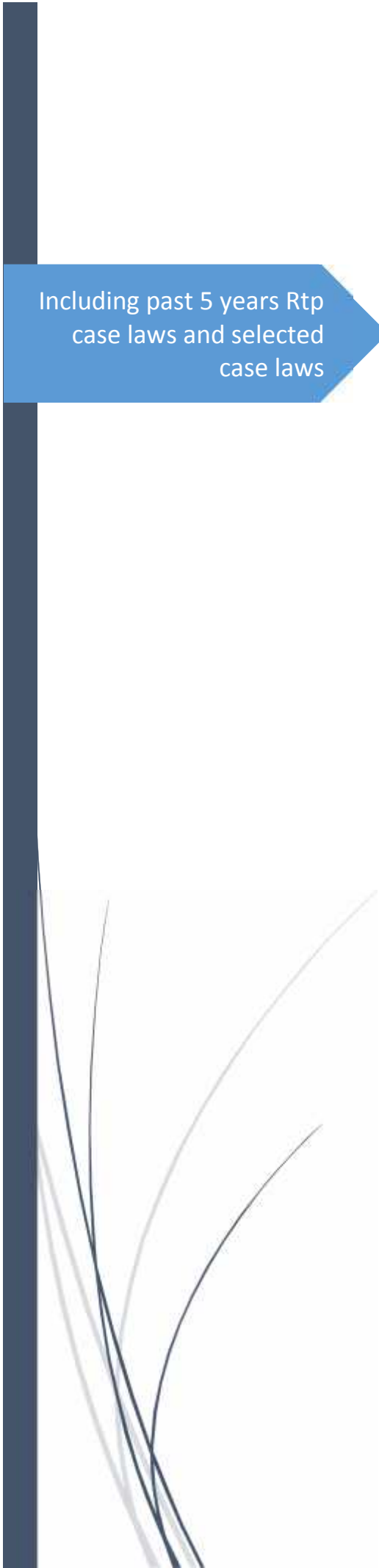


A thick dark blue vertical bar runs along the left edge of the page. In the lower-left quadrant, there are several thin, curved, light grey lines that sweep upwards and to the right, creating an abstract, organic feel.

Including past 5 years Rtp
case laws and selected
case laws

CENVAT CREDIT RULES 2004

Giridhar's

APPLICABLE FOR NOVEMBER -2015 EXAM

Cenvat Credit Rules 2004

Rule 1. Short title, extent and commencement. -

- (1) These rules may be called the CENVAT Credit (Amendment) Rules, 2010.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Rule 2. Definitions. -

In these rules, unless the context otherwise requires,-

(a) "**capital goods**" means:-

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
 - (ii) pollution control equipment;
 - (iii) components, spares and accessories of the goods specified at (i) and (ii);
 - (iv) moulds and dies, jigs and fixtures;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof;
 - (vii) storage tank; and
 - (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers, 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

(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or”;

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

- (i) providing an output service of renting of such motor vehicle; or
- (ii) transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of courier agency"

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-

- (i) transportation of passengers; or
- (ii) renting of such motor vehicle; or

(iii) imparting motor driving skills"

(D) Components, spares and accessories of motor vehicles which are capital goods for the assessee.

Tariff headings 8702, 8703, 8704, 8711 are as follows:-

- (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.

Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)? RTP-N-2015

Bharti Airtel Ltd. v. CCEX. Pune III 2014 (35) STR 865 (Bom.)

High Court's Decision: The High Court rejected the appeals of the appellant and upheld the findings of the Tribunal holding that the mobile towers and parts thereof and shelters / prefabricated buildings are neither capital goods under rule 2(a) nor „inputs“ under rule 2(k) of the CCR. Hence, CENVAT credit of the duty paid thereon by a cellular mobile service provider was not admissible.

(b) **Customs Tariff Act"** means the Customs Tariff Act, 1975 (51 of 1975);

(c) **"Excise Act"** means the Central Excise Act, 1944 (1 of 1944);

(d) **"exempted goods"** means excisable 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 an exemption under Notification No. 1/2011-CE, dated the 01.03.2011 @2% or under entries at serial numbers 67(coal) and 128(fertilizers) of Notification No. 12/2012-CE, dated the 17.03. 2012 @1% is availed"

(e) **exempted service"** means a-

- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
 - (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
 - (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;
- but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.'

(f) **"Excise Tariff Act"** means the Central Excise Tariff Act, 1985 (5 of 1986);

(g) **"Finance Act"** means the Finance Act, 1994 (32 of 1994);

(h) **"final products"** means excisable goods manufactured or produced from input, or using input service;

(ij) **"first stage dealer"** means a dealer, who purchases the goods directly from,-

- (i) 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

~~(ii) an importer who sells goods imported by him under the cover of an invoice on which CENVAT credit may be taken and such invoice shall include an invoice issued from his depot or the premises of his consignment agent"(31.12.2013)~~

(ii) 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

(k) **"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; or

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

but **excludes-**

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

(B) any goods used for -

(a) construction or execution of works contract 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 service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;"

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

(D) motor vehicles;

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

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

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

(l) **"input service"** means any service,-

(i) used by a provider of output 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 upto the place of removal; **but excludes services,-**

(A) service portion in the execution of a works contract and

construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract 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) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance , in so far as they relate to a motor vehicle which is not a capital goods, **except** when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; 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;";

Whether sales commission services are eligible input services for availment of CENVAT credit? If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department? Also, if there is a contradiction between the decision passed by jurisdiction High Court and another High Court, which decision will prevail? (RTP-N-2015)

Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (34) STR 814 (Guj.)

High Court's Decision: The High Court held that –

(i) if there is any conflict between the decision of the jurisdictional High Court and the CBEC Circular, then decision of the jurisdictional High Court will be binding to the Department rather than CBEC Circular. Therefore, the assessee would not be entitled to CENVAT credit on sales commission services obtained by them .

(ii) merely because there might be a contrary decision of another High Court is no ground to refer the matter to the Larger Bench.

(iii) when there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

Whether (i) technical testing and analysis services availed by the assessee for testing of clinical samples prior to commencement of commercial production and (ii) services of commission agent are eligible input services for claiming CENVAT? RTP-N-2013+SCL-8

CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)

Decision: The High Court held that technical testing and analysis services availed for testing of clinical samples prior to commencement of commercial production were directly related to the manufacture of the final product and hence, were input services eligible for CENVAT credit.

With respect to the services provided by foreign commission agents, the High Court held that since the agents were directly concerned with sales rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(l) of the CENVAT Credit Rules, 2004.

(m) **"input service distributor"** means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;

(n) **"job work"** means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

(na) **"large taxpayer"** shall have the meaning assigned to it in the Central Excise Rules, 2002.

(naa) **"manufacturer"** or "producer",-

(i) in relation to articles of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under rule 12AA(1) of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under rule 4 (1A) Central Excise Rules, 2002;";

(o) **"notification"** means the notification published in the Official Gazette;

(p) **"output service"** means any service provided by a provider of service located in the taxable territory but shall not include a service,-

(1) specified in section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.'

(q) **"person liable for paying service tax"** has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(qa) **"place of removal"** means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed.(11.07.2014)

(r) "**provider of taxable service**" include a person liable for paying service tax;

(s) "**second stage dealer**" means a dealer who purchases the goods from a first stage dealer;

(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

Rule 3. CENVAT credit. -

(1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act(**basic excise duty**)

Provided that CENVAT credit of such duty of excise shall **not** be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE,dated the 17th March, 2012 is availed ".

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978.

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

(v) NCCD

(vi) the Education Cess on excisable

(via) the Secondary and Higher Education Cess on excisable goods

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, **equivalent** to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);

Provided that CENVAT credit shall not be allowed in excess of **85%**. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, **on ships, boats and other floating structures** for breaking up falling under tariff item **8908 00 00** of the First Schedule to the Customs Tariff Act

(viii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act,(**SPECIAL CVD**)

Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;

(ix) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(x) the service tax leviable under section 66 of the Finance Act;

(ixb) the service tax leviable under section 66B of the Finance Act;"

(x) the Education Cess on taxable services and

(xa) the Secondary and Higher Education Cess on taxable and

(xi) the additional duty of excise on pan masala and tobacco products leviable under section 85 of Finance Act, 2005

Provided that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of de-bonding of the unit in terms of the para 8 of notification No. 22/2003-Central Excise, i.e. exempts certain goods when brought into **100% EOU/STP complex**

paid on-

(i) any input or capital goods **received** in the factory of manufacture of final product or by the provider of output service and

(ii) any input service received by the manufacturer of final product or by the provider of output services (on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.)

Explanation.- For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under **heading 9801(project imports)** of the First Schedule to the Customs Tariff Act.

IMPORTANT DECISIONS

V.G. Steel Industry v CCE (2011) 271 ELT 508 (P&H)

held that even if the duty has been paid in excess of what is to be paid, unless the excess duty paid has been refunded, the purchaser assessee could claim credit of the duties actually paid and department cannot deny the same.

Mahaveer Surfactants (P) Ltd. v. CCE, (2009) 233 E.L.T. 109 (Tri. -Chennai)

where the price of the product was reduced subsequent to availment of credit, the Department sought to deny credit on the ground that Rule 3(1) credit could be taken only to the extent duty was 'leviable', it was held that CENVAT credit on inputs is available to a manufacturer of final products to the extent of the duty leviable on such inputs and paid by the input-manufacturer/supplier.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on

inputs lying in **stock or in process** or

inputs contained in the **final products lying in stock**

on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(4) The CENVAT credit may be **utilized for payment of -**

a) **any** duty of excise on any final product; or

b) an **amount** equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

c) an **amount** equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

d) an **amount** under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

e) service tax on any output service:

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be:

Provided further that 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-CE, dated the 1st March, 2011 is availed

Provided also that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue),- shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

Provided also that no credit of the **(SPECIAL CVD)** additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilized for payment of service tax on any output service:

Provided also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent(**NCCD**) duty in item (v) thereof, shall not be utilized for payment of the said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff:

Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010.

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under section 85 of Finance Act, 2005, shall not be utilised for payment of said additional duty of excise on final products.

Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient"

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service:

Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products

Sub rule	Applicable to	When the rule applies	What shall be done
(5)	Both manufacturers and service providers	Removal of inputs or capital goods as such on which credit is availed	=> Pay an amount equal to the credit availed in respect of such inputs or capital goods => Clear such goods under cover of Invoice
First proviso to sub rule (5)	Service providers	Removal of inputs or capital goods for providing output services	⇒ Such reversal is not required where goods are removed outside the premises of the provider of output service for providing the output service
Second Proviso to subRule (5)	Manufacturers	Removal of inputs as warranty replacements	⇒ Reversal of credit not required.

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

- (i) for computers and computer peripherals:

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then” the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

Sub rule	Applicable to	When the rule applies	What shall be done
(5B)	Both manufacturers and service providers	Writing off of inputs or capital goods fully or partially or providing for fully or partially of the value of capital goods or inputs	⇒ Pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods
Proviso to (5B)	Both manufacturers and service providers	If such capital goods or inputs are subsequently used for manufacture or providing service	⇒ Could avail the credit again

~~Explanation. — If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.”(01.03.2013)~~

Circular No.: 990/14/2014-CX-8 dt 19.11.2014

According to Rule 3(5B) of CCR, 2004, if the value of any input or capital goods before being put to use on which CENVAT Credit has been taken, is written off or such provisions made in Books of Account, the manufacturer or service provider is required to pay an amount equal to credit so taken. However, when the inputs or capital goods are subsequently used, the amount so paid can be re-credited in the account. the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rule

PQR Ltd., a manufacturer of excisable goods, purchased in the month of April, 2014 inputs for Rs.1,00,000/- on which it pays excise duty of Rs.12,360/-. The company utilised the aforementioned CENVAT of ` 12,360/- while discharging its excise duty liability for the month of April, 2014. In June, 2014 before the said inputs are put into use, the company has written off ` 20,000 out of the total inputs. The balance inputs of ` 80,000 were not written off. What economic consequences the company has to face for writing off of ` 20,000/-. However, subsequently, in the month of December, 2014, the company puts to use the entire inputs of Rs.1, 00,000/-. Can the company get some economic benefit now? (PM-4)

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 Rs.20,000 (inputs written off) which is Rs.2,472 ($12,360/1,00,000 \times 20,000$) in June, 2014. 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 December, 2014, the company puts to use entire inputs of Rs.1,00,000; the company will be entitled to take credit of the amount equivalent to the CENVAT credit paid earlier i.e. Rs.2,472/-.

(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods(08.01.2014) shall be reversed.

Sub rule	Applicable to	When the rule applies	What shall be done
(5C)	Only to manufacturer	Where on any goods payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002	⇒ Credit taken on the inputs used in the manufacture or production of said goods shall be reversed

Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.(08.01.2014)

Explanation 2.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.(08.01.2014)

Can CENVAT credit availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004? (RTP-NOV-2015)(RTP-M-2015)

CCE v. Fenner India Limited 2014 (307) ELT 516 (Mad.)

High Court's Decision: The High Court held that CENVAT credit would need to be reversed only when the payment of excise duty on final product is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, which deals with the remission of duty. In the present case, the assessee has not claimed any remission and no final product has been removed, hence, assessee need not reverse the CENVAT credit taken on inputs (contained in the work-in-progress) destroyed in fire.

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?(PM-5)

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 input services used in/in relation to manufacture or production of said goods has to be reversed.

(6) The amount paid under **sub-rule (5) and sub-rule (5A)** shall be **eligible as CENVAT** credit as if it was a duty paid by the **person who removed** such goods under sub-rule (5) and sub-rule (5A).

(7) Notwithstanding anything contained in rule 3(1) and rule 3(4),-

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a **100% export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays**

excise duty levied under section 3 of the Excise Act read with serial numbers 3,5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely:-

50% of $[X \text{ multiplied by } \{(1+BCD/100) \text{ multiplied by } (CVD/100)\}]$, where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value:

Provided that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification no. 23/2003-Central Excise dated 31st March, 2003 shall be equal to $\{X \text{ multiplied by } [(1+BCD/200) \text{ multiplied by } (CVD/100)]\}$.

Provided further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 07.09.2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit **has paid** -

(A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the notification no. 23/2003-Central Excise, dated 31st March, 2003 and

(B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred **to in (A)**,

shall be the aggregate of -

(I) that portion of excise duty referred to in (A), as is equivalent to -

(i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act(**countervailing Duty**), which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;

(ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act(**special countervailing duty @ 4%**); and

(II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).

(b) CENVAT credit in respect of -

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978

(ii) the National Calamity Contingent duty

(iii) the education cess on excisable goods

(iiia) the Secondary and Higher Education Cess on excisable

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;

(v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(vi) the education cess on taxable services

(via) the Secondary and Higher Education Cess on taxable services

(vii) the additional duty of excise leviable on pan masala and tobacco products under section 85 of Finance Act, 2005

shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No.2) Act, 2004 or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 or the additional duty of excise leviable under section 157 of the Finance Act, 2003, or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No.2) Act, 2004, or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007, or the additional duty of excise leviable under section 85 of the Finance Act, 2005 respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service:

Provided that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services:

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act: **(30.04.2015)**

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act: **(30.04.2015)**

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act **(30.04.2015)**

Explanation - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under tariff items 2515 12 20 and 2515 12 90 respectively of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square meter; **Explanation.-** Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD? (RTP-N-2014) (SCL-1)

CCEx. v. Prag Bosimi Synthetics Ltd. 2013 (295) ELT 682 (Gau.)

Decision: The High Court held that merely because CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD.

Note: Fourth proviso to rule 3(4) of the CENVAT Credit Rules, 2004 provides that in case of mobile phones, credit of only NCCD can be utilised for payment of the NCCD payable thereon. In other words, in the absence of the credit of NCCD, NCCD payable on mobile phones will have to be paid in cash (even if credit of other duties/tax is available) as no other credit can be utilized to pay such duty.

Rule 4. Conditions for allowing CENVAT credit.-

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be. (01.03.2015)

Provided that in respect of final products, namely, articles of jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job

work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

Provided further that the 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.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after ~~six months~~ one year **(01.03.2015)** of the date of issue of any of the documents specified in sub-rule (1) of rule 9. **(01.09.2014)**

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be **(01.03.2015)**, at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year.

Provided further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

Provided also that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

Explanation.- For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration.- A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(5)

(a) (i) The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a **job worker** and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the inputs or the products produced therefrom are received back by the manufacturer or the provider of output service, as the case may be, within one hundred and eighty days of their being sent from the factory or premises of the provider of output service, as the case may be:

Provided that credit shall also be allowed even if any inputs are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of one hundred and eighty days shall be counted from the date of receipt of the inputs by the job worker;

(ii) the CENVAT credit on capital goods shall be allowed even if any capital goods as such are sent 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, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the capital goods are received back by the manufacturer or the provider of output service, as the case may be, within two years of their being so sent:

Provided that credit shall be allowed even if any capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of two years shall be counted from the date of receipt of the capital goods by the job worker;

(iii) if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise, but the manufacturer or the provider of output service may take the CENVAT credit again when the inputs or capital goods, as the case may be, are received back in the factory or in the premises of the provider of output service(01.03.2015)

Circular No.: 990/14/2014-CX-8 dt 19.11.2014

Rule 4(5)(a) of CCR, 2004 prescribes that in case inputs sent to job worker are not received back within 180 days, the manufacturer or service provider is required to pay an amount equal to credit taken on such inputs in the first instance. However, when the inputs are subsequently received back from job worker, the amount so paid can be re-credited in the account.

the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules

(b) The CENVAT credit shall also 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.

Ashish and Sons, a sole proprietorship firm is engaged in the manufacture of final products. It purchased following items during the financial year 2013-14:

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

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.(PM-7)

Answer

Rule 4(5)(b) of CENVAT Credit Rules, 2004, inter alia, stipulates that CENVAT credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to another manufacturer for the production of goods, 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 Rs.55,620/- in accordance with provisions of rule 4(5)(b)(i) of CENVAT Credit Rules, 2004.

(6) The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a **job-worker** may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:

~~Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid: (11.07.2014)~~

~~Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9: (11.07.2014)(31.03.2015)~~

~~Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules (11.07.2014)(31.03.2015)~~

Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:” (01.04.2015)

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within 3 months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:(01.04.2015)

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after ~~six months~~ one year(01.03.2015) of the date of issue of any of the documents specified in sub-rule (1) of rule 9 (11.07.2014)

Explanation I.- The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III. - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March."

Circular no :- 990/14/2014-CX-8 dt 19.11.2014

3rd proviso to Rule 4(7) of CCR, 2004 prescribes that if the payment of value of input service and service tax payable is not made within three months of date of invoice, bill or challan, then the CENVAT Credit availed is required to be paid back by the manufacturer or service provider. Subsequently, when such payment of value of input service and service tax is made, the amount so paid back can be re-credited.

the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rule

Whether wrongful availment of 100% CENVAT credit on capital goods in the year of purchase be upheld if wrongly availed credit of 50% is not utilized in the said year? RTP-N-2014+(SCL-3)

CCE v. Satish Industries 2013 (298) E.L.T. 188 (Bom.)

Decision: The High Court held that if 50% CENVAT credit on capital goods pertaining to subsequent financial year which had been wrongly availed in the first year had not been not utilized till the commencement of the subsequent financial year, no prejudice was caused to the Revenue and thus, the same could be upheld.

5. Refund of CENVAT Credit. –

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, **safeguards, conditions and limitations***, as may be specified by the Board by notification in the Official Gazette:

**Refund amount =
$$\frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$**

Where,-

(A) **Refund amount**” means the maximum refund that is admissible;

(B) **Net CENVAT credit**” means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) **Export turnover of goods** means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) **Export turnover of services** means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for

export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) **Total turnover**” means sum total of the value of -

- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of subrule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Explanation 1.- For the purposes of this rule,-

- (1) export service” means a service which is provided as per rule 6A of the Service Tax Rules 1994 ;
- (1A) export goods" means any goods which are to be taken out of India to a place outside India.**(01.03.2015)**
- (2) relevant period” means the period for which the claim is filed.

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

***Safeguards, conditions and limitations.-** Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely:-

(a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter:

provided that 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.

(b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.

(d) the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(e) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

3.0 Procedure for filing the refund claim. - (a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A annexed to the notification, to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-

(i) the factory from which the final products are exported is situated.

(ii) the registered premises of the provider of service from which output services are exported is situated.

(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).

(c) The application for the refund should be signed by-

(i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;

(ii) any partner in case of a partnership firm;

(iii) a person authorized by the Board of Directors in case of a limited company;

(iv) in other cases, a person authorized to sign the refund application by the entity.

(d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

(e) The refund claim shall be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

(f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

(g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be.

Ascertain whether the refund of service tax paid on input services can be claimed with the help of following information available for the relevant quarter:

Total available credit of service tax paid on input services Rs6,000

Total turnover of output service exported Rs30,000

Further, the CENVAT credit balance at the end of quarter was ` 7,500. CENVAT credit balance at the time of submitting refund claim was Rs.3,200. Assume that all the conditions prescribed vide rule 5 of the CCR, 2004 for availing the refund are fulfilled in the given case.(PM-13)

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 Rs.6,000/- paid on input services.

However, refund should not be more than the amount lying in balance at the end of quarter for which refund is claimed or at the time of filing of the refund claim, whichever is less. Hence, the eligible refund claim is Rs.3,200.

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

Total available credit of service tax paid on input services	Rs.6,000
Total turnover of output service	Rs.30,000
Turnover of output service exported	Rs.20,000

Answer – (PM-14)

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 Rs.10,000 (Rs30,000 -Rs20,000) is Rs.1, 236 @12.36%. Therefore, there is an excess credit of Rs.4,764 (Rs.6,000 – Rs.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 [$\frac{6,000}{Rs.20,000/Rs.30,000}$].

Rule 5A. Refund of CENVAT credit to units in specified areas.-

Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No.20/2007 - Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation: For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.

5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.-

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

1. Safeguards, conditions and limitations. –(03.03.2014) No.12/2014

(a) the refund shall be claimed of unutilised CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services namely:-

(i) renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;

(ii) supply of manpower for any purpose or security services; or

(iii) service portion in the execution of a works contract;

(hereinafter the above mentioned services will be termed as partial reverse charge services).

Explanation:- For the purpose of this notification,-

Unutilised CENVAT credit taken on inputs and input services during the half year for providing partial reverse charge services = (A) – (B)

Where,

A = CENVAT credit

taken on inputs

and input (*)

services during

the half year

turnover of output service under partial

reverse charge during the half year

total turnover of goods and services during

the half year

B = Service tax paid by the service provider for

such partial reverse charge services during

the half year;

(b) the refund of unutilised CENVAT credit shall not exceed an amount of service tax liability paid or payable by the recipient of service with respect to the partial reverse charge services provided during the period of half year for which refund is claimed;

(c) the amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim;

(d) in case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned;

(e) the claimant shall submit not more than one claim of refund under this notification for every half year;

(f) the refund claim shall be filed after filing of service tax return as prescribed under rule 7 of the Service Tax Rules for the period for which refund is claimed;

(g) no refund shall be admissible for the CENVAT credit taken on input or input services received prior to the 1st day of July,2012;

Explanation. – For the purposes of this notification, half year means a period of six consecutive months with the first half year beginning from the 1st day of April every year and second half year from the 1st day of October of every year.

- 2. Procedure for filing the refund claim.** – (a) the provider of output service, shall submit an application in Form A annexed hereto, along with the documents and enclosures specified therein, to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, before the expiry of one year from the due date of filing of return for the half year: Provided that the last date of filing of application in Form A, for the period starting from the 1st day of July, 2012 to the 30th day of September, 2012, shall be the 30th day of June, 2014;
- (b) if more than one return is required to be filed for the half year, then the time limit of one year shall be calculated from the due date of filing of the return for the later period;
- (c) the applicant shall file the refund claim along with copies of the return (s) filed for the half year for which the refund is claimed;
- (d) the Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim;
- (e) at the time of sanctioning the refund claim, the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the refund claim and that the refund claim is complete in every respect;

Rule 6. Obligation of a manufacturer or producer of final products and a provider of output service

(1) The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

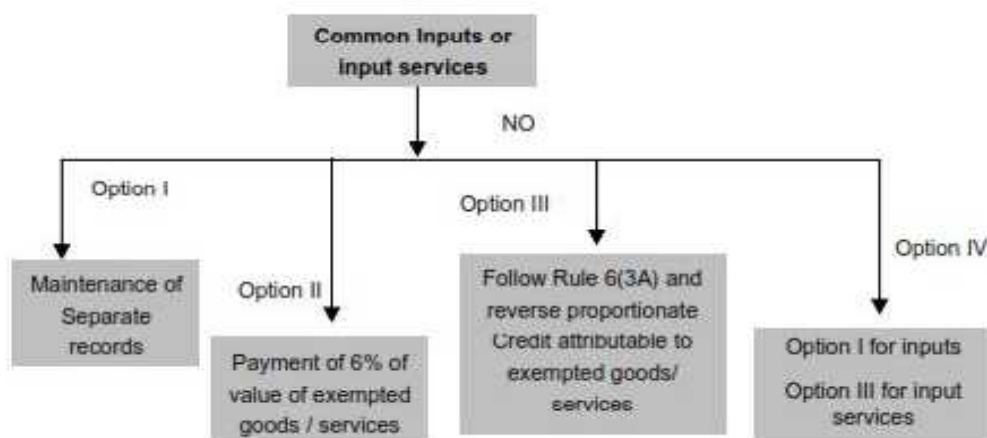
Explanation 1. – For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.
(01.03.2015)

Explanation 2. – Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder
(01.03.2015)

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts **(OPTION-I)** for-

- (a) the receipt, consumption and inventory of inputs used-
- (i) in or in relation to the manufacture of exempted goods;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
 - (iii) for the provision of exempted services;
 - (iv) for the provision of output services excluding exempted services; and
- (b) the receipt and use of input services-
- (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
 - (ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
 - (iii) for the provision of exempted services; and
 - (iv) for the provision of output services excluding exempted services,
- and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).”;

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow anyone of the following options, as applicable to him, namely:-



- (i) pay an amount equal to 6% of value of the exempted goods and exempted services(**OPTION-II**); or
- (ii) pay an amount as determined under sub-rule (3A);(**OPTION-III**) or
- (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under subclauses (ii) and (iv) of said clause (a) **and** pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and subclauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment(**OPTION-IV**):

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i):

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 6% of the value so exempted.

Provided that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent. of value of the exempted services.

Explanation I.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

(a)

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or output services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of

exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted

services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-

(i) details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii) amount short paid determined as per condition (d), along with the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of 24% per annum from the due date till the date of payment.

(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), 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.

(3C) omitted

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

Explanation I. - "Value" for the purpose of sub-rules (3) and (3A),-

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more.

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;"

Explanation II. - The amount mentioned in sub-rules (3), (3A) and (3B), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the

amount payable under sub-rule (3), (3A) and (3B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".;

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

(5) omitted

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-

(i) cleared to a unit in a special economic zone; or to a developer of a special economic zone for their authorized operations ; or

(ii) cleared to a hundred per cent. export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or

(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. 12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012 or"

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or.

(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,-

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. "12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012

(viii) supplies made for setting up of solar power generation projects or facilities.

(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported,

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision."

Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received **(11.07.2014)**

Clarification:- [Circular No. 973/07/2013-CX dated 04.09.2013]

Goods cleared against specified duty credit scrips not to be treated as exempted goods?

it has been clarified that such debit of duty in these scrips shall be treated as payment of duty for the purpose of determining the applicability of rule 6 of the CENVAT Credit Rules, 2004. The clearance of excisable goods against such specified duty credit scrips cannot be considered as clearances of exempted goods and therefore, the provisions regarding payment of amount under rule 6(3) of the CENVAT Credit Rules, 2004 will not apply in such a case.

Will rule 6 of the CENVAT Credit Rules, 2004 apply, if the assessee clears an exempted by-product and a dutiable final product? (RTP-N-2015)(RTP-M-2015)

UOI v Hindustan Zinc Limited. 2014 (303) ELT 321 (SC)

Facts of the Case: The respondent assessee was engaged in the manufacture of a dutiable product. During the manufacturing process, a by-product was also being produced which was exempted from the excise duty.

The Department denied CENVAT credit to the assessee saying that since the output products of the assessee were both dutiable and exempted, they were either required to maintain separate records for inputs used in taxable and exempted output or were to pay 8% [now 6%] of the sale price of by-product in terms of rule 6 of the CENVAT Credit Rules, 2004. It was submitted that language of the CENVAT Credit Rules, 2004 needs to be interpreted literally. Since, rule 6 does not provide any distinction between exempted final product and exempted by-product, its provisions would also be applicable to the by-product manufactured and therefore, the assessee was obliged to pay excise duty @ 8% [now 6%] in respect of clearance of exempted by-product.

Supreme Court's Decision: The Supreme Court held that since in rule 57CC of the erstwhile Central Excise Rules, 1944 [now rule 6 of the CENVAT Credit Rules, 2004], the term used is „final product“ and not „by-product“, said rule cannot be applied in case of „by-product“ when such by-product emerged as a technological necessity. If the Revenue's argument is accepted, it would amount to equating by-product with final product thereby obliterating the difference, though recognised by the legislation itself.

Rule 7. Manner of distribution of credit by input service distributor. –

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) credit of service tax attributable to service ~~used in a unit~~ used by one or more units **(24.02.2014)** exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
- (c) credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used by more than one unit shall be distributed *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.

Explanation 1.- For the purposes of this rule, —"unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2.- For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

Explanation 3. - For the purposes of this rule, the 'relevant period' shall be,-

- (a) If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or
- (b) If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.".(24.02.2014)

Example

An ISD has a common input service credit of ₹ 12000 pertaining to more than one unit. The ISD has 4 units namely 'A', 'B', 'C' and 'D' which are operational in the current year.

Unit	Turnover in the previous year (₹)
A (Manufacturing excisable goods)	25,00,000
B (Manufacturing excisable and exempted goods)	30,00,000
C (providing exclusively exempted service)	15,00,000
D (providing taxable and exempted service)	30,00,000
Total	1,00,00,000

The common input service relates to units 'A', 'B' and 'C'. How will the credit be distributed?

Answer

The distribution of credit will be as under:

- (i) Distribution to 'A'
- $$= 12,000 * 25,00,000 / 1,00,00,000$$
- $$= 3,000$$
- (ii) Distribution to 'B'
- $$= 12,000 * 30,00,000 / 1,00,00,000$$
- $$= 3,600$$
- (iii) Distribution to 'C'
- $$= 12,000 * 15,00,000 / 1,00,00,000$$
- $$= 1,800$$

(iv) Distribution to 'D'

$$= 12,000 * 30,00,000 / 1,00,00,000$$

$$= 3,600$$

The distribution for the purpose of rule 7(d) will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or in some of the units.

Rule 7A. Distribution of credit on inputs by the office or any other premises of output service provider.-

(1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall mutatis mutandis apply to such office or premises of the provider of output service.

Rule 8. Storage of input outside the factory of the manufacturer.-

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

Rule 9. Documents and accounts.-

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the 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;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002.

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or”(17.03.2012)

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or”(27.08.2014)

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax Registration number of the person issuing the invoice, as the case may be, name and

address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit;

(3) Omitted

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

Provided that provisions of this sub-rule shall apply mutatis mutandis to an importer who issues an invoice on which CENVAT credit can be taken. **(01.03.2015)**

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the **form ER-1**, by notification, by the Board: Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the **form ER-3**, by notification, by the Board within Ten days after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer or a **registered importer(28.02.2014)**, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

Provided that the first stage dealer or second stage dealer or **registered importer**, as the case may be, shall submit the said return electronically

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to

correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

Can CENVAT credit be taken on the basis of private challans?(SCL-7)

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

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

Rule 9A. Information relating to principal inputs.-

(1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products:

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004.

(2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form **ER-6**, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

Explanation: For the purposes of this rule, "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 products.

(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule

Rule 10. Transfer of CENVAT credit. -

(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of 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.

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 Rs.8,00,000 but the quantum of CENVAT credit attributable to the inputs and capital goods so transferred to the new site was only Rs.6,00,000.

The Department contended that the assessee was entitled to transfer only Rs.6,00,000 of CENVAT credit and not the entire balance of unutilized credit of Rs.8,00,000. Explain, with the help of a decided case law, if any, whether Department's plea is justified in law?(PM-22)

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. A48 (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.

10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.—

(1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961, may transfer unutilised CENVAT credit of additional duty **(SAD)** leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises may take CENVAT credit on the basis of the transfer challan:

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue).

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

Rule 11. Transitional provision.-

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, 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 whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.

Rule 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim.

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notwithstanding anything contained in these rules but subject to the proviso to clause (i) of sub rule (1) of the rule 3, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

Rule 12A. Procedure and facilities for large taxpayer.-

Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer,-

(1) A large taxpayer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, **without payment of an amount specified in sub-rule (5) of rule 3** of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that

(a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or

(b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises, and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied:

Explanation 1- The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee:

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules:

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules:

Explanation 2 -- If a large taxpayer fails to pay any amount due in terms of the first and second proviso, it shall be recovered along with interest in the manner as provided under rule 14 of these rules:

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

Provided also that nothing contained in this sub-rule shall be applicable to a export oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule(1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods,-

(a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or
(b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation: For the purpose of this sub-rule, "intermediate goods " shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large taxpayer may transfer, CENVAT credit **taken, on or before the 10th July, 2014**, by one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by,-

(i) making an entry for such transfer in the record maintained under rule 9;
(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and

the particulars of such entry as mentioned in clause (i), and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii):

Provided that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3.

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(5) A large taxpayer shall submit a **monthly return**, as prescribed under these rules, for each of the registered premises.

(6) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

Rule 12AA. Power to impose restrictions in certain types of cases.-

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.

12AAA: Power to impose restrictions in certain types of cases.-

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, registered importer**(01.03.2015)**, first stage and second stage dealer, provider of taxable service or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of an importer or**(01.03.2015)** a dealer and type of facilities to be withdrawn and procedure for issue of such order by the **Chief Commissioner of Central Excise**.

Explanation.- For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under notification no. 05/2012-CE (N.T.) dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly(21.03.2014)

Rule 13. Power of Central Government to notify goods for deemed CENVAT credit.-

Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of output service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the output service.

Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded.-(28.02.2015)

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

Recovery of CENVAT credit wrongly taken or erroneously refunded. – (01.03.2015)

(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

(2) For the purposes of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: -

(i) the opening balance of the month has been utilised first;

(ii) credit admissible in terms of these rules taken during the month has been utilised next;

(iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.”.

Rule 15. Confiscation and penalty.-

(1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or Rs.2000, whichever is greater.

Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company? (SCL-6)

Ashok Kumar H. Fulwadhya v. UOI 2010 (251) E.L.T. 336 (Bom.)

Decision: The Court held that the petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit and penalty cannot be imposed on them for the wrong CENVAT credit availed by the company.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised 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 of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the **principles of natural justice**.

Rule 15A. General penalty.-

Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to Rs.5000/-

Rule 16. Supplementary provision. -

(1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

Whether CENVAT credit can be availed of service tax paid on customs house agents" (CHA) services, shipping agents" and container services and services of overseas commission agents used by the manufacturer of final product for the purpose of export, when the export is on FOB basis? (Rtp-nov-2015)(RTP-M-2015)

Commissioner v. Dynamic Industries Limited 2014 (35) STR 674 (Guj.)

High Court's Decision: The High Court held that CENVAT credit in respect of (i) customs house agents services, (ii) shipping agents and container services and (iii) cargo handling services is admissible, but the CENVAT credit availed for the services of overseas commission agent is not allowed.

Can CENVAT credit be availed on machineries purchased for being used in setting up a sugar plant in foreign country when (i) the same are not used in the factory premises and (ii) no duty is paid on final product viz., the sugar plant? RTP-N-2014 + MAY 2015 EXAM+(SCL-2)

KCP Ltd. v. CCEx. 2013 (295) ELT 353 (SC)

Decision: The Supreme Court held that CENVAT credit could not be allowed to the assessee as no duty was paid on sugar plant set up in a foreign country. Further, since the bought-out machinery was not used in the assessee's factory premises, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.

Note: Although the above-mentioned case is based on old MODVAT provisions, the principle enunciated therein will hold good in context of CENVAT Credit Rules, 2004 also. For the sake of simplicity and better understanding, the term MODVAT has been referred to as CENVAT wherever applicable.

Will two units of a manufacturer surrounded by a common boundary wall be considered as one factory for the purpose of CENVAT credit if they have separate central excise registration? RTP-N-2013+SCL-9

Sintex Industries Ltd. vs. CCEx 2013 (287) ELT 261 (Guj.)

Decision: The High Court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose (textile division). However, credit on inputs utilized to produce electricity which was supplied to a factory registered as a different unit (plastic division) would not be allowed. The High Court rejected the contention of the assessee that separate registration of two units situated within a common boundary wall would not make them two different factories.

Whether CENVAT credit of the testing material can be allowed when the testing is critical to ensure the marketability of the product? (SCL-4)

Flex Engineering Ltd. v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.)

Decision: The Court was, therefore, of the opinion that the manufacturing process in the present case got completed on testing of the said machines. Hence, the testing material used for testing the packing machines were inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit.

Is assessee required to reverse the CENVAT credit availed on capital goods destroyed by fire when insurance company reimburses value of such capital goods inclusive of excise duty?(SCL-5)

CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

Decision: The High Court held that merely because the insurance company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the

CENVAT credit wrong or irregular. Excise Department cannot demand reversal of credit or payment of the said amount.