

CENTRAL EXCISE

CENVAT Credit Rules 2004

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Additional Commissioner Service Tax

We must know

- **Central Excise Act, 1944**
- **Central Excise Rules, 2002**
- **Cenvat Credit Rules, 2004**
- **Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000**
- **Basic Principles of Audit**
- **Procedural and Statutory Requirements**

Definitions

1. Capital Goods – Rule 2(a)

“capital goods” means :-

(A) the **following goods** , namely :-

- all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 68.05, grinding wheels and like , and parts thereof falling under heading 68.04 of the First Schedule to the Excise Tariff Act;
- pollution control equipment;
- components, spares and accessories of the above goods;
- moulds and dies, jigs and fixtures;

Definitions contd.

- refractories and refractory materials;
 - tubes and pipes and fittings thereof; and
 - storage tank,
used -
 - ❖ **in the factory** of the manufacturer of the final products but does not include any equipment or appliance used in an office; or
 - ❖ **for providing** output service
- (B) motor vehicles registered** in the name of Output Service Provider for providing seven specified taxable services i.e. door to door courier, tour operator, renting a cab, cargo handling, GTA, outdoor caterer & pandal and shamiana service

Definitions contd.

2. Customs Tariff Act – Rule 2(b)

Customs Tariff Act means the Customs Tariff Act, 1975

3. Excise Act – Rule 2(c)

Excise Act means the Central Excise Act, 1944

4. Exempted Goods – Rule 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**

Definitions contd.

5. Exempted Services – Rule 2(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**

6. Excise Tariff Act – Rule 2 (f)

Excise Tariff Act means the Central Excise Tariff Act

7. Finance Act- Rule 2 (g)

Finance Act means the Finance Act, 1994

8. Final Products- Rule 2(h)

“final products” means **excisable goods** manufactured or produced from input or using input service

Definitions contd.

9. First Stage Dealer/ Second Stage Dealer- Rule 2(ij) & Rule 2 (s)

“ **first stage dealer**” means a **dealer**, who purchases the goods directly **from -**

➤ the **manufacturer** under the **cover of an invoice** issued in terms of the provisions of **Central Excise Rules, 2002**

➤ from the **factory**; or

➤ from the **depot** of the said manufacturer; 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

Definitions contd.

- an **importer** under cover of an invoice; or
- from **the depot** of an importer; or
- from **the premises of the consignment agent** of the importer

“ **Second stage dealer**” means a dealer who purchases the goods from a **first stage dealer**

Definitions contd.

10. Input- Rule 2 (k) “input” means -

- (i) **all goods, except LDO, HSD and motor spirit (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,
 - (also includes) **accessories** of the final products cleared along with the final product
 - (use of above items within the factory of production?)
 - (also includes) goods used
 - a) as paint, or
 - b) as packing material (including raw material used for making the packing material within the factory of production) , or

Definitions contd.

c) as fuel, or

d) 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** LDO, HSD and motor spirit (petrol) and motor vehicles (**being capital goods**) used for providing any output service

➤ LDO, HSD or motor spirit (petrol) is not input for any purpose whatsoever- **Exp -I**

➤ Inputs includes goods used in manufacture of capital goods which are further used in the factory of the manufacturer (does not include cement, angles, channels, CTD, TMT & other items used for construction of factory shed, etc. wef 07/07/2009) – **Exp-II**

Definitions contd.

11. Input Service - Rule 2 (k) “input service” means any service -

- (i) used by a **provider of taxable service** for providing an output service ; or
- (ii) used by **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
 - a) setting up, modernization, renovation or repairs of factory, premises of output service provider or an office relating to such factory or premises,
 - b) advertisement or sales promotion,

Definitions contd.

- c) market research,**
- d) storage up to the place of removal,**
- e) procurement of inputs,**
- f) activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security,**
- g) inward transportation of inputs or capital goods,**
- h) outward transportation up to the place of removal**

12. Input Service Distributor- Rule 2 (m)-

“input service distributor” means

- an office of the manufacturer / producer of final products or provider of output service**
- which receives invoices issued under Rule 4A of the Service Tax Rules towards purchases of input services and**
- issues invoice , bill or challan for the purposes of distributing the credit of service tax paid on said services to such manufacturer / producer / provider**

Definitions contd.

13. Job work- Rule 2(n)

“job work” means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process (i.e. manufacture or finishing)

- expression “job worker” shall be construed accordingly

14. Large Tax Payer- Rule 2(na) r/w Rule 2(ea) of CER 2002

LTU means a person

- who has one or more registered premises under CEA / ST Act; and
- who is an assessee under IT Act; and
- who satisfies conditions & observes notified procedures

Definitions contd.

15. Manufacturer / Producer in relation to Articles of Jewellery- Rule 2(naa)

“manufacturer or producer” in relation to articles of Jewellery falling under Chapter Heading 7113 of CETA includes a person who is liable to pay excise duty on such goods under Rule 12 AA (1) of CE Rules

16. Notification- Rule 2(o)

“notification” means the notification published in the Official Gazette

17. Output Service - Rule 2(p)-

“output service” means any taxable service {except GTA services} provided by the provider of taxable service to a customer, client, subscriber, policy holder or any other person

and the expressions ‘provider’ & ‘provided’ shall be construed accordingly

18. Person liable for paying Service Tax- Rule 2(q)

“person liable for paying service tax” has the meaning as assigned to it in Rule 2(1)(d) of the Service Tax Rules, 1994 – (this Rule lays down the definition of persons liable for paying service tax in relation to different types of services)

Definitions contd.

19. Provider of taxable service- Rule 2(r)-

‘provider of taxable service’ includes a person liable for paying service tax

20. Rule 2(t)-

Words and expressions used in CCR and not defined but defined in Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts

FEATURES OF CENVAT CREDIT SCHEME

- **CENVAT Credit Rules applicable to whole of India except J & K (exception is only in relation to availment & utilization of ST Credit and not in relation to availment & utilization of Credit of Central Excise Duty) – Rule 1**
- **Manufacturer of final products and provider of taxable service eligible for CENVAT credit of duty paid on inputs , input services & C. G.**
- **Credit available instantly i.e. immediately on receipt of inputs / C. G. - Rule 4 (1)**
- **Credit available instantly i.e. immediately on payment of value of input services as well as the service tax paid or payable as is indicated in the invoice – Rule 4 (7)**

FEATURES OF CENVAT CREDIT SCHEME

Contd.

- Inputs to be **used** in or in relation to manufacture whether directly or indirectly
- Inputs eligible for Credit whether contained in final product or not
- Intention of use in manufacture of dutiable final product to be seen at the time of receipt of inputs
- Credit admissible on quantity of inputs **used** (and not contained)
- **Ownership** of inputs or of final product not relevant
- **Ownership** of C. G. (except motor car) not relevant
- Payment of value of input services and that of ST is relevant
- **Use** of inputs or C. G. is relevant

FEATURES OF CENVAT CREDIT SCHEME

Contd.

➤ Inputs eligible for Cenvat :-

- i) all goods except HSD, LDO and Motor Spirit (Petrol)
- ii) includes inputs used in manufacture of C. G. / inputs which are further used in factory of manufacturer
- iii) includes **accessories** cleared along with final product
- iv) includes lubricating oils , greases , coolants, paints, packing material, fuel, etc.

FEATURES OF CENVAT CREDIT SCHEME contd.

- **Inputs (not all) to be used within the factory**
- **C. G. to be used within factory**
- **No Cenvat Credit on inputs if final product is exempt**
- **No credit on C.G. if used exclusively in manufacture of exempted goods except in case of SSI units**
- **Proportionate credit if inputs used in both dutiable and exempted final product**
- **Credit allowed on basis of specified documents**
- **Credit amount is equal to the amount of duty shown in duty paying documents of inputs / C. G.**
- **Restricted amount of Cenvat credit on inputs cleared from 100% EOU, etc. –Rule 3(7)(a)**
- **Burden of proof regarding admissibility of Cenvat credit lies upon manufacturer availing credit**
- **Nature of inputs remain duty paid even after availment of Cenvat Credit**

FEATURES OF CENVAT CREDIT SCHEME contd.

- **Upto 50% credit in case of C. G. in the year of receipt of C.G. and remaining amount in subsequent year (s) if C.G. are still in possession (condition of use in manufacture of dutiable goods not relevant in subsequent years)**
- **No credit on excise duty portion of value of C. G. to the extent claimed as depreciation under IT Act**
- **No cash refund except if adjustment not possible in case of exports**
- **No one to one correlation between inputs and final products except in case of manufacture of final products under area based exemption schemes**
- **No one to one correlation in case of availment and utilization of credit of duty amount**
- **One to one correlation in utilization in respect of certain duties –Rule 3(7)(b)**

FEATURES OF CENVAT CREDIT SCHEME contd.

- Cenvat credit available only if the process amounts to manufacture – actual / deemed
- manufacturer has no option to forego exemption (i.e. pay duty) and claim Cenvat **except in case of textiles**
- Unutilized credit transferable in case of transfer / merger / shifting of factory / premises of output service provider
- Credit admissible even when inputs are stored outside the factory (with the permission of the department)
- Equivalent amount of credit to be reversed in case of removal of inputs as such
- Amount of credit to be reversed in case of removal of C.G. to be reduced by 2.5% for every quarter from the date of availment of credit– 2nd Proviso to Rule 3 (5) wef 13/11/2007
- Duty to be paid on TV in case of removal of C. G. as waste and scrap – Rule 3 (5A) wef 16/05/2005

FEATURES OF CENVAT CREDIT SCHEME contd.

- Credit to be reversed in case of obsolete and slow moving items written off & subsequent availment if used subsequently– Rule 3 (5B) wef 12/05/2007
- Credit to be reversed in case of grant of remission of duty on final products – Rule 3 (5C) wef 07/09/2007
- Credit admissible on inputs or C. G. sent for job work as such or after being partially processed provided these are received back in **180 days**
- If not returned , credit to be reversed which can be availed again when the inputs / C. G. are received back
- credit admissible on jigs, fixtures, moulds, dies sent to job worker (**no time limit for return**)
- Credit of ST paid on input services admissible only after payment of value of input service and ST thereon
- Penalty for wrongful / irregular availment of Credit
- Confiscation of inputs / C. G. in case of wrong availment of credit

Duties and Taxes eligible for CENVAT

Credit (Rule – 3 (1))

- (i) duty of excise specified in the first schedule to the CETA (BED /CENVAT)
- (ii) duty of excise specified in the second schedule to the CETA (SED)
- (iii) additional duty of excise leviable under Section 3 of the Additional Duties of Excise (T &TA) Act
- (iv) additional duty of excise leviable under section 3 of the Additional Duties of Excise (GSI) Act
- (v) National Calamity Contingent duty
- (vi) & (x) Education Cess on excisable goods & taxable services

Duties and Taxes eligible for CENVAT Credit

(Rule – 3(1)) contd.

- (via) & (xa) Secondary and higher education cess on excisable goods & taxable service
- (vii) additional duty leviable u/s 3 of CTA (CVD)
(**restricted to Rs 30/- per SQM for marble slabs**)
- (viia) additional duty leviable u/s 3(5) of CTA (**service provider not eligible**)
- (viii) additional duty of excise leviable u/s 157 of the Finance Act, 2003
- (ix) service tax leviable u/s 66 of Service Tax Act
- (xi) additional duty of excise leviable u/s 85 of the Finance Act, 2005
- duty paid on removal of inputs or capital goods as such – 3(6)
- duty paid on removal of capital goods as waste and scrap – 3(6)

Duties and Taxes eligible for CENVAT Credit

(Rule – 3(1)) contd.

- duty / cess paid on any input / input service used in manufacture of intermediate goods by a job worker availing benefit of Not. No. 214/86 dated 25/03/1986 and received by any manufacturer for use in or in relation to manufacture of final product
- amount equal to CE duty paid on CG at the time of de bonding of EOU – Proviso
- additional duty leviable u/s 3 of CTA on goods falling under heading 9801- Exp

Credit allowed in respect of above duties/ CESS paid on any inputs / capital goods / input services received in the factory of manufacturer of final product / premises of provider of output services

Duties and Taxes eligible for Cenvat Credit

(Rule – 3) contd.

- manufacturer of final products shall be allowed to take CENVAT credit of duty paid on inputs **lying in stock** or in process or inputs **contained** in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable – 3(2)
- provider of any service shall be allowed to take CENVAT credit of duty paid on inputs **lying in stock** on the date on which any service ceases to be exempted service – 3(3)
- Credit of an amount shown as duty paid or payable on duty paying documents
- Credit on inputs / taxable services used in manufacture in units availing area based exemption can be utilized for payment of duty on final products cleared from such units only – 2nd Proviso to 3(4)

Duties and Taxes eligible for Cenvat Credit

(Rule – 3) contd.

- **Restricted credit in respect of inputs received from 100% EOU , FTZ, EHTP, STP, etc. used in DTA – $AV * (1 + BCD/200) * (CVD/100)$ - Rule 3(7) (a) wef 05/12/2008**
- **One to one correlation in respect of certain duties – Rule 3(7) (b)**
- **Utilization of credit to the extent of amount available on last day of month / quarter – 1st Proviso to 3(4)**
- **Equivalent amount of credit to be reversed in case of removal of inputs / capital goods as such – 3(5)**

Duties and Taxes eligible for Cenvat Credit

(Rule – 3) contd.

- Amount of credit to be reversed in case of removal of used C.G. is to be reduced by 2.5% for every quarter from the date of taking credit – 2nd Proviso to 3 (5) wef 13/11/2007
- Duty to be paid on Transaction Value in Case of removal of C.G. as Waste and Scrap – 3 (5A) wef 16/05/2005
- Reversal of Cenvat credit on obsolete & slow moving items (inputs/ unused C. G.) written off in books and subsequent availment in case such items used subsequently – 3 (5B) wef 12/05/2007
- Credit to be reversed in case of grant of remission of duty on final products – 3 (5C) wef 07/09/2007
- If rule / notification granting exemption is conditional on non availment of credit , then that rule / notification will prevail over Cenvat credit rules which means that manufacturer has no option to forego exemption (i.e. pay duty) and claim CENVAT **except in case of Textiles - Exp**

Utilisation of Cenvat Credit –Rule 3(4)

CENVAT credit may be utilized for payment of

- **Excise duty on any final product**
- **amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed**
- **amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such**
- **amount paid on transaction value if Capital goods cleared as waste and scrap**
- **amount under Rule 16 (2) of Central Excise Rules, 2002 (re clearance after return)**
- **service tax on any output service**

Utilization of Cenvat Credit – one to one correlation in nature of duties –Rule 3(7)(b)

Rule 3 (1)	Type of input duty	Allowed for payment of
(i)	ED as per 1 st Schedule of CETA	All duties / EC / ST
(ii)	ED as per 2 nd Schedule of CETA	All duties / EC / ST
(iii)	Addl. ED (T&TA)	Same i.e. Addl. ED (T&TA)
(iv)	Addl. ED (GSI)	ED as per 1 st & 2 nd Schedule of CETA
(v)	NCCD	Same i.e. NCCD
(vi)	E. Cess on excisable goods	EC on excisable goods or on services
(vi a)	S&HE Cess on excisable goods	S&HE on excisable goods or on services
(vii)	CVD under CTA (including duty paid on goods under heading 9801 of CTA ; up to Rs. 30/- per SQM in case of marbles)	All duties / EC / ST

Utilization of Cenvat Credit – one to one correlation in nature of duties –Rule 3(7)(b)

Rule 3 (1)	Type of input duty	Allowed for payment of
(vii a)	Addl. Duty u/s 3(5) of CTA (service provider not eligible for this credit)	All duties / EC / (except ST)
(viii)	Addl. ED u/s 157 of Finance Act, 2003	Same i.e. Addl. ED u/s 157 of Finance Act, 2003
(ix)	Service Tax (ST)	All duties / EC / ST
(x)	E. Cess on services	EC on excisable goods or on services
(x a)	S& HE on services	S&HE on excisable goods or on services
(xi)	Addl. ED u/s 85 of Finance Act, 2005 (on inputs / capital goods / input services received on or after 10/09/2004)	Same i.e. Addl. ED u/s 85 of Finance Act, 2005

Conditions for availing Cenvat Credit Rule-4

- Credit admissible **immediately** on receipt of the inputs in the factory of the manufacturer (in case of jewellery on receipt of inputs in the premises of principal manufacturer) / premises of the output service provider – 4(1)
- **Upto 50%** credit on capital goods in the financial year of receipt and balance in any succeeding financial year (s) if capital goods are in possession of manufacturer / service provider (except in case of components, spares & accessories, moulds, dies, refractory material, grinding wheels, etc.) – 4(2)(a) & (b)
- Credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if the said capital goods are cleared as such in the same financial year – Proviso to 4(2)(a)

Conditions for availing Cenvat Credit

Rule-4 Contd.

- Credit admissible even if the capital goods are acquired on lease, hire purchase or loan agreement, from a financing company -4(3)
- No credit in respect of excise duty portion of the value of C.G. (to the extent) claimed as depreciation under Section 32 of the IT Act – 4(4)
- Credit admissible on inputs or C. G. sent to a job worker, for processing / testing/ repair/ reconditioning / manufacture of intermediate goods necessary for manufacture of final product, as such or after being partially processed provided these are received back in **180 days** – 4(5)(a)

Conditions for availing Cenvat Credit

Rule-4 Contd.

- the manufacturer / service provider shall have to pay an amount attributable to inputs / C. G. if inputs / C.G. not returned within 180 days – 4(5)(a)
- eligible to re-take credit when inputs / C. G. are received back – 4(5)(a)
- credit admissible on jigs, fixtures, moulds, dies sent to job worker for production of goods on manufacturer's behalf and as per his specifications (**no time limit for return**) – 4(5)(b)
- Credit of Service Tax paid on input services admissible only after payment of value of input service and service tax thereon – 4(7)

Job Work Conditions – Rule 4 (6)

Steps for sending inputs or capital goods for jobwork

- 1. Submission of undertaking to Deputy/Assistant Commissioner – **Permission** by him – valid for a financial year**
- 2. Inputs/capital goods can be sent under own delivery challan /other delivery documents**

Job Work Conditions – Rule 4 (6) Contd.

3. Goods can be **sent directly** to factory of job worker from supplier, without first bringing it in the factory of manufacturer
4. Record of goods sent out should be maintained challan-wise
5. To be ensured that goods are returned within the permitted period

Job Work Conditions – Rule 4 (6) contd.

- 6. Scrap / waste generated at the job worker's end to be returned or should be cleared on payment of duty**
- 7. Job worker should maintain his own records**
- 8. Job worker can send the goods to another job worker for further processing**
- 9. Goods can be returned by job worker in piece-meal under different challans on different dates**

Job Work Conditions – Rule 4 (6) contd.

10. Goods can be **removed directly** from the place of job worker without bringing the same to the manufacturer's factory
11. Duty to be paid against the invoice of the manufacturer - at the appropriate time i.e. when goods are removed from place of job worker

Refund of Cenvat Credit Rule - 5

Credit on inputs or input services used in the final products cleared for **export under bond or letter of undertaking** or used in the intermediate products cleared for export or used in providing output services which are exported (in accordance with the Export of Services Rules, 2005) is allowed to be utilized for payment of

- (i) excise duty on any final product cleared for home consumption or for export on payment of duty;
- (ii) service tax on output service

Refund of Cenvat Credit Rule – 5 Contd.

If such **adjustment is not possible**, CENVAT credit would be refunded in terms of Notification No. 5/2006 dated 14/03/2006 as amended by Not. No. 13/2007 dated 01/03/2007

No refund of credit shall be allowed if the manufacturer avails of **drawback allowed** under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a **rebate of duty** under the Central Excise Rules, 2002 in respect of such duty or of service tax under Export of Service Rules, 2005 in respect of such service tax

Refund of Cenvat Credit to units **in North East - Rule – 5A**

Unutilized credit on inputs used in the manufacture of dutiable final products specified in Not. No. 20/2007 dated 25/04/2007 is allowed to be refunded in accordance with the terms & conditions laid down in Not. No. 25/2007 –CE (NT) dated 25/04/2007

Obligation of manufacturer of dutiable and exempted goods - Rule 6

➤ no Cenvat credit on inputs / input services used exclusively for manufacture of exempted goods/ provision of exempted services – **RULE 6 NOT APPLICABLE IF ENGAGED IN MAN OF ONLY EXEMPTED GOODS / PROVISION OF ONLY EXEMPTED SERVICES**

➤ no Cenvat credit on quantity of inputs / input services used in manufacture of exempted goods / provision of exempted services if engaged in manufacture of both dutiable and exempted goods / provide dutiable and exempted services except when

- i) maintain **separate accounts** for receipt, consumption and inventory of inputs & input services; and
- ii) **avail credit** only on quantity intended to be used in manufacture of dutiable goods / providing dutiable output services

Obligation of manufacturer of dutiable and exempted goods - Rule 6 contd.

- if **unable to or opt not** (option to be exercised for all exempted goods/ exempted services and cannot be withdrawn during the year) to maintain separate accounts the manufacturer shall pay
 - i) an amount equal to 5% of value of exempted goods / 6% of value of exempted services ; or
 - ii) an amount equivalent to the CENVAT credit attributable to inputs / input services used in the manufacture of exempted final products/ provision of exempted services subject to the conditions and procedure specified under Rule 6 (3A)
- payment to be made either from Cenvat account or in cash through PLA by 5th of following month – Exp II to 6(3A)
- payment of this amount is not duty of excise (**as credit not admissible U/R 3 (1)**)
- full amount of CENVAT credit in respect of service tax paid on services in respect of 17 specified services allowed even if used in manufacture of both dutiable / exempted goods and / or provision of both dutiable / exempted services – 6(5)

Obligation of manufacturer of dutiable and exempted goods - Rule 6 contd.

- no CENVAT credit shall be allowed on capital goods which are used **exclusively** in the manufacture of exempted goods except in case of units availing SSI benefit - 6(4)
- no such condition of exclusive use in subsequent year (s)
- goods cleared to units in SEZ , 100% EOU , in EHTP, in STP, to UN , export under bond, etc. are not treated as exempted goods for the purposes of this section – 6(6)
- if fail to pay the said amount , to be recovered in terms of Rule 14 of CCR, 2004 – Exp III to 6(3A)

Determination of amount payable under - Rule 6 (3A)

- written intimation by manufacturer of goods / provider of service , inter-alia, about description of dutiable / exempted goods & dutiable /exempted services, etc. – 6(3A)(a)
- Manufacturer of goods / provider of services to **determine and pay provisional amount** on monthly basis, either through Cenvat or in cash, by 5th of following month– 6(3A)(b)
 - Cenvat credit attributable to **inputs used** in manufacture of **exempted goods (A)**
 - Cenvat credit attributable to **inputs used** for provision of **exempted services (provisional) = (B / C) * D = Total value of exempted services provided in preceding FY (B) / Total value of dutiable goods manufactured & removed , total value of taxable & exempted services provided in preceding FY (C) * Total Cenvat credit taken on inputs during the month minus A (D)**
 - Cenvat credit attributable to **input services** used in manufacture of **exempted goods / provision of exempted services (provisional) = (E / F) * G = Total value of exempted services , total value of exempted goods manufactured & removed in preceding FY (E) / total value of taxable & exempted services, total value of dutiable & exempted goods manufactured & removed in preceding FY (F) * Total Cenvat credit taken on input services during the month (G)**

Determination of amount payable under - Rule 6 (3A) contd.

- Manufacturer of goods / provider of services to **finally determine** amount of Cenvat credit attributable to exempted goods / exempted services for whole financial year– 6(3A)(c)
 - Cenvat credit attributable to **inputs used** in manufacture of **exempted goods** (H)
 - Cenvat credit attributable to **inputs used** for provision of **exempted services** = $(J / K) * L$ = Total value of exempted services provided in the current FY (J) / Total value of dutiable goods manufactured & removed , total value of taxable & exempted services provided in the current FY (K) * Total Cenvat credit taken on inputs during the current FY minus H (L)
 - Cenvat credit attributable to **input services** used in manufacture of **exempted goods** / provision of **exempted services** = $(M / N) * P$ = Total value of exempted services , total value of exempted goods manufactured & removed in the current FY (M) / Total value of taxable & exempted services, total value of dutiable & exempted goods manufactured & removed in the current FY (N) * Total Cenvat credit taken on input services during the current FY (P)

Determination of amount payable under - Rule 6 (3A) contd.

- **Manufacturer of goods / provider of services to pay the difference between amount determined U/R 6(3A)(C) and sum total of the amount determined & paid U/R 6(3A) (b) by 30th June of the next FY– 6(3A)(d)**
- **Manufacturer of goods / provider of services to pay the interest @ 24% pa from 30th June till the date of actual payment if the amount is not paid up to 30th June– 6(3A)(e)**
- **Manufacturer of goods / provider of service to take credit on his own if the total amount determined & paid U/R 6(3A) (b) is more than the amount determined U/R 6(3A)(C) - 6(3A)(f)**

Determination of amount payable under - Rule 6 (3A) contd.

- **Manufacturer of goods / provider of services to intimate the jurisdictional Supdt. within 15 days of payment / taking credit– 6(3A)(g)**
 - **month wise details of cenvat credit attributable to exempted goods / exempted services for the current FY as determined U/R 6(3A)(b)**
 - **total cenvat credit attributable to exempted goods / exempted services for the current FY as determined U/R 6(3A)(c)**
 - **amount short paid / interest paid / credit taken**
- **Manufacturer of goods / provider of services **not to determine & pay** the provisional amount U/R 6(3A)(b) if no dutiable goods were manufactured / no taxable services were provided in preceding FY but shall determine cenvat credit attributable to exempted goods / exempted services for whole FY U/R 6(3A)(c) – 6(3A)(h)**

Distribution of credit by input service distributor –Rule 7

- Input service distributor may distribute Cenvat credit of ST paid on input service to its manufacturing unit (s) providing output service provided :-
 - credit distributed against a document not to exceed amount of ST paid thereon
 - credit of ST attributable to service used in a unit exclusively engaged in manufacture of exempted goods / provision of exempted service is not allowed to be distributed

Distribution of credit on inputs by office or any other premises of output service provider – Rule 7 A

Output service provider can avail credit on inputs / C. G. on the basis of invoice / bill / challan issued by the office / premises of said output service provider which receives invoices towards purchase of inputs / C. G. provided such office / premises complies with the provisions relating to first / second stage dealer

Storage of inputs outside the factory –Rule 8

Assistant / Deputy Commissioner Central Excise may permit a manufacturer of the final products to store the inputs in respect of which CENVAT credit has been taken, outside factory premises subject to limitations and conditions as may be specified by him

Permission to be given in exceptional circumstances and keeping in view nature of goods and shortage of space at the premises of such manufacturer

Documents and Accounts -Rule 9

Credit allowed on the basis of following documents – 9(1) :-

- **Invoice issued by manufacturer from his factory**
- **Invoice issued by manufacturer from his depot or premises of consignment agent**
- **Invoice issued by manufacturer for clearance of inputs as such / capital goods as such or as scrap**
- **Invoice issued by importer**
- **Invoice issued by importer from his registered depot or registered premises of consignment agent**
- **Invoice issued by registered First / Second stage dealer**

Documents and Accounts -Rule 9 contd.

- Supplementary Invoice / challan/ any other similar document issued in case of additional payment of duty except when it is recoverable by reason of fraud, collusion,etc.
- Bill of Entry (not allowed if it contains endorsement that credit of CVD is not admissible – Proviso to 9(1) – **(BOE can't be endorsed)**)
- Certificate issued by an appraiser of Customs in case of imports through FPO
- Challan evidencing payment of ST by the person liable to pay ST
- Invoice / Bill / Challan issued by provider of input service on or after 10/9/2004
- Invoice / Bill / Challan issued by input service distributor under Rule 4A of ST Rules

Other requirements -Rule 9

- Document to be treated as **proper document** even if it does not contain all the particulars but contains details of duty / ST payable, description of goods / services , AV, name and address of factory and AC is satisfied that goods / services have been received and accounted for in books of accounts -9(2)
- First / second stage dealer has to maintain records showing that inputs / CG were supplied from that stock on which duty was paid by manufacturer of such inputs / CG and only **pro rata duty** has been passed on – 9(4)
- Manufacturer / provider of output service to maintain proper records of receipt, disposal, consumption, inventory of inputs / CG / input services, information relating to value , duty / ST paid, Cenvat credit taken / utilized, person from whom inputs / CG/ services procured, etc. -9(5) & (6)
- Burden of proof regarding admissibility of Cenvat credit lies upon manufacturer / provider of out put service availing credit – 9(5) & (6)

Other requirements – Rule 9 Contd.

S. No.	Rule	Who to file	Form No.	Title / Duration	Due date
1	9 (7)	Man.	ER-1	Monthly	Within 10 days
2	9 (7)	Man.	ER -3	Quarterly	Within 20 days
3	9 (8)	Dealer	ER -7	Quarterly	Within 15 days
4	9 (9)	Provider of output Service	ST -3	Half Yearly	End of succeeding month
5	9 (10)	Input Service Distributor	ST -3	Half Yearly	End of succeeding month

Other requirements – Rule 9 Contd.

S. No.	Rule	Who to file	Form No.	Title / Duration	Due date
6	9 (11)	Provider of output Service / Input Service Distributor	Revised ST -3	Half Yearly	Within 60 days from date of filing of original return
7	9 A (1)	Man. Who has paid duty of more than Rs. 1 Crore (cash plus CENVAT) in PY	ER -5	Annual Declaration about principal inputs	By 30 th April
8	9 A (2)	-DO-	Revised ER -5	-DO-	Within 15 days
9	9 A (3)	-DO-	ER-6	Monthly Declaration	Within 10 days

Transfer of Cenvat Credit – Rule 10

- If a manufacturer of the final products / provider of output services **shifts** his factory / business to another site or the factory is transferred on account of change in ownership or on account of **sale, merger, amalgamation, lease** or **transfer** of the factory to a joint venture with the specific provision for **transfer of liabilities** of such factory, then, the manufacturer is allowed to transfer the Cenvat Credit lying unutilised in his accounts to such transferred, sold, merged, leased or amalgamated factory- 10(1) &(2)
- Stock of inputs as such / inputs in process / CG shall also be transferred along with factory / business premises to new site / ownership and shall be duly accounted for to the satisfaction of AC / DC- 10(3)

Transitional provisions- Rule 11

- Credit earned before 10/09/2004 under old rules is allowed- 11(1)
- earlier applicable to SSI units only
- made applicable to non SSI units & output service provider wef 01/03/2007- Rule 11 (3) & (4)
- **SSI unit** opting for availing benefit of SSI exemption { 11(2)}, non SSI units { 11(3)} & output service provider { 11(4)} – to pay an amount equal to the credit in respect of inputs lying in stock or in process or is **contained** in final product lying in stock on the date of exemption and the balance lying in his credit to lapse
- No provision for deficiency to be made good by payment in cash

**Special Dispensation in respect of inputs
manufactured in factories availing Area
Based Exemption- Rule 12**

**Cenvat credit on inputs / C.G. cleared
by manufacturer availing Area Based
Exemption is admissible as if no
portion of duty paid on such inputs / C.
G. was exempted under any of the Area
Based Exemption Notification**

Procedure & Facilities for LTU- Rule 12 A

- LTU (registered sender premises) may remove Cenvat availed inputs (except petrol / HSD / LDO) or C. G. without reversal of credit under the cover of transfer challan/ invoice to his other registered recipient premises (except first / second stage dealer / availing area based exemption / EOU / EHTP unit / STP unit) for further use in manufacture and clearance for HC on payment of duty / for export under bond, LUT or on payment of duty within 6 months from date of receipt in recipient premises – 12A (1)
- If final products not cleared within 6 months or if inputs / C. G. are cleared as such by recipient premises or if C. G. are used exclusively in manufacture of exempted goods in recipient premises , recipient premises to pay credit taken by sender premises with interest – Proviso 1 & 2 to Exp 1 to 12A (1)

Procedure & Facilities for LTU- Rule 12 A contd.

- Recipient premises to avail Cenvat credit, on the basis of document showing payment of such duties, of the amount paid by it under Proviso 1 to 12 A (1) as if it was duty paid by sender premises who removed inputs / C. G.– 12A (2)
- Cenvat Credit availed by Sender premises not to be denied on the ground that inputs / C. G. have been removed without reversal of credit or on the ground that they have been used in manufacture of any intermediate goods removed without payment of duty U/R 12BB (1) of CER – 12A (3)
- Transfer of Cenvat credit from one registered manufacturing premises (except that availing Area Based Exemption) / premises providing taxable service to his other registered premises is allowed on the basis of transfer challan – 12A (4)
- LTU to file a monthly return for each of the registered premises – 12A (5)
- Any SCN issued but not decided before grant of acceptance of LTU status shall stand transferred to CE officer of such LTU – 12A (6)
- All the provisions of CCR not inconsistent with Rule 12A shall apply to LTU – 12A (7)

Power to impose certain restrictions in certain types of cases – Rule 12AA

CG may, by notification in the official gazette, provide for certain measures including restrictions on utilization , etc. on a manufacturer, first stage dealer, second stage dealer or exporter keeping in view the extent of misuse of provisions of Cenvat Credit and any other relevant factors

Power of Central Govt. to notify goods for deemed credit – Rule 13

- Central Govt. has the power to
 - declare inputs / input services on which excise duty / ST shall be deemed to have been paid at prescribed rates
 - allow deemed credit of such duty / ST even if the declared input / input service is not used directly by the manufacturer / provider of output service if such inputs / input service are contained in the final product / used in providing the taxable service

Wrong Availment of Cenvat Credit – Rule 14

In case Cenvat Credit is taken or utilized wrongly or has been refunded erroneously , the same along with interest shall be recovered from the manufacturer / provider of the output services under the provisions of Sections 11A and 11AB of the Central Excise Act / Sections 73 & 75 of Finance Act

Confiscation and Penalty – Rule 15

- Inputs / C. G. on which credit is wrongly availed / availed in contravention of any provision of CCR, are liable to be confiscated and the person who has availed such wrong credit is liable for penalty not exceeding the duty on such inputs / C. G. or Rs 2000/- whichever is greater – 15(1)
- the person who has availed wrong credit on input services is liable for penalty not exceeding Rs 2000/- – 15(3)
- In case Cenvat credit on inputs / C. G. / input services availed / utilized wrongly on account of fraud, etc. – manufacturer / output service provider liable for penalty U/S 11AC of CEA / Section 78 of the Finance Act – 15(2) & (4)

Steps in Audit

- **Trend Analysis**
- **Working out Ratios (PLA / Cenvat, Cenvat on dealer's invoice / manufacturer's invoice)**
- **Know nature of Product**
- **Manufacturing process**
- **Systems followed by assessee**
- **Gathering information about assessee**

Verification of documents and records

Documents needs to be seen

- **Annual Report in case of corporate assessee**
- **Balance- sheet and Profit & Loss Account in case of non corporate assessee**
- **Cost Audit Report**
- **Tax Audit Report with its complete Annexures**
- **Bill of Materials**
- **Input output norms fixed by the Director General of Foreign Trade**
- **List of all the records prepared and maintained by manufacturer**
- **Daily Stock Account**
- **Detailed flow chart of manufacturing process**

Verification of documents and records contd.

- **Detailed break up of contingent liabilities to get an idea of the issues on which Show Cause Notice(s) are issued / pending**
- **Suppliers/ Creditors Ledgers**
- **Bank Statement**
- **Bank Book**
- **Machine Log Book**
- **Value Addition**
- **Central Excise Returns filed under Rule 9A about principal inputs namely ER-5 and ER-6**

Verification of documents and records

contd.

- **Monthly (ER-1) / quarterly return (ER-3) about Cenvat credit availed**
- **Documents based on which credit has been availed**
- **Records maintained by the assessee for recording of availment and utilization of Cenvat Credit (earlier RG 23A and RG 23 C)**
- **ST-3 Returns**
- **FOREX Payments / Receipts**
- **Transactions with Associated Enterprises**

Main Audit Objections

- **Goods sent for job work not received back within 180 days and yet credit not reversed**
- **Simultaneous availment of credit on Capital Goods and depreciation on the excise duty portion of value of Capital Goods under Income Tax Act**
- **Wrong availment of cenvat credit on inadmissible documents**
- **Wrong availment of cenvat credit on air conditioner installed in office**
- **Wrong availment of cenvat credit on inputs used in manufacture of exempted goods**

Main Audit Objections contd.

- **Cenvat credit availed on C. G. used exclusively in exempted goods in case of non SSI units**
- **Wrongful availment of excess Cenvat credit shown in excess by registered dealer than amount of duty on pro-rata basis**
- **Non payment of amount equal to 5% or 6% of value of exempted goods / exempted services cleared under Rule 6**
- **Irregular / excess Cenvat credit on inputs the value of which is later reduced**
- **Less reversal of credit on clearance of inputs / C. G. as such**

Main Audit Objections contd.

- **Availment of Cenvat credit on ineligible inputs / C. G.**
- **Availment of credit on inputs used outside the factory (which should have been used within the factory)**
- **Excess Cenvat availed on inputs received short**
- **Credit availed on LDO, HSD , petrol**
- **Interest on delay in payment of amount / duty on clearances of inputs / C. G. as such under Rule 3(5)**

Main Audit Objections contd.

- **Proportionate credit not reversed by SSI units on the inputs lying in stock or contained in final product while opting out of Cenvat scheme**
- **Proportionate credit not reversed by non SSI units on the inputs lying in stock or contained in final product while final product become exempt**
- **Irregular availment of Cenvat on receipt of expired finished goods**
- **Irregular clearance of inputs to 100% EOU without reversal of credit**
- **Duty not paid on scrap not returned / received from job worker**

Main Audit Objections contd.

- **Non reversal of Cenvat credit on inputs / C. G. written off in books of Accounts**
- **Short payment of Central Excise duty by misclassification of finished goods under CET heading which attracts lower rates**
- **Irregular re-credit taken of the reversed Cenvat Credit**
- **Irregular availment of Cenvat Credit on inputs (like F.O. etc.) used in generation of electricity sold out side factory**
- **Cenvat Credit of CVD paid through Debit in DEPB**

Possible Causes of Cenvat Abuse

Wrong availment of Cenvat credit may happen on account of the following :-

- **Availing value of the goods as credit**
- **Availing double credit on the same document**
- **Fraudulent availment of credit without receipt / actual use of input**
- **Rejection / return / clearances of input without reversal of Cenvat credit**
- **Availment of credit in excess of the prescribed limit**
- **Cenvat credit availed but duty not paid on finished products**

Possible Causes of Cenvat Abuse contd.

- **Cenvat credit not reversed on inputs / C. G. written off**
- **Cenvat credit availed on ineligible goods e.g. light diesel oil, high speed diesel oil, motor spirit etc.**
- **Non reversal of credit on inputs used in or in relation to the manufacture of the finished product got destroyed by fire and for which remission of duty granted by the competent authority**

THANK YOU