



Cenvat Credit Rules 2004 AMENDED UPTO 30.04.2017

Rule 1. Short title, extent and commencement. -

- (1) These rules may be called the CENVAT Credit Amendment) Rules, 2017.
- (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 and wagons of sub-heading 860692 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; or

(1A) outside the factory of the manufacturer of the final products for generation of electricity or for pumping of water 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 and 8711 are as follows: -

- (i) Motor vehicles for the transport of 10 or more persons, including the driver. **(8702)**
- (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. **(8703)**
- (iii) Motor vehicles for transport of goods. **(8704)**
- (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars. **(8711)**

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

(c) **"Excise Act"** means the Central Excise Act, 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 –

- (a) which is exported in terms of rule 6A of the Service Tax Rules, 1994; or
- (b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India; (01.03.2016)**

(f) **"Excise Tariff Act"** means the Central Excise Tariff Act, 1985

(g) **"Finance Act"** means the Finance Act, 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) ***~~
- (iii) 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 or pumping of water for captive use; or

- (iv) all goods used for providing any output service; or
- (v) all capital goods which have a value up to 10000 rupees per piece

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, - (i) used as parts or components in the manufacture of a final product; or (ii) the value of such capital goods is up to 10000 rupees per Piece.
(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.

RTP MAY 2010

Rokasa Ltd. was engaged in the manufacture of pharmaceutical product-Rovamox pediatric drops. Rokasa Ltd. claimed the CENVAT credit of the duty paid on the plastic droppers supplied along with the bottle containing drops on the ground that the droppers were inputs used in or in relation to manufacture of such final product. However, the Revenue argued that CENVAT credit was not admissible because these droppers were separately kept in the cartons along with the sealed bottle of the pediatric drop. These droppers were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

Briefly discuss whether the stand taken by the Department is correct, with the help of a decided case law.

No, the stand taken by the Department is not correct. The facts of the given case are similar to the case of CCEx., Mumbai v. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.). In the instant case, the High Court agreed with the contention of the assessee that for purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper had to be affixed on the bottle containing the drug. Further, as the droppers were necessary packaging material for marketing of the drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words “packing material” in the definition of inputs under explanation to rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]. The Tribunal, while allowing the appeal in the instant case, had relied upon the decision taken in Heal Well Pharmaceutical v. Collector 1994 (72) E.L.T. 446 (Tribunal) wherein it was held that where dropper was provided in the carton along with bottle containing the drug, it amounted to manufacture and the manufacturer was entitled to credit of duty paid on such product being input of the firm product.

Considering the all the facts, circumstances and the legal position, the High Court, upholding the Tribunal's decision, held that the plastic dropper packed in the pediatric drops and marketed at the factory gate should be construed to be an input used in or in relation to the manufacture of the final product.

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

- (i) services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or
- (ii) any service used by a provider of output service for providing an output service; or
- (iii) any service 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 up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; **but excludes services,-**

(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.

RTP NOV 2011

Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-

The credit of input services used for repair or renovation of factory or office is available.

The said statement is absolutely valid. Circular No. 943/04/2011-CX dated 29.04.2011 clarifies that credit of input services used for repair or renovation of factory or office is allowed because services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

(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, or an outsourced manufacturing unit 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 parts of articles of jewellery or both, falling under heading 7113 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 sub-rule (1) of rule 9 of the Articles of Jewellery (Collection of Duty) Rules, 2016.

(ia) in relation to articles of precious metals falling under heading 7114 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 sub-rule (1) of rule 12AA 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.

(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 17.03.2012 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);

(viiia) 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;

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

(ix) 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.

(1a) A provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016.

(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 10.09.2004 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: **(1st proviso)**

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 01.03.2011 is availed **(2nd proviso)**

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: **(3rd proviso)**

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: **(4th proviso)**

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 National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 **(5th proviso)**

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. **(6th proviso)**

Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015 **(CC in R.3(1) – cannot pay SBC) (7th proviso)**

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. **(8th proviso)**

Provided also that CENVAT credit shall not be utilised for payment of Infrastructure Cess leviable under sub-clause (1) of clause 159 of the Finance Bill, 2016 **(9th proviso)**

Provided also that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016. **(10th Proviso)**

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" **(Reverse charge cases)**

(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 sub Rule (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:

for each quarter in the first year @ 10%

for each quarter in the second year @ 8%

for each quarter in the third year @ 5%

for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

Sub rule	Applicable to	When the rule applies	What shall be done
(5A)	Both manufacturer and service providers	Capital goods cleared after use	=> Pay amount equal to credit availed after considering following depreciation. =>Computer Peripherals: Year Rate/quarter I 10% II 8% III 5% IV 1% ⇒ Other capital goods - 2.5% per Quarter If the amount computed is less than the duty

		Removed after use as scrap or waste	payable on 'transaction value', then amount equal to duty on transaction value has to be paid. ⇒ Pay an amount equal to duty leviable on transaction value of such scrap or waste
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(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

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 6 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 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), (1a) 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, shall be admissible equivalent to the amount calculated in the following manner, namely:-

50% of $[X \text{ multiplied by } \{(1 + \text{BCD}/100) \text{ multiplied by } (\text{CVD}/100)\}]$, 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 $\{X \text{ multiplied by } [(1 + \text{BCD}/200) \text{ multiplied by } (\text{CVD}/100)]\}$.

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 31.03.2003 and

(B) the Education Cess and the Secondary and Higher Education Cess leviable 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 -

- 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;
- 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 NCCD

(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;

(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, 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 01.03.2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act:

Provided also that the credit of balance 50% 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.

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 01.03.2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act.

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service $\geq$ 01.06.2015 can be utilized for payment of service tax on any output service.

Provided also that the credit of balance 50 % Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service.

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service $\geq$ 01.06.2015 can be utilized for payment of service tax on any output service **(29.10.2015)**

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 paid on or after the 01.04.2000, 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 30 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.

(d) Cenvat credit in respect of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016

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 1 year 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, at any point of time in a given financial year shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year:

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-

- (i) an assessee engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule of the Excise Tariff Act, 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 15 crore.
- (ii) an assessee, other than (a) above, 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 400 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.

(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.

(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 180 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 180 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 2 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 2 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 6 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 to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer 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:

Provided that such credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises.

(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 3 financial years, 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 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.

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.

Provided also that in respect of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services, credit of service tax paid by the person liable for paying service tax shall be allowed after such service tax is paid.

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 01.04.2011 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 1 year **(01.03.2015)** of the date of issue of any of the documents specified in sub-rule (1) of rule 9, except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource.

Provided also that CENVAT Credit of Service Tax paid in a financial year, on the onetime charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of 3 years:

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year

Explanation I.- The amount mentioned in this 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 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."

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 rules.

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

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.

Narmada Manufacturers, a non-SSI unit, purchased some inputs and a machine (eligible as capital goods for CENVAT purpose) on first day of a month. The inputs required some further processing and the machine required re-conditioning. Therefore, on the same day, Narmada Manufacturers gave the direction to its suppliers to send the inputs and the machine directly to the premises of the job workers - Mr. A and Mr. B respectively. The goods were received in the premises of job worker on the same day. Narmada Manufacturers immediately availed CENVAT credit of the entire excise duty paid on those inputs and 50% of the excise duty paid on the capital goods on the same day. Mr. A and Mr. B carried out the job work and returned the inputs and capital goods to Narmada Manufacturers after 190 days from the date of receipt of such goods by them.

You are required to determine:

- (i) whether Narmada Manufacturers was justified in availing the CENVAT credit on inputs and capital goods, although it had not received the same in its factory?**
- (ii) whether Narmada Manufacturers is required to take any further action with respect to the CENVAT credit availed by it? (RTP-N-2015)**

(i) Narmada Manufacturers was justified in availing the CENVAT credit on inputs and capital goods even though it had not received the same in its factory. With effect from 01.03.2015, CENVAT credit in respect of inputs or capital goods can be availed immediately on receipt of the same in the premises of job worker where inputs and/or 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 [Rule 4(1) and rule 4(2) (a) of CENVAT Credit Rules, 2004].

(ii) With effect from 01.03.2015, rule 4(5) (a) *inter alia* provides that if the inputs or capital goods are not received back within 180 days and 2 years respectively, from the date of receipt of such goods by job worker, the manufacturer will have to pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise. However, such credit may be retaken once the inputs or capital goods are received back in the factory.

In the given case, since the inputs have not been received back within 180 days, Narmada Manufacturers will have to pay an amount equivalent to the CENVAT credit attributable to the inputs by debiting the CENVAT credit or otherwise. However, it can re-take such credit after 190 days when such inputs are received back by it.

CENVAT credit attributable to the capital goods, however, need not be reversed as the same have been received in the factory of the manufacturer within 2 years of the receipt of the same by job worker.

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:

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

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 1 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 as under:

- (i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944;

- (ii) in case of service provider, before the expiry of 1 year from the date of –
 - (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or
 - (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice
 - (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 (Rs.30,000 -Rs.20,000) is Rs.1, 236 @12.36%. Therefore, there is an excess credit of Rs.4, 764 (Rs.6, 000 – Rs.1, 236) which cannot 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. $\frac{4,000}{6,000} \times (Rs.20, 000/Rs.30, 000)$.

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 25.04.2007 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 (w.e.f 19.05.2015 omitted)~~
- (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 01.07.2012.

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 01.07.2012 to the 30.09.2012, shall be the 30.06.2014.

(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 as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is 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 and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

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.*

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 there under.

Explanation 3. – For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service ‘as defined in section 65B (44) of the Finance Act, 1994, provided that such activity has used inputs or input services

Explanation 4. – Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder

Circular No. 1027/15/2016-CX dated 25.04.2016

Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

(2) A manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services

(3) (a) A manufacturer who manufactures two classes of goods, namely: -

- (i) non-exempted goods removed;
- (ii) exempted goods removed; or

(b) a provider of output service who provides two classes of services, namely: -

- (i) non-exempted services;

- (ii) exempted services,

shall follow any one of the following options applicable to him, namely: -

- (i) pay an amount equal to 6 % of value of the exempted goods and 7 % of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or
- (ii) pay an amount as determined under sub-rule (3A):

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 seven per cent. of the value, so exempted:

Provided also 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% of value of the exempted services.

Explanation 1.- 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 2.- No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Explanation 3.- For the purposes of this sub-rule and sub-rule(3A), -

- (a) non-exempted goods removed means the final products excluding exempted goods manufactured and cleared up to the place of removal;
- (b) exempted goods removed means the exempted goods manufactured and cleared up to the place of removal;
- (c) non-exempted services means the output services excluding exempted services.

(3A) For determination of amount required to be paid 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) 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 number 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 inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;
- (iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(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 final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely: -

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as, - $C = T - (A + B)$;

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, - $D = (E/F) \times C$; where E is the sum total of -

(a) value of exempted services provided; and

(b) value of exempted goods removed, during the preceding financial year;

where F is the sum total of- (a) value of non-exempted services provided, (b) value of exempted services provided, (c) value of non-exempted goods removed, and (d) value of exempted goods removed, during the preceding financial year:

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be 50 % of the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where, - $G = C - D$;

Explanation. - For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under subclause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of 15 % per annum;

(c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year,

out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely: -

(i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A(Annual);

(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);

(iii) common credit left for further attribution shall be denoted as C(Annual) and calculated as, -

$$C(\text{Annual}) = T(\text{Annual}) - [A(\text{Annual}) + B(\text{Annual})].$$

(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, -

$$D(\text{Annual}) = (H/I) \times C(\text{Annual}).$$

where **H** is sum total of-

- a. value of exempted services provided; and
- b. value of exempted goods removed; during the financial year.

where **I** is sum total of –

- (a) value of non-exempted services provided,
- (b) value of exempted services provided,
- (c) value of non-exempted goods removed; and
- (d) value of exempted goods removed; during the financial year;

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, $[A(\text{Annual}) + D(\text{Annual})] - \{(A+D) \text{ aggregated for the whole year}\}$, where the former of the two amounts is greater than the later.

(e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of 15% per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

(f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, $\{(A+D) \text{ aggregated for the whole year}\} - [A(\text{Annual}) + D(\text{Annual})]$, where the former of the two amounts is greater than the later;

(g) the manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of 15 days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f), the following particulars, namely: -

- (i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);
- (ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);
- (iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;

(iv) interest payable and paid, if any, determined as per the provisions of clause (e); and

(v) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.

(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, mutatis mutandis in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of 15% per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

(3AB) Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses (c), (d), (e), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30.06.2016.

(3B) A banking company and a financial institution including a nonbanking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to 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

10% 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

1 % 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.

Provided that this clause shall not apply to 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.

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 used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services 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 or services provided in a financial year:

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of 2 years shall be computed from the date of installation of such capital goods

RTP NOV 2011

Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-

Credit of capital goods can be availed when such capital goods are exclusively used in manufacture of dutiable goods on which benefit under Notification 1/2011-CE is availed.

The said statement is not valid. Circular No. 943/04/2011-CX dated 29.04.2011 clarifies that as per rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods

or in providing exempted service. Since, goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE

Dated the 01.03.2011 is availed are exempted goods [Rule 2(d)], credit of capital goods used exclusively in manufacture of such goods is not allowed.

~~(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 100 % Export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park(EHTP) or Software Technology Park(STP); 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 No.108/95-Central Excise, 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 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.

(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 provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India shall be inserted with effect from 01.03.2016.

(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 6 months or such extended period as maybe allowed from time-to-time by the RBI, 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 1 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)**

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 shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, 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) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;
- (c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;

(d) the credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31.03.2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

Explanation. -The provision of this clause shall, mutatis-mutandis, apply to any outsourced manufacturer commencing production of goods on or after the 01.04.2016

(g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

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

Explanation 2. —For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5: **Provided** that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

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 maybe, the said financial year; or;
- (b) if the assessee does not have turn over 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.

Explanation 4.— For the purposes of this rule, —outsourced manufacturing unit|| means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.

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.

7B. Distribution of credit on inputs by warehouse of manufacturer

- (1) A manufacturer having one or more factories, shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of documents specified under rule 9, towards the purchase of such inputs.
- (2) The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, mutatis mutandis, apply to such warehouse of the manufacturer

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 or a service provider for clearance of-

- 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.
- 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 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, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport, or

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

(ea) a challan evidencing payment of service tax by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India; or”.

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10.09.2004; or

(fa) a Service Tax Certificate for Transportation of goods by Rail issued by the Indian Railways. or

(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**, 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 60 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) + RTP MAY 2011

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.

Clarification regarding Cenvat Credit in transit sale through dealer – circular dated 05.05.2015

It is further clarified that the provisions of the circulars on the issues referred in Para 3 (check in central excise rules 2002 under Rule 11(2)) would continue to apply as no amendment has been made in rule 9 of the Cenvat Credit Rules, 2004 which prescribes the document on the basis of which Cenvat Credit can be availed. No amendments have been made regarding registration requirements also.

5. Various specific issues referred to by the trade are clarified as follows -

(i) Where a registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. In such cases no Cenvatable invoice shall be issued by the registered dealer in favour of the consignee though commercial invoice can be issued. Where a registered dealer negotiates sale of goods from the total stock ordered on a manufacturer or an importer to multiple buyers and orders direct transportation of goods to the consignees and the manufacturer or the importer is willing to issue individual invoices for each sale in favour of the consignees for such individual sale, the same procedure shall apply.

(ii) Where a registered dealer negotiates sale by splitting a consignment procured from a manufacturer or a registered importer and issues Cenvatable invoices for each of the sale, it would now be possible for the dealer to order direct transport of the consignments as per the individual sales to the consignee without bringing the goods to his godown. This would save time and transportation cost for the dealer adding to ease of doing business. This is a new facility which flows from the amended provisions. Procedure as prescribed in the third proviso of rule 11(2) shall be applicable in such case.

(iii) Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any Cenvatable invoice by him. Such dealers as in the past can continue to be un-registered.

(iv) Where goods are sold by the registered importer to an end-user (say a manufacturer) who would avail credit on the basis of importer's invoice and the goods are transported directly from the port or warehouse at the port to the buyer's premises, the amendment prescribes that for such movement the factum of such direct transport to the buyer's premises needs to be recorded in the invoice.

6. It may be noted that the new provisos are meant to improve the ease of doing business by providing an additional facility to the registered dealer or importer for direct dispatch of goods from the manufacturer to the consignee, when he is issuing Cenvatable invoice,. They do not withdraw any past facility. These amendments should therefore be harmoniously interpreted with the existing rules and circulars in conformity with the legal provisions, keeping the intention of the Government in mind.

Rule 9A. Annual return. -

(1) A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board.

(2) The provisions of rule 12 of the Central Excise Rules, 2002, in so far as they relate to annual return shall, mutatis-mutandis, apply to the annual return required to be filed under 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.

(4) Subject to the provisions contained in sub-rule (3), the transfer of the CENVAT Credit shall be allowed within a period of three months from the date of receipt of application by the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be:

Provided that the period specified in this sub-rule may, on sufficient cause being shown and reasons to be recorded in writing, be extended by the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, for a further period not exceeding 6 months.”.

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.

Rule-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 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

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 6 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 6 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 6 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 an export oriented unit or a unit located in an 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 10.07.2014**, 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, 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

(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, 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.