate’ but related to sale of aerated waters. The reason given was that such advertisement expenses are not includible in assessable value of base essence [Really, the issue is highly arguable. Aspect of valuation is independent of aspect of eligibility of Cenvat credit].

In *Gujarat Ambuja Cement Ltd. v. CCE* (2007) 8 STT 122 = 212 ELT 410 = 6 STR 249 (CESTAT). Hon. Tribunal in para 12 of the decision has observed, ‘Crucial point to be noted in regard to Cenvat Credit is that credit availability is in regard to ‘inputs’. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the ‘final product’. Therefore, extending the credit beyond the point of duty paid removal of the final product, would be contrary to the Scheme of Cenvat Credit Rules’.

In *Excel Crop Care v. CCE* (2007) 9 STT 249 = 7 STR 451 (CESTAT SMB), it was held that services of CHA (Customs House Agent) in relation to export is not in relation to manufacture and clearance and hence Cenvat credit is not eligible. Same *prima facie* view was held in *GHCL Ltd. v. CCE* (2007) 10 STT 254 (CESTAT).

Really, in case of exports, port is ‘place of removal’ since property in goods is passed on to buyer only when goods are handed over to shipping company. Hence, all expenses upto that place should be considered as ‘input service’. In *Kuntal Granites v. CCE* (2007) 215 ELT 515

(CESTAT), it was held that in case of exports, customs port is the 'place of removal'. Hence, remission is to be granted if goods are destroyed by accident in transit before they are handed over in port for export.

In *Excel Crop Care v. CCE* (2007) 9 STT 249 = 7 STR 451 (CESTAT SMB), it was also held that construction services for setting up circles / gardens for putting sign boards is not in relation to advertisement of the product and is not eligible.

In *Rajhans Metals v. CCE* (2007) 8 STR 498 (CESTAT SMB), assessee availed Cenvat credit in respect of erection, commissioning and installation of windmills for generation of electricity. This was supplied to grid and corresponding quantum was withdrawn at the factory. It was held that electricity is not excisable and hence the services availed at windmill are not 'input services' – similar *prima facie* view in *India Cements v. CCE* (2008) 9 STR 65 (CESTAT SMB).

In *GHCL Ltd. v. CCE* (2007) 10 STT 254 (CESTAT), *prima facie* view was held that services received at residential colonies of staff do not qualify as 'input service' – similar *prima facie* view in *India Cements v. CCE* (2008) 9 STR 65 (CESTAT SMB).

These observations can and do mean that only input services relating to manufacture of final product or provision of output service are eligible for Cenvat credit. Hopefully, the matter will be set right soon either by large bench of Tribunal or Supreme Court.

Apart from the fact that definition of 'input service' is very wide, following factors need consideration –

- Whole purpose of Cenvat scheme is to avoid cascading effect. The interpretation should not be such as to defeat this basic purpose.
- The integration of Cenvat credit of excise duty and service tax is a pre-cursor to GST (Goods and Service Tax), where intention is to eliminate distinction between goods and services. The whole scheme of credit of 'input service' is designed from this point of view.
- It is well established that when two interpretations are possible, interpretation favouring assessee is to be preferred.
- The interpretation of definition of 'input service' should not lead to the situation where 'operation is successful but patient died'.

Coverage beyond manufacturing/service provision stage - Inclusive definition clause of rule 2(l) extends scope of 'input services' even beyond stage of 'manufacture' or 'provision of service'. The inclusive clause makes it clear that services much earlier to manufacture or provision of service or even after manufacture and after provision of service will be eligible as service tax credit.

Services which do not have even any casual relation with manufacture of goods or provision of service have been covered in the definition of 'input service'. In fact, any service in relation to business of assessee is 'input service'.

Thus, though the words used in rule 2(l)(ii) are 'used by the manufacturer, whether directly or

indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal', in view of the words 'includes', the scope of definition is much wider than 'in or in relation to manufacture' and would cover even services unrelated to 'manufacture'. *This is also clear from the fact that service tax paid at Head Office and branches/depots can be utilised as Cenvat credit through the mechanism of 'input service distributor'.*

Services of commission agent – Commission Agents do promote sale and hence commission paid to them is eligible as 'input service' – *prima facie* view held in *Metro Shoes v. CCE* (2007) 10 STT 462 = 8 STR 502 (CESTAT).

Wide scope due to use of word 'includes' - The word used in *explanation* is 'includes'. As we have seen earlier, the word 'includes' denotes that scope is expanded, beyond normal meaning of term 'in relation to manufacture or clearance of final products' or 'in relation to providing an output service'.

Services relating to 'clearance' of final product – Services in or in relation to 'clearance of final products, upto place of removal' have been included in definition of 'input service' in respect of 'manufacturer' [The words were 'clearance of final product *from* the place of removal' upto 31-3-2008].

It is thus clear that service tax paid on all expenses of transport, insurance upto and in the depot or place of consignment agent will be eligible for Cenvat Credit. 'Storage upto place of removal' has specifically been defined as eligible input service in the inclusive clause of definition.

Clearance – This word has specific meaning in Central Excise, where 'clearance' means removal from the factory. Thus, expenses incurred for removal of final product from factory like loading final products in vehicles will get covered.

Place of removal – The words are not defined in Cenvat Credit Rules, but are defined in section 4(3)(c) of Central Excise Act as follows –

"Place of removal" means—

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory from where such goods are removed.

In *Mangalam Cement v. CCE* (2007) 8 STR 639 (CESTAT), strong *prima facie* view was held that if services relate upto the depot, service tax credit will be available.

Port/airport is place of removal in case of export - In case of exports, the place of removal is port where export documents are presented to customs office – *Kuntal Granites v. CCE* (2007)

215 ELT 515 = 2007 TIOL 930 (CESTAT) – quoted and followed in *Rajasthan Spinning & Weaving Mills v. CCE* (2007) 8 STR 575 (CESTAT). Hence, all expenses upto that place should be considered as ‘input service’.

Activities relating to business

All services relating to business will be eligible for service tax credit. The words used are ‘activities relating to business, such as - - - - -’. The activities specifically mentioned are as follows –

- Accounting, auditing, financing
- Recruitment and quality control
- Coaching and training
- Computer networking
- Credit rating
- Share registry
- Security
- Inward transportation of inputs or capital goods and
- Outward transportation upto the place of removal.

However, these are only illustrations, as the words used are ‘such as’. The illustrations do not mean that only these services are covered under ‘activities relating to business’. For example, the words used are ‘outward transportation upto the place of removal’. It does not mean outward freight after place of removal is excluded.

Meaning of ‘such as’ - The words ‘such as’ are used only to illustrate the scope. It is not restrictive.

The input services relating to business can be used for any purpose whatsoever - As per inclusive definition of ‘input service’ [rule 2(l)], all services used for activities relating to business are ‘input services’. The definition does not say ‘activities relating to business pertaining to manufacture or provision of output services’. Thus, all input services used in activities relating to business are ‘input services’, whatever may be its purpose.

Any expenditure incurred on ground of commercial expediency is for purpose of business – In *S A Builders Ltd. v. CIT (Appeals)* (2007) 158 Taxman 74 = 288 ITR 1 (SC), it was held that any expenditure incurred on ground of commercial expediency is allowable as business expenditure. ‘For the purpose of business’ is wider in scope than the expression ‘for the purpose of earning income, profits or gains’. ‘Commercial expediency’ is an expression of wide import and includes such expenditure as a prudent businessman incurs for purpose of business. The expenditure may not have been incurred under legal obligation, yet it is allowable if it was incurred on grounds of commercial expediency – relying on *Madhav Prasad Jatin v. CIT* AIR 1979 SC 1291.



Mobile phones eligible for Cenvat Credit – Earlier Service Tax Rules required ‘installation’ of telephones in the business premises. Hence, CBE&C had clarified vide circular No. 59/8/2003-ST dated 20-6-2003 that Cenvat credit will not be available in case of mobile phones. Now there is no such requirement. Hence, service tax paid on mobile phones will be eligible for Cenvat credit w.e.f. 10-9-2004, so long as these are used for ‘activity relating to business’ – view confirmed in *Indian Rayon v. CCE* 2007 (6) STT 328 = 4 STR 79 (CESTAT SMB).

Internet services eligible – Cenvat credit is available in respect of internet services, as it is utilised for information relating to manufacture, sale and despatch – *Universal Cables Ltd. v. CCE* (2007) 7 STR 310 (CESTAT).

Outward freight after place of removal is not ‘input service’? – One of the illustrations given in inclusive part of definition of ‘activities relating to business’ is ‘outward freight upto place of removal’. Hence, a doubt is expressed that freight paid after place of removal is not ‘input service’. This is not correct. As already explained, ‘such as’ means what follows are only illustrations. These are not limitations. It does not mean outward freight after place of removal is excluded from definition of ‘input service’. It should be eligible if it is in relation to activities of business.

In *CCE v. KTMS Engineering* (2007) 7 STR 274 (CESTAT), a *prima facie* view was expressed that service tax paid on outward freight from place of removal is eligible for Cenvat credit – same view in *Gujarat Sidhee Cement v. CCE* (2007) 7 STR 571 (CESTAT).

However, this view has not been accepted by Tribunal. In *Gujarat Ambuja Cement Ltd. v. CCE* (2007) 8 STT 122 = 212 ELT 410 = 6 STR 249 (CESTAT), it has been held that outward freight is not an input service. Service tax paid on the cost of transportation from the factory/ depots to the buyers’ premises, would not be available as credit – followed in *India Japan Lighting P Ltd. v. CCE* (2007) 11 STT 498 = 8 STR 124 = 218 ELT 103 (CESTAT) – same *prima facie* view in stay petition in *Ultratech Cement v. CCE* (2007) 8 STT 152 = 6 STR 364 (CESTAT).

Credit only after payment is made to service provider

Credit of input services can be availed only after the output service provider makes payment of value of input services and the service tax payable on it, as shown in invoice of input service provider. [Rule 4(7) of Cenvat Credit Rules]. [In case of excise duty, credit is available as soon as goods are received in the factory. There is no condition that credit can be availed only after payment is made to supplier of goods].

This peculiar provision has a specific purpose. The reason for this provision is that as per Service Tax Rules, the service tax is payable only after the amount is actually received by the service provider. Thus, the service provider of input services will be liable to pay service tax only when the person who has availed the service (output service provider in this case) pays the amount of his invoice.

It may happen that the output service provider may avail credit of service tax on input services on the basis of Invoice raised by provider of input services. However, he may not actually pay the amount of Invoice to the input service provider. If such thing happens, the service provider of output services will avail credit of service tax, while service provider of input services will

not be paying the service tax, as he has not received the payment. Hence, it is provided that service provider of output services can avail credit of service tax only when he makes payment of invoice of input service tax provider, including service tax charged by the input service tax provider.

Mere payment of service tax to service provider is not sufficient – Suppose the invoice is for Rs 100 and service tax is Rs 12.36, can you avail Cenvat credit if you pay only Rs 12.36 to the input service provider? The answer is no, as the words used are ‘value of input services *and* the service tax payable on it’.

4.4 INPUT SERVICE DISTRIBUTOR

A manufacturer or service provider may have head office / regional office at different place / s. The services may be received at head office / regional office, but ultimately, these will be indirectly used for manufacture or providing output service. Provision has been made to avail Cenvat credit of services received and paid for at head office / regional office. Such head office / regional office can be registered with Central Excise as ‘Input Service Distributor’ and it can issue invoice on the manufacturer or producer or service provider.

Who is ‘input service distributor’ - As per rule 2(m) of Cenvat Credit Rules, “input service distributor” means (a) an office managing the business of manufacturer or producer of final products or provider of output service, (b) which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services *and* (c) issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

An office of assessee (manufacturer or service provider) is ‘Input Service Distributor’ if it satisfies all the three aforesaid requirements. It is not that each and every office of assessee is ‘Input Service Distributor’ and must register. The office should be registered as ‘Input Service Distributor’ only if it wants to distribute. There is no law that ‘distribution’ is the only way of availing Cenvat credit of services received at office of assessee. There are various documents eligible for availing Cenvat credit. Invoice / challan issued by ‘Input Service Distributor’ is only one of the specified document.

Document eligible for Cenvat credit - As per rule 9(1)(g); ‘invoice, bill or challan’ issued by an ‘input service distributor’ under rule 4A of Service Tax Credit Rules is an eligible document for purpose of taking Cenvat credit.

Concept of Input Service Distributor is a facility – not compulsion – Sometimes, an assessee has offices at various places but accounting is done centrally in the factory. Sometimes, there are various factories of assessee but accounting is done in main factory. In such cases, in my opinion, the main factory can directly take Cenvat credit of service tax on the basis of documents. The reason is that ‘Input Service Distributor’ is a facility. It is nowhere stated that the utilisation should be only through mechanism of Input Service Distributor. There is no law that ‘distribution’ is the only way of availing Cenvat credit of services received at office of assessee. A facility cannot be a compulsion.

Law does not even specify that there must be distribution of Cenvat credit or that the distribution should be in some specified ratio. If no 'distribution' is necessary, there should not be any need of 'Input Service Distributor'.

Distribution of credit by input service distributor – The 'Input Service Distributor' may distribute Cenvat Credit in respect of service tax, among its manufacturing units or providing output service. The credit distributed should not be more than the service tax paid. If an input service is attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing exempted services, the credit of such credit of service tax shall not be distributed [rule 7].

The 'input service distributor' should issue a 'Invoice, Bill or Challan' on monthly basis after consolidating the service tax paid on services received during the month.

4.5 CENVAT CREDIT OF DUTY PAID ON CAPITAL GOODS

- Only capital goods as defined in rule 2(a) of Cenvat Credit Rules are eligible for Cenvat Credit
- Capital goods should be used in the factory of manufacturer or for provision of output service
- Capital goods does not include equipment or appliance used in an office of manufacturer (this restriction does not apply to service provider)
- Motor vehicle is capital goods only in respect of specified service providers [rule 2(a)(B)]
- Capital goods should be used in factory. They can be sent outside for job work but should be brought back within 180 days [rule 4(5)(a)]
- Moulds, dies, jigs and fixtures can be sent outside [rule 4(5)(b)]
- Capital goods used exclusively for manufacture of exempted goods are not eligible for Cenvat credit
- Capital goods obtained on hire purchase/lease / loan are eligible [rule 4(3)]
- Duty paying documents eligible are same for Cenvat on inputs
- Depreciation under section 32 of Income Tax Act should not be claimed on the excise portion of the Capital Goods. – Rule 4(4) of Cenvat Credit Rules (Otherwise, the manufacturer will get double deduction for Income Tax - one credit as Cenvat and another credit as depreciation)
- Cenvat credit on capital goods is required to be availed in more than one year, viz. upto 50% credit can be availed when these are received and balance in any subsequent financial year. The condition for taking balance credit is that the capital goods should be in possession of manufacturer of final products in subsequent years. – Rule 4(2)(a) of Cenvat Credit Rules.

- If capital goods on which Cenvat was availed are removed as scrap, an 'amount' equal to duty on scrap value is payable [rule 3(5A)]. If capital goods are removed 'as such', an 'amount' equal to Cenvat credit availed on the capital goods is payable [rule 3(5)] If capital goods are cleared after use as second hand capital goods, 'amount' payable at reduced rate by reducing credit taken @ 2.5% per quarter.

Reversal of Cenvat credit if capital goods written off before use - As per rule 3(5B) of Cenvat Credit Rules (inserted w.e.f. 11-5-2007), if (i) inputs or (ii) capital goods before being put to use, are written off fully or provision is made in books of account to write off fully, the manufacturer is required to pay an 'amount' equal to Cenvat credit taken in respect of such inputs or capital goods. If these are subsequently used in manufacture of final products, manufacturer can take Cenvat credit of amount which was paid earlier.

Depreciation can be taken on 50% of Cenvat credit in first year? – In the first year, the assessee avails credit of only 50% of excise duty. The restriction in rule 4(4) regarding depreciation is only in respect of duty of which Cenvat credit has been taken. Hence, in *Suprajit Engineering Ltd. v. CCE* (2007) 6 STR 170 = 212 ELT 394 (CESTAT), it has been held that there is no violation of rule if assessee claims depreciation on the balance 50% of duty, since he has not availed credit of that amount in first year – followed in *Roots Cast v. CCE* (2007) 216 ELT 448 (CESTAT SMB).

Sending out of capital goods by service provider – Service provider can send out capital goods for providing output service. There is no requirement that these should be brought back within 180 days.

4.6 UTILISATION OF CENVAT CREDIT

- 'Cenvat Credit' is a pool of duties and taxes paid on inputs, capital goods and input services specified in rule 3(1) of Cenvat Credit Rules.
- The credit in this pool can be utilised for payment of any excise duty on excisable final product and service tax on taxable output service. The credit can also be used for payment of certain 'amounts'.
- Credit of various duties is inter-changeable, subject to few exceptions.
- Credit can be availed only of inputs and input services received upto end of the month.
- Cenvat credit will have to be reversed if the final product is subsequently exempt.

The basic conditions for taking Cenvat Credit are as follows –

- There should be 'manufacture' or provision of taxable output service
- Inputs (goods) should be used in or in relation to manufacture of final product or for provision of output service
- Input service should be utilised for manufacture of final product or provision of taxable output service

- Cenvat credit is available for duties and taxes specified in rule 3(1), paid on input, input services and capital goods, subject to restrictions as specified
- No credit is available if final product is exempt from duty or output service is not taxable
- Credit is available on the basis of specified documents only

The conditions for allowing Cenvat Credit, as specified in rule 4 are as follows –

- Cenvat credit on inputs is available as soon as inputs are received in the factory of manufacturer or premises of the provider of output service [rule 4(1)].
- Cenvat credit of capital goods can be taken upto 50% in the financial year in which capital goods are received and balance in subsequent year / s [rule 4(2)]
- Cenvat credit of capital goods is allowable even if the capital goods are acquired on lease, hire purchase or loan [rule 4(3)]. However, assessee should not claim depreciation on the excise portion of value of capital goods [rule 4(4)]
- Inputs and capital goods can be sent outside for job work but should be brought back within 180 days [rule 4(5)]
- Cenvat credit is available on jigs, fixtures, moulds and dies even if sent to job worker for production of goods on behalf of manufacturer [rule 4(6)]
- Cenvat credit of input service is allowed only after payment towards value of service and service tax is made [rule 4(7)]

Duties eligible for Cenvat credit - Assessee can avail credit of duty / service tax paid on inputs and input services. This credit is known as ‘Cenvat Credit’. This is a ‘pool’ which is available for utilisation for payment of duty on any final product or output services, subject to certain restrictions and limitations.

Payment of NCCD on mobile phones can be only by Cenvat credit of NCCD and not any other Credit – As per fourth proviso to Cenvat Credit Rule 3(4) inserted w.e.f. 1-3-2008, only credit of NCCD can be utilised for payment of NCCD on mobile phones. Any other credit cannot be used. This restriction is only for mobile phones.

One to one correlation not necessary in Cenvat – Rule 3(4)(a) states that Cenvat credit may be utilised for payment of any duty of excise on any final product or service tax on output service. Thus, there is no requirement of establishing relation between inputs / input services and final product / output services. One to one relation is not required.

There is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related - *CCE v. Dai Ichi Karkaria Ltd.* 112 ELT 353 = AIR 1999 SC 3234 = 1999 AIR SCW 3205 = (1999) 7 SCC 448 (SC 3 member bench) – quoted with approval in *CCE v. Bombay Dyeing* (2007) 10 STT 286 (SC).

Full credit even if seller gave trade discount or price reduction later – Even if manufacturer-seller gave trade discount later, full credit of excise duty paid by him is available to buyer so

long as duty paid at supplier's end is not changed – *CCE v. Tirumala Fine Texturiser P Ltd.* (2007) 217 ELT 85 (CESTAT SMB) – same view in *Evergreen Engineering Co. v. CCE* (2007) 215 ELT 134 (CESTAT SMB) * *Brown Kraft Indus. Ltd. v. CCE* (2007) 212 ELT 369 (CESTAT) – same view in *Force Motors v. CCE* (2007) 213 ELT 302 (CESTAT), where it was held that credit available is of duty 'paid' and not duty 'payable'.

Restriction on Cenvat credit of goods supplied by EOU - From following data, determine the Cenvat allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India. Assessable value : Rs. 770 per unit, Quantity cleared 1,000 units, BCD – 10%, CVD – 14%, plus education cess as applicable.

Answer - As per Rule 3(7)(a) of Cenvat Credit Rules, 2004 the following formula is to be used if a unit in DTA purchases goods from EOU, for clearances on or after 1-3-2006 - Assessable value $\times \{[1 + \text{BCD} / 400] \times \text{CVD} / 100\}$

Hence, Cenvat Available per unit is as follows –

Cenvat	=	$770 \times \{[1 + 10 / 400] \times 14.42 / 100\}$
	=	$770 \times \{1.025 \times 0.1442\}$
	=	$770 \times 0.147805 = \text{Rs } 113.81 \text{ per unit}$

Total Cenvat allowable on 1,000 units = $1,000 \times 113.81 = \text{Rs. } 1,13,81,000$

4.7 REVERSAL OF CENVAT

Cenvat credit is taken as soon as inputs are received in factory or input services are paid for. In some cases, Cenvat credit may have to be reversed.

Reversal under rule 6 - If a manufacturer manufactures exempted as well as taxable goods and / or a service provider provides taxable as well as exempt services, he (manufacturer / service provider) is required to either pay 'amount' or reverse proportionate Cenvat credit. The issue is discussed in a later chapter.

Reversal if finished goods cleared at concessional rate of duty - Finished products can be sent under bond under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 without payment of duty. If such goods are sent, Cenvat credit will have to be reversed. If common inputs and input services were used on which Cenvat was availed, payment of 'amount' as per rule 6(3)(b) will be required. Case law discussed in another chapter.

Reversal if remission obtained on duty payable on final product - If final product is destroyed or becomes unfit for consumption, when the goods were in store room, duty on such final product can be remitted under rule 21 of Central Excise Rules. Rule 3(5C) of Cenvat Credit Rules (as inserted w.e.f. 7-9-2007) provides that if duty on final products is remitted under rule 21 of Central Excise, Cenvat credit of duty paid on inputs used in manufacture or such goods shall be reversed.

Reversal of Cenvat credit in respect of obsolete goods written off - As per rule 3(5B) of Cenvat Credit Rules (inserted w.e.f. 11-5-2007), if (i) inputs or (ii) capital goods before being put to use, are written off fully or provision is made in books of account to write off fully, the manufacturer is required to pay an 'amount' equal to Cenvat credit taken in respect of such inputs or capital goods. If these are subsequently used in manufacture of final products, manufacturer can take Cenvat credit of amount which was paid earlier.

Reversal if final product subsequently exempt – Cenvat Credit is taken as soon as goods enter factory premises. Final product may be cleared later. It may happen that the final product may be subsequently exempt (conditionally or unconditionally). At that time, some inputs (on which Cenvat has been availed) will be in stock. These inputs will be used for manufacture of exempted final product, if he decides to avail the exemption (in case of conditional exemption. In case of unconditional exemption, it is mandatory for him to avail exemption.

In such case, basic principle is that Cenvat is available only if duty is paid on final product. According to this principle, the Cenvat credit availed on stock is required to be reversed.

Rule 11(3) as inserted w.e.f. 1-3-2007 provides that in such case, the manufacturer will have to pay an amount equivalent to Cenvat credit availed by him in respect of inputs received for such final product and lying in stock or in process or contained in final product. Similar provision has been made in respect of services exempt subsequent to availment of Cenvat credit on inputs availed in rule 11(4).

Though the words used are 'pay such amount' in later para of rule 11(3)(ii) and in rule 11(4), it is stated that the said amount should be deducted from balance of Cenvat credit and balance will lapse. Thus, reasonable interpretation is that such amount should be first paid out of Cenvat credit available (if any) and balance should be paid through cash.

The rule makes provision only in respect of reversal of Cenvat credit on inputs and not in respect of input services and capital goods.

4.8 PRACTICAL EXAMPLES

Question – An assessee cleared various manufactured final products during June 2007. The duty payable for June 2007 on his final products was as follows – Basic – Rs 2,00,000 Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – Rs 50,000, Education Cess – Rs 1,000, SAH education Cess Rs 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – Rs 12,000. Education Cess - Rs 240. SAH education cess - Rs 120. Service tax paid on input services was as follows – Service Tax – Rs 10,000. Education cess – Rs 200 SAH Education Cess - Rs 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2007, if assessee had no opening balance in his PLA account? What is last date for payment?

Answer – Education Cess payable on final products is Rs 4,000 (2% of Rs 2,00,000). SAH education cess payable is Rs 2,000.