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# **CENVAT Credit for service providers**

**By CA Rahul S. Jain**

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# Capital Goods

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- **CENVAT Credit Rules, 2004 ('Credit Rules')**
  - Rule 2 (a) - **Capital Goods**
    - (A) the following goods namely:-
      - i. All goods falling under Chapter 82, 84,85,90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 and **wagons of sub-heading 860692** [w. e. f. 1 April 2016] of the First Schedule to the Excise Tariff Act
      - ii. Pollution control equipment

# ..Capital Goods..

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- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for –
  - Providing an output service renting of such motor vehicle; or
  - Transportation of inputs and capital goods used for providing an output service; or
  - Providing an output service of courier agency;
- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing

# ..Capital Goods..

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- No relevance of accounting treatment of the goods treated as capital assets / capital goods in the books of accounts
- No relevance of definition of capital goods / capital assets in other Acts (such as Income Tax Act, 1961 or Maharashtra VAT Act, 2002 etc)
- Only specified chapter headings as specified in the definition are termed as 'Capital Goods'

# ..Capital Goods..

Chapter / Chapter Heading	General Description of Goods
82	Tools, implements, cutlery, spoons and forks of base metal; parts thereof of base metal
84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders , their parts etc
90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof
6805	Articles of stone, plaster, cement, asbestos, mica or similar materials
6804	Millstones, Grindstones, Grinding Wheels And The Like, Without Frameworks, For Grinding, Sharpening, Polishing, Trueing Or Cutting, Hand Sharpening Or Polishing Stones etc.
860692	Railway or tramways goods vans /wagons - Open with non-removable sides of a height exceeding 60 cm

**Classification disputes likely in case of CENVAT Credit on Capital Goods**

# ..Capital Goods..

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- Budget Amendments [ w.e.f. 1 April 2016]
  - Wagons of subheading 860692 included in the definition
  - In the case of **Bulk Cements Corporation (India) Pvt. Ltd Vs. Commissioner of Central Excise [2013 (294) ELT 433 (Tri – Mum)]**
- Goods used for pumping of water for captive use within the factory – Whether clarificatory and retrospective or prospective ?
  - The said goods used outside factory will also be

# ..Capital Goods..

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- **Vodafone India Ltd Vs Commissioner of Central Excise, Mumbai – II [2015 (40) STR 422 (Bombay High Court)]**
  - Issue
    - CENVAT Credit on telecom towers (in CKD or SKD form) or part thereof, shelters/pre-fabricated buildings purchased by assessee providing telecom services
  - Appellants' contention

# ..Capital Goods

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- **GSPL India Transco Ltd [ AAR – 2015(40) S.T.R. 398 (AAR) ]**
  - CENVAT Credit on capital goods



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- **Does an Advocate provide output service ?**
  - Answer
    - Yes or
    - No

# Output Service

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- **Rule 2 (p) - Output Service**
  - “output service” means any service provided by a provider of service located in the taxable territory but shall **not** include a service,-
    - (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;

**'Services under partial reverse ' charge qualify as Output Service**

# Input..

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- **Rule 2 (k) - Input means**
  - All goods used in the factory by the manufacturer of the final product; or
  - Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
  - All goods used for generation of electricity or steam ***or pumping of water*** [w. e. f. 1 April 2016] for captive use; or

# ..Input..

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- (A) Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- (B) Any goods used for –
  - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) laying of foundation or making of structures for support of capital goods,
  - Except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act
- (C) **capital goods, except when,-**
  - **(i) used as parts or components in the manufacture of a final product: or**

# ..Input..

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- Whether “or pumping of water” clarificatory and retrospective or prospective
- Value – whether inclusive of duty or exclusive of duty
- What is meant by “primarily meant for personal consumption/use by an assessee”

# Input Service..

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- Rule 2(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, maintenance of premises of a factory, services in connection with

# ..Input Service..

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- (B) services provided by way of renting of a motor vehicle in so far as they relate to a motor vehicle which is not a capital goods
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as they
  - Relate to a motor vehicle which is not a capital goods, except when used by –
    - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

# ..Input Service..

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- Used for output service (and not taxable service)
- Used in providing output service – Restrictive as compared to “used for”
- “Directly or indirectly” “in or in relation to” absent for service provider
- “Setting up” – deleted w.e.f. 1 April 2011
- “construction and works contract for constructions services” inserted w.e.f. 1 July



# ..Input Service..

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- ***Bansal Classes Vs. Commissioner of Central Excise & S.T., Jaipur – I [2015 (39) S.T.R. 967 (Raj.)]***
- *“5. As already mentioned, the appellant is essentially providing commercial training and coaching services to the students. It is not permitted to confer educational degrees on the students. The services of catering, photography and tents are used by the*

## ..Input Service..

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- CENVAT Credit on gardening service is available when it is essential under Pollution Control Laws – [**CCE, Nashik Vs. M/s. VIP**

# ..Input Service..

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- Outdoor caterers service used for employees allowable as it is mandatory under the Factory Act 1948 [**M/s. Kyungshin Industrial Motherson Ltd. (Unit II) Vs. CCE, CC & ST [2015 (11) TMI 846 – Mad H.C.]**]
  - Period involved = October 2008 to July 2009
  - In what circumstances, the above decision can be applied today?

# ..Input Service..

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- **Cadila Health care Ltd [2013(030) STR 0003] –**
  - Credit of service tax paid on sales commission services (Business auxiliary services) used in 28 relation to manufacture/sale of finished goods is admissible under Credit Rules
  - CBEC vide its Circular No. 943/4/2011-CX dated 29.04.2011 at point No.5 has clarified that credit of service tax paid on sales commission services (Business auxiliary services) used in 28 relation to manufacture/sale of finished goods is admissible under Credit Rules.
  - Birla Corporation Ltd – [2014(35) STR977] followed the judgment of Hon'ble High Court of Bombay and allowed the credit.

# Availment of CENVAT Credit – Rule

## 3..

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- Typically CENVAT Credit of virtually all the duties or taxes are available to service provider except
  - on duty levied under Section 3(5) of Customs Tariff Act [except on the goods falling under Chapter Heading 98.01 (viz., All Items Of Machinery Including Prime Movers, Instruments, Apparatus And Appliances, Control Gear And Transmission Equipment, Auxiliary Equipment). However, no credit of such duty can be utilized for payment of Service tax on any output service.

# .. Availment of CENVAT Credit – Rule 3..

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- Rule 3(2) - Manufacturer
- Rule 3(3) – Service provider
  - When service becomes taxable, the provider of taxable service, the provider of the output service shall be allowed to take CENVAT Credit of the duty paid on the Inputs received on and after 10 September 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.
  - No such provision required for services

# Availment of CENVAT Credit – Rule

## 4..

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- **Time when credit can be taken by the service provider**
  - Inputs/Capital Goods – Receipt in the premises of output services /job worker/on delivery of the goods to the service provider subject to documentary evidence of delivery and location of the Inputs
  - Capital Goods – 50% in the year in which the goods are received and remaining in subsequent financial year. However in case of goods falling under chapter heading 6804/6805 (viz., refractory

# Availment of CENVAT Credit – Rule

## 4..

- **Time limit to avail CENVAT Credit**

Period	<i>Time Limit for Inputs / Input Services</i>	<i>Capital Goods</i>
<i>Upto 31 August 2014</i>	<i>No time limit</i>	<i>No time limit*</i>
<i>1 September 2014 to 28 February 2015</i>	<i>6 months from date of invoice</i>	<i>No time limit*</i>
<i>1 March 2015 to till date</i>	<i>1 year from date of invoice</i>	<i>No time limit*</i>



## Assignment of right use natural resource (Spectrum Services etc) – CENVAT Credit [w.e.f. 1 April 2016]

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- CENVAT Credit amount in a F.Y. = Amount of Service tax charged / No. of years for which right to use is assigned
- CENVAT Credit amount of monthly user charges = Same F.Y.
- However, if the right is assigned to another person (who acquired it) then the balance of CENVAT Credit should be allowed in the same financial year in which the right is re - assigned.

# CENVAT Reversal – Rule 6..

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- Rule 6 of Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted (w.e.f. 1 April 2016) with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

## .. CENVAT Reversal – Rule 6..

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- ~~The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.~~
- Sub - rule (3A) is being amended to provide

# ..CENVAT Reversal – Rule 6..

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- A new sub - rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen per cent. per annum. In the case of **Mercedes Benz India Private Ltd Vs CCF Pune – 1 [2015 40**

# ..CENVAT Reversal – Rule 6..

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- Following are the other changes being made in rule 6 of the Cenvat Credit Rules:
  - Explanations 3 and 4 are being inserted in rule 6, sub - rule (1) so as provide for reversal of CENVAT Credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a “service” under the Finance Act, 1994 (w. e. f. 1 April 2016).
  - (ii) Sub - rule (4) is being amended to provide that where the capital goods are used for the

# ..CENVAT Reversal – Rule 6..

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- **Brindavan Beverages Pvt. Ltd. Vs. Commissioner of Central Excise (CESTAT Delhi) - [2014-TIOL-2136-CESTAT-DEL]**
- *“....This aspect has to be verified on the basis of records of the Appellant and if the Appellant at the time of receipt of the Capital goods, had filed any declaration to the Department or had sent some letter to the Department intimating that they would be using this machinery for manufacture of dutiable final products as well*

# ..CENVAT Reversal – Rule 6..

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- (iii) Sub - rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of “transportation of goods by a vessel from customs station of clearance in India to a place outside India” shall not be required to be reversed by the shipping lines.
- It may be mentioned here that this service presently qualifies as an “exempted service” on account of Rule 10 of Place of

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- **Thyssenkrup Industries Pvt. Ltd. Vs CCE [2014 (310) ELT 317 (Tri – Mum)]**
  - Common Credit Vs Total Credit
  - Recent Amendments



# Explanation I to Rule 6

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- Explanation I – “Value” for the purpose of sub-rules (3) and (3A), -
  - (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of Excise Act, read with rules made thereunder;
  - (b) In case of taxable service, when the option available under sub-rule (7), (7A), (7B) or (7C) of rule 6 of the Service tax Rules, 1994, has been availed, shall be the value on which the rate of

# Explanation I to Rule 6

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- Explanation I – “Value” for the purpose of sub-rules (3) and (3A), - (Contd..)
  - (d) in case of trading of securities, shall be the difference between the sale price and the purchasing price of the securities traded or 1% of the purchase price of the securities traded, whichever is more;
  - (e) Shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

# Utilization of CENVAT Credit

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- CENVAT Credit available on the last day of the month/quarter as the case may be
  - Typically the CENVAT Credit can be utilised for any duty/tax except
  - NCCD – NCCD
  - Not available for utilization for Clean Energy Cess /SBC/Infrastructure Cess
  - For payment of Service tax in respect of services where the person liable to pay tax is the service recipient

# CENVAT Credit – Removal of Capital Goods..

- Reduction in case of removal of Capital Goods removed after being put to use

Type of Capital Goods	Year	% of reduction in CENVAT Credit
Computer & Computer peripherals	1	10% per quarter
	2	8% per quarter
	3	5% per quarter
	4	1% per quarter
	5	1% per quarter
Capital goods other than above	Any	2.5% per quarter

# .. CENVAT Credit – Removal of Capital Goods

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- *“Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.”*
- Capital goods removed as waste / scrap – Duty leviable on Transaction Value
- Credit is available in both the above scenarios to the person to whom goods are cleared

# Duty liability on account of book entry

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- Value of any 'Input' or 'Capital Goods before being put to use' is written off fully or partially / provision is made for writing off, then the CENVAT Credit is required to be reversed:
  - Quantum of reversal
  - Whether reversal of CENVAT required for 'Input' after being put to use required

# Rule 7 – Input Service Distribution

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- *“Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined to mean either a job - worker who is required to pay duty on the value determined under the provisions of rule 10A of the*

# ..Rule 7 – Input Service Distribution..

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- *Presently, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, inter alia, the following conditions, ,:*
  - *Credit attributable to a particular unit shall be attributed to that unit only.*
  - *Credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.*
  - *Credit attributable to all units shall be attributed to all the units.*
  - *Credit shall be distributed pro rata on the basis of turnover as is done in the present*
  - *rules.*
- *It is also being provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax paid on input services, available with the Input Service Distributor as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit. Further, provisions of rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit*



# ..Rule 7 – Input Service Distribution..

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- Difference between earlier Rule 7 and present Rule 7 (w.e.f. 1 April 2016)
- Outsourced manufacturing unit included - Definition ?
- Circular No. 178/4/2014-ST dated 11 July 2014 (F. No. 334/15/2014-TRU)
- Interpretation of Rule 7(d) of CENVAT Credit Rules, 2004
- *Previous rule*

# Thank You

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