ANALYSIS OF AMENDMENT IN CENVAT Credit Rules, 2004:

(Before proceeding further please read the disclaimer at the bottom of this write up)

Notification Number 18 CE (NT) dated 17.03.2012 issued along with Budget 2012 has amended CENVAT Credit Rules, 2004 as under:

S. No.	Rule Amended	WEF	Amendment
1.	Rule 2(a): Capital Goods	01.04.2012	Definition Expanded
2.	Rule 2(l): Input Service	01.04.2012	Definition Amended
3.	Rule 3(5)	17.03.2012	3rd Proviso Omitted
4.	Rule 3(5A)	17.03.2012	Substituted
5.	Rule 4(1)	01.04.2012	2nd Proviso Inserted
6.	Rule 4(2)	01.04.2012	4th Proviso inserted
7.	Rule 5: Refund of CENVAT Credit	01.04.2012	Substituted
8.	Rule 6(3)	01.04.2012	Rate increased from 5% to 6%
9.	Rule 6(3C)	01.04.2012	Omitted
10.	Rule 6(3D)	01.04.2012	Amended

11.	Rule 7: Manner of distribution of credit by input service distributor	01.04.2012	Substituted
12.	Rule 9(1)(e)	01.04.2012	Substituted
13.	Rule 10A: Transfer of CVD u/s 3(5) of Custom Tariff Act	01.04.2012	Inserted
14.	Rule 12A(1)	01.04.2012	Amended
15.	Rule 12A(4)	01.04.2012	Amended
16.	Rule 14	17.03.2012	Amended

A. In rule 2(a) Capital Goods

1. The definition of capital goods has been extended and now following clause has been **inserted and other relevant amendment in same line has been made:**

   (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis

   Before amendment by NN 18, Capital Goods include motor vehicle categorized as under:

   I. Motor vehicle registered in the name of provider of output service for providing following specified taxable service:

      1. Courier Agency Services [65 (105) (f)]
      2. Tour Operator Services [65(105)(n)]
      3. Rent-a-Cab Scheme Operator Services [65(105)(o)]
      4. Cargo Handling Agency Services [65(105)(zr)]

5. Goods Transport Agency Services [65(105)(zzp)]
6. Outdoor Caterer Services [65(105)(zzt)]
7. Panadal or Shamiana Contractor Services [65 (105) (zzw)]

II. Dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing following specified taxable services:

1. Site Formation And Clearance, Excavation And Earthmoving And Demolition Services [65 (105) (zzza)]
2. Mining Of Mineral, Oil Or Gas Services [65 (105) (zzzy)]

III. Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in above two categories.

After amendment by NN 18, now Capital Goods include motor vehicle categorized as under:

I. Motor vehicle **falling under tariff headings 8702, 8703, 8704, 8711 and their chassis** registered in the name of provider of output service for providing following specified taxable service:

1. Courier Agency Services [65 (105) (f)]
2. Tour Operator Services [65(105)(n)]
3. Rent-a-Cab Scheme Operator Services [65(105)(o)]
4. Cargo Handling Agency Services [65(105)(zr)]
5. Goods Transport Agency Services [65(105)(zzp)]
6. Outdoor Caterer Services [65(105)(zzt)]

7. Panadal or Shamiana Contractor Services [65 (105) (zzw)]

II. Dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing following specified taxable services:

1. Site Formation and Clearance, Excavation and Earthmoving and Demolition etc. Services [65 (105) (zzza)]

2. Mining of Mineral, Oil or Gas Services [65 (105) (zzzy)]

III. Motor vehicles **other than** those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis.

However under this category following motor vehicles are **excluded**:

1. Falling under tariff headings 8702 i.e., MOTOR VEHICLES FOR THE TRANSPORT OF TEN OR MORE **PERSONS**, INCLUDING THE DRIVER

2. Falling under tariff headings 8703 i.e., MOTOR CARS AND OTHER MOTOR VEHICLES PRINCIPALLY DESIGNED FOR THE TRANSPORT OF **PERSONS** (OTHER THAN THOSE OF HEADING 8702), INCLUDING STATION WAGONS AND RACING CARS

3. Falling under tariff headings 8704 i.e., MOTOR VEHICLES FOR THE TRANSPORT OF **GOODS**

4. Falling under tariff headings 8711 i.e., MOTORCYCLES (INCLUDING MOPEDS) AND CYCLES FITTED WITH AN AUXILIARY MOTOR, WITH OR WITHOUT SIDE-CARS

Under this category attempt is made to keep out of the definition of motor vehicles, those motor vehicles which are used for transport of **goods and persons** as these are already covered by first category and in respect of first category only those motor vehicles are included in the definition of capital goods which are used for providing 7 specified taxable services.

In respect of dumpers or tippers mentioned in second category above, they are included in the definition of capital goods only if they are used for providing 2 specified taxable services.

Thus we can conclude that this category will includes those motor vehicles with their chassis which are used in factory, site or premises etc. for the purpose of business or commerce.

IV. Components, spares and accessories of **motor vehicles which are capital goods** for the assesse.

Meaning of motor vehicle – The term 'motor vehicle' is not defined in Cenvat Credit Rules. As per Central Excise Tariff Act, 'motor vehicles' are covered under chapter 87 of Central Excise Tariff.

As per section 65(73) of Finance Act, 1994; 'motor vehicle' has same meaning as assigned to it under section 2(28) of Motor Vehicles Act. As per that Act, 'motor vehicle' means any mechanically propelled vehicle adapted for use upon roads, whether the power or propulsion is transmitted thereto from internal or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle run on fixed rails or a vehicle of special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters.

B. In rule 2 (l) input services

Under new definition of input service (as substituted wef 01.03.2011) following services are **specifically excluded** from the definition of input services:

1. Specified services used for **construction of a building or a civil structure** etc
2. Specified services used in relation to **motor vehicles**
3. Any services used for the **personal use or consumption of any employees**

2nd specific exclusion clause of the definition of input services has been amended as under:

Before amendment by above notification, if the following services

1. General Insurance Business Services[65 (105) (d)]
2. Rent-a-Cab Scheme Operator Services [65(105)(o)]
3. Authorised Service Station Services [65(105)(zo)]
4. Supply of Tangible Goods Services [65(105)(zzzzj)]

are used in respect of motor vehicle by **any service provider then they shall not be included** in the definition of input services and accordingly CENVAT credit shall not be taken. However, if the above services are used by the following service provider in respect of motor vehicle then they shall be included in the definition of input service and accordingly CENVAT credit shall be taken:

1. Courier AgencyServices [65 (105) (f)]
2. Tour OperatorServices [65(105)(n)]
3. Rent-a-Cab Scheme Operator Services [65(105)(o)]
4. Cargo Handling Agency Services [65(105)(zr)]
5. Goods Transport Agency Services [65(105)(zzp)]
6. Outdoor Caterer Services [65(105)(zzt)]
7. Panadal or Shamiana Contractor Services [65 (105) (zzw)]

Now after amendment by NN 18, it has been amended as under:

I. If the following services are used in relation to **motor vehicle which is not a capital good** then these are **excluded** from the definition of input services

1. Rent-a-Cab Scheme Operator Services [65(105)(o)]

2. Supply of Tangible Goods Services [65(105)(zzzzj)]

In other words, we can say that if the above services are used in relation to motor vehicle which is included in the definition of capital goods then they shall be included in the definition of input services and accordingly qualify for CENVAT credit.

II. Second amendment in respect of same is as under:

1. General Insurance Business Services[65 (105) (d)]
2. Authorised Service Station Services [65(105)(zo)]

The above services shall be included in the definition of input services only if they are used by

1. Manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him.
2. Provider of General Insurance Business Services [65 (105) (d)], in respect of a motor vehicle insured or reinsured by him.

   In other words, we can say that if above services are used by any other person then they shall not be included in the definition of input services and accordingly CENVAT credit shall not be taken and utilized.

C. Rule3(5) and Rule 3(5A) has been amended as under:

3rd proviso of rule 3(5) and rule 3(5A) provides provision for payment of CENVAT credit taken on capital goods removed after being used. Now these provisions are clubbed in rule 3(5A) by omitting 3rd proviso and subject to the condition that if the amount calculated in said sub rule is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Now new rule 3(5A) is as under:

If the capital goods, on which CENVAT credit has been taken, **are removed after being used, whether as capital goods or as scrap or waste**, the manufacturer or provider of output services **shall pay an amount**

equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(a) for computers and computer peripherals :

for each quarter in the first year @ 10%

for each quarter in the second year @ 8%

for each quarter in the third year @ 5%

for each quarter in the fourth and fifth year @ 1%

(b) for capital goods, **other than computers and computer peripherals** @ 2.5% for each quarter:

Provided that if the amount so calculated is **less than** the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

Example:

Suppose any machinery which is a capital goods other than computer has been purchased on 01.04.2008 of Rs.10,00,000 and CENVAT Credit of 10.30% of excise duty of Rs.1,03,000 has been taken as per provisions of CCR, 2004 and sold on 01.05.2012 of Rs.5,00,000. Now amount payable under rule 3(5A) shall be calculated as under:

1. Excise Duty on sale on transaction value is Rs.61,800 (12.36% of Rs.5,00,000)
2. CENVAT Credit Taken - Amount calculated @2.50% for each quarter or part thereof by SLM

   [103000-(103000*2.50%*4 (complete years)*4(quarter in a year) +103000*2.50%*1(part of the quarter of FY 12-13)]

   =103000-(103000*2.50%*4 *4 +103000*2.50%*1)

=103000-(41200+2575) =103000-43775=59225

Thus amount payable under Rule 3(5A) is higher of 1 and 2 i.e. Rs.61,800/-

D. In rule 4 following amendments has been made:

1. 2nd proviso to Rule 4 (1) has been **inserted** as under:

   Provided further that the CENVAT credit in respect of **inputs** may be taken by the **provider of output service** when the **inputs** are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

2. 4th proviso to Rule 4(2) has been **inserted** as under:

   Provided also that the CENVAT credit in respect of **capital goods** may be taken by the **provider of output service** when the **capital goods** are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

   Now it is mandatory to maintain documentary evidence of delivery and location of the input and capital goods by the **provider of output service** in order to take CENVAT credit of duty paid on input and capital goods.

E. Rule 5 has been substituted as under:

Old:

1. Rule 5. **Refund of CENVAT credit.** -Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or

(ii) service tax on output service,

and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification:

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.

Explanation: For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of Services Rules, 2005.

New:

5. **Refund of CENVAT Credit.** - (1) A **manufacturer** who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a **service provider** who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all **inputs** removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax.

Explanation 1. - For the purposes of this rule,-

(1) "export service" means a service which is provided as per the provisions of Export of Services Rules, 2005, whether the payment is received or not;

(2) "relevant period" means the period for which the claim is filed.

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

Before this amendment, refund of CENVAT Credit by the exporter of goods or services may be claimed only if it can-not be utilized for the payment of excise duty or service tax, as the case may be. Now refund can be determined by the formula given in this rule subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette. In other words, one can claim refund of CENVAT credit even if it can be utilized against tax liability to be arise in future in the manner prescribed in aforesaid rule.

F. In rule 6 following amendments has been made:

1. Rate in Rule 6(3)(i) and 2nd proviso of Rule 6(3) has been increased from 5% to 6%.

2. Sub rule 3C has been omitted:

Before above amendment in respect of following services

i. Life Insurance Business Services u/s 65(105)(zx)

ii. Management Of Investment, Under Unit Linked Insurance Business Services u/s 65(105)(zzzzf)

Provider of these services are required to pay for every month an amount equal to 20% of the CENVAT credit availed on inputs and input services in that month instead of paying amount calculated as per normal provision of rule 6(3).

After above amendment now amount payable shall be calculated as per normal provision of Rule 6(3).

G. Rule 7 has been substituted as under:

Old

Rule 7. Manner of distribution of credit by input service distributor. - The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely:-
(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or
(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

New

7. **Manner of distribution of credit by input service distributor.** - The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—
(*a*) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
(*b*) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.
Explanation 1. - For the purposes of this rule, —unit includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.
Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

Under substituted provision two new condition i.e. (c) and (d) along with two explanation has been added.

H. In rule 9(1), clause (e) has been substituted as under:

Old

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

New

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or

I. A new rule 10A has been **inserted** as under:

10A. **Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act**.— (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan:

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003];

(viii) No.20/2007-Central Excise, dated the 25th April, 2007

[G.S.R. 307 (E), dated the 25th April, 2007]; and

(ix) No. 1/2010-Central Excise dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010].

(2) The manufacturer or producer shall **submit the monthly return**, as specified under these rules, separately in respect of transferring and recipient registered premises.

J. In rule 12A following amendments has been made:

1. In 3rd proviso of rule 12(A)(1) following clause has been **inserted**

   (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]

2. In rule 12A(4) in 2nd proviso following shall be **inserted**:

   (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]

K. In rule 14 following **amendments** has been made:

This rule provides provision for recovery of CENVAT credit taken and utilized wrongly. Before this amendment words used in these provisions were taken or utilized wrongly and due to this even if assessee has not utilized the CENVAT credit taken wrongly assessee has to pay interest due to various court judgements including apex court judgement. Now it has been suitably amended and interest to be paid if CENVAT credit wrongly taken and utilized.

(Disclaimer: The above write up has been compiled from various provisions of Finance Act 1994, CENVAT Credit Rules, 2004 and amendment made by Finance Bill 2012 and notifications issued thereunder. The illustrative examples have been drafted based on these provisions and amendments proposed by the Finance Bill 2012. The compilation may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this write up. Readers are also requested to convey the correct position as per their interpretation of the provisions of Finance Act 1994, CENVAT Credit Rules, 2004 and amendment made by Finance Bill 2012 which shall be most welcome for correcting this write up.)

With Warm Regards,

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