

Rule 6 (4) of CCR, 2004 - Interpreted.

(G. Natarajan, Advocate, Swamy Associates)

The following sub rule (4) of Rule 6 of Cenvat Credit Rules, 2004 has been introduced with effect from 01.04.2016.

(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year:

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.

The effect of this sub rule has to be understood properly.

In various decisions it has been held that the time of receipt of capital goods in the factory is relevant to decide the eligibility to avail cenvat credit of the specified duties paid on such capital goods (Eg. Spenta International Ltd. Vs CCE - 2007 (216) ELT 133 Tri-LB). If the final products are exempted from payment of duty and during such period if any capital goods are received on payment of specified duties, such duties cannot be availed as cenvat credit, even if the final products have become dutiable subsequently.

By virtue of the above sub rule (4) it has been provided that in case of new units, if the capital goods in possession are used only in the manufacture of exempted goods or provision of exempted services, for a period of two years from the date of commencement of commercial operations; and in case of existing units, if the capital goods procured are used only in the manufacture of exempted goods or provision of exempted services, for a period of two years from the date of installation of such capital goods, no cenvat credit of specified duties paid on such capital goods can be taken. But, if within the said two years, if the capital goods are used in the manufacture of dutiable goods or provision of taxable services, at that point of time, the specified duties paid on the capital goods can be availed as cenvat credit (subject to other conditions like satisfying the definition of capital goods, not claiming depreciation on duty portion, etc.).

The above rule cannot be interpreted to mean that even if the capital goods are used exclusively in the manufacture of exempted goods or provision of exempted services, for the first two years, cenvat credit can be taken after the expiry of two years, in the absence of any such enabling provision in the said rule. The above rule seeks to relax the law laid down so far that the eligibility to credit should be only with reference to the date of receipt, by giving a further period of two years to avail credit, if the capital goods are used in manufacture of dutiable goods / taxable services, within such two years.

The said sub rule (4) cannot also be interpreted to mean that in respect of capital goods, which have already been used for more than two years from the commencement of commercial production / date of installation, exclusively in the manufacture of exempted goods / provision of exempted services, cenvat credit of the specified duties paid on such capital goods can now be taken. The said sub rule is not an enabling provision as to when cenvat credit can be taken, but a restrictive provision, when cenvat credit cannot be taken.