

CENVAT CREDIT

Question 1

ABC Co. Ltd. procured the following items during the month of January 2011. Determine the amount of CENVAT credit available with necessary explanations for treatment of various items.

Items	Excise duty paid(including education cesses) (₹)
Raw materials	52,000
Manufacturing machine	1,00,000
Light diesel oil	40,000
Greases	10,000
Office equipment	20,000
Paints	5,000

(Note: M/s. ABC Co. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year)
(5 Marks) (May 2011)

Answer

Computation of CENVAT credit available to ABC Co. Ltd. for purchases made during the month of January, 2011

Particulars	CENVAT credit available (₹)
Raw materials	52,000
Manufacturing machine (1,00,000 × 50%) (Note – 1)	50,000
Greases	10,000
Paint	<u>5,000</u>
CENVAT credit available	<u>1,17,000</u>

Notes:

1. As per third proviso to rule 4(2)(a) of the CENVAT Credit Rules, 2004, assessee eligible for SSI exemption can avail CENVAT credit of the whole amount of the duty paid on the capital goods in the same financial year in which such goods are received. However, since ABC Co. Ltd. is not eligible for SSI exemption, CENVAT credit of only 50% is available in respect of the manufacturing machine in the year of purchase.
2. Light Diesel Oil is not an input as per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004. Hence, it is not eligible for the CENVAT credit.
3. Office equipment is not a capital good as per the definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.

Question 2

C & C Co. Ltd. manufactured non-alcoholic beverage bases known as concentrates. These were sold to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors. These were then sold to retailers and thereafter to the ultimate consumers. The advertisement and market research activities were undertaken by M/s. C & C Co. Ltd. Input credit of service tax paid on the advertising service used for marketing of soft drinks removed by bottlers was claimed by M/s. C & C Co. Ltd. This credit was denied on the ground that advertisements did not relate to the concentrates manufactured by M/s. C & C Co. Ltd. Discuss briefly with reference to decided case law whether M/s. C & C Co. Ltd. is eligible to avail CENVAT credit paid on advertising services which was utilised towards payment of excise duty on concentrates. (5 Marks) (May 2011)

Answer

The fact of the case are similar to the case of *Coca Cola India Pvt. Ltd. v. CCE (2009) 15 STR 657 (Bom)*. The Bombay High Court held that though the contents of advertisements made by the appellants (the manufacturer of 'concentrates') essentially featured the 'bottle of aerated waters' (the bottles being the final products manufactured by bottlers and not by the appellants), the credit on advertising services received by the appellant could not be denied on the ground that the advertisement was not of the final product of the appellants (viz. 'concentrates'), but of the final product of the bottlers (viz. 'aerated waters') (Rule 2(l) of CENVAT Credit Rules, 2004).

The High Court observed that any input service that forms a part of value of final product should be eligible for the benefit of CENVAT credit. In the said case, since the advertising cost formed part of the assessable value, the assessee was eligible to take credit of tax paid on advertising services. So long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of final product, credit must be allowed. In the present case, the Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.

In view of the above-mentioned judgment, C & C Co Ltd. is eligible to avail CENVAT credit paid on advertising services.

Question 3

Write a short note with reference to the CENVAT Credit Rules 2004 on "exempted goods"

(3 Marks) (May 2011)

Answer

As per Rule 2(d) of the Cenvat Credit Rules, 2004, "exempted goods" means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of exemption under Notification No. 1/2011-CE dated 1st March, 2011 is availed.

Question 4

Sona Ltd. purchased a lathe machine at a cum-duty price of ₹ 18,63,680. The excise duty rate charged on the said machine was 10% plus education cess 2% plus secondary and higher education cess 1%. The machine was purchased on 1-7-2009 and was disposed of on 30-09-2011 for a price of ₹ 10,00,000 in working condition as second hand machine. Calculate the amount of CENVAT credit allowable for the financial years 2009-10 and 2010-11 and also specify the amount payable towards CENVAT credit already taken at the time of disposal of the machinery in the year 2011-12. Sona Ltd. is not eligible for SSI exemption.

(5 Marks) (Nov 2010)

Answer

Amount of CENVAT credit allowable for financial years 2009-10 and 2010-11:-

Cum duty price of the machinery	₹ 18,63,680
Rate of duty including education cess and secondary and higher education cess	10.30%
Duty paid on machinery = ₹ 18,63,680 × 10.30/110.30 = ₹ 1,74,033.58=	₹ 1,74,034
CENVAT credit allowable during the	
Financial Year 2009-10 @ 50%	₹ 87,017
Financial Year 2010-11 @ 50%	₹ 87,017

Amount payable towards CENVAT credit on disposal of machinery during the year 2011-12

Total CENVAT credit availed on the machinery	₹ 1,74,034
Less: Amount of reduction from the said credit on	

(i) First 50% = $[87,017 \times 2.5\%] \times 9$ quarters	₹ 19,579
(ii) Next 50% = $[87,017 \times 2.5\%] \times 6$ quarters	<u>₹ 13,053</u>

Amount payable on disposal of machinery ₹ 1,41,402

Notes:

1. In respect of capital goods, CENVAT credit shall be taken only for an amount not exceeding 50% of duty in the same financial year and balance may be taken in any subsequent year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
2. If capital goods are removed after being used, the manufacturer has to pay an amount equal to CENVAT credit taken on the said capital goods reduced by 2.5% of each quarter of a year or part thereof from the date of taking the CENVAT credit [Second proviso to rule 3(5) of the CENVAT Credit Rules, 2004].
3. It is assumed that first 50% of the CENVAT credit has been taken on 01.07.2009 and the balance 50% of the credit has been taken on 01.04.2010.

Question 5

XYZ Co. engaged in the service of over burden removal in mines had acquired some trucks and taken CENVAT credit to the extent of the excise duty paid on the said trucks acquired by them. Subsequently, on becoming aware that the said trucks do not qualify as capital goods or inputs under the CENVAT Credit Rules, 2004, the said XYZ Co. reversed the credit taken, all of which had remained unutilized. The Department has issued a show cause notice that interest under section 11AA of Central Excise Act on the amount of credit taken, but not utilised should be paid. Write a note whether the action of the Department is correct in law.

(2 Marks) (Nov 2010)

Answer

Yes, the action of the Department is correct in law. Rule 14 of the CENVAT Credit Rules, 2004 provides for recovery of CENVAT credit wrongly taken or utilized wrongly or erroneously refunded. Earlier, there was a view that if an assessee had taken the credit but not utilised the same for payment of taxes or duty, then no interest payment is required. However, the Department has clarified vide **Circular No. 942/03/2011-CX** [which has been issued in the light of Apex Court's decision dated 21.02.2011 in **Ind. Swift Laboratories Ltd. V Union of India**] dated **14.03.2011** that assessee is liable to pay interest where CENVAT Credit was wrongly taken by an assessee but reversed subsequently before its utilisation. Hence, in this case, XYZ Co. having taken the credit wrongly will have to pay interest under section 11AA of Central Excise Act, 1944 even if the credit has not been utilised.

Question 6

Mr. Happy, a service provider, has provided services of ₹ 1,00,00,000. Out of this, ₹ 70,00,000 are taxable output services and ₹ 30,00,000 are exempt output services. Mr.

Happy has opted not to maintain separate inventory and accounts and pay prescribed amount on value of exempt output services.

Service tax paid on his input services, excluding education cess and secondary and higher education cess (EC & SHEC) is ₹ 6,00,000. Rate of service tax, excluding EC and SHEC, is 10%. Calculate the total amount payable including service tax, EC and SHEC by Mr. Happy through GAR-7 challan. (5 Marks) (May 2010)

Answer

Calculation of service tax and total amount payable under rule 6(3)(i) of the CENVAT Credit Rules, 2004

Particulars	₹
Service tax payable on taxable services ($₹ 70,00,000 \times 10\%$)	7,00,000
Education cess @ 2% ($₹ 7,00,000 \times 2\%$)	14,000
Secondary and higher education cess @ 1% ($₹ 7,00,000 \times 1\%$)	7,000
Amount payable on exempt services under rule 6(3)(i) ($₹ 30,00,000 \times 5\%$) [Note (1)]	<u>1,50,000</u>
Total	<u>8,71,000</u>

Particulars	Service tax and amount payable under rule 6(3)(i)	Education cess	Secondary and higher education cess
Amount payable (A)	$₹ 7,00,000 + ₹ 1,50,000 = ₹ 8,50,000$	₹ 14,000	₹ 7,000
Less: CENVAT credit (B)	₹ 6,00,000	$₹ 6,00,000 \times 2\% = ₹ 12,000$	$₹ 6,00,000 \times 1\% = ₹ 6,000$
Net amount payable = (A) - (B)	₹ 2,50,000	₹ 2,000	₹ 1,000

Amount payable by GAR-7 challan = ₹ 2,50,000 + ₹ 2,000 + ₹ 1,000 = ₹ 2,53,000

Notes :

- (1) Education cess and secondary and higher education cess are not payable on 'amount' payable @ 5% of the value of exempt services under rule 6(3)(i) of the CENVAT Credit Rules, 2004.
- (2) Credit of education cess and secondary and higher education cess paid on input services can be utilized only for the payment of education cess and secondary and higher education cess payable on output services (or on excisable goods) respectively [First and second proviso to rule 3(7)(b) of the CENVAT Credit Rules, 2004].

Question 7

XYZ Co. is engaged in the **manufacture of water pipes**. From the following details for the month of May, 2010, compute the available CENVAT credit under the CENVAT Credit Rules, 2004:

Duty (including the education cesses) paid on purchases as detailed below:

Particulars	₹
Raw steel	22,000
Water pipe making machine	18,000
Spare parts for the above machine	7,500
Grease and oil	2,800
Office equipment	20,000
Light Diesel Oil	12,000

XYZ Co. is not eligible for SSI exemption

Provide explanation for treatment of various items.

(5 Marks) (Nov 2009)

Answer

CENVAT credit admissible to XYZ Co. for the month of May, 2010

Particulars	₹
Raw Steel	22,000
Water pipe making machine (₹ 18,000 × 50%) (Note-1)	9,000
Grease and Oil	2,800
Spare parts for the machinery (₹ 7,500 × 50%) (Note-1)	<u>3,750</u>
CENVAT credit admissible	<u>37,550</u>

Notes :

In respect of:-

1. Water pipe making machine and spare parts, being capital goods, only 50% of CENVAT credit is available [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
2. No credit is available on office equipment since the definition of capital goods under Rule 2(a) of the CENVAT Credit Rules, 2004 specifically excludes any equipment/ appliance used in an office.
3. No credit is available on light diesel oil since the definition of input under rule 2(k) of the CENVAT Credit Rules, 2004 specifically excludes it.

Question 8

*I Ltd. was a manufacturer of excisable goods such as **polyester yarn**. A ground plan of the factory was provided by the assessee to the jurisdictional Central Excise Officer and the same was approved. The ground plan showed the area in which the manufacturing is carried out as also the areas occupied for purpose of storage godowns, cycle sheds, canteen as well as the housing complex for staff and workers. The assessee had a **captive power plant** in the approved area. The electricity generated was supplied to the housing complex as well as for use in the manufacturing activity.*

*I Ltd. claimed CENVAT credit on the duty paid on furnace oil used for generation of electricity as it was used within the factory and was covered by the expression "for any other purpose" in rule 2(k) of the CENVAT Credit Rules, 2004. The Central Excise Department wanted to deny the CENVAT credit on the duty paid on furnace oil for generation of electricity which in turn **is supplied to the housing complex** on the ground that it was **not used in relation to manufacture of the final product**. Examine whether the stand of the Department is correct in law. (5 Marks) (Nov 2009)*

Answer

With effect from 01.04.2011, the definition of term "input" given under Rule 2(k) of CCR, 2004 has been substituted. According to the substituted definition, the term "input" **specifically excludes** any goods such as food items, **goods used** in a guest house, **residential colony**, club or a recreation facility when such goods are used **primarily for personal use or consumption of any employee**. In the given case excise duty has been paid on furnace oil for generation of electricity which is supplied to the housing complex of employees of the factory. Thus, furnace oil would not fall within the purview of term "input". and hence, the stand taken by the Department is correct in law.

Furthermore, the substituted definition of "input" also specifically excludes any goods which have no relationship whatsoever with the manufacture of a final product. In the given case, furnace oil used for generation of electricity which is supplied to the housing complex of employees of the factory has no relationship whatsoever with the manufacture of a final product. Thus, due to this specific exclusion also, furnace oil would not fall within the scope of term "input".

Question 9

Write a brief note on CENVAT monthly return of information relating to principal inputs in Form ER 6. (2 Marks) (Nov 2009)

Answer

ER-6 is a monthly return of receipt and consumption of **each of principal inputs** with reference to the quantity of final products manufactured by a manufacturer of final products. It is to be submitted to the Superintendent of Central Excise by the assessee within ten days

from the close of each month. Only those assesseees who are required to submit **ER-5 return** are required to submit ER-6 return [**Rule 9A(3)** of the CENVAT Credit Rules, 2004]. Further, according to proviso to Rule 9A(3) of CCR, 2004 where a manufacturer of final products has paid total duty of **rupees ten lakh or more** [including the amount of duty paid by utilisation of CENVAT Credit] in the preceding financial year, he shall file the said monthly return **electronically**.

It is also worth specifying that according to Explanation to Rule 9A, "principal inputs" means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of **unit quantity** of a given final product.

Question 10

X, a manufacturer purchased 500 kgs of inputs on 1.10.2010. Total assessable value of inputs was ₹10,000 and excise duty of 10% and 3% as education cess was paid on the input. On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 1.4.2011 and balance 50% on 31.5.2011. X received back the processed inputs on the same day. Calculate the CENVAT credit required to be reversed or that can be availed on relevant dates and net availment and reversal in the financial years 2010-11 and 2011-12.

(5 Marks) (June 2009)

Answer

As per **Rule 4(5)(a)** of CENVAT Credit Rules, 2004, a manufacturer or output service provider is entitled to claim CENVAT credit on the inputs that are cleared to a job worker for further processing, testing, repair, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose **provided** the goods are **returned back** in the factory **within 180 days of their being sent to the job worker**. In case inputs are not returned within 180 days, the manufacturer or provider of output service has to pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods **by debiting the CENVAT credit or otherwise** [which means by making payment through cash/ cheque/ internet banking]. However, the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

In the light of above provisions, present problem will be solved as under:

	₹
CENVAT credit that can be taken on 1.10.2011 ($₹ 10,000 \times 10.30\%$)	1,030
Therefore, Goods should have been returned within 180 days i.e., by 30.03.2011.	
CENVAT credit that should be reversed on 31.3.2011 i.e., immediately after the expiry of 180 days from the date of sending goods to job worker	1,030

CENVAT credit availed and reversed in financial year 2010-11	1,030
CENVAT credit that can be taken on 1.4.2011 (50% of ₹ 1,030)	515
CENVAT credit that can be taken on 31.5.2011 (50% of ₹ 1,030)	515
CENVAT credit availed in financial year 2011-12	1,030

Question 11

M/s ABC Ltd. was a cement manufacturer. The company used ropeway system for bringing crushed limestone from the mines located 4 - 5 kms away from the factory. A part of ropeway system was installed in the factory and the system was controlled from the factory. M/s ABC Ltd. availed CENVAT credit on parts / spares for ropeway system treating the same as capital goods. The Central Excise Department denied CENVAT credit on the ground that ropeway is used for transporting raw materials from the mines to the factory and cannot be considered as material handling system within the factory premises. Examine, with the help of a decided case law, whether the stand taken by the Department is correct in law. (5 Marks) (June 2009)

Answer

Rule 2(a) of CENVAT Credit Rules, 2004, *inter alia*, provides that capital goods means goods "used in the factory of the manufacturer of final products". The Department's contention is that ropeway is used for transporting raw material from mines located 4-5 kms away and hence it can not be said to have been used in the factory.

The facts of the given case are similar to the case of ***M/s. Birla Corporation Ltd. v. CCE 2005 (186) ELT 266 (SC)***. In the instant case, the Apex Court followed the principle laid down in case of ***J.K. Udaipur Udyog Ltd. v. CCE, Jaipur-II 2001 (130) E.L.T. 996*** wherein the same question arose for consideration and the facts were almost identical. It was held in aforementioned case that the assessee was entitled to the CENVAT credit of the spares of the ropeway system because the ropeway system, used to bring the crushed lime stone from the mines to the factory, **could be covered under the expression "precincts of the premises" in the definition of the term "factory"** under section 2(e) of the Central Excise Act, 1944. The same ruling has also been given in the following cases:-

- (i) Manikgarh Cement Ltd. V CCE (2004) 168 ELT 331 (CESTAT)
- (ii) Ultratech Cement V CCE(2009) 243 ELT 575 (CESTAT)

Applying the ratio of the abovementioned judgements, the ropeway system used by ABC Ltd. would be taken to be within the factory. and therefore, parts/spares thereof would be covered under the definition of capital goods.

Hence, the stand of the Department is not correct.

Question 12

Explain with reference to rule 3(5) of the CENVAT Credit Rules, 2004, the provisions relating to the payment of excise duty on used capital goods cleared by an assessee as second hand capital goods on which CENVAT credit has been availed? (2 Marks) (June 2009)

Answer

Capital Goods removed after being used: As per second proviso to Rule 3(5) of the CENVAT Credit Rules, 2004 if capital goods on which CENVAT Credit has been taken are removed after being used, the manufacturer/provider of output service has to pay an amount equal to the CENVAT credit taken on such capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter or part thereof from the date of taking the CENVAT credit, namely:-

S.No.	Type of capital goods	Percentage points calculated by straight line method	
1.	Computers and computer peripherals	For each quarter in	Percentage
		Year 1	10%
		Year 2	08%
		Year 3	05%
		Year 4 & 5	01%
2.	Other capital goods	2.5% per quarter for each year	

Question 13

Following transactions took place in the factory of JKA Ltd:

- (i) *An imported consignment of raw materials was received vide bill of entry dated 2.09.10 showing the following customs duty payments:
Basic customs duty ₹ 25,000; Additional duty (CVD) ₹ 20,000; Special additional duty ₹ 5,800.*
- (ii) *A consignment of 1,000 kg of inputs was received. The excise duty paid as per the invoice was ₹ 10,000. While the input was being unloaded, 50 kg were damaged and were found to be not usable.*
- (iii) *A vehicle containing machinery was received. The machinery was purchased through a dealer and not from the manufacturer. The dealer's invoice no. 925 dated 3.9.10 marked "original for buyer" certified that the excise duty paid by the manufacturer of machinery was ₹ 24,000. The dealer is registered with the Central Excise Authorities.*

Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary. The excise duty paid includes education cesses in all the cases:
(4 Marks) (Nov 2008)

Answer

- (i) As per **rule 3(1)(vii)** of the CENVAT Credit Rules, 2004, CENVAT credit of the **additional duty** leviable under section 3 of the Customs Tariff Act, 1975 viz., **Countervailing Duty (CVD)** is allowed to a manufacturer or producer of the final products. Thus, credit can be availed in respect of ₹ 20,000 paid as additional duty (CVD). In different words, no CENVAT Credit can be availed in respect of Basic Customs Duty and Special Additional Duty.
- (ii) **Rule 2(k)** of CENVAT Credit Rules, 2004 *inter alia* provides that input means all goods used in the factory by the manufacturer of final products. Thus, **the inputs lost before being issued for production cannot be termed as “used in the factory by the manufacturer”**. Hence, CENVAT credit in respect of 50 kg of inputs will not be available but CENVAT credit of ₹ 9,500 on balance 950 kg of inputs can be availed.
- (iii) Sub-**Clause (iv) of rule 9(1)(a)** of CENVAT Credit Rules, 2004 provides that CENVAT credit shall be taken by manufacturer on the basis of an **invoice issued by a first/second stage dealer**. Further, as per rule 9 of Central Excise Rules, 2002, a **first/second stage dealer requires registration**. Thus, in the given case, CENVAT credit can be claimed against dealer's invoice since the dealer is registered with Central Excise Authorities.

However, CENVAT credit in respect of capital goods can be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and balance 50% can be availed in the subsequent financial year [**Rule 4(2)** of CENVAT Credit Rules, 2004]. Hence, CENVAT credit of ₹ 12,000 will be available in the current financial year. Balance credit of ₹ 12,000 can be availed in any subsequent year.

Question 14

If a manufacturer manufactures various products under his own brand name, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?
(2 Marks) (Nov 2008)

Answer

No, if a manufacturer manufactures various products using his own brand name, he has to avail CENVAT for all items or opt for exemption for all products. However, if the assessee manufactures goods under brand name of others as well as other goods, he can avail CENVAT credit in respect of inputs used in branded goods on which he is liable to pay excise duty.

This view has been upheld in **CCE v. Ramesh Foods Products (2004) 174 ELT 310 (SC)**, where it has been held that simultaneous availment of CENVAT credit on some products and exemption on some other products is not permissible.