

CENVAT Credit

Question 1

Briefly explain the following with reference to the provisions of Cenvat Credit Rules, 2004 :

- (i) Exempted Goods
- (ii) Exempted Services
- (iii) Final products
- (iv) First stage dealer.

Answer

- (i) **Exempted Goods:** 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.
- (ii) **Exempted Services:** Rule 2(e) of CCR, 2004 provides that “**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 taxable services whose part of value is exempted on the condition that no credit on inputs and input services, used for providing such taxable service, shall be taken. Further, it has been clarified that “**exempted services**” include trading.
- (iii) **Final Products:** As per Rule 2(h) of the Cenvat Credit Rules, 2004, “**final products**” means excisable goods manufactured or produced from input or using input service.
- (iv) **First Stage Dealer:** As per Rule 2(ij) of the Cenvat Credit Rules, 2004 “**first stage dealer**” means a dealer who purchases the goods directly from, -
 - (a) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
 - (b) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice

Question 2

Elucidate the meaning of term “input” as given in Rule 2(l) of CENVAT Credit Rules, 2004. Also briefly explain the changes brought in the definition of term “input” by Finance Act, 2011.

Answer

Statutory Definition of term “input” as given in Rule 2(k) of CENVAT Credit Rules, 2004 :
 Since “input” can be utilised both by a manufacturer of a final product and provider of a taxable service, following table has been prepared to exhibit separately relevant extract of the definition applicable to these parties respectively:

S. No.	Relevant Party	Relevant Extract of Substituted Definition of “Input” as applicable w.e.f. 01.04.2011
1.	Manufacturer of Final Product	(A) “input” means– (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. (B) Specific Exclusions: (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), (zzl), (zzm), (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

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		(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;
2.	Provider of a taxable service	(A) “input” means– all goods used for providing any output service [B] Specific Exclusions: (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), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act; (C) motor vehicles; (D) 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 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;

Salient features of changes made in the definition of term “Input” w.e.f. 01.04.2011

S. No.	Nature of Exclusions
1.	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

	For manufacturing any excisable goods or providing any taxable services excepting those which are given below: Port Services--Section 65(105)(zn) Other Port Services—Section 65(105)(zzl) Airport Services- Section 65(105)zzm) Commercial or Industrial Construction Services-- Section 65(105)(zzq) Complex Construction Services-- Section 65(105)(zzzh) Services in Execution of Works Contract -- Section 65(105)(zzza)
2.	Capital goods except when used as parts or components in the manufacture of a final product.
3.	Motor Vehicles.
4.	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
5.	Any goods which have no relationship whatsoever with the manufacture of a final product

Question 3

Explain in detail the substituted definition of term "input service" as given in Rule 2(l) of CENVAT Credit Rules, 2004 as well as salient features of changes made therein by Finance Act, 2011.

Answer

Statutory Definition of term "input service: According to Rule 2(l) OF Cenvat credit Rules, 2004 w.e.f. 01.04.2011 "input service" 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 up to 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 up to the place of removal; but **excludes** services,-

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- (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;]

Salient features of changes made in the definition of “input service” by Finance Act, 2011:

It is worth mentioning here that Finance Act, 2011 has made substantial changes in the definition of term “input service” w.e.f. 01,04,2011. In order to enable the students to appreciate the several changes made in the definition of term “input service” following table has been prepared:

S. No.	Nature of changes
1.	Following changes have been made in Inclusion Part of the definition: (A) Services used in relation to setting up of a factory or premises of provider of output service have been deleted from inclusion part. (B) The phrase “activities related to business as such “has also been deleted from the inclusion part. (C) “Business Exhibition Services” as well as “Legal [Consultancy] Services have been specifically added in the inclusion part.
2.	Specific Exclusions List has been inserted for the first time. The constituents of Specific Exclusions List are as under:- (A) Any of the specified services [Architect's Services, Port Services, Other Port Services, Airport Services, Commercial or Industrial Construction Services, Complex Construction Services, Works Contract Services] if used for either of the following purposes: (i) Construction of a building or a civil structure or a part thereof; OR

	(ii) Laying of foundation or making of structures for support of capital goods. However, it is pertinent to add here that if above mentioned specified services are used for the purpose of providing one or more specified services themselves, then the prohibition on availment of CENVAT Credit in respect of relevant taxable services will not apply. For instance, if Architect Services are used for providing Complex Construction Services then CENVAT Credit of service tax paid in respect of said Architect's Services can be availed. (B) Any of the following specified services if related to Motor Vehicle: (i) General Insurance Services. (ii) Rent-a-cab Scheme Operator's Services. (iii) Authorised Service Station Services. (iv) Supply of Tangible Goods Services. Exceptions to above Exclusions: However, when these services are used for providing any of the following taxable services in respect of which CENVAT Credit on Motor Vehicle is available as Capital Goods, the bar of availing CENVAT Credit in respect of any of above Input Services will not apply:- (i) Courier Services-Section 65(105)(f) (ii) Tour Operator's Services-Section 65(105)(n) (iii) Rent-a-cab Scheme Operator's Services-Section 65(105)(o) (iv) Cargo Handling Services-Section –Section 65(105)(zr) (v) Goods Transport Agency Services-Section 65(105)(zzp) (vi) Outdoor Caterer's Services-Section 65(105)(zzt) (vii) Pandal or Shamiana Contractor's Services –Section 65(105)(zzw) (C) Services which are used for personal use or consumption of any employees: Services which are provided to employees on vacation [such as Leave Travel Concession [LTC] or Home Travel Concession (HTC)] when these services are primarily used for personal use or consumption of any employee. A few examples of these services are given below:- (i) Outdoor Caterer's Services -Section 65(105)(zzt) (ii) Beauty Treatment[Parlour] Services-Section 65(105)(zq) (iii) Health Related Services-Section 65(105)(zzzo) (iv) Life Insurance Services- Section 65(105)(zx) (v) Health Insurance Services
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Question 4

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.

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 5

With reference to CENVAT Credit Rules, 2004, discuss giving reason whether the following statements are true or false:

- (i) *Credit of duties of excise on inputs can be availed irrespective of whether payment is made or not against the invoice, whereas credit of service tax on input services can be availed only after making payment of the invoice.*
- (ii) *An input service distributor is comparable to a dealer under the CENVAT scheme of inputs and capital goods.*
- (iii) *The manufacturer shall not be allowed to transfer unutilized input credit in case of transfer of ownership of the factory by way of sale along with the inputs and capital goods.*
- (iv) *A manufacturer availing CENVAT credit on input, capital goods or input services wrongly is liable to a penalty.*

Answer

- (i) **False.** W.E.F. 01.04.2011 the CENVAT Credit of “input service” is allowed, on or after the day on which invoice, bill or challan is received as per provisions of Rule 4(7) of CENVAT Credit Rules, 2004. In simple words, w.e.f. 01.04.2011 the CENVAT Credit is allowed on accrual basis. Similarly, CENVAT credit in respect of excise duty paid in respect of inputs can be availed on accrual basis i.e. as soon as the goods are received in the factory as per provisions of Rule 4(1) of CENVAT Credit Rules, 2004.

Thus, w.e.f. 01.04.2011 the CENVAT Credit both in r/o “input” and “input service” can be availed on accrual basis.

- (ii) **True.** The invoice issued by a dealer is acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. In order to pass on the credit, the dealer has to obtain registration and file quarterly returns with the Superintendent of Central Excise. Likewise, the document/invoice issued by an input service distributor is also acceptable under the CENVAT Credit Rules, 2004 as an eligible document for availing credit. Similarly, in order to pass on the credit, the input service distributor too has to obtain service tax registration, comply with rule 4A of Service Tax Rules, 1994 and file half yearly statement giving details of credit received and distributed, with the Superintendent of Central Excise.
- (iii) **False.** The manufacturer shall be allowed to transfer the credit lying unutilized in his accounts provided the transfer takes place with specific provision for transfer of liabilities of such factory [Rule 10(1) of CCR, 2004] and the said inputs and capital goods are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise. [Rule 10(3) of CCR, 2004]

Note: It is also possible to answer as True. if it is assumed that there is no specific provision of transfer of the liabilities of such factory or the inputs and the capital goods

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have not been accounted for to the satisfaction of the Deputy/Assistant Commissioner of Central Excise.

- (iv) **True.** The quantum of penalty imposed due to different reasons in r/o inputs, input services and capital goods has been exhibited in the following table in order to facilitate greater clarity and convenient learning by students

Nature of items in r/o which CENVAT Credit is taken wrongly or in contravention of the provisions of CCR, 2004	Broad Reason for taking CENVAT Credit wrongly or contravention of the provisions of CCR, 2004	Quantum of Penalty	Relevant Rule of CCR, 2004	
Inputs	Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty	(A)Such goods shall be liable to confiscation; and (B) Penalty not exceeding greater of the following two amounts: (i) Excise duty payable on such goods or (ii) ₹ 2,000/-	Rule 15(1)	
	Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty	In additional to above penalty given under Rule 15(1), following Penalty shall also be imposed: <table><tr><td>In case of a manufacturer</td><td>In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short</td></tr></table>	In case of a manufacturer	In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short
In case of a manufacturer	In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short			

			payment or erroneous refund	
		In case of a service provider	In terms of Section 78 of Finance Act, 1994	
Capital Goods	Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty	(A) Such goods shall be liable to confiscation; and (B) Penalty not exceeding greater of the following two amounts: (i) Excise duty payable on such goods or (ii) ₹ 2,000/-		Rule 15(1)
	Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Excise Act or the Rules made thereunder with intent to evade payment of duty.	In addition to above penalty given under Rule 15(1), following Penalty shall also be imposed:		Rule 15(2)
		In case of a manufacturer	In terms of Section 11AC of Central Excise Act, 1944 i.e. Penalty for non-levy or short levy or non-payment or short payment or erroneous refund	
		In case of a service	In terms of Section 78	

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		provider	of Finance Act, 1994	
Input Services	Any reason other than fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Finance Act, 1994 or the Rules made thereunder with intent to evade payment of Service Tax.	(A) Penalty not exceeding greater of the following two amounts: (i) Service Tax payable on such services or (ii) ₹ 2,000/-		Rule 15(1)
	Fraud, collusion or any wilful mis-statement or suppression of facts or contravention of the provisions of the Finance Act, 1994 or the Rules made thereunder with intent to evade payment of Service Tax	In additional to above penalty given under Rule 15(1) following , Penalty shall also be imposed:		Rule 15(3)
		In case of a manufacturer	In terms of Section 11AC of Central Excise Act, 1944 i.e Penalty for non-levy or short levy or non-payment or short payment or erroneous refund	
		In case of a	In terms of	

		service provider	Section 78 of Finance Act, 1994	
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Question 6

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.]

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 7

With reference to CENVAT Credit Rules, 2004, discuss giving reason whether the following statements are true or false:

- (i) *Credit of duties of excise on inputs will not be available if inputs are used in intermediate product, which is exempt from duty, even though the final product is dutiable.*

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- (ii) A manufacturer can sell the inputs on which CENVAT credit has already been availed of, as they are, provided he pays the amount equal to the credit availed.
- (iii) A manufacturer is eligible for CENVAT credit in the cases stated below:
 - (1) Inputs used in trial runs;
 - (2) Materials used for maintaining factory building.

Answer

- (i) **False.** It was held in CCEx. v. Hindustan Sanitaryware 2002 (145) ELT 3 (SC) that CENVAT credit would be available in respect of duty paid on inputs even if intermediate product is exempt from duty but the final product is dutiable. Further, the Central Board of Excise and Customs has clarified vide Clarification No. B-4/7/2000-TRU, dated 03.04.2000 that the CENVAT credit shall not be denied if the inputs are used in any intermediate product of the final product even if such intermediate product is exempt from payment of duty so long as the final product is dutiable. The basic idea is that CENVAT credit should be admissible so long as the inputs are used in or in relation to the manufacture of dutiable final products, whether directly or indirectly.
- (ii) **True.** Rule 3(5) of CENVAT Credit Rules, 2004 *inter alia* provides that a manufacturer of the final products can remove inputs on which CENVAT credit has been taken, as such, from the factory if he pays an amount equal to the credit availed in respect of such inputs and such removal is made under the cover of an invoice referred to in rule 9 of CENVAT Credit Rules, 2004. However, in the following case, no payment equivalent to CENVAT availed is required to be made:

Purpose of removal of inputs outside the factory	Relevant statutory provision and its effective date
Providing free warranty for final products	Second proviso to Rule 3(5) of CCR, 2004 inserted w.e.f. 01.04.2011

- (iii) (1) **True.** Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are considered to have been used in the factory by the manufacturer of final product [*Definition of Input, Rule 2(k)*]
- (2) **False.** According to Rule 2(k) of CCR, 2004 w.e.f. 01.04.2011 the term “input”, amongst other things, means all goods used in the factory [by the manufacturer] of the final product. Materials used for maintaining factory building only facilitate manufacture and are not integrally used in the manufacture of final products. Hence, such materials are not eligible for CENVAT Credit.

Question 8

Discuss briefly the validity of the following statements with reference to the CENVAT Credit Rules, 2004:

- (i) Basic excise duty credit can be utilized for payment of basic excise duty and education cess and secondary and higher education cess.

- (ii) *CENVAT Credit can be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed.*
- (iii) *CENVAT Credit can be utilised for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.*
- (iv) *Credit of duty paid @ 1% on inputs and input services in pursuance of Notification No. 1/2011-C.E. dated 01.03.2011 is available both to the manufacturer of these goods as well as manufacturer or service provider who buys them.*
- (v) *CENVAT credit on inputs lying in stock or in process or contained in the final product shall be reversed when the final product is subsequently exempted unconditionally in terms of an exemption notification issued under section 5A of the Central Excise Act, 1944.*

Answer

- (i) **Correct.** There is no restriction in the said rules on utilization of CENVAT credit of basic excise duty (BED) for payment of education cess (EC) and secondary and higher education cess (SHEC). Rule 3(4) of the said rules provides that credit of BED can be utilized for payment of any duty of excise on any final product. Since EC and SHEC are duties of excise, as per statutory provisions. Hence, credit of BED can be utilized for payment of cesses.
- (ii) **Incorrect.** According to second proviso [inserted w.e.f. 01.03.2011] to Rule 3(4) of CENVAT Credit Rules, 2004 CENVAT Credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed. In simple words, excise duty liability on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E. dated 01.03.2011 is availed has to be discharged in cash/ by cheque/ e payment only.
- (iii) **Incorrect.** According to sixth proviso [inserted vide Notification No. 26/2010-C.E.(N.T.) dated 29.06.2010] to Rule 3(4) of CENVAT Credit Rules, 2004 the CENVAT Credit of any duty specified under Rule 3(1) of CCR, 2004 shall not be utilised for *payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.*
- (iv) **Incorrect.** Credit of duty paid on input or input services is not available to the manufacturer of these goods. In addition, credit of the duty paid on these goods is also not available to the manufacturer or service provider who buys them
- (v) **Correct.** As per Rule 11(3) of CENVAT Credit Rules, 2004 when final product has been exempted absolutely under section 5A of the Central Excise Act, CENVAT credit on inputs, lying in stock or in process or contained in final product shall be reversed. The balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product or for payment of service tax on any output service.

Question 9

M/s Smart Ltd. manufactures certain excisable goods that are exempt from duty in terms of a notification, provided CENVAT credit of duty paid on input is not taken by the manufacturer. M/s Smart Ltd. had taken the credit of duty paid on inputs, but reversed the same before its utilization. The department denied the benefit of exemption on the ground that once the credit is taken it is immaterial whether the same is reversed before or after utilisation of such credit. State briefly whether the action of the department is correct under the Central Excise Act and rules made thereunder with reference to decided case law, if any.

Answer

The case is similar to **CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. (2007) 215 ELT 3 (SC)**, wherein it was held by the Apex Court that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit. Hence, in view of this decision, M/s Smart Ltd. is entitled to claim the benefit of exemption notification. Consequently, the Department's action is not correct.

Question 10

Discuss in detail whether interest can be recovered from an assessee who firstly wrongly takes and subsequently reverse CENVAT Credit before its utilisation.

Answer

According to Rule 14 of CCR, 2004 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 provider of the output service and the provisions of Sections 73 and 75 of the Finance Act shall apply for effecting such recoveries.

The moot question which is to be examined is whether in terms of abovementioned Rule 14 the interest can be recovered from an assessee who firstly wrongly takes and subsequently reverses CENVAT Credit before its utilisation. Until 20.02.2011 there was no unanimity of opinion on this issue. On one side, there were cases laws and Departmental Circular supporting the view that interest is not recoverable if the assessee merely avails the CENVAT Credit wrongly but reverses the same before its utilisation. For instance:-

- (i) In **CCE, Delhi III Vs Maruti Udyog Ltd.-2007 (214) E.L.T. (P & H)** upholding the decision of the Tribunal it was held that assessee was not liable to pay interest on CENVAT Credit which was taken as an entry in the Modvat Record but was not in fact utilised. The Hon'ble High Court perfectly agreed with the reasoning of the Tribunal that in the absence of utilisation of CENVAT Credit, the assessee was not liable to pay interest.
- (ii) The above view has also been upheld in **CCE V Bombay Dyeings & Manufacturing Co. Ltd. (2007) 10 STT 286 (SC)** it was inter alia held that reversal of credit by the assessee before utilisation *implies that CENVAT Credit has not been taken.*

As per **Circular No. 942/03/2011-CX dated 14.03.2011**, the interest shall be recoverable when credit has been wrongly "taken" even if it has not been utilized.

Conclusion

After taking into consideration both the pros and cons of above topic, it can be safely inferred that the assessee is liable to pay interest where CENVAT Credit was wrongly taken by him but reversed subsequently before utilisation in the light of latest **Circular No. 942/03/2011-CX dated 14.03.2011** [which is based on **Apex Court's judgment dated 21.02.2011 in case of Ind-Swift Lab Ltd. Vs UOI**]

Question 11

Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU):

Assessable value	₹ 20 lakhs
Basic customs duty	10%
Excise duty	10%
Education cess	2%
Secondary and Higher Education cess	1%
VAT payable under State VAT law	4%

Answer

As per **Notification No. 23/2003 CE dated 31.3.2003**, 50% of basic customs duty is exempt in case of clearance of goods by an EOU to DTA. The amount of excise duty payable by EOU is calculated as under:

		₹
(i)	Assessable value	20,00,000
(ii)	Customs duty @ 5% of ₹20,00,000	1,00,000
(iii)	Additional customs duty (CVD) @ 10.30% of (₹20,00,000 + ₹1,00,000)	2,16,300
(iv)	Education cess of customs @ 2% of ₹(1,00,000 + 2,16,300)	6,326
(v)	S & H education cess of customs @ 1% of ₹(1,00,000 + 2,16,300)	3,163
	Add: Special additional customs (SAD) (It is exempt since VAT is payable)	<u>Nil</u>
	Excise duty payable in terms of proviso to section 3(1) = ₹(1,00,000+2,16,300+6,326+3,163)	3,25,789
	Education cess of excise= ₹ (3,25,789×2%)	6,515.78

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Secondary and higher education cess of excise=₹ (3,25,789×1%)	3,257.89
Total Excise duty liability of EOU (rounded off)=₹(3,25,789+6,515.78+3,257.89)	3,35,563

As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

	₹
Additional duty of customs (CVD)	2,16,300
Education cess of excise	6,515.78
S & H education cess of excise	<u>3,257.89</u>
Total amount of credit	<u>2,26,073.67</u>

Note. Notification No. 23/2003-CE dated 31-03-2003, granting partial exemption to EOU, states that 'duty of excise' under section 3(1) in excess of duty of customs reduced by 50% is exempt. Thus this notification grants partial exemption only to 'duty of excise'.

A view can be taken that excise duty is not inclusive of education cess(EC) and secondary and higher education cess(SHEC) as EC is leviable under section 91 read with section 93 of the finance act,2004.Similarly SHEC is leviable under section 136 read with section 138 of Finance Act ,2007.Hence EC and SHEC need to be separately added to above calculated excise duty.

Question 12

M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur and transferred all the available inputs and capital goods to the new site. The inputs, capital goods and the balance of unutilised CENVAT credit were duly received and accounted for in the registers of the new unit. The said balance of unutilised CENVAT credit transferred was ₹8,00,000. However, the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was ₹6,00,000 only. The Department raised the plea that the assessee was entitled to transfer only ₹6,00,000 of CENVAT credit and not the entire balance of unutilized credit of ₹8,00,000.Explain, with the help of a decided case law, if any, whether Department's plea is justified in law?

Answer

As per Rule 10 of the CENVAT Credit Rules, 2004, if a manufacturer of the final product shifts his factory to another site with the specific provision for transfer of liabilities of such factory, he shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to the new site if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises and the inputs, or capital goods, on which credit has been availed of, are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of Central Excise.

The Madras High Court in the case of *CCE, Pondicherry vs. CESTAT 2008 (230) ELT 209 (Mad.)* has also affirmed this position. In this case, the High Court has held that erstwhile Rule 8 of the CENVAT Credit Rules, 2002 (new rule 10 of the CENVAT Credit Rules, 2004) does not provide that the assessee could transfer the CENVAT credit corresponding only to the quantum of inputs or capital goods transferred to the new factory.

Thus, the plea of Department is not justified presuming that M/s. XYZ Ltd. shifted its factory from Sitapura to Rampur with the specific provision for transfer of liabilities of such factory and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of Assistant/Deputy Commissioner of the Central Excise.

Question 13

What are the provisions relating to the payment of excise duty on used capital goods cleared by an assessee on which CENVAT credit has been availed?

Answer

Capital Goods removed after being used: As per Third proviso to Rule 3(5) of the CENVAT Credit Rules, 2004 if capital goods on which the CENVAT Credit has been taken, are removed after being used, the manufacturer/provider of output service shall 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% quarter for each year	

Question 14

Madan Gopal Ltd. acquired the following assets on 1-4-2008:-

Kinds of Capital Assets	Amount excluding excise duty (₹)	Amount of Excise Duty (₹)
Computers and Computer Peripherals	5,00,000	50,000
Capital Assets other than Computers & Computer Peripherals	20,00,000	2,00,000

The company removed of above capital Assets after use on 24th March 2011. Compute the amount to be paid by the company separately in case of disposal of Computer and Computer Peripherals and other capital assets respectively.

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Answer

In accordance with substituted Third proviso to Rule 3(5) of CENVAT Credit Rules 2004, Madan Gopal Ltd will pay the following amounts:-

Date of Acquisition of Assets	01-04-2008
Date of Disposal of Assets	24-03-2011
Time Gap in terms of number of quarters/part thereof between above two dates	12 quarters

(A) Case of Computer & Computer Peripherals:-

Total CENVAT availed in case of Computers & Computer Peripherals:	₹50,000
Amount reduced for each quarter in the first year @ 10% i.e. 4 x 10%=40%	₹20,000
Amount reduced for each quarter in the second year @ 8% i.e. 4x 8%=32%	₹ 16,000
Amount reduced for each quarter in the third year @ 5% i.e. 4 x 5%=20%	₹ 10,000
Total amount to be reduced	₹ 46,000
Amount to be paid in cash by Madan Gopal Ltd.(₹ 50,000 – ₹ 46,000)	₹ 4,000

(B) Case of disposal of other Capital Assets:-

Total Amount of CENVAT availed	₹ 2,00,000
Amount reduced for 12 quarters @ 2.5% i.e. 2.5 x 12= 30%	₹ 60,000
Thus amount to be paid by Madan Gopal Ltd[₹ 2,00,000 – ₹ 60,000]	₹ 1,40,000

Question 15

Following transactions took place in the factory of JKA Ltd:

- 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.
- 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.
- 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.

- (iv) Some inputs for final product were received. These were accompanied by a certified Xerox copy (photo copy) of invoice no. 286 dated 15.11.10 indicating that excise duty of ₹ 6,400 had been paid on inputs. The original or duplicate copy of invoice was not traceable.
- (v) A **supplementary invoice** for ₹ 1,00,00 together with Service Tax of ₹ 10,300/- was received on 15.09.2011. The aforementioned supplementary invoice was in respect of Business Support Services received during the month of May 2011 and whose original invoice of ₹ 3,00,000 together with Service Tax of ₹ 30,900/- was received in the month of May 2011 itself.

Would your answer in above case be different if the above supplementary invoice was issued consequent upon additional amount of tax became recoverable from the concerned provider of Business Support Services on account of short-payment by reason of fraud with intent to evade payment of service tax.

Indicate the eligibility of CENVAT credit, in each case, under the CENVAT Credit Rules, 2004 with explanations where necessary.

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) shall be 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 r/o 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 the final product. Thus, the inputs lost before being issued for production cannot be termed as “used in the factory by the manufacturer of final product”. 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 shall 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% shall be available 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.
- (iv) Rule 9 of CENVAT Credit Rules, 2004 states that the CENVAT credit can be availed on the basis of invoice issued by a manufacturer. Thus, the credit can be availed on any copy of the invoice i.e., whether it is the invoice marked as “original for buyer” or

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“duplicate for transporter” as it is still an invoice issued. However, a **certified photocopy is not an invoice** issued by the manufacturer. Thus, credit cannot be availed on the basis of a certified copy.

- (v) Clause (bb) has been inserted in sub-rule (1) of Rule 9 of CENVAT Credit Rules, 2004 w.e.f. 01.04.2011. The aforementioned clause (bb) provides that CENVAT Credit can be availed on the basis of a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994. Thus, in the given case CENVAT Credit can be availed on the basis of supplementary invoice received on 15.09.2011 *in respect of Business Support Services received during the month of May 2011.*

However, Rule 9(1)(bb) also specifies that CENVAT Credit in r/o supplementary invoice, bill or challan shall not be available in a case 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, collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of Finance Act or the rules made there under with the intent to evade payment of service tax. Since in the given case supplementary invoice has been issued *consequent upon additional amount of tax became recoverable from the concerned provider of Business Support Services on account of short-payment by reason of fraud with intent to evade payment of service tax CENVAT Credit in r/o supplementary invoice in this case can not be availed.*

Question 16

Write a brief note on CENVAT monthly return of information relating to principal inputs in Form ER 6.

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 assessees 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 17

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.

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 18

Ashish and Sons, a sole proprietorship firm is engaged in the manufacture of final products. It purchased following items during the financial year 2011-12:

Jigs	₹ 1,00,000
Fixtures	₹ 1,50,000
Moulds and dies	₹ 2,00,000
Excise Duty paid on above items @ 10.30%	₹ 46,350

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It sent above-mentioned Jigs, Fixtures, Moulds and dies to another manufacturer for the production of goods according to his specification. Will Ashish and Sons get CENVAT Credit in respect of aforementioned Jigs, Fixtures, Moulds and dies?

Answer

According to Rule 4(5)(b) of CENVAT Credit Rules, 2004 the CENVAT Credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to :-

- (i) Another manufacturer for the production of goods ; or
- (ii) A job worker for the production of goods on his behalf according to his specification.

Since in the given case Ashish & Sons has sent Jigs, Fixtures, Moulds and dies to another manufacturer for the production of goods according to its specification, it is entitled to get CENVAT Credit in respect of excise duty of ₹ 46,350/- in accordance with provisions of Rule 4(5)(b)(i) of CENVAT Credit Rules, 2004.

Question 19

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.

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 20

M/s. AJ imported some inputs and paid basic customs duty ₹5 lakh, surcharge on customs duty ₹50,000 and CVD ₹1 lakh. Calculate the amount that he can claim as CENVAT credit. Would it make any difference, if the assessee is not a manufacturer but a service provider?

Answer

M/s. AJ can take credit of ₹1,00,000 i.e. of additional duty of customs (CVD). **Rule 3(1)** of CENVAT Credit Rules, 2004 allows the credit of additional duty of customs imposed under section 3 of the Customs Tariff Act, 1975. The credit of other two duties i.e. basic custom duty and the surcharge on customs duty is not allowed.

It will not make any difference if the assessee is a service provider as credit of additional duty of customs (CVD) can be availed both by the manufacturers and the service providers alike.

Note: It has been assumed that the additional duty of customs (CVD) referred to in the question is not the additional duty of customs (CVD) leviable under section 3(5) of the Customs Tariff Act, 1975 as in that case the service provider will not be entitled to avail the CENVAT credit.

Question 21

M/s TCCL, providing management consultancy to its client, does not maintain any separate accounts and have paid ₹1,00,000 as service tax and excise duty towards input services and input material/capital goods used by them. It is assumed for the sake of simplicity that out of aforementioned ₹1,00,000 they have used the inputs for exempted and taxable services to the extent of ₹40,000 & ₹60,000 respectively. They are providing the output services amounting to ₹14,00,000 and exempted services amounting to ₹7,00,000. How much credit out of ₹1,00,000 can be availed by them for paying output service tax liability, if they do not maintain any separate accounts?

Answer

w.e.f. 01-04-2011 **Rule 6(3)** of the CENVAT Credit Rules, 2004 *inter alia* provides that where common input/input services are used for providing taxable as well as exempted services and **separate accounts are not maintained**, the output service provider has the following options at his disposal:-

(i) Pay an amount equal to 5% of the value of exempted services;

OR

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- (ii) Pay an amount as determined under Rule 6(3A) of CCR, 2004 i.e. Reverse the CENVAT Credit attributable to the inputs and input services used for providing exempted services
- (iii) Maintain separate accounts for inputs as provided for in Rule 6(2)(a) of CCR, 2004 and take credit of only those inputs which are used for provision of output services excluding exempted services. In addition, a service provider has to pay an amount determined in accordance with Rule 6(3A) in respect of input services.

Accordingly, in the present case if the above options are applied then:-

- (i) M/s TCCL has to pay ₹ 35,000/- (5% on ₹ 7,00,000) on value of exempted services. After making aforementioned payment, it can take entire CENVAT Credit of ₹ 1,00,000 available to it.
- (ii) TCCL has to reverse CENVAT Credit attributable to inputs and input services used for providing exempted services which are given as ₹ 40,000/- .
- (iii) In the absence of complete information for maintaining separate accounts for inputs, this option can not worked out in this case. Consequently, proportionate reversal option only in r/o input services can not be worked out.

Question 22

What action can be taken by the department in case of misuse of service tax credit?

Answer

The following actions can be taken by the Department in case of misuse of service tax credit:

- (i) Penalty not exceeding Service Tax on such services OR ₹2,000, whichever is greater can be levied if a person has taken CENVAT credit in respect of input service wrongly [Rule 15(1) of the CENVAT Credit Rules, 2004];
- (ii) Penalty prescribed under section 78 of the Finance Act, 1994 shall also be levied on the output service provider if the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of these Rules or Finance Act or the rules made thereunder with an intent to evade payment of service tax [Rule 15(3) of the CENVAT Credit Rules, 2004];
- (iii) The special audit, in cases where credit of duty availed or utilized is not within the normal limits etc., prescribed under section 14AA of the Central Excise Act, 1944 can be ordered in case of misuse of service tax credit.

Question 23

Whether a manufacturer of excisable goods, who has paid service tax on freight, can himself take credit of service tax; paid, if such transportation service is in relation to the manufacture and clearance of his final products?

Answer

Credit of service tax paid on freight is eligible in case of the manufacturer who pays service tax for inward transportation and satisfies the statutory definition of "input service" as given in Rule 2(l) of CENVAT Credit Rules 2004.. For outward freight, credit is admissible only up to the place of removal.

Question 24

The goods manufactured by a company got destroyed by fire. The payment of duty was ordered to be remitted. Is the company required to reverse the CENVAT credit taken on input services used in manufacture of such destroyed goods?

Answer

As per Rule 3(5C) of the CENVAT Credit Rules, 2004, where on any goods manufactured by an assessee, the payment of duty is ordered to be remitted under Rule 21 of Central Excise Rules 2002, the credit taken on inputs used in the manufacture or production of said goods shall be reversed. Thus, there is no requirement for the reversal of CENVAT credit taken on input services used in the manufacture of such goods.

Question 25

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.

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>

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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 × 2% = ₹ 12,000	₹ 6,00,000 × 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 26

Ascertain whether the refund of service tax paid on input services can be claimed in the following case:

Total credit of service tax on input services ₹ 6,000

Total turnover of output service exported ₹ 30,000

Answer

Rule 5 of CENVAT Credit Rules, 2004 *inter alia* provides that the CENVAT credit in respect of the input services used in providing output services which are exported shall be allowed to be utilized towards payment of service tax on taxable output services. However, where such adjustment is not possible, the refund of credit shall be allowed.

In the present case there is no service tax liability because the entire turnover of output services has been exported. Thus, refund can be claimed in respect of entire service tax of ₹ 6,000/- paid on input services.

Question 27

If a manufacturer manufactures various products, can he avail CENVAT credit on some products and exemption under Notification No. 8/2003-CE dated 1.3.03 on some other products?

Answer

No, if a manufacturer manufactures various products, he has to avail CENVAT for all items or opt for exemption for all products.

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.

Question 28

Whether CENVAT Credit can be availed in respect of service paid under section 66A of Finance Act, 1994?

Answer

As per Rule 3(1)(ixa), a manufacturer or producer of final products or a provider of taxable service can take cenvat credit of the service tax leviable under section 66A of the Finance Act.

Question 29

Punjab National Bank provides the following information for the month of June 2011:

CENVAT Credit available on Inputs	₹ 2,00,000
CENVAT Credit available on Input Services	₹ 4,00,000
Service Tax liability before availing eligible CENVAT	₹ 10,00,000

Determine the amount of CENVAT Credit available to Punjab National Bank for the month of June, 2011 in view of Rule 6(3B) of CENVAT Credit Rules, 2004. Also determine the net service tax liability of the Bank after availing the eligible CENVAT Credit.

Answer

According to Rule 6(3B) [inserted w.e.f. 01.04.2011] of CCR, 2004 w.e.f. 01.04.2011 notwithstanding anything contained in sub-rules (1)(2)(3) of Rule 6 of CCR, 2004 a banking company and a financial institution [including a non-banking financial company] providing Banking or other Financial Services shall pay for every month an amount equal to 50% of the CENVAT Credit available on inputs and input service in that month. It is worth mentioning that previously mentioned a banking company etc. has necessarily to follow Rule 6(3B) of CCR, 2004. Looking from another perspective, a banking company is entitled to avail only 50% of CENVAT Credit in r/o inputs and input services.

In view of above statutory provisions, CENVAT Credit available to bank for the month of June 2011 and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	₹ 2,00,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed	₹ 1,00,000

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Net CENVAT Credit available on Inputs	₹ 1,00,000
CENVAT Credit available on Input Services	₹ 4,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	₹ 2,00,000
Net CENVAT Credit available on Input Services	₹ 2,00,000

Determination of Net Service Tax liability of Bank for the month of June, 2011-07-09

Service Tax liability of bank before availing eligible CENVAT Credit	₹ 10,00,000
Less: Net/Eligible CENVAT Credit available on Inputs	₹ 1,00,000
Less: Net/Eligible CENVAT Credit available on Input Services	₹ 2,00,000
Net Service Tax liability of bank after availing eligible CENVAT Credit	₹ 7,00,000

Question 30

LIC of India provides the following information for the month of June 2011:

CENVAT Credit available on Inputs	₹ 2,00,000
CENVAT Credit available on Input Services	₹ 4,00,000
Service Tax liability before availing eligible CENVAT	₹ 10,00,000

Determine the amount of CENVAT Credit available to LIC India for the month of June, 2011 in view of Rule 6(3C) of CENVAT Credit Rules, 2004. Also determine the net service tax liability of the LIC of India after availing the eligible CENVAT Credit.

Answer

According to Rule 6(3C) [inserted w.e.f. 01.04.2011] of CCR, 2004 w.e.f. 01.04.2011 notwithstanding anything contained in sub-rules (1)(2)(3) of Rule 6 of CCR, 2004 a provider of output service providing Life Insurance Business Services and Management of Investment under ULIP Service shall pay for every month an amount equal to 20% of the CENVAT Credit available on inputs and input service in that month. It is worth mentioning that previously mentioned service provider has necessarily to follow Rule 6(3C) of CCR, 2004. Looking from another perspective, a service provider providing Life Insurance Business Services and Management of Investment under ULIP Services is entitled to avail only 80% of CENVAT Credit in r/o inputs and input services.

In view of above statutory provisions, CENVAT Credit available to bank for the month of June 2011 and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	₹ 2,00,000
Less: Payment of 20% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 20% of available CENVAT Credit is to be disallowed	₹ 40,000

Net CENVAT Credit available on Inputs	₹ 1,60,000
CENVAT Credit available on Input Services	₹ 4,00,000
Less: Payment of 20% of CENVAT Credit available on Input Services by virtue of Rule 6(3C). It effectively means 20% of available CENVAT Credit is to be disallowed.	₹ 80,000
Net CENVAT Credit available on Input Services	₹ 3,20,000

Determination of Net Service Tax liability of LIC India for the month of June, 2011:

Service Tax liability of LIC of India before availing eligible CENVAT Credit	₹ 10,00,000
Less: Net/Eligible CENVAT Credit available on Inputs	₹ 1,60,000
Less: Net/Eligible CENVAT Credit available on Input Services	₹ 3,20,000
Net Service Tax liability of LIC of India after availing eligible CENVAT Credit	₹ 5,20,000

Question 31

PQR Ltd, a manufacturer of excisable goods purchases in the month of September, 2011 inputs of ₹ 1,00,000/- on which it pays excise duty of ₹ 10,300/- . The company availed the aforementioned CENVAT of ₹ 10,300/- while discharging its excise duty liability for the month of September, 2011. In Dec. 2011 before the said inputs are put into use, the company has written off ₹ 20,000 against the said inputs. What economic consequences the company has to face for foregoing writing off of ₹ 20,000/- However, subsequently, in the month of March, 2012 the company put to use the entire inputs of ₹ 1,00,000/-. Can the company get some economic benefit now?

Answer

Finance Act, 2011 has amended Rule 3(5B) of CENVAT Credit Rules, 2004 w.e.f. 08.04.2011 to require a manufacturer or service provider to pay an amount equivalent to the CENVAT Credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off partially before being put to use. Until 07.04.2011 this provision used to apply only when the value was written off fully.

In view of the above-mentioned amendment in CCR, 2004 PQR Ltd. will have to pay an amount equivalent to the CENVAT Credit taken in respect of inputs [which are ₹ 10,300 in the present case] consequent upon partial writing off to the extent of ₹ 20,000/- in respect of said inputs.

However, **proviso to Rule 3(5B)** provides that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable service, the manufacturer or output service provider, shall be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of CCR, 2004. Thus, in the present case, by virtue of proviso to Rule 3(5B) when in March 2012, the company puts to use entire inputs of ₹ 1,00,000 to use; the company will be entitled to take credit of the amount equivalent to the CENVAT Credit paid earlier i.e. ₹ 10,300/-.

Selected Self-Examination Questions

Question 1

With reference to CENVAT Credit Rules, 2004, discuss whether a manufacturer is eligible for CENVAT Credit on inputs used in trial runs.

Question 2

State briefly the provisions relating to CENVAT Credit on capital goods.

Question 3

Determine the CENVAT Credit available for use in the current year under the CENVAT Credit Rules on equipments used in office-Duty paid ₹ 12,000.

Question 4

Discuss in relation to Rule 3(4) of CENVAT Credit Rules, the manner of utilisation of CENVAT Credit allowed on inputs received in a factory.

Question 5

What are the duties in respect of which CENVAT credit can be availed under the CENVAT Credit Rules, 2004?

Question 6

Discuss the provisions prescribed in CENVAT Credit Rules, 2004 for a situation where an output service provider renders both taxable as well as exempted output services by using common inputs/input services and maintains only one set of books of accounts for taxable and exempted services.

Question 7

Discuss the provisions relating to information on principal inputs in context of CENVAT Credit Rules, 2004.

Question 8

Can credit be taken only after making payment against the bill/invoice/challan? Discuss.

Question 9

Who is an "input service distributor"?

Question 10

Credit for inputs is not available if the final products are exempted goods. What are the exceptions to this rule?

Question 11

A machine was received in a factory at 5 p.m. on 31.03.2010. It was not erected at that time. The machine was meant for the manufacture of dutiable as well as zero duty goods. The

assessee decided to claim depreciation under section 32 of the Income-tax Act on the sans duty price of machinery. Can the manufacturer take CENVAT Credit? If yes, what is the amount of credit that he can avail?

Answer/Hint

As per Rule 4 of the CENVAT Credit Rules, 2004, CENVAT credit on capital goods can be availed on the following propositions--:

- (1) The capital goods should have been actually received in the factory (Physical receipt is a must, as in the case of inputs. Erection of the machinery is not compulsory for the first year).
- (2) The capital goods might have been received at any point of time in a financial year.
- (3) Not more than 50% of the duty paid on the capital goods in the same financial year can be taken as CENVAT credit. Credit for the balance can be taken in any subsequent year, provided the goods are in the possession and use of manufacturer.
- (4) Capital goods must not be used exclusively in the manufacture of exempted goods.
- (5) Depreciation under section 32 of the Income tax Act on the part of the value of the capital goods that represents excise duty cannot be claimed, if the manufacturer avails CENVAT credit.

As all the conditions specified above are fulfilled in the given case, 50% of the duty paid by the manufacturer can be availed as CENVAT credit in the first year and the balance in any subsequent year, if the machine remains to be in his possession and use.

Question 12

India Cements Ltd. is engaged in the business of manufacturing cement. For this purpose, limestone is excavated from a mine, which is situated at a distance of few kilometres from the plant where the cement is manufactured. The mine is connected to the main plant through a ropeway. Explosives are used for blasting the mine to excavate limestone. Can CENVAT credit be taken on such explosives? Discuss.

Answer/Hint

The Supreme Court in the case of *Vikram Cement v. CCE*, (2006) 194 ELT 3 (SC) has held that CENVAT credit on inputs being explosives used for blasting mines to produce limestone for use in manufacture of cement/clinkers in factory situated at some distance away from mines could not be denied on the ground that they were not used as inputs within the factory.

Note: The above-mentioned decision overrules the contrary opinion of the Supreme Court in the case of *J.K. Udaipur Udyog Ltd.* 2004 (171) E.L.T. 289 (SC). In this case, the credit on explosives used for blasting mines was disallowed on the ground that the same were not used within the factory but in a mine which could not qualify to be a factory.

Further, it may be noted that in *Vikram Cement v. CCE* 2006 (197) ELT 145 (SC), it has been held that CENVAT credit is available only when mines are captive mines i.e. they constitute

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one integrated unit with the main cement factory. Credit would not be available if the supplies from the mine are made to various cement factories of different assesseees.

Question 13

Answer the following with reference to CENVAT Credit Rules, 2004:

- (a) 'A' manufactures a certain final product in which petrol is used among other inputs. Can he avail CENVAT credit on petrol?
- (b) 'B' is an outdoor caterer. He has purchased a lorry for carrying utensils, tables, groceries, vegetables etc. to the place of service. Can 'B' avail credit of the excise duty paid by him on the purchase of the lorry?
- (c) Can a manufacturer located in Jammu utilize the credit of service tax availed on input services received in New Delhi for payment of excise duty on his final products cleared in Jammu?
- (d) Inputs are received in the factory of the manufacturer on 10.11.2010 but are issued for the production process on 10.12.2010. When should the manufacturer avail credit?

Answer/Hint

- (a) No. Petrol (motor spirit) is specifically excluded from the list of eligible inputs under Rule 2(k).
- (b) Yes. As per Rule 2(a) motor vehicles are treated as capital goods in the case of an outdoor caterer.
- (c) No. CENVAT Credit Rules, 2004 in relation to availment and utilization of service tax credit are not applicable in the State of Jammu and Kashmir, as service tax law does not apply in Jammu and Kashmir.
- (d) Credit can be availed on 10.11.2010 immediately on receipt of the inputs in the factory of the manufacturer [Rule 4(1)].

Question 14

With reference to CENVAT Credit Rules, 2004, discuss giving reasons whether the following statements are true or false:

- (a) Motor vehicles are eligible capital goods both for manufacturers and all output service providers.
- (b) An input service distributor has to furnish a half yearly statement in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
- (c) Cenvat credit shall be allowed on inputs which are sent to the job worker for the manufacture of intermediate goods necessary for the manufacture of final products, if they are received back in the factory within 180 days of their being sent to the job worker.
- (d) Where the capital goods are cleared as waste and scrap, the manufacturer has to pay an

amount equal to the duty leviable on transaction value. Such amount paid can be availed as CENVAT credit.

- (e) Credit of basic excise duty can be utilized for payment of education cess whereas the *vice versa* is not possible.

Answer/Hint

- (a) False. Rule 2(a) defines capital goods to mean

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, 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 and pipes and fittings thereof; and
- (vii) storage tank,

used-

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (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), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act. [Rule 2(a)]

Motor Vehicles fall under Chapter 87. Thus, the manufacturers cannot avail credit on motor vehicles. However, in case of taxable services credit on motor vehicles can be availed in case of abovementioned specific output services. These services are:

- (1) Courier services
- (2) Tour operator's services
- (3) Rent-a-cab scheme operator's services
- (4) Cargo handling agency's services
- (5) Goods transport agency's services
- (6) Outdoor caterer's services

(7) Pandal or shamiana contractor's services

- (b) False. The sub-rule 10 of rule 9 provides that the input service distributor shall furnish a half yearly return in the form specified by the Board to the jurisdictional Superintendent of Central Excise.
- (c) True. Rule 4(5) lays down that CENVAT credit shall be allowed on goods (being inputs or capital goods) sent to the job worker for further processing, testing, repair, reconditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, if they are received back in the factory within 180 days of their being sent to the job worker. In case they are not returned within 180 days the credit on such goods has to be reversed. However, credit can be retaken once the goods come back.
- (d) True. Sub-rule (5A) of rule 3 provides that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value. Rule 3(6) provides that the amount paid under sub-rule (5A) shall also be eligible as CENVAT credit as if it was duty paid by the person who removed such goods under sub-rule (5A).
- (e) True. As per rule 3(4) read with rule 3(1) and rule 3(7)(b), the Cenvat credit of basic excise duty, special excise duty, service tax and AED(GSI) can be utilised for payment of **any** duty or service tax as credit of all duties together is known as 'Cenvat credit'. Hence, credit of basic excise duty can be utilised for payment of education cess on excisable goods. However, as per rule 3(7)(b), credit of education cess paid on excisable goods can be utilised only for payment of education cess on excisable goods or taxable services.