

CENVAT CREDIT RULES

- By CA Mayur Zanwar

CENVAT

- An Input Duty relief scheme.
- Designed to reimburse the user service provider with the duty paid on inputs.
- Prevents cascading effects of duty on taxable service.
- CENVAT scheme covers capital goods and all inputs barring motor spirit (petrol), high speed diesel and LDO.
- It covers all final products except matches.
- This scheme applies to whole of India except Jammu & Kashmir.



For Instance-Bata India Ltd. a shoe manufacturing co. use the leather as raw material which is purchased with excise duty as charged by supplier....Bata also uses the services of fashion designers to make fashionable shoes, thus it paid ST on bills raised by fashion designers.....Now Bata Ltd manufactured shoes and want to clear the same from factory, in that case Bata Ltd liable to pay excise duty on manufactured shoes.....such excise duty can be paid by utilizing the credit of input excise and input ST as paid ...and still if anything left unpaid the same to be paid in cash



CENVAT CREDIT RULES, 2004

- Rule 2 – Definition
- Rule 3 – Availment of CENVAT Credit
- Rule 4 – Conditions for allowing CENVAT Credit
- Rule 5 – Refund of CENVAT Credit
- Rule 8 – Rights of Commissioner
- Rule 9 – Documents and Accounts
- Rule 10 – Transfer of CENVAT Credit
- Rule 14 – Recovery of CENVAT Credit wrongly taken
- Rule 15 – General Penalty



RULE 2 : DEFINITIONS

- CAPITAL GOODS means the following goods:
 - All goods falling under chapter 82,84,85,90
 - Components , spares and accessories
 - Moulds and dies
 - mould-a container used to design liquid in desired shape
 - dies-a device/equipment for cutting metals
 - jigs-a device that guides the tools used in any manufacturing process
 - fixtures-a piece of equipment which is in fixed position
 - Refractories and refractory materials
 - Tubes ,pipes and fittings thereof
 - Pollution control equipments
 - Storage tank
- above goods can be used:-
- at the time of rendering taxable services.



Example: Unique Techno Sales & Service is using its trucks to carry spare parts and machineries at the premises of its customer where the repairs and maintenance services are being provided, and then the trucks will qualify as capital goods for Unique Sales & Service

3. For providing courier agency services...so trucks, tempos used by First Flight couriers will qualify as capital goods for it.

Further, Motor vehicles used for transport of passengers will qualify as capital goods for the following service providers using the same as:

1. For transportation of passengers
2. For renting the motor vehicle....so if I own some buses and give the same on hire then the same will qualify as capital goods for me.
3. Imparting motor driving training



For Instance: Wipro Ltd.using bricks, cement for constructing a factory building...then the same will not qualify as input for Wipro Ltd...and therefore Wipro Ltd cannot claim the credit of excise

However, if Wipro Ltd has signed a contract with Niddhi Construction to construct the building then M/s Niddhi Construction can claim the credit of excise paid on cement, bricks ...and accordingly discharge its ST liability by utilizing the credit



- EXEMPTED GOODS means goods exempted from whole of the duty and includes goods which are chargeable to 'nil' rate of duty.
- EXEMPTED SERVICES means taxable services which are exempted from the whole of the service tax.
- INPUT means
 - All inputs used in the factory by service provider for providing taxable services
 - Any goods including accessories the value of which is included in the value of taxable service

For Instance:

Colgate Limited manufacture toothpaste but clear the toothpaste in packed box with a free toothbrush attached therewithbut in reality the same is not at all free because the value of same is included in the MRP of paste itself and thus toothbrush qualify as inputs...:-)

- INPUT SERVICE means any service-
 - Used by a provider of taxable service for providing on output 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 removals and includes

1. Modernization/repairs & maintenance of factory or service station /premises
2. Advertisement or Sales Promotion..
3. Market Research
4. Storage up to place of removal
5. Procurement of inputs
6. Accounting
7. Auditing

Contn....



8. Financing
9. Recruitment & Quality control
10. Coaching & training
11. Computer networking
12. credit rating
13. share registry
14. Security
15. Business exhibition
16. legal services
17. inward transportation
18. outward transportation upto place of removal



RULE 3 : AVAILMENT OF CENVAT CREDIT

A service provider can take credit of :

- 1) Basic excise duty
- 2) Special excise duty
- 3) The additional duty of excise on goods of special importance
- 4) National calamity contingent duty
- 5) Education cess on excise duty
- 6) Countervailing duty of custom duty
- 7) Service tax.



RULE 4: CONDITIONS FOR ALLOWING CENVAT CREDIT

- The CENVAT CREDIT on inputs may be taken immediately on receipt of the inputs.
- The CENVAT CREDIT in respect of Capital goods to be availed within a period of 2 Years i.e.
 - 50% immediately when capital goods received.
 - Balance 50% in next Financial Year

Exception:-

- Small Service Provider can avail 100% cenvat credit in the very first year.



Example:

A service provider purchased a machinery on the 10th day of March, 2014. CENVAT of two lacs rupees is paid on this machinery. The Service Provider can take credit up to a maximum of one lacs rupees in the financial year 2013-14, and the balance in subsequent year(s).

- CENVAT CREDIT is allowed to a service provider even if the inputs are acquired by him on lease ,hire purchase or loan agreement.
- CENVAT CREDIT is not allowed on goods used for office.

- **Zero rated and exempt transactions**

In zero rated transaction, tax not payable on output service, but Credit of input taxes is available (e.g. exports, supplies to SEZ, EOU) – thus indirectly Cenvat credit is available

In ‘exempted transaction’, tax is not payable on output services and input credit is not available



CENVAT CREDIT REVERSAL

Reversal of Credit on input or input services used for providing exempted services

1. As per rule 6(1) cenvat credit shall not be allowed on that quantity of input or input services which are used in for provision of exempted service except under the circumstances specified in sub rule (2).
2. As per sub rule (2) the assessee shall maintain separate accounts for –
 - A. the receipt, consumption and inventory of inputs used—
 - for the provision of exempted services;
 - for the provision of output services excluding exempted services; and



b) the receipt and use of input services—

(i) in or in relation to the exempted services and their clearance upto the place of removal;

(ii) for the provision of exempted services; and

(iii) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).



3) In case the assessee does not maintain separate records he shall follow any of the following:

i. Pay an amount equal to six per cent of value of the exempted goods and exempted services; or

ii. Pay an amount as determined under sub-rule (3A); or

iii. Maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) or clause (b) and sub-clause (c) of sub-rule (3A) shall not apply for such payment.

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

4) The value for the purpose of rule 6 is as follows:

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 there under or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made there under;

(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



RULE 6: OBLIGATION OF SERVICE PROVIDER RELATING TO TAXABLE AND EXEMPTED SERVICES

- CENVAT CREDIT shall **not be allowed** on such inputs which is used while providing Exempted services. For this purpose the output service provider may follow either of following 2 methods;
 - Maintain Separate accounts for different goods.
 - If he does not maintain separate accounts and avail CENVAT CREDIT on inputs or on input services, then 6% of total price (Excluding all taxes) shall be paid on clearance of output service.



TIME RESTRICTION ON AVAILMENT OF CENVAT CREDIT – WITHIN 6 MONTHS ONLY!

- Rule 4(7) and Rule 4(1) of cenvat credit rule provide that credit on Input Service must be taken within 6 month from the date of issue of invoice.
- While credit can be availed on receipt of the invoice pertaining to input service, payment will have to be effected within 3 months from the date of the invoice, failing which, the credit availed should be reversed.

Example:

Mr. X receives certain taxable services and receives its bill dated 15th September, 2014 on 1st October, 2014. Cenvat credit of such invoice can be availed only till 14th February 2014 i.e. six months from the date of invoice.

CENVAT CREDIT ON RETENTION MONEY.

- In case of works contracts, there is a trade practice of retaining 5 to 10% of the contract value, even on completion of the entire contract (commonly known as Retention Money).
- **For example** X appoints Y Ltd. to construct office building for Rs. 10 crores. On completion of the service, X will make payment of Rs. 9 crores only and withheld Rs. 1 crore which will be paid to Y Ltd. only after one or two years, so as to safeguard itself from any deficiency in service of the contractor. On completion of building, Y Ltd. will issue the invoice for Rs. 10,49,44,000/- (i.e. Rs. 10 crores + Rs. 49,44,000 ST). Since, Y Ltd. is a body corporate, it will charge full service tax. As per the Cenvat Credit Rules 2004, credit of such input services can be taken on receipt of invoice. However, if the payment to the vendor for the value of services along with service tax is not made within 3 months, then such credit is to be reversed. On combine reading of this provision with the newly introduced provision, if the service receiver fails to make the payment to the vendor within 6 months, the credit will get lapsed. In such cases, it is advised that the service receiver must pay entire service tax to the vendor on the retention amount & claim full cenvat credit. Continuing our above example, X must pay Y Ltd. Rs. 9,49,44,000 (i.e. 9 crores + entire ST of Rs. 49,44,000).

CHANGES IN CONDITIONS ON AVAILMENT OF CENVAT CREDIT OF INPUT SERVICES:

- In case of Full reverse charge (i.e. GTA, Sponsorship, Legal service etc)
- Earlier credit was available only when value and service tax on the same was paid. Payment of value of service to vendor and service tax thereon to govt. under reverse charge.
- The condition now relaxed – Credit can be availed even if only service tax is paid to govt. irrespective of payment made to vendor towards value of services.



Example:

Mr. A has availed some legal services from an Advocate. The advocate has issued a bill of Rs. 1,00,000/- on 01.04.2014 to Mr. A.

In such case Mr. A can avail the entire credit only when the service tax i.e. Rs. 12,360 (Service tax@ 12.36%) on the said value of service has paid under reverse charge to the govt. vide challan.

The challan will be the document u/r 9 in such case to avail the CENVAT Credit.

Normally, the credit of the entire tax paid on the service received by the service recipient subject to the provisions of the CENVAT Credit Rules 2004. The credit of tax paid by the service provider would be available on the basis of the invoice subject to the condition specified in the Rules. The credit of the tax paid by recipient under Partial RCM would be available on the basis of tax payment challan.

In case of Partial reverse charge (i.e. Works contract service Security service, etc):

Earlier practice:

Cenvat credit on service tax portion paid to service provider:

Credit was availed on the basis of receipt of invoice and reversed if payment not made within 3 months.

Cenvat credit on service tax portion paid directly under reverse charge to govt.:

Credit was availed on payment of service tax to govt. on the basis of challan irrespective of the fact whether payment is made to vendor or not.

After Amendment:

Credit is now eligible only when after the service tax along with value of service is paid to the vendor 'And' service tax with respect to receiver's liability is paid to the Government.

Example:

A manpower supply service (covered under partial reverse charge) is availed by an assessee.

Service provider issues a Bill dated 05th August, 2014 for Rs. 1,031 (Rs. 1,000 towards value of service + Rs. 31 ST @ 12.36% on 25% value)

The service receiver's service tax portion Rs. 92 (i.e. $1000 \times 12.36\% \times 75\%$) Payment of Rs. 1,031 is made on 10th September, 2014 to the provider.

ST of Rs. 92 is paid on 20th October, 2014 to the government.

The entire cenvat credit of Rs. 123/- (92+31) can be availed in the month of October, 2014 only as per the amended provisions.

RULE 9: DOCUMENTS AND ACCOUNTS

- Documents & accounts used /maintained in CENVAT
- An invoice issued by a service provider, an importer, a first stage dealer, a consignment agent .
- A supplementary invoice issued by service provider
- A certificate issued by custom appraiser .
- A challan evidencing the payment of service tax.
- A bill of entry .



RULE 10 : TRANSFER OF CENVAT CREDIT

- If a service provider shifts his office to another site or the ownership is transferred or on account of sale, merger etc then he shall be allowed to transfer CENVAT CREDIT lying unutilized ,only if
 - Capital goods are also transferred to the new unit.
- And
- After taking approval of assistant or Deputy Commissioner



RULE 14 : RECOVERY OF CENVAT CREDIT

- Where the CENVAT CREDIT has been taken or utilised wrongly ,the same along with interest shall be recovered from service provider under provisions of Excise Act.



RULE 15 : CONFISCATION AND PENALTY

- If a person takes wrong CENVAT CREDIT in respect of input or capital goods or without ensuring that appropriate duty on such inputs or capital goods have been fixed or contravenes any of the provisions of cenvat credit rules, then he shall be liable to penalty
 - Not exceeding the duty on taxable services or
 - Rs. 10,000 whichever is highhis goods shall also be liable to confiscation.



RULE 15A : GENERAL PENALTY

- A general penalty up to Rs.5000 can be imposed in case of contravention of any of the provision of CENVAT CREDIT RULES 2004, for which no specific penal provision exists.



CENVAT RETURNS

Provider of output service.	Half yearly return	By the end of the month following the particular half year.
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Thank You!

