

C.A
FINAL

INDIRECT TAX LAWS

Amendments and case laws – Nov 2011

[This booklet contains all amendments, notifications, circulars, case laws as notified by the Institute of Chartered Accountants of India for November 2011 CA Final, Indirect tax laws examination]

SREERAM ACADEMY

(Formerly SREERAM COACHING POINT)

Door No.7, Sree Flats,
Ground Floor (Rear Side)
4/3, Krishnaswamy Street,
Chennai 600 017

Ph: 2814 2616, 98409 54207

Mail: joinsreeram@gmail.com



Preface

The amendments and case laws are discussed in this booklet as per the method of study of Indirect tax laws.

There are 5 angles through which each part in Indirect tax laws has to be studied.

1. Taxable event - The event on occurrence of which tax liability is attached. (I.e. WHEN the tax shall be levied?)

2. Rate of duty - The effective rate of duty that shall be payable

3. Valuation - The value on which the duty shall be payable

(I.e. WHAT is the amount of duty payable?)

4. Exemptions - The exemptions which shall be granted in the said Act Or Notifications given in this respect.

(I.e. HOW the duty shall be payable?)

5. Procedures - Formalities which needs to be complied with, by the assessee

	Excise Duty	Service Tax	Customs Duty
Taxable Event	Sec. 3 of Central Excise Act, 1944 - "Excisable goods manufactured or Produced in India"	Sec. 66 of Finance Act, 1994 - "Date of Provision of service"	Sec. 12 of Customs Act, 1962 - "Import is complete as soon as goods enter the Territorial Waters" "Export is complete only when goods cross the territorial waters"
Rate of Duty	As mentioned in Central Excise tariff Act (CETA), 1985	@ 10% on the value of taxable services provided or to be provided + EC + SHEC, as applicable. Sec. 65A - Classification of services.	As mentioned in Customs Tariff Act (CTA), 1975
Valuation	Sec. 3(2) - Tariff Value Sec. 3A - Duty based on Production capacity Sec. 4A - MRP based Valuation Sec. 4(1) - Transaction Value Central Excise (Determination of value) Rules, 2000	Sec. 67 of the Finance Act, 1994 and Service tax (Determination of value) Rules, 2006	Sec. 14(1) - Transaction Value, Customs (Determination of value of Imported goods) Rules, 2007 and Customs (Determination of value of Export goods) Rules, 2007
Exemptions	Sec. 5A and various exemption notifications by the Board in the official Gazette.	Sec. 93 and various exemption notifications by the Board in the official Gazette.	Sec. 25 and various exemption notifications by the Board in the official Gazette.
Procedures	Contained in Central Excise Rules, 2002	Contained in Service tax Rules, 1994	Import Procedures, Export Procedures, Warehousing, Duty drawback, Baggage Rules.



Central Excise – Taxable Event

Recent case laws on the issue of plant and machinery assembled at site:



Whether the fabrication, assembly and erection of waste water treatment plant amounts to manufacture?

Larsen & Toubro Limited v. UOI 2009 (Bom. HC)

LARSEN & TOUBRO It's all about Imagineering Engaged in the business of fabrication and erection of structures of various types on contract basis Activities Involved - Procurement, supply, fabrication of various components - Making of carbon steel tanks - Various platforms - walkways and ladders are fabricated at site by process of rolling, welding, grinding etc. - Civil construction is also done Water treatment plant which will be an immovable structure	contract for fabrication, assembly and erection of waste water treatment plant.
<u>Department's Contention:</u> Department issued a notice to the assessee alleging that assessee had fabricated/manufactured the waste water treatment plant in the premises of BPCL and the waste water treatment plant fell under Chapter Heading No. 8419.00 on which excise duty was payable. Plant came into existence in unassembled form as per the drawings and designs approved by the BPCL before the same was installed and assembled to the ground with civil work. Thus excise duty was payable on the value of the plant excluding the value of the civil work	<u>Assessee's Contention:</u> The plant cannot function as such until it is wholly built including the civil construction.

Decision of the High Court:

- ✓ Mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to manufacture of a plant.
- ✓ Simply collecting together at site the various parts would not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts.
- ✓ In the present case, as the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work.
- ✓ Waste water treatment plant did not become a plant until the process which included the civil work, was completed.
- ✓ Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works.



Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?

CCE v. Solid & Correct Engineering Works and Ors 2010 (SC)



 Asphalt Drum  Hot mix plant  Asphalt paver machine Asphalt is a sticky, black and highly viscous liquid or semi-solid that is present in most crude petroleum and in some natural deposits which are used mainly for laying roads. 	Soild & Correct Engg. Works Supplies components Soildmec Equipments Ltd. (Marketing company) manufactures Asphalt Drum/ Hot mix plants at the sites of purchasers of such plants 
Department's Contention: Department issued the show cause notice alleged that the process of assembly of the parts and components at the site provided by the customer was tantamount to manufacture of Asphalt Batch Mix, Drum Mix/Hot Mix plants as a distinct product with a new name, quality, usage and character emerged out of the said process. Thus Asphalt Drum/Hot Mix Plants became exigible to Central Excise duty.	Assessee's Contention: Such plants (Asphalt Drum/Hot Mix) have to be permanently embedded in earth as it required to be fixed to a foundation that is 1 and $\frac{1}{2}$ ft. deep for the sake of stability of the plant which causes heavy vibrations while in operation. Thus, the setting up of the plant is result into immovable property and not subject to excise duty.

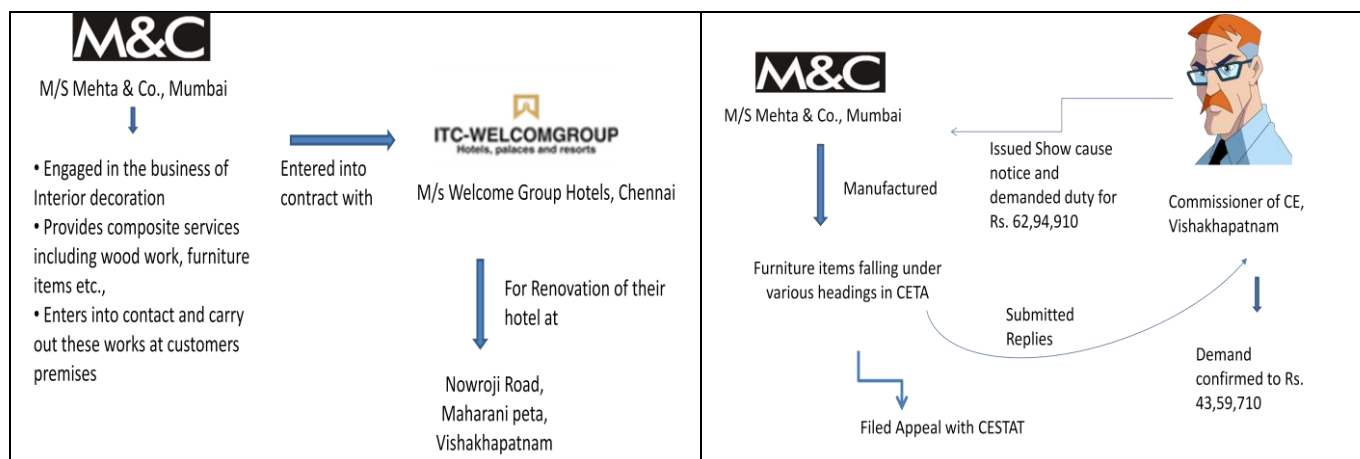
Decision of Supreme Court:

- ✓ the expression "attached to the earth" has three distinct dimensions, viz. (a) rooted in the earth as in the case of trees and shrubs
(b) Imbedded in the earth as in the case of walls or buildings or
(c) Attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached.
- ✓ Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1½ feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above.
- ✓ The Court opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.
- ✓ Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.



Whether Furniture Manufactured at Customers site movable and excisable?
CCE (Vizag) V. Mehta & Co. (2011) (SC)





Decision of Supreme Court:

- ✓ The decision in craft interiors has clearly laid down that ordinarily furniture refers to movable items such as desk, tables, chairs required for use or ornamentation on a house or office.
- ✓ So, therefore the furniture could not have been held to be immovable property.
- ✓ Tribunal was not justified in rejecting the said findings by mere conclusion and without trying to meet the findings recorded by commissioner.
- ✓ **Decision in M/s. Craft Interiors Pvt. Ltd. V. CCE (2006) (SC):** It was held that items which are ordinarily immovable or which ordinarily cannot be removed without cannibalizing e.g. storage units, running counters, over- head unit, rear and side unit, wall unit, pantry unit, kitchen unit and other items which are ordinarily immovable or cannot be removed without cannibalizing are not furniture. However, items like tables, desks, chairs etc. are furniture and hence excisable.

Recent case laws on Excisable Goods



Whether aluminium dross and skimmings have become excisable in view of the insertion of Explanation to section 2(d) of the Central Excise Act, 1944 by the Finance act, 2008?

Hindalco Industries Ltd. UOI 2009

Facts:

- ✓ The assessee submitted that insertion of the explanation to section 2(d) would not change the position established in law that 'aluminium dross and skimming,' were neither processed or manufactured, or were marketable commodities.
- ✓ The High Court observed that effect of the explanation is to get over the judgment of the Apex Court in case of Commissioner, Central Excise v. Indian Aluminium Co. Ltd. 2006 wherein the Supreme Court held that everything that can be sold is not necessarily marketable.

Decision:

- ✓ The High Court elucidated that, prima facie, the insertion of the explanation under section 2(d) providing for definition of "goods" to include any article, material or substance which is capable of being bought and sold for a consideration, and to treat such goods as marketable, would make the 'aluminium dross and skimming' liable to excise duty.
- ✓ Where the goods are specified in the Tariff, they can be subjected to duty, if they are produced, or manufactured by the person on whom duty is 'proposed'.
- ✓ The High Court noted that the expression has been explained by the Supreme Court to mean that the goods so produced must satisfy the test of marketability.



- ✓ The excise duty is levied on production and manufacture which means bringing out a new commodity, substance, and it is implicit that such goods must be usable, saleable and marketable.
- ✓ If the goods are marketable or are **deemed to be marketable**, as on now by the explanation added to section 2(d), such goods included in the Tariff would attract excise duty.

The Schedule to Central Excise Tariff Act (CETA) contains a list of goods and these are called Excisable goods.

Unless the item is specified in CETA as subject to duty, no duty is leviable. Once an item is mentioned in tariff, it will be excisable goods even if duty rate is nil or is exempt.

Burden of proof that goods are excisable and sold as goods in the market is on department - Sandur Manganese V. CCE



Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?

Bata India Ltd. v. CCE 2010 (SC)

Department's Contention: Collector of Central Excise held unvulcanised sandwiched fabric/double textured fabrics are marketable products fulfilling the requirement of the definition of excisable goods attracting the levy of central excise duty under the Act On appeal, Commissioner upheld the order of Collector Tribunal by a majority order held that double textured rubberized fabrics /unvulcanized stitched fabric is an excisable product attracting duty	Assessee's Contention: The product in question is not a finished product and is an intermediate product used to manufacture the finished product and will be captively consumed. As department failed to prove that it is not marketable, no excise duty is payable.

Decision:

- ✓ The Apex Court observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization.
- ✓ The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges.
- ✓ The question is not whether there is a hypothetical possibility of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known.
- ✓ The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold. Theory and practice will not go together when one examine the marketability of a product. (The theoretical possibility which department has



contended is that the product in question was sent outside for some job work for stitching purposes)

The Supreme Court further ruled that the burden to show that the product is marketed or capable of being bought or sold is entirely on the Revenue. Revenue, in the given case, had not produced any material before the Tribunal to show that the product was either been marketed or capable of being marketed, but expressed its opinion unsupported by any relevant materials.

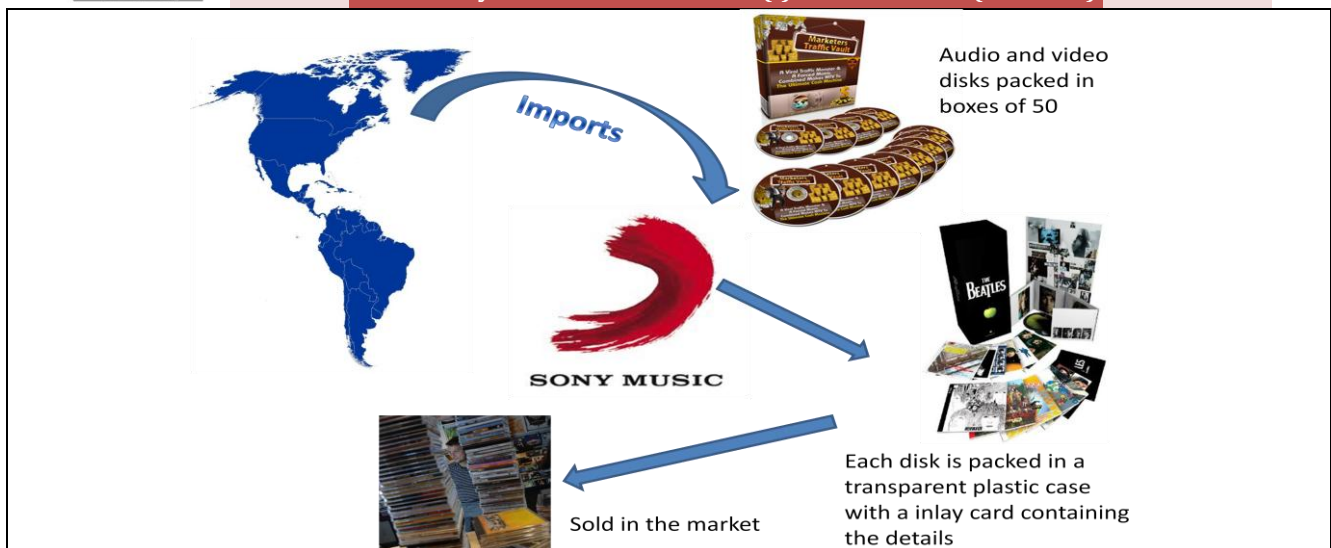
Note: The above judgment is in conformity with the explanation to section 2(d) of the Central Excise Act, 1944 inserted by the Finance Act, 2008.

Recent Cases on Manufacture:



Does the activity of packing imported compact discs in a jewel box along with inlay card amount to manufacture under section 2(f) of the Central Excise Act, 1944 ?

CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (Bom. HC)



Department's Demand:

The processes undertaken by the assessee in regard to the compact discs amounted to manufacture as the packed compact discs were not marketable without being packed in the jewel box, & they would otherwise be subject to damage and that the insertion of the inlay card was also essential because without it the customer would not be aware of the identity of the compact disc or the nature of its contents

The notice also cited the provisions of Note 6 to Section XVI of the tariff that conversion of an unfinished or incomplete product into a complete finished product amounts to manufacture.

Assessee's Contention:

As we are only involved in packing the disks and selling them, No excise duty Is payable as mere packing does not amount to manufacture

Decision of High court:

- ✓ Assessee received was compact discs containing data reproducible as music or visual images or both.
- ✓ What it sold was nothing other than such discs, albeit packed in a box and containing details of the contents of each disc.



- ✓ It is therefore not possible to say that an article that is new and different from the commodity that the assessee imported has emerged as a result of the treatment that was imparted to the imported article at the assessee's hands. It continued to be a compact disc.
- ✓ The fact that the value addition to the compact disc does not result in the conclusion that there is manufacture.

Note 6 to Section XVI of the tariff provides that in respect of goods covered by that section, conversion of an article which is incomplete or unfinished but having the essential character of a finished article into a complete finished article shall amount to manufacture.

It clearly does not apply for given case. Those compact discs were complete and finished. They could be played by any person in order to listen to the sound and view the images that they contained. They were imported in finished and complete form. The mere packing of these discs has no bearing on the fact that they were imported complete and finished.

Conclusion:

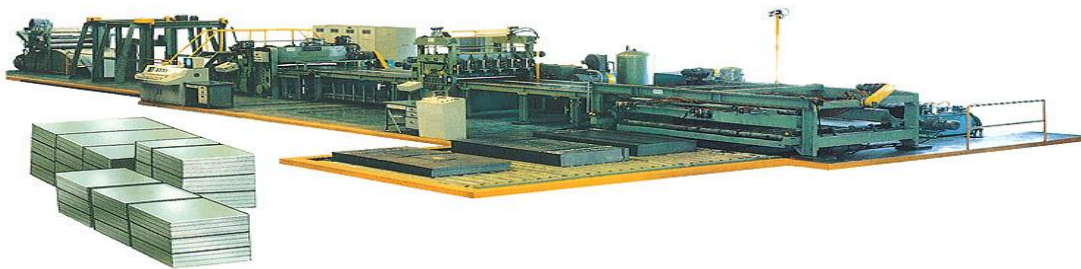
Thus, the activity of packing imported Compact discs in a jewel box along with inlay card would not amount to manufacture under Section 2(f) of the Central Excise Act, 1944



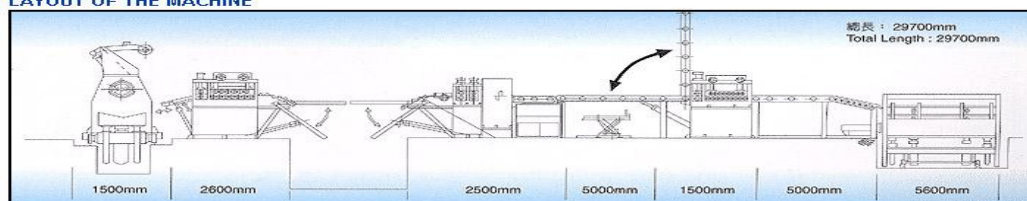
Whether slitting/shearing of steel coils amounts to manufacture? When Raw material and finished products fall under different headings is it manufacture?

Bemcee Ltd. - 2010 (S.C.)

slitting/shearing of steel coils



LAYOUT OF THE MACHINE



Decision of Supreme Court:

- ✓ Slitting/shearing of steel coils does not amount to manufacture as the description as flat rolled products was continuing even when tariff sub-heading changed following width of product.
- ✓ Since the identity of the product remained unchanged even with change of classification, activity causing such a change does not amount to manufacture.



Is converting a substance from liquid state to solid state amounts to manufacture?

TIKITAR INDUSTRIES 2010 (S.C.)





Decision of Supreme Court: The process of converting straight grade bitumen into blown grade bitumen through Oxidation, known as blowing process, does not amount to manufacture and therefore, exempted from payment of Excise duty.



Whether making of shutter plates for the purpose of construction is Manufacture?
Orissa Bridge & Construction Corporation Ltd. V. CCE (2011) (SC decision)



Issue Involved:

- Whether the fabrication of shuttering plates, vertical props and Derricks made from Steel angle, MS plates, MS sheets and pipes amount to manufacture?
- Whether Shuttering plates, Vertical props and Derricks are marketable products so as to become chargeable to excise duty?

The Tribunal in 2002 held that these are marketable and amounts to manufacture, but assessee went for appeal to Supreme Court.

Decision of Supreme Court:

- ✓ The Supreme Court has agreed with the finding recorded by the Tribunal that the activities carried out by the appellant amount to manufacture of goods.
- ✓ The plates and sheets which are starting materials get transformed into various products which are having distinct name, identity, character and use.
- ✓ The sheets, plates or angle irons cannot be used as shuttering plates for the reason of which they are specifically transformed into new product.





Recent circular on Deemed manufacture:

Circular No. 910/30/2009.



offloaded



Drums of 200 Liters

Ammonia in Tankers

ISSUE: certain dealers are receiving liquid chemicals in bulk in containers and offloading the same at the dealers' premises or godown into drums of 200 ltrs for subsequent marketing of these materials to customers. Doubts have been raised as to whether such activity would amount to manufacture in terms of Chapter Note 10 to Chapter 29.

LEGAL PROVISION: In relation to products of 29 Chapter, (Chapter note 10) labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'

Tribunal has in the case of **Ammonia Supply Co.**, held that "As per Note quoted above, labelling or re-labelling of the container should take place at a time when the goods are packed from bulk packs to retail packs.

The assessee was not getting Ammonia in bulk packs. They were getting it in tankers. Ammonia gas brought in tankers can never be termed as brought in bulk packs. So the assessee was not repacking the goods from bulk packs to retail packs. Accordingly the activity undertaken by the assessee in filling the smaller container from bulk container namely tankers can never fall within the fiction of manufacture as envisaged by Note 10 quoted above."

Therefore the tankers cannot be termed as bulk packs and therefore the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10.

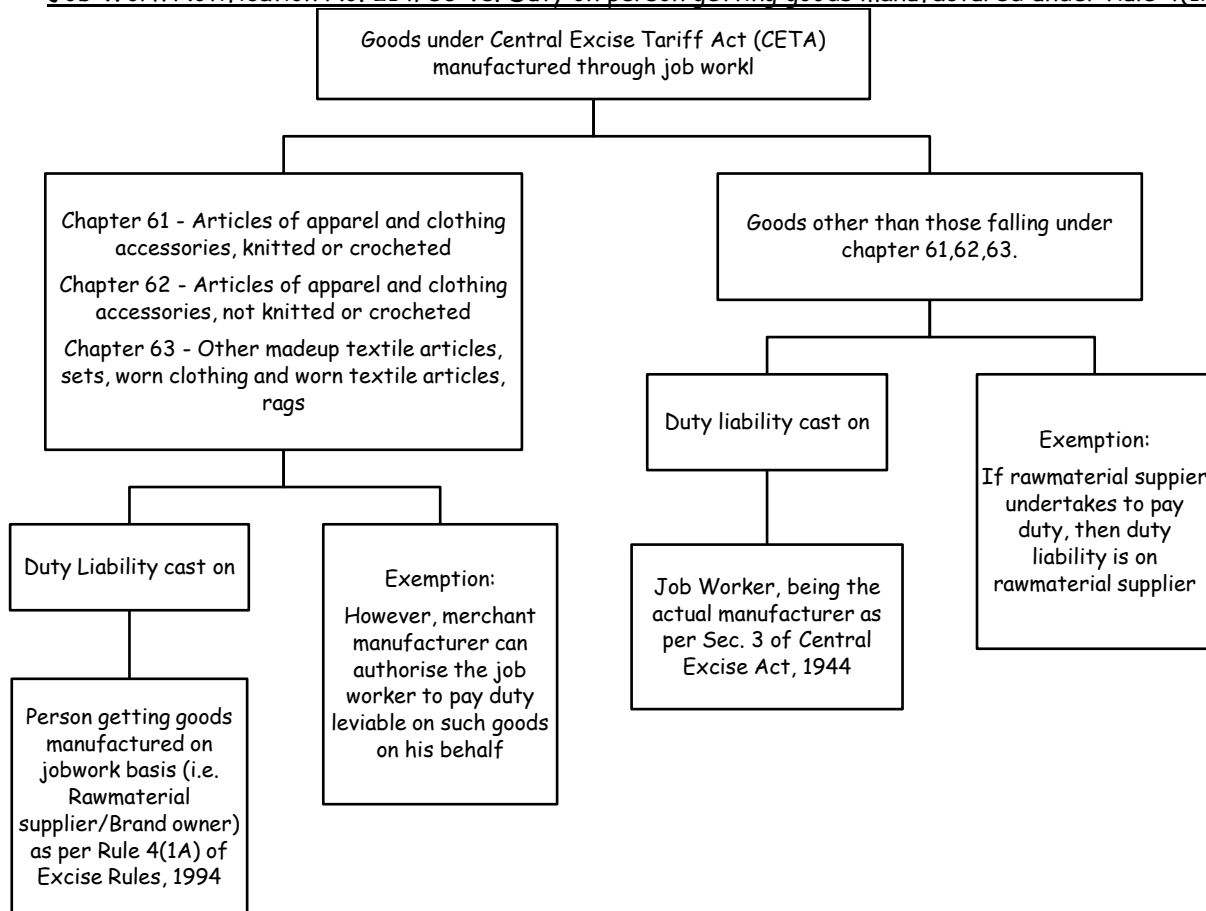
Duty liability on a person other than manufacturer:

The General Rule is that the "Manufacturer" as defined u/s 2(f) is the person liable to pay Excise Duty. But in the following cases, the excise duty liability is on the person other than manufacturer.

1. **Goods stored in a warehouse:** When goods are stored in a warehouse without payment of duty, then the duty liability is on the person who stores the goods.
2. **Molasses produced in khandsari sugar factory:** The duty liability is of the procurer (i.e. purchaser of such molasses)
3. **Job work:** Job worker is the actual manufacturer and he is liable to pay excise duty. But if raw material supplier undertakes to make payment of excise duty under notification No. 214/86, then duty liability is on the raw material supplier.
4. **Textile Articles:** In respect of textile products falling under heading 61, 62 or 63, person who is getting the goods manufactured on job work basis will be liable to pay excise duty under Rule 4(1A) of Central Excise Rules. (w.e.f 1-3-2011). Such person (i.e. who is getting goods manufactured) will be 'manufacturer' and eligible for SSI exemption under SSI exemption Notification No. 18/2003.



Job Work Notification No. 214/86 Vs. Duty on person getting goods manufactured under Rule 4(1A)



Implication of the amendment:

It is the practice in the garment and made up industry for brand owners to have goods manufactured from several job-workers. The brand owners may or may not, themselves, possess any manufacturing facility.

By virtue of the aforesaid amendment, in case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay duty is on the merchant manufacturer (person on whose behalf the goods are manufactured by job-workers) and not on the job-workers. Hence, the job-worker is exempt from payment of duty if the merchant manufacturer pays the duty.

Further, merchant manufacturer would be required to register his private store-room or warehouse in which inputs are received for distribution to job-workers and finished goods are received from the job-workers. He would also be required to comply with all the other provisions of Central Excise law.

Circular No. 927/17/2010 -It has been clarified that the process of pickling and oiling does not amount to manufacture

"Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution."

Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.



The Tribunal has also in the case of Resistance Alloys 1996 & Bothra Metal Industries 1998 held that the process of pickling being preparatory process to drawing of wire **does not amount to manufacture**.



Whether physician samples distributed to medical practitioner as free samples, are goods under excise?

Medly Pharmaceuticals Ltd. V. CCE (2011) (SC)



What is 'Physician samples'?

Some pharmaceutical companies, distributes physician samples to medical practitioners, which serves the company as a marketing tool.

As per the drugs and cosmetic rules, the physician samples of patent and proprietary medicines are statutorily prohibited from being sold.

It is also held in the said rules that the word "Physicians sample - Not to be sold" requires to be printed.

Issue Involved?

- It is well stated law and out of various decisions, it is clear that EXCISE DUTY is levied under section 3, if manufacture or production takes place in India. Sale is not necessary to levy excise duty.
- But 4 conditions are to be satisfied:
 - a) Goods
 - b) Excisable goods
 - c) Manufacture or Production
 - d) In India
- In the present case, the physician samples to become goods must satisfy Movability and marketability.
- As physician samples cannot be sold, **how the marketability can be established?**

Supreme Court decision:

- Even though Drugs and cosmetics Act, 1940 prohibits the sale of physician's samples, the excisability of a product does not depend on its saleability.
- Excise duty is a levy on production or manufacture and is payable whether or not the goods are sold.
- Such prohibition does not affect the marketability as marketability does not require actual sale but should be capable of being sold.
- Therefore physicians' samples are liable to excise duty.

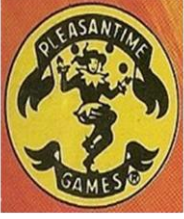
Central Excise – Rate of Duty



Whether the product "Scrabble" is classifiable under sub-heading 9503.00 or sub-heading 9504.90 of the First Schedule to the Central Excise and Tariff Act, 1985?

Pleasantime Products v. CCE 2009 (S.C.)





A Mumbai based proprietary firm engaged in the business of manufacture and trade of toys, games and puzzles of various kinds



"Scrabble" is very similar to a crossword or jigsaw puzzle

Heading	Description	Rate of duty
9503.00	"puzzles of all kinds"	NIL
9504.90	board game	16%

Assessee want to classify under this head

Department want to classify under this head



© Leo Blanchette * www.ClipartOf.com/13166

Decision by Supreme Court:

- ✓ The Court opined that "Scrabble" was not a puzzle/crossword.
- ✓ The difference between a "game" and a "puzzle" is brought out by three distinct features, viz., outcome, clue-chance and skill. In a puzzle, the outcome is fixed or pre-determined which is not there in "Scrabble".
- ✓ In a "Scrabble" there are no clues whereas in crossword puzzle, as stated above, words are written according to clues.
- ✓ Hence, the essential characteristic of crossword to lay down clues and having a solution is absent from "Scrabble".
- ✓ Thus, "Scrabble" would not fall in the category or class mentioned in sub-heading 9503.00, namely, "puzzles of all kinds".
- ✓ As per the dictionary meaning, "Scrabble" is a board game in which players use lettered tiles to create words in a crossword fashion.
- ✓ Applying the dictionary meaning, the Apex Court held that "Scrabble" was a board game. It was not a puzzle. In the circumstances, it would fall under heading 95.04 and not under sub-heading 9503.00 of the CETA.

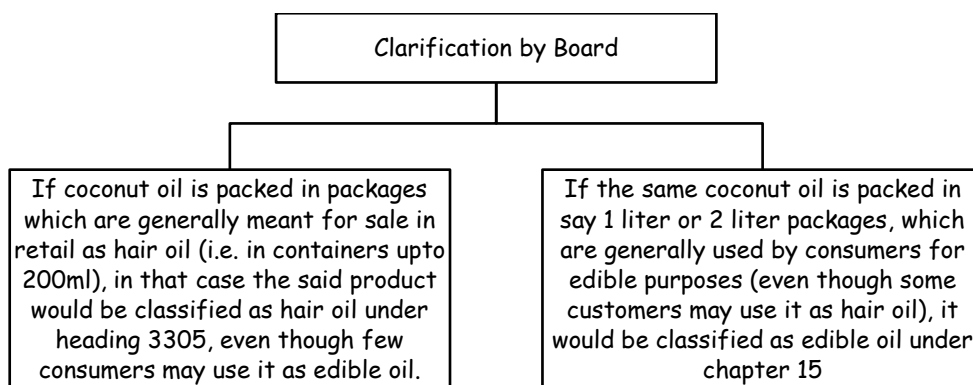


Circular No. 890/10/2009 CX dated 03.06.2009 has been issued in respect of classification of coconut oil sold in small packs say of 50 ml or 100 ml.

COCONUT OIL AS COCONUT OIL 	COCONUT OIL AS EDIBLE OIL 
--	--

The disputes have arisen in respect of coconut oil when it is sold in small packs say of 50 ml. or 100 ml. Hence, in view of the amendments/insertion of Chapter Note and Section Note, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product.





- ✓ When 'hair oil' is printed on the container/label, it is classified as 'hair oil' under chapter 33. Further, the coconut oil falling under the other two categories ('edible oil', 'pure coconut oil' or 'coconut oil') should also be classified as 'hair oil' under Chapter 33 as they are meant for sale as 'hair oil'.
- ✓ The circular explains, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305 as hair oil.
- ✓ This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority.

Conclusion:

- ✓ Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.
- ✓ If the coconut oil is packed in containers more than 200 ml shall be classified as edible oil under chapter 15.



Circular No. 903/23/2009 - Classification of textile quilted products like quilts, quilted bed spreads, etc.

QUILTS



QUILTED BED SPREADS,



CLASSIFICATION UNDER CETA

- | | |
|--|---|
| <ul style="list-style-type: none"> • covers the final finished products like quilts and other articles of bedding and furnishing. | <ul style="list-style-type: none"> • covers quilted textile products which are further used in the manufacture of quilts, quilted bedspreads, etc. • covers only materials which are further used in making of quilted final products like bedding or bedspreads. |
|--|---|

Heading 9404

Heading 5811



- It is clarified that these products will be classified under heading 9404.
- Explanatory Notes to Harmonized System of Nomenclature to Chapter Heading 5811 also states that the heading does not cover made up goods of this Section (Section Note 7) and articles of bedding or similar furnishing of Chapter 94 which are padded or internally fitted. Thus, the articles of bedding and furnishing fall in Chapter 94.



Under which heading Multi-functional machines performing functions of printer, fax and scanner is to be classified?

XEROX INDIA Ltd. V. CC (2010) (SC)



Multi-functional machines performing functions of printer, fax and scanner

Classification related issue???

84.71 – Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data not elsewhere specified or included.

8471.60 – Inputs or output units whether or not containing storage units in the same housing.
(Assessee want to classify under this heading)

84.79 – Machines and mechanical appliances having individual functions not specified or included elsewhere in this chapter (Department want to classify under this heading)

Decision by Supreme Court:

- Rule 3(a) of GIR - Prefer Specific heading over general.
- Rule 3(b) of GIR - In case of composite items, classify as per ESSENTIAL CHARACTER
- While observing the multi functional machines, the major portion of manufacturing cost as well as parts and components are allocated to printing function.
- This clearly shows that the printing function emerges as the principal function and it gives the essential character to multi functional machines.
- Therefore, multi functional machines should be classified under heading 8471.60
- The multi functional machines serves as both input device (i.e. Scanner) and output device (i.e. Printer) of an Automatic data processing machine.

Clean Energy Cess levied from 01.07.2010

Clean energy cess announced in the Budget has been levied on coal @ Rs.50 per tonne. Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products.

Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should



be shown separately in the invoice or bill issued by the producers.- **Notification Nos. 1-6/2010 and Notifications Nos. 28-29/2010**

Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise

All goods falling under the Schedule to the Central Excise Tariff Act, when supplied to the United Nations or an international organisation for their official use, have been exempted from the whole of the additional and special additional duty of the excise.

Condition: Above exemption will be available only if the manufacturer produces a certificate before the jurisdictional Assistant /Deputy Commissioner of Central Excise from the United Nations or the international organisation that the goods are intended for such use.

Circular No. 929/19/2010 -It has been clarified that polyester staple fibre manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

Central Excise – Valuation



Whether the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars? **Maruti Suzuki India Ltd. v. CCE 2010 (Tri. – LB)**

Facts of the case:

- ✓ The appellants were manufacturers of various types of motor vehicles chargeable to duty on ad valorem basis.
- ✓ Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available to them by the appellants.
- ✓ This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services.
- ✓ Hence, the Department contended that the cost of post delivery inspection and after sale services were to form part of the assessable value of the automobile while discharging the duty liability.

Decision of the case:

The Larger Bench of the Tribunal drew the following propositions:-

(i) Transaction value includes the amount paid by reason of/in connection with sales of goods	⇒ Transaction value not only include the amount paid to assessee towards price but also includes any amount a buyer is liable to pay by reason of or in connection with the sale, including any amount paid on behalf of assessee to the dealer or the person selling the vehicles. ⇒ The reason of sale and inter connection thereto are essential elements to contribute for assessable value. ⇒ The transaction value, therefore, is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.
--	---



(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded therefrom	⇒ Extensive The use of expressions like “includes in addition to” and “including but not limited to” in the definition clause establishes that it is of very wide and extensive in nature. ⇒ Restrictive and exhaustive At the same time, it precisely pinpoints the items which are excluded therefrom, with the prefix as “but does not include”. Exclusions being defined no presumption for further exclusions are permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded therefrom.
(iii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer	⇒ Any amount collected by the dealer towards PDI or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer are forming part of the activity of sales promotion of the goods. This payment is on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods. ⇒ Hence, it was held that the charges towards PDI and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

Conclusion: cost of after sale service and PDI charges incurred by dealer during warranty period is includible. There need not be direct flow back of consideration to assessee. Even indirect benefit is includible in assessable value.



Whether Chocolates/Toffes packed liable for MRP based valuation? Though chocolates are covered under MRP provisions as per Sec. 4A, but as it is packed MRP is not printed. Will the penal provisions and confiscation as per Sec. 4A, applicable in this case?

CCE V. Makson Confectionary (2010) (SC)

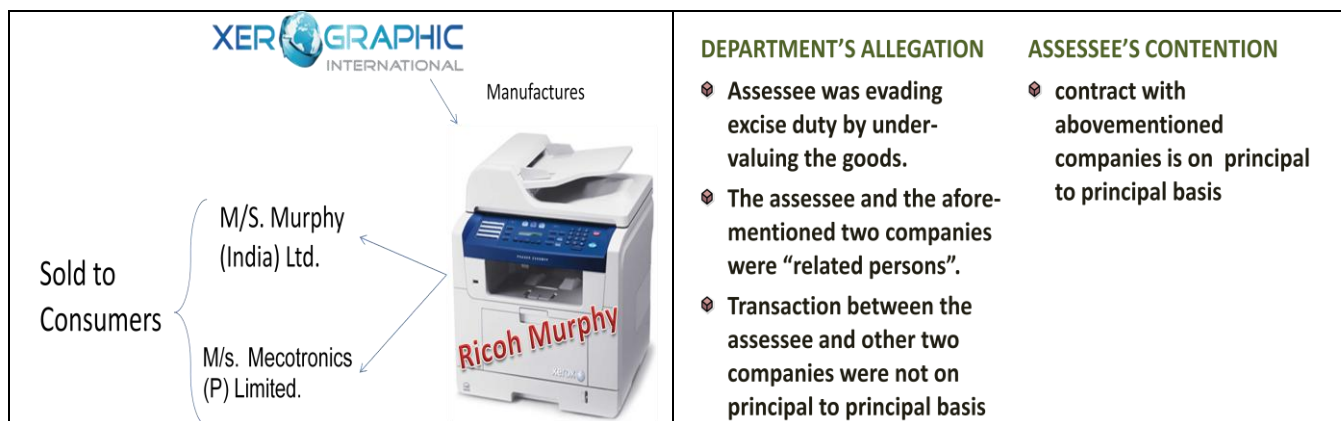
Éclairs Brand chocolate Packet containing 100 pieces	Assessee paid duty on the basis of 'Transaction value' u/s 4. Department demanded duty on the basis of MRP u/s 4A.
- Chocolates/ toffees were notified under sec. 4A i.e. covered under MRP based valuation - When a product is covered under MRP based valuation no other valuation shall be applicable. - MRP should be printed on the package, if not the goods can be confiscated and for the purpose of duty payment RSP (Determination) Rules shall be applicable.	



SC Decision:

- As per the standards of weight and measure rules,
- A package containing 10 or more than 10 retail units is defined as 'Whole sale package' and there is no need to declare sale price on a whole sale package.
- The packs/jars of Eclairs are not intended for sale to retail customers
- Therefore there is no need to declare RSP on the packs and these were assessable as per sec. 4 and not as per sec. 4A.

XEROGRAPHIC LTD. (2010) - A Recent case law on valuation



Decision by Supreme court:

- ❖ The department failed to show the existence of any extra commercial consideration in fixing the normal price between the assessee and the two companies.
- ❖ It also failed to show that the price at which the goods were sold to the "related persons" was not the normal price at which the goods were being sold through any other distributor or dealer.
- ❖ It again failed to prove that the price was less than the market price at which it was being sold in the market or that there was any extra commercial consideration in fixing the normal value.
- ❖ Conclusion: Hence normal price between Assessee and aforementioned two companies is acceptable.

Circular No. 923/13/2010 - Cost of return fare of vehicles not to be added for determining assessable value

Cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of DCW Ltd. v. CCE 2007 and Haldia Petrochemicals Limited v. CCEx. Haldia 2009



Does the taxes (or) duties paid on any inputs (or) any capital goods (or) any input service is available as credit. Is there any prescribed definition?



Rule 2(k) "input" means- (Notification 3/2011 dated 1/3/2011)

- (i) All goods used in the factory by the manufacturer of the final product; or
- (ii) Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) All goods used for generation of electricity or steam for captive use; or

(iv) All goods used for providing any output service;

But excludes-

(A) Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) Any goods used for-

(a) Construction of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods, except for the provision of any taxable service specified in sub-clauses (zn), (ztl), (ztm),

(zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) Capital goods except when used as parts or components in the manufacture of a final product;

(D) Motor vehicles;

(E) Any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) Any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation - For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

Any goods used for

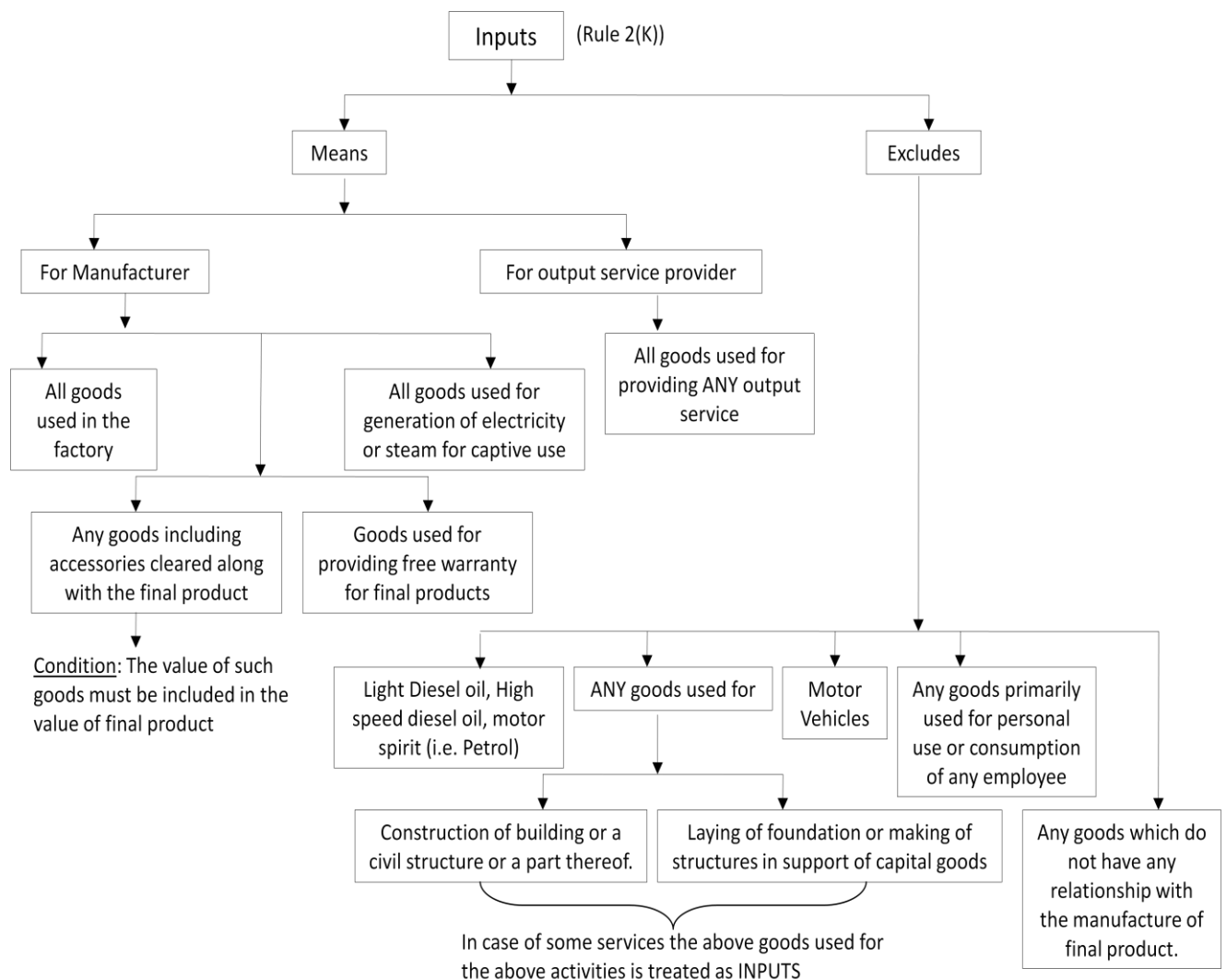
a) Construction of building or civil structure or part thereof

b) Laying of foundation or making of structures for support of capital goods,

is NOT an INPUT. But w.r.to following services it is treated as INPUT. Those services are:

1. Port Services [Sec. 65(105)(zn)]
2. Other port services [Sec. 65(105)(ztl)]
3. Airport services [Sec. 65(105)(ztm)]
4. Commercial or industrial construction [Sec. 65(105)(zzq)]
5. Construction of residential complex [Sec. 65(105)(zzzh)]
6. Works contract service [Sec. 65(105)(zzzza)]





FAQ's on inputs

- (i) **There is a condition that, in order to qualify as input under Rule 2(k) it should be used in the factory by the manufacturer of final product. Will that condition be applicable for output service provider also?**

From the analysis of the definition, the condition of use of goods in the factory is not applicable to service provider. He is entitled to credit on inputs if such inputs are used in providing output service.

- (ii) **In the definition, the capital goods are specifically excluded. If certain goods which does not fall under the definition of capital goods but used in manufacture of finished goods (or) used in provision of services, can it be classified as inputs and can the credit be availed?**

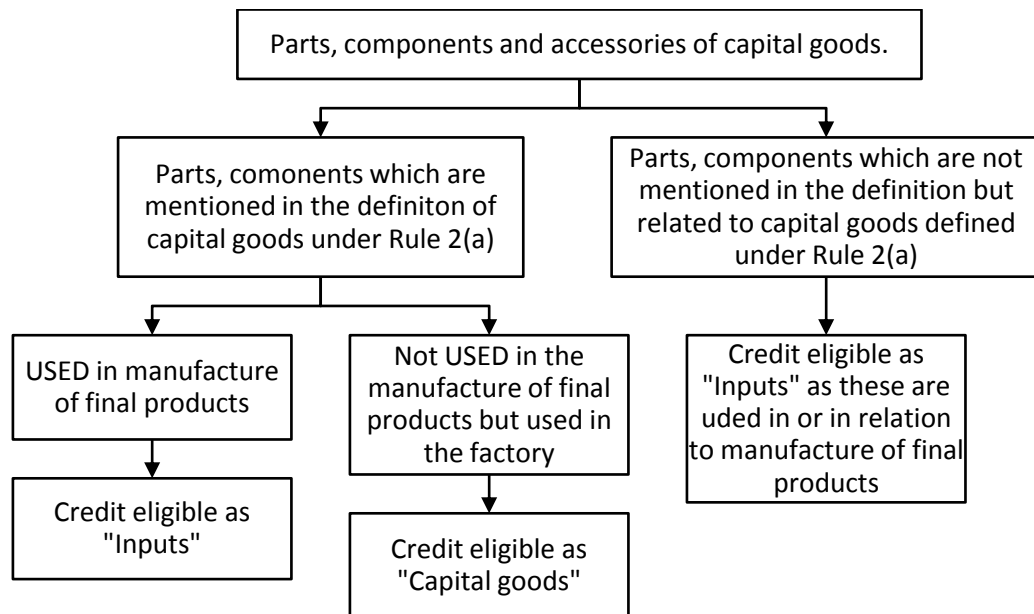
The definition reads "Capital goods", so only those goods defined as "capital goods" under CENVAT credit rules will be excluded from the definition of inputs. The definition of capital goods is restrictive whereas the definition of inputs is inclusive.

Therefore, other capital goods, if used in factory, should be eligible as "Inputs".



Fork lift trucks, lifting tackles, trolleys, conveyors and measuring instruments are inputs used in or in relation to manufacture of final products. Thus, unless they are excluded by an exclusion clause, they will be eligible as 'inputs' - CCE V. Tata Engineering & Locomotives co Ltd.

- (iii) **Sec. 2(k)(C) of the definition reads "Capital goods except when used as parts or components in the manufacture of a final product". So will all the parts and components of any capital goods treated as inputs or will the parts and components of capital goods defined under Rule 2(a) treated as inputs?**



- The definition of 'Capital goods' covers parts, components and accessories of capital goods. If such parts or components are used in manufacture of final product, these will be eligible as inputs (Here the word mentioned is USED in manufacture, which means there is no finished product if such input is not used).
- If a manufacturer of automobile uses parts and components to manufacture an automobile, these parts and components will be eligible for CENVAT credit as 'input', even if these are covered in the definition of capital goods as per Rule 2(a).
- The definition of capital goods do not cover certain spares and accessories but they are the components, spares and accessories of capital goods as defined under rule 2(a). These will be eligible as 'inputs' as these are used 'in or in relation to manufacture'.

The following recent circular supports the above provision.



Circular No. 920/10/2010 to clarify the issue as to whether alumina balls/ceramic pebbles which are grinding media used in ball mills in the Ceramic Tile Industry should be treated as capital goods or inputs



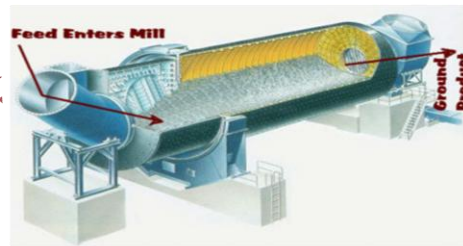
The making of Ceramic tiles



Alumina Balls



Ceramic pebbles



Alumina
Ceramic tiles



- ⇒ Alumina balls/ceramic pebbles are essential to run the ball mill in the ceramic tile factory and the ball mill cannot function without the grinding media.
- ⇒ Therefore, alumina balls/ceramic pebbles should be considered as component/part of the machines to be classified as capital goods for CENVAT credit purposes.



Circular No. 920/10/2010 to clarify the issue as to whether bolting cloth/screens/silicon cylinders which carry designs and which are fitted on the machines used for printing of design over the surface of the tiles should be treated as capital goods or inputs

How Printing can be done on the surface of tiles?



BOLTING CLOTH

How Printing can be done on the surface of tiles?

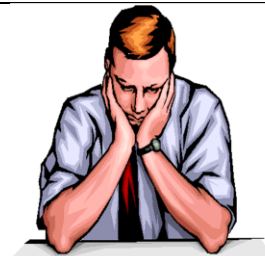


SCREEN PRINTING

How Printing can be done on the surface of tiles?



SILICON CYLINDERS



ISSUE RAISED??

Whether Bolting cloth/Screens/Silicon Cylinders are Inputs or Capital goods?



- ⇒ Bolting cloth/screens/silicon cylinders which carry designs and which are fitted on the machines used for printing of designs are essential for operating of the machines.
- ⇒ Therefore, these items would also be considered as capital goods for the purpose of CENVAT Credit Rules, being part/component of the machines.

(iv) In the previous definition there was a requirement that goods must be used in or in relation to manufacture of final products, whether directly or indirectly and whether contained in the final product or not. Is that requirement applicable in the new definition?

The said requirement has been removed and hence all goods used in the factory by the manufacturer of final product, except those specified in the negative list and goods having no relationship with whatsoever with the manufacture of final product, would qualify for treatment as "Inputs" - Departments Clarification No. 334/3/2011.

(v) What is the meaning of the phrase and when inputs are said to be used in or in relation to manufacture?

In the manufacture	In relation to the manufacture
The 'Input' is actually used in the manufacture of finished product, either directly or indirectly.	The 'Input' has been used during a process while manufacturing the product.
'Input' may be present in the final product in same or similar or identifiable form (or) may have undergone change during the process	'Input' need not form part of final product
'In the manufacture' is a specific and exhaustive term	'In relation to manufacture' is a broad expression which covers all inputs which have direct nexus with the manufacturing process.
Eg: Wood, Nails and paints are used 'In the manufacture' of table.	Eg: Sand paper for polishing is used 'In relation to the manufacture' of table.

(vi) The exclusion list in the definition reads "Any goods which have no relationship whatsoever with the manufacture of a final product". How the no relationship whatsoever with the manufacture of final product can be determined. Will the expression exclude the inputs used in or in relation to manufacture of final products from taking CENVAT credit?

The meaning can be understood from the analysis of definition which reads "Rule 2(k)(i) - All goods used in the factory by the manufacturer of the final product" and "Rule 2(K)(F) - Any goods which have no relationship whatsoever with the manufacture of a final product are excluded".

The expression must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in factory but having absolutely no relationship with the manufacture of final product is not allowed. - Departments Circular No. 943/04/2011.



Hence, Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to manufacturing business. Therefore, the credit of same is allowed - Example mentioned in the circular.

(vii) If inputs are used to generate electricity (or) steam, whether credit is available ?

Any goods used for generation of steam or electricity for captive use are eligible as inputs. However HSD, LDO and Petrol have been specifically excluded from the definition of inputs. So, if HSD, LDO and petrol are used for generation of steam or electricity for captive use, Credit not available.

The words "captive use" is not defined, but it means "For use within the factory of production or premises of output service provider". However, Captive use shall not include electricity or steam sold for a price to grid/others and used in residential premises/complex.

It has been held that CENVAT credit is not available in respect of fuel used for generation of electricity, which has been sold outside to sister units, vendors etc., - Maruti Suzuki Ltd. V. CCE (2009)

Electricity captively generated was cleared to State Electricity Board and simultaneously equal quantity was received from Board, as electricity generated in plant was fluctuating type. It was held that CENVAT credit of furnace oil used for captive plant is available. - Jindal Stainless V. CCE

(viii) If the inputs are not directly identifiable with the finished goods, will the credit be available?

Yes, in the definition the words "in relation to" connotes a wider meaning for inputs. Input need not be physically present in the final products nor it should be completely consumed in order to avail CENVAT credit. For, inputs used after manufacture of finished goods but before removal from the factory gate, the credit can be availed. - Union Carbide India v. CCE

"Inputs burnt up or consumed in manufacture process and not retaining identity in the end product will be eligible for CENVAT credit" - Eastern Electro Chemical Industries V. CCE

(ix) Bhajrang Decoratives and suppliers P. Ltd has supplied decoration items and appliances to Shadi Mubarak, wedding planners. Bhajrang decorative and suppliers P. Ltd are taxable and are required to pay service tax under the head 'Supply of tangible goods for use'. They purchased equipment and appliances for providing the service and took the excise portion on equipment and appliances as CENVAT credit. But the excise authorities denied this. Comment?

The CBE&C letter clarified that the machinery, equipment, appliance, vehicles, aircrafts, vessels etc. supplied during course of providing taxable service of 'Supply of tangible goods for use' is input for providing the taxable service. Hence excise duty/CVD paid on such machinery, equipment, appliance, vehicles, aircrafts, vessels etc. will be eligible for CENVAT credit as 'Input'.

(x) Rule 2(k)(E), the exclusion clause reads "Any goods, such as food items-----". As the word used is "SUCH AS", are the food articles consumed excluded or all articles excluded?



The use of the words 'Such as' shows that the application of this sub clause shall not be limited to food items. It covers all goods used in a guest house, residential colony, club or a recreation facility and clinical establishment.

But "such goods" are used

- ✓ Primarily (Which means indirect use not covered i.e. employee purchases and employer reimburses it)
- ✓ For personal use or consumption (Articles for official use are not covered)
- ✓ Of any employee (What if, the assessee makes employee as a service provider???)

(xi) Inputs are purchased for use in finished goods, but before using some of the input are destroyed (or) pilfered from store room.

The credit is not available, as it cannot be said that they are used in or in relation to manufacture. If the manufacturer has already taken the credit, then he has to reverse it back (i.e. cancel the credit).

The following table will clarify the issue.

Case	Whether CENVAT credit available
If inputs are issued for production and there is a process loss (or) handling loss	Credit is available as inputs are used in the manufacture of final product - Multimetals Ltd. v. CCE.
Note: Exact mathematical equation between raw material purchased and raw material found in finished product is not possible, and should not be looked for - UOI V. Indian aluminium Co. Ltd. (SC)	
Inputs used in trial production, which turned into scrap or waste	Credit available as inputs, are used in or in relation to manufacture.- Fertilizer corporation of India V. CCE
If shortage occurs during storage due to natural causes	credit will be available - CCE V. BOC India
If inputs are lost in fire before issue to production	CENVAT credit not available and should be reversed - Asian paints V. CCE
If inputs are stolen or loss in transit	Credit not available - CCE V. Royal containers. But if such loss in transit is due to natural causes then credit on inputs available - CCE V. Bhuwalka steel Industries (2010)

Recent cases on Inputs:



Whether welding electrodes used in repairs/maintenance of plant and machinery can be considered as 'input' as defined under rule 2(g) of the erstwhile CENVAT Credit Rules, 2002 [now rule 2(k) of the CENVAT Credit Rules, 2004]?

Ambuja Cements Eastern Ltd. v. CCE 2010 (Chhattisgarh)





Decision of High court:

- ✓ The definition of "input" occurring under rule 2(g) of the erstwhile CENVAT Credit Rules, 2002 [now rule 2(k) of the CENVAT Credit Rules, 2004] takes in its ambit all inputs, except the specifically excluded items, which have been employed in the manufacturing process, whether directly or indirectly and whether contained in the final product or not.
- ✓ Tribunal in case of Jaypee Rewa Cement v. CCE 200, it was held that welding electrode was not admissible for CENVAT credit. But now the high court overruled the decision.
- ✓ The High Court answered the substantial question of law in favour of the appellant-assessee and held that **welding electrodes used in repairs and maintenance of plant and machinery were inputs as defined under erstwhile rule 2(g) [now rule 2(k)] and thus, entitled for CENVAT credit.**

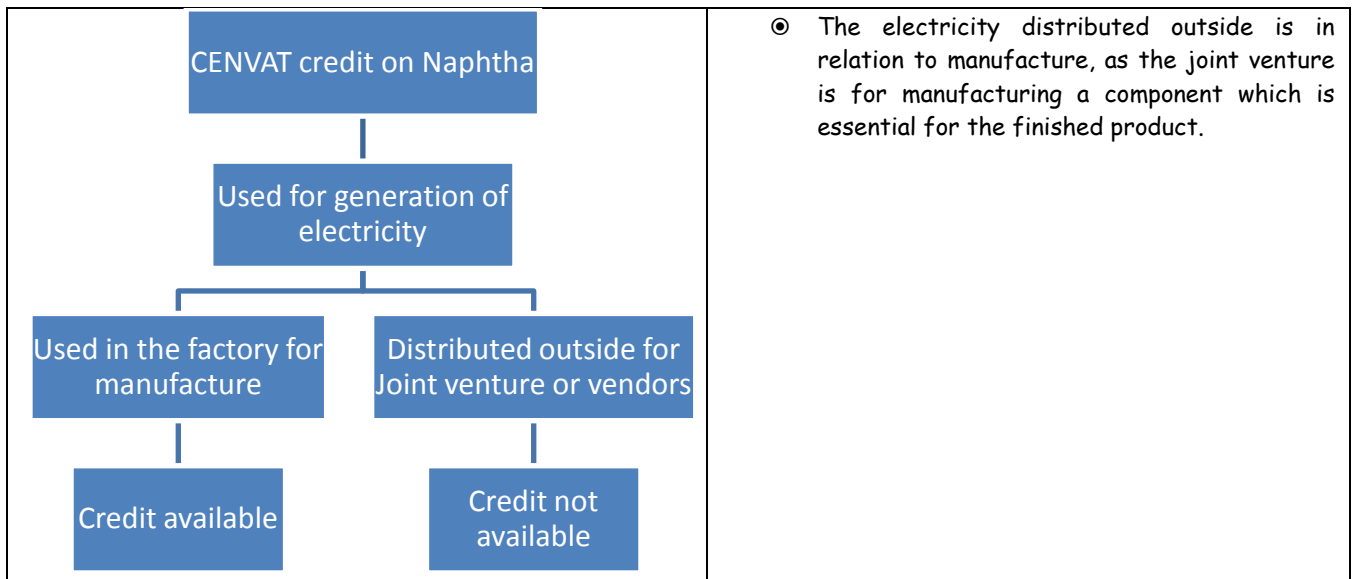


Whether an assessee would be entitled to claim CENVAT credit in cases where it sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution?

Maruti Suzuki Ltd. v CCE (2009) (SC)

electronic control units of the diesel engine Maruti Entered into JV for manufacture MARUTI SUZUKI	MARUTI SUZUKI sunnyside naphtha Credit availed Turbines for generation of electricity Joint ventures, vendors
<u>Departments Demand:</u>	<u>Assessee's contention:</u> ☉ The definition of Inputs as per Rule 2(k), uses the phrase "The goods must be used in or in relation to manufacture of final product".





The CENVAT scheme was not designed to grant windfall benefits by way of credit to inputs not used ultimately in or in relation to manufacture of the final products but are used in or in relation to the production of electricity which is not even excisable.

Intention of the Legislature (behind Rule 2(k) - Input) is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

- ⇒ The test laid down by judicial authority is whether the 'process and the use' are integrally connected.
- ⇒ when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input" used in that electricity generation is an "input used in the manufacture" of final product.
- ⇒ However, to the extent the excess electricity is cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale) the "process and the use test" fails. In such a case, the nexus between the process and the use gets disconnected.
- ⇒ Therefore, it was held that, to the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, etc. which is cleared for a price, would not be admissible for CENVAT credit as it would not fall within the definition of "input"



Whether CENVAT credit can be denied on the ground that the weight of the inputs recorded on receipt in the premises of the manufacturer of the final products shows a shortage as compared to the weight recorded in the relevant invoice?

CCE v. Bhuwarka Steel Industries Ltd. 2010 (Tri-LB)

Tribunal held that **each case had to be decided according to merit and no hard and fast rule can be laid down for dealing with different kinds of shortages. Decision to allow or not to allow credit under rule 3(1), in any particular case, will depend on various factors such as the following:-**

- (i) Whether the inputs/capital goods have been diverted en-route or the entire quantity with the packing intact has been received and put to the intended use at the recipient factory.
- (ii) Whether the impugned goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc.



- (iii) Whether the impugned goods comprise countable number of pieces or packages and whether all such packages and pieces have been received and accounted for at the receiving end.
- (iv) Whether the difference in weight in any particular case is on account of weighment on different scales at the despatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976.
- (v) Whether the recipient assessee has claimed compensation for the shortage of goods either from the supplier or from the transporter or the insurer of the cargo.

Tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms excluding, however, unreasonable and exorbitant claims. Similarly, minor variations arising due to weighment by different machines will also have to be ignored if such variations are within tolerance limits.



Rule 2(I) - "input service" (w.e.f 1.4.2011) means any service, -

- (i) Used by a provider of taxable service for providing an output service; or
- (ii) Used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

But excludes services,-

(A) Specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

- (a) Construction of a building or a civil structure or a part thereof; or
- (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) Specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

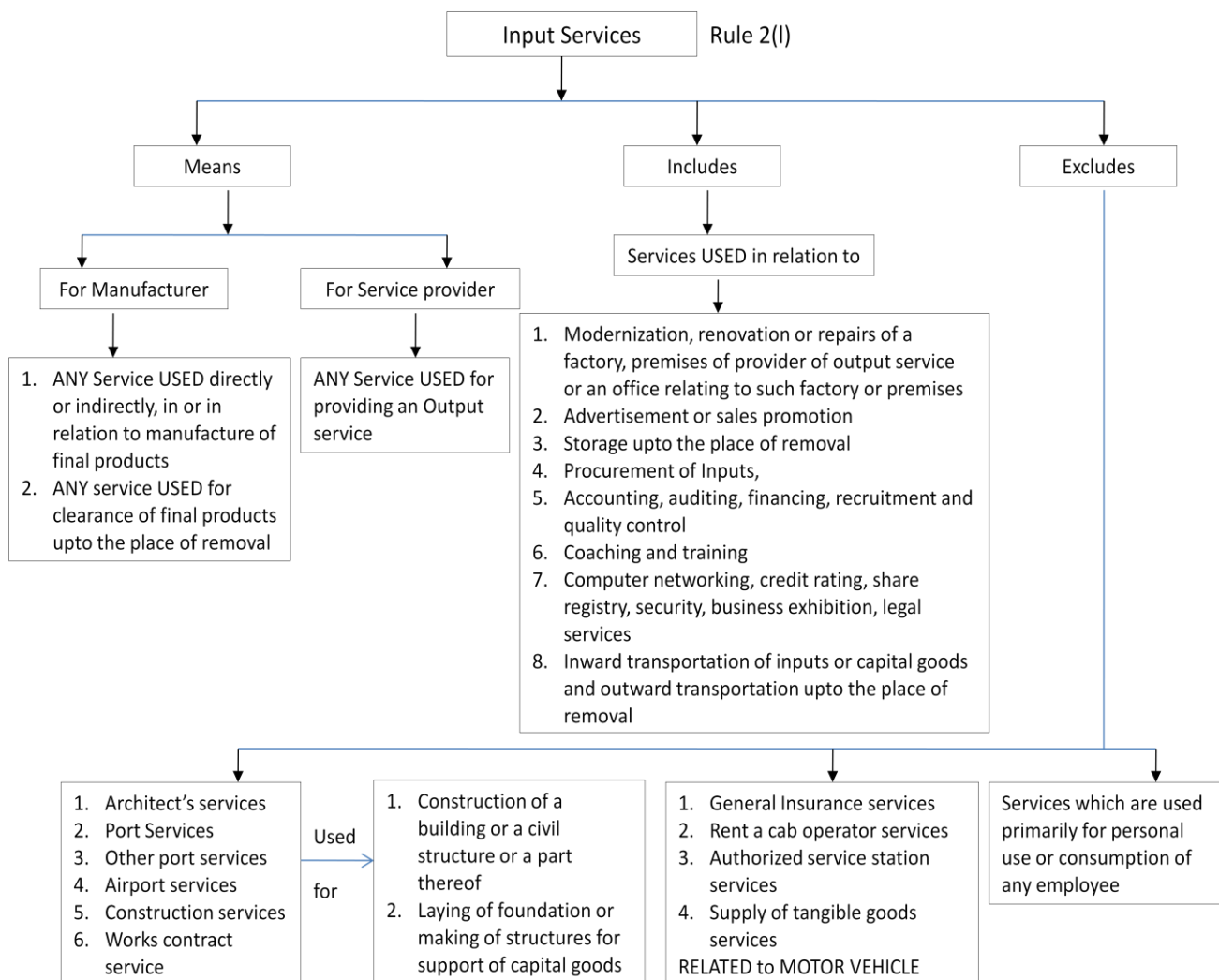
Services covered under Rule 2(I)(A):

Sec. 65(105)(p)	Architect's Services
Sec. 65(105)(zn)	Port Services
Sec. 65(105)(zzl)	Other Port services
Sec. 65(105)(zzm)	Airport Services
Sec. 65(105)(zzq)	Construction services in respect of commercial or industrial buildings or civil structures
Sec. 65(105)(zzzh)	Construction services in respect of residential complexes
Sec. 65(105)(zzzza)	Works contract service

Services covered under Rule 2(I)(B):

Sec. 65(105)(d)	General Insurance services
Sec. 65(105)(o)	Rent a cab scheme operator's services
Sec. 65(105)(zo)	Authorized service station's services
Sec. 65(105)(zzzzj)	Supply of tangible goods services





There are many cases regarding the definition of Input service as the department and Tribunal is taking a restricted view on the definition. So the definition has to be understood from the decisions of honourable court of law in the cases of **Coco cola (By Bombay high court)** and **ABB (By Larger bench of CESTAT)**. This is as follows:

- ✓ The word includes is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not restriction.

Five parts of the definition of "input service" are independent of each other -

- (a) Any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products
- (b) Any service used by manufacturer, whether directly or indirectly, in or in relation to clearance of final products upto the place of removal
- (c) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory (or premises in case of service provider)
- (d) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs.
- (e) Services used in relation to activities related to business and outward transportation upto the place of removal.

Both Bomabay high court (in case of Coco Cola) and large bench of Tribunal (in ABB) have held that each limb of the above decision is an independent benefit/concession. If an assessee can satisfy anyone of above, the credit of input service would be admissible even if the assessee does not satisfy the other limbs - Followed in **Semco Electrical V. CCE (2010)**





FAQ's on Input service:

- (i) The second part (i.e. Inclusive part) of the definition provided list of some services which reads "services used in relation to modernization, renovation or repairs". Are those services covered in the definition are input services or any service related to business is Input service?**

The inclusive part of the definition covers input services used 'in relation to' various activities. Scope of inclusive part of the definition of input service is further widened by use of the term 'in relation to'.

In a SC judgment, SC held that "In relation to" are words of comprehensiveness which might have both a direct significance or indirect significance depending on the context. They are not the words of restrictive content.

The activities listed are random without any logic or grouping or sequence. Input services relating to five M's (i.e. Men, Material, Machines, Money and Minutes) which are essential for manufacture or provision of service would be eligible as Input service unless specifically excluded.

- (ii) Ragavendra TVS are dealers in TVS sales and service in Madanapalli. They have paid service tax with respect to GTA service for inward transportation of new TVS bikes and spares. The said dealers availed credit of service tax paid for GTA service and utilized for payment of service tax on servicing of old TVS bikes. The department argued that there were no nexus with GTA service and servicing of bikes, as GTA service is w.r.to new and servicing is w.r.to old ones. As a consultant comment on this?**

The facts are similar to the case of CCE V. Shariff Motors, where assessee was dealer in two wheelers and was also providing service to old vehicles as authorized service station. It was held that the definition of input service is wide enough to cover input service availed by assessee.

Form the judgment it is clear that in case of input services which have only remote or no nexus with output services or manufacture of goods can get covered so long as these are related to activities of business.

- (iii) In the definition the word "Place of Removal" is mentioned, what is the place of removal? Is it applicable to output service provider?**

The concept of place of removal applicable only to manufacturer but not for service provider. 'Place of removal' is as defined under Sec. 4(3)(c) of Central Excise Act.

- (iv) In case of Inputs and capital goods, CENVAT credit is eligible to manufacturer only if these are received in the factory. Is there such requirement in case of Input service?**

In Case of manufacturer	In case of service provider
Input services need not be received in the factory of manufacturer for availing credit on such input services.	Inputs, Input services, capital goods need not be received in the premises of service provider for availing CENVAT credit
Note: Inputs, capital goods must be received in order to avail credit	



- (v) Tarang Interior decorators provided service to Yuvraj singh and billed 1,00,000 plus service tax. They utilized the services of a transport agency and paid freight which is not included in the said bill charged but has availed the credit with respect to freight paid. Department denied the avaiement of CENVAT credit on the ground that the freight was not included in the value of taxable service. Is department's contention correct?

The tribunal has held in many cases that valuation and CENVAT credit are independent of each other.

The question of denial of CENVAT credit does not arise whether a particular cost is included in the transaction value. - ABB case

Thus, if a cost is included in the assessable value, its CENVAT credit will be certainly eligible. However, even if it is not included, it will be still eligible if it is in relation to business of assessee.

- (vi) Rule 2(l)(A), the exclusion clause of the definition reads "-----except for the provision of one or more of the specified services". What are the specified services mean?

The services mentioned in the said clause are 'specified services'. If these services are used for construction of a building or a civil structure or part thereof, or laying of foundation or making of structures for support of capital goods, then credit w.r.to service tax paid on these services is not available.

- But the credit on these services is available, if these services are used for any of these 'Specified services'. For example, Architect service will be eligible as input service if used for port service or construction service or works contract service.
- And also if these services used for purposes other than construction of a building or a civil structure or part thereof or laying of foundation or making structures for support of capital goods (i.e. other purposes like, finishing services, repair, alteration or restoration), then credit on these input services is available.

Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services. - CBEC Circular No. 943/04/2011.

- (vii) Rule 2(l)(B), the exclusion clause of the definition reads "----- except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods". When the credit on motor vehicle is available as capital goods?

Motor vehicles shall be treated as capital goods, only if registered in the name of service providers providing the following services:

- a. Courier services
- b. Tour operator services
- c. Rent - a - cab scheme operator services
- d. Cargo handling agency services
- e. Goods Transport Agency services



- f. Outdoor caterer services
- g. Pandal or shamiana contractor

The analysis of this exclusion clause is as follows:

- If the services mentioned in the clause are used for motor vehicle not registered in the name of above service providers, the said services used do not qualify as input services and credit not available.
- If the services mentioned in the clause are used for motor vehicle registered in the name of above service providers, the said services used qualify as input services and credit shall be available.
- If the services mentioned in the clause are not used for motor vehicle but used for other purpose, the said services used qualify as input services and credit shall be available.

Services mentioned in this clause are:

- ✓ General Insurance services
- ✓ Rent a cab scheme operator's services
- ✓ Authorized service station's services
- ✓ Supply of tangible goods services

(viii) In case of services, the service recipient is liable to pay service tax (under reverse charge) e.g. Import of services. Whether the service tax paid in that case can be taken as CENVAT credit?

Yes, the service receiver is eligible to avail CENVAT credit even if he is liable to pay the same under relevant rules of reverse charge – Jindal steel and power V. CCE
Rule 3 of CENVAT credit rules has been amended vide Finance Act, 2011 with retrospective effect from 18-4-2006 providing that service tax paid under Section 66A (i.e. Import of services) of Finance Act, 1994 will be eligible as input service.

(ix) Is the credit available on services received before 1.4.2011 on which credit is not allowed w.e.f 1.4.2011 eg. Rent-a-cab service?

The credit shall be available if provision of service completed before 1.4.2011.

(x) Is the credit of Input services used for repairs or renovation of factory or office available?

Credit of input services used for repair or renovation of factory or office is allowed.
Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

(xi) From the combined analysis of the definition of Inputs as per Rule 2(k) and Input services as per Rule 2(l), it is clear that inputs/input services used for employees are not available as credit. Is this position true?

From the analysis of Rule 2(k), it is clear that all goods (Not only food items) used in a guest house, residential colony, club or a recreation facility and clinical establishment are excluded



from the purview of Inputs only if "such goods" are used Primarily for personal use or consumption of any employee.

From the analysis of Rule 2(l), it is clear that all services (Not only the mentioned services because the words used are 'such as') when used primarily for personal use or consumption of any employee are excluded from the purview of Input services.

The following Circular No. 943/04/2011 clarifies the position:

It is not that the credit of only specified goods and services listed in the definition of inputs and input services shall not be allowed. The list is only illustrative. The principle is that CENVAT credit is not allowed when any goods and services are used primarily for personal use or consumption of employees.

Some examples to support the above clarification:

- Outdoor catering for sales promotion would be eligible, even if some employees attend the lunch/dinner, since it is not primarily for personal use or consumption of employees.
- Mobile phones to employees mainly for business purposes (Black berry!!!) should be eligible even if incidentally used for personal purposes.
- Club membership fee of a director will be eligible as he is not an employee.

(xii) Is the credit of Business Auxiliary service (BAS) on account of sales commission now disallowed after the deletion of the expression "activities related to business"?

The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.

(xiii) Can the credit of Inputs or Input services used exclusively in trading be availed?

Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.

(xiv) What shall be the treatment of credit of Input and Input services used in trading before 1/4/2008?

Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in Rules.

(xv) If Invoice is of Rs. 110.3, but the recipient of service (who is going to avail CENVAT credit) pays only Rs. 95 in full settlement of bill, how much credit can he avail?

Rs. 95 can be taken as price inclusive of service tax and the service tax can be calculated by back calculations.

It will be advisable to obtain credit note from person who had provided service, specifically showing service tax separately.





Rule 2(a) - "Capital goods" means

(A) The following goods, namely:

(i) all goods falling under chapter 82, 84, 85, 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) Pollution control equipment;

(iii) Components, spares and accessories of the goods specified at (i) and (ii);

(iv) Moulds and dies, jigs and fixtures;

(v) refractories and refractory materials

(vi) Tubes, pipes and fitting thereof; and

(vii) Storage tank,

Used-

(1) In the factory of manufacturer of final products but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the final product for generation of electricity for captive use within the factory; or **(inserted w.e.f. 1.4.2011)**

(2) For providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zpz), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

(C) Dumpers or tippers, falling under chapter 87 of the first schedule to the central excise tariff act, 1985, registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) (site formation and clearance, excavation and earthmoving and demolition) and (zzzy) (mining of mineral, oil or gas) of clause (105) of section 65 of the said finance act (Notification. 25/2010)

(D) Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C). **(Notification. 29/2010)**

Applicable Amendment:

w.e.f 22-6-2010, Dumpers or tippers falling under chapter 87 are eligible as capital goods to the following service providers.

(a) Service of site formation and clearance, excavation and earth moving and demolition

(b) Service of mining of mineral, oil or gas

Chapter 82: Tools, implements, spoons & forks of bare metal and parts thereof.

Chapter 84: Machinery and mechanical appliances and their parts.

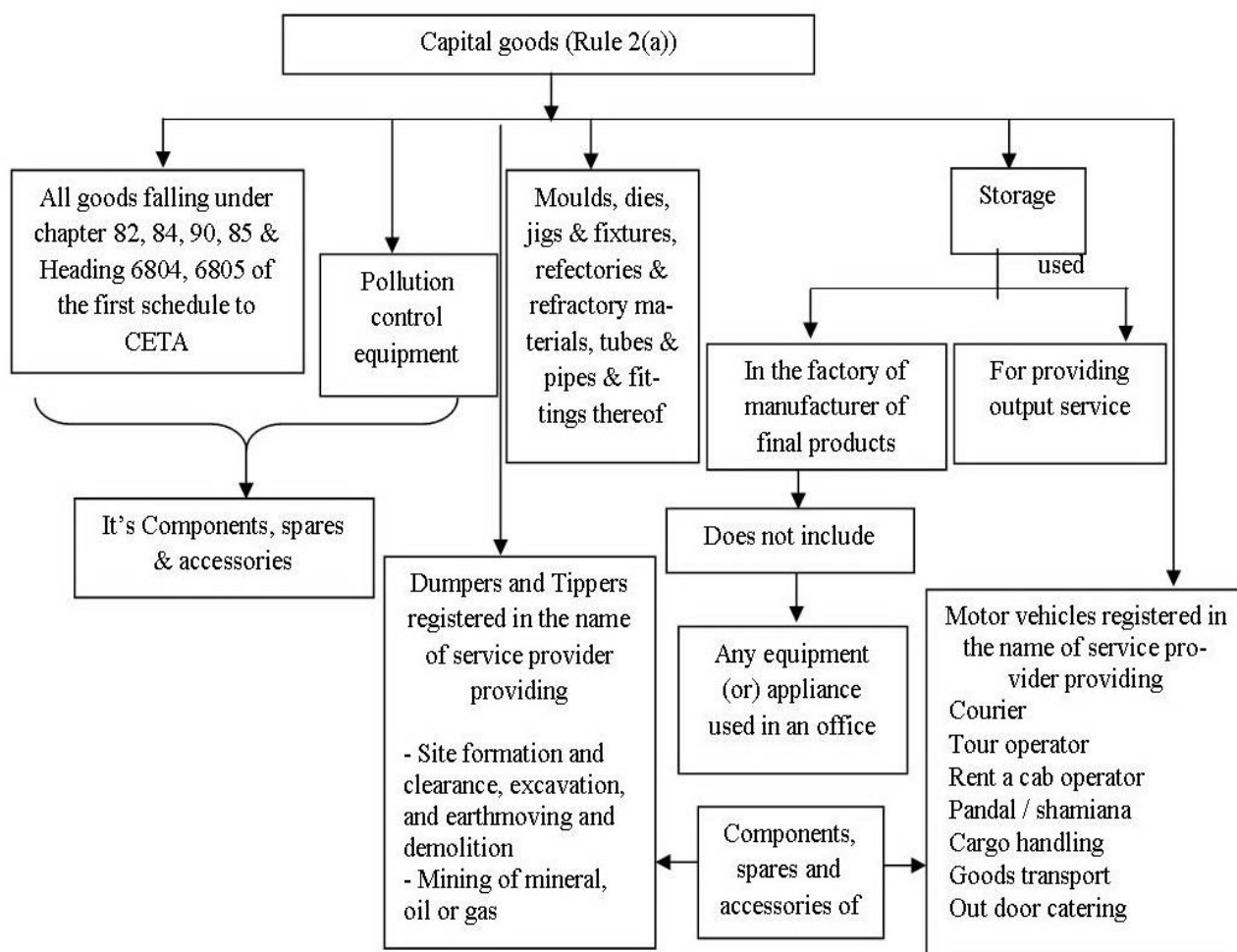
Chapter 85: Electricals and electronic machinery and equipment.

Chapter 90: Optical, photographic & surgical equipments.

Heading 6804: Grinding wheels

Heading 6805: Natural (or) artificial abrasive powder on Base of textile material





Note:

Depreciation on capital goods should not be availed on the excise duty portion of value of capital goods. I.e. the cost of capital goods in balance sheet should exclude excise duty portion, then only credit shall be available, otherwise the manufacturer will enjoy double benefit. First, credit of excise duty and second depreciation on excise portion.



FAQ's on capital goods.

- (i) Air - Conditions, refrigerating equipment and computers are used in the factory. Will it be considered as capital goods? Will the credit be available?

Ans: Yes; the credit is available provided they are used in the factory (not in office) of the manufacturer of final product.

Inkjet printer has been used to print the date of manufacture and sale price on bottles. As it is mandatory as per law, the printing of price on the bottle of the beverage is a process of manufacture and is treated as capital goods which are eligible for CENVAT credit.

-- Surat Beverage Pvt. Ltd. v. CCE

- (ii) In order to qualify as capital goods for availing credit,

- (i) The goods must be used for producing the final product



- (ii) Used in the process of any goods for the manufacture of final product
- (iii) Used for bringing about any change in any substance for the manufacture of final product
- (iv) None of the above

Ans: (d) None of the above, the only requirement is that the said goods should be used in the factory of manufacturer of final product. -- CCE v. Jawahar Mills Ltd.

- (iii) If inputs are used for the purpose of capital goods and in turn if capital goods are used for finished goods, then credit in respect of inputs is available. Whether credit for inputs used in immovable property (i.e. construction of building) is available. Is there any exception.

Ans: The materials used for constructing foundation for machinery does not qualify as inputs because

- ❖ The foundation made of cement, being immovable property is not capital goods and
- ❖ The cement was not used directly (or) indirectly in the manufacture of final product.

-- UOI v. Hindustan Zinc Ltd.

The exception is storage tank.

As storage tank is specifically mentioned as capital goods, the materials used for constructing storage tank are considered as inputs and credit shall be available.

- (iv) Whether the credit with respect to capital goods obtained on hire purchase/ lease/ loan is available?

Yes. But it is advisable that the invoice issued by manufacturer of capital goods shows name of manufacturer as consignee, though the invoice of manufacturer will be in name of the financing company.

- (v) Whether the credit on accessories eligible as capital goods for CENVAT purposes?

Yes, accessories are eligible as capital goods.

Accessory may or may not be required for essential working of main unit. Accessory is an object used for convenience and effectiveness of main unit. It may not be used in the particular machine and is capable of being used as common object with number of machines. In this case, it was held that plastic crates for material handling within the factory are eligible as accessory of capital goods and hence eligible for CENVAT credit – Banco Products V. CCE (2009)

- (vi) Whether Ownership of capital goods is essential to avail CENVAT credit on capital goods?

No, The CENVAT credit rules, 2004 does not state that capital goods should be 'Purchased'. It has stated that it should be 'Used in the factory' or for provision of output services.

Therefore ownership of capital goods is not required for the purpose of CENVAT credit on capital goods, also laid down in the case of Gujrat Alkalies V. CCE

- (vii) Does the spares for rope ways used for bringing crushed lime stone from mines to the factory are capital goods and does the credit available?

Ans: Yes, as laid down in the case of Birla Corporation Ltd., v. CCE.



- (viii) **CENVAT credit on capital goods is available only when mines are captive mines i.e. they constitute one integrated unit with main cement factory.** Credit of duty on capital goods will not be available if the mine supplies to various cement factories of different assumes.
---Vikram Cement v. CCE.



Can the CENVAT credit of duty paid on inputs and capital goods used in mines be availed?

Madras Cements Ltd. v. CCE 2010 (S.C.)

The Apex Court decided the issue with regard to the eligibility of CENVAT credit on inputs and capital goods used in mines as follows:-

(i) CENVAT credit on inputs used in mines

The Supreme Court held that the issue as to availability of CENVAT credit on inputs (explosives, lubricating oils etc.) was squarely covered by the case of Vikram Cement v. CCE 2006 (S.C.). Therefore, the credit on inputs is allowed.

(ii) CENVAT credit on capital goods used in mines

(a) If the mines are captive mines

If the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, CENVAT credit on capital goods will be available to the assessee.

(b) If the mines are not captive mines

If the mines are not captive mines but they supply goods to various other cement companies of different assessees, and it is found that the said goods were being used in the lime stone mines outside the factory of the assessee, CENVAT credit on capital goods used in such mines will not be available to the concerned assessee.



Whether the Steel plates and M.S. channels used in the fabrication of chimney, which is an integral part of the diesel generating set (Pollution Control equipment), are treated as capital goods? Whether the credit available on the said goods? **Rajasthan spinning & weaving mills Ltd. 2010 (s.c.)**

Decision of the SC:

- ✓ Applying the "user test" on the facts in hand, the SC held that the steel plates and M.S. channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 2(a) of CENVAT Credit Rules, 2004.
- ✓ Steel plates and M.S. channels used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases.
- ✓ Therefore, any equipment used for the said purpose has to be treated as an accessory of diesel generating set
- ✓ Therefore, the assessee was entitled to avail of CENVAT credit in respect of the subject items viz. steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as **capital goods** in terms Rule 2(a) of CENVAT Credit Rules, 2004





Availability of CENVAT credit on inputs used in the manufacture of capital goods.
Board Circular No. 267/11/2010-CX, dated 8-7-2010

Attention is drawn to the following judgments of the CESTAT:

1. **Vandana Global Ltd. v. CCE, Raipur (2010) (CESTAT)**
2. **Vikram Cement v. CCE, Indore (2009) (CESTAT)**

Larger Bench in the case of **Vandana Global Ltd. v. CCE**, has ruled that goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated as either inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the CENVAT Credit Rules.

It has also been stated by Tribunal that amendment to **Explanation 2 to Rule 2(k) of CENVAT Credit Rules, 2004 inserted vide Notification No. 16/2009**, is clarificatory in nature and has **retrospective effect**.

Tribunal in the case of **Vikram Cement v. CCE**, held that credit on welding electrodes used for repair and maintenance, is not available as input and also held by the Apex Court that the definition of capital goods is not inclusive and only the items covered under the definition and used in the factory of the manufacturer can be treated as capital goods.

It thus follows from the above judgments that 'inputs', they have to be covered under the definition of 'input' under the CENVAT Credit Rules, 2004 and **used in or integrally connected with the process of actual manufacture of the final product for admissibility of CENVAT credit**.

Conclusion: Thus credit shall not be admissible on inputs used for repair and maintenance of capital goods.

What are the duties which can be taken as credit?

Rule 3(1)

- Basic excise duty (except in cases where excise duty @ 1% paid under Notification No. 1/2011)
- National calamity and contingent duty
- Education cess on excise duty (except in cases where excise duty @ 1% paid under Notification No. 1/2011)
- Secondary and higher education cess on excise duty (except in cases where excise duty @ 1% paid under Notification No. 1/2011)
- Service tax on input services
- Education cess on service tax
- Secondary and higher education cess on service tax.
- Additional excise duty paid under Section 85 of Finance Act, 2005. This duty is payable w.e.f 1-3-2005 on pan masala and certain tobacco products. (This credit can be utilised only for payment of this duty)
- Additional duty of excise leviable u/s 3 of additional duties of excise (Textile and textile articles) Act, 1978 and additional duties of excise (Goods of Special importance) Act, 1957.
- Additional duties of customs u/s 3 to counter balance duties of excise. (Known as counter veiling duty (CVD)). In case of ships, boats and other structures for breaking up falling under 8909 00 00, credit of CVD will be allowed only to the extent of 85% w.e.f. 1.3.2011



- Additional duties of customs u/s 3(5) to counter balance the sales tax, VAT and other local taxes. (This credit not available to service providers)
- Excise duty paid on capital goods in terms of Notification No. 22/2003, at the time of debonding of EOU.

Notification No. 1/2011 – CE

As per this Notification about 130 items are chargeable to Excise duty @ 1% ad valorem.

The limitations as per the CENVAT credit rules are as follows:

- ✓ In respect of manufacture of these goods, CENVAT credit of duty paid on Inputs and Input services is not available.
- ✓ As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of goods under Notification No. 1/2011 – **Circular No. 943/04/2011**
- ✓ The buyer of such goods (for which the benefit of exemption under Notification No. 1/2011 is availed), cannot avail the CENVAT credit w.r.to duty paid by him. – **Notification No. 3/2011**
- ✓ CENVAT credit cannot be utilized for payment of such duty on such goods (i.e. for payment of 1%, CENVAT credit cannot be used and should be paid by cash) – **Notification No. 3/2011**

Restriction on Utilisation:

- ⇒ CENVAT credit cannot be utilized for payment of Clean energy cess, which is payable under section 83 of Finance Act, 2010. – **Notification No. 26/2010**

An assessee has paid duty on goods which are unconditionally exempted and passed the burden to the buyer. The buyer availed CENVAT credit on the said amount but Excise officer denied the avaiement. Is he correct?

It has been clarified that if assessee still pays duty on goods which are unconditionally exempted, the amount paid is not duty. Hence the buyer will not be eligible for CENVAT credit of such amount. Further, the person paying excise duty will not be eligible for CENVAT credit of duty paid on inputs. Further, the assessee is required to deposit the duty charged with central government in view of section 11D of CE Act – **CBEC&C circular No. 940/01/2011**.



FAQ

FAQ 's on Removal of Inputs, Capital goods:

1. When the inputs or Capital goods are said to be removed as such?

In case when inputs or capital goods are sold or transferred and also,
As per Rule 3(5B), when the inputs or capital goods on which CENVAT credit availed

- (i) Written off **fully or partially** in the books of accounts or
- (ii) Where any provision to write off **fully or partially** has been made in the books of accounts

In all the above cases, the manufacturer/Service provider is required to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods. – **Notification No. 3/2011**



2. In case any inputs are removed as such outside the factory for providing free warranty for final products, should the CENVAT credit availed in respect of such inputs be reversed?

Rule 3(5) provides that when inputs/ 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 and,

As per Notification No. 3/2011, such payment **shall not be required** to be made where any inputs are removed outside the factory for providing **free warranty** for final products.



Bottles are purchased and CENVAT credit availed. The Board in its instruction vide letter F.No. 261/ID/1/75-CX8 dated 17.09.1975 has stated that the tolerance of 0.5% is allowed on account of breakage of bottles due to handling in the course of movements from the manufacturing area to bonded store rooms and breakages during storage and clearance there-from. Will this provision be applicable in case of PET bottles also? - **Circular No. 930/20/2010.**

- ✓ As per the provisions of Rule 21 of Central Excise Rules, 2002, remission of duty before removal can be claimed on any goods lost or destroyed by natural causes or unavoidable accident, claimed by manufacturer to be unfit for consumption or marketing.
- ✓ The said remission is granted subject to the condition of reversal of CENVAT credit taken on inputs used in the final product.
- ✓ Rule 3(5C) was also inserted in CENVAT Credit Rules, 2004, to specifically provide for the same.
- ✓ Further, as per Rule 3(5B) of CENVAT Credit Rules, 2004, if the value of any input is written off, the CENVAT availed on the same is required to be reversed.
- ✓ Therefore, if the final product (i.e bottled beverage) is broken/ destroyed then remission can be claimed and if the bottle (input) is written off by the assessee as destroyed, the same is required to be dealt with as per the provisions of Rule 3(5B) of CENVAT Credit Rules, 2004

When the credit can be availed on inputs and capital goods. Whether immediately on receipt (or) on usage? Whether full credit is available (or) only part is available. Are there any restrictions?

Rule 4 Is the answer

	When availed	Quantum of credit
Input	Immediately after receiving into factory / premises	100% credit can be availed
Input service	Only after payment of bill	100% credit can be availed
	Part payment of bill	Credit to the extent of part
	<u>Advance payment</u> At the time of payment No need to wait till receipt of service	



Capital goods	Immediately on receipt into Factory	Upto 50% in the first financial year Balance in subsequent years Condition: For availing balance the capital goods must be in possession of manufacturer
----------------------	-------------------------------------	--

Note: In case of consumables like spare parts, components, moulds and dies, refractory materials and grinding wheels, the balance credit can be availed in subsequent year even if they are not in possession and use.

With effect from 01.04.2011, the aforesaid restriction of availing only 50% credit in the same financial year has been extended to the capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory. - **Notification No. 3/2011**



Whether CENVAT credit of the service tax paid can be claimed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to some reasons?

CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly. - Circular No. 122/03/2010

What are "Exempted goods" and "Exempted services"?

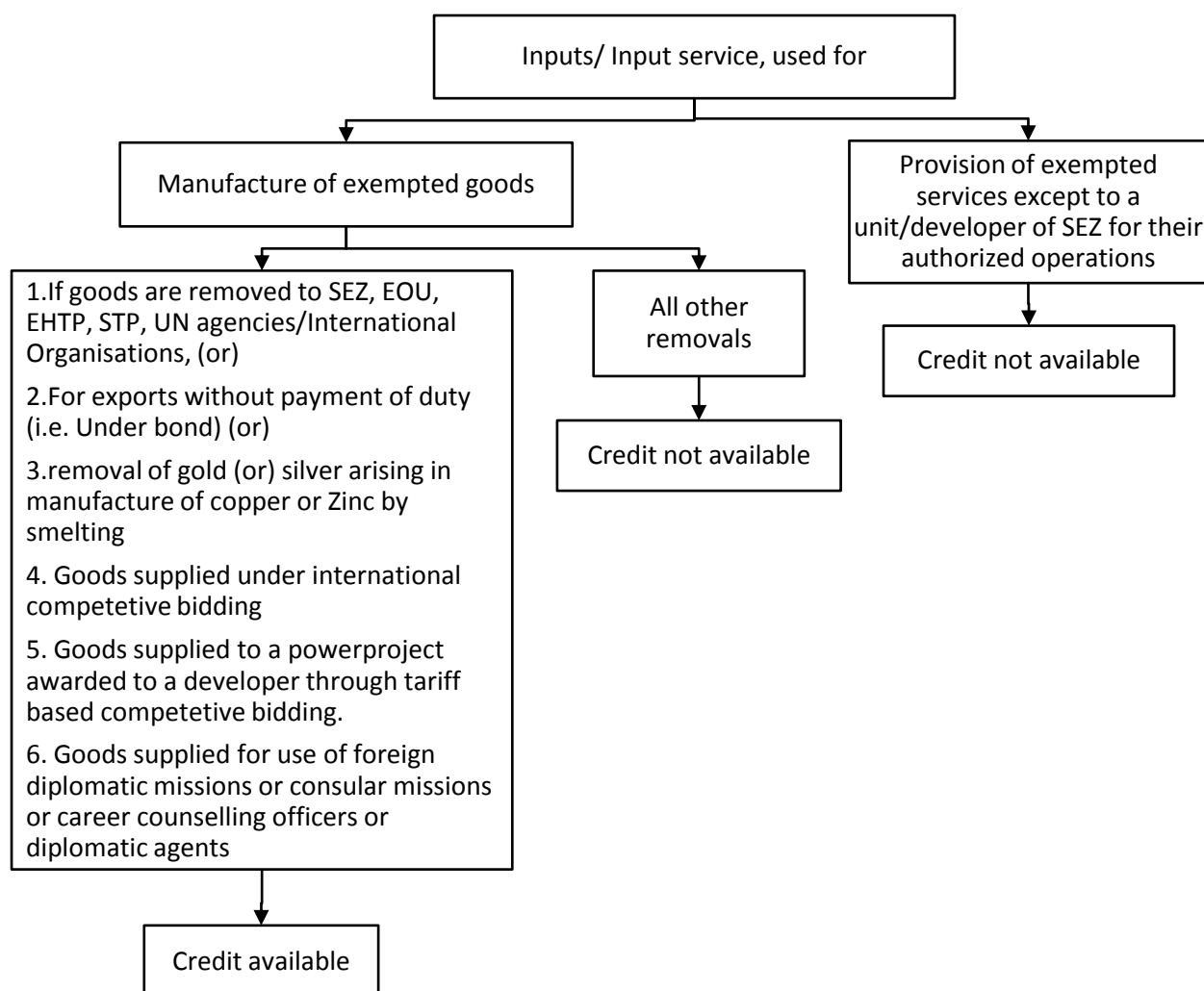
Exempted goods means excisable goods which are exempt from the whole of duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and also includes goods in respect of which the benefit of an exemption under Notification No. 1/2011 is availed. - **Notification No. 3/2011**

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 and also includes taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken. Further, it has been clarified that **"exempted services" includes trading**. - **Notification No. 3/2011**



If a manufacturer uses inputs / input services only for manufacture of exempted finished goods. Will the credit be available? (W.e.f 1/3/2011)

Rule 6



Rule 14 → Recovery of CENVAT credit wrongly taken or erroneously refunded.

Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

In light of clear and unambiguous provisions of rule 14 of the CENVAT Credit Rules, 2004, the interest shall be recoverable when credit has been wrongly "taken", even if it has not been utilized. - **Circular No. 897/17/2009-CX**

It is held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances, such credit becomes recoverable along with interest. - **UOI v. Ind-Swift Laboratories Ltd. 2011(SC)**



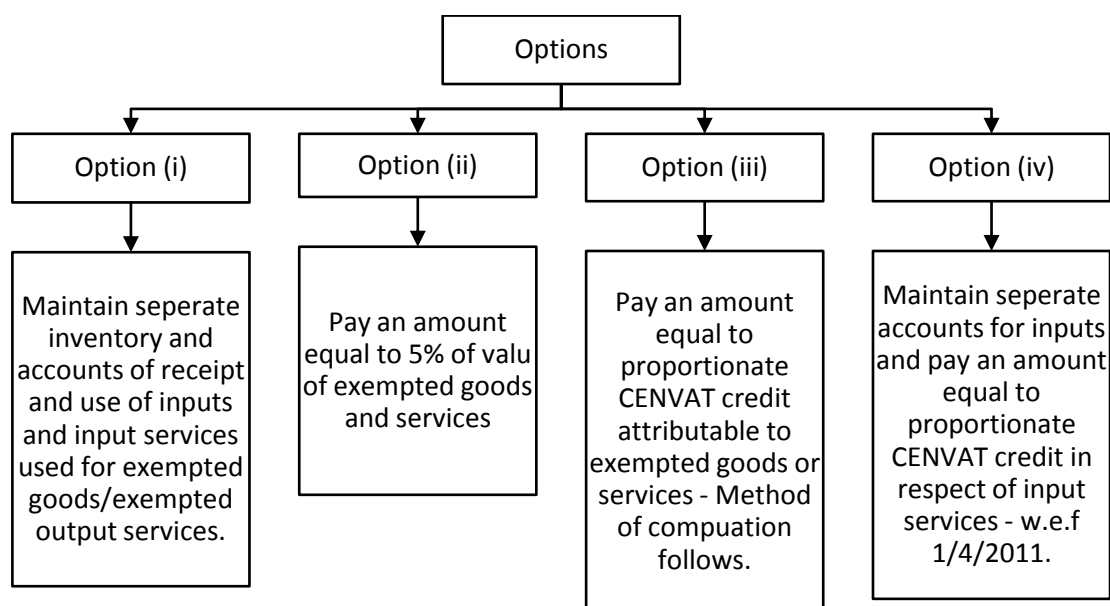
If a manufacturer uses common inputs for BOTH EXEMPTED AND DUTIABLE GOODS (AND) services, is the treatment same as previous (or) any other treatment in these?

The provisions are contained in Rule 6 and sub rules of Rule 6

Rule 6(1) - The CENVAT credit shall not be allowed on such quantity of -

- ⇒ INPUT USED - IN or IN RELATION to manufacture of Exempted goods or FOR provision of Exempted services
- ⇒ INPUT SERVICE USED - IN or IN RELATION to manufacture of Exempted goods or FOR provision of Exempted services

Rule 6(2)/(3)/(3A) - 4 options are available if Inputs/Input services commonly USED for both Exempted goods/ services and Dutiable goods/ services.



Option (i) - SEPARATE INVENTORY and ACCOUNTS should be maintained for INPUTS and INPUT services USED in respect of DUTIABLE goods and services, EXEMPTED goods and services.

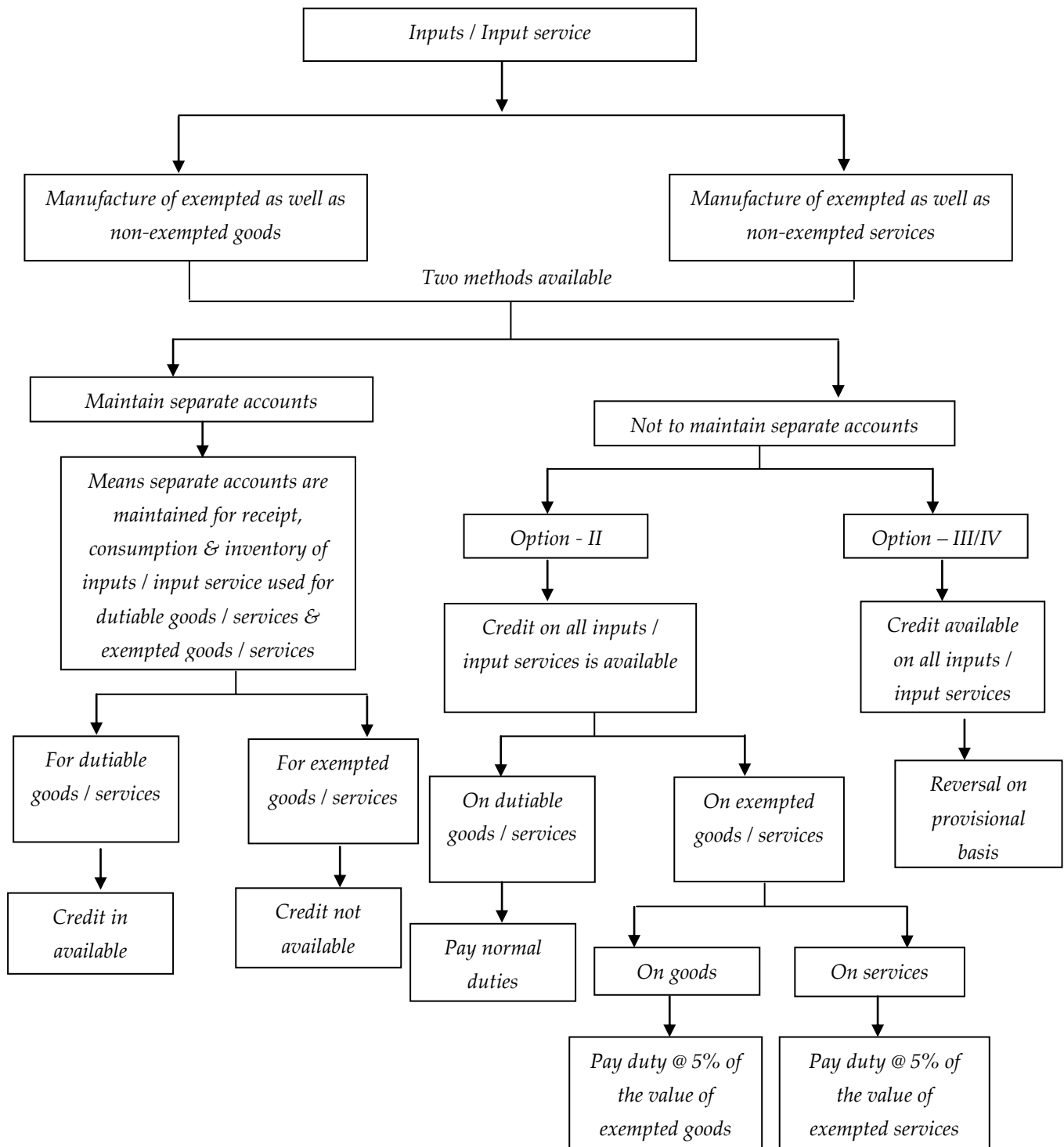
RECORDS for

Receipt, consumption and inventory of INPUTS used -	Receipt and use of INPUT SERVICES
(i) in or in relation to the manufacture of exempted goods	(i) in or in relation to the manufacture of exempted goods
(ii) In or in relation to the manufacture of dutiable goods	(ii) In or in relation to the manufacture of dutiable goods
(iii) For provision of exempted services	(iii) For provision of exempted services
(iv) For provision of Dutiable services	(iv) For provision of Dutiable services
CENVAT credit on Inputs under clause (ii) and (iv) available.	CENVAT credit on Input services under clause (ii) and (iv) available.

Option (ii) - If the manufacturer/service provider opts not to maintain such separate accounts of inputs and input services, he has an option to pay an amount equal to 5% of the value of Exempted goods (In case of manufacturer) and 5% of the value of Exempted services (In case of service provider). EC and SHEC not payable on such 5% as it is amount and not duty.

Some goods on which 1% ED is payable and which are known as Exempted goods, in that case it shall be reduced from the amount payable.





The manufacturer of goods/the provider of output service have an option to pay the following amount:

Particulars	Amount (Rs.)
5% of value of the exempted goods and/or exempted services	XXX
Less: Duty of excise, if any, paid on the exempted goods	(XX)
Amount payable under rule 6(3)(i)	XXX

5% of the exempted value of the service to be paid in case of exempted services that are partially taxed with no facility of credits.



However, if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 5% of the value so exempted.

For example, if the abatement on certain service is 60%, the amount required to be paid shall be 3% (5% of 60) of the full value of the exempted service.

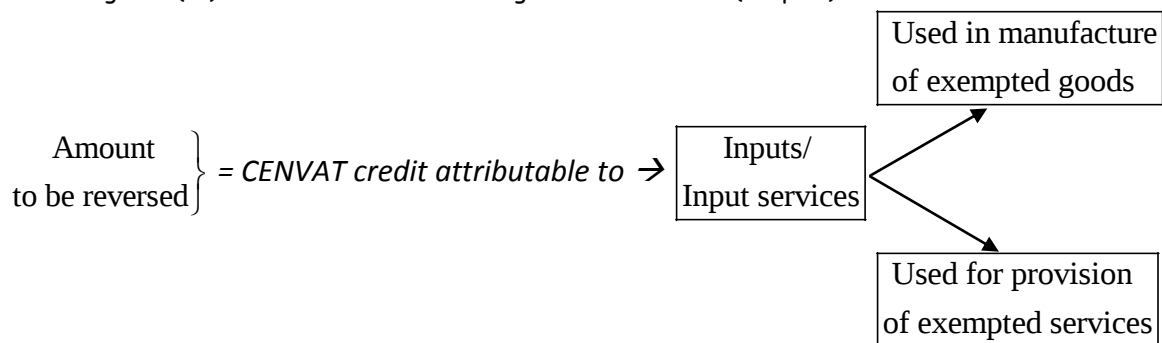
Option (iii) - If assessee intends to pay amount on proportional basis, the amount is to be calculated as per the prescribed procedure and should inform the avaiement of such option to superintendent. Once option exercised cannot be changed for the financial year for which option is exercised.

While exercising this option, the manufacturer of goods or 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 manufacturer of goods or provider of output service;
- (ii) Date from which the option under this clause is exercised or proposed to be exercised;
- (iii) Description of dutiable goods or taxable services;
- (iv) Description of exempted goods or exempted services;
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

Option Iii in detail

Credit is available on all inputs / input services irrespective of whether it is used for exempted (or) dutiable goods (or) services. But the following shall be reversed (i.e. paid)



How to calculate the above "Amount to be reversed"

- Assessee should first take entire CENVAT credit of inputs and input services used in exempted as well as taxable final products and services.
- At the end of the month, assessee should calculate CENVAT credit attributable to EXEMPTED GOODS and EXEMPTED SERVICES on PROVISIONAL basis (For this purpose previous year ratios of Inputs/Input services used in Dutiable and Exempted Goods/Services can be taken)
- At the end of the year, assessee should calculate the ratios on actual basis and make fresh calculations and pay difference if any before 30th June. If it is found that he had paid excess amount based on provisional ratio, he can adjust the difference himself by taking credit.

Step 1: Computation of provisional amount - It shall be reversed

Step 2: Computation of actual amount - only for computation

Step 3: Payment of differential amount



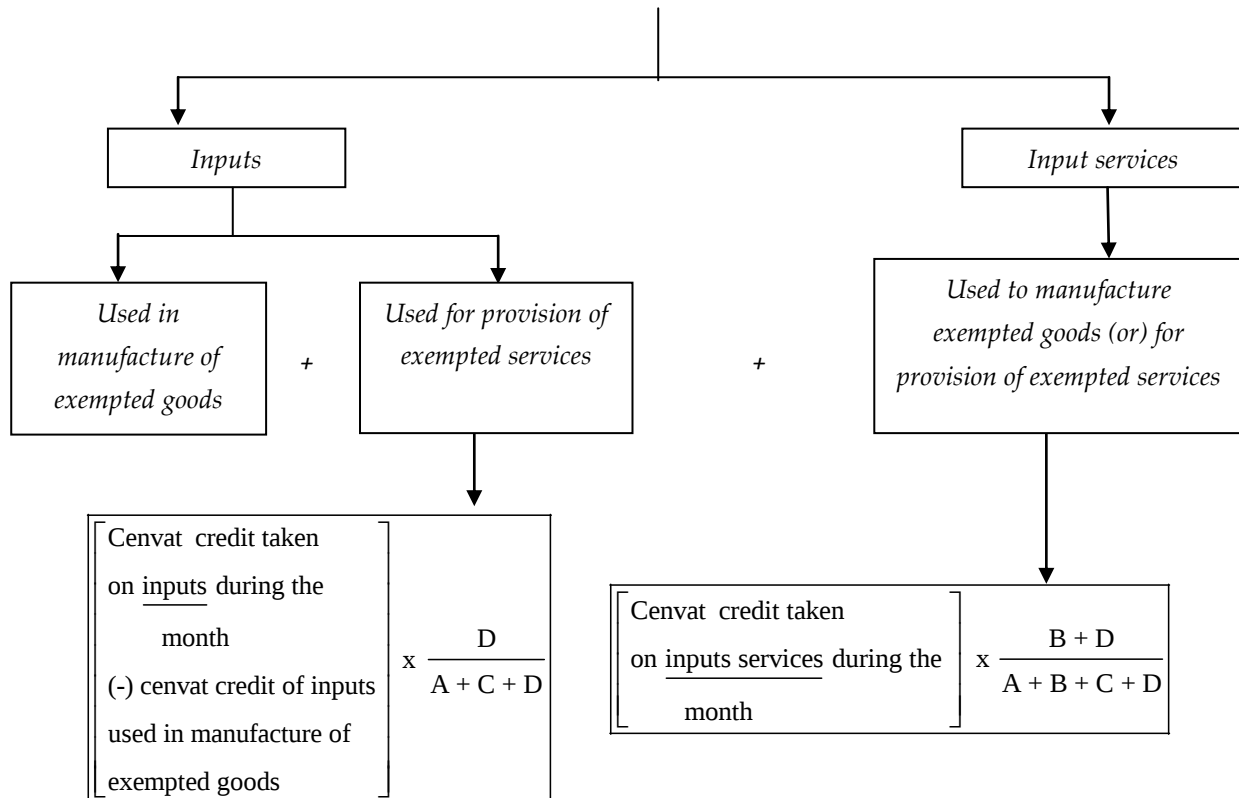
Step 1: *Computation of Provisional Amount*

The amount equivalent to CENVAT credit attributable to **inputs used in or in relation to manufacture of exempted goods** has to be arrived on actual basis (if possible) or input-output ratio or on some reasonable technical estimate basis (A certificate from Cost/chartered accountant has to be obtained).

The amount of CENVAT credit attributable to **inputs used for provision of exempted services** is to be calculated as follows:

Amount to be reversed for EVERY MONTH shall be

- Amount of CENVAT credit attributable to



Where

- (A) → Value of dutiable goods manufactured & removed during the preceding FY.
- (B) → Value of exempted goods manufactured & removed during the preceding FY.
- (C) → Value of taxable services provided during the preceding FY.
- (D) → Value of exempted services provided during the preceding FY.



FAQ's on Rule 6:

1. How the CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods during the month is available?

This has to be done on the basis of actual (if possible) or input-output ratio or on some reasonable technical estimate basis.

2. What is the meaning of "Value" for the above purpose?

- In case of Services, the value shall have meaning as assigned to it under sec. 67 of Finance Act, 1994 read with rules made there under; In case of Goods, the value determined under Sec. 3,4, 4A of the Excise Act, 1944 read with rules made there under.
- In case of services covered under composition scheme, value = $\frac{\text{Service Tax calculated under Composition scheme}}{10.3\%}$ (i.e. The value shall be the value on which the rate of service tax when applied for calculation of service tax results in the same amount of tax as calculated under the option availed)
- In case of trading, the value shall be difference between sale price and the cost of goods sold or 10% of cost of goods sold whichever is higher.

Explanation to above chart:

1. Inputs may be used for 4 purposes - Dutiable FG, Exempted FG, Dutiable Services, Exempted services.
2. CENVAT credit on Inputs used for Exempted FG and Exempted Services not available. So, it must be reversed (i.e. Paid)
3. CENVAT credit on inputs used for Exempted FG can be arrived using Input-Output ratio or some technical estimate
4. The balance (i.e. after arriving at step 3) CENVAT credit on inputs must be used for Dutiable FG, Dutiable services and Exempted services. (A+C+D)
5. Now the proportion of Exempted services (D) to Dutiable FG, Dutiable services and Exempted services (A+C+D) has to be arrived based on previous year information
6. Step 4 X Step 5 = CENVAT credit on INPUTS used FOR EXEMPTED SERVICES
7. Continue the procedure for Input services USED for EXEMPTED GOODS and EXEMPTED SERVICES, only an exception that both must be calculated on proportionate basis as Input services - Output ratio cannot be arrived.



Where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as above, due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year. What is the treatment of CENVAT credit in such case?

The manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the **whole year** as prescribed in the following step and pay the amount so calculated on or before 30th June of the succeeding financial year.

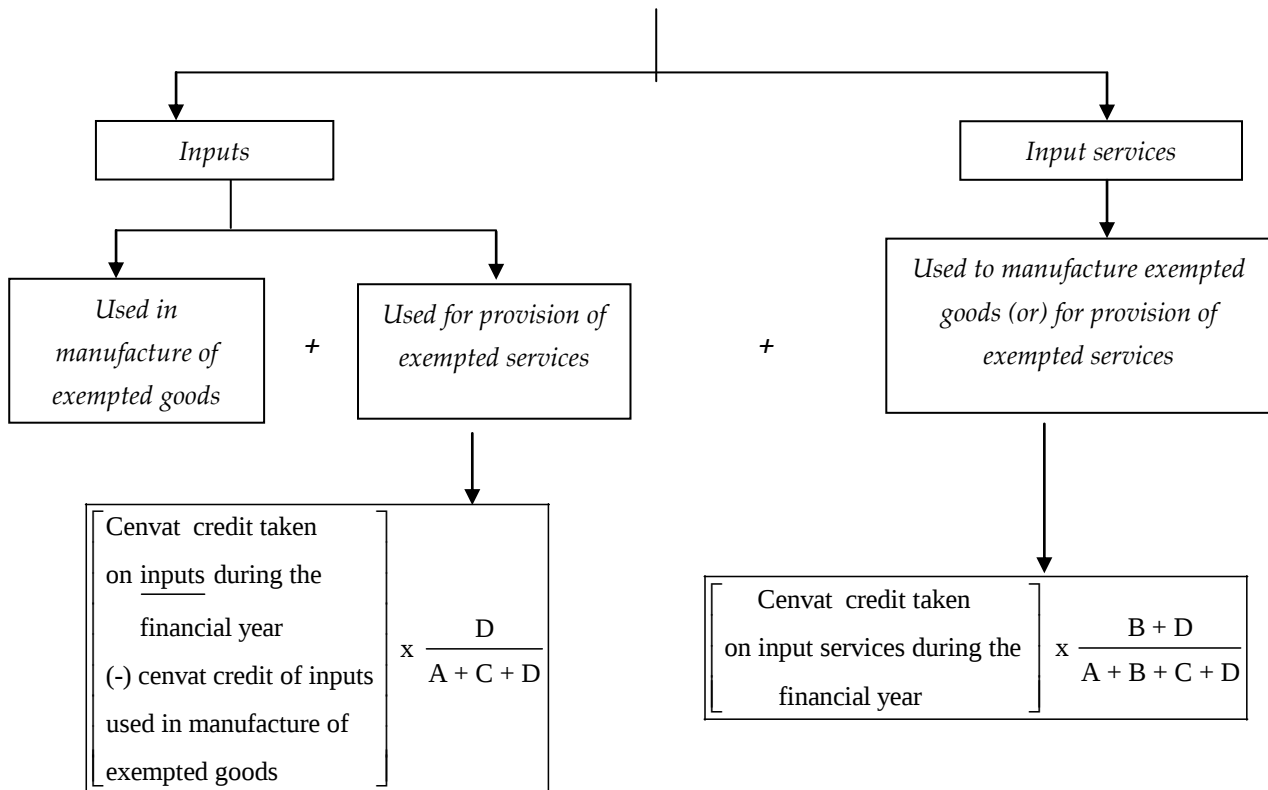
Where the amount determined as above is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest @ 24% p.a from the due date till the date of payment.



Step 2: *Computation of Actual Amount*

Amount to be reversed for WHOLE YEAR shall be

- Amount of CENVAT credit attributable to



Where

- (A) → Value of dutiable goods manufactured & removed during the financial year.
- (B) → Value of exempted goods manufactured & removed during the financial year.
- (C) → Value of taxable services provided during the financial year.
- (D) → Value of exempted services provided during the financial year.

Step 3: *Payment of differential amount*

Where

- (A) Actual amount > provisional amount
- (B) Provisional amount cannot be determined during the preceding financial year then, manufacturer (or) output service provider shall pay the differential amount (i.e. actual amount (-) provisional amount) on or before 30th June of succeeding financial year.
If not paid, Int. @ 24% p.a is payable.

Note:

1. When provisional amount > actual amount, the manufacturer (or) output service provider shall adjust the excess amount, on his own by taking credit of such amount.
2. The manufacturer of goods (or) the provider of output service shall intimate to the jurisdictional superintendent of central excise, within a period of 15 days from the date of payment (or) adjustment, the prescribed particulars.



Option (iv): The manufacturer of goods/the provider of output service has an option to:

(i) **Maintain separate accounts** for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a)

And

(ii) Pay an **amount as determined under sub-rule (3A)** in respect of input services. (i.e. Proportionate Reversal as stated above)

Conditions:

- ✓ If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
- ✓ It is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.
- ✓ No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Reversal of CENVAT credit in case of service providers engaged in Banking and Financial services and Life Insurance Business - Rule 6(3B) and Rule 6(3C)

A substantial part of the income of a bank or a life insurance company is from investments or by way of interest in which a number of inputs and input services are used. There have been difficulties in ascertaining the amount of credit flowing into earning these amounts. Thus a banking company or a financial institution, including NBFC, providing banking and financial services are being obligated to pay an amount equal to **50% of the credit availed**.

In case of services relating to life insurance or management of ULIPs, such amount will be equal to **20% of credit availed**. Other options of payment of amount under rule 6 shall not be available for these taxpayers.

What are the documents on the basis of which credit can be taken?

- Invoice of manufacturer from factory
- Invoice of manufacturer from his depot (or) premises of consignment agent.
- Invoice issued by registered importer.
- Invoice issued by importer from his premises (or) consignment registered with central excise.
- Invoice issued by registered first stage (or) second stage dealer
- Supplementary invoice by manufacturer
- A supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made there under with the intent to evade payment of service tax. - **Notification No. 13/2011**
- Bill of entry
- Certificate issued by an appraiser of customs in respect of goods imported through foreign post office.



- TR - 6 (or) GAR - 7 challan of payment of tax where service tax is payable by other than input service provider.
- Invoice, bill (or) challan issued by provider of input service.
- Invoice, bill (or) challan issued by input service distributor.



Whether CENVAT credit of the service tax paid can be claimed when payments are made through debit/credit notes, debit/credit entries in books of account or by any other mode as mentioned in Explanation (c) to section 67 of the Finance Act, 1994 for transactions between associate enterprises?

CENVAT credit is admissible in the said case. Rule 4(7) does not indicate the form of payment and does not place any restriction on payment through debit in the books of accounts. If the service charges as well as the service tax have been paid in any prescribed manner which is entitled to be called 'gross amount charged', credit will be allowed under said rule. - Circular No. 122/03/2010

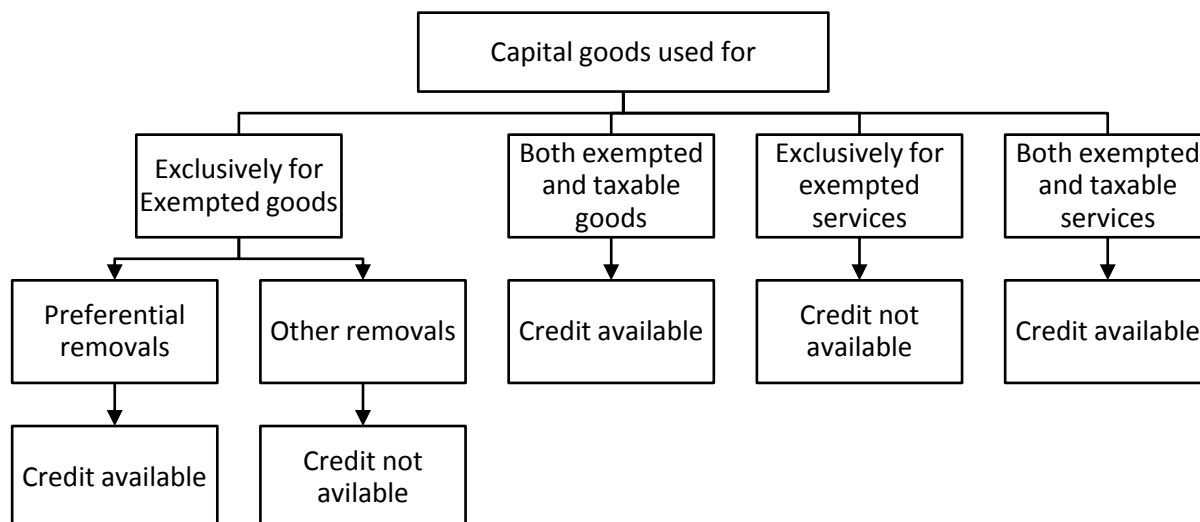


Can CENVAT credit be taken on the basis of private challans?

CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)

The High Court held that CENVAT credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.

What is the treatment of CENVAT credit if capital goods are used for exempted goods and service only (or) for both exempted goods / services taxable goods /services.



CENVAT credit in respect of capital goods used in the manufacture of the exempted final products of an SSI unit shall be allowed. An SSI unit can avail the CENVAT credit of the capital goods used exclusively in manufacture of the exempted final product, but can be utilised for payment of duty on clearances exceeding Rs. 150 lakh. (W.e.f 1/4/2011)

Procedures & Records for CENVAT

- Maintain records of inputs & capital goods



- Maintain records of CENVAT credit received & utilized
- Submit returns of details of CENVAT credit availed, principal inputs & utilization of principal inputs in form ER-1 to ER-6.

Form of return	Description	Who is required to file	Time limit
ER-5 (Rule 9A)	Information relating to principal inputs	Assesses paying duty of Rs. 1 crore (or) more p.a through PLA & manufacturing goods	Annually by 30 th April for the current year (e.g. Return for 2008-09 in to be filed by 30.4.2008)
ER-6 (Rule 9A)	Monthly return of receipt & consumption of each of principal inputs	Assesses required to subunit ER-5 return	10 th of the following month
Rule 9(7) and Form Specified in the Notification No. 3/2011	Quarterly return	SSI Unit	Within 10 days from the close of quarters
Rule 9(8)	Quarterly return	First stage / second stage dealer	Within 15 days from the close of quarters
With effect from 01.06.2011, the quarterly return of CENVATABLE invoices submitted by the first/second stage dealer under rule 9(8) of the CENVAT Credit Rules, 2004 shall be filed electronically unconditionally. - Notification No.21/2010			
Rule 9(9) ST-3	Half yearly return	Provider of output service	Within 1 month from the close of half year
ST - 3 Rule 9(10)	Half yearly return	Input service distributor	Within 1 month from the close of half year

Note:

1. Rule 9(11) - A revised return can be filed by service provider within 60 days of filing of original return.
2. ER-5 return and ER-6 return shall be filed electronically if manufacturer of final products has paid total excise duty of Rs. 10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year - **Notification 21/2010**.
3. Further, the quarterly return of CENVATABLE invoices submitted by the first/second stage dealer under Rule 9(8) shall be filed electronically unconditionally. - **Notification No. 21/2010**.

Central Excise – Exemptions

During the period between 07.12.2008 and 06.07.2009, while one notification granted full exemption to certain items of Textile Sector without any condition, another notification prescribed a concessional rate of duty of 4% on these items, with the benefit of CENVAT credit*.

The issue is as to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under first notification during the period under dispute in terms of the provisions of section 5A(1A) of the Central Excise Act, 1944?

1. On the basis of the opinion of the Law Ministry, it is clarified that in view of the specific bar provided under section 5A(1A) of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty under second notification in respect of unconditionally fully exempted goods



and he cannot avail the CENVAT credit of the duty paid on inputs. - **Circular No. 937/27/2010-CX.**

2. It is further clarified that in case the assessee pays any amount as excise duty on such exempted goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under rule 3 of the CENVAT Credit Rules, 2004.
3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of section 11D of the Central Excise Act, 1944.
4. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004. - **Circular No. 940/1/2011**

Note - In the case of ready-made garments and made-up articles bearing a brand name/sold under a brand name, no such option is henceforth available and a duty of 10% is payable regardless of the composition of the item/article.

Relaxation from brand name restriction under the SSI exemption scheme extended to all packing materials - Notification No. 24/2010

SSI exemption is available in case the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear even if they bear the brand name of others. **"Packing material"** includes labels of all kinds



Whether the clearances of two firms having common brand name, goods being manufactured in the same factory premises, having common management and accounts etc. can be clubbed for the purposes of SSI exemption?

CCE v. Deora Engineering Works 2010

Facts of the case:

- ✓ The respondent-assessee was using the brand name of "Dominant" while clearing the goods manufactured by it.
- ✓ One more manufacturing unit was also engaged in the manufacture and clearance of the same goods under the same brand name of "Dominant" in the same premises.
- ✓ Both the firms had common partners, the brand name was also common and the machines were cleared from both the units under common serial number having common accounts.
- ✓ Department clubbed the clearance of the goods from the both the units for the purposes of SSI exemption because both the units belong to same persons and they had common machinery, staff and office premises etc.

Decision of the case:

The High Court held that indisputably, in the instant case, that the partners of both the firms were common and belonged to same family. **They were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, having common management and accounts etc.** Therefore, High Court was of the considered view that **the clearance of the common goods under the same brand name manufactured by both the firms had been rightly clubbed.**

Central Excise – Procedures

Exemption from Registration in case of mines engaged in production/manufacture of specified goods - Notification No. 10/2011



Every mine engaged in the production/manufacture of following goods is exempt from obtaining registration where the producer/manufacture of such goods has a centralized billing/accounting system in respect of such goods produced by different mines and opts for registering only the premises or office from where such centralized billing or accounting is done:

- Coal, briquettes, Ovoids and similar solid fuels manufactured from coal [Chapter heading 2701]
- Lignite, whether or not agglomerated, excluding jet [Chapter heading 2702]
- Peat (including peat litter), whether or not agglomerated [Chapter heading 2703]
- Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon [Chapter heading 2704]
- Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars [Chapter heading 2706]

Returns under Excise (Rule 12 of Central Excise Rules):

Form of Return	Description	Who is required to file	Time limit
ER - 1	Monthly return by large units	All Manufacturers except SSI	10 th of the following month
ER - 2	Return by EOU	All EOU units	10 th of the following month
ER - 3	Quarterly return by SSI	Units availing SSI exemption	20 th of the month following the quarter
ER - 4	Annual Financial Information Statement	Assesses paying duty of Rs. 1 crore or more through PLA	30 th November every year for the previous year
ER - 7	Annual Installed capacity statement	All assesses, except Manufacturers of biris and matches without aid of power and Manufacturers of reinforced cement concrete pipes.	30 th April every year for the previous year
Form Specified in the Notification No. 8/2011	Quarterly return of goods produced, removed and other particulars.	Assessee availing exemption under Notification No. 1/2011 and manufactures only those excisable goods specified in the notification.	Within 10 days from the end of the quarter.

Note: E-filing of ER-2 and ER-4 return is mandatory in case of assessee's who had paid excise duty including by utilisation of CENVAT credit of Rs. 10 lakh or more in the preceding financial year - **Notification No. 20/2010**

Job work in jewellery (Rule 12AA):

- ✓ Rule 12AA provides that any person who is not an EOU or an SEZ Unit, who gets the following goods manufactured on job work basis, should register, maintain accounts and pay duty as if he is the assessee.
- ✓ Goods Covered under this rule:
 - Article of jewellery of precious metals falling under heading 7113
 - Articles of goldsmiths' or silversmiths' wares of precious metals falling under heading 7114. - **Notification No. 8/2011**



- ✓ However, it is open to the job worker at his option to agree to register, comply with the Rules and pay duty in which case the person engaging the job worker is not required to register and pay duty.

	Person getting jewellery manufactured through job worker	Job Worker
Option (i)	Duty liability first cast on him and he has to comply with registration, maintenance of records and payment of duty	Not required to register, maintain records and pay duty
Registration, Maintenance of Accounts, Payment of Duty.	✓	X
Option (ii)	If job worker undertakes, then person getting goods manufactured is not required to register, maintain records and pay duty	It is the liability of the job worker to get registered, main records and pay duty.
Registration, Maintenance of Accounts, Payment of Duty.	X	✓

- ✓ Where the person engaging the job worker desires clearance of the excisable goods for home consumption or export from the premises of the job worker is required to pay duty and prepare the invoice as per Rules except for mentioning the date and time of removal.
- ✓ The original and the duplicate copy of the invoice so prepared shall be sent by him to the job worker from whose premises the excisable goods after job work are intended to be cleared.
- ✓ The job worker shall fill the particulars of date and time of removal and shall intimate the other person so that necessary information can be completed in the third copy of the invoice maintained by the said person.
- ✓ The Following goods may be supplied to job worker:
 - (a) inputs in respect of which the person getting the goods manufactured may or may not have availed CENVAT credit in terms of the CENVAT Credit Rules, 2004, without reversal of the credit thereon; or
 - (b) goods manufactured in the factory of the said person without payment of duty; under a challan, consignment note or any other document
- ✓ The responsibility in respect of the accountability of the said goods lie on the person who engages the job worker
- ✓ The job worker, with or without completing the job work may,-
 - (i) return the goods without payment of duty to the said person; or
 - (ii) clear the goods for home consumption or for exports; subject to receipt of an invoice from the said person.
- ✓ **Rule 4(1) of CENVAT credit Rules, 2004:** For manufacture of above mentioned goods (i.e. articles of jewellery of precious metals, Articles of goldsmiths' or silversmiths' wares of precious metals), the CENVAT credit of duty paid on inputs may be taken immediately on



receipt of such inputs in the registered premises of principal manufacturer. - **Notification No. 9/2011**

- ✓ The CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.
- ✓ Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of duty. However, CENVAT credit on the inputs used in the manufacture of such goods shall not be denied.

Interest and Penalties

Description	Cases where this Interest shall be levied	Amount	Period for which Interest shall be payable
Interest on delayed payment of Excise Duty (Sec. 11AA)	In all cases other than those mentioned in Sec. 11AB. i.e. Sec. 11A(2) - The Central Excise officer, after considering the representation, if any, made by the person on whom show cause notice has been served, shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.	Simple int. @ 18% p.a (w.e.f. 1.3.2011)	Duty and Interest determined should be paid within 3 months from the date of such determination. If not interest shall be calculated, FROM - The date immediately after the expiry of the said period of three months. TILL - The date of payment of such duty determined.
Interest on delayed payment of Excise Duty in Special cases (Sec. 11AB)	Duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded	Simple Int. @ 18% p.a (w.e.f. 1.3.2011)	Calculated FROM - The first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, TILL - The date of payment of such duty



Is the assessee liable to pay interest under section 11AB on the differential duty paid on the difference between price at date of removal and enhanced price at which goods are ultimately sold?

CCE v. International Auto Ltd. 2010 (S.C.)

Bare Act Portion:

Section 11A(2B) - Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person, chargeable with the duty, may pay the amount of duty [on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer] before service of notice on him under sub-section (1) in respect of the duty, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the duty so paid.



Explanation 2 to section 11A(2B) - For the removal of doubts, it is hereby declared that the interest under section 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-section.

Decision of the case:

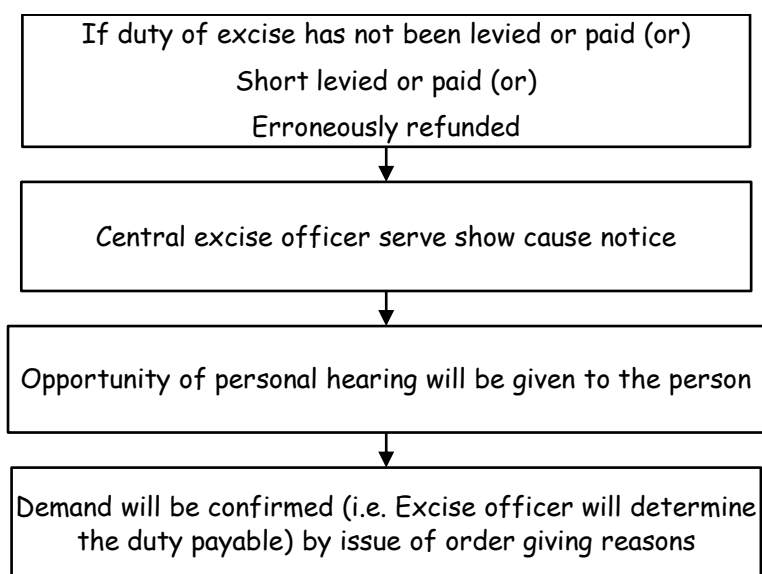
The Apex Court, following the decision made in the case of *CCE v. S.K.F. India Limited* 2009 (S.C.), observed that sub-section (2B) of section 11A provides that the assessee in default may make payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer and, in that event, such assessee in default would not be served with the demand notice under section 11A(1) of the Act.

However, Explanation 2 to the sub-section (2B) of section 11A makes it clear that such payment would not be exempt from interest chargeable under section 11AB of the Act.

From the scheme of section 11A(2B) and section 11AB of the Act, it becomes clear that interest is levied for loss of revenue caused on any count. In the present case, the price, on the date of removal/clearance of the goods, was not correct i.e. it was understated. The enhanced duty was leviable on the corrected value of the goods on the date of removal.

When the differential duty was paid after the date of clearance, it indicated short-payment/short-levy on the date of removal, hence, interest which was for loss of revenue, became leviable under section 11AB of the Act.

Show cause notice for short payment of duty (Sec. 11A):



FAQ's on Show cause notice:

1. What are the reasons for which demands can be issued?

Demand of duty or differential duty may be relating to

- ✓ Determination of valuation and/or classification (or)
- ✓ Cenvat credit cases (or)
- ✓ Duty short paid or not paid or erroneously refunded for any reason

Note: Such demand may or may not contain for allegation of fraud, suppression of facts etc.

- ✓ Demand for shortages and clandestine removal (Removal of goods done secretly)



2. **Who can issue show cause notice?**

Show cause notice should be approved and signed by officer empowered to adjudicate the case.

The authority to adjudicate the case are:

When demand of duty/ Cenvat credit is upto Rs. 5 lakhs	AC/DC
When amount is between 5 and 50 lakhs	Joint commissioner
When amount is between 20 and 50 lakhs	Additional commissioner

3. **What are the requirements of show cause notice?**

- ✓ Demand of duty or penalty on a person cannot be confirmed unless a show cause notice is issued to him.
- ✓ A simple letter asking to pay duty is not a show cause notice
- ✓ A show cause notice issued after payment of duty/tax is void
- ✓ Show cause notice must be in writing
- ✓ Amount demanded must be specified (Duty finally determined cannot exceed the amount shown in SCN)
- ✓ It should state the nature of contravention and provisions contravened
- ✓ If penalty is proposed to be imposed, this should be mentioned in the notice
- ✓ If SCN is issued in one ground, demand cannot be confirmed on other ground

"The show cause notice should ask the person, why he should not pay the amount specified in the notice or why the penalty should not be imposed on him"

4. **What is the time limit for serving show cause notice?**

Situation	Time limit
If it is because of reasons mentioned in Sec. 11A	Within 1 year from 'Relevant date'
In case of fraud, collusion, wilful mis-statement and suppression of facts or contravention of any provision with intend to evade payment of duty	Within 5 years from 'Relevant date'

5. **What is "Relevant date" for calculating the time limit?**

Case	Relevant date
(i) If return is filed as per provisions of law	The actual date of filing return
(ii) If return was required to be filed, but was not filed	The date on which return should have been filed
(iii) No return is required to be filed	The date of payment of duty
(iv) Provisional assessment	Date of adjustment of duty after final assessment
(v) Demand on account of erroneous refund	Date of such refund

Note: Demand can be raised only after assessment. In case of provisional assessment no demand can be raised.

Special points on computation of time limit:

- ✓ The first day is to be excluded and last day should be included
- ✓ No time limit in respect of demands not covered U/S 11A
- ✓ Where the service of notice is stayed by order of court, the period of such stay can be excluded.

6. **To whom show cause notice is given?**

Liability to pay duty is on manufacturer and duty cannot be demanded from buyer, stockist or consumer. Therefore, SCN is given to manufacturer only.



7. **Sec. 11A specifies 'Erroneously refunded'. What is the refund covered in this case?**
Refund includes rebate of excise duty paid on goods exported from India or rebate on excisable material used in manufacture of goods exported out of India.
8. **Can a show cause notice cum demand be issued at the same time?**
Protective demand means issue of show cause notice cum demand in time, so that it does not get time barred.
On receipt of audit objections, protective demands should be issued in time, before they get time barred - CBE&C circular No. 210/28/81
9. **An assessee paid duty on exempted parts, availed CENVAT credit and reversed it when utilising it for exempted final product. The so called method followed by assessee is revenue neutral (i.e. There is no revenue loss). Can demand be issued in that case?**
The procedure followed was revenue neutral and hence duty is not payable. However penalty was held valid for violation of rules.
10. **What is the time limit for confirmation of demand?**

Situation	Time limit
Reasons covered under sec. 11A	Within 1 year from the date of issue of SCN
In any other case	Within 6 months from the date of issue of SCN

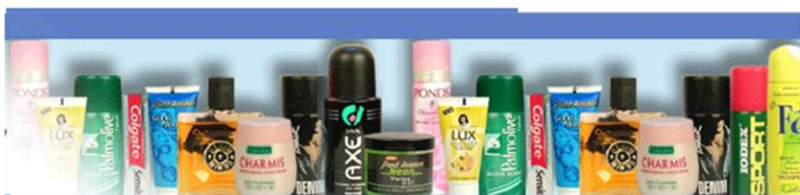


Whether non-disclosure of a statutory requirement under law would amount to suppression for invoking the larger period of limitation under section 11A?

CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010

Highest Quality Contract Packaging
Accra Pac India Pvt Ltd
India's No.1 Aerosol Manufacturer

Engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc



Issue Involved:

The Department alleged that the intermediate product i.e. Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty. Whether non-disclosure as regards



manufacture of Denatured Ethly Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

Decision of the case:

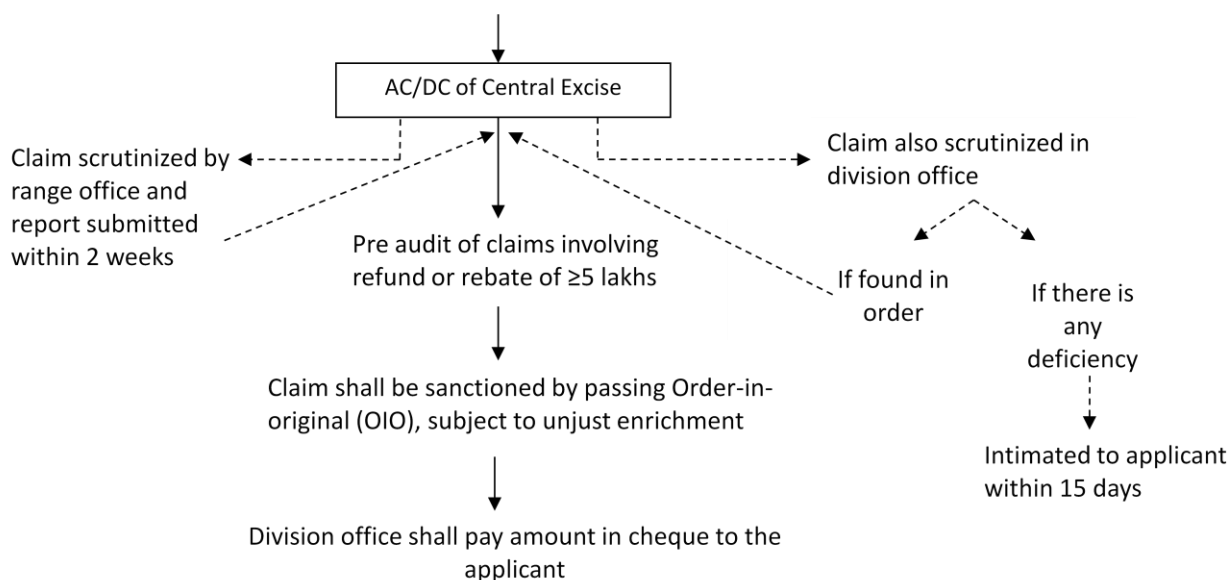
- ✓ The Tribunal noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act.
- ✓ Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement.
- ✓ Hence, **failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement.**
- ✓ Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.

The High Court upheld the Tribunal's judgment and pronounced that **non-disclosure of the said fact on the part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.**

Refund of duty under excise (Sec. 11B)

Refund application should be filed in Form 'R' (in duplicate) along with

- Original GAR-7 challan/PLA/other document through which duty was paid
- Proof that duty burden has been borne by the assessee and has not been passed to the customer
- Other documents in support of refund claim E.g. Invoices
- Stating the reasons thereof for refund claim in a statement/application.



FAQ's on Refund:

1. What are the reasons for which refund claim shall be made?

- Excess payment of duty due to mistake
- Forced by department to pay higher duty
- Finalization of provisional assessment
- Export under claim of rebate



- Assessee paid duty under protest/ pre deposit of duty for appeal, and appeal decided in favor of assessee.
- Refund of CENVAT credit if final product exported
- Unutilized balance in PLA.

2. What is the time limit within which Refund claim must be filed?

Refund claim should be lodged within 1 year from 'Relevant Date'.

3. What is the definition of relevant date for calculating the time limit for filing refund claim?

Situation	Relevant Date
a) Exports by sea or air	When ship or aircraft leaves India
b) Exports by land	Date on which goods leave Indian frontier
c) Export by post	Date of dispatch of goods by post office to a place outside India.
d) In case of compound levy scheme and assessee pays the full amount of duty, but later reduced by government	Date on which notification regarding reduction of rate is published
e) Refund claim filed by purchaser	Date of purchase of goods
f) Duty exempted by special order under section 5A(2)	Date of issue of such order
g) Duty was paid on provisional basis	Date of adjustment of duty after final assessment of duty
h) In any other cases	Date of payment of duty

4. Who can file refund claim?

- ✓ Assessee who has paid the duty (or)
- ✓ Buyer on whom the burden of duty has been passed.

5. What is refund subject to unjust enrichment?

It is reasonable assumption that as and when a manufacturer pays excise duty, he will pass on the burden immediately to the buyer of such goods.

In such a case, if refund is granted to him, he will be enjoying the benefit at the cost of buyer. It will not be just and equitable. This is known as "Unjust enrichment"

So, Refund shall be granted to manufacturer only if he proves that the duty liability has not been passed on to the buyer or if buyer makes the refund claim, he has to prove that the burden has not been passed on to the subsequent person.

In other words, the burden of proof is on the person who makes the refund claim.

6. What happens if the burden is passed on to the subsequent person?

In majority of the cases, it is not practicable to identify individual consumer and ay refund to him, at the same time the duty cannot be retained by the government

In such cases the amount will be paid to consumer welfare fund. The fund so created shall be utilized for payment to:

- Any agency/organization engaged in consumer welfare activities for a period of 3 years, registered under any law.
- Any industry engaged in viable and useful research activity in formulation of standard mark of products of mass consumption.
- State government



d) Consumer for legal expenses incurred by consumer.

7. When the doctrine of unjust enrichment shall not apply?

- Rebate of excisable goods exported out of India (If he had exported on payment of duty)
- Rebate of excise on excisable materials used in manufacture of goods exported out of India (If he has not availed CENVAT credit)
- Refund of duty paid on inputs
- Export duty
- Duty drawback

8. What is the time limit within which the duty must be refunded to the applicant?

Within 3 months from the date of application. If not so paid, interest @ 6% shall be payable to the assessee.



Merely because assessee has sustained loss more than the refund claim, is it justifiable to hold that it is not a case of unjust enrichment even though the assessee failed to establish non-inclusion of duty in the cost of production?

CCE v. Gem Properties (P) Ltd. 2010

Decision of the case:

- ✓ The High Court answered the question of law in favour of the Revenue. The Court observed that indisputably, the assessee was not liable to pay the duty and was entitled to the refund of the excise duty wrongly paid by it.
- ✓ The claim of the assessee had been rejected on the ground that if the application was allowed, it would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of the duty.
- ✓ Therefore, the burden had been heavy on the assessee to prove that while computing the cost of the material it had not included the duty paid by it.

The Court elucidated that merely because the assessee had sustained the loss in the relevant year, could not be a ground to hold it had not been a case of unjust enrichment. **It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material.** Therefore, on facts of the case, the High Court held that **assessee could not be granted relief since it had failed to establish that the cost of the duty was not included while computing the cost of the products.**

Circular No. 928/18/2010 - Goods which are exempted from payment of duty or chargeable to nil rate of duty shall not be allowed to be exported under bond. Since, 100% EOU's are required to export the goods under bond, in terms of Customs and Excise notifications, the exports from 100% EOU's have been specifically excluded from the purview of this amendment.

Rationale behind this amendment: As a policy, the Government does not tax exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through *Notification No. 21/2004-CE*, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. In order to avoid such detailed verification and scrutiny by the department for claiming of refund of input taxes, some of the exporters were exporting the exempted goods under bond and claiming refund under rule 5 of the CENVAT Credit Rules, 2004, though a bond is executed



only when goods are liable for payment of excise duty. If there is no excise duty then there is no question of exporting under bond.

Circular No. 922/12/ 2010 - Superintendents has the power of adjudication for cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual show cause notices. However, they would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc. Consequently, the Assistant/Deputy Commissioners are now empowered to adjudicate cases involving duty upto Rs. 5 lakh (except the cases where Superintendents are empowered to adjudicate).



Is the Settlement Commission empowered to grant the benefit under the proviso to section 11AC in cases of settlement?

Ashwani Tobacco Co. Pvt. Ltd. v. UOI 2010

Decision of the case:

The Court ruled that benefit under the proviso to section 11AC could not be granted by the Settlement Commission in cases of settlement.

It elucidated that the order of settlement made by the Settlement Commission is distinct from the adjudication order made by the Central Excise Officer. The scheme of settlement is contained in Chapter-V of the Central Excise Act, 1944 while adjudication undertaken by a Central Excise Officer is contained in the other Chapters of the said Act. Unlike Settlement Commission, Central Excise Officer has no power to accord immunity from prosecution while determining duty liability under the Excise Act.

Once the petitioner has adopted the course of settlement, he has to be governed by the provisions of Chapter V. Therefore, the benefit under the proviso to section 11AC, which could have been availed when the matter of determination of duty was before a Central Excise Officer was not attracted to the cases of a settlement, undertaken under the provisions of Chapter-V of the Act.

Service tax – Taxable Event

Issue in Taxable event:



The definition of person includes State & Central government. So, if the government provides any services for a fee, is it required to pay service tax?



If the Sovereign/ Public authorities (i.e. Agencies constituted/Set up by government) perform functions and duties which are statutory in nature, then these are not taxable services.

But if these authorities provide any non - statutory services i.e. activities in the nature of trade or commerce, those will be liable to service tax.

Following are some of the services in statutory nature:

- ✓ RTO issuing fitness certificate
- ✓ Factories inspector inspecting factories
- ✓ Certification of film by Central Board of Film Certification (CBFC)

Source: CBE&C Circular No. 89/7/2006 & 96/7/2007; State of MP V. CCE; Kerala state Electricity Board V. CCE.

Levy and collection of service tax on State Government agencies/ departments implementing CSS under a central grant, is not legally tenable. The fact that State Governments are implementing agencies for the Central Government within the framework of CSS does not make them service providers. Consequently, Central



Government cannot be taken as service receiver.

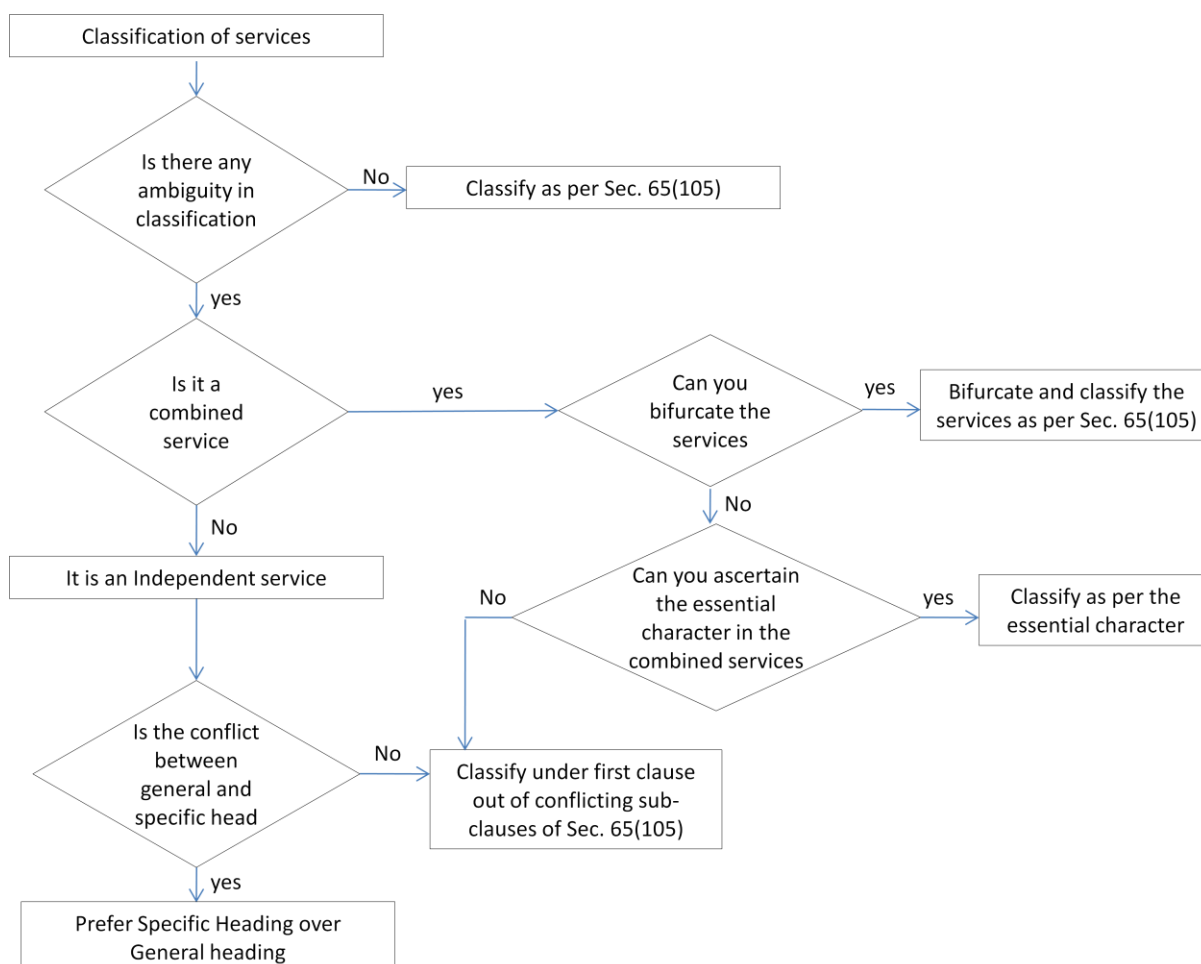
Grant released by the Central Government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service. - **Circular No. 125/7/2010.**

CSSs are special purpose grants extended by the Central Government to States to encourage and motivate State Governments to plan and implement programmes that help attain national goals and objectives.

Eg: clean drinking water and sanitation to every habitation, eradicating polio and tuberculosis

Service Tax - Rate of Duty

The following flowchart explains the concept of classification of taxable service - Sec. 65A (Though it is not a recent amendment but for importance sake it is provided here)



Service Tax - Valuation

Issue in Valuation:



Whether the payment made by service recipient to service provider, not in relation to service is includible in the value of taxable service?





No, as laid down in the following cases.

(i) CKP Mandal V. CCE

Facts:

- CKP Mandal, who was a mandap keeper entered into contract with other contractor.
- The contract is for giving the contractor exclusive rights for rendering services of catering and decoration to the hirer of community hall.
- Any other contractor was not to be allowed to provide these services to the hirer of community hall.
- The contractors had given donation of Rs. 8.35 lakhs to the appellants (CKP Mandal) as contribution to corpus fund.

Issue: The department demanded duty from CKP Mandal on the ground that it has received Rs. 8.35 lakhs for the contract (i.e. Sale of rights).

Decision: The court held that the amount received was not in relation to service of mandap provided by CKP mandal and hence tax is not required to be paid on this amount.

(ii) Cultural Society of Angamally V. CCE

It was held that amounts received as donation and public/ government grants for activities of society are not related to services provided by society. These are excludible from taxable value for charging service tax.

Whether Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth liable to service tax?

Circular No.127/09/2010

- ✓ It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, **will not be treated as 'consideration'** received for such training and thus not subjected to service tax under 'commercial training or coaching' service.
- ✓ Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation.
- ✓ There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee.
- ✓ **Conclusion:** In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

Recent case law on taxability of Turnkey Projects:



Will the service provided by way of "advice, consultancy or technical assistance" in the case of turnkey contracts attract service tax and can these turnkey contracts be vivisected?

CCE v. BSBK Pvt. Ltd. 2010

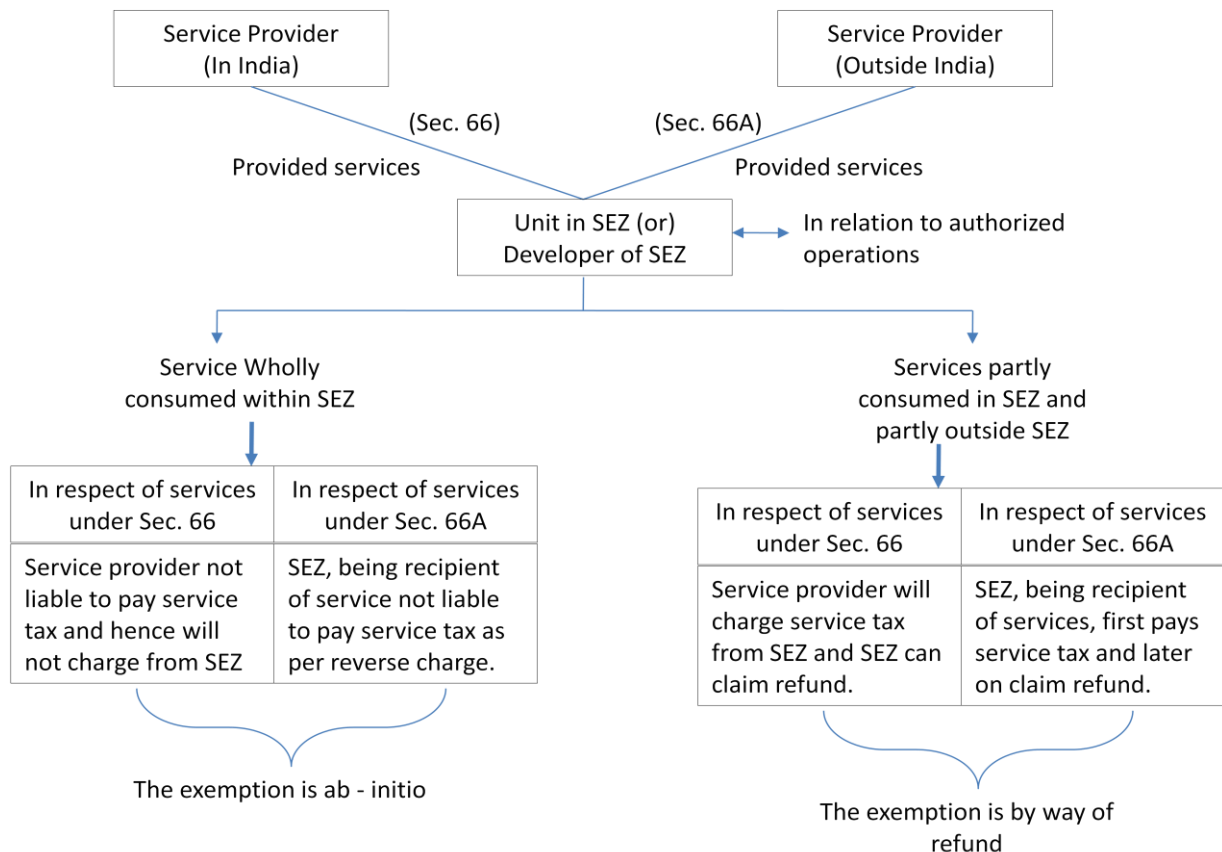
- ✓ The Larger Bench of the Tribunal noted that Article 366(29-A)(b) to the Constitution has allowed the vivisection of indivisible contracts in order to find out goods component and value thereof.
- ✓ Therefore, the remnant part of the contract may be attributable to the scope of service tax under the provisions of the Finance Act, 1994.
- ✓ It inferred that **turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy of service tax under the Finance Act, 1994 provided such services are taxable services** as defined by that Act and



- ✓ Depending on the facts and circumstance of each case, services by way of advice, consultancy or technical assistance in the case of turnkey contract shall attract service tax liability.

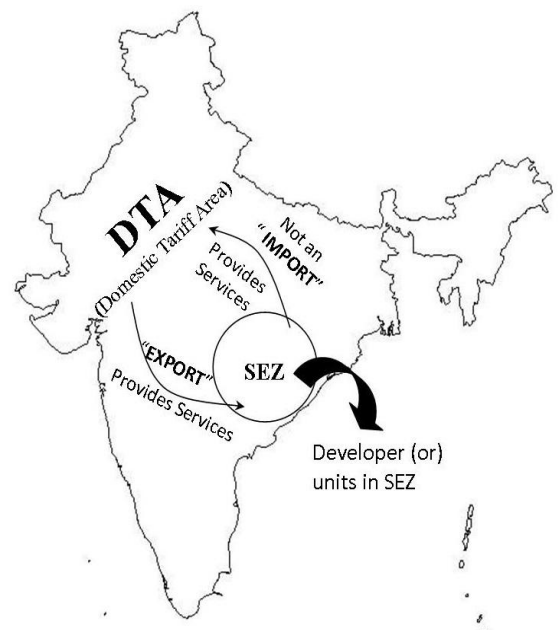
Service Tax – Exemptions

Exemption with respect to Services provided to developer (or) units of SEZ – Notification No. 17/2011

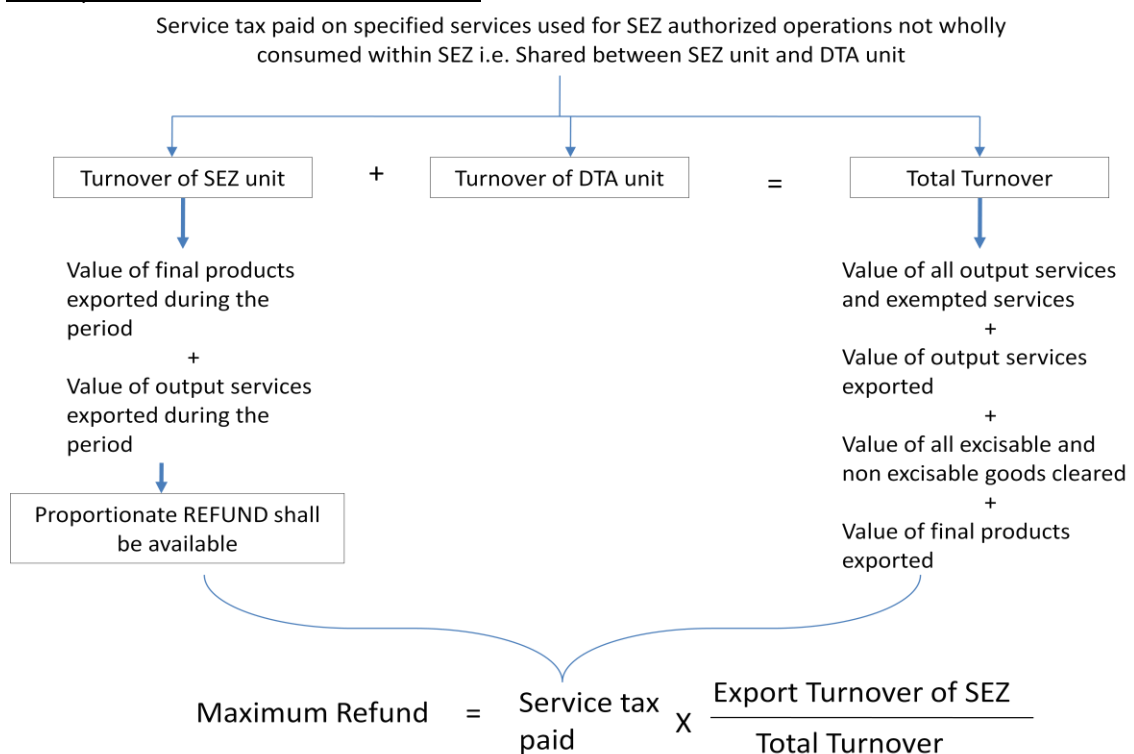


FAQ's On Services provided to SEZ:

- What are authorized operations?**
These are a list of services approved by approval committee of SEZ, which the units in SEZ (or) Developer should obtain.
- With whom the refund claim should be filed?**
The refund claim should be filed with Jurisdictional AC/DC who will issue STC to SEZ unit (or) Developer. The form for Refund is Form A-2.
- What is the time limit for filing refund claim?**
Within 1 year from the actual date of payment of service tax. The period of 1 year can be extended by AC/DC.



4. How to file refund claim?
With the Form A-2 accompanied by list of approved services, documents for having paid service tax and a declaration.
5. As the service tax is paid by units in SEZ (or) developer of SEZ. Can the CENVAT credit be availed?
No, CENVAT credit is not available with respect to services received in relation to authorized operations in SEZ.
6. In some cases, under reverse charge the recipient of service is liable to pay tax. Whether for the services received by SEZ under such reverse charge, the SEZ is exempted?
Yes, SEZ is exempt from paying service tax in such cases.
7. Will the entire amount paid as service tax available for refund, as the service may be used for export turnover as well as for DTA?



Total turnover means the sum total of the value of:

- (i) All output services and exempted services provided, including the value of services exported;
- (ii) All excisable and non-excisable goods cleared, including the value of the goods exported;
- (iii) Bought out goods sold, during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

Turnover of SEZ Unit means the sum total of the value of:-

- (i) Final products exported,
- (ii) Output services exported during the period of which the invoices pertain and the exporter claims the facility of refund under this notification.

8. If SEZ provides services to a person in DTA, what is the position of developer (or) units in SEZ, in that case?

SEZ units providing taxable services to any person for consumption in DTA (or) providing any taxable service which is otherwise not exempt, are liable to pay service tax.



Services of Indian News Agency:

Taxable services provided in relation to online information and data base access or retrieval services and business auxiliary services provided by any Indian news agency are exempt. - **Notification No. 13/2010**

Note: The exemption is available only if such news agency is notified and setup solely for collection and distribution of news.

Exemption to advance received prior to 1.7.2010 towards new services as introduced by the FA, 2010:

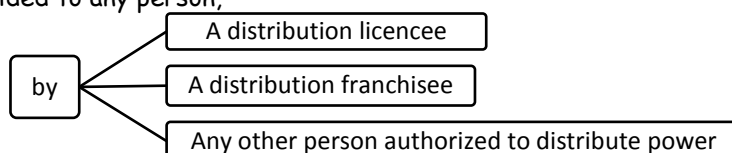
The following are the 8 services introduced in FA, 2010 w.e.f 1-7-2010.

- i. Service of promoting, marketing or organizing games of chance, including lottery, bingo or lotto - Sec. 65(105)(zzzzn)
- ii. Health services - Sec. 65(105)(zzzzo)
- iii. Service of maintenance of medical records of employees of business entity - Sec. 65(105)(zzzzp)
- iv. Service of promoting a brand - Sec. 65(105)(zzzzq)
- v. Service of permitting commercial use or exploitation of any event organized by a person or organisation - Sec. 65(105)(zzzzr)
- vi. Service provided by electricity exchange - Sec. 65(105)(zzzzs)
- vii. Copy right services - Sec. 65(105)(zzzzt)
- viii. Preferential location or development of complex services - Sec. 65(105)(zzzzu)

If advance is received w.r.to above services before 1.7.2010, the said amount received as advance is exempt from service tax levy as per **Notification No. 36/2010**.

Recent circular w.r.to Hire charges collected by a service provider engaged in transmission or distribution of electricity

- 1) Service provided to any person, by any other person for transmission of electricity
- 2) Service provided to any person,



For distribution of electricity.



Whether renting of electricity meter by a service provider rendering the service of transmission or distribution of electricity is covered under the above exemption?

Circular No. 131/13/2010.

- ✓ It is a general practice among electricity transmission (TRANSCO)/ Distribution companies (DISCOM) to install electricity meters at the premises of the consumers to measure the amount of electricity consumed and "Hire charges" are collected periodically
- ✓ Supply of electricity meters for hire being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered under the exemption

Service Tax – Procedures

Registration [Section 69 read with Rule 4 of ST Rules, 1994]

Who?	Every person liable to pay service tax (Including Importer of service)
------	--



How?	Application for registration in FORM ST-1 along with • copy of PAN • Affidavit declaring the commencement of services • Proof of RESIDANCE • Constitution of applicant • In Case of Individual - Passport Size photograph - In case of partnership - Partnership deed - In case of corporate assessee - MOA, AOA
When?	<u>If the services to be provided are taxable services:</u> Within 30 days from the date of commencement of the business of providing taxable service <u>If the services to be provided are not taxable service:</u> Within 30 days from the date on which the levy of service tax is brought into force in respect of the relevant services
With Whom?	Superintendent of central excise under whose jurisdiction the premises falls

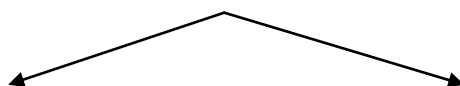
.....**After 7 days**

From ST-2, Certificate of registration will knock your door, which is granted by **superintendent Of Central Excise**

Issue in Registration

- 1) A person is providing service from more than one premises (or) offices
- 2) A person Receives services, for which he is liable to pay service tax in more than one premises or offices

---- In the above two cases



Centralized Registration can be made.

Provided, Centralized billing/accounting system is located for such service

Separate Registration for each premise can be made.

When no Centralized billing/accounting system exists



Whether the provisions of deemed registration under rule 4(5) of the Service Tax Rules, 1994 are attracted in case of centralized registration?

Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI

Bare Act Reference: (Service Tax Rules, 1994)

Rule 4(1) - Person liable to pay service tax shall make an application to the superintendent in Form ST-1 for registration.

Rule 4(2) - When centralized registration is required?

Rule 4(3) - In case of Centralized registration, the registration should be granted by commissioner of Central Excise in whose jurisdiction the centralized premises falls.

Rule 4(5) - If registration certificate in Form ST-2 not granted within 7 days, then the registration applied for shall be deemed to have been granted.

Decision of the case:



- ✓ The Court observed that every person liable to pay service tax is required under rule 4(1) of the Service Tax Rules, 1994, to apply to the Superintendent of Central Excise for registration in Form ST-1. The deeming provision in rule 4(5) is applicable to registration granted by the Superintendent of Central Excise.
- ✓ However, the petitioner's application was for centralised registration under rule 4(2).
- ✓ The registration was to be granted by the Commissioner of Central Excise or the Chief Commissioner of Central Excise in whose jurisdiction the premises of the petitioner company, from where centralised billing/accounting was done, was located.
- ✓ **There being no time stipulation on the Commissioner of Central Excise to grant centralised registration under sub-rule (2), the provision of deemed registration is not attracted in case of grant of registration by the Commissioner.**
- ✓ Further, even if the applications for centralized registrations have been submitted to the Superintendent of Central Excise, registration under sub-rule (2) can only be granted by the Commissioner.
- ✓ Undoubtedly, registration cannot be indefinitely delayed. Registration has to be granted within reasonable time. However, while in case of grant of registration by the Superintendent of Central Excise, the time stipulation of seven days is mandatory under the Rules and its contravention attracts the consequence of deemed registration, in case of the Commissioner, the same time stipulation extended by circulars is only directory.

Invoice/Bill/Challan [Rule 4A of ST Rules, 1994]:

- Every person providing taxable service shall issue an invoice/bill/challan
- Time limit for issue of invoice/bill/challan - within 14 day from the completion of such taxable service or receipt of any payments towards the value of such taxable service, whichever is earlier.

Format:

Serial No: _____		INVOICE/BILL	STC No: _____
Name and Address of Service Provider		Date: _____	
Name of Service recipient: _____			
Address : _____			
Registration No : _____			
Description of service	Classification (Head)	Value	
Service tax Payable: _____			
Sd/- (Service provider or person authorized by him)			



Air ticket to be considered a valid invoice/bill/challan under rule 4A - Notification No.39/2010

- ✓ In case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule.
- ✓ The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the service receiver.

Comment: As the invoice must be issued within 14 days from the date of completion of service, it would be an additional burden on the part of the air travel service provider. So, with this amendment the ticket is sufficient to make it as invoice bill or challan as per rule 4A of service tax rules, 1994.

Payment of service tax [Rule 6 of ST Rules, 1994]

What if Service Provider pays excess amount of service tax in order to avoid interest and penalty for late payment?

As per Rule 6(4B), The EXCESS payment can be utilized for the payment of service tax for the subsequent month liability but subject to a condition that the adjustment of excess amount paid shall be subject to **maximum of Rs. 2,00,000/-** for a relevant month or quarter, as the case may be -

Notification No. 3/2011

Note: In case where the excess payment is due to delayed receipt of details of payments towards taxable services, then the limit of 2,00,000/- not applicable.

Mode of payment of service tax in case of specified services:

	Regular Scheme	Composition Scheme
Meaning	Under this scheme, the value shall be determined as per Sec. 67 of the Finance Act, 1994 and the tax shall be payable @10% + EC + SHEC as applicable	Under this scheme, the service tax payable shall be specified in the notification given to that effect. Note: EC & SHEC is payable on the service tax specified.
Services for which the said scheme applicable	All Services mentioned under Sec. 65(105) of the Finance Act, 1994	1. Air travel agents service 2. Life Insurance 3. Sale/purchase of foreign currency including money changing 4. Distributors/Selling agents of lotteries 5. Works contract services
Whether CENVAT credit available?	Yes, CENVAT credit w.r.to Inputs, Input services and capital goods is available.	Only CENVAT credit on Input services, and capital goods is available.

Special Rate (Composition scheme) of Service Tax In Case Of Certain Services

Air travel agent - rule 6(7)

The person liable for paying the service tax in relation to the services provided by an air travel agent, instead of paying service tax at normal rate has the option to pay amount as follows:

- a) @ 0.6% of the basic fare in the case of domestic bookings, and



- b) @ 1.2% of the basic fare in the case of international bookings, of the passage for travel by air, during any calendar month or quarter, as the case may be.

Note: The option once exercised shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Life Insurance - Rule 6(7A)

Insurer carrying on life insurance business would have the option to pay service tax under any of the following schemes - **Notification No. 35/2011**

Normal scheme		Composition scheme
Gross premium charged from a policy holder	XXX	The insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.
Less: amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service	(XX)	
Value of taxable service	XXX	
Service tax payable on above @ 10% + EC and SHEC		

Note: such option would not be available if the entire premium is only towards risk cover in life insurance.

Sale/purchase of foreign currency including money changing amended - Rule 6(7B)

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer has the option to pay an amount at the following rates instead of paying service tax @ 10% - **Notification No. 26/2011**

For an amount	Service tax shall be calculated at the rate of
Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher
Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged
Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is lower

Note: the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Optional Composition Scheme for Distributor or Selling Agents of Lotteries - Rule 6(7C)

The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10% - **Notification No. 49/2010**

Where the guaranteed lottery prize payout is > 80%	₹ 6000/- on every ₹10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
--	--



Where the guaranteed lottery prize payout is < 80%	₹ 9000/- on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
--	---

Note:

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.
4. For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010.

Comment: In all the above composition schemes, the rate is duty specified is excluding EC and SHEC; therefore EC and SHEC payable even on the composition rates accordingly.

Interest and Penalties:

Description	Amount	Special points
Interest on excess amount collected from recipient of service. (Sec. 73B)	Simple int. @ 18% p.a (w.e.f. 1.3.2011)	Excess amount together with interest shall be payable and interest calculated only on excess amount
Interest on delayed payment of service tax (Sec. 75)	Simple Int. @ 18% p.a (w.e.f. 1.3.2011)	Calculated From - First day after due date To - Date of payment of defaulted amount

Audit of Service Tax assesses

Frequency of Audit:

Tax payers with service tax payment (Cash + CENVAT)	To be audited
Upto Rs. 25 Lakhs	2% of taxpayers to be audited every year
Between Rs. 25 Lakhs and Rs. 1 Crore	Once in every 5 years
Between Rs. 1 Crore and Rs. 3 Crores	Once in every 2 years
Above Rs. 3 Crores (These are known as mandatory units)	Every Year Audit has to be done.

- Director General of Audit has suggested that Audit of all mandatory units shall be done using Computer Assisted Audit Program (CAAP) techniques.
- The Non-Mandatory tax payers will be selected for audit based on assessment of risk potential to revenue, which is known as Risk assessment.
- Risk assessment involves the ranking of taxpayers according to a quantitative indicator of risk known as a "risk parameter".



- In order to avoid duplication of work, it is also recommended that the taxpayers, whose returns were selected for detailed scrutiny, may not be taken up for Audit that year. Similarly, the taxpayers who have been selected for Audit may not be taken up for detailed scrutiny of their ST-3 Returns during that year.

Service Tax – Taxable services

Airport/ Port Services

Services not taxable under this head (i.e. Specific exemptions):

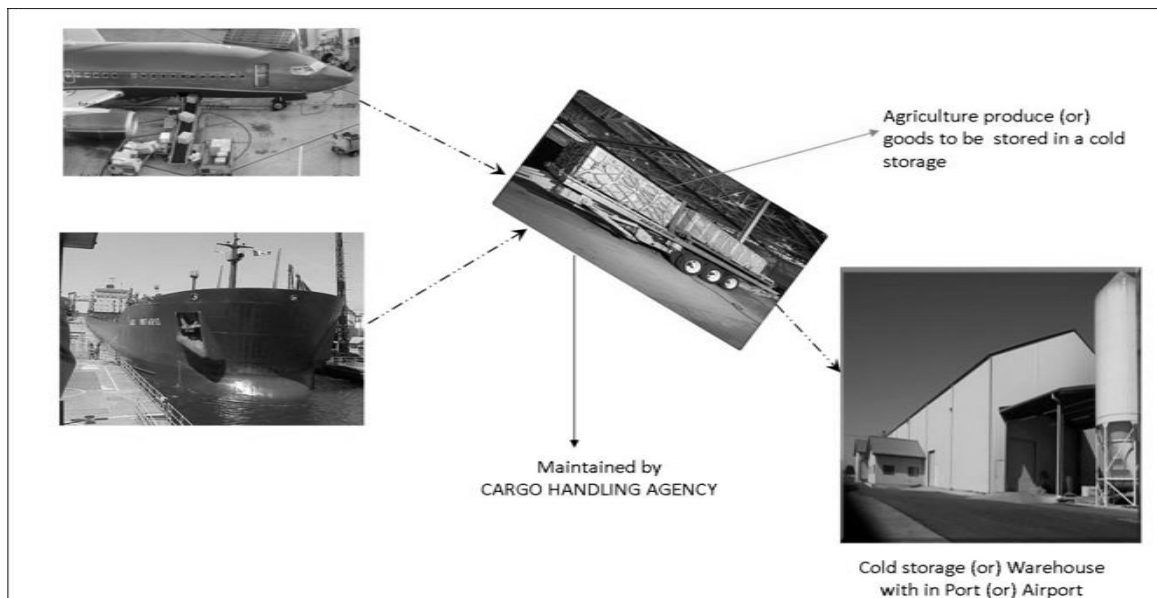
The exemption is available provided the following services are provided within an airport or a port.

Notification No. 31/2010:

- ✓ Repairs of ships or boats or vessels belonging to the government of India including Navy or Coast guard or customs but does not include government owned public sector undertakings.
- ✓ Repair of ships or boats or vessels where such process of repair amounts to 'manufacture' as per sec 2(f) of Central Excise Act, 1944.
- ✓ Supply of water and electricity
- ✓ Treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service)
- ✓ Services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre.
- ✓ Services provided by fire service agencies
- ✓ Pollution control services

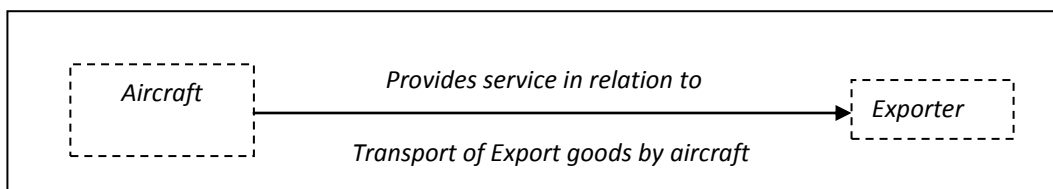
Notification No. 41/2010:

✓



Services provided by Cargo handling agency and warehouse keeper in relation to agricultural produce.

✓



- ✓ Taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Notification No. 42/2010:

- ✓ Services of commercial (or) industrial construction, if provided wholly within airport.

Notification No. 36/2010:

The definition of airport service has been amended w.e.f. 1-7-2010. In respect of services as per amended definition, if any advance payment was received prior to 1-7-2010, for service to be provided after 1-7-2010, service tax will be fully exempted.

Notification No. 37/2010:

Exemption will be available to all airport services used by exporter for export. The exemption will be available by way of refund. The exporter will have to pay service tax to the service provider and then claim refund.

Notification No. 38/2010

Commercial or industrial construction services exempted from service tax if provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.

Notification No. 10/2011

Works contract services, when provided wholly within an airport and classified under airport services, is exempt from the whole of service tax.

Notification No. 11/2011

Works contract service is exempt from service tax if provided wholly within airport or other port for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.



In case where the respondent is authorized by the airport authority to collect entrance fee from visitors to airport, who is liable to pay service tax –respondent or Airport Authority?

CCE v. P. C. Paulose 2010

- ✓ The Kerala High Court elucidated that **even though respondent was not providing the service in the Airport which was done by the Airport Authority, once the licence was given by the Airport Authority to the respondent to permit entry and allow enjoyment of the services provided there to the customers, respondent in fact became the service provider**, though he was only acting as an agent under the licence agreement with the Airport Authority.
- ✓ Therefore, the Court opined that respondent being the service provider was liable to pay the service tax and the Tribunal's finding to the contrary was untenable.
- ✓ Consequently, it reversed the findings of the Tribunal and allowed the Department's appeal.



Banking and other Financial Services

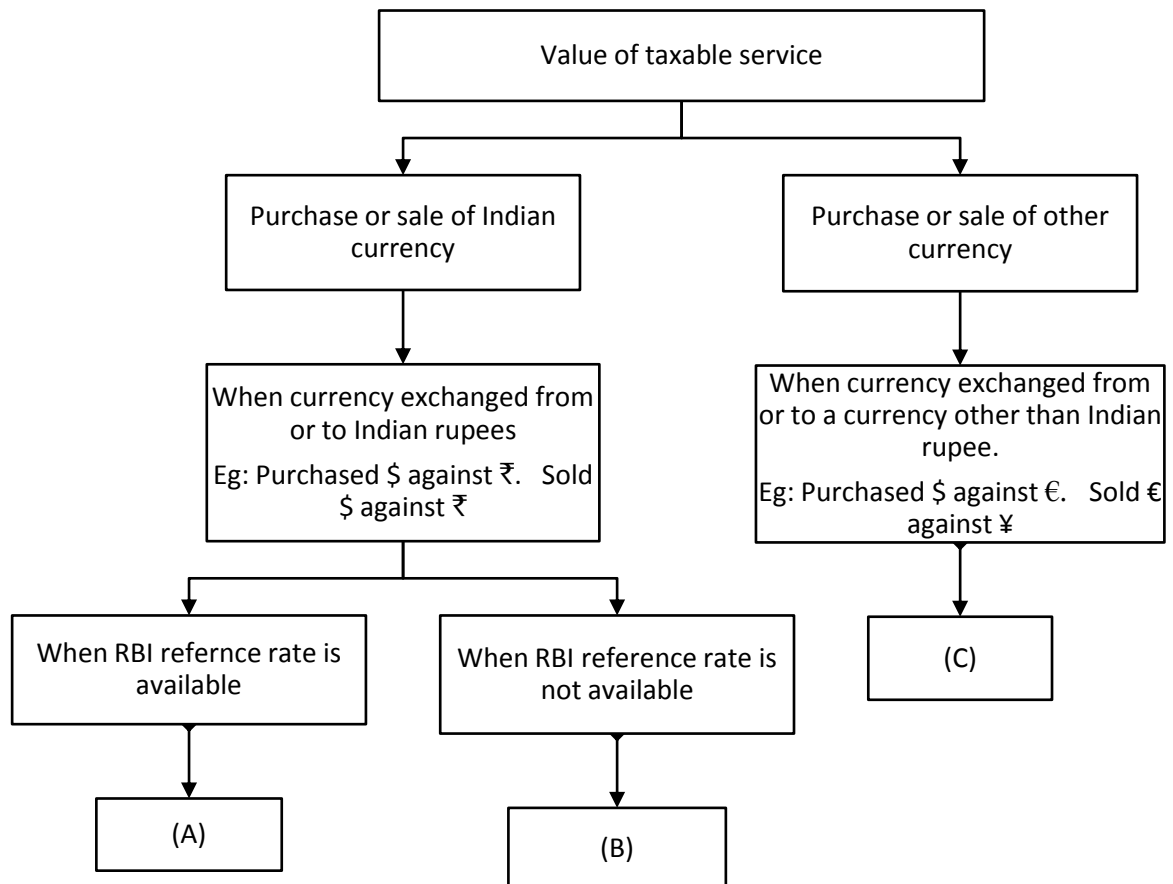
Services not taxable under this head (i.e. Specific exemption):

Notification no 27/2011

Interbank transactions of purchase and sale of foreign currency are exempt from service tax.
(Services may be by ANY bank to ANY bank)

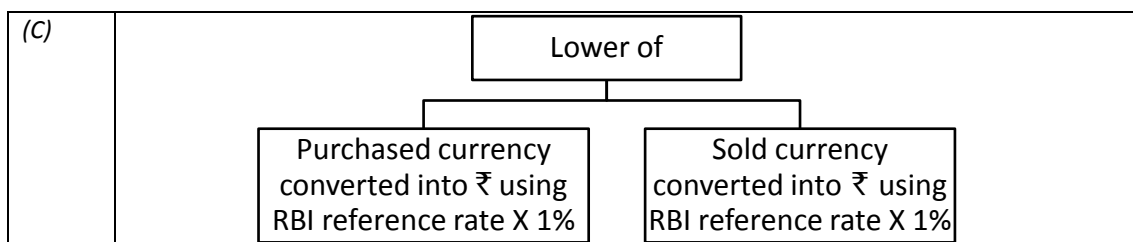
Value of Taxable service:

- ✓ A Notification No. 2/2011 has been issued to insert Rule 2B in Service tax (Determination of value) Rules, 2006. It specifies the valuation of service w.r.to purchase or sale of foreign currency, including money changing.



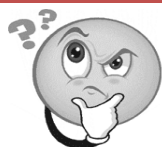
(A)	$\text{Value} = \left(\text{Buying rate / selling rate} - \text{RBI reference rate for that currency for that day} \right) \times \text{Units of currency}$ Note: Ignore +ve/-ve
(B)	$\text{Value} = \text{Gross amount of Indian rupees provided or received} \times 1\%$



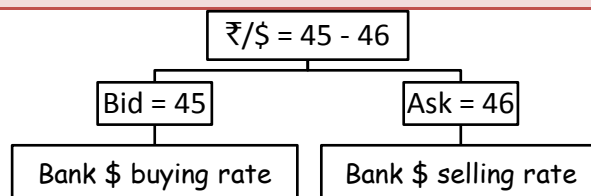


- ✓ The value of taxable service shall not include interest on loans – **Rule 6** of Service tax (Determination of Value) Rules, 2006.

Illustrations on valuation under Rule 2B:



Mr. Sinha, an exporter received 10,000 \$ from an importer in U.S. He approached SBI for Indian Rupees (₹). The Direct quote in the bank is ₹/\$ = 45-46. RBI reference rate for \$ is ₹ 45.5 for that day. What is the value of taxable service?

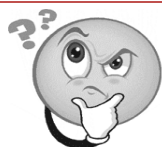


The exchange rate relevant in the present case is 1 \$ = ₹ 45, as bank is buying \$ from exporter. As per Rule 2B of service tax (Determination of value) Rules, 2006, in case of purchase or sale of Indian currency and when RBI reference rate is available,

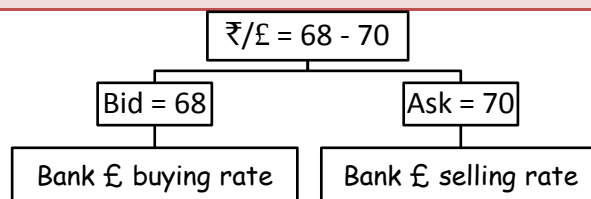
$$\text{Value} = \left(\begin{array}{c} \text{Buying rate/} \\ \text{selling rate} \end{array} - \text{RBI reference rate for} \right. \quad \times \quad \left. \begin{array}{c} \text{Units of} \\ \text{currency} \end{array} \right.$$

that currency for that day

$$\text{Value} = (45 - 45.5) \times 10,000 = ₹ 5000 \text{ (Ignore +ve/-ve)}$$



Mr. Murthy, an importer has GBP obligation of 1,000 £. He approached SBI for U.K £. The Direct quote in the bank is ₹/£ = 68-70. RBI reference rate for GBP for that day is ₹ 69. What is the value of taxable services?



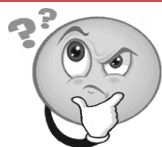
The exchange rate relevant in the present case is 1 £ = ₹ 70, as bank is selling £ to importer. As per Rule 2B of service tax (Determination of value) Rules, 2006, in case of purchase or sale of Indian currency and when RBI reference rate is available,

$$\text{Value} = \left(\begin{array}{c} \text{Buying rate/} \\ \text{selling rate} \end{array} - \text{RBI reference rate for} \right. \quad \times \quad \left. \begin{array}{c} \text{Units of} \\ \text{currency} \end{array} \right.$$

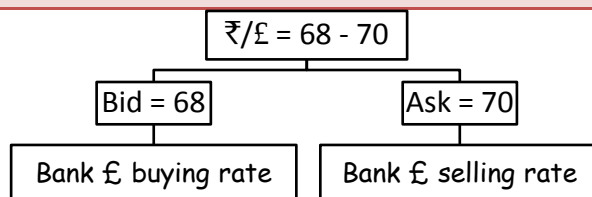
that currency for that day

$$\text{Value} = (70 - 69) \times 1,000 = ₹ 1000 \text{ (Ignore +ve/-ve)}$$





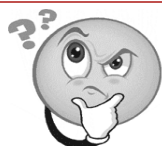
Mr. Murthy, an importer has GBP obligation of 1,000 £. He approached SBI for U.K. £. The Direct quote in the bank is ₹/£ = 68-70. RBI reference rate for GBP for that day is not available. What is the value of taxable services?



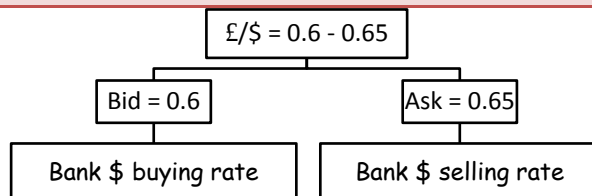
The exchange rate relevant in the present case is 1 £ = ₹ 70, as bank is selling £ to importer. As per Rule 2B of service tax (Determination of value) Rules, 2006, in case of purchase or sale of Indian currency and when RBI reference rate is not available,

Value = Gross amount of Indian rupees provided or received × 1%

Value = 70 X 1,000 X 1% = ₹ 700

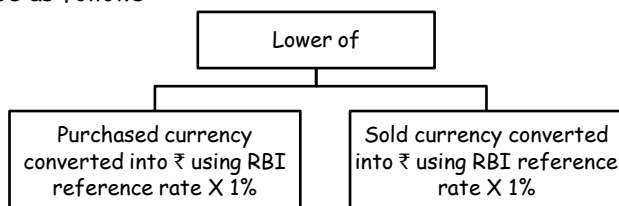


The Cross currency quote for \$ and £ in a Yes Bank Ltd. is £/\$ = 0.6 - 0.65. A trader has exchanged £ for 10,000 \$. How many £ will he obtain and what is the value of taxable services provided by Yes bank Ltd. to the trader? On that date the RBI reference rate for ₹/\$ is 45.5 and ₹/£ is 70.5.



The exchange rate relevant in the present case is 1\$ = £ 0.6, as bank is buying \$ from the trader. No. of £ obtained = 10,000\$ X £0.6/\$ = £ 6,000.

As per Rule 2B of service tax (Determination of value) Rules, 2006, in case of purchase or sale of other currency and the currency exchanged is other than Indian currency, the value of taxable service shall be as follows:



Purchased currency by bank = \$

Purchased currency converted into ₹ using RBI reference rate = 10,000 \$ X ₹ 45.5/\$ = ₹ 4,55,000

Purchased currency converted into ₹ X 1% = ₹ 45,500

Sold currency by bank = £

Sold currency converted into ₹ using RBI reference rate = 6,000 £ X ₹ 70.5/£ = ₹ 4,23,000

Sold currency converted into ₹ X 1% = ₹ 42,300

Lower of ₹ 45,500 and ₹ 42,300 shall be the value of taxable service i.e. ₹ 42,300



Whether the levy of service tax on hire purchase and leasing transactions falling under section 65(12) of the Finance Act, 1994 is constitutionally valid?

Madras Hire Purchase Association v. UOI 2009



The High Court, in the impugned judgment, had upheld the constitutional validity of service tax levy on hire purchase and lease services after noting that service charge @ 1% was admitted as collected and service tax was levied on service and not on sale or purchase of goods.

The High Court rejected the plea that levy of service tax on hire purchase/leasing transaction is violative of Articles 14 and 19(1)(g) of the Constitution after observing that a taxing statute was not per se, a restriction of the freedom under Article 19(1)(g) and policy of a tax, in its effectuation, might, bring in some hardship in some individual cases but that was inevitable.

Business Auxiliary services and Business Support Services



Visa facilitators – Business auxiliary service v. Business support services v. Manpower recruitment and supply service.

Mr. X, a broker in Visa (Formal language: Facilitator!!!) provided services in the form of assistance directly to individuals (As company and Firm don't need Visa!!!). He collected certain statutory charges like Visa Fee, Certification Fee, attestation Fee, Emigration Fee, etc. and remitted to the respective authorities and in addition has collected charges towards his service.

Is it a taxable service? If yes, then under which head the said service has to be classified?

The said service does not fall under any of the taxable services under sec. 65(105). Hence service tax not attracted.

Departments Clarification – Circular No. 137/6/2011

Service does not fall under	Reason	When will it fall under the said service?
Business Auxiliary Service	Visa Facilitator does not act on behalf of the embassies, as agents of the principal.	Where the foreign embassy gives licence to operate as a visa agent and any amount paid to him, are taxable under this head as they are acting as agents.
Business support service	Visa applicant pays the service charge on his own meaning and such service charge is not borne by any business entity. My Comment: A service will be treated as Business support service, if it is provided to support the BUSINESS or COMMERCE of service receiver. Visa Facilitation is not an activity related to business or profession	Where the Visa Facilitator renders Visa Assistance to individuals who are employed in a business entity and the service charges are paid by the business entity.
Manpower Recruitment and supply service	In the normal course of business, Visa Facilitators are not acting as agents of recruitment or of foreign employer	Where visa facilitators also act as agents of recruitment or of foreign employer, then service tax would be leviable to that extent under this head.



Clearing and Forwarding Agents Service



"Clearing and forwarding agent" means any person, who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent



Can a commission agent also acting as a consignment agent be covered under the definition of 'clearing and forwarding agent'?

CCE v. Mahaveer Generics 2010

The assessee contended that activity carried on by him came within purview of 'commission agent' and not under the 'clearing and forwarding agent'.

The Court elucidated that assessee in question had not restricted its activities to business of commission agency, but had also carried on business as consignment agent. Since the consignment agent had been brought under statutory definition of 'clearing and forwarding agent' by inclusive clause, the High Court held that the assessee falls under the definition of 'clearing and forwarding agent' after considering the following points:-

- Agreement itself termed the assessee as a consignment agent.
- Price was mutually decided by the principal and the agent (assessee). Had the assessee been merely a commission agent, price determination would not have been within his domain.
- Since assessee had been given the authority and power to appoint dealers, stockists and distributors, it implied that it was not merely a commission agent.
- Mere procurement of purchase orders was not involved, but stored goods were also cleared and forwarded to stockists and dealers by the assessee.

Construction services

Notification No. 28/2010

Construction of complex service in relation to Jawaharlal Nehru National urban Renewal mission and Rajiv Awaas Yojana has been exempted from service tax.

Telecommunication service



Whether the value of SIM cards sold by the mobile phone companies to their subscribers has to be included in value of taxable service under 'telecommunication service' or it is taxable as sale of goods under the Sales Tax Act?

CCE v. Idea Mobile Communications Ltd. 2010

Decision of the Kerala High Court:

- ✓ On analysis of the functioning of a SIM card, it is a computer chip having its own SIM number on which telephone number can be activated.
- ✓ SIM card is a device through which customer gets connection from the mobile tower. Unless the SIM card is activated, service provider cannot give service connection to the customer



because signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's mobile instrument.

- ✓ Hence, it can be inferred that it is an integral part required to provide mobile service to the customer.
- ✓ Further, SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider.

Conclusion: Thus, the Court accepted the view that **SIM cards were not goods sold or intended to be sold to the customer, but supplied as part of service.** Consequently, it held that **the value of SIM card supplied by the assessee would form part of the value taxable service on which service tax was payable by the assessee.**

Value of Taxable Service:

Value shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority. - **Notification No. 2/2011**

In case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority - Departments clarification.

Transport of Goods by Rail, Road, Air Services

Common Exemption – Notification No. 8/2011

Transport of goods by air, rail, and road services provided to any person located in India is exempt, when the goods are transported from a place located outside India to a final destination which is also outside India.

Notification No. 9/2011

Services of transport of goods by air have been exempted from service tax to the extent so much of the value as is equal to the amount of airfreight included in the value for the purpose of charging customs duties.

Amendments applicable w.e.f. 1.1.2011

- Transport of goods by railways including Government railways, whether in containers or otherwise has been made liable to service tax.
- An abatement of 70% of the gross value of the freight charged has been provided to 'transport of goods by rail whether in containers or otherwise'.

Transport of air passengers services

Value of taxable service

The rates of service tax on travel by air are as follows:

Type of Travel		Service tax leviable at the rate of	
		01.07.2010-31.03.2011	01.04.2011 onwards
		Notification No. 26/2010	Notification No. 04/2011
Domestic	Economy Class	(a) 10% of the gross value of	(a) 10% of the gross value of



Travel		the ticket or (b) Rs.100 per journey whichever is less	the ticket or (b) Rs.150 per journey whichever is less
	Other than Economy class	(a) 10% of the gross value of the ticket or (b) Rs.100 per journey whichever is less	10% (Standard rate)
International Travel	Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.500 per journey whichever is less	(a) 10% of the gross value of the ticket or (b) Rs.750 per journey whichever is less
	Other than Economy class	10% (Standard rate)	10% (Standard rate)

These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Economy class in an aircraft means, —

- (i) **Where there is more than one class of travel:** the class attracting the lowest standard fare;
- (ii) **Where there is only one class of travel:** that class.

Transport of Coastal Goods and Goods through Inland Water Including National Waterways

Exemption Notification No. 16/2011

Abatement of 25% of the gross amount charged in relation to transport of coastal goods, goods through national waterways or goods through inland water.

Works Contract services

- ✓ Construction of new residential complex or part thereof or completion and finishing services of new residential complex or part thereof, under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and Rajiv Awaas Yojana. - Notification No. 6/2011
- ✓ **Is CENVAT credit available on Input services and capital goods used in execution of works contract? Can it be utilized for payment of service tax on value of works contract?**

Yes, the CENVAT credit w.r.to service tax paid on input services and excise duty paid on capital goods can be availed and utilized for the purpose of service tax payable on the value of works contract service as per Rule 2A of service tax (Determination of Value) Rules, 2006.

But w.e.f 2011 in case of 3 input services, the CENVAT credit shall be restricted to 40% of the service tax paid on such services - Notification No. 1/2011.

Those services are Erection, commissioning and installation service, Services of commercial or industrial construction, construction services in respect of residential complexes.





Can the option for composition scheme under works contract service be exercised after payment of service tax on a particular works contract?

Nagarjuna Construction Company Ltd v. GOI

Decision of the case:

- ✓ The A.P High Court held that on a true and fair construction of rule 3(3) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, unambiguously, it was clear that where in respect of a works contract service tax had been paid, no option to pay service tax under the composition scheme could be exercised.
- ✓ The entitlement to avail the benefits of the composition scheme is only after an option is exercised under rule 3(3) of the said rules and this provision specifically enjoins a disqualification for exercise of such option where service tax has been paid in respect of a works contract.
- ✓ In other words, **where service tax has been paid in respect of a works contract, the eligibility to exercise an option to avail the benefits of the composition scheme is excluded.**

Recent Clarifications by department

Mr. X is engaged in the following activities:

- ✓ laying of cables under or alongside roads,
- ✓ shifting of overhead cables to underground on account of renovation/widening of roads;
- ✓ laying of electrical cables under or alongside roads/railway tracks;
- ✓ Electrification of railways, installation of street-lights, traffic lights, flood-lights etc.

Under which head/heads the said services provided by him can be classified?

The clarification is provided in **Circular No.123/5/2010**

Taxable service	Coverage of the above activities under the respective services
Commercial or industrial construction services	Only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits are covered under this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.
Erection, commissioning or installation services	Activity resulting in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or resulting in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) are covered under this taxable service.
Works Contract	Activities excluded from aforesaid two services would generally remain excluded from this taxable service as well.
Site formation and clearance, excavation, earthmoving and demolition services	Services provided independently and not as part of a complete work are covered under this taxable service. Thus, site formation and excavation activities provided in respect of a complete work like that of laying of cables under the road will not be taxable.



The activities and its taxability under the sub clause of sec. 65 (105) are as follows:

Activity	Taxability	Relevant category of service
Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Non-taxable service	
Laying of cables under or alongside roads	Non-taxable service	
Laying of electric cables between grids/substations/ transformer stations en route	Non-taxable service	
Installation of transformer/ sub-stations undertaken independently	Taxable service	Erection, commissioning or Installation services
Laying of electric cables up to distribution point of residential or commercial localities/complexes	Non-taxable service	
Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service	Commercial or industrial construction' or 'Construction of complex' service
Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service	Erection, commissioning or Installation services
Railway electrification, electrification along the railway track	Non-taxable service	

Whether underwriting commission received by the Primary Dealers for the auction of Government Securities liable to service tax?

Circular No.126/08/2010

- ✓ The terms 'underwriting' and 'underwriter' pertain to dealing in securities of a body corporate. In other words, service tax is leviable on underwriting only when the securities of a body corporate are underwritten.
- ✓ Though the Government securities are issued by the Reserve Bank of India (RBI), which is a 'body corporate' in terms of the RBI Act, 1934, Government securities are not securities of a body corporate as the Government securities are sovereign securities having zero default risk and RBI of India only manages the issue as also the auction of Government Securities on behalf of the Government of India.
- ✓ The Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the Central Government's market borrowing program.
- ✓ **Conclusion:** Therefore, it has been clarified that service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.



Customs Act – Taxable Event

No amendments in this area

Customs Act – Rate of Duty

Recent Circular on Classification

Whether documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale i.e. paper licenses of software and PUK cards, when imported without the packaged software should be classified under Customs Tariff Heading 8523 i.e. the heading applicable to IT software? Circular No. 15/2011

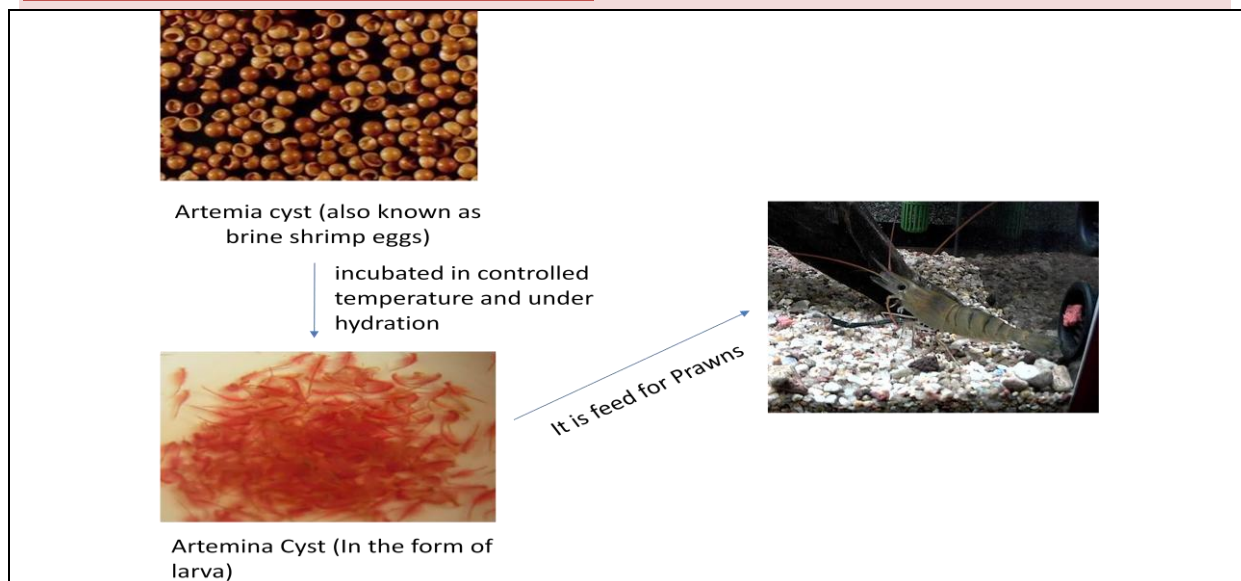
The documents conveying the right to use software by themselves do not satisfy the definition of information technology software provided in the supplementary note to Chapter 85 and therefore, **do not qualify for classification under this tariff item** because they do not contain any representation of instructions, data, sound or image recorded in a machine readable form, which is capable of being manipulated or providing interactivity to a user.

Classification of paper licenses of software	Classification of PUK cards
Tariff item 49070030 of heading 4907 refers directly to "Documents of title conveying the right to use Information Technology software". Hence, as per rule 1 of the Rules for the interpretation of the Tariff Schedule, such paper licenses which are essentially documents conveying the right to use such IT software, merit classification under Customs Tariff Heading 49070030.	PUK cards are not documents of title conveying the right to use Information Technology software per se, but are actually printed matter containing numbers which when entered; enable the importer to access right to use such IT software. Hence, they are liable to classified under Customs Tariff Heading 4911 as "other printed matter".

Recent case laws on classification

Whether classification of the imported product changes if it undergoes a change after importation and before being actually used?

Atherton Engineering Co. Pvt. Ltd. v. UOI 2010



AN EXTRACT FROM CTA

Heading	Description
2309	products used as animal feed
0511.99	other products in the category of non edible animal products

Assessee want to classify under this head

Department want to classify under this head



© Leo Blanchette * www.ClipartOf.com/13166

Assessee's Contention:

- These imported cysts contained little organisms/embryos which later became larva that prawns feed on.
- Therefore, according to them, the nature and character of this product was not changed by nurturing or incubation.

Decision of the case:

- ✓ It was the use of the product that had to be considered in the instant case. **If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification.**
- ✓ Therefore, in the instant case, it examined whether the nature and character of the product remained the same.

The Court opined that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court held that **the said product should be classified as feeding materials for prawns** under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

M/s CPS Textiles P Ltd. v. Joint Secretary 2010

Decision of the case:

- ✓ The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criteria for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test.
- ✓ The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice need be issued separately as the payment of interest become automatic, once it is held that excess drawback has to be repaid.



Customs Act – Valuation

Recent Circular on Valuation

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed? Circular No. 11/2010

With effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods.

Definition of Transaction value: The price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a sale for export to India. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

However, as per erstwhile section 14, applicable to period prior to October 2007, the value of the imported goods is deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, in the course of international trade.

In this case also, the sale of imported goods made after warehousing cannot be considered to have been made in the course of international trade and hence, the price at which such sale takes place cannot be the assessable value in terms of erstwhile section 14.

Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007 - Circular No. 933/23/2010 - CX

The value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases:-

- (a) Endress Hauser Flowtec (I) Pvt Ltd. [2009 (Tribunal)]
- (b) Morarjee Brembana Ltd. [2003 (Tribunal)]
- (c) Uniworth Textile Ltd. [2009 (Tribunal)]

Customs Act – Exemptions

No amendments in this area

Customs Act – Procedures

Interest and Penalties:

Description	Cases where this Interest shall be levied	Amount	Period for which Interest shall be payable
Interest on delayed payment of Customs Duty (Sec. 28AA)	In all cases other than those mentioned in Sec. 28AB. i.e. Sec. 28(2) - The proper	Simple int. @ 18% p.a (w.e.f. 1.3.2011)	Duty and Interest determined should be paid within 3 months from the date of such



	officer, after considering the representation, if any, made by the person on whom show cause notice has been served, shall determine the amount of duty or interest due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.		determination. If not interest shall be calculated FROM - The date immediately after the expiry of the said period of three months. TILL - The date of payment of such duty determined.
Interest on delayed payment of Customs Duty in Special cases (Sec. 28AB)	Duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded	Simple Int. @ 18% p.a (w.e.f. 1.3.2011)	Calculated FROM - The first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, TILL - The date of payment of such duty

Remission of Duty on Lost/ Pilfered Goods

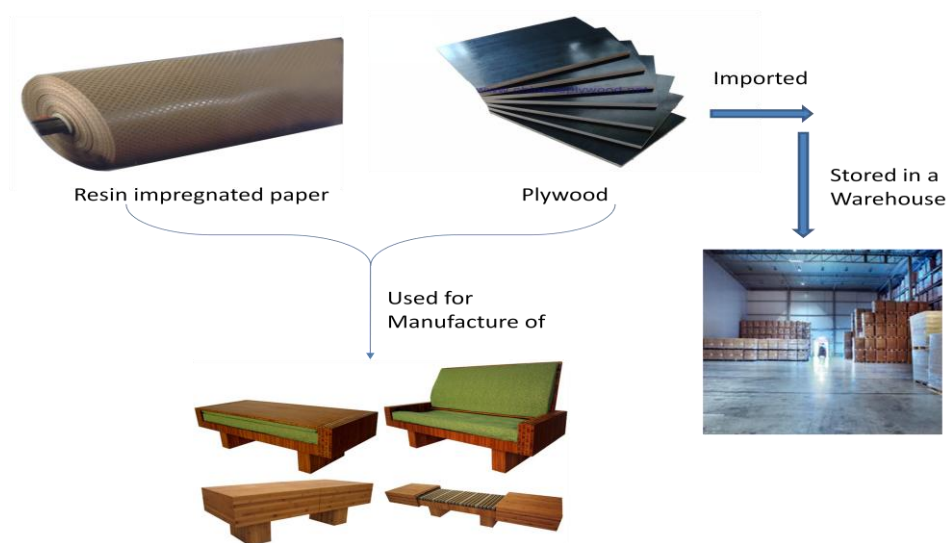
Section 13 - Remission in case of Pilferage	Section 23 (1) - Remission in case of loss or destruction of goods, except pilferage
No duty payable under Sec. 13. But if goods are restored, liability of duty shall be revived	Duty shall be payable under Sec. 23(1), but it is remitted by AC of customs. Thus unless remitted, duty has to be paid under Sec. 23(1)
Importer does not have to prove pilferage	Burden of proof is on importer to prove loss or destruction
Pilferage should be before order for clearance is made	Loss or destruction can be any time before clearance
Loss must be only due to pilferage	Loss or destruction may be due to fire, accident etc. but not pilferage. Eg. Loss by leakage is covered under section 23
Normally duty is not paid. However if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.	Under Sec. 23(1), if duty is paid then refund can be obtained only if remission is granted by customs authorities. Thus remission u/s 23(1) is at the discretion of customs authorities.
Section 13 is not applicable for warehoused goods.	Section 23(1) is applicable for warehoused goods also.

Whether remission of duty is permissible under section 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?

CCE v. Decorative Laminates (I) Pvt. Ltd. 2010



Facts of the case:



Decorative laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. It sought an extension of the warehousing period which was granted by the authorities.

However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, the assessee applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had become unfit for use on account of non-availability of orders for clearance.

Decision of the case:

- ✓ Section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, **the application for remission of duty can be considered.**
- ✓ Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would **not be liable to pay duty.**
- ✓ Therefore, the expression "**at any time before clearance for home consumption**" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods.
- ✓ The said expression cannot **extend to a period after the lapse of the extended period** merely because the licence holder has not cleared the goods within the stipulated time.

The High Court held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section.

When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Duty Drawback

Duty Drawback: The Excise duty paid on inputs and service tax paid on input services is given back to the exporter of finished goods.



	Duty Drawback (Sec. 74)	Duty Drawback (Sec. 75)
When admissible?	Imported goods are re-exported as it is or after use, and article is easily identifiable	Imported goods used in manufacture of goods which are then exported
Related Rules	Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995	Customs, Central Excise Duties and Service Tax Drawback Rules, 1995
Examples	- Import for exhibitions - Goods rejected or wrong shipment	
Situations through which it can be sent	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post	i) General Export of Cargo; ii) Export by Post
Coverage of Duty	Customs Duty is only refunded.	Customs, Excise Duty as well as Service Tax are refunded.
Rates of DBK	Sec 74(1): 98% of the import duty paid at the time of importation Sec 74(2): DBK at reduced rate (Notified Rates)	i) AIR (All Industry Rate) --- generally; ii) BR (Brand Rate)—when no All Industry rate is fixed in the DBK Schedule; iii) SBR (Special Brand Rate)--- when fixed All Industry Rate < 80% of the actual duties incidence

Duty Drawback (Sec. 74)

	Sec. 74(1)	Sec. 74(2)
When admissible	Imported goods exported as such (without being used)	Imported goods exported as such after having being used in India for some period
Rates of DBK	98% of the import duty paid at the time of importation	DBK at reduced rate (Notified Rates)
Permissible Time Period of Exportation	2 years from date of payment of initial import duty [The above period can be extended by CBEC on sufficient cause being shown]	Maximum upto 3 Years or 4 years , as the case may be

Drawback rates notified by Central Government for the purpose of Sec. 74(2):

Period between the "date of clearance for home consumption" and the "date when goods are place under customs control for Export"	% of Import Duty to be paid as Drawback
≤ 3 months	95%
> 3 months but ≤ 6 months	85%
> 6 months but ≤ 9 months	75%
> 9 months but ≤ 12 months	70%
> 12 months but ≤ 15 months	65%
> 15 months but ≤ 18 months	60%
> 18 months	Nil



On the following goods Drawback under sec. 74(2) is not available

1. Wearing apparel
2. Tea chests
3. Exposed Cinematograph film passed by Board of Film Censors in India
4. Unexposed photographic films, papers and plates and X ray films.

Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995

Coverage of taxes	Refund of only Customs Duties
Procedure for claiming drawback on goods exported by post (Rule 3)	Step -1: Mention "DUTY DRAWBACK EXPORT" on outer package and Prepare Duty drawback claim separately. Hand it over to the postal authorities along with the package Step -2: The postal authorities shall forward the claim to the proper officer and the date of receipt of such claim shall be deemed to be the date of filing duty drawback claim by exporter. Step -3: (If aforesaid claim is complete in all respects) - Intimation shall be given by proper officer to the exporter in the form specified by commissioner of Customs. Step - 4: (In case of deficiency in claim) - The deficiencies in the claim shall be informed by proper office to exporter within 15 days from the date of receipt of such claim in the form as prescribed by the commissioner of customs. Step -5: Exporter has to comply with the requirements specified in the deficiency memo within 30 days of receipt of such memo and when complied with an acknowledgment shall be given by proper officer in the form prescribed by the commissioner of customs.
Statement/ Declarations to be made on exports other than by post (Rule 4)	✓ On Shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under sec. 74 shall be stated. ✓ A declaration on the relevant shipping bill or bill of export that export is being made under a claim of drawback, the duties of customs were paid on the goods imported and the imported goods were or were not taken into use after importation. ✓ Bill of entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from RBI to report the goods shall be furnished with the proper officer of customs.
Time limit for claiming drawback in case of goods exported other than by post (Rule 5)	⇒ 3 months from the date in which an order permitting export was given + 3 months by AC/DC on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1,000 whichever is less. ⇒ 3 months from the date in which an order permitting export was given + 3 months by AC/DC + 6 months by commissioner of customs/Commissioner of excise and customs on an application accompanied with a fees of 2% of FOB value or Rs. 2,000 whichever is less.

Duty Drawback (Sec. 75) and Notification No. 49/2010.

Coverage of taxes	Refund of Customs Duty / Excise Duty (on Inputs) + Service Tax (on Input Services)
Rates of DBK	Rule 3 - All Industry Rate (AIR): Fixed by Central Government (annually) [This rate is fixed by CG considering the average quantity and value of each class of inputs imported or manufactured in India. The duty incidence of inputs and input service is considered] ▪ In respect of export of manufactured goods, Assessee manufacturer exporter is also entitled to take CENVAT credit of Excise duties, customs duties and service tax. ▪ If CCR is taken of these duties, then Admissible duty drawback shall be reduced by the amount of such CENVAT credit availed and only net amount shall be available as duty



	drawback	
	Rule 5 - The relevant date for application of amount or rate of drawback shall be:	
	In case of Goods exported by filing Shipping Bill / Bill of Export	→ Date of issuance by "Let Export Order / Let Ship Order"
	In case of Goods Exported by Post	→ Date of delivery of Export Goods to the Postal Authority
	Rule 6 - Brand Rate (BR): Fixed by Chief Commissioner of Excise / Commissioner of Customs & Commissioner of Excise on application by importer [Importer can make application in respect of his product if no All Industry Rate has been fixed] Period of submission of Application: ⇒ 3 months + 3 months Extension by AC/DC on an application accompanied with a fees of 1% of the value of exports or Rs. 1,000 whichever is less. ⇒ 3 months + 3 months Extension by AC/DC + 6 months by Commissioner of Excise/ Commissioner of Customs on an application accompanied with a fees of 2% of the FOB value of Exports or Rs. 2,000 whichever is less.	
	Rule 7 - Special Brand Rate (SBR): Fixed by Chief Commissioner of Excise / Commissioner of Customs & Commissioner of Excise on application by importer The application can be made within 30 days from the date of export, when a particular manufacturer or exporter finds that the actual excise/ customs duty paid on inputs or input services is higher than All Industry rate fixed for the product The conditions of eligibility are: ▪ The All Industry Rate fixed should be less than 80% of the duties paid by him ▪ Rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than Rs. 500 ▪ Export Value is not less than the value of imported material used in them i.e. there should not be negative value addition.	
Upper limit of drawback rate (Rule 8A)	Duty drawback rate shall not exceed 33% of market price of export goods	
Procedure for claiming DBK	Export by Post (Rule 11)	Mention "DUTY DRAWBACK EXPORT" on outer package and Prepare Duty drawback claim separately. Hand it over to the postal authorities along with the package
	Export other than by Post (Rule 12 & 13)	Mention "DUTY DRAWBACK EXPORT" on Shipping Bill/Bill of Export and Duty drawback claim needn't be prepared separately (as Triplicate Copy of Shipping Bill shall be deemed to be the DBK Claim itself)
DBK Order	It is issued under Rule 14.	
Supplementary claim (Rule 15)	If exporter is entitled to get additional amount supplementary claim should be filed within 3 months + Period can be further extended by 9 months by AC/DC on making an application accompanied with a fees of 2% of the FOB value or Rs. 2,000 whichever is less.	
Erroneous duty drawback - refund	It shall be repaid upon demand by the PO.	
Recovery of duty drawback	▪ AC/DC will send notice to Importer to bring evidence of sale proceeds (Evidence should be submitted within 3 months from the date of realization of sale proceeds + 9 months	



upon failure to realize Foreign exchange (Rule 16A)	by Commissioner of Customs/Commissioner of Excise and Customs on an application accompanied with a fees of 1% of FOB value of Exports or Rs. 1,000 whichever is less) ▪ Failure to bring the evidence, AC/DC shall pass recovery orders ▪ Importer shall pay within next 30 days ▪ However, as and when foreign exchange is brought in India, Proof can be submitted and then, recovered duty drawback shall be repaid to the importer. Such Drawback shall not be recovered under circumstances or conditions specified below – Notification No. 30/2011. (All the points has to be satisfied) ✓ sale proceeds are not realized by an exporter with the period allowed under FEMA, 1999 ✓ such non realization of sale proceeds is compensated by Export Credit Guarantee Corporation (ECGC) under an insurance cover ✓ RBI writes off the requirement of realization of sale proceeds on merits ✓ Exporter produces a certificate from the concerned Foreign mission of India about the fact of non recovery of sale proceeds from the buyer.
---	---

Dutiability of “Packaged/Canned SOFTWARE” under Indirect taxes

Assessment of packaged/Canned software – where affixation of Retail Sale Price (RSP) is mandatory

	Under Central Excise	Under Service Tax	Under Customs Act
When the said duties shall be levied?	Manufacture and sale of packaged/ canned software	Providing the right to use packaged/Canned software	Import of packaged/canned software
Covered under?	Notification No. 30/2010 - CE	Notification No. 53/2010 - ST	Circular No. 15/2011
What is the value for the purpose of levy?	MRP based valuation u/s 4A: MRP declared on the package including the value of licences (i.e. Right to use Less: Abatement @ 15%	If Excise Duty or Customs duty is paid on packaged/ canned software manufactured domestically or imported then, On the service of providing the right to use the packaged or canned software under 'information technology software services' is fully exempt .	Basic Customs Duty shall be payable and for the purpose of calculation of CVD u/s 3(1), the value shall be as determined u/s 4A.

All the Very Best for your Examinations..... 😊

In case of Doubts, send mail to cma.tharunraj@gmail.com

Will be at your service always.....



Assessment of packaged/Canned software – where affixation of Retail Sale Price (RSP) is NOT mandatory

	Under Central Excise	Under Service Tax	Under Customs Act
When the said duties shall be levied?	Manufacture and sale of packaged/ canned software	Providing the right to use packaged/Canned software	Import of packaged/canned software
Covered under?	Notification No. 14/2011 - CE	Sec. 65(105) of Finance Act, 1994	Notification No. 25/2011 - Cus
What is the value for the purpose of levy?	Transaction value u/s 4: Transaction Value at the time of sale Less: value representing consideration for transfer of right to use such packaged/canned software.	Service tax would be charged under the category of information technology software service on the value representing consideration for transfer of right to use such packaged/canned software.	Basic Customs Duty shall be payable and for the purpose of calculation of CVD u/s 3(1), the value shall be as determined u/s 4.

