

2014

## CENVAT Credit on input Services

[Definition of Input Services under Rule 2(l) of CENVAT Credit Rules , 2004  
commentary on above definition with case laws  
Instances on Input Services]



## CENVAT Credit on Input Services

### RULE 2(l) : Input Services

"Input Service" means any service,-

- (i) used by a provider of [output 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, up to the place of removal,

and includes services used in relation to 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 up to 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 up to the place of removal; [but excludes](#),-

[\(A\) service portion in the execution of a works contract and construction services including service listed under clause \(b\) of section 66E of the Finance Act \(hereinafter referred as specified services\) in so far as they are used for -](#)

[\(a\) construction or execution of works contract of a building or a civil structure or a part thereof; or](#)

[\(b\) laying of foundation or making of structures for support of capital goods,](#)

[except for the provision of one or more of the specified services; or](#)

[\(B\) Services provided by way of renting of a motor vehicle](#), in so far as they relate to a motor vehicle which is not a capital goods; or

[\(BA\) Service of general insurance business, servicing, repair and maintenance , in so far as they relate to a motor vehicle which is not a capital goods, except when used by \(a\) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ;or](#)

[\(b\) an insurance company in respect of a motor vehicle insured or reinsured by such person; or](#)

(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;**

S.N.	Party	Extract of Input definition w.e.f 1.7.2012
1	Manufacturer of final product	Input service means any service used by used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, <b>Specific Inclusion :</b> a) services used in relation to modernization, renovation or repairs of a factory or an office relating to such factory or premises b) Advertisement or sale promotion c) Market research d) storage up to the place of removal e) procurement of input f) accounting , auditing, financing, recruitment, and quality control, coaching and training, computer networking, , credit rating,, share registry, , security, <a href="#">business exhibition</a> , <a href="#">legal services</a> , inward transportation of input or capital goods and outward transportation up to the place of removal
2	Provider of output service	Input service means any service used by provider of output service for providing an output service; a) services used in relation to modernization, renovation or repairs of a premises of provider of output service or an office relating to such premises. b) Advertisement or sale promotion c) Market research f) accounting , auditing, financing, recruitment, and quality control, coaching and training, computer networking, , credit rating,, share registry, security, <a href="#">business exhibition</a> , <a href="#">legal services</a> , inward transportation of input or capital goods.
3		<b>Specific exclusions;</b> <u>(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -</u> <u>(a) construction or execution of works contract of a building or a civil structure or a part thereof; or</u> <u>(b) laying of foundation or making of structures for support of capital goods,</u> <u>except for the provision of one or more of the specified</u>

		<u>services;</u> <u>or</u>  (B) <u>Services provided by way of renting of a motor vehicle</u> , in so far as they relate to a motor vehicle which is not a capital goods; or <u>(BA) Service of general insurance business, servicing, repair and maintenance , in so far as they relate to a motor vehicle which is not a capital goods, except when used by -</u>  <u>(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ;or</u> <u>(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or</u> (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, <b>when such services are used primarily for personal use or consumption of any employee;</b>
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### Meaning of “Includes”

The inclusive part of the definition cover input services used ‘ in relation to’ various activities. Definition are ‘inclusive’ or ‘exhaustive’. If the definition use the word ‘means’ it means that its restrictive and exhaustive. However if the word ‘includes’ is used in the definition it means that it is not exhaustive but inclusive. *CCE v. Bakelite Hylam*

### Meaning ‘in relation to’

The word in relation to is very broad expression and are word of comprehensiveness which might have both a direct or indirect significance depending on the context. They are not the word of restrictive content. *State of karnataka v. Azad Coach Builders.*

### Place of removal

CENVAT credit is available for input service up to place of removal. The concept of removal is borrowed from central excise and hence applies to only manufacturer and not service provider.

The term ‘ place of removal’ has not been defined in CENVAT Credit Rules but is defined in Section 4 (3)(c ) of central excise act as follows :

‘Place of removal’ means

- i) A factory or any other place or premises of production or manufacture of the excisable goods.
- ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty.
- iii) a depot or premises of 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 word ‘from where such goods are removed’ apply to all the three clauses.

*DSCL Sugar v. CCE, MP biscuit v. CCE*

**The place where ownership gets transferred to buyer is place of removal when there is direct sale from factory**

Normally factory gate is place of removal. But in case of *Ambuja Cements v. UOI [ Punjab and Haryana High Court][2009]* it was decided that if the freight charges form part of the assessable value, price is for destination,

**Port is place of removal in case of export**

*Kuntal Granites v. CCE [2007] , CCE v. Adani Pharmachem[2009]*

*Rajasthan spinning and weaving mills v. CCE [ 2007]*

*Expenses up to the place of removal are eligible for Cenvat. Centuary Ryon v. CCE [2012]*

**Services specially excluded from definition of ‘Input Services’**

Some services have been specifically excluded from the definition of ‘input services’

■ **Construction related services specifically excluded under clause (A)**

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

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

(b) laying of foundation or making of structures for support of capital goods.

Are excluded from the definition of 'input services'

However these services are eligible as input services if used for the provision of one or more the specified services ( i.e construction/work contract of building or structure or laying of foundation etc as above)

- Services relating to setting up are not eligible ;  
Broadly , services relating to setting up of unit are not allowed.
- Structural components which are essential part of equipment / machinery are eligible for Cenvat credit.
- Renting of motor vehicle specifically excluded under clause (B)

The term motor vehicle has not been defined in the Cenvat Credit Rules , 2004 . As per Central Excise motor vehicles are covered under chapter 87 of the Central Excise Tariff . Some vehicle (e.g. forklift truck , excavators ) require registration under motor vehicle act , but they fall under chapter 84 of Central Excise Tariff. Goods falling under chapter 84 are eligible for Cenvat credit as capital goods . Hence , insurance, repair services , renting etc. in respect of such vehicle should be eligible for Cenvat credit.

- **Motor vehicle insurance and repair and maintenance services specifically excluded under clause (BA)**

The clause as amended w.e.f 1.7.2012 is as follows;

Service of general insurance business, repair and maintenance , in so far as they relate to motor vehicle which is not capital goods will not be eligible for Cenvat credit except when used by (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ;or (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

- **Services for personal use or consumption of employees specifically excluded under clause (C).**

Services such as 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 have been specifically excluded from the definition of input services.

However, this exclusion is only when such services are used primarily for personal use or consumption of any employee. Like mobile phone to employee for business purpose is allowed. Club membership fees of director who is not employee should be eligible. Corporate club membership [ without any name of employee] shall be eligible .

**Meaning of ‘such as’** the exclusion clause uses the word ‘such as’ . The word such as are used only to illustrate the scope. It is not restrictive. Such as means for ‘example’

CCE v. JK Cement Works [2009], TTK Pharma Ltd v. CCE [ 1993]

### Eligibility of Various Services as Input Services

Accounting Services	Eligible as specifically included in definition
Advertisement [ may be recruitment , tender, sales promotion , legal notice etc.]	Eligible as specifically included in definition
Air travel of employee	Eligible if in relation to inclusive services mention in 2( 1 )
Airport services	Eligible if in relation to inclusive services mention in 2( 1 ). The services is also eligible in case of construction or work contracts services or port or airport services.
Architect Services	Not eligible if provided for services specifically excluded under clause A of 2(l). If the service is used for other purpose shall i.e. finishing services , repair, alteration, or restoration , these should be eligible. The services is also eligible to person providing construction or work contract service itself.
Auditing Services	Eligible as specifically included in definition
Authorised Service Station	Usually not eligible except the clause BA of 2(l)

Banking	Eligible under financing
Beauty treatment	Not eligible
Brand Ambassadors	Eligible as relating to Sales Promotion
Business exhibition	Eligible as specifically included in definition
Business Support Services	Eligible if related to inclusive part of definition
Canteen Expenses	Eligible as provided in recent circulars/ notification.
Clearing and forwarding agent	Eligible for input and for final product up to the place of removal.
Club membership	Not eligible
Commercial coaching and training	Eligible as specifically included in definition
Commission agent	Eligible as relating to sales promotion or procurement
Computer networking	Eligible as specifically included in definition
Consignment agent exp	Eligible as consignment agent place is place of removal when sale is from depot
Construction of building or civil structure or part thereof	Not eligible if provided for services specifically excluded under clause A of 2(l). If the service is used for other purpose shall i.e. finishing services , repair, alteration, or restoration , these should be eligible. The services is also eligible to person providing construction or work contract service itself.
Construction of residential project	Not eligible if provided for services specifically excluded under clause A of 2(l). If the service is used for other purpose shall i.e. finishing services , repair, alteration, or restoration , these should be eligible. The services is also eligible to person providing construction or work contract service itself.



Consulting engineers management	Eligible if for definition of rule 2(l)
Courier	Eligible
Credit rating	Eligible as specifically included in definition
Custom house agent	Eligible for procurement of input and also for export as port is place of removal
Depot expenses	Eligible as depot is place of removal
Director Services	Eligible as director control overall operation
Erection commissioning and installation	Not eligible as setting up of plant but eligible as modernisation, renovation of factory
Financing ( bank charges, lease, hire purchase)	Eligible as specifically included in definition
Foundation or support of capital goods	Specifically excluded
Gardening	Eligible if done as statutory requirement
Insurance of plant and machinery, building and transportation of input, capital goods and final product up to the place of removal	Eligible
Insurance of Motor vehicle	Ineligible except a] where vehicle is eligible as capital assets b] manufacturer of motor vehicle c] general insurance company
Health insurance	Ineligible
Information technology software	eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list.
Intellectual property service	eligible if in relation to manufacture of taxable goods/ services, quality control, sales promotion , computer networking
Job work	eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list.
Legal consultancy	Eligible as specifically included in definition
Maintenance and repair	eligible if in relation to manufacture of taxable goods/ services, modernisation and

	repair of factory or office, storage, quality control except where motor vehicle is not capital goods
Mandap keeper	Eligible if in relation to recruitment, accounts, audit, sales promotion ,procurement of input, legal services, financing and computer networking
Manpower recruitment and supply	eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list.
Market research	Eligible as specifically included in definition
Mobile phone [ even if in the name of employee but reimbursed by employer]	Eligible
Outward transportation	Eligible up to the place of removal
Real agent services	Ineligible
Renting of immovable property	eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list.
Setting of plant and office building	Ineligible
Showroom expenses	Eligible as sale promotion
Software	Eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list.
Supply of tangible goods for use service	eligible if in relation to manufacture of taxable goods/ services and all services under the inclusive list except for motor vehicle .
Transportation charges for employees	Ineligible
Travel by air , road, or water except by motor vehicle	Eligible
Work contract service	Not eligible if provided for services specifically excluded under clause A of 2(1). If the service is used for other purpose shall

	i.e. finishing services , repair, alteration, or restoration , these should be eligible. The services is also eligible to person providing construction or work contract service itself.
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