

CENVAT CREDIT RULES 2004

CA Sagar Shah
December 2013

Rule 2(a): Capital Goods

- **Capital goods means:-**

- i. All goods under chapter 82,84,85,90,6805,6804 of the First Schedule
 - ii. Pollution Control Equipment
 - iii. Components, spares and accessories of goods at (i) and (ii)
 - iv. Moulds, dies, jigs and fixtures
 - v. Refractories and refractory materials
 - vi. Tubes and pipes and fittings thereof
 - vii. Storage tank
 - viii. Motor vehicles other than those falling under 8702,8703,8704,8711 and their chasis **but including dumpers and tippers**
- Condition
 - 1. Used in the factory of the manufactures, but does not include any equipment or appliances used in an office or
 - 1(A)Outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory or
 - 2. for providing output service;

Capital Goods

Motor Vehicle including dumpers and tippers but excluding 8702,8703,8704 ,8711 and their chassis

- i. Used in factory ,
- ii. outside factory in electricity generation
- iii. Provider of output service

Motor vehicle designed for transportation of goods (i.e. motor vehicles falling under 8704)

- i. providing an output service of renting of such motor vehicle; or
- ii. transportation of inputs and capital goods used for providing an output service; or
- iii. providing an output service of courier agency

Motor vehicle designed for transportation of passengers (i.e. motor vehicles falling under 8702,8703 and 8711)

- i. transportation of passengers
- ii. renting of such motor vehicle; or
- iii. imparting motor driving skills

Components, spares and accessories of motor vehicles which are capital goods for assessee. The motor vehicle should be registered in the name of service provider and used for providing output service

Rule 2

- d) Exempted goods means:-
 1. excisable goods which are exempt from the whole of the duty of excise leviable thereon,
 2. goods which are chargeable to "Nil" rate of duty;
 3. goods which avail the benefit of exemption notification number 1/2011 C.E.

- e) Exempted Services means
 1. *taxable service which is exempt from the whole of the service tax leviable thereon*
 - *(i.e. services covered under negative list and Mega Exemption notifications)*
 2. *service, on which no service tax is leviable under section 66B of the Finance Act; or*
 - *(i.e. a) transfer of immovable property , deemed sales as per Clause (29A) of article 366 and transaction in money or actionable claim*
 - *b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
 - *(c) fees taken in any Court or tribunal established under any law for the time being in force.)*
 3. taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;
 4. but excludes exports as defined under Rule 6A of Service Tax Rules

Inputs : Rule 2(k) “input” means—all goods used for providing any output service

Goods used for construction or execution of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods are inputs ONLY FOR following service providers:

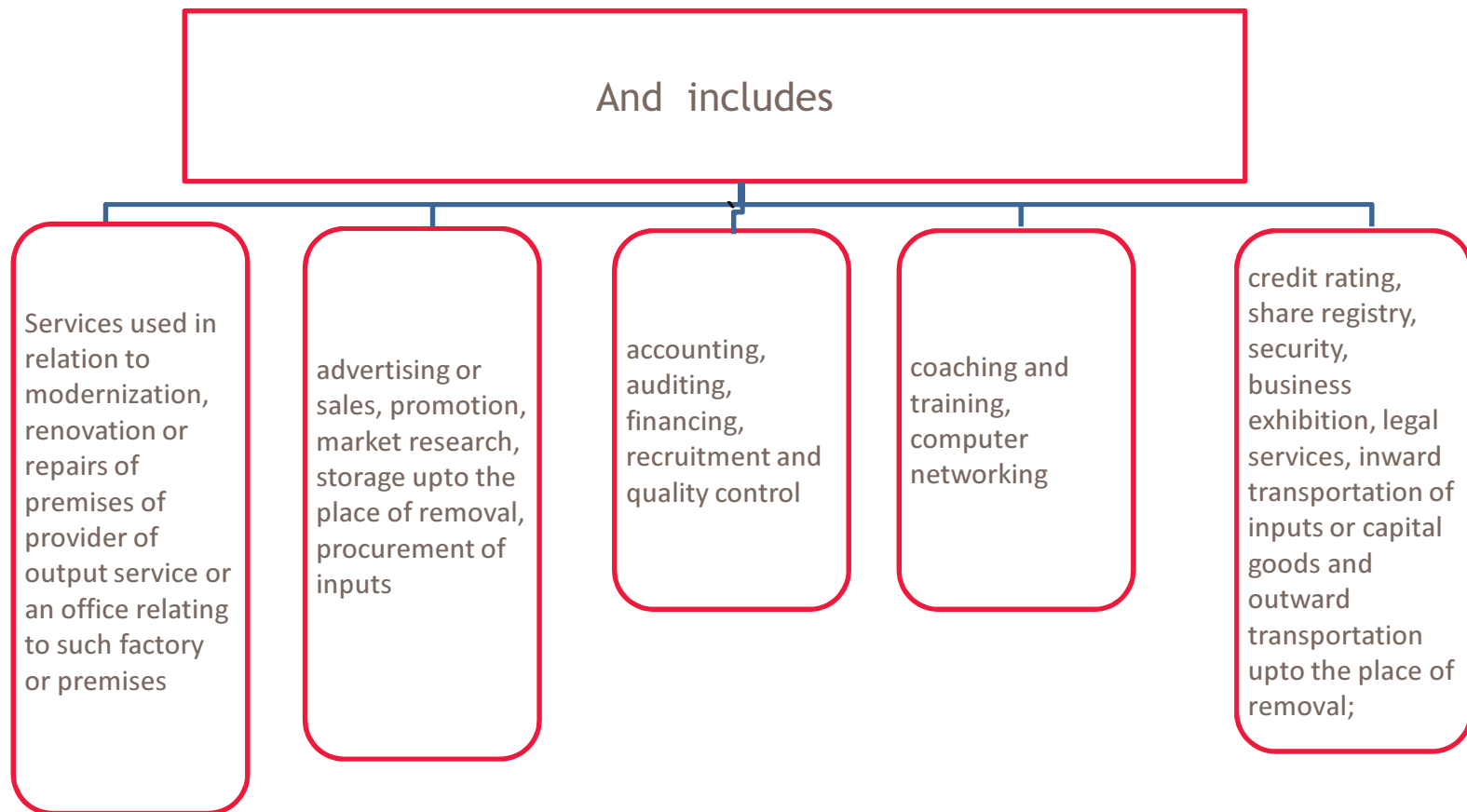
provision of service portion in the execution of a works contract

construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Exclusions

- light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol
- Motor Vehicles**
- Capital Goods
- goods are used primarily for personal use or consumption of any employee (food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment)
- Goods used for construction of a building or a part thereof or laying of foundation or making of structures for support of capital goods used for providing services other than specified services
- Goods which have no relationship with manufacture of final products

Input Service : Rule 2(l) “input service” means any service used by a provider of taxable service for providing an output service



Input Services excludes

Basket 1 : Construction related:

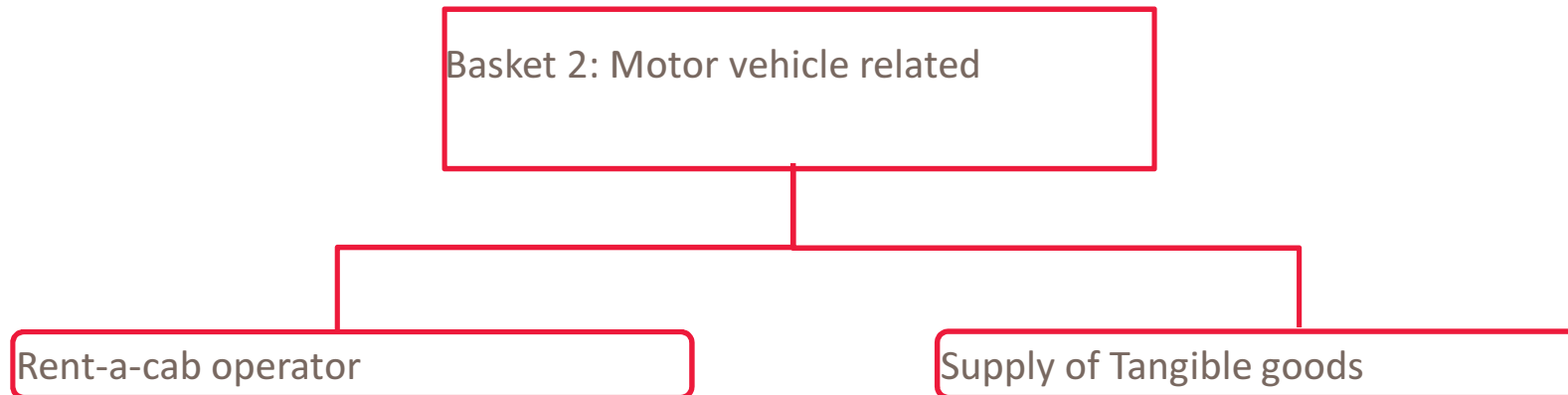
following services used or construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:

provision of service portion in the execution of a works contract

construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

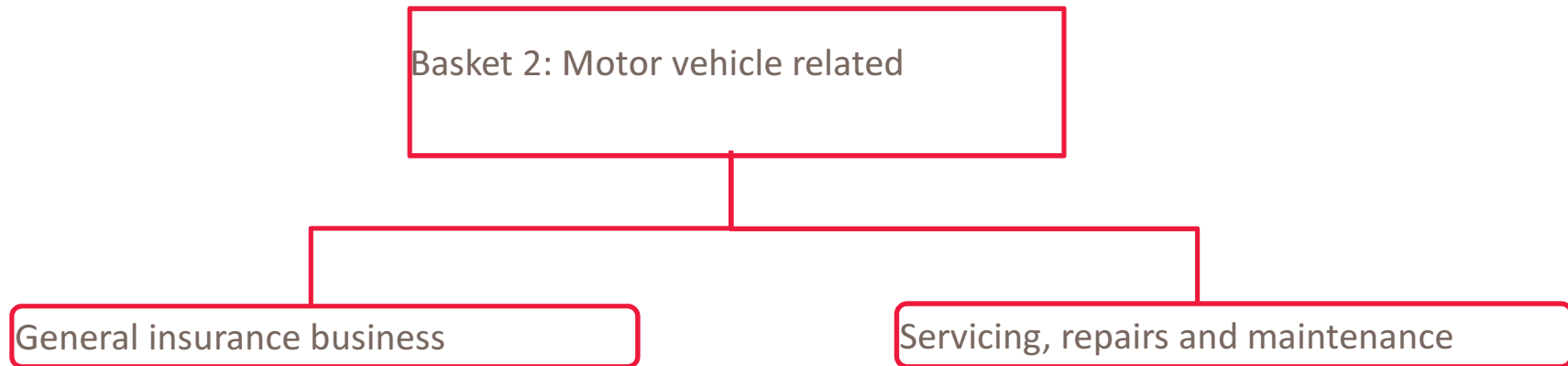
Aforesaid services are “input services” if they are used for providing the services specified above.

Input service excludes



Aforesaid services are “input services” so far as they relate to a motor vehicle which is not a capital goods

Input service excludes



Aforesaid services are “input services”

- 1) so far as they relate to a motor vehicle which is not a capital goods
- 2) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person
- 3) an insurance company in respect of a motor vehicle insured or reinsured by such person

Input services excludes

Basket 3: Personal Use : following services which are used primarily for personal use or consumption of any employee:



Output Service

- Output service means service provided by a provider of service located in the taxable territory but excludes
 - (1) specified in section 66D of the Finance Act; or
 - (2) where the whole of service tax is liable to be paid by the recipient of service.'
- *(Will negative list and mega exemption services will be qualified under output service)*

CENVAT Credit- Rule 3

- i. Duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under Excise Act, excludes, CENVAT credit of goods where exemption of Notification No.1/2011 is been availed. (Ready Mix Concrete, utensils ,etc.)
- ii. CVD restricted to 85% in few cases
- iii. Section 3(5) of Custom Tariff Act not eligible to provider of taxable service.
- iv. Additional duty as per Section 3 of Customs Tariff Act on goods falling under heading 9801 of First Schedule (i.e. project imports, scientific laboratory chemicals, etc)
- v. Excise and Service Tax (E.cess and SHE cess)
 -
 - Utilization of CENVAT credit Rule3(4)
 - i. Not allowed to pay excise on goods where exemption under notification 1/2011 is availed
 - ii. Not allowed to pay service tax where the liability is on service recipient.

CENVAT Credit- Rule 3(5(A))

- If Capital goods are removed from the factory than CENVAT credit is to be reversed as follows:
- (a) for computers and computer peripherals :
 - A) for each quarter in the first year @ 10%
 - B) for each quarter in the second year @ 8%
 - C) for each quarter in the third year @ 5%
 - D) for each quarter in the fourth and fifth year @ 1%
- b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter

Refund Rule 5

- Refund amount means maximum refund eligible restricted to
Lower of the following two:-
CENVAT balance lying at the end of the quarter for which refund is filed or
CENVAT balance lying at the end of the quarter in which the refund is filed

Net CENVAT credit means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider

Refund Rule 5

Particulars	Valuation
Export turnover of goods	Value of export of goods cleared as per monthly/quarterly returns
Total Value of goods cleared	Value of all goods cleared as per monthly/quarterly returns
Value of export of services	<p>a) payments received during the relevant period for export services plus</p> <p>b) export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period minus</p> <p>c) advances received for export services for which the provision of service has not been completed during the relevant period;</p>
Value of all services	Value shall be determined as per Point of Taxation, 2011
Total Turnover	<p>Total turnover means sum total of the value of -</p> <p>(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;</p> <p>(b) export turnover of services determined in terms of clause (D) of sub rule (1) above and the value of all other services, during the relevant period; and</p> <p>(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.</p>

Refund Rule 5

- The new refund rules shall be applicable for exports made on or after 1st April 2012.
- For value services refer Rule 6(3) and 6(3A) of CCR,2004
- Action points:-
 - All refund claim of upto March 2012 should be filed before 16th March 2013 or else the refund will have to be applied as per new amended rules.

Refund Rule 5

- Refund u/r 5B
- Applicable to service provider providing services notified under Section 68(2)

Rule 6- Proportionate reversal of CENVAT credit

□ Option 1 :

□ Pay 6% of the value of exempted services and exempted goods

- If exemption claimed for services by availing **abatement** (where CENVAT credit is not allowed to be availed) then in such a case the **6% should be calculated only on the amount of exemption and not the entire value.**
- **Eg.** Total contract Value = 10 Lakhs
- Exemption availed = 6.7 lakhs
- Net taxable value = 3.3 Lakhs.
- In such a case if one wishes to opt for this option then he would **pay 6% on the exempt value of 6.7 lakhs.**
- Reduced payment to the extent of excise paid on exempted goods
- Provided that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent of value of the exempted services.

Rule 6- Proportionate reversal of CENVAT credit

- **Option 2:** Pay an amount as determined under sub-rule (3A) which is proportionate to the turnover of taxable and exempt services/goods (except banking company, financial institutions and NBFS)

Sr No.	Type of service/goods	Value	Special Impact
1	Taxable service and Taxable goods in General	Taxable Service - As per section 67 of the Finance Act and rules made there under Taxable goods - Section 3, 4 or 4A of the Excise Act, read with rules made there under;	
2	Taxable service, when the option available for a preferred rate has been availed by : 1)Air Travel agent 2)Insurer 3)Money changer 4)Works Contractor	Taxable Service - As per section 67 of the Finance Act and rules made there under Taxable goods - Section 3, 4 or 4A of the Excise Act, read with rules made there under;	For e.g. In case of a Works Contractor opting for composition @ 4% his corresponding taxable value would be 40 and not 100 since 10% of 40 would be 4%. Accordingly the taxable turnover would be less then what it actually was considered prior to the amendment.

Rule 6- Proportionate reversal of CENVAT credit

Sr NO	Type of service/goods	Value	Special Impact
3	In case of trading	The difference between the sale price and purchase price of the goods traded or 10% of COGS Whichever is more	This means the value of traded goods would have to be considered for reversal based upon the Gross Profit as per the given formula.
4	In case of trading of securities	The difference between the sale price and purchase price of the securities traded or 1% of the purchase price of the securities traded Whichever is more	

Rule 6- Proportionate reversal of CENVAT credit

Option 3: maintenance of separate records and go for formula based reversal only for input services as per sub rule (3A).

- **Sub-rule (7) -Sub - Rule 1,2,3 and 4 of Rule 6 are not applicable** in case the taxable services are provided, without payment of service tax, **to a Unit in a Special Economic Zone or to a Developer** of a Special Economic Zone for their authorized operations. Reversal of CENVAT credit is not required to be made in respect of output service provided to SEZ area or when a service is exported
- **Sub-rule (8)** a service provided or agreed to be provided shall not be an exempted service when:-
 - a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
 - b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.”

Input Service Distributor- ISD

- ISD may distribute the CENVAT credit of input services to its manufacturing unit or units providing output services subject to following conditions:-
 - a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
 - b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
 - c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
 - d) credit of service tax attributable to service used in more than one unit shall be distributed pro-rata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Input Service Distributor- ISD

- Total turnover as calculated under rule 5
 - credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.”
 - (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.
 - (b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.
 - (c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available.”

Case Laws

- **Rule 2(K): Input**

1. **COMMISSIONER OF C. E., BHOPAL V/s KARELI SUGAR MILLS (P) LTD.**

- **2013 (296) E.L.T. 59 (Tri. - Del.)**
- **Issue:**
 - Credit of steel items used for repair and maintenance of machinery and for fabrication.
 - Once usage of items accepted to be for repair and fabrication of machinery, such goods become eligible for CENVAT credit.

- **Rule 2(l): Input Service**

2. **SHRE VAISHNAV INDUSTRIES P LTD V/S CCE**

- **2013-TIOL-1834-CESTAT-MUM**
- **ISSUE:**
 - Promoter and Builder constructing rooms/colony for the workers and paid service tax on same.
 - Definition of input service is wide enough to cover the activity of construction and maintenance of township. CENVAT credit is allowed.

Case Laws

3. COMMISSIONER OF CENTRAL EXCISE, KOLKATA-VI Vs M/s VESUVIOUS INDIA LTD 2013-TIOL-1038-HC-KOL-ST

- **Issue:**

- CENVAT credit of service tax paid on outward transportation of finished goods ?
- By the amendment made with effect from 1st April, 2008 substituting the word "from" by the word "upto" all that has been done is to clarify the issue - Neither the services rendered to the customer for the purpose of delivering the goods at the destination was covered by the definition of input service prior to 1st April, 2008, nor is the same covered after 1st April, 2008.

4. ACC LIMITED VS CCE & ST

- **2013-TIOL-90-CESTAT-MUM**

- **Issue:**

- Outward transportation of goods from factory or from depot to customers' premises is to be treated as an Input service during the period April, 2005 to March, 2007 in view of settled decision in ABB Ltd. (2011-TIOL-395-HC-KAR-ST).
- Pre-deposit of CENVAT credit demand of Rs.5.11 Crores & interest & penalty waived and stay granted.

Case Laws

5. POSITIVE PACKAGING INDUSTRIES LTD VS CCE

- 2013-TIOL-1849-CESTAT-MUM

- **Issue:**

- Since tax paid on Outdoor catering service is allowed as CENVAT credit, Construction Service used in construction of canteen building within factory premises is also an Input Service. A harmonious reading of the definitions of Input Service u/r 2(1) of CCR, 2004 and 'factory' in s. 2(e) of the CEA, 1944 would indicate that canteen building will also be considered as a part of the factory, for purpose of definition of the input services as the definition includes not only the factory but also the office relating to such factory.

-

Case Laws

- **Rule 3: CENVAT Credit**

6. CCE VS. INDUCTOTHERM (I) P. LTD

- **2013 (39) STT 141 (GUJ.);**
- **Issue:**
 - Section 73A of the Finance Act, 1994, read with rule 3 of the CENVAT Credit Rules, 2004 - Any sum collected in name of service tax has to be deposited with Central Government. - Such sum is to be paid in cash and cannot be paid out of utilization of CENVAT Credit - Assessee cannot seek refund of CENVAT Credit by utilizing it for ineligible sums.
 - Further, in absence of any time-limit specified in section 73A, demand therein may be raised within reasonable time.

7. N.D. METAL INDUSTRIES LTD. V/s COMMISSIONER OF CENTRAL EXCISE, VAPI

- **2013 (292) E.L.T. 520 (Tri. - Ahmd.) dt. 4/9/2013**
- **Issue:**
 - Demand raised by Commissioner (Appeals) on a issue which is not subject matter of show cause notice or adjudication proceedings.
 - Confirming demand on a different ground not permissible without issue of separate show cause notice to appellant.
 - Disallowance of credit on suspicion or presumption not sustainable. CENVAT
- credit allowed.

Case Laws

8. YEE KAY TECHNOCRAT (P) LTD. V/s COMMISSIONER OF CENTRAL EXCISE

- **2013 (292) E.L.T. 48 (P & H) (HC) dt. 17/4/2012**
- **Issue:**
 - CENVAT credit - Availment of - Shifting of factory working outside CENVAT Scheme - Capital goods not cleared under Rule 3(5) of CENVAT Credit Rules, 2004- HELD :Assessee is not entitled to take CENVAT credit under Rule 10 ibid, as factory was not operating under CENVAT Scheme. [para 4]

9. NECTAR LIFESCIENCES LTD. Versus COMMISSIONER OF C. EX., CHANDIGARH-II

- **2013 (293) E.L.T. 247 (Del.) (HC) dt. 26/4/2013**
- **Issue:**
 - CENVAT - Reversal of CENVAT credit - Inputs destroyed in fire - Inputs lost at work-in-progress stage and not as fully manufactured products - Fire broke out in bulk drug manufacturing plant situated away from stores where inputs stored, establishing work-in-progress regarding inputs issued for manufacturing.
 - Reversal of CENVAT credit not justified for material lost at work-in-progress stage - Rules 3(5B)/3(5C) and 14 of CENVAT Credit Rules, 2004.

Case Laws

10. COMMISSIONER OF SERVICE TAX V/s HERO HONDA MOTORS LTD.

- **2013 (29) S.T.R. 358 (Del.) (HC) dt. 11/8/2012**
- **Issue:**
 - Whether CENVAT credit of service tax paid on GTA service by recipient of service is allowed.
 - It is permissible under Rule 3(4)(e)
- **Rule 4: Conditions for allowing CENVAT Credit**

11. M/S TATA SPONGE IRON LTD VS CCE, C & ST

- **2013-TIOL-1775-CESTAT-KOL (CESTAT)**
- **Issue:**
 - Availment of CENVAT credit of the duty paid on capital goods and depreciation u/s 32 of the Income Tax Act, 1961
 - Assessee claimed depreciation in the FY, 06-07 and 07-08, but afterwards revised the same resulting into deletion of claim of depreciation and availed CENVAT Credit.

Case Laws

- **Rule 5: Refund of CENVAT Credit**

12. COMMISSIONER OF CENTRAL EXCISE, JAMSHEDPUR Versus TATA MOTORS LTD.

- **2013 (296) E.L.T. 7 (Jhar.) dt.15/01/2013**

- **Issue:**

- CENVAT credit - Refund of - Assessee becoming entitled to entire amount of credit as refund, can file refund claim before appropriate authority, which cannot be rejected on limitation ground and other statutory provisions
- CENVAT credit - Refund of - Limitation - When order of disallowance of credit itself had not become final, refund claim could not be raised by assessee - In such situation, bar of limitation is not applicable.

13. SANDOZ PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, BELAPUR

- **2012 (286) E.L.T. 8 (Bom.) dt. 05/09/2012**

- **Issue:**

- Refund - Unutilized credit - Granted by Additional Commissioner under Rule 5 of CENVAT Credit Rules, 2004.
- Under Section 12E of Central Excise Act, 1944, Additional Commissioner can exercise powers under Section 11B ibid thereof.

Case Laws

- **Rule 5: Refund of CENVAT Credit**

14. EVEREST INDUSTRIES LTD. Versus COMMISSIONER OF CENTRAL EXCISE, MEERUT-I

- **2013 (31) S.T.R. 189 (Tri. - Del.) dt.05/04/2013**

- **Issue:**

- Refund - CENVAT credit of Service Tax - Credit on input/input services used in final product supplied to SEZ unit.
- Rule 5 of CENVAT Credit Rules, 2004 provides for refund of credit taken on final products cleared for export - Supplies to SEZ not to be treated as export for purpose of Rule 5 ibid. Assessee not entitled to refund.

15. M/S ML OUTSOURCING SERVICES PVT LTD VS CST

- **2013-TIOL-1829-CESTAT-DEL dt: 6/2/2013**

- **Issue:**

- Service Tax - Refund under Rule 5 of the CENVAT Credit Rules, read with Notification No. 05/2006-CE, rejected in adjudication and first appeal on the sole ground that premises where the input services were received is not registered with the Department
- Held: the registration of the premises is not necessary for claiming the CENVAT Credit in terms of HC ruling in mPortal India case.

Case Laws

- **Rule 5: Refund of CENVAT Credit**

16. M/S HCL COMNET SYSTEM & SERVICES LTD VS CCE

- **2013-TIOL-1686-CESTAT-DEL**

- **Issue:**

- The Commissioner (Appeals) has held that consultants provided the services in order to file return in foreign countries for the income earned and this service has no nexus with the output service - At the same time, he has allowed CENVAT Credit on professional charges.
- The Commissioner (Appeals) is not consistent in deciding the issue of eligibility of credit/refund in respect of Professional Charges and matter needs to be remanded back to Commissioner (Appeals)

17. CCE VS SURANA TELECOM & POWER LTD

- **2013-TIOL-1671-CESTAT-MUM**

- **Issue:**

- CE - Refund of Unutilized CENVAT credit upon closure of factory, whether Rule 5 of CCR, 2004 covers such cases - since refund has not been sanctioned as yet, considered view of the Bench is that the status quo should be maintained till final disposal of appeal.

Case Laws

- **Rule 5: Refund of CENVAT Credit**

18. PHOENIX INDUSTRIES PVT LTD VS UOI

- **2013-TIOL-792-HC-MUM-CX**

- **Issue:**

- Refund of unutilized CENVAT credit of Rs.35.49 lakhs lying in petitioner's CENVAT account consequent upon their stopping manufacturing activities and surrender of central excise licence –
- CESTAT rejecting application for early hearing on the ground that the amount in dispute is less than Rs.1 Cr-issue in appeal is apparently covered in favour of petitioner by the decision of Bombay HC in case of Jain Vanguard Polybutlene Ltd. [2010-TIOL-911-HC-MUM-CX]

19. KPIT CUMMINS INFOSYSTEM LTD. VS. CCE

- **2013-TIOL-193-CESTAT-MUM**

- **Issue:**

- Software consultancy service exported during the impugned period was classifiable as an 'exempted service' under Rule 2(e) of the CCR, 2004 and even if an exempted service is exported the benefit of CENVAT Credit and Rules thereof shall be allowed to the exporter of exempted service as well.

Case Laws

- **Rule 6: Obligation of a Manufacturer and Output service provider.**

20. ST JOHN CFS PARK PVT LTD VS CCE

- **2013-TIOL-1671-CESTAT-MUM**
- **Issue:**
 - Service Tax - Stay/Dispensation of pre-deposit - CENVAT Credit availed on common services - Demand of 6% under Rule 6 of the CENVAT Credit Rules, 2004 on cargo handling service used for export of goods on which no service tax is payable
 - Prima facie, cargo handling service is to be treated as exempted service under Rule 2(e) of the CENVAT Credit Rules, 2004

21. MIRC ELECTRONICS LTD VS CCE

- **2013-TIOL-1761-CESTAT-MUM**
- **Issue:**
 - As per rule 2(d) exempted goods have to be excisable goods, imported goods which are traded cannot be considered as exempted goods. In that case the question of invoking the provisions of Rule 6(2) and 6(3) for payment of a sum @10%/5% on the value of the traded goods would not arise at all.
 - Assessee has not availed any CENVAT credit in respect of traded goods and, therefore, question of maintenance of separate accounts does not arise at all.

Case Laws

- **Rule 6: Obligation of a Manufacturer and Output service provider.**

22. M/S INDUSTRIAL HEAT TREATERS VS CC & CCE

- **2013-TIOL-1756-CESTAT-MUM**
- **Issue:**
 - Appellant availing CENVAT credit in respect of common inputs and input services and using the same in processing of goods, some of which were cleared on payment of Service Tax under BAS and some under benefit of notification 8/2005-ST
 - appellant prima facie liable to pay 6%/8% of the price of the exempted services as per the provisions of Rule 6 of the CCR.

23. LALLY AUTOMOBILES PVT LTD VS COMMISSIONER (ADJUDICATION), CENTRAL EXCISE

- **2013-TIOL-818-HC-DEL-ST**
- **Issue:**
 - Trading activity, whether to be considered exempted prior to 01.04.2011 and credit is to be reversed - High Court modifying pre-deposit order of CESTAT
 - Whether formula adopted by adjudicating authority as laid down in rule 6(3D) of CCR, 2004 is to be made applicable for past period or some other basis can be applied which is more just, fair or equitable - Pre-deposit ordered of 50% of credit involved without interest.

Case Laws

- **Rule 6: Obligation of a Manufacturer and Output service provider.**

24. OBERTHUR CARD SYSTEM PVT. LTD Versus COMMISSIONER OF C. EX., NOIDA

- **2013 (292) E.L.T. 515 (Tri. - Del.) dt. 04/04/2013**

- **Issue:**

- CENVAT Credit on common inputs used in manufacture of dutiable and exempted goods rule 6(3).
- Demand of CENVAT Credit on the ground that the dutiable goods formed just a minor part of the turnover against exempted goods.
- No percentage is fixed under Rule 6 for dutiable and exempted goods – Demand is not sustainable.
- However, CENVAT Credit is not admissible on inputs used exclusively in exempted goods.

25. HINDALCO INDUSTRIES LTD. Versus COMMISSIONER OF C. EX., VAPI

- **2013 (31) S.T.R. 686 (Tri. - Ahmd.) dt. 01/04/2013**

- **Issue:**

- Commercial and Industrial Construction service - Interpretation of Rule 6(5) of CENVAT Credit Rules, 2004 .Restriction of provisions of Rule 6(5) of CENVAT Credit Rules, 2004 was only if these services are used exclusively in or in relation to manufacture of exempted goods or providing exempted services credit should not be availed.

Case Laws

- **Rule 7: Manner of Distribution of Credit by Input Service Distributor.**

26. M/S GRAPHITE INDIA LTD VS CCE, CC & ST

- **2013-TIOL-1682-CESTAT-KOL**

- **Issue:**

- CENVAT Credit availed on input service credit distributed by the Head Office.
- Once the availability of credit by the Head Office had not been disputed, when the same has been distributed after being registered as "Input Service Distributor" - the same cannot be questioned at the hands of the Applicant Unit, who availed credit on the basis of such invoices.

- **Rule 9: Documents And Accounts.**

27. ATLAS DOCUMENTARY FACILITATORS CO PVT LTD VS CST

- **2013-TIOL-1727-CESTAT-MUM**

- **Issue:**

- Credit on the strength of Debit notes - prescription of document is only a machinery provision for achieving the object of law - objection raised for denial of credit is that information is not in one page but several pages –
- The fact that legislature chose not to prescribe a format itself indicates flexibility given to the service provider to issue suitable documents.

Case Laws

- **Rule 9: Documents And Accounts.**

- The stipulation is only with respect to information required to be provided in the said document - so long as information is available in the document, the same is a valid document for availing credit.

28. M/S MANGALAM CEMENT LTD VS CCE & ST

- **2013-TIOL-1483-CESTAT-DEL**

- **Issue:**

- CENVAT Credit availed on supplementary invoice issued by the service provider consequent to the payment of service tax on being detected by the audit - Rule 9(1)(b) of CENVAT Credit Rules, 2004.
- Such a provision was not there in respect of input services at the material time and was introduced only w.e.f . 1.4.2011 - The receipt of the services, in question, by the appellant is not disputed and the fact that the services were used in or in relation to the manufacture of finished goods is also not disputed.
- The appellants have a strong prima facie case in their favour.

Case Laws

- **Rule 9: Documents And Accounts.**

29. M/S DELPHI AUTOMOTIVE SYSTEMS (P) LIMITED VS CCE

- **2013-TIOL-1793-CESTAT-DEL**

- **Issue:**

- CENVAT credit availed on supplementary invoices issued by the service provider.
- Credit denied on the ground that the supplementary invoice is not valid document under Rule 9 (1)(b) as the non-payment of service tax was due to deliberate suppression etc
- This provision was only in respect of supply of inputs and capital goods and, as such, in respect of supply of input services there was no such provision during the period of dispute. Such a provision was introduced only w.e.f. 1.4.11 by inserting clause (bb) in Rule 9 (1)
- Credit is admissible.

30. GUJARAT SIDHEE CEMENT LTD. VS. CCE

- **[2013] 34 TAXMANN.COM 15 (AHD. CESTAT)**

- **Issue:**

- There were procedural lapses and tax invoices did not contain all particulars and some challans/invoices were in name of Head Office.

Case Laws

- **Rule 9: Documents And Accounts.**

- Procedural lapses and absence of all particulars were rectifiable errors; hence, credit was to be allowed subject to rectification by assessee - Further, credit was to be allowed even if challan and invoices were in name of head office.

- **Rule 10: Transfer of CENVAT Credit.**

31. COMMISSIONER OF CENTRAL EXCISE, BELAPUR Versus SANDOZ PVT.LTD.

- **2013 (291) E.L.T. 325 (Bom.) dt. 04/11/2012**

- **Issue:**

- DTA unit converting to EOU - Balance CENVAT credit available in books of accounts on date of conversion can be utilized for clearances effected by EOU.

32. MAGNUM STEEL LTD. VS. CCE

- **[2012] 37 STT 546/25 TAXMANN.COM 473 (NEW DELHI – CESTAT)**

- Transfer of - Merger diminishes status of amalgamating companies after amalgamation - Any right existing before amalgamation cannot be claimed to be a right existing after amalgamation - Unutilized CENVAT Credit lying before change of status cannot be carried forward and set-off in hands of amalgamated company.

Case Laws

- **Rule 14: Recovery of CENVAT Credit wrongly taken or erroneously refunded as in force upto 01.04.2012.**

33. AUORA FOAM (P.) LTD. VS. CCE, CHANDIGARH

- **[2012] 37 STT 397/26 TAXMANN.COM 197 (NEW DELHI – CESTAT)**
- **Issue:**
 - Assessee didn't object to manner of stock taking by Department which was done in presence of assessee-company's assistant manager, any objection thereto can't be raised at appellate stage - Demand of CENVAT credit on inputs found short in stock-taking was upheld.

34. GOKALDAS IMAGES PRIVATE LTD. VS. CCE

- **2008 (227) ELT 448 (TRI. – BANG)**
- **Issue:**
 - Credit taken but not utilized to discharge any duty liability, it remain merely as entries without any effect on Government's revenue. Credit was reversed immediately after audit pointed out lapse - Demand of interest not justified.

Case Laws

- **Rule 14: Recovery of CENVAT Credit wrongly taken or erroneously refunded as in force upto 01.04.2012.**

35. CCE. VS. PEARL INSULATION LTD.

- **2012 (27) STR 337 (KAR.)**
- **Issue:**
 - Availed on inputs used in exempted product – If reversed without utilization, there is no liability for interest – Interest is compensatory in character imposed on assessee withholding tax as and when due.

36. DR. REDDY'S LABORATORIES LTD. VS. THE CCE & ST

- **2013-TIOL-934-CESTAT-BANG**
- **Issue:**
 - **Karnataka High Court Judgement per incuriam – Supreme Court Judgement In Ind-Swift applicable:** there is only one ruling that is applicable to the instant case and the same is the one handed down by the apex court after interpreting the provisions of Rule 14. The ruling is to the effect that the word 'or' appearing between the words "taken" and "utilized" cannot be read as 'and'.

Case Laws

- The effect of this ruling is unambiguously clear. Where an amount of inadmissible CENVAT credit was taken by a manufacturer of excisable products or a provider of output service but later on reversed, he has to pay interest under Rule 14 for the period from the date of taking of credit to the date of its reversal, whether or not the credit was utilized.
- **Rule 15: Confiscation And Penalty.**
- 37. PATEL ALLOYS (STEEL) (P) LTD. Versus COMMISSIONER OF C. EX., AHMEDABAD**
- **2013 (293) E.L.T. 264 (Tri. - Ahmd.) dt. 19/04/2013**
- **Issue:**
 - Transfer of capital goods to sister concern within the same Commissionerate for doing job work - It cannot be said that appellant had cleared the capital goods to another person or assessee.
 - If the appellant's other unit have taken the credit of capital goods and subsequently reversed the same and credit has been taken by unit No. 1, this itself would prove that appellant's other unit were registered with Central Excise Authority.
 - Entire issue is revenue neutral - No intention to evade duty - Penalty imposed under Section 11AC of Central Excise Act, 1944 read with Rule 15 of CENVAT Credit Rules, 2004 set aside.

Case Laws

- **Rule 16: supplementary Provision.**

38. M/S LIME CHEMICALS LTD VS CCE

- **2013-TIOL-167-CESTAT-MUM DT. 02/11/2012**

- **Issue:**

- Applicant receiving rejected finished goods & taking CENVAT credit of duty paid on the same on the basis of invoices which were not in their name but issued by their Paonta Saheb unit or on invoices addressed to their Paonta Saheb unit.
- Credit is admissible to any unit when the invoices pertaining to those inputs are in the name of receiving factory - prima facie the same thing would apply to rejected goods.

Case Laws

- **GTA : Goods Transport Agency**

39. KUMARAN STEELS VS CST

- **2013-TIOL-1808-CESTAT-MAD**

- **Issue:**

- Documents showing that the transporter was not availing benefit of CENVAT credit on inputs and capital goods not produced - Benefit of 75% abatement as provided in Notification 32/2004 and 1/2006 denied.
- Prima facie view taken by Tribunal that declaration given by transport operators in a consolidated manner should serve the purpose and declaration on each consignment note need not be insisted upon.

40. M/S N C JOHN & SONS (P) LTD VS CCE (ST)

- **2013-TIOL-1519-CESTAT-MAD**

- **Issue:**

- Abatement under Notification No 32/2004 ST .
- Consolidated declaration from the concerned transport operators would be sufficient for granting abatement under Notification No. 32/2004-ST.

Case Laws

- **GENERAL PRINCIPLES**

41. HINDUSTAN PETROLEUM CORPORATION LTD VS CCE

- **2013-TIOL-1481-CESTAT-MUM**

- **Issue:**

- CENVAT credit of duty paid on Capital goods taken of 100% in the first year itself.
- interest on such wrongly availed credit from the date of taking credit till the end of the Financial Year - appellant directed to make pre-deposit of Rs.6.25 lakhs being the interest liability.

42. JPP MILLS PVT LTD VS CCE

- **2013-TIOL-1643-CESTAT-MAD**

- **Issue:**

- Demand of service tax on commission paid to overseas commission agents under reverse charge.
- In view of the fact that the appellants are entitled for CENVAT Credit of the service tax paid on such commission and also various other options like exemption from payment of service tax etc, it is not a fit case to slap demand under extended period.
- Appellant entitled for CENVAT Credit of the service tax paid - Interest and penalty under Section 77 upheld - Penalty under Section 76 and 78 set aside.

Case Laws

- **GENERAL PRINCIPLES**

43. M/S NATIONAL ALUMINIUM CO LTD VS CCE, C & ST

- **2013-TIOL-1691-CESTAT-KOL**

- **Issue:**

- Credit taken twice on the same invoice reversed - Demand of interest - Contention that interest is not required to be paid as the assessee had sufficient credit balance - Held: Appellant is liable to pay interest in view of the Supreme Court judgement in case of Ind -swift laboratories Ltd.

44. M/S TREAT CONVENIENCE FOODS VS CCE & ST (SERVICE TAX)

- **2013-TIOL-1755-CESTAT-DEL**

- **Issue:**

- Credit of service tax paid on maintenance of the property utilized for payment of service tax on renting of immovable property.
- Credit is admissible proportionately for the area given on rent - Denial of entire credit is not correct.
- Penalty - Imposing penalties under both Sections 76 and 78 simultaneously is not justified - Penalty under Section 78 upheld.

Case Laws

- **GENERAL PRINCIPLES**

45. M/S HINDUSTAN UNILEVER LTD VS CCE

- **2013-TIOL-1867-CESTAT-MUM**

- **Issue:**

- Even if the appellant has paid duty wrongly or illegally, once the same has not been refunded, they cannot be denied the CENVAT credit.
- Pre-deposit waived and Stay granted.

46. S S ENGINEERS VS CCE

- **2013-TIOL-1512-CESTAT-MUM**

- **Issue:**

- Appellant manufacturing goods as well as providing output service - Credit availed on Input services utilized for payment of Central Excise duty.
- Once credit is admissible it forms part of common pool and manufacturer can utilize Credit for both, ST on output services or Central Excise duty.

Case Laws

- **GENERAL PRINCIPLES**

47. CCE VS M/S KAY BOUVET ENGINEERING PVT LTD

- **2013-TIOL-1835-CESTAT-MUM**

- **Issue:**

- Availment of CENVAT Credit without the goods being brought into the factory - in fact the goods were never meant for use in the factory and the appellant had knowing fully well that they are not eligible to take credit, has taken ineligible credit deliberately
- It was only after pointing out by the department that the credit has been reversed without paying any interest thereon.
- Respondent liable to interest liability as well as penal consequences as the conduct clearly showed guilty mind and intent to evade tax.

Case Laws

- **GENERAL PRINCIPLES**

48. SUNDARAM INDUSTRIES LTD VS CCE

- **2013-TIOL-1798-CESTAT-MAD**

- **Issue:**

- CENVAT Credit on GTA service used for providing the output service of tyre -retreading. Test with reference to "place of removal" cannot be applied in the case of output service because said expression is defined in Central Excise Act and has relevance for the purpose of paying excise duty.
- It is incorrect to say that transportation of tyres to & from place of repair has no nexus with the output service as service is undertaken as per the contract - Credit is admissible.

49. M/S BANSAL CLASSES VS CC & E

- **2013-TIOL-1805-CESTAT-DEL**

- **Issue:**

- Credit on catering and photography services used to encourage students who succeeded in coaching - Since the activities take place after the students passed the commercial coaching or training session, these services cannot be said to be used to provide output service - credit is not admissible.
- Credit is admissible on service tax paid on renting of the examination hall.

Case Laws

- **GENERAL PRINCIPLES**

50. M/S MLR MOTORS LTD VS CCE

- **2013-TIOL-1688-CESTAT-BANG**

- **Issue:**

- The bar of utilising CENVAT Credit does not apply to credit on Capital Goods - Pre-deposit waived. It is quite clear that the restriction applies for availing credit of duty only in respect of excise duty paid on input or service tax paid on any input services and not capital goods.

51. M/S SOS ENTERPRISE VS CCE & ST

- **2013-TIOL-1824-CESTAT-AHM**

- **Issue:**

- M/s. Sos Enterprise (service provider) provided services to other sister concern entity M/s. Sos Finance (service receiver). Service receiver took CENVAT credit of the tax shown on the invoices whereas the provider of the services actually paid less service tax.
- Authority has taken a view that sister concern has not reversed the excess CENVAT credit taken.
- Under the prevailing provision of Sec. 68 of the FA, service tax was to be paid on receipt basis, If some more credit has been taken by the service recipient then such service recipient should have been issued SCN for reversal of excess CENVAT credit taken.

Case Laws

- **GENERAL PRINCIPLES**

52. RAJA MECHANICAL CO. (P) LTD V/s COMMISSIONER OF C. EX., DELHI

- **2012 (279) E.L.T. 481 (S.C.)**

- **Issue:**

- The assessee's stand before the Tribunal and before this Court is that the orders passed by the adjudicating authority would merge with the orders passed by the first appellate authority and the Tribunal ought to have considered the appeal filed by the assessee on merits also.
- In view of the plethora of decisions of this Court, wherein this Court has, categorically, observed that if for any reason an appeal is dismissed on the ground of limitation and not on merits, that order would not merge with the orders passed by the first appellate authority. In that view of the matter, we are of the opinion, that the High Court was justified in rejecting the request made by the assessee for directing the revenue to state the case and also the question of law for its consideration and decision.

CENVAT CREDIT of SERVICE TAX PAID UNDER VCES

➤ Issue

- Whether CENVAT Credit of service tax paid under by a Service Provider opting for Voluntary Compliance Encouragement Scheme(VCES) is available to the Service Receiver?
- The said service tax could be collected by the service provider from the receiver through a supplementary invoice or by the receiver himself as a recipient of service(reverse charge mechanism)

➤ Legal Provision

- Nowhere has it been provided in the VCES regarding availment of CENVAT credit.
- The same is governed by the CENVAT Credit Rules 2004.
- Circular No. 170/5/2013-St dated 08/08/2013 states “ As regards admissibility of CENVAT credit in situations covered under part (a) and (b), attention is invited to Rule 9(1)(bb) and 9(1)(e) respectively of the CENVAT Credit Rules.

➤ RULES – 9(1)(e) and 9(1)(bb)

- RULE 9(1)(e) states that CENVAT credit can be availed on the basis of “*a challan evidencing payment of service tax , by the service recipient as the person liable to pay service tax*”

CENVAT CREDIT of SERVICE TAX PAID UNDER VCES

- RULE 9(1)(bb) states *“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 thereunder with the intent to evade payment of service tax”*

➤ Analysis

- Considering the above rules, the question arises that ‘ Whether payment of Service tax under VCES Scheme per se amounts to acceptance of allegations that non-payment or short-payment was the result of any fraud, collusion or suppression of facts ,etc.?’

➤ Clarification by H’ble Finance Minister in VCES Seminar

- H’ble Finance Minister clarified that CENVAT credit would be available to the service receiver and a suitable clarification would be issued to further clarify the doubts.

➤ ***In view of the above apprehension CENVAT Credit of the amount paid under VCES, it would be in the interest of VCES that a clarification on the aforesaid should be issued at earliest.***

Thank You

CA Sagar Shah