

NOTIFICATION NO 13/2011-CX.,(N.T.)

Dated: March 31, 2011

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely :-

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2011.
- (2) They shall come into force on the 1st day of April, 2011.

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".'

3. 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.

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."

F.No. 334/3/2011- TRU

(SAMAR NANDA)
Under Secretary to the Government of India