

Misery of "six months"
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Vide Notification 21/2014 C.E. NT Dt. 11.07.2014, certain crucial amendments are made in Rule 4 of the Cenvat Credit Rules, 2004. The said rule, along with the amendments duly highlighted is reproduced below for ready reference (Insertions marked in blue with date of effect in bracket and omissions marked in red with date of effect in bracket)

RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service :

Provided that in respect of final products, namely, articles of jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

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.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9." (Effective from 01.09.2014)

(2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory,] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year :

Provided that the CENVAT 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 such capital goods are cleared as such in the same financial year :

Provided further that the CENVAT credit of the additional duty leviable under subsection (5) of section 3 of the Customs Tariff Act, [* * * *] in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer :

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year :

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.

Explanation. - For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5)(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning [, or for the manufacture of intermediate goods necessary for the manufacture of final products] or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to, -

- (i) another manufacturer for the production of goods; or
- (ii) a job worker for the production of goods on his behalf, according to his specifications.

(6) The [Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be,] having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(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 (Omitted with effect from 01.09.2014)

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. (Omitted with effect from 01.09.2014)

Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid. (Inserted with effect from 11.07.2014)

Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, 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. (Inserted with effect from 11.07.2014)

Provided also 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, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, 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. (Inserted with effect from 11.07.2014)

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.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9. (Inserted with effect from 01.09.2014)

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".

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9." (Inserted with effect from 01.09.2014).

The above amendments are capable of creating many practical difficulties, which are discussed below.

(i) If a manufacturer or service provider is contesting the demand of excise duty / service tax raised on them and if it is ultimately held that they are liable to pay excise duty / service tax, at that time, they would not be able to avail credit of duties and service tax paid on inputs / input services, as the documents evidencing such credit would be more than six months old. So far, such credit is routinely being allowed on the basis of various judicial pronouncements to the effect that once duty liability / service tax liability is confirmed on final products / output services, cenvat credit in respect of inputs / input services shall be allowed.

(ii) Under Rule 16 of the Central Excise Rules, 2002, in case of return of finished goods into a factory, the duty originally paid at the time of their clearance can be availed as cenvat credit. Wherever the consignee had already availed cenvat credit of the duties paid at the time of original clearance of the goods from the manufacturer, they would return the goods under their own invoices, reversing the credit taken and there would not be any problem for the manufacturer, to avail credit on the basis of such invoice. But wherever the consignee has not taken any cenvat credit they would send the goods only under the cover of some other documents like, delivery challan, letter, etc. which would not indicate any duty portion. In such cases, the manufacturers can avail cenvat credit on the basis of the triplicate copy of the invoice for the original clearance of the goods, available with them, by duly correlating the goods with such invoice. This has also been approved in various judicial decisions. Now, if the goods are returned after six months from the original date of invoice, the manufacturer would not be able to take cenvat credit on the basis of triplicate copy of the invoice with them.

(iii) Cenvat credit of service tax paid on input services can be availed immediately on receipt of invoice. But if the value indicated in the invoice and service tax is not paid to the service provider (except the case where the whole of the service tax is payable by the service recipient), within three months, the credit availed shall be reversed and re-credit of the same can be taken after making the payment to the service provider. If the service provider is paid after six months from the date of his invoice, taking re-credit could be objected by the department on the ground that the document based on which such credit is being availed now, is more than six months old. Though it can be argued that only the first credit was taken based on the document and what is taken second time is only taking back the credit, which was subsequently reversed and hence the time restriction of six months would not apply for the same, it is not known, whether the department would accept such argument, especially in view of the language of the third proviso under Rule 4 (7), which reads as "subject to other provisions of these rules".

(iv) As per Rule 4 (5) (a), credit availed inputs can be cleared to job worker and shall be returned within 180 days. If not, the credit thereon has to be reversed and such credit can be taken again, as and when the goods are received back. Though, such re-credit is not taken based on any documents mentioned in rule 9 (1) of the Rules, the department can always trace the credit back to the invoice based on which the credit was taken first and deny the re-credit on the ground that the document is more than six months old.

(v) Whenever an exemption is withdrawn or a new levy is imposed, or when a manufacturer availing SSI exemption, crosses the exemption limit, as per Rule 3 (2) of the rules, cenvat credit can be taken in respect of the inputs lying in stock, contained in work in progress and finished goods. But if such inputs were purchased before six months, taking such transitional credit would be a problem.

(vi) As per rule 3 (1), credit of duties paid on inputs, used at the job workers' premises is also eligible to the principal manufacturer, after the processed goods are received by him. If the processed goods are received after six months, how to avail such credit?

(vi) Many of the area based exemptions are operated on refund route. The manufacturers have to compulsorily avail credit and pay duty using such credit and the duty paid over and above by way of cenvat credit utilisation is refunded back? What if they deliberately fail to take credit within 6 six months, so that they can get more cash refund?

Will somebody facilitate the trade, which is groping in dark?