

## Credit of service tax paid on Transportation Charges

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### Background

Cenvat Credit is a beneficial scheme wherein the duty paid at earlier stage on inputs and input services is allowed to be set off against the liability on manufactured goods or output services provided. One of the major expenses incurred by manufacturer is transportation charges for inwards movement of input & capital goods and outward movement of finished goods.

### Person liable to pay tax

Where the person liable to pay freight in relation to service provided by a goods transport agency (GTA) is any of the following:

- i. any factory registered under or governed by the Factories Act, 1948;
- ii. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;
- iii. any co-operative society established by or under any law;
- iv. any dealer of excisable goods, registered under Central Excise Act;
- v. any body corporate established, by or under any law; or
- vi. any partnership firm whether registered or not under any law including association of persons;

then the service tax needs to be paid by person who pays or is liable to pay freight either himself or **through his agent**. Service tax needs to be paid on 30% of the freight charges i.e. effective rate of tax would be  $14.5\% \times 30\% = 4.35\%$ . The concessional rate would be applicable where GTA has not availed credit on input, input service and capital goods.

### Input service definition

The definition of input service as per section 2 (l) of Cenvat Credit Rules (CCR)– means any service ... used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products AND CLEARANCE OF FINAL PRODUCT upto the place of removal, and INCLUDES services used .....inward transportation of inputs or capital goods and outward transportation **upto the place of removal**.....This definition indicates that the credit of outward freight is eligible when expense has been incurred upto place of removal.

### Concept of Place of removal

As per Rule 2 (qa) of CCR, “*place of removal*” means.

- i. a factory or any other place or premises of production or manufacture of the excisable goods;
- ii. a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
- iii. depot, premises of a consignment agent or any other place or **premises from where the excisable goods are to be sold after their clearance from the factory;**

*from where such goods are removed;*

The definition of ‘sale’ under Central Excise Act would be relevant to arrive at place of removal of excisable goods. Under the Act, sales mean **any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;**

On a conjoint reading of the definitions of sale and place of removal, in case of a sale from a depot or any other premises (from where the possession of excisable goods is transferred for consideration by manufacturer, after their clearance from the factory), the determination of the ‘place of

removal' would be that location outside the factory. Then it can be inferred that location of customers site where the possession of the goods is handed over for a payment after the clearance from factory and where such sale takes place is the place of removal.

#### **Availment of credit of ST paid on freight outwards**

Based on above definition, it is clear that the place of removal would depend upon the specific transaction in issue. Where the removal is pursuant to sales on FOR basis, with the risk in the goods manufactured being borne by the manufacturer till delivery to the customer at its premises and where the composite value of sales include the value of freight involved in delivery at the customer's premises, the place of removal would not be at the factory gate, but the customer's premises. In such scenario, credit on GTA service would be eligible.

On the other hand, in cases where sale is ex-factory, place of removal would be factory and credit of service tax on transportation charges would not be eligible.

#### **Judicial Precedents**

- i. Gujarat Ambuja Cement Ltd. 2009-TIOL-110-HC-P&H-ST where assessee availed credit for duty paid on outward freight which was disallowed by revenue. It was held by High Court that assessee is eligible for Credit.
- ii. New Allenberry Works Vs CCE CENVAT - 2014-TIOL-724-CESTAT-DEL the question was whether credit of service tax can be taken for the outward freight in respect of excisable goods delivered at the premises of buyer for period November, 2009 to March, 2010. Held that where the place of delivery of the goods is the customer premises and the freight is borne by the manufacturer, the place of removal has to be held as the customer's factory gate.
- iii. Also in Ultra Tech Cement Ltd. Vs. C.C.Ex. and ST, Rohtak [2014-TIOL-1934-CESTAT-DEL] has again held that Cenvat credit on outward transportation is allowed when the sales are made on FOR destination basis and place of removal would be customer's premises.

In paper writers view, there was no restriction as per law as the word 'includes' in input services definition does not disentitle credit on outward GTA. Further as per PO terms in the case of manufacturer [supported by case laws], where the removal (sale completion) is ONLY at the customer's premises therefore such credit on outwards GTA are eligible to be availed.

#### **Credit in different situations:**

- 1. Whether freight and outward insurance amount charged are includible in assessable value when the sale is ex-works? Whether credit is eligible?**  
**Comment:** *If sale is ex-works then freight and outward insurance charges are not includible to arrive at the value of excisable goods and credit is not eligible.*
- 2. Whether freight and outward insurance amount charged are includible in assessable value when the sale is Free On Road(FOR) basis?**  
**Comment:** *In some cases price is FOR and the possession is given to buyer only at destination. The ownership of goods could be transferred to buyer only at buyer's premises. Sale takes place when delivery is given at destination of customer place and hence destination is place of removal. Hence freight upto place of destination would be includible in assessable value of excisable goods and credit of service tax paid would be eligible.*

**3. In case of exports, which freight charges would be eligible for credit?**

**Comment:** It has been clarified by department vide circular no. 999/6/2015-CX, dated 28-2-2015 that In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Credit of freight charges upto port would be eligible. Alternatively, exporter may claim exemption from payment of service tax on transportation charges under Notification No. 31/2012-ST.

**4. Where goods are sold by manufacturer to merchant exporter, whether credit would be admissible to manufacturer?**

**Comment:** If the sale is ex-factory and goods are moved to port by manufacturer on request of merchant exporter, credit would not be admissible as place of removal has become factory. On the other hand, if goods are required to be delivered at the port by manufacturer, credit of transportation charges upto port would be eligible.

**5. Credit of service tax paid on purchase of input and capital goods, whether eligible?**

**Comment:** Yes, the definition of input service specifically includes inward transportation of input and capital goods. Hence, credit would be eligible.

**6. Transportation charges incurred for the goods sent from factory to depot, whether credit available?**

**Comment:** Where goods are sent to depot from where sale is made to ultimate customer, depot become place of removal and credit would be eligible. Similarly, transportation charges on goods sent to job worker for further processing would be eligible.

**Conclusion**

Above discussion indicates that credit is eligible for expense incurred upto place of removal. The place of removal needs to be decided on case to case basis depending upon the terms of the contract with customer and the place where risk and reward is transferred. For any queries, mail at [ashish@hiregange.com](mailto:ashish@hiregange.com) or [madhukar@hiregange.com](mailto:madhukar@hiregange.com)