

ANALYSIS OF AMENDMENTS IN CENVAT CREDIT RULES, 2004 BY FINANCE ACT, 2011 AND BY VARIOUS NOTIFICATIONS ISSUED FROM 01.03.2011 TO 31.10.2011

BRIEF DETAIL OF THE AMENDMENTS

| S. NO. | AMENDMENT IN RULE | EFFECT | DATE OF APPLICABILITY | RELEVANT NN ETC |
|---------------|-----------------------------------|---------------------------|------------------------------|---|
| 1 | Rule 2 (a) Capital Goods | Definition Extended | 01.04.2011 | NN 03 DATED 01.03.11 |
| 2 | Rule 2 (d) exempted goods | Definition Extended | 01.03.2011 | Do |
| 3 | Rule 2 (e) Exempted Services | Do | 01.04.2011 | Do |
| 4 | Rule 2 (k) Input | Definition Substituted | 01.04.2011 | Do |
| 5 | Rule 2 (l) Input Service | Definition Substituted | 01.04.2011 | Do |
| 6 | Rule 2 (naa) | Definition Extended | 01.03.2011 | Do |
| 7 | Rule 3 (1)(i) | Proviso Inserted | 01.03.2011 | Do |
| 8 | Rule 3 (1)(vii) | Proviso Inserted | 01.03.2011 | Do |
| 8A | Rule 3 (1) | Sub clause (ixa) inserted | 18.04.2006 | Clause 68 (1) of FA 2011 Read with Schedule 8 |
| 9 | Rule 3 (4) After first proviso | Proviso Inserted | 01.03.2011 | NN 03 DATED 01.03.11 |
| 10 | Rule 3 (4) | Second Proviso Amended | 01.03.2011 | Do |
| 11 | Rule 3 (5) After first proviso | Proviso Inserted | 01.04.2011 | Do |
| 12 | Rule 3 (5) | Second Proviso Amended | 01.04.2011 | Do |
| 13 | Rule 3 (5B) | Extended | 01.03.2011 | Do |
| 14 | Rule 4(2)(a) | Extended | 01.04.2011 | Do |
| 15 | Rule 4(7) | Substituted | 01.04.2011 | Do + NN 13 DATED 31.03.11 |
| 16 | Rule 6 Heading | Substituted | 01.04.2011 | NN 03 DATED 01.03.11 |
| 17 | Rule 6(1) | Extended | 01.04.2011 | Do |
| 18 | Rule 6(2) | Substituted | 01.04.2011 | Do |

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|----|------------------------------------|--|------------|---------------------------|
| 19 | Rule 6(3) | Substituted any one for either | 01.04.2011 | Do |
| 20 | Rule 6(3)(i)/(ii) | Substituted | 01.04.2011 | Do |
| 21 | Rule 6(3) Explanation 2 | Substituted | 01.04.2011 | Do |
| 22 | Rule 6(3A)(b)(iii) | Extended | 01.04.2011 | Do |
| 23 | Rule 6(3A)(c)(iii) | Extended | 01.04.2011 | Do |
| 24 | Rule 6(3A) Explanation I, II & III | Omitted | 01.04.2011 | Do |
| 25 | Rule 6(3A) | Sub Rule 3B, 3C & 3D along with Explanation I To IV Inserted | 01.04.2011 | Do + NN 13 DATED 31.03.11 |
| 26 | Rule 6 (5) | Omitted | 01.04.2011 | NN 03 DATED 01.03.11 |
| 27 | Rule (6)(6A) | Inserted | 01.03.2011 | Do |
| 28 | Rule (9)(7) Proviso | Amended | 01.03.2011 | Do |
| 29 | Rule 2 (naa)(i) | Amended | 24.03.2011 | NN 09 DATED 24.03.11 |
| 30 | Rule 4(1) First Proviso | Extended | 24.03.2011 | NN 09 DATED 24.03.11 |
| 31 | Rule (9)After Cause (b) | Clause (bb) Inserted | 01.04.2011 | NN 13 DATED 31.03.11 |
| 32 | Rule 9A | Second Proviso of Sub Rule 1 & Proviso of Sub Rule 3 Omitted & clause 5 Inserted | 01.10.2011 | NN 22 DATED 14.09.11 |

How To Read And Understand This Article:

In this article, relevant portion of old provision has been shown above the new provision wherever necessary. **New provision or amendments has been highlighted by green colour** and after that extract of relevant notification, clause of Finance Act, 2011 and clarification, if any, issued by the department has been reproduced for better understanding of above mentioned amendments.

1.

(a) "capital goods" means:-

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;

- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; and
- (vii) storage tank, used-
 - (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A)

outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or

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in rule 2,-

(i) in clause (a), in sub-clause (A), after item (1), the following shall be inserted, namely:-

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

EXTRACT OF D.O.F.No.334 3 2011-TRU DATED 25.03.11

(c) In the case of **capital goods**, there is no material change in the definition. Credit of duty paid on capital goods used outside the factory for generation of electricity for captive use within the factory has been permitted.

ANALYSIS OF ABOVE AMENDMENT

Now capital goods also include those capital goods which will be used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory.

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01.04.2011

- (2) for providing output service;
- (B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

2.

- (d) "exempted goods" means excisable goods which are exempt from the

whole of the duty of excise leviable thereon, and **includes** goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed.

AS PER NN3 2011 DATED 01.03.11

(ii) in clause (d), after the words "rate of duty", the words "and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed" shall be inserted with effect from the 1st day of March, 2011;

ANALYSIS OF ABOVE AMENDMENT

Under NN 1/2011 –CE dated 01.03.11 excise duty will be paid @1% on the goods specified in the said notification on the condition that assessee will not take CENVAT credit under CENVAT Credit Rules, 2004 in respect of duty on inputs or tax on input services.

It is advisable for the assessee that before availing benefit under above notification they should compare that whether it is beneficial to avail the benefit of above notification or going with normal provision. In other words, assessee should analyse whether to pay excise at normal rate and take CENVAT credit or pay excise duty at concessional rate under above notification and not to take CENVAT credit.

**DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.03.2011**

3.

- (e) "exempted services" means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act and taxable services 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.

Explanation.- For the removal of doubts, it is hereby clarified that "exempted services" includes trading

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(iii) in clause (e), after the words and figures "section 66 of the Finance Act", the following shall be inserted, namely:-
"and taxable services 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.

Explanation.- For the removal of doubts, it is hereby clarified that "exempted services" includes trading";

ANALYSIS OF ABOVE AMENDMENT

Thus scope of definition of exempted services has been Extended and CENVAT credit in respect of any input services used for trading shall not be allowed as it is included in the above definition.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011

4.

OLD PROVISION SUBSTITUTED BY NEW PROVISION

(k) "input" means-

- (i) all goods,
except light diesel oil, high speed diesel oil and motor spirit,
commonly known as petrol,
used in or in relation to the manufacture of final products whether
directly or indirectly and whether contained in the final product or not
and
includes lubricating oils, greases, cutting oils, coolants, accessories
of the final products cleared along with the final product,
goods used as paint, or as packing material, or as fuel, or for
generation of electricity or steam used in or in relation to manufacture
of final products or for any other purpose, within the factory of
production;
- (ii) all goods, except light diesel oil, high speed diesel oil, motor spirit,
commonly known as petrol and motor vehicles, used for providing
any output service;

Explanation 1.- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2.- Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;
but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;

NEW PROVISION

(k) "input" means—

- (i) all goods ***used in the factory*** by the manufacturer of the final product; or
- (ii) any goods including accessories, ***cleared along with*** the final product, ***the value of which is included*** in the value of the final product and goods used for providing ***free warranty*** for final

products; or

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

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

but **excludes**-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods **used for**-

(a) construction 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 any taxable service specified in sub-clauses (zn), (zzi), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(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**.

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;

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(iv) for clause (k), the following shall be **substituted**, namely:-

„(k) “input” means–

(i) all goods used in the factory by the manufacturer of the final product; or

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

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

(iv) all goods used for providing any output service;

but **excludes**-

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for-

(a) construction 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 any taxable service specified in sub-

clauses (zn), (ztl), (ztl), (ztl), (ztl) and (zzza) of clause (105) of section 65 of the Finance Act;

(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.

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;”;

ANALYSIS OF ABOVE AMENDMENT

LIST OF SERVICES SPECIFIED UNDER RULE 2 (k)(iv)(B)

1. Port Services [65 (105) (zn)]
2. Port Services in other port [65(105)(ztl)]
3. Air Port Services [65(105)(ztl)]
4. Commercial or Industrial Construction Services [65(105)(ztl)]
5. Construction of Complex Services [65(105)(zzzh)]
6. Works Contract Services [65(105)(zzza)]

Any goods used for the provision of above specified services shall be included in the definition of input and accordingly CENVAT credit in respect of same can be taken and utilised.

EXTRACT OF D.O.F.No.334 3 2011-TRU DATED 25.03.11

(a) The definition of „input“ contained in rule 2(k) has been **revised**. The requirement that goods should be used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not has been **removed**. Henceforth, ***all goods used in the factory by the manufacturer of the final product, except those specified in the negative list and goods having no relationship whatsoever with the manufacture of final product, would qualify for treatment as inputs.*** In addition, any goods including accessories cleared alongwith the final product and goods used for providing free warranty have also been included in the definition of inputs. Similarly, goods used for generation of electricity or steam for captive use also constitute inputs.

As for exclusions, any goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods have been excluded. Another feature of the new definition is that goods used primarily for personal use or

consumption of any employee including food articles etc. have been expressly excluded.

EXTRACT OF CIRCULAR NO.943/04/2011-CX DATED 29.04.2011

| S.No. | Issue | Clarification |
|-------|---|--|
| 3 | How is the "no relationship whatsoever with the manufacture of a final product" to be determined? | Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed . |
| 4 | Is the credit of input services used for repair or renovation of factory or office available? | Credit of input services used for repair or renovation of factory or office is allowed . Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services. |
| | | |

**DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011**

5.

OLD PROVISION SUBSTITUTED BY NEW PROVISION

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

- (i) used by a provider of taxable service for providing an output service; or
- (ii) 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,

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, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

NEW PROVISION

(l)

"input service" means any service, -

- (i) used by a provider of taxable 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 **upto the place of removal,**

and **includes** services used in relation to modernisation, renovation or repairs of a **factory, premises** of provider of output service or **an office** relating to such factory or premises,

advertisement or sales promotion, market research,

storage upto the place of removal,

procurement of inputs,

accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services,

inward transportation of inputs or capital goods and outward transportation **upto the place of removal,**

but **excludes** services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are **used for-**

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, **except** for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the

Finance Act, in so far as they **relate to a motor vehicle except** when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel

benefits **extended to employees on vacation such as Leave or Home Travel Concession**, when such services are used primarily for **personal use or consumption of any employee;**”;

EXTRACT OF NN3 2011 DATED 01.03.11

(v) for clause (l), the following shall be substituted, namely:-

„(l) “input service” means any service, -

(i) used by a provider of taxable 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 upto the place of removal,

and **includes** services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,

advertisement or sales promotion, market research,

storage upto the place of removal,

procurement of inputs,

accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services,

inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but **excludes** services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are **used for-**

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,**except** for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they **relate to a motor vehicle except** when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits **extended to employees on vacation such as Leave or Home Travel Concession**, when such services are used primarily **for personal use or consumption of any employee;**”;

ANALYSIS OF ABOVE AMENDMENT

List of Services Specified Under Rule 2 (I)(ii)(A)

1. Port Services [65 (105) (zn)]
2. Port Services in other port [65(105)(zzl)]
3. Air Port Services [65(105)(zzm)]
4. Commercial or Industrial Construction Services [65(105)(zzq)]
5. Construction of Complex Services [65(105)(zzzh)]
6. Works Contract Services [65(105)(zzza)]
7. Architect's Services [65 (105) (p)]

If the above services are used for the

(a) construction 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

then these services shall not be considered as input services and accordingly CENVAT credit shall not be allowed. In other words, if the above services are used for provision of services other than construction etc in clause (a) & (b) then they shall be included in the definition of input services and accordingly CENVAT credit shall be taken.

List of Services Specified Under Rule 2 (I)(ii)(B)

1. General Insurance Business Services [65 (105) (d)]
2. Rent-a-Cab Scheme Operator Services [65(105)(o)]
3. Authorised Service Station Services [65(105)(zo)]
4. Supply of Tangible Goods Services [65(105)(zzzj)]

If the above services are used in respect of motor vehicle by any service provider then they shall not be included in the definition of input services and accordingly **CENVAT credit shall not be taken**. However, if the above services are used by the following service provider in respect of motor vehicle then they shall be included in the definition of input service and accordingly **CENVAT credit shall be taken**:

1. Courier Agency Services [65 (105) (f)]
2. Tour Operator Services [65(105)(n)]
3. Rent-a-Cab Scheme Operator Services [65(105)(o)]
4. Cargo Handling Agency Services [65(105)(zr)]
5. Goods Transport Agency Services [65(105)(zzp)]
6. Outdoor Caterer Services [65(105)(zzt)]
7. Panadal or Shamiana Contractor Services [65 (105) (zzw)]

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(b) The definition of „input service“ has also been rationalized to impart clarity and to achieve congruence between goods and services so that the services related to any goods excluded from the definition of „inputs“ are also excluded from the definition of „input services“. To give an example, goods used for construction have been excluded from inputs while construction services, works contract service, and other specified services in so far as they are used for construction have been kept out

of the purview of input services.

EXTRACT OF CIRCULAR NO.943/04/2011-CX DATED
29.04.2011

| S.No. | Issue | Clarification |
|-------|--|---|
| 2 | Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative? | The list is <i>only illustrative</i> . The principle is that credit is not allowed when any goods and services are used primarily for personal use or consumption of employees. |
| 4 | Is the credit of input services used for repair or renovation of factory or office available? | Credit of input services used for repair or renovation of factory or office is <i>allowed</i> . Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services. |
| 5 | Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"? | <i>The definition of input services allows all credit on services used for clearance of final products upto the place of removal.</i> Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis. |
| 12 | Is the credit available on | The credit on such service shall be available if its |

| | | | |
|--|--|---|--|
| | services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service | provision had been <i>completed before 1.4.2011.</i> | |
| DATE OF APPLICABILITY OF ABOVE AMENDMENT 01.04.2011 | | | |

6.

OLD PROVISION SUBSTITUTED BY NEW PROVISION

- (naa) “manufacturer” or “producer” in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, **includes** a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;

NEW PROVISION

(naa) “manufacturer” or “producer”,-

(i) in relation to 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, includes a person who is liable to pay duty of excise leviable on such goods under subrule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;

EXTRACT OF NN3 2011 DATED 01.03.11

(vi) for clause (naa), the following shall be **substituted** with effect from the 1st day of March, 2011, namely:-

„(naa) “manufacturer” or “producer”,-

(i) in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under subrule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;”;

EXTRACT OF NN 09 2011 DATED 24.03.11

(i). in rule 2, in clause (naa), in sub-clause (i), for the words and figures "jewellery falling under heading 7113" the words and figures "jewellery or other articles of precious metals falling under heading 7113 or 7114 as the case may be" shall be substituted;

ANALYSIS OF ABOVE AMENDMENT

The meaning of manufacturer or producer under Rule 2(naa) has been extended.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.03.2011 & 24.03.2011.

7.

Rule 3. CENVAT credit. ---(1) A manufacturer or producer of final products or a provider of taxable service shall be **allowed** to take credit (hereinafter referred to as the CENVAT credit) of –

- (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed;

EXTRACT OF NN3 2011 DATED 01.03.11

(a) after clause (i) the following shall be *inserted* with effect from the 1st day of March, 2011,namely:-

"Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed;"

ANALYSIS OF ABOVE AMENDMENT

A manufacturer or producer of final products or a provider of taxable service **shall not be allowed** to take CENVAT credit of duty of excise paid on any goods in respect of which the benefit of an exemption under notification No.1/2011-CE, dated the 1st March, 2011 is availed.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.03.2011.

- (vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);

Provided that CENVAT credit shall not be allowed in **excess of eighty-five per cent.** of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Custom Tariff Act;

EXTRACT OF NN3 2011 DATED 01.03.11

(b) after clause (vii), the following shall be **inserted** with effect from the 1st day of March, 2011, namely:-

“Provided that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Custom Tariff Act;”;

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(d) The process of obtaining goods and material mainly melting scrap and re-rollable scrap of steel, by **breaking up of ships**, boats and other floating structures is deemed to be a process of manufacture in terms of section note 9 of Section XV of the Central Excise Tariff. In the breaking of ships, a number of used serviceable articles such as pumps, air-conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. ***These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process.*** At the same time, ship breaking units are allowed to avail full credit of additional duty of customs paid on the ship when it is imported for breaking. It has been reported by the field formations that this anomaly is resulting in misuse of the Cenvat credit scheme. **Rule 3 of the CCR** has been amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

ANALYSIS OF ABOVE AMENDMENT

Now CENVAT credit in respect of **additional duty of customs** paid under section 3(1) of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Custom Tariff Act, shall be allowed only upto 85% of additional duty of customs under section 3 (1).

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.03.2011.

(ix) the service tax leviable under section 66 of the Finance Act;

(ixa) the service tax leviable under section 66A of the Finance Act;
and

AS PER CLAUSE 68 (1) OF FINANCE ACT 2011 READ WITH SCHEDULE 8

(a) in clause (ix), the word "and" occurring at the end shall be omitted;

(b) after clause (ix), the following clause shall be **inserted**, namely:—

"(ixa) the service tax leviable under section 66A of the Finance Act; and".

ANALYSIS OF ABOVE AMENDMENT

It is a welcome amendment and now CENVAT credit in respect of service tax leviable under section 66A of the Finance Act may be taken retrospectively wef 18.04.2006.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
18.04.2006.

- (4) The CENVAT credit may be **utilized** for payment of –
- a) any duty of excise on any final product; or
 - b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
 - c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
 - d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or
 - e) service tax on any output service:

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be:

"Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed:

EXTRACT OF NN3 2011 DATED 01.03.11

(a) after the first proviso, the following shall be **inserted** with effect from the 1st day of March, 2011, namely:—

"Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed:"

ANALYSIS OF ABOVE AMENDMENT

CENVAT credit shall not be utilised for payment of any duty of excise

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service :

Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products:

EXTRACT OF NN3 2011 DATED 01.03.11

(a) after the first proviso, the following shall be inserted , namely:-

“Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.”:

ANALYSIS OF ABOVE AMENDMENT

Now CENVAT credit taken on inputs which are removed **as such** from the factory, or premises of the provider of output service, **is not required to be paid** if the inputs are removed as such outside the factory for providing free warranty for final products.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011.

Provided also that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(a) for computers and computer peripherals:

for each quarter in the first year @ 10%

for each quarter in the second year @ 8%

for each quarter in the third year @5%

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

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

EXTRACT OF NN3 2011 DATED 01.03.11

(b) in the second proviso, for the word “further”, the word “also” shall be substituted;

(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(5B) If the value of any,
 (i) input, or
 (ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully **or partially** or where any provision to write off fully **or partially** has been made in the books of account then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

EXTRACT OF NN3 2011 DATED 01.03.11

(iv) in sub-rule (5B), for the words and letters “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 then”, the words and letters “on which CENVAT credit has been taken is written off fully **or partially** or where any provision to write off fully **or partially** has been made in the books of account then” shall be **substituted** with effect from the 1st day of March, 2011;

EXTRACT OF D.O.F.No.334 3 2011-TRU DATED 25.03.11

(e) **Rule 5B** is being amended to require a manufacturer or service provider to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off partially before being put to use. Currently, this is required only when the value is written off fully.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.03.2011.

EXTRACT OF CIRCULAR NO.943/04/2011-CX DATED 29.04.2011

| S. No. | Issue | Clarification |
|--------|--|--|
| 6 | Can the credit of input or input services used exclusively in trading, be availed? | Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed. |
| 7 | What shall be the treatment of credit of input and input services used in trading before 1.4.2008? | Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up |

| | | | | |
|--|---|--|--|--|
| | | | to 20% of the total duty liability as provided for in extant Rules. | |
| | 8 | While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation? | The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used. | |

8.

Rule 4. Conditions for allowing CENVAT credit. - (1) The CENVAT credit in respect of inputs may be taken ***immediately on receipt of the inputs*** in the factory of the manufacturer or in the premises of the provider of output service:

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.

EXTRACT OF NN 09 2011 DATED 24.03.11

(ii). in rule 4, in sub-rule (1), in the first proviso for the words and figures "jewellery falling under heading 7113" the words and figures "jewellery or other articles of precious metals falling under heading 7113 or 7114as the case may be" shall be substituted.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

24.03.2011.

(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:

EXTRACT OF NN3 2011 DATED 01.03.11

(i) in sub-rule (2), in clause (a), after the words "provider of output service" the words, "or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory," may be ***inserted***;

ANALYSIS OF ABOVE AMENDMENTS

Now the CENVAT credit in respect of capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory shall be allowed as per provision of Rule 4(2) of above rules.

| |
|---|
| DATE OF APPLICABILITY OF ABOVE AMENDMENT 01.04.2011. |
|---|

OLD PROVISION SUBSTITUTED BY NEW PROVISION

(7) The CENVAT credit in respect of 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 is indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

NEW PROVISION

(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".

EXTRACT OF NN 13 2011 DATED 31.03.11

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules") in rule 4, for sub-rule 7, the following sub-rule shall be **substituted**, namely:-

'(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".

ANALYSIS OF ABOVE AMENDMENT

Earlier CENVAT credit on input services is allowed on or after the payment of value of input service and service tax thereon but after the introduction of Point of Taxation Rules, 2011 it become necessary to amend the same and consequently now CENVAT credit in respect of input services shall be allowed on or after receipt

of invoice, bill or challan as the case may be.

However, in case of reverse charge mechanism (i.e. when the recipient of taxable is liable to pay service tax) CENVAT credit shall be taken on or after the day on which payment, of value of input service and service tax thereon, is made.

Now Govt. has made it mandatory on the part of the receiver of taxable to make the payment of value of input service and the service tax thereon within 3 months of the date of the invoice, bill or, as the case may be, challan. Otherwise assessee shall pay an amount equal to the CENVAT credit availed on such input service.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011.

9.

OLD HEADING

Rule 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.-

NEW HEADING

Rule 6. Obligation of a manufacturer or producer of final products and a provider of taxable service.-

EXTRACT OF NN3 2011 DATED 01.03.11

(i) for the marginal heading, the following shall be **substituted**, namely:-

"Obligation of a manufacturer or producer of final products and a provider of taxable service"

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011.

(1) The CENVAT credit shall not be allowed on such quantity of **input** used in or in relation to the manufacture of exempted goods or for provision of exempted services,

Or

input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

EXTRACT OF NN3 2011 DATED 01.03.11

(ii) in sub-rule (1), for the words "input or input service which is used in the manufacture of exempted goods or for provision of exempted services", the words "input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services" shall be substituted;

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011.

OLD PROVISION SUBSTITUTED BY NEW PROVISION

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall ***maintain separate accounts*** for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

NEW PROVISION

(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, 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
- (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 upto 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).

EXTRACT OF NN3 2011 DATED 01.03.11

(iii) for sub-rule (2), the following shall be substituted, namely:-

“(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, 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
(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 upto 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).”;

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, **opting not to maintain separate accounts**, shall follow **any one** of the following options, as applicable to him, namely:-

OLD PROVISION SUBSTITUTED BY NEW PROVISION

- (i) the manufacturer of goods shall pay an amount equal to five per cent. of value of the exempted goods and the provider of output service shall pay an amount equal to six percent. of value of the exempted services; or
- (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

NEW PROVISION

(i) pay an amount equal to **five 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 subclauses (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) of clause (b) and subclauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:
Provided that if any duty of excise is paid on the exempted goods, the same shall be **reduced** from the amount payable under clause (i):
Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be **five per cent.** of the value so exempted.”;

EXTRACT OF NN3 2011 DATED 01.03.11

(b) for clauses (i) and (ii), the following shall be substituted, namely:-

“(i) pay an amount equal to five 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 subclauses (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) of clause (b) and subclauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:
Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i):
Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be five per cent. of the value so exempted.”;

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.04.2011.

OLD EXPLANATION SUBSTITUTED BY NEW EXPLANATION

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 or provision of exempted service.

NEW EXPLANATIONS

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

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

EXTRACT OF NN3 2011 DATED 01.03.11

(c) for Explanation II, the following shall be **substituted**, namely:-

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

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

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011.

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

(a)

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

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

(b) the manufacturer of goods or the provider of output service 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 of CENVAT credit attributable to inputs used for provision of exempted services
(provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

- (iii) the amount attributable to input services used in or in relation to **manufacture of exempted goods and their clearance up to the place of removal** or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and 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;

- (c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services 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 of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;
 - (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods **and their clearance up to the place of removal** or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, N denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;
- (d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;
- (e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;
- (f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;
- (g) the manufacturer of goods or the provider of output service shall intimate to the

jurisdictional

Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment,

as per condition (d) and (f) respectively, the following particulars, namely:-

- (i) details of CENVAT credit attributable to exempted goods and exempted services, month wise, for the whole financial year, determined provisionally as per condition (b),
 - (ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),
 - (iii) amount short paid determined as per condition (d), along with 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);
- (h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services 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.
- 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.

THESE EXPLANATION HAS BEEN OMITTED BY NN 03 DATED 01.03.11

Explanation I.- "Value" for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may 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 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) or as the case may be sub-rule (3A), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

„(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial

company, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, 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.

(3C) Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to **twenty per cent.** of the CENVAT credit availed on inputs and input services in that month.

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

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

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made 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 thereunder.

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 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.

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), 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), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".;

EXTRACT OF NN3 2011 DATED 01.03.11

(v) in sub-rule (3A),-

(a) in clause (b), in sub-clause (iii), after the words "manufacture of exempted goods", the

words "and their clearance up to the place of removal" shall be inserted;

(b) in clause (c), in sub-clause (iii), after the words "manufacture of exempted goods", the

words "and their clearance up to the place of removal" shall be inserted;

(vi) after sub-rule (3A), the *Explanations I, II and III* shall be **omitted**;

(vii) after sub-rule (3A), the following shall be **inserted**, namely-

„(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a **banking company and a financial institution** including a non-banking financial company, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, 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.

(3C) Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to **twenty per cent.** of the CENVAT credit availed on inputs and input services in that month.

(3D) Payment of an amount under sub-rule (3) shall be **deemed to be CENVAT credit not taken** for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

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

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made 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 thereunder.

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 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 purchase price of the goods traded.**

EXTRACT OF NN 13 2011 DATED 31.03.2011

1. In rule 6 of the said rules, in *Explanation I*, in clause (c) for the words "shall be the difference between the sale price and the purchase price of the goods traded", the words "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" shall be **substituted**.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), 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), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".;

| S.No. | Issue | Clarification |
|-------|---|---|
| 1 | Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under Notification 1/2011- CE is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken? | As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services 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, are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed. |
| 10 | Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of Cenvat credit? | The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation" must be read harmoniously with the definition of "inputs". |
| 11 | Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each | The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial |

| | | |
|--|---------------|--|
| | registration? | services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premises, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done. |
| DATE OF APPLICABILITY OF ABOVE AMENDMENT 01.04.2011 | | |

(4) 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.

OLD PROVISION

(5) Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless such service is ***used exclusively in or in relation to the manufacture of exempted goods or providing exempted services.***

NEW PROVISION

(5) **Omitted**

EXTRACT OF NN3 2011 DATED 01.03.11

(viii) sub-rule (5) shall be omitted;

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-

- (i) cleared to a unit in a special economic zone; or to a developer of a special economic zone for their authorized operations ; or
- (ii) cleared to a 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 under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or
- “(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. 6/2006- Central Excise dated the 1st March, 2006, number G.S.R.96(E), dated the 1st March, 2006; or” (WEF 01.07.10 VIDE NN 27 DATED 01.07.2010)
- (v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
- (vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or.
- (vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,—
- (a) against International Competitive Bidding; or
- (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
- (c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006.

(6A) 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.

EXTRACT OF NN3 2011 DATED 01.03.11

(ix) after sub-rule (6), the following shall be inserted with effect from the 1st day of March, 2011, namely:-

“(6A) 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.”.

ANALYSIS OF ABOVE AMENDMENT

CENVAT credit shall be allowed in respect of **input or input services** used in the provision of taxable services which are provided to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations even if these services are provided without payment of service tax.

DATE OF APPLICABILITY OF ABOVE AMENDMENT
01.03.2011

10.

Rule 9. Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

- (a) an invoice issued by-
 - (i) a manufacturer for clearance of -
 - (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
 - (II) inputs or capital goods as such;
 - (ii) an importer;
 - (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
 - (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or
- (b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

- (bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 **except** where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.

EXTRACT OF NN 13 DATED 31.03.2011

4. In rule 9 of the said rules, after clause (b), the following clause may be **inserted**, namely:-

"(bb) a supplementary invoice, bill or challan issued by a provider of output

service, in terms of the provisions of Service Tax Rules, 1994 **except** where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax."

ANALYSIS OF ABOVE AMENDMENT

Now CENVAT credit can also be taken on the basis of supplementary invoice etc. issued by the provider of output service.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.04.2011

(7) The manufacturer of final products shall submit within **ten days** from the close of each month to the Superintendent of Central Excise, a **monthly return** in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a **quarterly return** in the form specified, by notification, by the Board within **ten days (twenty days)** after the close of the quarter to which the return relates.

EXTRACT OF NN3 2011 DATED 01.03.11

6. In rule 9 of the said rules, in sub-rule (7), in the proviso, for the words "twenty days", the words "**ten days**" shall be substituted with effect from the 1st day of March, 2011.

ANALYSIS OF ABOVE AMENDEMENT

Now under proviso to rule 9 (7), where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a **quarterly return** within **10 days** after the close of the quarter to which the return relates. Earlier it was 20 days.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.03.2011

11.

Rule 9A. – Information relating to principal inputs. - (1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, **annually** by 30th April of each Financial Year, a **declaration** in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products:

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004.

THE BELOW MENTIONED PROVISIO OF 9A (1) HAS BEEN OMITTED BY NN 22 DATED 14.09.11

"Provided further that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file such declaration electronically."

EXTRACT OF NN 22 2011 DATED 14.09.11

2. In the CENVAT Credit Rules, 2004,-

(a) in rule 9A, -

(i) in sub-rule (1), the second proviso shall be omitted;

(2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a **monthly return** in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

THE BELOW MENTIONED PROVISIO OF 9A (3) HAS BEEN OMITTED BY NN 22 DATED 14.09.11

"Provided that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said monthly return electronically:" (WEF 01.06.2010 VIDE NN 21 DATED 18.05.2010)

EXTRACT OF NN 22 2011 DATED 14.09.11

2. In the CENVAT Credit Rules, 2004,-

(a) in rule 9A, -

(ii) in sub-rule(3), the proviso shall be omitted;

(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

"(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule."

EXTRACT OF NN 22 2011 DATED 14.09.11

2. In the CENVAT Credit Rules, 2004,-

"(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule."

ANALYSIS OF ABOVE AMENDMENT

Now all the assessee are required to file declaration under rule 9A (1) and monthly return under rule 9A (3) electronically wef 01.10.2011.

DATE OF APPLICABILITY OF ABOVE AMENDMENT

01.10.2011