

# Conditions for Allowing CENVAT Credit

## **RULE 4 : Conditions for CENVAT Credit**

### Statutory Provision

- (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service:

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

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

- (2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or outside the factory of the manufacturer of the Final products for generation of electricity for captive use within the factory, at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

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

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

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

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

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

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

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

- (3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.
- (4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961( 43 of 1961).
- (5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or

memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf, according to his specifications.

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

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

Provided that in case of an input service 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 on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:

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

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who

has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited:

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

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

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

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

## Commentary

### Time limit for taking credit of duty paid on input

Rule 4(1) of CCR states that Cenvat credit may be taken immediately on receipt of input in the factory or the premises of service provider. Department clarified that immediately means at the earliest opportunity when the input are received. However it does not mean that manufacturer or service provider does not take credit afterward. In fact rule uses the term ' may be taken immediately' . This may can not be read as 'must'.

In one of case it was held that in the absence of any time limit CENVAT Credit can be taken any time- even after three four years- *SAIL vs. CCE 2000RLT CEGAT. Super Cassette vs. CCE 2004 ELT 280 ( CESTAT), Industrial Cable vs. CCE 2009 [236 ELT P&H –HC], Punjab National Bank vs. CCE 2012 STT 75, Coromandal Fertiliser vs. CCE 2009 CESTAT.*

### Availment of CENVAT Credit on capital goods

Cenvat credit on capital goods is required to be availed in two installments i.e. 50% in first year and balance in subsequent year. SSI unit can take entire Cenvat credit immediately. Similarly, entire credit of special CVD of 4% can be availed immediately [ Rule 4(2)]

#### **Cenvat Credit of capital goods obtained on lease, hire purchase or loan**

Cenvat credit of capital goods is available even if these are obtained on financial lease or hire purchase from financing company [ Rule 4(3)]

Depreciation can not be claimed on duty portion of value of capital goods.

#### **Removal of input or capital goods for job work/ repair/ testing**

Input or capital goods as such or after carrying out partial processing, without payment of duty. The goods should be returned within 180 days after job work.

Amount of duty is to be paid on completion of 180 days. If amount is not debited on 180 days, penalty can be imposed. – *Fiat India v. CCE 2006ELT 439[ CESTAT ]*

- **Final product can be despatched directly from job worker's place ;**

Goods can be directly cleared from job worker place or processing site after obtaining approval from Asst./Deputy Commissioner – Rule 4[6] of CENVAT Credit Rules.

- Moulds and dies, jigs and fixture are not required to be returned in 180 days- capital goods/ raw material must come back within 180 days is not applicable to moulds and dies, as that provision applies only to capital goods sent under rule 4(5)(a). – *Videocon Industries vs.CCE[2008]232 ELT [CESTAT], Pricol Ltd vs. CCE [2010] 251 ELT 289[ CESTAT].*
- Direct dispatch of input to job worker – the manufacturer can directly despatch the goods to job worker instead of bringing the goods to factory first and then to job worker[ to save transport cost] . [As per Rule 3 (1) of the CCR]. Though the direct despatch of capital goods are not permitted under rule 3(1). This applies only to input and input services.

- In case of *Diamond Cables V. CCE and Bharat Heavy Electrical v. CCE*, it was held that CENVAT can be availed when the goods were directly delivered to job worker.
- **Scrap waste generated at end of job worker.**

There are conflicting views

In *Rocket Engineering Corporation V. CCE [2006] ELT 33[CESTAT]* it was held that scrap is not required to be returned to raw material supplier and he is not required to pay any duty on the scrap. The reason is that earlier Rule 57F provided that waste and scrap arising during job work is required to be returned to raw material supplier. New CENVAT rules make no such provision. – *Fag Engineering v. CCE [2011] 266ELT 193 CESTAT*.

In *Silicon Cortec Vs. CCE [2004] 166 ELT 473 CESTAT* it was decided that job worker can be treated as manufacturer of waste and scrap as it is final product. He can pay duty on scrap. He can pay duty from Cenvat Credit available with him from his other product.

No duty on Invisible losses – *Galaxy Surfactants Vs. CCE 2006 ELT 39 CESTAT*.

**Capital goods can be sent to Job worker**

Rule 4(5)(a) of the CCR provides that the input as well as capital goods can be sent to job worker, as such or after being partially processed., for processing , testing , repair, as such or for any other purpose.

**Clearance of manufactured excisable goods without payment of duty for carrying out test other process not amounting to “manufacture”**

A manufacturer with specific approval of commissioner , remove excisable goods manufactured in his factory for carrying out test or any other purpose not amounting to manufacture to some other premises without payment of duty. Such other premises may or may not be registered under central excise. After the test or any other process goods can be brought back to factory without the payment of duty.

**Cenvat credit of input services on receipt of invoices.**

Cenvat credit of input services can be immediately availed on receipt of invoices. However if the payment is not made within three months from the date of invoice, the Cenvat credit is required to be reversed and the same can be availed later after the payment is made.

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