A word of Caution

For students appearing in CA Final – Nov 2008 Attempts, all amendments in Act/Rules, notifications (exemption notifications or other notifications) and circulars as has come into force upto 30th April, 2008 are applicable.

FA, 2008 has come into force from 11th May, 2008. Thus, provisions made by FA, 2008 shall not be applicable to students appearing in CA Final-Nov 2008 Attempt. Accordingly, provisions of FA, 2008 have not been discussed in this material.

Guidelines for reading this material

1) The amendment part has been given in "*italics*" *(blue colour printing).*
2) Students are advised to put before them their old study material while reading this material. The students shall appreciate the words which have been changed, the paras which have been changed. It will stimulate their mind.
3) Comments have been attached with each amendment so as to facilitate understanding on the part of students. Still for further clarification, students can approach the Author at **dg@idtfundas.com**.
4) Students are encouraged to use summaries prepared by Prof Dippak Gupta so that they are able to revise whole syllabus in shortest possible time. Summaries are available for download at our web-site www.idtfundas.com. Downloading facility is free of cost and is available to all whether the student has undergone coaching in DG Academy or not (but the user has to register himself). These summaries have been updated upto 30th April, 2008.

UPDATIONS IN EXCISE

Amendments in Act

New Rules Notified

Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008.
[N/N 13/2008 ---- dated 1st March, 2008]

Author's Note: Students are advised to have just an overview of these rules. These are not expected to be asked in the examination. So, students shall not try to learn them by heart. A bare reading for once is sufficient enough.

Rule 1	***Title, Commencement***
Rule 2	***Definitions***
Rule 3	***Applicability*** *The Retail Sale Price (RSP) of any excisable goods* ***under sec 4A(4) of CEA, 1944****, shall be determined in accordance with these rules.*
Rule 4	***Determination of Retail Sale Price in certain situations*** *Where a manufacturer removes goods covered under Sec 4-A ,* *(a)* ***without declaring RSP*** *on the packages of such goods; or*

	(b) ***by declaring RSP***, ***which is not the RSP as required to be declared under the provisions of the SWMA*** ; or (c) ***by declaring the RSP but OBLITERATES the same after their removal from factory***, then, the retail sale price of such goods shall be ascertained in the following manner, namely:-

(i) If the manufacturer → has **manufactured and removed** identical goods, → **within** a period of **1 month**, **before or after** removal of such goods, → **by declaring RSP,**	then, the ***said declared RSP shall be taken*** as the RSP of such goods:
(ii) If **RSP cannot be ascertained in terms of clause (i),**	RSP of such goods shall be ***ascertained by conducting the enquiries (on sample basis) in the retail market*** where such goods → have normally been sold → at or about the same time of the removal of such goods from the place of manufacture:

Provided that
- → ***if more than one RSP*** is ascertained under clause (i) or clause (ii),
- → then, the ***highest of the RSP, so ascertained, shall be taken.***

Rule 5	***Determination of RSP when originally declared RSP is altered or tampered*** *Where a manufacturer **ALTERS** or **TAMPERS** the RSP declared on the package of goods after their removal from the place of manufacture, **resulting into increase in RSP,*** *then* → *such **increased RSP shall be taken as the RSP of all goods removed during a period of one month before and after the date of removal of such goods**:* ***Provided that*** → *where the manufacturer alters or tampers the declared RSP resulting into more than one RSP available on such goods,* → *then, the highest of such retail sale price shall be taken as the retail sale price of all such goods.*
Rule 6	***Best Judgment*** *If RSP of any excisable goods cannot be ascertained under these rules, then RSP shall be ascertained in accordance with the principles and the provisions of section 4A of the Act and the rules aforesaid.*

Comment: Sec 4-A of CEA, 1944 deals with the valuation of goods on MRP basis. Section 4-A (4) provides that in case assessee clears the goods without printing MRP thereon or printing MRP which is not genuine MRP or subsequently alters MR, then for purposes of valuation u/s 4-A, the MRP shall be one as fixed by CG through Rules. The Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008 are being issued [*w.e.f. 1/3/2008]* under section 4A(4) of the CEA, 1944 to provide the manner for determination of retail sale price.

Amendments in Rules

Amendments in Central Excise Rules, 2002

Rule 11 of CER, 2002 (Invoice to contain certain additional particulars also)

A proviso has been inserted in Rule 12 providing for following:

Rule 11(2): (Particulars to be mentioned on invoice)

The invoice shall be **serially numbered**. It shall contain

- ⇒ the registration number, *address of the concerned Central Excise division*
- ⇒ name of the consignee;
- ⇒ description,
- ⇒ classification,
- ⇒ time and date of removal,
- ⇒ rate of duty,
- ⇒ quantity and value, of goods and
- ⇒ the duty payable thereon.
- ⇒ mode of transport
- ⇒ vehicle registration number

Provided that

- ⇒ *in case of a proprietary concern or a business owned by Hindu Undivided Family,*
- ⇒ *the name of the proprietor or Hindu Undivided Family, as the case may be, shall also be mentioned in the invoice* *[inserted by 2008]*

Comment: Now onwards, mentioning the name of proprietary concern shall not alone be sufficient. The name of proprietor shall also be mentioned.

Rule 12 of CER, 2002 (Additional Return for Assessees availing area-based exemption)

A proviso has been inserted in Rule 12 providing for following:

Rule 12(1): (Additional Return)

Every assessee shall submit to the SCE a **monthly return** **[Form: ER-1]**, of production and removal of goods and other relevant particulars, **within 10 days** after the close of the month to which the return relates:

Provided that **SSI Unit** shall file a **quarterly return** **[Form: E.R.-3]** of production and removal of goods and other relevant particulars, **within 20 days** after the close of the quarter to which the return relates**.**

Provided also that where ***an assessee is availing area-based exemption****, he shall file a* ***quarterly return***

- ⇒ ***with*** *the jurisdictional* ***Commissioner*** *of Central Excise,*
- ⇒ *in the form specified by notification by the Board,*
- ⇒ *of production and removal of goods and other relevant particulars,*
- ⇒ ***within 20 days*** *after the close of the quarter to which the return relates.*

Comment: Concept of "exemption to area based exemption" was found to be utilized by assesses in a manner which was never intended by Govt. Most of the companies used to set up factories for packaging activities (or labeling or relabeling activities) only in those areas. The basic production units were set up in developed areas only and goods were removed from these factories to packaging units in backward areas. While doing so, the assessee was able to substantially avoid the ED liability without making any substantial contribution towards the development of backward areas. This was never intended by Govt. Hence, Govt has amended those area-based notifications specifically excluding certain peripheral activities from the operation of these notifications. Accordingly, the benefit of these notifications will not be available to goods which have been subjected to only one or more of the following processes such as packing or re-packing of such goods in a unit container or labeling or re-labeling of containers, declaration or alteration of retail sale price, etc. In other words, units carrying out only such processes would not be eligible for exemption benefit and would be required to pay duty as per normal procedure.

Alongwith, Rule 12 has been amended to provide for filing of quarterly return by such units. **This return has been prescribed in order to collect the basic details regarding the production and removal activities of such units and the transactions undertaken by them with their related units/persons**. It may be noted that this return is required to be filed with the office of the Commissioner only.

Amendments in Cenvat Credit Rules, 2004

☛ *(M.Imp & Expected)*

Rule 2(l) of CCR, 2004 ***(Definition of INPUT SERVICE)***

Rule 2(l) has been amended to restrict the scope of input service.

Old Definition:

"Input service"

means **Any service** used by the manufacturer, whether directly or indirectly, **in** or **in relation to**

⇒ the ***manufacture*** of final products *and*

⇒ ***clearance*** of final products **FROM the place of removal**

includes services used in relation to

……………………………………………………………………..

activities relating to business, *such as** accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, *inward transportation* of inputs or capital goods and ***outward transportation upto the place of removal***

New Definition:

"Input service"

means **Any service** used by the manufacturer, whether directly or indirectly, **in** or **in relation to**

⇒ the ***manufacture*** of final products *and*

⇒ ***clearance*** of final products **UPTO the place of removal**

includes services used in relation to

……………………………………………………………………..

activities relating to business, *such as** accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, *inward transportation* of inputs or capital goods and ***outward transportation upto the place of removal***

Comment: The cenvat credit on transportation of goods from factory to buyer's premises has been the subject matter of dispute for a long time with contrary decisions coming from judicial forums.

While there was no doubt/dispute as to admissibility of cenvat credit on GTA (Goods Transport Agency) service availed for

- inward transportation of inputs/ capital goods,
- outward transportation of final product **from one place of removal to another place of removal** (the reason being that both of these were specifically covered by inclusive part of the definition o f input service and therefore, credit thereon can not be disputed).

However, admissibility of cenvat credit on GTA service availed for transportation of goods **from place of removal to buyer's premises** was a matter of dispute. The conflicting views prevailing were as stated below:

View-1: CCr Admissible: Such transportation service gets covered by "means" part of the definition of input service as that covers any service used in or in relation to clearance of final production FROM place of removal.

View-2: CCr Not Admissible: AV of FP does not include transportation charges from place of removal to buyers premises [Rule 5 of Central Excise Valuation Rules, 2000]. That being so, CCr of such transporation shall not be admissible *[CBEC also took same view by issuing a Circular]*

Now, definition of INPUT SERVICE has been amended to the effect of fortifying the second view (i.e, now onwards credit will not be admissible)

Rule 3(4) of CCR, 2004 *(Restriction on utilization of Cenvat Credit of ED for payment of NCCD on mobile phones)*

In Rule 3(4) of Cenvat Credit Rules, 2004, following proviso has been inserted-

"***Provided also that***

⇒ *the Cenvat credit of any duty, except the NCCD, shall not be utilized for payment of the said NCCD on mobiles.*

Comment: Rule 3(4) has been being amended to provide that in case of National Calamity Contingent duty (NCCD) payable on mobile phones, credit of any duty of excise other than NCCD will not be utilized for payment of the said NCCD. It shall be noted that restriction is only in respect of one excisable goods MOBILE PHONES. NCCD payable on mobile phones shall be paid by using credit of NCCD only *(it is like Health Cess on FP is payable only by using credit of Health Cess)*

[Students can ignore this amendment as not very significant from examination point of view]

➼ *(M.Imp & Expected)*

Rule 3(5) of CCR, 2004 *(Removal of used Capital Goods – payment of reduced amount (not that of total credit taken)*

In Rule 3(5) of Cenvat Credit Rules, 2004, following proviso has been inserted-

When **INPUTS**, **CAPITAL GOODS**, *on which cenvat credit has been taken*,

→ are **REMOVED AS SUCH** from the factory,

→ the **manufacturer** of the final products shall
Pay **AN AMOUNT** *equal to* ***the credit availed*** i.r.o. such inputs / capital goods **&** such removal shall be made under the cover of an invoice.

Removal of Used Capital Goods: Payment of reduced amount

Provided that
*if the **Capital Goods**, on which Cenvat Credit has been taken, are **removed after being used**,*

→ the **manufacturer** of the final products shall
Pay **AN AMOUNT** *equal to*
the credit taken on such capital goods
reduced by ***2.5% for each quarter or part thereof*** *from the date of taking the cenvat credit.*

Comment: Rule 3(5) provides for payment of an amount equal to credit taken when **capital goods are removed as such**. Whether "REMOVAL OF USED CAPITAL GOODS" shall be treated as "REMOVAL OF CAPITAL GOODS AS SUCH" used to be a disputed issue. Assessee used to contest applicability of Rule 3(5) upon removal of used capital goods mainly on account of the reason that if Rule 3(5) is held applicable then whole of the credit needs to be reversed. Assessee was put to situation of loss as he has infact used capital goods for certain period and therefore, payment of amount equal to whole of credit was unjustifiable. Now, to end all the disputes and relax the burden on the assessee, proviso to Rule 3(5) has been inserted. It provides that in case of removal of used capital goods, Rule 3(5) would be applicable but amount payable shall not be whole of the credit amount but reduced amount. The payable amount shall be computed as follows:

The credit taken *on such capital goods*
Less ***2.5% for each quarter or part thereof*** *from* ***the date of taking the cenvat credit.***

- **Compute the amount payable in terms of Rule 3(5) upon removal of used capital goods by the manufacturer:**
  a) **Purchase price of CG = [Basic Price 1,00,000/- + ED 40,000]**
  b) **Date of receipt of Capital Goods in factory --- 1st April, 2008**
  c) **Capital goods installed and used – sold off by 1/6/2009**

Computation- VIEW-1:

	Credit of first 50% Taken on 1/4/2008	**Credit of Bal 50% Taken on 1/4/2009**
Amount of Credit Taken	**20,000.00**	**20,000.00**
Less: Reduction @ 2.5% per quarter or part thereof	**(2,500.00)** *[20,000 * 2.5% * 5]*	**(500.00)** *[20,000 * 2.5% * 1]*

Total Amount payable on removal of used capital goods
= [17,500/- + 19,500/-] = 37,000/-

Computation- VIEW-2:

Total Amount of Credit Taken	**40,000.00**
Less: Reduction @ 2.5% per quarter or part thereof	**(5,000.00)** *[40,000 * 2.5% * 5]*
Total Amount payable on removal of used capital goods	**35,000/-**

In person opinion of Author, VIEW-2 is more appropriate. ***(**However, issue is arguable**)***

(M.Imp & Expected)

Rule 6 of CCR, 2004 ***(Procedure for availment of credit by manufacturer manufacturing both dutiable and exempted goods using common inputs/input service)***

In the Cenvat Credit Rules, 2004, Rule 6 (3) is being amended:-

Input & Input Service

OPTION 1: MAINTAIN SEPARATE ACCOUNTS

6-(2): Where a **manufacturer**

→ **avails** of cenvat **credit i.r.o any INPUTS** or **INPUT SERVICES** *and*

→ **manufactures** such **final products** which are **CHARGEABLE TO DUTY** *as well as* **EXEMPTED GOODS**,

then,

the manufacturer shall

(i) **maintain SEPARATE ACCOUNTS** *for* ***receipts***, *consumption and inventory* of input and input service meant for use in the manufacture of dutiable final products and the quantity meant for use in the manufacture of exempted goods ***and***

(ii) **TAKE cenvat credit** *only* ***on that quantity*** of input or input service which is **intended for use in** the manufacture of **DUTIABLE GOODS.**

OPTION 2: DON'T MAINTAIN SEPARATE ACCOUNTS

6-(3): ***Notwithstanding anything contained in sub-rules (1) and (2),***

the manufacturer of goods,

⇒ *opting not to maintain separate accounts,*

⇒ ***shall follow either of the following options**, as applicable to him, namely:-*

*(i) the **manufacturer** of goods **shall PAY***

⇒ **AN AMOUNT** *equal to* **10% *of* VALUE *of*** *the* **EXEMPTED GOODS**;

Or

*(ii) the **manufacturer** of goods **shall PAY***

⇨ **AN AMOUNT** *equal to* the **Cenvat credit attributable to inputs and input services** used in, or in relation to, the manufacture of **EXEMPTED GOODS**

*subject to the conditions and procedure specified in **sub-rule (3A).***

***Explanation I.**- If the manufacturer of goods avails any of the option under this sub-rule,*

- ⇨ *he shall **exercise such option for all exempted goods** manufactured by him and*
- ⇨ *such option **shall not be withdrawn during** the remaining part of the **financial year**.*

***Explanation II**.-For removal of doubt, it is hereby clarified that the **credit shall not be allowed on inputs and input services used exclusively for** the manufacture of **exempted goods**.*

Procedural Aspect relating to Credit [Rule 6(3)(ii)]

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

Intimation to SCE

(a) while exercising this option, the **manufacturer** of goods **shall intimate in writing to the SCE** giving the following particulars, namely:-

(i) name, address and registration No. of the manufacturer of goods;
(ii) date from which the option under this clause is exercised or proposed to be exercised;
(iii) description of dutiable goods;
(iv) description of exempted goods;
(v) Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

Provisional Computation

*(b) the **manufacturer** of goods **shall determine and pay, PROVISIONALLY**, for every month,-*

*(i) the **AMOUNT** equivalent to **Cenvat credit attributable to INPUTS used in** or in relation to **manufacture of EXEMPTED GOODS**, denoted as A;*

*(ii) the **AMOUNT** attributable to **INPUT SERVICES used in** or in relation to **manufacture of EXEMPTED GOODS** (provisional)*

= (E/F) multiplied by G,

where

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

Final Computation

*(c) the **manufacturer** of goods **shall determine FINALLY** the amount of Cenvat credit attributable to exempted goods **for the whole financial year** in the following manner, namely:-*

*(i) the **AMOUNT** of Cenvat credit attributable to **INPUTS used in** or in relation to **manufacture of EXEMPTED GOODS,***

*→ on the basis of **TOTAL QUANTITY OF INPUTS** used in or in relation to manufacture of said exempted goods, denoted as H;*

*(ii) the **AMOUNT** attributable to **INPUT SERVICES used in** or in relation to **manufacture of exempted goods***

= (M/N) multiplied by P,

where

*M denotes total value of exempted goods manufactured and removed during **the financial year**,*
*N denotes total value of dutiable and exempted goods manufactured and removed, during **the financial year**,&*
*P denotes **total Cenvat credit taken** on input services during **the financial year**;*

Adjustment of differences

*(d) the **manufacturer** of goods **shall PAY***

***AN AMOUNT** equal to the difference between*

⇒ the aggregate amount determined finally [as per condition (c)] and
⇒ the aggregate amount provisionally determined and paid [as per condition (b)],

*on or before the **30th June** of the succeeding financial year,*

***where the finally determined amount is more than the amount provisionally paid**;*

*(e) the manufacturer of goods shall, in addition to the amount short-paid, be liable to **pay interest @ 24% p.a.***

⇒ from the due date, i.e., 30th June
⇒ till the date of payment,

where the amount short-paid is not paid by 30th June (due date);

(f) where

*⇒ the **amount finally determined** [as per condition (c)] is **less than** the **amount provisionally determined and paid** [as per condition (b)],*

*➔ the said **manufacturer** of goods may **ADJUST THE EXCESS AMOUNT** on his own, **by taking credit of such amount**;*

Intimation of Payment/Adjustment (within 15 days)

*(g) the manufacturer of goods shall **intimate to the jurisdictional SCE**, within a period of **15 days***

*from the date **of payment or adjustment**, the following particulars, namely:-*

*(i) details of Cenvat credit attributable to exempted goods, **monthwise**, for the whole financial year, determined provisionally;*

(ii) Cenvat credit attributable to exempted goods for the whole financial year, determined finally,

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

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

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

Problem in Provisional Computation: Solution thereof

*(h) where the **amount** equivalent to Cenvat credit **attributable to exempted goods cannot be determined provisionally**, as prescribed in condition (b),*

→ ***due to reasons that no goods were manufactured in the preceding financial year**,*

then the manufacturer of goods

⇒ *is **not required to determine and pay such amount provisionally** for each month,*

⇒ ***but***

⇒ ***shall determine finally** the Cenvat credit attributable to exempted goods for the whole year [as prescribed in condition (c)] and*

⇒ ***pay the amount so calculated on or before 30th June** of the succeeding financial year.*

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods shall, in addition to the said amount, be liable to pay interest @ 24% p.a. from the due date till the date of payment.

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

⇒ ***the value determined under section 4 or 4A** of the Central Excise Act, 1944 read with rules made thereunder.*

***Explanation II**.-**The amount** mentioned in **sub-rules (3) and (3A)**, unless specified otherwise, shall be paid by the manufacturer of goods*

⇒ *by **debiting the Cenvat credit** or*

⇒ ***otherwise** **(through PLA)***

→ *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*

⇒ ***fails to pay the amount** payable **under sub-rule (3) or (3A)**,*

⇒ *it shall be **recovered,***

→ ***in the manner as provided in Rule 14**, for recovery of Cenvat credit wrongly taken.'.*

6-(5): *Notwithstanding anything* contained in sub-rules (2) and (3),

credit of the whole of service tax paid shall be allowed on following taxable services

- ⇒ *Architect's service*
- ⇒ *Banking & Financial Services*
- ⇒ *Construction Service*
- ⇒ *Consulting Engineer's service*
- ⇒ *Erection, Commissioning & Installation Services*
- ⇒ *Foreign Exchange Broker's Service*
- ⇒ *Insurance Auxiliary Services concerning life insurance business*
- ⇒ *Intellectual Property related services*
- ⇒ *Interior Decorator's service*
- ⇒ *Maintenance & Repair Services*
- ⇒ *Management Consultant's service*
- ⇒ *Real Estate Agent's service*
- ⇒ *Scientific or technical Consultancy*
- ⇒ *Security Agency's service*
- ⇒ *Technical Inspection & Certification Services*
- ⇒ *Technical testing and analysis services*

Comment: Rule 6 has been being amended to provide the following options to a manufacturer, using common inputs or input services for providing dutiable as well as exempted goods and opting not maintain separate accounts:

(i) **Either** reverse the credit attributable (to be worked out in a manner prescribed in the rule) to inputs and input service used for manufacturing exempted goods; **or**

(ii) Pay 10% amount of the value (to be determined in accordance with provisions of Sec 4 / 4-A of CEA, 1944) of the exempted goods.

[Refer Illustration also for detail discussion]

CBEC Circular 868/6/2008

	Question	Answer
1.	**Whether an assessee availing** ➔ **OPTION (i) or OPTION (ii)** ➔ **under Rule 6(3)** **is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods.**	Yes, credit on such inputs and input services is allowed. However, an assessee following OPTION (i) or OPTION (ii) under Rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods ***[refer Explanation II of rule 6(3)].*** For the purpose of the calculation of amount under formula given under Rule 6(3A), the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods.
2.	**Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods simultaneously?**	An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him. and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. ➔ Therefore, the same assessee cannot avail both OPTION (i) and OPTION (ii) simultaneously during a financial year. ***[Explanation I to Rule***

		6(3)].
3.	**What is the manner for calculation of CENVAT Credit amount attributable to inputs used in or in relation to the manufacture of exempted goods.**	It is required to be done on the basis of **ACTUAL CONSUMPTION OF INPUTS** used and the quantification may be made based upon the stores/production records maintained by the manufacturer. ➔ Further, **a certificate from Cost Accountant/Chartered Accountant** giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and CENVAT credit taken on these input ***may*** be submitted ***at the end of the year.***
4.	**Whether credit in respect of input services covered by Rule 6(5) would be required to be taken into account for determination of amount payable as per formula provide in Rule 6(3A).**	No, the credit attributable to services mentioned in Rule 6(5), shall not be taken into account for determination of amount under Rule 6(3A).

Some Questions [Applicability of Rule 6(3)]

Q-1: DG the Great Ltd is running registered factory. He is manufacturing two final products: "FP-1 (which is chargeable to ED)" and "FP-2 (which is exempted)". He is using common inputs (X & Y) for both of his final product *[ED paid on these two is Rs 4,00,000]*. He does not want to maintain separate accounts. Rather he wishes to operate under Rule 6(3)(i). How much amount shall be paid by him ---

a) 10% of price of FP-2

b) (2* 10%) = 20% of the price of FP-2

Q-2: DG the Great Ltd is running registered factory. He is manufacturing two final products: "FP-1 (which is chargeable to ED)" and "FP-2 (which is exempted)". He is using common inputs (X & Y) for both of his final product *[ED paid on these two is Rs 4,00,000]*. At the same time, he is using "input A" exclusively in manufacture of FP-1 *[ED paid thereon is Rs 40,000]* and "input B" exclusively in manufacture of FP-2 *[ED paid thereon is Rs 60,000]*. He does not want to maintain separate accounts. Rather he wishes to operate under Rule 6(3)(i).

Q-3: DG the Great Ltd is running registered factory.

Details of Final Products	**Input used**	
FP-1 (Dutiable)	**X**	

FP-2 (Exempted)	**X**	
FP-3 (Dutiable)	**Y**	
FP-4 (Exempted)	**Y**	

DG wishes to follow Rule 6(3)(i) in respect of input X and Rule 6(3)(ii) in respect of input Y. Whether he can do so?

DG wishes to follow Rule 6(3)(i) in respect of input X . In respect of input Y he wishes to take credit maintain separate accounts. Whether he can do so?

Q-4. **Mr A is running registered factory. He is manufacturing two final products: "FP-1 (which is chargeable to ED)" and "FP-2 (which is exempted)". He is using common input and input services for both of his final product. The operational details for the year 2008-09 are as follows:**

a) Eligible Duty/Tax/Cess paid on Inputs and Input Service during April, 2008:

[A] CCr of INPUTS purchased during the month: Rs 2,00,000/-

[B] CCr of INPUT SERVICES received and paid for during the month: Rs 2,00,000/-

b) ED liability on clearances of FP *(input has been used in equal proportion for both the products as determined from production records maintained by assessee)*

i) Clearance of FP-1 (30,000 units): Rs 6,00,000/- [AV 30,00,000 * ED @ 20%]

ii) Clearance of FP-2 (30,000 units): Nil [AV 30,00,000 * ED @ Nil]

During the immediately preceding year (FY 2007-08), the details of value of goods manufactured and cleared are as follows:

i) Value of dutiable goods= Rs 300 lakhs

ii) Value of exempted goods = Rs 200 lakhs

Mr A has opted for non-maintenance of separate accounts. Further, he has opted for payment in terms of Rule 6(3-A) of CCR, 2004. Discuss how he shall operate under Rule 6(3-A)?

Statement showing discharge of ED liability for month of April, 2008

ED liability for the month of April, 2008 [Due Date: 5th / 6th]	**6,00,000.00**
Less: Cenvat credit available for utilization **Total CCr taken during the month of April, 2008 Rs 4,00,000** *Less*: **CCr relating to exempted goods *(determined provisionally)*** **[A] CCr of INPUTS used in or i.r.t. exempted goods** **[B] CCr of INPUT SERVICES used i.r.t. exempted goods**	
Amount of ED payable through PLA (Excise Deposit Account)	

Such manner shall be used for all months of the FY 2008-09. By the end of FY, actual data becomes available. The details of value of goods manufactured and cleared are as follows:

i) Value of dutiable goods= Rs 250 lakhs

ii) Value of exempted goods = Rs 750 lakhs

Month	Eligible Duty/Tax/Cess paid on INPUT during the month	Provisionally Paid Amount	Finally determined Amount	Differential Amount
April, 2008	2,00,000/-			
May, 2008	2,00,000/-			
June, 2008	4,00,000/-			
July, 2008	3,00,000/-			
Aug, 2008	2,00,000/-			
Sep, 2008	2,00,000/-			
Oct, 2008	1,00,000/-			
Nov, 2008	1,00,000/-			
Dec, 2008	3,00,000/-			
Jan, 2008	3,00,000/-			
Feb, 2008	2,00,000/-			
Mar, 2008	2,00,000/-			

Month	Eligible Duty/Tax/Cess paid on INPUT SERVICE during the month	Provisionally Paid Amount	Finally determined Amount	Differential Amount
April, 2008	2,00,000/-	80,000/-		
May, 2008	2,00,000/-			
June, 2008	4,00,000/-			
July, 2008	3,00,000/-			
Aug, 2008	2,00,000/-			
Sep, 2008	2,00,000/-			
Oct, 2008	1,00,000/-			
Nov, 2008	1,00,000/-			

Dec, 2008	**3,00,000/-**			
Jan, 2008	**3,00,000/-**			
Feb, 2008	**2,00,000/-**			
Mar, 2008	**2,00,000/-**			

The difference as arising shall be paid by ……………………………………………..

In case of delayed payment, the differential amount shall be payable alongwith interest @ ……………..

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Rule 15-A of CCR, 2004 ***(Residual Penalty upto Rs 5,000/- introduced under CCR, 2004)***

In the Cenvat Credit Rules, 2004, Rule 15-A is being inserted :-

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.

Comment: Rule 15-A is being inserted to provide for general penalty upto Rs 5,000/- in case of contravention of any of the provisions of the Cenvat Credit Rules, 2004, for which no specific penal provisions exists.

[applicable to SERVICE PROVIDER also]

Amendment in Exemption

E/N 8/2003	**Computation of limit of 150 lakhs / 400 lakhs** **For** the purposes of **determining** 150 lakhs, **the following clearances shall not be taken into account, namely :-** ***a)*** ***Clearances of Non-dutiable goods*** ***b)*** ***Clearances bearing Brand Name / Trade Name of Another person*** *c)* ***Clearances of intermediate goods*** ~~d) *Clearances of strips of plastics used for weaving of sacks/bags in the factory*~~

Comment: Earlier, clearances of strips of plastics used for weaving of sacks/bags in factory shall not be considered in exemption limit of 150 lakhs (as well as in 400 lakhs). Now, **these will be considered in computation of limit of 150 lakhs (as well as in 400 lakhs)**

E/N 23/2003	**Clearances by 100% EoU into DTA** All excisable goods produced/manufactured in an EOU **and brought to any other place in India** shall be exempt from excise duty to the extent of ⇒ ~~*75%*~~ ***50% of Basic Customs Duty (BCD) &*** ⇒ **100% of Special CVD (as leviable under section 3(5) of the CTA, 1975).** ⇒

Comment: Earlier, DTA clearances of 100% EoU was exempt from 75% of BCD. Now, that exemption has been reduced to 50%.

This amendment in exemption demands a corresponding change in Rule 3(7)(a) of CCR, 2004 (explained below in detail). **But unfortunately that has not been made**. Author is hopeful that very soon that will be made by Government.

P-1: An EOU is engaged in manufacture of article "X". Part of production is sold by it into the DTA (such sale being permissible in terms of Foreign Trade Policy 2004-2009). You are required to compute the excise duty liability of said unit in terms of Sec 3 of CEA, 1944 read with E/N 23/2003 :

1) Value as per Sec 14 of Customs Act, 1962 = Rs 100/-.
2) Basic Custom Duty [as leviable u/s 12 of CA, 1962] (BCD) = 10%
3) Counter-veiling Duty (CVD) [as leviable u/s 3(1) of CTA] = 20 %
4) Education Cess (on imported goods) [as leviable under FA, 2004] = 2%
5) SHEC (on imported goods) [as leviable under FA, 2007] = 1%
6) Special CVD [as leviable u/s 3(5) of CTA] = 4 %

The "fabric" so cleared by the ABC Ltd. is purchased by "Pantaloon Ltd." for use as an input for manufacture of "readymade garments". You are required to compute the amount of Cenvat Credit admissible to the "Pantaloon Ltd." in terms of provisions of CCR, 2004.

OLD POSITION

EoU Clearances to DTA [When E/N 23/2003 – exempts 75% of BCD & 100% of Spl CVD]

100% EoU :: ED liab *Pantaloon Ltd*

Input --------------------- > FP
(Fabric) (Garments)

Sec 14(1) Value	Rs 100.00
BCD ---- (25% of 10%) , i.e., @ 2.5%	2.50
	Rs 102.50
CVD ---- @ 20%	20.50
	Rs 123.00
Ed Cess @ 2% of (BCD + CVD)	0.46
SHEC @1% of (BCD + CVD)	0.23
Spl CVD – 100% Exempted	Nil
Total duty payable after applying the exemption	Rs 23.69

Admissible CCR as per formulae given in Rule 3(7)(a)

*= [100 * (1 + 10/400) * 20/100]*

= 20.50

[This amount was nothing but the sum total of CVD + Spl CVD – basically, for buyer these will be treated as Imported Inputs only]

NEW POSITION

EoU Clearances to DTA [When E/N 23/2003 – exempts 50% of BCD & 100% of Spl CVD]

100% EoU :: ED liab *Pantaloon Ltd*

Input --------------------------------> FP
(Fabric) (Garments)

Sec 14(1) Value		Rs 100.00
BCD	(50% of 10%) , i.e., @ 5%	5.00
	Value for CVD	Rs 105.00
CVD	@ 20%	21.00
		Rs 126.00
Education Cess (on Imported Goods)	2% of Rs 26.00 (BCD+CVD)	Rs 0.52
SHEC (on Imported Goods)	1% of Rs 26.00 (BCD+CVD)	Rs 0.26
		Rs 126.78
Special CVD	– 100% Exempt	Nil
Total duty payable after applying the exemption		Rs 26.78

Admissible CCR as per formulae given in Rule 3(7)(a)

*= [100 * (1 + 10/400) * 20/100]*

= 20.50

[Now this is not sum total of CVD + Spl CVD – Formulae needs to be amended

It should be :]

*= [X * (1 + BCD/200) * CVD/100]*

*= [100 * (1 + 10/200) * 20/100] = Rs 21.*

UPDATIONS IN CUSTOMS

Amendment in Notifications

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Notification on [Sec 74 Duty Drawback] Rates—in relation to re-export of imported goods after their

In respect of goods imported into India are exported after having been used, then Sec 74 permits Duty Drawback (DBK) but at reduced rate only. The reduced rate shall be as notified by CG.

In respect of export of goods (other than motor car and goods imported by individual for personal and private use), the reduced rate has been amended as stated below:

N/N 19/1965

Goods (Other Than Motor Car And Goods Imported By Individual For Personal And Private Use):

DBK shall be granted as per the following rates:

Period Of Usage	***Notified Rate***
Upto 3 months	95%
More than 3 months, **upto 6** months	85%
More than 6 months, **upto** 9 months	75%
More than 9 months, **upto** 12 months	70%
More than 12 months, **upto** 15 months	65%
More than 15 months, **upto** 18 months	60%
More than 18 months	**NIL**

UPDATIONS IN SERVICE TAX

Amendments in Service Tax Rules, 1994

Rule 5-A of STR, 1994 (Access to Premises of Service Provider)

In the Service Tax Rules, 1994 after Rule 5-A has been inserted -

Rule 5-A:: Access to registered premises

- An officer authorized by the Commissioner in this behalf shall have access to any premises registered under these rules
  - ➔ for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue
- Every **assessee shall, on demand, make available** to
  → the officer so authorised or
  → the audit party deputed by the Commissioner or the Comptroller and Auditor General of India,
  within
  - ➔ a reasonable time not exceeding **15 working days** from the day when such demand is made, *or*
  - ➔ *such further period as may be allowed* by such officer or the audit party, as the case may be,-

(i) the **RECORDS** as mentioned in Rule 5;
(ii) **TRIAL BALANCE** or its equivalent; *and*
(iii) the **INCOME-TAX AUDIT REPORT**, if any, under section 44AB of the Income-tax Act, 1961,

for the scrutiny of the officer or audit party, as the case may be.

Comment: New Rule 5-A has been inserted empowering authorized officer to visit the registered premises of service provider. Assessee shall be under an obligation to produce records before such officer.

☛

Rule 6 of STR, 1994 (Facility of Advance Payment subject to self-adjustment introduced)

In the Service Tax Rules, 1994 after Rule 6(1), sub-rule (1-A) shall be inserted -

***Rule 6(1A):* Pay in Advance and then claim self-adjustment**

Without prejudice to the provisions contained in sub-rule (1),
every person liable to pay ST, may, ***on his volition***,

⇒ pay an amount as ST in advance, to the credit of CG **and**
⇒ **adjust the amount so paid against ST** which he is liable to pay **for the subsequent period**.

Provided that the assessee shall,--

(i) intimate the details of the amount of ST paid in advance, to the jurisdictional SCE within 15 days of such payment; and
(ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent ST return.

Comment: Under Excise, there is already concept of PLA (personal Ledger Account) under which assessee makes advance payment to CG account which is subsequently adjusted against his excise duty liability. The adjustment so made is treated as payment of excise duty.

Now, under service tax same concept has been introduced but with slight different features. The noted features are as follows:

1) This facility is on OPTIONAL BASIS. i.e., pay in excess if assessee wishes. (While under Excise, payment through PLA is mandatory).
2) Intimation of Advance payment is required (this is because this being an optional facility officer shall be made to know its availment).

Rule 6 of STR, 1994 *(Limit of self-adjustment increased for non-centralized assessee)*

In the Service Tax Rules, 1994 after Rule 6(1), sub-rule (1-A) shall be inserted -

Rule 6(4-B): **Facility in certain cases (in such cases PA not required)**

Notwithstanding anything contained in sub-rule (4),

where an assessee has **paid** to the credit of CG **any amount in excess** of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, **the aassessee may adjust such excess amount paid by him** against the service tax liability for the **succeeding month or quarter**, as the case may be.

Rule 6(4-B):

The adjustment of excess amount paid, under sub-rule (4-A), shall be **subject to the following conditions**, namely:

(i) Excess amount paid is on account of reasons ***not involving***

⇒ **I**nterpretation of law, **T**axability, **C**lassification,

⇒ **V**aluation or **A**pplicability of any exemption notification;

(ii) the **details** and **reasons** for **adjustment shall be intimated** to the jurisdictional SCE **within 15 days** from the date of adjustment.

The adjustment that can be made shall be subject to following limit:

Excess amount ⇒ **paid by the assessee registered under Rule 4(2)** (i.e., Centralized Registered), ⇒ **on account of delayed receipt of details of payments towards taxable services**	may be **adjusted without any monetary limit**
In all other cases	the excess amount paid may be **adjusted** ⇒ **with a monetary limit of** ~~**Rs 50,000**~~ **Rs 1,00,000/-** *(Year 2008)* ⇒ **for a relevant month or quarter**, *as the case may be*

Comment: The monetary limit of adjustment has been increased from 50,000/- per month/quarter to Rs

1,00,000 per month /quarter.

☛

Rule 7-C of STR, 1994 (Waiver/reduction of late fees by CEO -- when ST payable is Nil)

In the Service Tax Rules, 1994, in Rule 7C, the following proviso shall be inserted:-

Rule 7-C of STR, 1994

Where the ST return is furnished after the due date, the person liable to furnish the said return shall pay to the credit of the CG, -

Period of delay	**Late fee payable**
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due date	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 ***plus*** Rs 100 for every day from the 31st day till the date of furnishing the said return

~~**Provided that** the total amount of late fee shall not exceed the amount of ST self-assessed.~~

Provided also *that*

- ⇒ *where the gross amount of **service tax payable is Nil**,*
- ⇒ *the **CEO may**, on being satisfied that there is sufficient reason for not filing the return, **reduce or waive the penalty**.*

Comment:

Sec 70. Furnishing of returns.

(1) Every person liable to pay the service tax

- » *shall **himself assess** the tax due on the services provided by him and*
- » *shall furnish to the SCE, a return*
  - ⇒ *in such **form**, in such **manner** and at such **frequency, and***
  - ⇒ *with **such amount of late fees, not exceeding Rs 2000/-**,*

*as may be **prescribed.***

❑ **Determine the amount of late fee payable alongwith return filed belatedly:**

	ST liability for the Half-year	Delay in filing of return	Late Fee payable			
			Fee as per prescribed scale	Max Amt. as prescribed in Rules	Max Amt. as stated in Sec	Net Payable Amount
Case-A	3,000/-	30 days	1,000/-	3,000/-	2,000/-	
Case-B	1,500/-	60 days	4,000/-	1,500/-	2,000/-	
Case-C	3,000/-	60 days	4,000/-	3,000/-	2,000/-	
Case-D	10,000	90 days	7,000/-	10,000/-	2,000/-	
Case-E	Nil	90 days	7,000/-	Nil	2,000/-	

Rule 7-B of STR, 1994 *(Time limit for filing of Revised Return increased)*

In the Service Tax Rules, 1994, Rule 7B, has been amended:-

Rule 7-B of STR, 1994

An assessee may submit **a revised return**,

⇒ in Form ST-3,
⇒ in triplicate (i.e., 3 copies),
⇒ to correct **a mistake** or **omission**,
⇒ **within ~~60 days~~ 90 days** from the date of submission of original return.

Comment: Time limit for filing of revised return has been increased from 60 days to 90 days.

Amendments in Work Contract (Composition Scheme For Payment Of Service Tax) Rules, 2007

Rule 3 of WCR, 2007 *(Composition Scheme of Payment of ST in case of WORK CONTRACT SERVICE – rate increased from 2% to 4%)*

Notwithstanding anything contained in Sec 67 of FA, 1994 and Rule 2-A of Valuation Rules, 2006

*The person liable to pay ST in relation to work contract service shall have the option to discharge his ST liability on the works contract, instead of paying ST @ 12%, by paying an amount equivalent to ~~2%~~ 4% **of gross amount charged for work contract**.*

Comment: Composition facility is available in case of work contract. That facility was introduced last year. Earlier, the rate was 2% of Gross Amount Charged. Now, it has been increased to 4%.

Amendments in Cenvat Credit Rules, 2004

Rule 2(p) of CCR, 2004 (Definition of output service)

In the Cenvat Credit Rules, 2004, Rule 2(p) defining output service has been amended:-

Rule 2(p)

means **any TAXABLE SERVICE** ***(excluding GTA service)*** provided

⇒ by the provider of taxable service,
⇒ to a customer, client, subscriber, policy holder or any other person, as the case may be,

Comment: Definition of "OUTPUT SERVICE" has been amended excluding GTA service from its ambit/coverage. *[WHY? – Kindly refer AMENDMENTS IN EXEMPTION in the end of this Chapter]*

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Rule 3 of CCR, 2004 *(removal of capital goods outside premise – time restrictions removed)*

In the Cenvat Credit Rules, 2004, proviso to Rule 3(5) has been amended:-

Rule 3(5) of CCR, 2004

When inputs / capital goods, on which CENVAT credit has been taken, are removed as such from the factory,

- ⇒ *the output service provider shall pay an amount equal to the credit availed in respect of such inputs / capital goods and*
- ⇒ *such removal shall be made under the cover of an invoice.*

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:*

~~***Further provided*** *that such payment shall not be required to be made*~~

- ⇨ ~~*when* ***any capital goods*** *are removed outside the premises of the provider of output service for providing the output service – and*~~
- ⇨ ~~*the capital goods are brought back to the premises within 180 days, or such extended period as may be permitted by the jurisdictional AC/DC.*~~

Comment: Rule 3(5) has been amended to allow removal of capital goods outside the premises of output service provider ***without any time restriction***, if the same is for providing output service. The earlier time restriction of 180 days as to bringing back the capital goods within factory shall not be applicable henceforth.

Rule 6 of CCR, 2004 *((Procedure for availment of credit by service provider providing both taxable service chargeable to service tax and exempted services using common inputs/inputservices))*

In the Cenvat Credit Rules, 2004, Rule 6 is being amended:-

Input & Input Service

OPTION 1: MAINTAIN SEPARATE ACCOUNTS

6-(2): Where the **output service provider**

→ **avails** of cenvat **credit i.r.o any INPUTS** or **INPUT SERVICES** *and*

→ **provides** such **output services** which are **CHARGEABLE TO TAX** *as well as*

EXEMPTED SERVICES,

then,

the output service provider shall

(iii) **maintain SEPARATE ACCOUNTS** *for* ***receipts****, consumption and inventory* of input and input service meant for use in the providing exempted services and the quantity meant for use in providing output service on which service tax is payable ***and***

(iv) **TAKE cenvat credit** *only* ***on that quantity*** of input or input service which is **intended for use in** providing output **service on which service tax is payable.**

OPTION 2: DON'T MAINTAIN SEPARATE ACCOUNTS

6-(3): ***Notwithstanding anything contained in sub-rules (1) and (2),***

the provider of output services,

⇒ *opting not to maintain separate accounts,*

⇒ ***shall follow either of the following options****, as applicable to him, namely:-*

(i) the ***provider*** *of output service* ***shall PAY***

⇒ **AN AMOUNT** *equal to* **8% *of* VALUE *of*** *the* **EXEMPTED SERVICES**;

Or

(ii) the ***provider*** *of output service* ***shall PAY***

⇨ **AN AMOUNT** *equal to* the **Cenvat credit attributable to inputs and input services** used for provision of **EXEMPTED SERVICES**

subject to the conditions and procedure specified in ***sub-rule (3A).***

Explanation I.*- If the provider of output service avails any of the option under this sub-rule,*

⇨ *he shall* ***exercise such option for all exempted services*** *provided by him and*

⇨ *such option* ***shall not be withdrawn during*** *the remaining part of the* ***financial year****.*

Explanation II*.-For removal of doubt, it is hereby clarified that the* ***credit shall not be allowed on inputs and input services used exclusively for*** *provision of* ***exempted services.***

Procedural Aspect relating to Credit [Rule 6(3)(ii)]

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

Intimation to SCE

(a) while exercising this option, the **provider** of output services **shall intimate in writing to the SCE** giving the following particulars, namely:-

(i) name, address and registration No. of the provider of output services;
(ii) date from which the option under this clause is exercised or proposed to be exercised;
(iii) description of taxable services (chargeable to service tax);
(iv) description of exempted services;
(v) Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

Provisional Computation

*(b) the **provider** of output service **shall determine and pay, PROVISIONALLY**, for every month,-*

*(i) the **AMOUNT** equivalent to **Cenvat credit attributable to INPUTS used for provision of EXEMPTED SERVICES**, (provisional);*

= (B/C) multiplied by D,

where

***B** denotes total value of exempted services provided during the **preceding financial year**,*
***C** denotes total value of taxable and exempted services provided during **the preceding financial year**, and*
***D** denotes total Cenvat credit taken on input during **the month**;*

*(ii) the **AMOUNT** attributable to **INPUT SERVICES used for provision of EXEMPTED SERVICES** (provisional)*

= (E/F) multiplied by G,

where

***E** denotes total value of exempted services provided during the **preceding financial year**,*
***F** denotes total value of taxable and exempted services provided during **the preceding financial year**, and*
***G** denotes total Cenvat credit taken on input services during **the month**;*

Final Computation

*(c) the **provider** of output service **shall determine FINALLY** the amount of Cenvat credit attributable to exempted service **for the whole financial year** in the following manner, namely:-*

*(i) the **AMOUNT** of Cenvat credit attributable to **INPUTS used for provision of EXEMPTED SERVICES,***

= (J/K) multiplied by L,

where

***J** denotes total value of exempted services provided during the **financial year**,*
***K** denotes total value of taxable and exempted services provided during **the financial year**, and*
***L** denotes total Cenvat credit taken on input during **the YEAR**;*

*(ii) the **AMOUNT** attributable to **INPUT SERVICES used for provision of EXEMPTED SERVICES,***

= (M/N) multiplied by P,

where

***M** denotes total value of exempted services provided during the **financial year**,*
***N** denotes total value of taxable and exempted services provided during **the financial year**, and*
***P** denotes total Cenvat credit taken on input services during **the YEAR**;*

Adjustment of differences

*(d) the **provider** of output service **shall PAY***

AN AMOUNT *equal to the difference between*

⇒ *the aggregate amount determined finally [as per condition (c)] and*

⇒ *the aggregate amount provisionally determined and paid [as per condition (b)],*

*on or before the **30th June** of the succeeding financial year,*

***where the finally determined amount is more than the amount provisionally paid**;*

*(e) the provider of output service shall, in addition to the amount short-paid, be liable to **pay interest @ 24% p.a**.*

⇒ *from the due date, i.e., 30th June*

⇒ *till the date of payment,*

where the amount short-paid is not paid by 30th June (due date);

(f) where

⇒ *the **amount finally determined** [as per condition (c)] is **less than** the **amount provisionally determined and paid** [as per condition (b)],*

➔ *the said **provider** of output service may **ADJUST THE EXCESS AMOUNT** on his own, **by taking credit of such amount**;*

Intimation of Payment/Adjustment (within 15 days)

*(g) the provider of output service shall **intimate to the jurisdictional SCE**, within a period of **15 days** from the date **of payment or adjustment**, the following particulars, namely:-*

*(i) details of Cenvat credit attributable to exempted services, **monthwise**, for the whole financial year, determined provisionally;*

(ii) Cenvat credit attributable to exempted services for the whole financial year, determined finally,

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

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

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

Problem in Provisional Computation: Solution thereof

*(h) where the **amount** equivalent to Cenvat credit **attributable to exempted services cannot be determined provisionally**, as prescribed in condition (b),*

→ ***due to reasons that no taxable service was provided in the preceding financial year**,*

then the provider of output service

⇒ *is **not required to determine and pay such amount provisionally** for each month,*

⇒ ***but***

⇒ ***shall determine finally** the Cenvat credit attributable to exempted service for the whole year [as prescribed in condition (c)] and*

⇒ ***pay the amount so calculated on or before 30th June** of the succeeding financial year.*

(i) *where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the provider of output service shall, in addition to the said amount, be liable to pay interest @ 24% p.a. from the due date till the date of payment.*

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

⇒ *have the same meaning as assigned to it under* ***Sec 67 of FA, 1994.***

Explanation II.-***The amount*** *mentioned in* ***sub-rules (3) and (3A)***, *unless specified otherwise, shall be paid by the provider of output service*

⇒ *by* ***debiting the Cenvat credit*** *or*

⇒ ***otherwise*** ***(through PLA)***

➔ *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 provider of output service*

⇒ ***fails to pay the amount*** *payable* ***under sub-rule (3) or (3A)***,

⇒ *it shall be* ***recovered,***

➔ ***in the manner as provided in Rule 14***, *for recovery of Cenvat credit wrongly taken.'.*

6-(5): Notwithstanding anything contained in sub-rules (2) and (3),

credit of the whole of service tax paid shall be allowed *on following taxable services*

⇒ *Architect's service*

⇒ *Banking & Financial Services*

⇒ *Construction Service*

⇒ *Consulting Engineer's service*

⇒ *Erection, Commissioning & Installation Services*

⇒ *Foreign Exchange Broker's Service*

⇒ *Insurance Auxiliary Services concerning life insurance business*

⇒ *Intellectual Property related services*

⇒ *Interior Decorator's service*

⇒ *Maintenance & Repair Services*

⇒ *Management Consultant's service*

⇒ *Real Estate Agent's service*

⇒ *Scientific or technical Consultancy*

⇒ *Security Agency's service*

⇒ *Technical Inspection & Certification Services*

⇒ *Technical testing and analysis services*

Comment: Rule 6 is being amended to provide the following options to a provider of output service, using common inputs or input services for providing taxable as well as exempted services and opting not maintain separate accounts:

(iii) either reverse the credit attributable (to be worked out in a manner prescribed in the rule) to inputs and input service used for providing exempted services; or

(iv) Pay 8% amount of the value (to be determined in accordance with provisions of Sec 67) of the exempted service.

[Refer – Rule 6(3) in Excise Amendment]

Rule 7-A of CCR, 2004

In the Cenvat Credit Rules, 2004, Rule 7-A is being inserted-

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/Bill/Challan issued by an **OFFICE OR PREMISES OF THE SAID PROVIDER OF OUTPUT SERVICE (i.e., ISD)**, 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.".*

Comment: Rule 7-A is being inserted to prescribe a procedure to enable the provider of output services to take credit on inputs and capital goods on basis of an invoice/bill/challan issued by its head office.

Amendments in Taxation of Services (Provided from outside India and received in India) Rules, 2006

Rule 3(ii)(Import of certain services)

Rule 3-(ii), amended to provide for following, namely;-:

Rule 3-(ii)

Following proviso has been inserted in Rule 3(ii) [Performance based category]:

"Provided further that

where → *Management, Maintenance or Repair Service, or*

→ *Technical Testing and Analysis Service, or*

→ *Technical Inspection and Certification Service*

is **provided**

⇒ **remotely through internet** or an electronic network including a computer network or any other means

⇒ ***in relation to** any **Goods** or **Material** or any **Immovable property**, as the case may be,*

⇨ **situated in India**

⇨ at the time of provision of service,

then

➔ **such taxable service**, *whether or not partly performed outside India*, **shall be treated as performed in India** and leviable to service tax under reverse charge method.

Comment: **Logic of Amendment** [as explained in CBEC Circular 334/1/2008]

Information technology is used to provide services in relation to tangible goods located distantly. *In such cases*,

the actual place of performance of the service is different from **the actual location of the tangible goods** (place of consumption of service).

The place of performance and the physical location of the goods are immaterial when both places are within a single taxing jurisdiction i.e. country of taxation. However, if these two places are in two different taxing jurisdictions, the taxing jurisdiction shall be the place of actual location of the goods at the time of provision of service.

Rule 3(ii) of Taxation of Services (Provided from Outside India and received in India) Rules, 2006 *[AND Rule 3(1)(ii) of the Export of Services Rules, 2005]* are being amended by inserting a proviso to determine the country of use or consumption of the taxable services provided. **The proviso enables to determine the taxing jurisdiction based on the place of actual location of the tangible goods at the time of provision of service** in the case of following three services:

(a) management, maintenance or repair,

(b) technical testing and analysis, and

(c) technical inspection and certification,

These services are also provided remotely through internet or any electronic network including a computer network, or any other means.

Amendments in Export of Service Rules, 2005

Rule 3(ii) (Export of certain services)

Rule 3-(ii), amended to provide for following, namely;-:

Rule 3-(ii)

Following proviso has been inserted in Rule 3(ii) [Performance based category]:

"Provided further that

where → *Management, Maintenance or Repair Service, or*

→ *Technical Testing and Analysis Service, or*

→ *Technical Inspection and Certification Service*

is **provided**

⇒ **remotely through internet** or an electronic network including a computer network or any other means

⇒ ***in relation to*** any **Goods** *or* **Material** *or* any **Immovable property**, *as the case may be*,

⇨ **situated outside India**

⇨ at the time of provision of service,

then

➔ **such taxable service**, *whether or not partly performed outside India*, **shall be treated as performed outside India**.

Comment: See comments for amendment is Import of Service Rules, 2006

☞

Amendments in Exemption

SSP Exemption	**E/N 6/2005** In **any FY,** ⇒ the **First Receipts of** ~~**Rs 8 Lakhs**~~ **Rs 10 Lakhs** ⇒ shall be **exempt** from payment of whole of service tax. **Condition** The **aggregate value** ⇒ of all **taxable services rendered** by a provider of taxable service ⇒ from *one or more premises*, **does not exceed** (=<) ~~**Rs 8 Lakhs**~~ **Rs 10 lakhs in preceding FY.** **Comments:** Earlier, exemption limit was 8 lakhs. Now, it has been increased to 10 lakhs. *[Also, an assessee will now be treated as small service provider if the aggregate value of services rendered in the preceding year is upto Rs 10 lakhs (earlier, this limit was also 8 lakhs)]* Consequent amendments have also been made in **Service Tax (Registration of Special Categories of Person) Rules, 2005**. Now, ***a small service provider was required to take mandatory registration once he crosses the limit of 9 lakhs*** (earlier, it was 7 lakhs).
GTA Exemption	**75% Value is exempt** **[E/N 13/2008]** **Comments:** ***Old Treatmen: [E/N 1/2006]***: Abatement benefit of 75% was available to GTA ***2 conditions***: i) Benefit of E/N 12/2003(exemption of value of material sold) is not availed; ii) Cenvat Credit (Input/ Input Service / Capital Goods) is not availed. ***New Treatment: [E/N 13/2008]*** Earlier allowed Abatement benefit of 75% has been withdrawn. Instead, **a specific exemption has been issued for GTA (unconditionally)**. Though in this notification, there is no condition as to non-availment of Cenvat Credit by GTA. But, amendments have been made in Cenvat Credit Rules, 2004 to the effect that GTA service provider shall not be allowed to availed cenvat credit. Rule 2 (Definition Rule) has been amended. Rule 2(p) which defines "output service" has been amended to exclude GTA from definition of output service. The effect of amendment is that GTA can not take cenvat credit at all. ***Logic of Amendment***: [Circular 334/1/2008] GTA service was under Reverse Charge (it still is). In case of GTA service, if consignor/consignee falls under certain specified category, ST is not payable by GTA—rather it is payable by consignor/consignee who is paying freight to GTA. The actual amount of ST

	payable was on 25% of the amount of freight, i.e., 75% of the amount of freight was provided as abatement, subject to the condition that no cenvat credit of duty paid had been availed of. It was represented that fulfillment of the condition of non-availment of cenvat credit by the service provider was, at times, difficult to prove, when ST liability was of that of consignor/consignee. Taking into account special nature of the GTA service, it is being exempted from payment of ST unconditionally to the extent of 75% fo the freight. In other words, ST is required to be paid only on 25% the freight irrespective of who pays ST. simultaneously, the benefit of cenvat credit has been withdrawn to GTA service under the Cenvat Credit Scheme by deleting the said service from the scope of output service in the Cenvat Credit Rules, 2004. Henceforth, the consignor/consignee whosoever is required to pay ST under reverse charge method can pay ST on 25% of the amount of freight unconditionally. ***Recipient of GTA service paying ST under the reverse charge method is no more required to prove non-availment of Cenvat Credit by the GTA service provider.***