



CENVAT CREDIT – Recent Court Rulings

Presented by:
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Wrong availment of CENVAT Credit and interest thereon...

- Mr. Inamdaar was engaged in the manufacture of accessories of Motor Vehicles
- He purchased Capital Goods and on receipt of invoice, he passed one entry in Books of Accounts
- However, since he had not received these Capital Goods. After some days, on realisation of the fact, he reversed the entry
- Department issued a SCN stating that this is wrong availment of CENVAT Credit on which interest is leviable



...Wrong availment of CENVAT Credit and interest thereon...

- *Rule 14 of CCR till 17/03/2012:*

- Where the CENVAT credit has been **taken or utilized** wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of **sections 11A and 11AB** of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries



- *Pratibha Processors vs. Union of India 1996 (88) ELT 12 (SC)*

- The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty - which is penal in character

- *Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd. 1999 (112) ELT 353 (SC)*

- The credit of excise duty on the raw material in the register maintained for Modvat purposes was only a book entry which might be utilised later for payment of excise duty on the excisable product. In other words, it matured when the excisable product was removed from the factory and the stage for payment of excise duty thereon was reached. Actually, credit was taken, that is, availed of or utilised, at the time of the

...Wrong availment of CENVAT Credit and interest thereon...

- *Commissioner of C. Ex., Delhi-III vs. Maruti Udyog Ltd. 2007 (214) ELT 173 (P &H)*
 - Learned Counsel for the appellant is unable to show as to how the interest will be required to be paid when in absence of availment of Modvat credit infact, the assessee was not liable to pay any duty. The Tribunal has clearly recorded a finding that the assessee did not avail of the Modvat credit in fact and had only made an entry.
- *Union of India vs. M/s. Ind-Swift Laboratories Ltd. 2011 (265) ELT 3 (SC)*
 - ... The issue is as to whether the aforesaid word ‘OR’ appearing in Rule 14, twice, could be read as “AND” by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word “OR” in between the expressions ‘taken’ or ‘utilized wrongly’ or has been erroneously refunded as the word “AND”. On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.



4. We do not feel that any other harmonius construction is required to be given to the aforesaid expression/provision which is clear and unambiguous as it exists all by itself. So far as Section 11AB is concerned, the same becomes relevant and applicable for the purpose of making recovery of the amount due and payable.

...Wrong availment of CENVAT Credit and interest thereon...

- *Commissioner Of C. Ex. & S. T., Bangalore vs. Bill Forge Pvt. Ltd. 2012 (26) STR 204 (Kar.)*

- 19. It is also to be noticed that in the aforesaid Rule, the word 'avail' is not used. The words used are 'taken' or 'utilized wrongly'. Further the said provision makes it clear that the interest shall be recovered in terms of Section 11A and 11B of the Act.

20.. Before utilization of such credit, the entry has been reversed, it amounts to not taking credit. Reversal of cenvat credit amounts to non-taking of credit on the inputs.

- *Commissioner Of Central Excise, Bangalore-II vs. Pearl Insulation Ltd. 2012 (27) STR 337 (Kar.)*

- The interest cannot be claimed from the date of wrong availment of credit and that the interest would be payable from the date when credit is taken or utilized wrongly



• CENVAT credit is

...Wrong availment of CENVAT Credit and interest thereon

- *Vodafone Essar Cellular Ltd. Vs. Commr. Of C. Ex. & S. T., Pune- III 2013 (30) STR 81 (Tri.-Mumbai)*
 - Stay case
 - Distinguishing decision of Bill Forge Pvt. Ltd. Delivered by Karnataka High Court
- *Rule 14: Recovery of CENVAT credit wrongly taken or erroneously refunded (After amendment on 17.03.12):*

Where the CENVAT credit has been **taken and utilized** wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions **11A and 11AA** of the Excise Act or sections 73 and 75 of the Finance



Definition of Input Service...

- Mr. Samajdar was engaged in manufacture of medicaments
- He received various services while carrying out its business activities

- Department disallowed CENVAT Credit of total Rs following services:

- Technical testing and analysis services
- Technical inspection and certification services
- **Services of foreign agents on commission basis**



7/2/13 Repair/maintenance of copier machine, air-conditioner, water cooler

...Definition of Input Service...



- *Commissioner of C. Ex., Ahmedabad – II vs. Cadila Healthcare Ltd. 2013 (30) STR 3 (Guj.)*

(I) “input service” means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products **upto the place of removal,**

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or **sales promotion**, market research, storage

...Definition of Input Service...



- Commission paid to foreign agents:
 - Under the circumstances, the adjudicating authority was justified in holding that the commission agent is **directly concerned with the sales rather than sales promotion** and as such the services provided by such commission agent would not fall within the purview of the main or inclusive part of the definition of input service as laid down in Rule 2(I) of the Rules
 - The activities that follow the words such as are illustrative of the activities relating to business which are included in the definition of input service and are not exhaustive. Therefore, activities relating to business could also be other than the activities mentioned in the sub-rule. However, **that does not mean that every activity related to the business of the assessee would fall within the inclusive part of the definition.** For an activity related to the business, **it has to be an activity which is analogous to the activities mentioned after the words such as** In the opinion of this court, **none of the illustrative activities**, viz., accounting,

...Definition of Input Service...

- However, as against the judgment of Cadila Healthcare, there are 2 Tribunal judgments in favour of the assessee:
 - *30 STR 535 (Tri- Ahmd) Hindalco Industries &*
 - *30 STR 378 (Tri- Del) Vishal Pipes Ltd.*

Both Tribunals decided in favour of the assessee with regard to admissibility of Credit on Commissioner and Indian agents respectively



...Definition of Input Service

- Clearing and forwarding services:
 - Viewed from that light the services rendered by the C & F agent of clearing the goods from the factory premises, storing the same and delivering the same to the customer **would fall within the ambit of Rule 2(I)** of the Rules as it stood prior to its amendment with effect from 1-4-2008, namely clearance of final products from the place of removal
 - **However, this court is not in agreement with the view adopted by the Tribunal that such services would amount to sales promotion** and is, therefore, an input



CENVAT Credit on Capital Goods...

- Mr. Anthony purchased Capital Goods and availed CENVAT Credit thereon
- The Capital Goods got destroyed in fire
- Claim was sanctioned which included payment of Central Excise Duty
- Mr. Anthony reversed CENVAT Credit considering it to be a double benefit



...CENVAT Credit on Capital Goods...



- *Sarada Plywood Industries Ltd., Calcutta vs. Collector Of Customs & Central Excise, Shillong 1987 (32) ELT 116 (Tri.)*
 - Loss or destruction of excisable goods due to fire within licensed premises - Demand of duty thereon not sustainable - Compensation received by manufacturer for such loss, whether including excise duty or not, cannot be a ground of demand - Duty chargeable on lost goods, only in terms of Proviso to Rule 49(1) of Central Excise Rules, 1944.
- *Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd. 1999 (112) ELT 353 (SC)*
 - Reversal of credit by Excise authorities permissible only when Modvat taken illegally or irregularly
- *Commissioner of C. Ex. & Cus., Surat-II vs. Welspun Terri Towels 2002 (149) ELT 593 (Tri.-Mum.)*

...CENVAT Credit on Capital Goods...



- *Commissioner of C. Ex., Bangalore vs. Tata Advanced Materials Ltd. 2012 (26) STR 600 (Kar.)*
 - No provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been irregularly taken
 - When the assessee purchased the capital goods and when he has paid the excise duty on them, in law, he is entitled to get the credit on the duty paid while clearing the finished products from his factory

...CENVAT Credit on Capital Goods

- Merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the cenvat credit wrong or irregular
- The assessee has paid the premium and covered the risk of this capital goods and when the goods were destroyed in terms of the insurance policy, the Insurance Company has compensated the assessee. It is not a case of double payment as contended by the department. At any rate, the Excise Department has no say in the instant case as held by the Apex Court
- Reversal of credit by Excise authorities permissible only when Modvat taken illegally or irregularly



Duty paid on inputs in excess of due amount

- *V.G. Steel Industry vs. Commissioner of Central Excise 2012 (27) STR 94 (P & H)*



Duty on exempted goods

- Manufacturer of dutiable as well as exempted goods
- Duty reversed in proportion to exempted goods
- Still is it necessary to pay 8% on the price of exempted goods?

Commissioner of C. Ex., Bangalore-III vs. Drug Company 2012 (27) STR 95 (Kar.)



CENVAT Credit in absence of registration



- Exporter of software claimed refund of accumulated credits
- At the time of accumulation of credits registration was not in place

J. R. Herbal Care India Ltd. Vs. Commissioner of C. Ex., Noida 2010 (253) ELT 321 (Tri.-Del.)

- Nowhere in CCR, 02 or CCR, 04 there is any provision that Cenvat credit would not be available to a manufacturer of excisable goods who is not registered

Well Known Polyesters Ltd. vs. Commissioner of C. Ex., Vapi 2012 (25) STR 411 (Tri.-Ahmd.)

- Division Bench Decision
- **In respect of the goods manufactured during the period when the appellant was not registered, credit can be taken subsequently also**

7/2/13 Consistent stand taken by various judicial forums in the base of clandestine removals, even if the duty is paid subsequently, cenvat credit on inputs used

CENVAT Credit in absence of registration

*mPORTAL India Wireless Solutions P. Ltd. Vs. C. S. T.,
Bangalore 2012 (27) STR 134 (Kar.)*

- No requirement under CCR to have registration to avail Credit
- Credit can be claimed





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