

CENVAT Credit

For the sake of brevity, CENVAT Credit Rules, 2004 have been referred to as CCR, 2004 at many places in this Chapter.

Question 1

When will the accessories and goods used for providing free warranty would be eligible as 'input' under rule 2(k) of the CENVAT Credit Rules, 2004?

Answer

As per rule 2(k) of the CENVAT Credit Rules, 2004:

- (i) accessories would be eligible as input, if they are cleared along with the final product and their value is included in the value of the final product.
- (ii) goods used for providing free warranty for final products would be eligible as input if warranty is provided by the manufacturer and its value is included in the price of the final product and is not charged separately from the customer.

Question 2

Whether a manufacturer of excisable goods, who has paid service tax on freight, can take credit of such service tax paid, if such transportation service has been used for bringing the inputs to the factory of manufacture?

Answer

As per rule 2(l) of CENVAT Credit Rules 2004, inward transportation of inputs or capital goods and outward transportation up to the place of removal are eligible input services for a manufacturer. Thus, service tax paid on freight by the manufacturer under reverse charge can be availed as CENVAT credit as such transportation service has been used for inward transportation of inputs.

Question 3

M/s. AJ imported some inputs and paid basic customs duty ₹ 5 lakh, surcharge on customs duty ₹ 50,000 and additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 ₹ 1 lakh. Calculate the amount that he can claim as CENVAT credit. Would it make any difference, M/S. AJ 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 leviable under

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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 M/S AJ is a service provider as credit of additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 (CVD) can be availed both by the manufacturers and the service providers alike. However, a service provider is not entitled to avail the credit of additional duty of customs leviable under section 3(5) of the Customs Tariff Act, 1975 (special CVD).

Question 4

PQR Ltd., a manufacturer of excisable goods, purchased in the month of September, 2013 inputs of ₹ 1,00,000/- on which it pays excise duty of ₹ 12,360 /- . The company availed the aforementioned CENVAT of ₹ 12,360/- while discharging its excise duty liability for the month of September, 2013. In Dec. 2013 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, 2014 the company put to use the entire inputs of ₹ 1,00,000/-. Can the company get some economic benefit now?

Answer

Rule 3(5B) of CENVAT Credit Rules, 2004 requires a manufacturer or service provider to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods when the value of such inputs or capital goods is written off fully or partially before being put to use.

Thus, PQR Ltd. will have to pay an amount equivalent to the CENVAT credit taken on inputs valuing ₹ 20,000 (inputs written off) which is ₹ 2,472 ($12,360/1,00,000 \times 20,000$).

However, proviso to rule 3(5B) provides that if the said inputs or capital goods is subsequently used in the manufacture of final products or the provision of output 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 2014, the company puts to use entire inputs of ₹ 1,00,000; the company will be entitled to take credit of the amount equivalent to the CENVAT credit paid earlier i.e. ₹ 2,472/-.

Question 5

The goods manufactured by a company have been destroyed in a fire. The payment of duty has been 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 the Central Excise Rules 2002, the credit taken on inputs used in the manufacture or production of said goods

has to 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 6

A machine was received in a factory at 5 p.m. on 31.03.2013. It was not erected at that time. The machine was meant for the manufacture of dutiable as well as exempt goods. The manufacturer decides 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

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). However, if the capital goods is used for generation of electricity for captive use within the factory, the same may even be revived outside the factory of the manufacturer. Erection of the machinery is not a criterion for availing credit.
- (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 of the 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.

Question 7

Ashish and Sons, a sole proprietorship firm is engaged in the manufacture of final products. It purchased following items during the financial year 2012-13:

Particulars	Amount (₹)
Jigs	1,00,000
Fixtures	1,50,000
Moulds and dies	2,00,000
Excise duty paid on above items @ 12.36%	55,620

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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? Explain.

Answer

As per rule 4(5)(b) of CENVAT Credit Rules, 2004, 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 specifications.

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 of excise duty of ₹ 55,620/- in accordance with provisions of rule 4(5)(b)(i) of CENVAT Credit Rules, 2004.

Question 8

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. The lorry is registered in the name of 'B'. 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 10.11.2013 but are issued for the production process on 10.12.2013. When should the manufacturer avail credit?

Answer

- (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)(B)(ii), motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for transportation of inputs and capital goods used for providing an output service are treated as capital goods.
- (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 10.11.2013 immediately on receipt of the inputs in the factory of

the manufacturer [Rule 4(1)].

Question 9

With reference to CENVAT Credit Rules, 2004, discuss giving reasons 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 inputs, capital goods or input services wrongly is liable to a penalty.*
- (v) *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.*
- (vi) *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.*

Answer

- (i) **False.** As per provisions of rule 4(7) of CENVAT Credit Rules, 2004, the CENVAT Credit of "input service" is allowed, on or after the day on which invoice, bill or challan is received. In simple words, 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, the CENVAT Credit both in respect of "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.

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- (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]
- (iv) **True.** Rule 15 of CCR, 2004 *inter alia* provides for levying a penalty for wrongful availment or utilization of CENVAT credit in respect of inputs/capital goods/input services. The penalty in such a case would be the duty/service tax on such goods/services or ₹ 2,000, whichever is greater. However, where the credit has been taken or utilized wrongly by reason of fraud, collusion etc. with intent to evade payment of duty/service tax, then, the manufacturer/output service provider shall also be liable to the penalty under section 11AC of the Excise Act/section 78 of the Finance Act, 1994.
- (v) **False.** Central Board of Excise and Customs has clarified in its *Excise Manual of Supplementary Instructions 2005* that the CENVAT credit will 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 [Chapter 5 Para 3.7 of CBEC's *Excise Manual of Supplementary Instructions 2005*].
- (vi) **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, such payment would not be required to be made where inputs are removed outside the factory for providing free warranty for final products.

Question 10

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

- (i) CENVAT credit of basic excise duty can be utilized for payment of education cess whereas vice versa is not possible.
- (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 @ 2% on inputs in pursuance of Notification No. 1/2011-C.E. dated 01.03.2011 is available to the manufacturer as well as 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

- (vi) *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.*
- (vii) *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.*

Answer

- (i) **Correct.** There is no restriction in the said rules on utilization of CENVAT credit of basic excise duty for payment of education cess. Rule 3(4) of the said rules *inter alia* provides that CENVAT credit can be utilized for payment of any duty of excise on any final product. Since credit of all duties and service tax together is known CENVAT credit and education cess is also considered as duties of excise, CENVAT credit of basic excise duty can be utilized for payment of education cess also.

However, as per rule 3(7)(b), CENVAT credit of education cess paid on excisable goods can be utilised only for payment of education cess on excisable goods or taxable services.

- (ii) **Incorrect.** According to second proviso to rule 3(4) of CCR, 2004, CENVAT credit cannot 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 to rule 3(4) of CCR, 2004, CENVAT credit of any duty specified under rule 3(1) of the said rules cannot be utilised for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.
- (iv) **Incorrect.** Proviso to clause (i) of rule 3(1) of CCR, 2004 lays down that CENVAT credit of excise duty will not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under *Notification No. 1/2011-C.E. dated the 1st March, 2011* is availed.
- (v) **Correct.** As per rule 11(3) of the 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.

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- (vi) **Incorrect.** Sub-rule (10) of rule 9 of the said rules 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.
- (vii) **Correct.** Rule 4(5)(a) of the CCR, 2004 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.

Question 11

Discuss with a brief note the validity of the following statements with reference to the CENVAT Credit Rules, 2004.

- (i) *Credit of service tax paid on services used in the repairs or renovation of factory or office is not available.*
- (ii) *Credit is available in respect of duty paid on capital goods used exclusively in the manufacture of dutiable goods cleared under Notification No. 1/2011 CE dated 01.03.2011.*
- (iii) *Credit of duty paid on capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory is allowed.*
- (iv) *If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value.*
- (v) *Rule 4 allows credit of inputs without bringing them into the premises of output service provider subject to due documentation regarding their delivery and location.*
- (vi) *All motor vehicles used in the factory of the manufacturer are eligible as capital goods for availing CENVAT credit.*

Answer

- (i) The given statement is **not valid** as the definition of input service under rule 2(l) of the CENVAT Credit Rules, 2004 specifically includes services used in relation to renovation or repairs of a factory or an office relating to such factory. Thus, credit on such services is available.
- (ii) The said statement is **not valid**. As per rule 6(4) of the said rules, no credit can be availed on capital goods which are used exclusively in manufacture of exempted goods or in providing exempted service. Since, as per rule 2(d) of the said rules, goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated the 01.03.2011* is availed are exempted goods, credit of capital goods used exclusively in

manufacture of such goods is not allowed [*Circular No. 943/04/2011-CX dated 29.04.2011*].

- (iii) The said statement is **valid**. Capital goods used outside the factory of manufacturer for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit. Such capital goods have been specifically included in the definition of capital goods as provided under rule 2(a) of the CENVAT Credit Rules, 2004.
- (iv) The said statement is **not valid**. As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to:-
 - (i) CENVAT credit taken on the said capital goods reduced by the specified percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT credit.
 - or
 - (ii) Duty leviable on transaction value.**whichever is higher.**
- (v) The said statement is absolutely **valid**. Rule 4 of the CENVAT Credit Rules, 2004 provides that CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.
- (vi) The said statement is **not valid**. Rule 2(a) of the CENVAT Credit Rules, 2004 provides that motor vehicles used in the factory of the manufacturer of the final products are eligible capital goods but it specifically excludes the following motor vehicles from the ambit of the definition of capital goods:
 - (i) Motor vehicles for the transport of 10 or more persons, including the driver;
 - (ii) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars;
 - (iii) Motor vehicles for transport of goods;
 - (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars.

Question 12

Enumerate the safeguards, conditions and limitations subject to which the refund of CENVAT credit shall be allowed under rule 5 of CENVAT Credit Rules, 2004.

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Answer

Refund of CENVAT credit is allowed under rule 5 of the CENVAT Credit Rules, 2004 subject to the procedure, safeguards, conditions and limitations set out vide *Notification No. 27/2012 CE (NT) dated 18.06.2012* as under:-

- (i) Only one refund claim will be submitted for every quarter. However, a person exporting goods and service simultaneously, may submit two refund claims – one in respect of goods exported and other in respect of the export of services - every quarter.
- (ii) Quarter means a period of 3 consecutive months with the first quarter beginning from 1st April of every year.
- (iii) The value of the export goods cleared during the quarter will be the sum total of all the export goods cleared during the quarter as per the monthly/ quarterly return filed by the claimant.
- (iv) The total value of goods cleared during the quarter will be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly/quarterly return filed by the claimant.
- (v) The value of export services will be determined in accordance with rule 5 of the CENVAT Credit Rules, 2004.
- (vi) The time of provision of non-export services will be determined as per the provisions of the Point of Taxation Rules, 2011.
- (vii) The amount of refund claimed should not be more than the amount lying in balance at the end of quarter or at the time of filing of the refund claim, whichever is less.
- (viii) The amount claimed as refund should be debited by the claimant from his CENVAT credit account at the time of making the claim.
- (ix) If refund sanctioned is less than the amount of refund claimed, the claimant may take back the credit of the differential amount.

Question 13

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

Assume that all the conditions prescribed vide rule 5 of the CCR, 2004 for availing the refund are fulfilled in the given case.

Answer

Rule 5 of CENVAT Credit Rules, 2004 *inter alia* provides that the CENVAT credit in respect of 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 given case, there is no service tax liability as 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 14

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	₹ 30,000
Output service exported	₹ 20,000

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 this case the service tax liability on taxable services of ₹ 10,000 (₹ 30,000 - ₹ 20,000) is ₹ 1236 @12.36%. Therefore, there is an excess credit of ₹ 4,764 (₹ 6,000 – ₹ 1,236) which can not be utilized. Thus, the refund of such credit can be claimed. However, the refund will be restricted to the extent of ratio of export turnover to the total turnover for the given period, i.e. ₹ 4,000 [₹ 6,000 x (₹ 20,000/₹ 30,000)].

Question 15

Following transactions took place in the factory of JKA Ltd:

- (i) *An imported consignment of raw materials was received vide bill of entry dated 02.09.13 showing the following customs duty payments:
Basic customs duty ₹ 25,000; Additional duty (CVD) ₹ 20,000; Safeguard 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 03.09.13 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. The original or duplicate copy of invoice no. 286 pertaining to the same was not traceable. However, they were accompanied by a Xerox copy (photo copy) of invoice no. 286 dated 15.11.13 indicating that excise duty of*

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₹ 6,400 had been paid on inputs. JKA Ltd. got the said xerox copy attested by the jurisdictional Range Superintendent of the supplier.

- (v) A supplementary invoice for ₹ 1,00,000 together with service tax of ₹ 10,300/- was received on 15.09.2013. The aforementioned supplementary invoice was in respect of business support services received during the month of May, 2013 and whose original invoice of ₹ 3,00,000 together with service tax of ₹ 30,900/- was received in the month of May, 2013 itself.

Would your answer in above case be different if the above supplementary invoice was issued consequent upon additional amount of tax becoming 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. JKA Ltd. is not eligible for exemption available under Notification No.8/2003 CE dated 01.03.2003.

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). However, no CENVAT credit can be availed in respect of basic customs duty and safeguard 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 received in a factory at any point of time in a given financial year 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) The High Court in the case of *CCEx & Cus. Vadodara II v. Steelco Gujarat Ltd.* 2010 (255) ELT 518 (Guj.) has held that mere xerox copy by itself should not be made the basis of allowing the credit but where the assessee has made efforts to get the said

xerox copy attested by the Range Superintendent of the supplier's end and has established beyond doubt that the duty stands paid on the goods and the goods stand received by him, denial of credit on this procedural irregularity would not be justified.

Since in the given case also the invoice has been certified by the jurisdictional Range Superintendent and there is no doubt about goods being received in the factory of JKA Ltd., CENVAT credit of ₹ 6,400 can be availed on the basis of photocopy of invoice no. 286.

- (v) Clause (bb) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 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 15.09.2013 in respect of business support services received during the month of May, 2013.

However, rule 9(1)(bb) also specifies that CENVAT credit in relation to supplementary invoice, bill or challan shall not be available if 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.

Therefore, when the supplementary invoice is issued consequent upon additional amount of tax becoming 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 cannot be availed on the basis of such supplementary invoice.

Question 16

Write a brief note on monthly return of information relating to principal inputs submitted 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. Further, ER-6 is required to be filed electronically irrespective of the duty paid in the preceding year.

As per 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

Discuss in detail whether interest can be recovered from an assessee who wrongly takes the CENVAT credit but reverses the same before its utilization.

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Answer

According to rule 14 of CCR, 2004 where the CENVAT credit has been taken **and** utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Central Excise Act, 1944 or sections 73 and 75 of the Finance Act, 1994 shall apply *mutatis mutandis* for effecting such recoveries.

Hence, interest cannot be recovered from an assessee who wrongly takes the CENVAT credit but reverses the same before its utilisation. Thus, interest cannot be recovered for mere wrongful availment of the CENVAT credit but for wrongful availment and utilization thereof.

Question 18

XYZ Ltd, a output service provider, has misused the service tax credit. Discuss the actions that can be taken by the department against XYZ Ltd.

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 services wrongly [Rule 15(1) of the CENVAT Credit Rules, 2004];
- (ii) Penalty prescribed under section 78 of the Finance Act, 1994 can 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 CCR, 2004 or Finance Act, 1994 or the rules made thereunder with an intent to evade payment of service tax [Rule 15(3) of the CENVAT Credit Rules, 2004];
- (iii) Special audit prescribed under section 72 of the Finance Act, 1994 can be ordered where credit of service tax availed and utilized is not within the normal limits etc.

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. It also availed CENVAT credit on other capital goods used in the mines. No supplies are made to the cement factories of other aseessees from such mines.

The Central Excise Department denied CENVAT credit on parts/spares for ropeway 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. It also denied credit on other capital good as they were not used in the factory.

Examine with the help of a decided case law, whether the stand taken by the Department in denying credit on

- (i) parts/spares for ropeway; and*
- (ii) other capital goods used in mines*

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”. Thus, the issue to be considered is whether the ropeway used for transporting raw material from mines located 4-5 kms away could 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, which was 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.

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

Applying the ratio of the abovementioned judgements, the ropeway system used by ABC Ltd. would be taken to be used within the factory and therefore, parts/spares thereof would be covered under the definition of capital goods. Likewise, capital goods used in the mines will be eligible to CENVAT credit as the mines are captive mines.

Hence, the stand of the Department is not correct.

Question 20

I Ltd. was a manufacturer of 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 of the duty paid on furnace oil consumed in generation of electricity supplied to housing complex on the ground that the same was used captively within

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the factory (housing complex being part of the factory). However, the Central Excise Department refused to allow such credit.

Examine whether the Department's action is correct in law.

Answer

The definition of input under rule 2(k) of CCR, 2004 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. Since, in the given case, the electricity generated captively is used in the housing complex of the employees of I Ltd., the furnace oil consumed therefor will not be an eligible input. Thus, Department's action in denying CENVAT credit on the duty paid on furnace oil consumed in generation of electricity supplied to housing complex of employees is correct in law.

Furthermore, the 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 and thus, credit cannot be availed of the duty paid thereon.

Question 21

The assessee is engaged in the manufacture of various types of packaging machines. The machines are made to order according to the specification of individual customers and such machines, before dispatch, are to be tested at the manufacturer's premises for the customer's satisfaction. After the satisfaction of the customer, the assessee makes the entry in the RG-1 register (DSA) declaring the machine as manufactured and ready for clearance. For testing the machine, assessee procures certain excisable goods and avails CENVAT credit of the duty paid thereon by treating them as inputs used in the manufacture of packaging machines.

The department, however, denied such credit on the basis of the following contentions

- (i) The said excisable goods were used only for testing and as such, they cannot be treated as inputs used in manufacturing the final product.*
- (ii) Testing takes place only after manufacture of final product and any goods used in the process subsequent to manufacture cannot be termed as inputs under rule 2(k) of CENVAT Credit Rules, 2004.*

Discuss whether the department is justified in denying the CENVAT credit. You may refer to decided case law, if any, in support of your decision.

Answer

No, the contention of the Department to deny the CENVAT credit is not justified.

The facts of the given case are similar to the case of *Flex Engineering Ltd. v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.)*. In this case, the Supreme Court held that

the process of manufacture would not be complete if a product is not saleable, as a non-saleable product is not marketable.

The Apex Court held that the process of testing the customized packaging machines was inextricably connected with the manufacturing process. Until this process was carried out as per customer's satisfaction, the manufacturing process was not complete and the machines were not fit for sale. Therefore, manufacturing process was completed only after testing of the said machines.

Thus, in the given case also, the excisable goods used for testing the packaging machines are inputs used in relation to the manufacture of the final product namely packaging machines and the assessee is eligible to avail CENVAT credit of the duty paid on such excisable goods.

Question 22

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. CENVAT 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. However, the 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 of service tax paid on advertising services which was utilised towards payment of excise duty on concentrates.

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').

The High Court observed that any input service that forms a part of value of final product should be eligible for 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. The Court held that the advertisement of soft-drink enhanced the marketability of the concentrate.

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

Question 23

M/s. XYZ Ltd. shifted its factory from Sitapur 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 balance of unutilized CENVAT credit transferred was ₹8,00,000 but the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was only ₹6,00,000.

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.)* [decision maintained by the Supreme Court in *Commissioner v. CESTAT – 2009(237) E.L.T. 448 (SC)*] 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 Sitapur 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 24

M/s Smart Ltd. manufactures excisable goods that are exempt from duty in terms of a notification provided CENVAT credit of duty paid on inputs 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.

However, 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 utilization of such credit.

State briefly whether the action of the department is correct 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 25

XYZ Co. is engaged in the manufacture of water pipes. From the following details for the month of May, 2013, compute the CENVAT credit admissible to XYZ Co. under the CENVAT Credit Rules, 2004:

Duties (including the education cesses) paid on purchases are detailed below:

Particulars	Amount (₹)
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**Computation of CENVAT credit available in the month of May, 2013**

Particulars	Amount (₹)
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].

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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 the same.

Question 26

X, a manufacturer, purchased 500 kgs of inputs on 01.10.2012. Total assessable value of inputs was ₹ 10,000 and excise duty of 12% and 3% as education cess was paid on the inputs. On the day of receipt itself, inputs were sent to the job worker. Job worker sent back 50% of the inputs on 01.04.2013 and balance 50% on 31.05.2013. X received 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 2012-13 and 2013-14.

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 received back in the factory within 180 days of their being sent to the job worker.

If 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 is solved as under:

Particulars	Amount (₹)
CENVAT credit that can be taken on 1.10.2012 (₹ 10,000×12.36%) if goods are returned within 180 days i.e., by 30.03.2013.	1,236
Since goods are received back on 01.04.2013, CENVAT credit that should be reversed on 31.3.2013 i.e., immediately after the expiry of 180 days from the date of sending the goods to the job worker	1,236
CENVAT credit availed and reversed in financial year 2012-13	1,236
CENVAT credit that can be taken on 1.4.2013 (50% of ₹ 1,236)	618
CENVAT credit that can be taken on 31.5.2013 (50% of ₹ 1,236)	618
CENVAT credit availed in financial year 2013-14	1,236

Question 27

ABC Co. Ltd. procured the following items during the month of January, 2014. Determine the amount of CENVAT credit available by giving necessary explanations for treatment of various items.

Items	Excise duty paid (including education cesses @ 3%) [₹]
Raw materials	52,000
Manufacturing machine	1,00,000
Light diesel oil	40,000
Greases	10,000
Office equipment	20,000
Paints	5,000

M/s. ABC Co. Ltd. is not eligible to avail exemption under the notification based on value of clearances in a financial year.

Answer**Computation of CENVAT credit available during the month of January, 2014:**

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

Notes:

- 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 up to 50% of the duty paid can be availed in respect of the manufacturing machine in the year of purchase by virtue of rule 4(2)(a).
- Light Diesel Oil is not an eligible input as per the definition of inputs under rule 2(k) of the CENVAT Credit Rules, 2004. Hence, it is not eligible for CENVAT credit.
- Office equipment is not an eligible capital good as per the definition of capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.

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Question 28

M/s R & Co. Ltd. have cleared their manufactured final products during April, 2013 and the duty payable is ₹ 2,40,000 plus education cesses as applicable. Given below are the details of excise duty/service tax paid by them during the month at the time of purchase of goods/procurement of input services:

S. No.	Particulars	Amount (₹)	
(i)	On inputs	1,00,000	(Invoice for excise duty of ₹ 20,000 paid was received by the assessee on 04.05.2013)
(ii)	On input service	20,000	
(iii)	On welding electrodes for repairs and maintenance of capital goods	5,000	
(iv)	Fuel (excluding LDO/HSD/Petrol)	6,000	
(v)	Storage Tank	8,000	
(vi)	Tubes and Pipes (used in the factory)	14,000	
(vii)	Air-conditioner for the office of the Manager	12,000	

Note: All the above payments are exclusive of education cesses as applicable. M/s. R & Co. Ltd. is not eligible to avail exemption under the notification based on value of clearances in a financial year.

Find the total duty payable by the assessee for the month of April, 2013 after taking into account the CENVAT credit available.

Answer

CENVAT credit available in the month of April, 2013

S. No.	Particulars	Excise Duty/service tax [₹]	Education Cess [₹]	Secondary and Higher Education Cess [₹]
1.	Inputs [Refer Note 1]	80,000	1600	800
2.	Input service	20,000	400	200
3.	Welding Electrodes [Refer Note 2]	5,000	100	50
4.	Fuel	6,000	120	60
5.	Storage Tank [Refer Note 3]	4,000	80	40

6.	Tubes and Pipes [Refer Note 3]	7,000	140	70
7.	Air-conditioner [Refer Note 4]	-	-	-
	Total credit available	1,22,000	2,440	1220
	Excise duty payable for the month April, 2013	<u>2,40,000</u>	<u>4,800</u>	<u>2,400</u>
	Payable through GAR-7 challan after set off of the credit	<u>1,18,000</u>	<u>2,360</u>	<u>1,180</u>

Notes:

- (1) Since invoice for ₹ 20,000 was not received as on 30.04.2013, credit thereon has not been considered [First proviso to rule 3(4) read with rule 9(1) of the CENVAT Credit Rules, 2004].
- (2) CENVAT credit is available on welding electrodes as per Rajasthan High Court's decision in the case of *Hindustan Zinc Ltd. 2008 (228) ELT 517*.
- (3) Storage tank and tubes and pipes are capital goods [Rule 2(a)(A)(vii) and Rule 2(a)(A)(vi) of the CENVAT Credit Rules, 2004 respectively]. Hence, only 50% credit is allowed [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].
- (4) Air conditioner is not an eligible capital goods as it is used in the office of the factory manger [Rule 2(a)(A)(1) of the CENVAT Credit Rules, 2004].

Question 29

Determine the amount of CENVAT credit available with Gangotri Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2013:-

Items	Excise duty paid (including EC and SHEC) (₹)
Raw materials	52,000
Capital goods used for generation of electricity for captive use within the factory	1,00,000
Motor spirit	40,000
Inputs used for construction of a building	1,00,000
Dairy and bakery products consumed by the employees	5,000

(Note: The aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2012-13 is ₹ 450 lakh)

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Answer

Computation of the amount of CENVAT credit available with Gangotri Manufacturing Ltd.:-

Items	Excise duty paid (including EC and SHEC) (₹)
Raw materials	52,000
Capital goods used for generation of electricity for captive use (50% of ₹ 1,00,000) (Note-1 & 2)	50,000
Motor spirit (Note-3)	Nil
Inputs used for construction of a building (Note-3)	Nil
Dairy and bakery products consumed by the employees (Note-3)	<u>Nil</u>
Total CENVAT credit available	<u>1,02,000</u>

Notes:-

- Capital goods used for generation of electricity for captive use within the factory are eligible capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.
- Since, aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2012-13 is ₹ 450 lakh i.e. more than ₹ 400 lakh, it is not eligible for SSI exemption. Therefore, CENVAT credit of only upto 50% of the duty paid is available in respect of the eligible capital goods in the year of purchase [Rule 4(2)(a)].
- As per the definition of inputs under rule 2(k), there is specific exclusion with regard to the following:-
 - motor spirit
 - goods used for construction of a building or a civil structure or a part thereof
 - any goods, such as food items used primarily for personal use or consumption of any employee

Question 30

Determine the amount of CENVAT credit available with Satnarayan Manufacturing Ltd. in respect of the following items procured by them in the month of November, 2013:

	Item	Excise Duty paid (including EC and SHEC) [₹]
(i)	Raw materials	72,000

(ii)	Capital goods used outside the factory for generation of electricity for captive use within the factory	1,50,000
(iii)	Goods used in the guest house primarily for personal use.	40,000
(iv)	Inputs used for making structures for support of capital goods	1,25,000
(v)	Parts and components for use in the manufacture of final product	40,000
(vi)	Goods for providing free warranty – The value of such free warranty provided by Satnarayan Manufacturing Ltd. is included in the price of the final product and is not charged separately from the customer.	10,000
(vii)	Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer	3,50,000

Note : The aggregate value of clearances of Satnarayan Manufacturing Ltd. for the financial year 2012-13 is ₹ 480 Lakhs.

Answer

Computation of CENVAT credit available with Satnarayan Manufacturing Ltd. in the month of November, 2013

Particulars	Amount [₹]
Raw materials	72,000
Capital goods used for generation of electricity for captive use within the factory [₹ 1,50,000×50%] [Note 1 & 2]	75,000
Goods used in the guest house primarily for personal use [Note 3]	Nil
Inputs used for making structures for support of capital goods [Note 3]	Nil
Parts and components for use in the manufacture of final product [Note 4]	40,000
Goods for providing free warranty [Note 5]	10,000
Special purpose motor vehicle (falling under tariff heading 8705) for use in the factory of manufacturer [₹ 3,50,000×50%] [Note 1 & 6]	<u>1,75,000</u>
Total CENVAT credit available	<u>3,72,000</u>

Notes:

- Since its value of clearances in the financial year 2012-13 is ₹ 480 lakh, Satnarayan Manufacturing Ltd. is not eligible for SSI exemption in FY 2013-14. Hence, as per rule 4(2)(a) of the CENVAT Credit Rules, 2004, CENVAT credit of only upto 50% of the duty paid will be available in respect of the eligible capital goods in the year of purchase.

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2. Capital goods used outside the factory for generation of electricity for captive use within the factory are capital goods eligible for CENVAT credit [Rule 2(a) of CCR, 2004].
3. As per the definition of inputs under rule 2(k) of CCR, 2004, there is specific exclusion with regard to the following:-
 - (i) goods used in a guest house when the same are used primarily for personal use or consumption of any employee.
 - (ii) goods used for making of structures for support of capital goods.Thus, CENVAT credit cannot be claimed in respect of the above goods.
4. Though definition of inputs under rule 2(k) specifically excludes capital goods, capital goods used as parts or components in the manufacture of a final product are included therein. Thus, CENVAT credit will be available on the same.
5. Since the value of the free warranty provided by Satnarayan Manufacturing Ltd. is included in the price of the final product and is not charged separately from the customer, the goods used for providing such free warranty will be inputs eligible for CENVAT credit [Rule 2(k) of the CCR, 2004].
6. Capital goods as defined under rule 2(a) of the CCR, 2004 includes motor vehicles other than the ones falling under tariff headings 8702, 8703, 8704, 8711. Thus, special purpose motor vehicle falling under tariff heading 8705 will be capital goods eligible for CENVAT credit.

Question 31

KSP Ltd. purchased a pollution control equipment for ₹ 15,14,240 which is inclusive of excise duty at 12% plus education cess 2% plus secondary and higher education cess 1%. The equipment was purchased on 01.09.2011 and was disposed of as second hand equipment on 10.10.2013 for a price of ₹ 12,00,000). The excise duty rate on the date of disposal was 12% plus education cess @ 2% plus secondary and higher education cess 1%.

- (i) *You are required to calculate the amount of CENVAT credit allowable for the financial year 2011-12 and 2012-13.*
- (ii) *What is the amount payable towards CENVAT credit already availed at the time of disposal of the equipment in the financial year 2013-14?*

KSP Ltd. is not eligible for SSI exemption and the pollution control equipment has been received in the factory on 01.09.2011. The disposal price of the equipment is the transaction value which is exclusive of excise duty.

Answer

- (i) **Computation of amount of CENVAT credit allowable for financial years 2011-12 and 2012-13**

		Amount [₹]
Cum duty price of Pollution Control Equipment	₹15,14,240	
Rate of excise duty including education cess and secondary and higher education cess	12.36%	
Excise duty paid on equipment = ₹ 15,14,240 × $\frac{12.36}{112.36}$		1,66,571.80
Excise duty paid on equipment (rounded off)		1,66,572
CENVAT credit allowable on pollution control equipment for the		
Financial Year 2011-12 @ 50% [Note-1]		83,286
Financial Year 2012-13 @ 50% [Note 1]		83,286

- (ii) **Computation of amount payable towards CENVAT credit on disposal of equipment in the financial year 2013-14**

Particulars	Amount (₹)	
Total CENVAT credit availed on the equipment		1,66,572
Less:		
(i) First 50% credit = [₹ 83,286 × 2.5%] × 10 quarters (credit availed on 01.09.2011)	20,821.50	
(ii) Next 50% credit = [₹ 83,286 × 2.5%] × 7 quarters (credit availed on 01.04.2012)	<u>14,575.05</u>	35,396.55
Amount payable on disposal of machinery		1,31,175.45
Duty leviable on transaction value (₹12,00,000 × 12.36%)		1,48,320
Amount payable towards CENVAT credit on disposal of equipment [Note 2]		1,48,320

Notes:

- Pollution control equipment is an eligible capital goods under rule 2(a) of the CCR, 2004 and credit upto 50% can only be taken in the financial year in which the capital goods is received. Balance credit can be taken in any subsequent financial year. [Clause (a) and (b) of rule 4(2) of the CCR, 2004].

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2. As per rule 3(5A) of the CENVAT Credit Rules, 2004, if the capital goods, on which CENVAT credit has been taken, are removed after being used, higher of the following two amounts has to be paid
- an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5% by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT credit
- OR
- duty leviable on transaction value.

Question 32

Mr. Happy, a service provider, has provided services valuing ₹ 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 for dutiable and exempt services 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. 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	Amount (₹)
Service tax payable on taxable services (₹ 70,00,000 × 12%)	8,40,000
Education cess @ 2% (₹ 8,40,000 × 2%)	16,800
Secondary and higher education cess @ 1% (₹ 8,40,000 × 1%)	8,400
Amount payable @ 6% of value of exempt services under rule 6(3)(i) (₹ 30,00,000 × 6%) [Note (1)]	<u>1,80,000</u>
Total	<u>10,45,200</u>

Particulars	Service tax and amount payable under rule 6(3)(i) [₹]	Education cess [₹]	Secondary and higher education cess [₹]
Amount payable (A)	8,40,000 + 1,80,000 = 10,20,000	16,800	8,400
Less: CENVAT credit (B)	6,00,000	6,00,000 × 2% = 12,000	6,00,000 × 1% = 6,000
Net amount payable = (A) - (B)	4,20,000	4,800	2,400

Amount payable by GAR-7 challan = ₹ 4,20,000 + ₹ 4,800 + ₹ 2,400 = ₹ 4,27,200

Notes :

- (1) Education cess and secondary and higher education cess are not payable on 'amount' payable @ 6% 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 33

Punjab Hind Bank provides the following information for the month of June, 2013:

Particulars	Amount (₹)
CENVAT credit available on inputs	₹ 2,00,000
CENVAT credit available on input services	₹ 4,00,000
Service tax liability	₹ 10,00,000

Determine the amount of CENVAT credit available with Punjab Hind Bank in the month of June, 2013. Also determine the net service tax payable by the Bank for the said month.

Note: Punjab and Hind Bank Ltd. is not eligible for small service providers' exemption under Notification No. 6/2005 dated 01.03.2005 for the financial year 2012-13.

Answer

According to rule 6(3B) of CENVAT Credit Rules, 2004, a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

In other words, a banking company is entitled to avail only 50% of CENVAT credit in relation to inputs and input services.

Computation of CENVAT credit available with Punjab and Hind Bank in the month of June, 2013

Particulars	Amount (₹)
CENVAT on credit available inputs	2,00,000
CENVAT credit available on input services	<u>4,00,000</u>
Total amount of credit availed	6,00,000
Less: Payment of 50% of CENVAT credit availed on inputs and input services by virtue of rule 6(3B).	<u>3,00,000</u>
Net CENVAT credit available on inputs and input services	<u>3,00,000</u>

4.30 Central Excise

Determination of net service tax liability of Punjab and Hind Bank for the month of June, 2013

Particulars	Amount (₹)
Service tax liability for the month of June, 2013	10,00,000
Less: Eligible CENVAT credit available on inputs and input services	<u>3,00,000</u>
Net service tax payable by the Bank	7,00,000

Exercise

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.
2. Elucidate the meaning of term "input" as given in rule 2(k) of CENVAT Credit Rules, 2004.
3. Elucidate the meaning of term "input service" as given in rule 2(l) of CENVAT Credit Rules, 2004.
4. With reference to rule 2(a) of the CENVAT Credit Rules, 2004, state briefly the provisions relating to CENVAT credit on capital goods.
5. What are the duties in respect of which CENVAT credit can be availed under the CENVAT Credit Rules, 2004?
6. Can credit be taken only after making payment against the bill/invoice/challan? Discuss.
7. Discuss in relation to rule 3(4) of CENVAT Credit Rules, the manner of utilization of CENVAT credit.
8. What are the provisions relating to the payment of amount on used capital goods cleared by an assessee on which CENVAT credit has been availed?
8. 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.
9. Discuss the provisions relating to information on principal inputs in context of CENVAT Credit Rules, 2004.
11. Explain who is an "input service distributor"?
12. Mention briefly the provisions relating to non-reversal of CENVAT credit under section 5B of the Central Excise Act.