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Documents , Record and Returns mandatory for CENVAT Credit

[Statutory provisions , Commentary]

CA. Sanjeev Singhal

Documents, Accounts and Returns for CENVAT

RULE -9: Documents, Records and Returns

Statutory Provisions

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot 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;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of

the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(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 there under with the intent to evade payment of service tax.

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

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

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, central excise or service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document

have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

(3) [Omitted]

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within ten days after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board.

Provided that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically.

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year

to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

9A. Information relating to principal inputs.

(1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products:

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004.

[Omitted]

(2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

[Omitted]

(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule.

Explanation: For the purposes of this rule, “principal inputs”, means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final products.

Commentary

CENVAT Credit on Input, Input Services and Capital Goods can be Obtained as follows :

Rule 9(1) of Cenvat Credit Rules prescribes that Cenvat Credit can be taken on the basis of ;

- Invoice of manufacturer from factory
- Invoice of manufacturer from his depot or premises of consignment agent
- Invoice issued by registered importer
- Invoice issued by importer from his premises or consignment registered with Central Excise
- Invoice issued by registered first stage or second stage dealer
- Supplementary Invoice by supplier-manufacturer or service provider, except where such payment was on account of fraud, suppression of facts etc.
- Bill of Entry
- Certificate issued by an customs in respect of goods imported through foreign post office
- GAR-7 challan evidencing payment of service tax by the service recipient as the person liable to pay service tax
- Invoice , bill or Challan issued by provider of input service on or after 10-09-2004
- Invoice, Bill or Challan issued by input service distributor under rule 4A of Service Tax Rules.

❑ **Credit can be on the basis of any copy** – Earlier, Cenvat credit was allowable only on basis of Invoice copy marked 'Duplicate for Transport'. Now there is no such copy specified.

❑ **Credit can be taken on basis of own invoice** – In Madhava Laxmi Mills Ltd. v. CCE (2006) 3 STT 147 (CESTAT), assessee cleared manufactured goods (single yarn) to job workers for purpose of doubling. After return of double yarn (which was intermediate product), assessee too Cenvat credit on the basis of his own invoices. It was held that assessee is within his right to do so.

Cenvat credit can be taken on basis of own invoice – Godavari Sugar Mills v. CCE 2006 (196) ELT 74 (CESTAT).

❑ **No Cenvat on Photostat/Xerox copy?** – Cenvat credit cannot be taken on basis of Photostat/Xerox copy of Invoice – Nexus Computers v. CCE 2005 (190) ELT 55 (CESTAT) * CC v. Avis Electronics (2000) 117 ELT 571 (CESTAT Large bench) * CCE v. Vandana Energy (2008) 9 STR 31 = 223 ELT 83 (CESTAT SMB) * CCE v. Survoday Blending (2012) 278 ELT 373 (CASTAT SMB) * DSM Sugar v. CCE (2013) 287 ELT 236 (CESTAT SMB).

❑ **Credit if duty paying document is lost**

There is no specific provision to avail Cenvat credit if all copies of duty paying documents are lost.

As per proviso to rule 9(2), if prescribed document contains required minimum details but does not contain all details and if Jurisdictional Assistant/Deputy Commissioner is satisfied that such goods or services covered by the document have been received and accounted for in books of account receiver, he may allow Cenvat credit.

Thus, document containing prescribed minimum details should be available. The rule makes no provision of situation where no document is available at all.

In Bombay Goods Transport Assn v. UOI 1995(77) ELT 521 (Born HC DB), it was held that MODVAT credit (based on certified copy or authenticated copy) cannot be mechanically disallowed. Assessee can prove that excisable goods used had been subjected to duty.

- **Can permission of AC/DC be taken post facto** - One issue is whether assessee can take credit and apply for permission post facto, or when objection is raised during audit.

The proviso to rule 9(2) does not prescribe any procedure or time limit for submitting application for permission of AC/DC. In fact, the wording is such that AC/DC can allow credit even on his own i.e. suo motu, without making any specific application.

Further, proviso to rule 9(2) does not require prior approval or permission. In LIC of India v. Escorts Ltd. – AIR 1986 SC 1370 (1986) 59 Comp Cas 548 (SC) (1986) 1 SCC 264 (1986) 8 ECC 189, it has been held that as long as law does not state that prior approval should be obtained , such approval can be given later with retrospective effect. – followed in Date & Carrington Investment v. PK Prathapan (2004) 54 SCL 601 122 Comp Cas 161 AIR 2005 SC 1624 2004 AIR SCW 5143 * Texmaco Ltd. v. Dy Director, Enforcement (1997) 88 Comp Cas 228 (Cal HC DB).

In CCE v. System India (2008) 232 ELT 459 (CESTAT SMB), assessee took credit on basis of original invoice instead of duplicate invoice. It was held that AC/DC can grant post facto permission.

Thus, it can be argued that post facto approval can be given, after objection is raised by excise audit party.

- **Unsigned invoice or printed signature on generated on computers**

  Rule 11(1) of Central Excise Rules and rule 4 A(1) of Service Tax Rules state that invoice should be 'signed'. It does not say that it should be signed in link. Thus, even mechanical signature means it is 'signed'.

  Further, even if not signed, it is at the most a technical lapse. It is well settled that a substantive benefit cannot be lost on account of procedural lapses.

  Industry is not static. There are continuous progresses therein. New processes and methods are developed and new material and components or types of components supersede others. It is unreasonable to give a static interpretation to words used in a tariff schedule by ignoring the rapid march of technology - Progress cannot be stifled by over rigid interpretation – CCCE v. Lekhraj Jessumal and Sons 1996 (82) ELT 162 13 RLT 300 101 STC 480 (SC) AIR 1997 SC 145.

- **Wrong or different address given** – In CCE v. Jammu Woodplast 2000 (121) ELT 777 (CEGAT SMB), Cenvat was permitted when the only defect was that address of assessee was different, which occurred due to clerical mistake of consigner's staff - same view in Om Textiles v. CCE 2006 (199) ELT 47 (CESTAT) * Strides Research v. CCE (2008) 227 ELT 479 (CESTAT SMB).

- **Invoice in name of Head Office/administrative office** – Invoice with address of Head Office is eligible for Cenvat credit –Modern Petrofils v. CCE (2010) 29 STT 111 (CESTAT SMB) * CCE v. Chamundi Textiles (2010) 270 ELT 531 50 VST 217

(CESTAT SMB) * Krisha Maruti v. CCE (2012) 34 STT 576 18 taxmann.com 225 (CESTAT SMB).

Cenvat credit cannot be denied only on the ground that invoice is on address of administrative office – Moving Picture Company v. CST (2012) 34 STT 33 (Mag) 16 taxmann.com 74 (CESTAT) * Krishna Maruti v. CCE (2012) 277 ELT 357 (CESTAT SMB).

- **Is name of user of goods/receiver of services using inputs/input services necessary on Invoice?**

  In Wiptech Peripherals v. CCE (2009) 19 STT 306 (CESTAT SMB), it was held that Cenvat credit on mobile phones will be eligible even if the cell phones are in name of employees, if the phone is used for business of assessee.

  In CCE v. Proctor and Gamble (2010) 258 ELT 268 (CESTAT SMB), invoice showed name of job worker 'On account' of Principle Manufacturer. Job worker certified that he has not availed Cenvat credit. It was held that Principal Manufacturer can avail Cenvat credit.

  This is indeed correct as Central Excise Duty is on 'manufacture' - 'ownership' is irrelevant.

  Cenvat Credit Rule 3(1) also makes it clear that a manufacturer/service provider shall be allowed to take credit of duty paid on inputs received in the factory/premises of service provider – it does not mention about 'purchase' of capital goods at all.

  In a contrary decision, in Prakash Strips P Ltd. v. CCE 1998 (100) ELT 155 (CEGAT), Cenvat credit was denied when the invoice did not contain name of assessee as consignee. In Bazpur Coop Sugar Factory v. CCE 1998 (104) ELT 372 (CEGAT), Cenvat was denied when invoice was not in the name of manufacturer – similar decision in Steel Authority of India v. CCE (2008)227 ELT 265 (CESTAT).

- **Transfer to another unit** – In Schlafhorst Engineering v. CCE 1999 (108) ELT 299 (CEGAT), it was held that exchanges between units by multi-unit manufacturer can be made by endorsement of invoice even after 1-9-1994, i.e. even after introduction of system of dealer's invoice.

  In Ajay Poly v. CCE (2011) 273 ELT 85 (CESTAT SMB), it was held that goods received wrongly in one factory of manufacturer can be transferred to other factory by endorsement of invoice/Bill of Entry.

  In a contrary decision, in CCE v. Lakshmi Mills Co. Ltd. 1999 (105) ELT 101 (CEGAT), it was held that transfer of goods to another unit of same company should be under invoice under rule 57G [Now comparable rule is 3(4)] and not by endorsement of invoice

- **Supplementary Invoice by supplier-manufacturer or service provider for differential excise duty/service tax**

  It is possible that a manufacturer who had supplied input/capital goods and who had paid duty on such inputs/capital goods may have to pay further duty on these inputs/capital goods on account of any demand or audit objection or finalization of provisional assessment or on account of cost escalation granted by buyer or for any other reason. Similarity, a service provider may be liable to pay additional service tax at a later stage.

In such cases, the other manufacturer who is using that input/capital goods will get further credit of additional duty paid by the supplier of inputs/capital goods or additional service tax paid by service provider.

If supplementary invoice can be issued by manufacturer on account of price rise given by buyer, the buyer can avail Cenvat credit – Ispat Industries v. CCE (2008) 221 ELT 540 (CESTAT).

- **Bill of Entry**

  Cenvat credit is available on additional duty (CVD) paid on imported goods [Rule 9(1)(c)].

  As per Customs procedures, customs duty is payable by using a document called 'Bill of Entry'. This is the authentic document regarding payment of CVD.

  Cenvat credit is available even if Bill of Entry is only provisionally assessed and not finally assessed – Monarch Catalyst v. CCE (2012) 278 ELT 668 (CESTAT).

  – If Bill of Entry is name of head of office, Cenvat credit will be available if there is declaration on Bill of Entry that goods are imported on account of a particular factory. This declaration should be on reverse of triplicate copy of Bill of Entry (duplicate copy in case of EDI system) and should be endorsed by Customs Officer. In case of clearness from bonded warehouse from where goods are diverted to a particular factory (either entire consignment or part consignment), there should be a declaration on reverse of third copy of Ex-bond Bill of Entries will be verified Range Superintendent. – CBE&C Circular No. 179/13/96CX dated 29-2-1996. Pune Commissionerate TN 40/96 dated 16.4.1996.

  In Krishna Insulation v. CCE – (1996) 84 ELT 220 7 RLT 59 (CEGAT), Kay Polyplast Ltd. v. CCE (1996) 83 ELT 681 (CEGAT), Shri Krishna Strips Ltd. v. CCE – 1995 (10) RLT 650 (CEGAT), Filament India Ltd. v. CCE – 1996 (84) ELT 214 (CEGAT), Superpax India Pvt. Ltd. v. CCE 1997 (94) ELT 144 (CEGAT), Gehring India v. C 1997 (96) ELT 74 (CEGAT), Reckitt & Colman India Ltd. v. CCE – 1996 (86) ELT 299 (CEGAT),. , Cenvat credit was allowed on basis of endorsed Bill of Entry.

  In Maruti Udyog v. CCE 2004(165) ELT 226 (CESTAT), it has been held that Cenvat credit can be availed on basis of endorsed Bill of Entry – same view in CCE v. Pepsi Foods (2010) 254 ELT 284 (P&H HC DB). – same view in CCE v. Sunder Castings (2007) 7 STR 24 223 ELT 59 (CESTAT), where it was held that endorsed Bill of Entry is Permissible even if part of consignment is transferred.

- **Sale on high seas** – In case of high sea sales, Cenvat credit can be taken on basis of endorsed Bill of Entry – Maharaja International Ltd. v. CCE – (1996) 84 ELT 466 (CEGAT). If Bill of Entry indicates name of person who has purchased goods on high seas sale and has cleared goods from harbour, further endorsement or certificate from customs authorities is not necessary. Cenvat credit can be taken on such Bill of Entry – Mayura Caps v. CCE 1997 (95) ELT 493 (CEGAT).

Other documents eligible for Cenvat credit

Other documents which are eligible got taking Cenvat credit are as follows:

- **Invoice/bill/ challan of service provider** – An invoice, bill or challan issued by a provider of input service on or after 10-9-2004 will be an eligible document [rule 9(1)(f)]

- **Invoice from depot or consignment agent** – Invoice issued by manufacturer from depot or premises of consignment agent or any other premises where goods are sold on behalf of manufacturer is eligible for availing Cenvat credit [rule 9(1)(a)(i)(I)]. The duty is paid by manufacturer, which is passed on by the depot/consignment agent. However, the depot/consignment agent of manufacturer is not a 'first stage dealer'. The depot/consignment agent should be registered with Central Excise.
- **Invoice of Registered Imported** – An importer may import goods in bulk and then sell them to local buyers from his godown. In such case, Cenvat of CVD paid can be claimed on basis of invoice of the imported. The importer must be registered with Central Excise and his Invoice should contain details similar to those required for Dealer's Invoice. Invoice issued from depot or consignment agent of importer is also eligible for availing Cenvat Credit [rule 9(1)(a)(ii) and 9(1)(a)(iii)].
- **Invoice of first stage and second stage dealer** – Sometimes, goods are dispatched by manufacturer to his depot and then sold from there.

  Often goods are purchased in bulk by wholesaler/distributor from manufacturer's factory or from manufacturer's depot and then subsequently sold.

  These may be bought by sub-dealer and then sold to ultimate user (who will avail the credit). In such case, the dealer who has purchased goods from manufacturer or manufacturer's depot or sub-dealer who has purchased from wholesaler/distributor will raise an invoice.

  Only first stage and second stage dealers can issue Cenvatable Invoice. The dealer issuing such Invoice must be registered with Central Excise. The Invoice should contain details as prescribed [rule 9(1)(a)(iv)].

- **Transit sale** – In case of transit sale, dealer's invoice is not requires. Cenvat can be availed by buyer on the basis of invoice issued by manufacturer. Invoice can be in name of dealer through whom goods are purchased, provided that name of buyer appears as consignee.
- **Certificate issued by Appraiser of Customs in post office** – A certificate issued by an appraiser of customs in respect of goods imported through a foreign post office is an eligible document for Cenvat credit. [Of course, only CVD portion of duty will be eligible for Cenvat credit] [rule 9(1)(d)]
- **Payment of further CVD subsequent to clearance** – It may happen that assessee may pay customs duty on provisional basis and may pay further duty subsequent to clearance from the customs. In such case, he can take Cenvat credit of further CVD paid by you subsequent to clearance. He can take credit on basis of challan or any other document by which he paid the further duty. Such challan or other document will be treated as 'supplementary invoice' – Explanation to Rule 9(1)(b).
  in CCE v. Ennore Foundries (2009) 244 ELT 288 (CESTAT), it was held that differential credit of CVD can be taken on basis of certificate issued by Appraising Officer, Customs.
  In Lakshmi Automatic Loom Works v. CCE (2010) 259 ELT 545 (CESTAT SMB), duty was paid later as initially goods were cleared without payment of duty under advance authorization. It was held that Cenvat credit can be taken on basis of Certificate from Customs authorities.

- **Debit Note issued by service provider**

  In Chemplast Sanmar Ltd. v. CCE (2009) 21 STT 283 = 16 STR 94 = 2009 TIOL 443 (CESTAT), assessee availed Cenvat credit on basis of debit note. The document

contained all the required details as required in invoice or challan. It was prima facie held that Cenvat credit cannot be denied solely on the basis that document was titled as 'debit note' – same view in Pharmalab Process v. CCE (2009) 242 ELT 467 (CESTAT SMB) * Pallipalayan Spinners v. CCE (2010) 28 STT 424 (CESTAT SMB) * CCE v. Jalaram Plastic Pack (2012) 35 STT 94 = 19 taxamann.com 184 (CESTAT SMB).

There is contrary view in Godrej Consumer Products Ltd. v. CCE (2011) 30 STT 48 (CESTAT SMB).

In Shriram Pistons v. CCE (2012) 281 ELT 90 (CESTAT), it was held that Cenvat credit is allowable on the basis of letter issued by Head Office (as Input Service Distributor) even if not mentioned as invoice or challan, if it contains all required details.

In CCE v. Graphite (I) (2007) 212 ELT 54 (CESTAT SMB), Cenvat credit on basis of 'cash memo' was held as admissible. It was observed that hyper technicalities should not be made to disallow Cenvat credit.

In CCE v. Gwalior Chemicals (2011) 274 ELT 97 (CESTAT SMB), it was held that Cenvat credit can be taken on basis of document titles 'Debit Note cum Bill'.

Section 67 of Finance Act, states that 'gross amount charged' includes debit notes. Thus, charging service tax by debit note is recognized by Statute itself. A rule cannot be override provisions of Statute.

The words used in rule 4A(1) of Service Tax Rules are 'invoice, challan or Bill'. Rule 11 of Central Excise Rules specified the document as 'Invoice'. This indicates that in case of service tax, specific nomenclature is not essential.

In fact, first and second proviso to rule 4A(1) uses the term 'any document, by whatever name called'. Thus, rules do envisage flexibility in nomenclature depending on trade and business practices. Different practices are followed in different trades. Nomenclature can vary from trade to trade or business to business.

As per rule 5(1) of Service Tax Rules, the records maintained by assessee including computerized data maintained by assessee in accordance with various other laws are acceptable. Thus, private documents maintained in normal course of business are acceptable. No special records or registers or change in business practices envisaged. This is also indicates that law does not envisage that trade should change its normal practices.

As per Explanation (c) to section 67 Finance Act, 1994, "Gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment. Thus, charging of any amount by debit note and credit note has been accepted.

- **Responsibility of person taking Cenvat credit**

  If there is even minor defect in duty paying document, assessee is required to seek permission of AC/DC for availing Cenvat credit.

- **Burden of proof on manufacturer or service provider** – Rule 9(5) of Cenvat Credit Rules states that burden of proof regarding admissibility of Cenvat credit shall be on manufacturer of final product or provider of output services. Really, the manufacturer can only provide proof over which he has control.

Is the person availing credit responsible to check dealer's records? – Rule 9(4) of Cenvat Credit Rules states that Cenvat credit of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained proper records and amount of duty on pro rata basis has been indicated in the invoice issued by him. Now, the buyer has absolutely no control over these aspects and he has to rely on the invoice issued by the dealer. How can he ensure compliance with these requirements?

- **Buyer not responsible for fraud of supplier** – In R S Industries v. CCE 2003 (153) ELT 114 (CEGAT), the manufacturer supplied goods to buyer on duty paying document. The manufacturer had availed Cenvat credit on inputs fraudulently. It was held that the buyer is not responsible for fraud of supplier and he is entitled to Cenvat credit on basis of a valid duty paying document.
- **Buyer/service receiver cannot produce evidence that the supplier/service provider has actually paid duty/service tax** – Buyer or service receiver cannot prove that the supplier of goods/provider of service has actually paid the excise duty/service tax. In Aarvee Denims v. CCE (2009) 22 STT 356 (CESTAT SMB), it was held that assessee cannot be expected to produce evidence to show that service provider has actually deposited dues with Government. Documentary evidence showing collection of service tax from assessee would meet requirement of law (same principle would apply to excise duty also).

Procedure for Cenvat

The main procedures for availment of Cenvat are –

- Maintaining records of inputs and capital goods
- Maintaining records of credit received and utilised
- Submit returns of details of Cenvat credit availed, Principal Inputs and utilization of Principal Inputs in Forms ER – 1 to ER – 8.
- Returns by dealer/service provider/input service distributor

- **Returns of inputs and capital goods** – The manufacturer of final products or provider of output service or input service distributor shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods. The record should contain relevant information regarding (a) value (b) duty paid (c) Cenvat credit taken and utilised (d) the person from whom inputs/capital goods have been procured. Burden of proof regarding admissibility of Cenvat credit is on the manufacturer or provider of output service taking the credit – Rule 9(5) of Cenvat Credit Rules.
- **Record of input services** – The manufacturer of final products or the provider of output service shall maintain proper records for receipt and consumption of the input services. The record should contain relevant information regarding – (a) Value of service (b) Tax paid (c) Cenvat Credit taken and utilised (d) Person from whom input service has been procured. The burden of proof regarding the admissibility of Cenvat credit shall lie upon the person taking such credit. [rule 9(6)].
- **Cenvat Credit Record** – Cenvat Credit record should be maintained, which is similar to PLA. It is a current account of Cenvat credit received, credit utilised and credit balance. This should give details of (a) credit availed against each input/capital goods (b) credit utilised against clearance of final products or removal of inputs as such or after processing or removal of capital goods as such (c) balance credit available.
- **No Interest if wrong credit reversed on own** – In Emmllen Biotech v. CCE 2004 (163) ELT 172 (CEGAT), it was held that if Cenvat credit wrongly taken is reversed before issue of show cause notice, interest is not payable quoted and followed in Hari Krishna

Steel Corporation v. CCE 2006 (194) ELT 63 (CESTAT) [see also case law under 'penalty' in another chapter].

Returns under Cenvat

A manufacturer has to submit returns to Range Superintendent of Central Excise in the prescribed forms ER – 1 to ER – 8 in respect of Cenvat Availed, Principal Inputs, utilization of Principal inputs etc. Others have to submit returns as follows-

- Quarterly return by first stage/second stage dealer within 15 days from close quarter [rule 9(8)]
- Half yearly within 25 days from close of half year, by provider of output services [rule 9(9) of Cenvat Credit Rules prescribes time of one month but rule 7(2) of Service Tax Rules allows only 25 days] Return should be in form ST-3 electronically.
- Half yearly return within one month from close of half year, by Input Service Distributor [rule 9(10) of Cenvat Credit Rules] Return should be in form ST – 3

Compulsory e-filing of returns – All dealers, manufacturers and service providers have to file return electronically only w.e.f. 1-10-2011.

Revised return – A revised return can be filed by a service provider within 60 days of filing of original return [rule 9(11) inserted w.e.f.1-3-2007]. This facility is only to service providers and not to manufacturers.

Though the Rule 7B of Service Tax Rules,1994 provides that Revised ST-3 to correct a mistake or omission , can be filed within period of [Ninety days] [inserted w.e.f. 1.3.2008] , from the date of submission of the return under rule 7.

If assessee has not taken Cenvat credit of certain inputs, input services or capital goods, and mistake comes to notice after 60 days, he can avail it in subsequent period, since there is no time limit for availing Cenvat credit. This will be reflected in his return for that subsequent period, as in normal course.

- **Records to be maintained for Cenvat**

  Cenvat Rules do not prescribe any statutory records. However, quantitative record of inputs and capital goods is required as per rule 9(5) of Cenvat Credit Rules. Record of service tax credit is required as per rule 9(6).

  Record of Cenvat credit taken and utilized is required to be maintained so that monthly/quarterly return can be submitted in prescribed form.

  Records can be maintained on computers.

1011, LGF, Sector-15-II, Gurgaon. Haryana.
Site : Skaca.in, email ; sanjeev.singhal@skaca.in
Phone : 0124-4271552