

# **Persisting Issues under the Cenvat Credit Rules, 2004**

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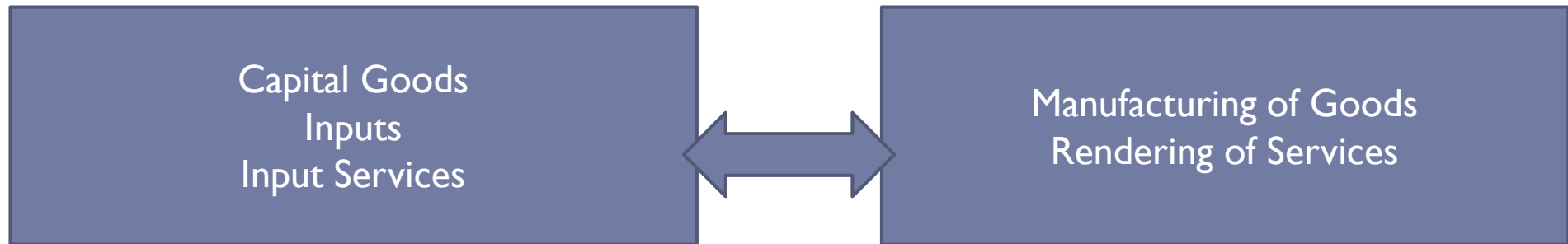
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# Unsettling the Settled Jurisprudence



- Change in the definition of Inputs/ Input Services w.e.f 1-4-2011
- Why there is restriction clauses – Inputs/ Input Services
  - Inputs/ Services related to civil construction
  - Services related to motor vehicle i.e. Rent a Cab services
  - Services which are used for consumption of any employees
- Restrict seamless flow of credit – Cascading effects
- Now, Time limit to avail Cenvat Credit on Inputs/ Input Services

# Cenvat Credit – Input Services

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**Rule 2(I) of the CCR, 2004 → “input service” means any service, -**

(i) used by a provider of output service for providing an output service; or

(ii) used by a Manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and **clearance of final products up to the place of removal**

➤ What is Place of Removal S. 4(3)(c) of CEA, 1944 → Cenvat Credit on Inward Transportation & Outward Transportation

➤ Cenvat Credit allowed up to place wherefrom excisable goods are sold & Risk lies with the Manufacturer & No Freight charged separately

# Cenvat Credit – Place of Removal

- **Rule 2(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;

# Cenvat Credit – Input Services

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## ➤ **What is Place of Removal**

- Circular No. 988/12/2014-CX dated October 20, 2014 → the place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the ‘place of removal’
- **Contrary Judgments** → Ultratech Cement Ltd. Vs. Commissioner of C. Ex., Chandigarh [2013 (30) S.T.R. 220 (Tri. - Del.)], referring of C.C.E., Bangalore Vs. ABB Ltd. [2011 (23) S.T.R. 97 (Kar.)]
- **Relief comes from** → Lafarge India Ltd. Vs. CCE, Raipur [2014-TIOL-1720-HC-CHHATTISGARH-CX] and then followed Ultra Tech Cement Ltd. Vs. CCE, Raipur [2014-TIOL-1437-HC-CHHATTISGARH-CX]

# Cenvat Credit – Input Services

and includes services used in relation to ~~setting up~~, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, ~~activities relating to business, such as~~ accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, Inward transportation of inputs or capital goods and outward transportation upto the place of removal; ***but excludes,-***

# Cenvat Credit – Input Services

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- **Whether Cenvat Credit available of Service tax paid on commission to foreign Commission Agent for procuring order for Indian Manufacturer/ Exporter?**
- **CCE, Ludhiana Vs. Forgings & Chemicals Industries [2014 (10) TMI 281 - CESTAT NEW DELHI] → Service of procuring export order is, obviously, the service of marketing/ sales promotion and also an activity related to the manufacturing business of the Assessee. Thus, the Assessee is eligible for availing Cenvat credit**
- **Commissioner Vs. Dynamic Industries Ltd. [(2014) 49 taxmann.com 240 (Gujarat)] → BAS received from overseas commission agents who procured export orders has no nexus with the manufacturing of final products and hence the same cannot be treated as input service.**

# Cenvat Credit – Input Services

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(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



# Cenvat Credit – Input Services

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## **Continued...**

(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

# Cenvat Credit – Input Services

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## Continued

(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;**

# Cenvat Credit – Capital Goods

Rule 2(a) of CCR, 2004 → “**Capital Goods**” means:-

(A) the following goods, namely:-

(i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, (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

# Cenvat Credit – Capital Goods

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(viii) Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis, but including dumpers and tippers

S.No.	Tariff Heading	Description of Motor Vehicle
1	8702	Motor Vehicles for the transport of ten or more persons, including driver
2	8703	Motor Cars/ other motor vehicles principally designed for the transport of persons including station wagons and racing cars
3	8704	Motor Vehicles for transport of goods
4	8711	Motor Cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars
5		Chassis of all the Motor Vehicle prescribed above

# Cenvat Credit – Capital Goods

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## Used-

(1) in the factory of Manufacturer of the final products, but does not include any equipment or appliance used in an office; or

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

(2) for providing output service;

## Cenvat Credit – Capital Goods

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**(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

# Cenvat Credit – Capital Goods

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**(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

# Cenvat Credit – Inputs

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**Rule 2(k) of CCR, 2004 → “Inputs” means**

(i) all goods used *in the factory* by Manufacturer of the final product;

or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service; ***but excludes-***



# Cenvat Credit – Inputs

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**Continued..**

**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;

# Cenvat Credit – Inputs

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## **Exclusions..**

(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;

# Cenvat Credit – Inputs

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## **Continued..**

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

(D) Motor vehicles;

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

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

# Time Limit – Cenvat Credit

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- **Whether there is any time limit for availing Cenvat credit?**
- Credit availed in the year 2009 for the period from October 2004 to March 2009
- No where in the Central Excise Act as well as in the Cenvat Credit Rules prescribed any period in which credit has to be taken. Although it is mentioned in the Cenvat Credit Rules that assessee can take the credit immediately, but there is no prescribed time limit
- ***Central Bank Of India Vs. CCE & Service Tax, Coimbatore 2013 (32) S.T.R. 525 (Tri. - Chennai)***

# Credit – Service vs. Inputs/CG

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- Cenvat Credit - Input Services Vs. Inputs/ CG
- **W.e.f 1-9-2014: Time limit to avail Cenvat Credit by** Manufacturer or Service Provider within 6 months of the date of issue of any of the documents specified in sub- rule (1) of Rule 9
- Payment to SP is not made with in 3 months from date of invoice - then Reverse Credit and re-avail after payment
- When SP has paid on accrual basis → Govt. collected the Tax/  
Why denial after 3 months?? - POT – Receipt Vs. Accrual – w.e.f 1-4-2011
- What Happen Cenvat Credit Taken/ Not taken on Interpretation issue

# Credit – Service vs. Inputs/CG

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- **What Happen Cenvat Credit Not taken for Invoices prior to 1-9-2014?**
- Ashok Leyland Ltd vs. Commissioner of Central Excise, Nagpur 2014 TIOL 2102 CESTAT MUM → Rule 57G of CER, 1944 specifically provided that “no credit under sub-rule (3) shall be taken by the manufacturer unless the inputs are received in the factory under the cover of specified documents.” Further, sub-rule (5) specifically provided that “credit shall not be taken by the manufacturer after six months of the date of issue of any document specified in sub-rule (3).”

# Reverse Charge Credit – Rule 4(7)

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## ➤ W.E.F: 1-9-2014:

- Full Reverse Charge – Cenvat Credit - Where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed after the service tax is paid
- Partial Reverse Charge – Cenvat Credit - 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.
- What happen in case of Partial payment of input services in partial Reverse charge

# Offences - Imprisonment

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- **S.89(1)Whoever commits any of the following offences:-**
  - a) Knowingly Evades the payment of Service Tax - ***Uniworth Textiles Ltd. Vs. Commissioner of CE, Raipur [2013-TIOL-13-SC]***
  - b) Availment and utilisation of Credit without actual receipt of Taxable services or excisable goods partially or fully / Violation of Rules
  - c) Maintains ***false*** books of Accounts or fails to supply information/ supply false information
  - d) Fails to pay Service Tax already collected within 6 months,



## Personal Penalty – Officials of Company

- **New S. 78A → Impose penalty which may extend to Rs. 1 lakh on**
- **Directors, Manager, Secretary and other officials of the Company, for specified offences:-**
  - Evasion of Service Tax
  - Issuance of Invoice/ Bill/ Challan without provision of Service/ Violation of Rules
  - **Availment and utilisation of Credit without actual receipt of Taxable services** or excisable goods/ Violation of Rules
  - Failure to pay Service Tax already collected within 6 months

## Utilization of Credit – One to One Co-relation

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- **Whether there is need for one to one co-relation of CENVAT credit availed on input services towards payment of output services?**
- Failure to maintain separate accounts for inputs/ input service availed for providing output service
- No requirement for one to one correlation
- Rule 3(4) provides that credit may be utilized for payment only to the extent such credit is available on the last day of the month or quarter
  
- ***Jyoti Structures Ltd. Versus Commissioner of Central Excise, Nasik [2012 (10) TMI 335- CESTAT, Mumbai]***

# Cenvat Credit – Utilization

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- Rule 3(4) → **Cenvat credit can be utilized for payment of-**
  - Excise duty on any final product
  - Payment of CENVAT credit taken on Inputs are removed as such or after being partially processed
  - Payment of CENVAT on capital goods are removed as such
  - Amount under Rule 16(2) of the CE Rules, 2002 – Repair/ Reconditioning, etc.
  - Service tax on any output service
- Restricts Utilization of credit as available by end of Month/ Quarter
- CENVAT credit Shall not be used for payment of service tax in respect of Reverse Charge/ for payment of ED on Goods – Notification no. 1/2011-CE dated. 1-3-2011
- SAD credit shall not be used for payment of Service Tax

# Service Tax – CCR

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- Other duties should not be utilised for payment of NCCD of certain goods.
- Other duties should not be utilised for payment of the Clean Energy Cess.
- Other duties should not be utilised for payment of additional duty (Pan Masala and Tobacco Products).

# Cenvat Credit – Input Service

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- **Deficiency of Service/ Renegotiation of Invoice:** Payment or part thereof is returned or credit note is issued by SP, proportionate credit shall be reversed or paid – Rule 6(3) of STR
- **What happen in case of Bad debts - F. No.341/34/2010-TRU dated. 31-3-2011:** Dispute persists
- **Invoice/ bill issued prior to 1.4.2011** - Credit after the date of payment of value of service → Litigation on amended Input Service like Outdoor catering, Rent a cab, etc. *Circular No. 943/04/2011-CX dated - 29-04-2011*

# Registration – Cenvat Credit

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- **Whether registration required as condition for availing Cenvat Credit?**
- Registration and eligibility of Cenvat Credit are Independent issue → *Well Known Polyesters Limited [2011 (267) E.L.T. 221 (Tribunal)]*
- *Distribution of Cenvat credit as ISD even if invoices prior to registration → PRECISION WIRES INDIA LTD. Vs. CCE, VAPI 2013 (31) S.T.R. 62 (Tri. - Ahmd.)*

# Cenvat Credit on Capital Goods

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- Cenvat Credit on CG U/R 4(2) - Distributed over two years
- *Whether Cenvat credit on capital goods for which 50% credit was availed in 1st year, can be denied in subsequent year when the final product is exempted from duty → Kothari Fermentation and Biochem Ltd. Vs. CCE, Noida [2012 (8) TMI 106 - CESTAT, New Delhi]*
- *Whether Capital goods initially used for exempted goods but later for excisable goods → CCE Vs. Kailash Auto Builders (2011) 33 STT 323 (Karn HC DB)*

# Changes in Rule 3(5) - CCR

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- If Manufacturer or Service provider fails to pay the amount payable:
  - Under sub-rules (5) i.e. inputs or capital goods removed as such,
  - under sub-rules (5A) i.e. the capital goods are removed after being used or as scrap/ waste, *N No. 12/2013-CE (NT) Sep 27, 2013*, and
  - under sub rules (5B) i.e. inputs or capital goods before being put to use is written off fully or **partially**,
  
- Then, it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.



# Capital Goods – Rule 3(5)

- **Whether reversal of credit availed on input services required U/R 3(5) → For reversal of Cenvat credit on inputs or capital goods removed as such?**
- Proportionate Cenvat credit of service tax paid on the GTA service in bringing the inputs was directed to be reversed
- **Not applicable to the credit availed on the "input services" – No Reversal required**
- *Seven Star Steels Ltd. Versus Commissioner of Central Excise, Customs & Service Tax, BBSR-II [(2013) 32 taxmann.com 186 (Kolkata)]*

# Capital Goods – Rule 3(5B)

- **Whether Valuing defective inputs at lower rate cannot be made equivalent to writing off the value in the books for demanding reversal of Cenvat credit?**
- **Autoline Vs. CCE, Kolhapur [2014-TIOL 2003-CESTATMUMBAI]** → Rule 3(5B) of the Credit Rules is applicable in the circumstances where inputs on which Cenvat credit has been taken is written off fully or where any provision to write off fully has been made in the books of account. In the instant case, there is no such finding. It was further held that valuing at lower rate is not equivalent to writing off the value of inputs in the books of account

# Cenvat Credit under ST VCES, 2013

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- Rule 6(2) of VCES Rules restricts utilization of Cenvat Credit for payment of Tax dues declared under the VCES?
- *Whether the tax dues paid under VCES would be eligible as CENVAT credit to the recipient of service under a supplementary invoice?*
- Circular No. 176/2/2014-ST dated January 20, 2014 → Cenvat credit available only after payment of entire service tax dues and obtaining discharge certificate in form VCES 3

# Abatement vs. Cenvat credit

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- What if → Assessee used to claim the benefit of both Abatement and CENVAT, → Entire benefit of “Abatement” disallowed and Service Tax will be calculated on the 100% gross value of services provided or to be provided
- What happen → if the assessee wish to reverse the credit so claimed - Litigation was there
- ***KHYATI TOURS & TRAVELS Vs. COMMISSIONER OF C. EX., AHMEDABAD 2011 (24) S.T.R. 456 (Tri. - Ahmd.)*** held that, later on if reversal of CENVAT credit is there, then benefit under notification cannot be denied.

# Other Cases – Cenvat Credit

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- **Whether**
  - (i) **Cenvat credit can be denied on inputs used in a process not considered as manufacture; and**
  - (ii) **Excise duty paid on such goods can again be demanded under Section 11D of the Central Excise Act, 1944?**
- CENVAT credit taken on inputs used in the manufacture of finished goods is not liable to be disallowed on the ground that the process in which the inputs were used did not amount to ‘manufacture’.
- ***CCE Vs. Amar Roto Prints [2013-TIOL-926-CESTAT-BANG]***

# Other Cases – Cenvat Credit

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- **Whether there is any need to reverse Cenvat credit availed of duty paid on HR coils/sheets for discharging duty on HR slitted and pickled coils on dispute whether slitting and pickling is a manufacturing activity under Section 2(f) of the Central Excise Act, 1944?**
- Asian Colour Coated Ispat Ltd. Vs. Commissioner of Central Excise, Delhi-III [2014-TIOL-2111-CESTAT-DEL] → Since the amount paid on the clearance of pickled HR sheets is more than the Cenvat credit availed, the Cenvat credit availed stands more than reversed and there is no need to recover the same again.

# Other Cases – Cenvat Credit

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- **Whether classification/ duty liability can be altered or challenged at the end of User's?**
- Classification of inputs/ capital goods is under jurisdiction supplier of inputs
- Cannot be altered at the end of user of inputs who is availing Cenvat credit
- ***Flextronics Technologies vs. CCE (2010) 29 STT 233 (CESTAT)***

# Other Cases – Cenvat Credit

- **Whether Credit of duty paid by supplier can be disputed at User's end?**
- No fault in availment of credit by assessee - Person availing credit of duty paid by input supplier not expected to examine legal dispute as regard supplier being manufacturer or not.
- *Excise officer at User's end has no jurisdiction to decide whether duty was short paid or excess paid.*
- ***CCE vs. Advance Diesels Engines (2012) 278 ELT 491 (CESTAT)***



# Interest & Penalty – Wrong availment

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- **Rule 14 → No interest on wrong availment of Cenvat credit but not utilized** - amended to provide that interest is chargeable if Cenvat credit is “wrongly availed and utilized”. Thus, no interest is chargeable if Cenvat credit is wrongly availed but remains unutilized
- **Rule 15 → No Change relating to Penalty** - Penalty may be charged even if Cenvat credit wrongly availed but not utilized
- **Why Not at Par and with Retrospective Benefits extended**

# Export of Services (Rule 6A of ST Rules, 1994)

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Any service provided or agreed to be provided shall be treated as export of service when -

1. The provider of service is located in the taxable territory
2. The recipient of service is located outside India
3. The service is not a service specified in the negative list under section 66D of the Act
4. **The POP of the service is outside India**
5. The payment for such service has been received by the provider of service in convertible foreign exchange, and
6. The provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of Section 65B of the Act

# Export - Exempted Service – R 2(e)

- i. Taxable service which is **exempt** from the whole of the service tax leviable thereon; or
- ii. Service, on which **no service tax is leviable** under section 66B of the Finance Act; or
- iii. Taxable service whose part of value is exempted on the **condition that no credit of inputs and input services**, used for providing such taxable service, shall be taken;

But shall not include a service which is exported in terms of Rule 6A of the Service Tax Rules, 1994.

- Rule 6 of CCR applicable for Reversal of Cenvat credit for exempted Service

# Export - Exempted Service

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CONSIDERED AS NON EXEMPT SERVICE UNDER CENVAT CREDIT RULES

## **W.e.f 11-7-2014: Rule 6(8) of Cenvat Credit Rules, 2014**

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

# Service Tax – CCR - Refund

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- **Refund to Exporter – Rule 5 – No Nexus** required between exports and input services used in such exports → Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the **export turnover to total turnover** in line with Circular No. 868/6/2008-CE dated 09.05.2008
- *Refund amount = (Export turnover of goods+ Export turnover of services) x Net CENVAT credit/ Total turnover*
- **What about Capital Goods?**

# Refund - Rule 5B

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- Rule 5B allows such service provider to claim refund of such input tax credits – Partial/ Reverse Charge
- Notification No. 28/2012-CE (NT) Dated 20/06/2012 – No procedure, safeguards, conditions and limitations, is prescribed for refund

# Service Tax – CCR -ISD

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- **Rule 7 → ISD may distribute the CENVAT credit in respect of service tax paid on the input service to its manufacturing units or units providing output service**
  - Credit distributed not to exceed amount of ST paid thereon;
  - No Credit distributed of service tax attributable to unit exclusively engaged in manufacture of exempted goods or providing of exempted service
  - To extent Service Utilized by respective Unit or
  - Pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.
  
- Relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

# Service Tax – CCR -ISD

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- **Open Issues:**

- Whether unaudited Monthly figures acceptable to Dept. – Not subject to Litigation
- Whether it is compulsory to distribute monthly
- What happen if particular month does not have turnover from exempted Unit
- Keeping track of Input Service utilized by respective Unit
- What happen for Capital Intensive project where Turnover starts only after a reasonable period



## Policy Issue: Input Service Credit – Job Work

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- Brand Owners (Principal manufacturers) who employ job-workers exclusively for manufacture of goods, the job worker is eligible to claim credit on inputs and capital goods (Purchased by the Principal manufacturer) by receiving the same in its factory
- Principal manufacturer cannot avail the credit on input services since he is not the manufacturer and the manufacturer, i.e., the job-worker, cannot avail the credit since he has not paid for the taxable input service
- No provision to allow the Principal Manufacturer to distribute such credit to the job-worker

## Policy Issue: Accumulation of Cenvat Credit

- **Accumulation of Cenvat credit with the manufacturers:**
  - Inverted duty structure/ Lower value addition,
  - SAD Credit not fully utilized – Refund to Trader etc.
- Import vs. Manufacturing
- Rule 10A → Transfer of unutilized Cenvat credit of SAD – Manufacturer having two or more factories can transfer unutilized Cenvat credit of SAD from one excise unit to another on strength of a transfer challan (W.e.f 1/4/2012) – Quarterly basis - Not available for Units availing Area based Exemption
- **W.E.F 11-7-2014: LTU can't transfer Credit from One Unit to Another**

# Policy Issue: Employer's Service to Employees

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- ▶ Number of facilities provided by an employer to the employee have come within the service tax net and proposed by Draft Circular F. No. 354/127/2012-TRU dated 27th July 2012
- ▶ Like canteen in factory/ office premises, transport facilities, etc., for which a fixed amount recovered from the employees
- ▶ **Whether the employer is allowed to take the credit of service tax paid on outdoor catering, transport services, etc., availed by it for providing such services to its employees**

## Cenvat Credit Matching Concept

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- **Whether assessee is expected to verify with Department whether supplier had paid duty on inputs supplied, in order to avail Cenvat credit?**
- No specific condition under Credit Rules
- Sub rule (5) and (6) of Rule 9 of Credit Rules, only specify that burden of proof lies on Manufacturer or Service Provider regarding admissibility of the CENVAT credit on Inputs, Capital Goods and Input Services
- ***CCE, Jalandhar Vs. Kay Kay Industries [AIT-2013-147-SC]***

# Rule 6(1) - Obligation

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- ▶ No credit will be allowed on
  - ▶ Such quantity of inputs used
    - in or in relation to the manufacture of exempted goods or
    - for provision of exempted services,
  - ▶ input service used
    - in or in relation to the manufacture of exempted goods and their clearance up to the place of removal or
    - for provision of exempted services
- ▶ except as mentioned in sub-rule (2).

# Rule 6(2)

- ▶ In case of Common Cenvat credit availed in respect of any inputs or input services and
- ▶ then, the manufacturer or provider of output service **shall maintain separate accounts** for-
  - ▶ (a) the receipt, consumption and inventory of inputs used-
    - ▶ (i) in or in relation to the manufacture of exempted goods;
    - ▶ **(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;**
    - ▶ (iii) for the provision of exempted services;
    - ▶ **(iv) for the provision of output services excluding exempted services; and**

# Rule 6(2)

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

# Rule 6(3)

- ▶ Notwithstanding anything contained in sub-rules (1) and (2) → **Opting not to maintain separate accounts**, shall follow **any one of the following options**, as applicable to him, namely:-
  - ▶ *Pay an amount equal to six per cent. of value of the exempted goods and exempted services; or*
  - ▶ *Pay an amount as determined under sub-rule (3A); or*
  - ▶ *Maintain separate accounts for the receipt, consumption and inventory of inputs as per 6(2), and for input service pay the ineligible amount computed as per sub-rule (3A)*



# Rule 6(3)

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- Abatement for payment of service tax with a condition that no credit on inputs and input services, value for 6% will be only the exempted value.
- In case of transportation of goods or passengers by rail instead of 6% of exempted value, it should be 2% of exempted value.
- Any option taken it should be for all exempted goods/services and such option cannot be withdrawn during the remaining part of the financial year.



# Rule 6(3A) – Determination, Conditions and Procedure

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- ▶ While exercising this option (Formula Based), Manufacturer/service provider has to intimate in writing to the SCE giving the following particulars:-
    - ▶ name, address and registration No. of the manufacturer of goods or provider of output service;
    - ▶ date from which the option under this clause is exercised or proposed to be exercised;
    - ▶ description of dutiable goods or output services;
    - ▶ description of exempted goods or exempted services;
    - ▶ CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition
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# Rule 6(3A) – Determination, Conditions and Procedure

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- ▶ After choosing option by Manufacturer or the provider of output service:
- ▶ Details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally,
- ▶ CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined
- ▶ Amount short paid determined along with the date of payment  
→ Pay the amount so calculated on or before 30th June of the succeeding financial year
- ▶ Interest payable and paid, if any, on the amount short-paid, determined, and
- ▶ Credit taken on account of excess payment, if any, determined;



## Rule 6(3A) – Determination, Conditions and Procedure

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



## Rule 6(3B) – (3D)

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- ▶ 6(3B) - A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.
- ▶ 6(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 – Value – Sub Rule (3) & (3A)

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- ▶ (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;
- ▶ (b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or
- ▶ (c) in case of **trading**, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.
- ▶ (d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more.
- ▶ e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;



# Other Explanation

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- ▶ 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.



## 6(4)

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





# Rule 6(6)


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- ▶ The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-
    - (i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or
    - (ii) cleared to a hundred per cent. export-oriented undertaking; or
    - (iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
    - (iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available
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## Rule 6(6)

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- (iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. 12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012; or
  - (v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
  - (vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting, or
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## Rule 6(6)

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- ▶ (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]<sup>44</sup>
- ▶ (viii) supplies made for setting up of solar power generation projects or facilities.



## 6(7) & (8)

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

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

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

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

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# Thank You !

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