

CENVAT Credit of Duty Paid on Capital Goods

CENVAT Credit is available on Capital goods used by manufacturer or service provider. Let us discuss the intricacies of CENVAT on capital goods which is most contentious issue nowadays.

RULE 2(a) : Capital Goods

"capital goods" means:- definition of "capital goods" is amended by notification no. 28/2012 dated 20.6.2012.

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading no. 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act; *** defined
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof;
- (vii) storage tank; and
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers have been inserted w.e.f.

1.7.2012 **** Defined

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
- (2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

- (i) providing an output service of renting of such motor vehicle; or
(ii) transportation of inputs and capital goods used for providing an output service; or
(iii) providing an output service of courier agency”
(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-
(i) transportation of passengers; or
(ii) renting of such motor vehicle; or
(iii) imparting motor driving skills
 (D) components, spares and accessories of motor vehicles which are capital goods for the assessee

Capita Good covered in Clause (A)(i)

Chapter 82 : tools hand tools Knives etc

Chapter 84 : machinery

Chapter 85 : Electrical Machinery

Chapter 90 : Measuring, Checking and testing machine

Sub heading 6804 : Grinding wheel and the like and parts thereof

Sub heading 6805 : Abrasive powder or grain on base of textile material, of paper, of paper board, or other material

Description of tariff heading discussed in hereinbefore is given as under.

<u>Tariff Heading</u>	<u>Type of vehicle</u>
8702	Motor vehicle for the transport of ten or more person, including the driver
8703	Motor cars and other Motor vehicle principally designed for the transport of persons (other than those specified in heading 8702) including station wagon and racing cars.
8704	Motor vehicle for transport of goods
8711	Motorcycle (including moped) and cycle fitted with an auxiliary motor, with or without side cars.

Capital goods definition is enlarged to include motor vehicle other than used for transportation of passengers and goods like cranes, forklift, tractor and all other vehicle primarily used for business or commerce for all kind of service providers.

What does not cover under the definition of motors vehicle provided under section 2(28) of the Motor Vehicle Act, 1988.

- Vehicle running on fixed rails like railways, tram, trolleys etc.
- Vehicle of special type which is used in factory like cranes and forklifts.
- Vehicles less than four wheel fitted with an engine capacity of not exceeding 25 cubic centimetres .

- Hand cart, bull cart, animal driven, vehicle, hand rickshaw etc. As they are not mechanically propelled.

⇒ Spare, Component etc of capital goods of (i) and (ii) above.

⇒ Accessories of capital goods eligible ;

Accessory means “ an object or device not essential in itself but adding to beauty, convenience or effectiveness of something else.”

In Mehra Brother VS. Joint Commercial Officer-1991 car seat cover was considered as accessories of automobile.

Balkrishna Industries VS CCE it was held that tube is part of tyre and flap is accessory.

Banco Product VS. CCE [2009] it was held that plastic crates for material handing within the factory are eligible as accessory of capital goods and eligible for capital goods.

⇒ Parts, spares etc need not fall under chapter 82,84 ,85 and 90.

⇒ Capital goods obtained on hire purchase / lease / loan eligible

B] Motor Vehicle designed for transportation of goods including their chasis if register in the name of service provider, is eligible as capital goods , when used for – w.e.f. 1.7.2012.

i) providing an output service of renting of such motor vehicle; or

ii) transportation of input and capital goods used for providing output service; or

iii) providing an output service of courier agency

C] Motor Vehicle designed to carry passengers including their chasis if register in the name of service provider, is eligible as capital goods , when used for – w.e.f. 1.7.2012.

i) transportation of passenger; or

ii) renting of such vehicle

iii) imparting motor driving skills

- ❑ Capital Goods used exclusively for exempted final products and output services not eligible.

Capital goods does not cover equipment or appliances used in office for manufacturer

Rule 2(a)(A)(1) clarify that equipment or appliances used in an office will not be eligible as “capital goods”. This restriction is only for manufacturer and not for service provider.

It is clarified that air conditioner, refrigerator and computer will be eligible if they are used in the manufacture of final product.

Computer though install in office but used for monitoring equipment involved in manufacturing process and movements of goods shall be eligible for CENVAT – [Ruchi Health Food V. CCE\[2007\]](#)

General Provisions

- ☞ Eligibility to be decided on the basis of date of receipt of capital goods; CCE V. Suraya Roshni Ltd., KS Oils V. CCE,
- ☞ Ownership of capital goods is not essential to avail CENVAT on capital goods; HIS Automotive Ltd V. CCE , CCE V. Pepsi Foods, German Remedies Ltd v. CCE, Dalmia Cement v. CCE
- ☞ Purpose for which the capital goods is used is immaterial. CCE v. Miscrolabs
- ☞ Capital goods manufactured within factory; Input purchased to manufacture capital goods will be input used for capital goods shall be eligible for CENVAT Credit.

Capital Goods used by Service provider

A service provider is eligible for CENVAT Credit on capital Goods , If these are used for providing output service.. The definition does not say ‘exclusively used’.

- ⇒ Capital Goods need not be brought in the premises of service provider. Only documentary evidence of delivery and location of capital goods should be maintained – Fourth Proviso to Rule 4(2)(a) of CENVAT Credit Rule inserted w.e.f 1.4.2012.
- ⇒ Towers, prefabricated building, chairs for telecom service not capital goods – Bharti Airtel v. CCE[2012]

Condition for Availing CENVAT on Capital Goods

- ⇒ Duty paying documents eligible for CENVAT .
- ⇒ Depreciation under section 32 of income tax act not to be claimed on the excise portion of capital goods- Rule 4[4] of CENVAT Rule,2004,
- ⇒ CENVAT Credit on capital goods has to be availed in two stages except by SSI.
50% to be availed in first year when goods received and balance 50% in any subsequent years. SSI unit can avail 100% CENVAT in the very first year.
- ⇒ W.e.f 1.4.2010 – Rule 4(2)(b) of CENVAT Credit Rules [the word is subsequent years not subsequent year][Till 10.9.2004 , the word used were ‘in possession and use’ but now ‘possession’ is sufficient in subsequent years. These need not be in use.
- ⇒ In case of additional custom duty paid u/s 3(5) of Custom Tariff Act (Special CVD), 100% CENVAT credit will be available in first year itself , even if these goods are capital goods. Service providers are not eligible for this CENVAT credit of this duty [Second proviso to Rule 4(2)(a) of CENVAT Credit Rules .
- ⇒ In case of unit availing SSI exemption, entire CENVAT credit can be availed by them in first year itself. – Second proviso to Rule 4(2)(a) as inserted w.e.f. 1.4.2010.
- ⇒ Assessee can take full credit in second year if no credit has been taken in first year.
- ⇒ If full credit is availed in the first year, demand can be only of interest on 50% excess credit availed in the first year. [Guardian Plasticote V. CCE]
- ⇒ If the capital goods are cleared as such in the first year, 100% CENVAT credit shall be available. [Proviso to rule 4(2)(a) of CENVAT Credit Rules][CCE v. Ispat industries Ltd.]