

**-COPY OF-
Service Tax Circular
No. 122/03/2010-ST
Dated 30-4-2010**

Clarification regarding availment of CENVAT credit on input services

Representations have been received by Board regarding denial of CENVAT credit on input services in certain cases. Some of the cases where doubts have been raised by field formations are given below:

2. As per Rule 4 (7) of the CENVAT Credit Rules, 2004, the CENVAT credit on input services is available only on or after the day on which payment of the value of input service and service tax is made. The section 67 (4) of the Finance Act, 1994, provides that gross amount charged includes payment made by issue of credit / debit notes or by entries in the books of account, where the transaction is with any associated enterprise.

A doubt has arisen as to whether CENVAT credit can be taken by “Associate Enterprises” when debit is made in book of accounts or when book adjustments/ debit or credit in accounts is made, or if the CENVAT credit of the service tax paid on input service is available only after the actual payment of the value of input service has been made in money terms.

3. As per sub-rule (7) of Rule 4 of the CENVAT Credit Rules, 2004,

“Credit in respect of 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 is indicated in invoice, bill or as the case may be, challan referred to in Rule 9”.

A doubt raised is as to whether the receiver of input service can take credit only after the full value that is indicated in the invoice, bill or challan raised by the service provider, and also the service tax payable thereon, has been paid. It has been represented that in many cases, after the invoice is issued by the service provider, the service receiver does not make the full payment of the invoiced amount on account of discount agreed upon after issuance of invoice; or deducts certain amount due to unsatisfactory service; or withholds some amount as security to be held during contract period. Due to these reasons the value paid may not tally with the amount indicated in the invoice, bill or challan. In such cases the department has raised objections to the taking of credit as it does not meet the requirement of the said sub-rule (7).

4. Thus the following issues relating to availment of CENVAT credit need clarification,-

Whether CENVAT credit can be claimed

(a) when payments are made through debit/credit notes and debit/credit entries in books of account or by any other mode as mentioned in section 67 Explanation (c) for transactions between associate enterprises; or

(b) where a service receiver does not pay the full invoice value and the service tax indicated thereon due to some reasons.

5. Matter has been examined and clarification in respect of each of the above mentioned issues is as under,-

(a) When the substantive law i.e. section 67 of the Finance Act, 1994 treats such book adjustments etc., as deemed payment, there is no reason for denying such extended meaning to the word 'payment' for availment of credit. As far as the provisions of Rule 4 (7) are concerned, it only provides that the CENVAT credit shall be allowed, on or after the date on which payment is made of the value of the input service and of service tax. The form of payment is not indicated in the same and the rule does not place restriction on payment through debit in the books of accounts. Therefore, if the service charges as well as the service tax have been paid in any prescribed manner which is entitled to be called 'gross amount charged' then credit should be allowed under said rule 4 (7). Thus, in the case of "Associate Enterprises", credit of service tax can be availed of when the payment has been made to the service provider in terms of section 67 (4) (c) of Finance Act, 1994 and the service tax has been paid to the Government Account.

(b) In the cases where the receiver of service reduces the amount mentioned in the invoice/bill/challan and makes discounted payment, then it should be taken as final payment towards the provision of service. The mere fact that finally settled amount is less than the amount shown in the invoice does not alter the fact that service charges have been paid and thus the service receiver is entitled to take credit provided he has also paid the amount of service tax, (whether proportionately reduced or the original amount) to the service provider. The invoice would in fact stand amended to that extent. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would also be altered accordingly.

6. The contents of this circular may be suitably brought to the notice of the field formations. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned

F. No. 137/71/2009 – CX.4

Himanshu Gupta
Commissioner (Service Tax)