

# WIRC of ICAI



## Input Credit mechanism with reference to service tax and ISD mechanism

By

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29/05/2015



# Provision under ST/Excise Law

**SECTION 94. Power to make rules. — (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

- [(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-
- [(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;]

**SECTION 37. Power of Central Government to make rules. — (1)** The Central Government may make rules to carry into effect the purposes of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may —
- [(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to the manufacture of excisable goods];
- [(xviaa) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994 (32 of 1994) paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;].

## □ Capital Goods (CG)

- **Goods which are specified in certain chapters of the Central Excise Act used;**
  - **In the factory of the manufacturer of final products;**
  - **Outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory;**  
**or**
  - **For providing output service**  
*(In case of manufacturer, equipment or appliance used in office are excluded)*

# Specified Capital Goods (CG)

- **All goods falling under;**
  - Chapter 82 (*Tools, hand tools, knives etc*)
  - Chapter 84 (*Machinery and mechanical appliance*)
  - Chapter 85 (*Electrical Machinery, Equipment and parts etc.*)
  - Chapter 90 (*Measuring, checking, precision or testing instruments*)
  - heading No. **68.05**, *grinding wheels and the like and parts thereof under 6804* of the first Schedule to the Excise Tariff Act ;( CETA).
- **Pollution control equipment.**
- **Components, spares and accessories of the goods specified above.**
- **Moulds and dies, jigs and fixtures.**
- **Refractories and refractory materials.**
- **Tubes and pipes and fittings thereof; and**
- **Storage tank.**
- **Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 (MV for passenger and goods transportation, motor bikes) and their chassis but including dumpers and tippers**



## Specified Capital Goods (CG)

- **(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for—**
  - (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;
- **(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of—**
  - (i) transportation of passengers; or
  - (ii) renting of such motor vehicle; or
  - (iii) imparting motor driving skills;
- **(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;**

# Input – Eligibility (New) – 01/04/2011

Nature of Input	Eligibility
Goods used in the factory by manufacturer	Yes
Goods cleared with finished goods as accessories value included in final product	Yes
Goods used for providing free warranty for final product	Yes
Goods used for generation of electricity or steam for captive use	Yes
<b>Goods used for providing output service</b>	<b>Yes</b>
LDO/HSD/Motor Spirit (Petrol)	No
Goods used for construction or execution of a works contract of a building or civil structure or part thereof or foundation or support structure for capital goods	No, except for provision of service portion in the execution of a works contract or construction service as listed under 66E(b) .
Capital Goods	No, except when used as parts or components in mfg.
Motor Vehicles	No
Goods used primarily for personal use or consumption of employees such as food, used in guest house, club etc.	No
Goods having no relationship with manufacture of final product	No

# Input service – Eligibility (New)-01/04/2011

Nature of Input service	Eligibility
Services used for providing output service	Yes
Services used in relation to manufacture of final products and clearance up to place of removal	Yes
Modernisation, Repairs or Renovation of Factory/Premises	Yes
Advertisement, Sales Promotion, Market Research, Storage, Procurement of Inputs, Accounting, Auditing, Financing, Recruitment and Quality Control, Coaching and Training, Computer Networking, Credit Rating, Share Registry, Security, Business Exhibition, Legal Services, Inward and outward transportation up to the place of removal	Yes

# Input service – Eligibility (New)-01/04/2011

Nature of Input service	Eligibility
Service portion in the execution of a works contract and construction services including service listed under 66E(b) used for construction or execution of works contract of a building or civil structure or part thereof or foundation or support structure for capital goods	No, except for provision of service portion in the execution of a works contract or construction service as listed under 66E(b) .
Renting of Motor Vehicles	No, unless the credit is available on MV as CG
Insurance, Servicing , Maintenance and Repairs connected with MV except when used by manufacturer of MV mfg. by them and Insurance Co. for MV insured by them.	--do--
Outdoor Catering, Beauty Treatment, Health Services, Cosmetic Surgery, Club, Health Club. Life Insurance, Health Insurance Travel Benefits to employees primarily for personal use or consumption of employees	No





## Some Important Definitions

- **Final products means;**

- excisable goods manufactured or produced from input, or using input 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 FA (Negative list); or
  - (2) where the whole of service tax is liable to be paid by the recipient of service.

## Some Important Definitions

### •Exempted goods means;

- excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods exempted under N. No 1/2011-CE or under Sr. No. 67 and 128 of N.No. 12/2012-CE.

### •Exempted services means;

- *taxable service which is exempt from the whole of the service tax leviable thereon; or*
- *service, on which no service tax is leviable under section 66B of FA; or*
- *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;*
  - *but shall not include a service which is exported in terms of rule 6A of the STR,1994*

## Specified duties/taxes eligible for credit



- **Basic Excise Duty**
- **Special Excise Duty**
- **Additional duty on Textiles and Textiles articles**
- **Additional duty on 'goods of special importance'**
- **Education cess on excisable goods**
- **Countervailing duty on imports**
- **National Calamity Contingent duty**
- **Additional duty of Customs – VAT (SP not eligible)**
- **Additional duty of excise on tea**
- **Service tax**
- **Education cess on service tax**
- **Additional duty of Excise u/s 85 of the FA, 2005**

# Availment of Credit



- **When to avail credit;**

<b>Capital Goods</b>	<b>Receipt in the premises</b>
<b>Inputs</b>	<b>Immediately on receipt in the premises</b>
<b>Input Services</b>	<b>Receipt of Invoice</b>

- **CG acquired under lease, hire purchase or loan also eligible for credit.**
- **Credit available in respect of CG**
  - **Year of receipt – Max 50% of duty paid**
  - **Any subsequent FY in which possession continues – Balance duty**

## Restrictions on credit availment

- **No cenvat credit on that part of value of CG, on which depreciation has been claimed.**
- **No cenvat credit on CG, which are used exclusively in manufacture of exempted goods (except SSI exemption) or in providing exempted service**
- **No cenvat credit on Inputs/IS used in the manufacture of exempted goods or service.**



# Conditional Availment on accrual basis

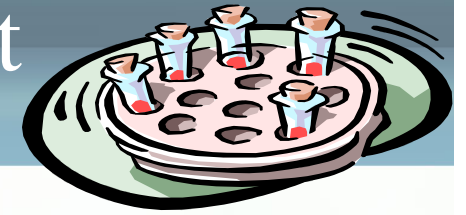
- **Rule 4(7) is amended to provide that credit is allowed on receipt of invoice/bill/challan.**
  - If payment is not made within 3 months of the date of invoice/bill then availed credit is to be reversed and can be claimed only after payment of taxable value and tax thereon.
  - Credit in respect of Invoices/Bills issued prior to 01/04/2011 is available on payment basis only.
- **No Cenvat credit is allowed after one year from the date of issue of documents specified in rule 9(1) for claiming credit.**
- **In case of RCM credit is allowed of service tax paid (full or part) as receiver of service.**
- **In case of refund of part or full payment or credit note passed, credit is to be reversed accordingly.**

# Availment - Special Situations

- **Input/CG (Credit taken) are removed “as such” from the premises, MF/OSP to pay an amount equal to the credit availed. Goods to be removed under an invoice. Amount paid eligible for credit to buyer of those goods.**
- **If CG cleared after use as “CG” or as “scrap or waste” then amount equal to Cenvat claimed to be reversed after deducting 2.5% per quarter from the date of taking Cenvat on CG or duty payable on transaction value , whichever is higher .**
  - For Computers and its peripherals different rate of reversal is prescribed .
- **If inputs/CG written off fully or partially in books then cenvat credit to be reversed by MF or service provider.**



# Tests for availing/utilizing credit



- **Inputs should be for FP or OS**
- **Inputs should not be for non-taxable/wholly exempt FP or OS**
- **If inputs for taxable as well as exempted FP or OS, then;**
  - **Inputs for taxable FP or OS to be determined by separate records or**
  - **If no separate records;**
    - **MF has to pay 5% (10%) of sale price of exempted products**
    - **Other services – Input credit utilization to be restricted to 20% of tax on output service (up to 31/03/2008)**
      - **Op balance as on 1/4/2008 can be used without restriction. (F. No. 137/72/2008-CX-4, dated 21/11/2008)**
  - **General Insurance service providers can claim proportionate credit. (special treatment) (up to 31/03/2008)**




## Rule 6(3) amended-01/03/2008 to 31/03/2011

- **Rule 6 was amended to provide the following option to Service provider using common inputs or input services for providing taxable and exempted goods/services and opting not to maintain separate accounts;**
  - Reverse the credit attributable to the inputs and input services used for manufacturing exempted goods/providing exempted service. (20% option withdrawn)
  - Pay 6%( 8%) of the value of exempted service or 5% (10%) of value of exempted goods.
- **Any option exercised by MF or OSP is to be exercised for all exempted goods and exempted services.**

## **Rule 6(3) amended w.e.f. 01/04/2011**

- **If no separate accounts are maintained follow any one of the following option;**
  - **Pay 6% of value of exempted goods and 7%(earlier 6% ) of value of exempted services**
  - **In case of Transportation of goods/passengers by rail pay 2% of value of exempted goods and exempted services**
    - **Duty paid on exempted goods, if any to be reduced**
    - **Where exemption is subject to non-availment of credit on inputs/input services, exempted value of service only to be considered.**
  - **Pay proportionate credit attributable to exempted goods/services determined under rule 6(3A)**
  - **Maintain separate accounts for inputs and claim credit of inputs used in dutiable goods/taxable services and pay proportionate credit in respect of input service attributable to exempted goods/services determined under rule 6(3A)**



## Rule 6(3) amended

- **Option once exercised can not be withdrawn during the financial year**
- **Proportionate option exercised has to be intimated in writing to Superintendent of Central Excise giving following particulars;**
  - **Name, address and Registration no. of MF and OSP**
  - **Date from which option is exercised or proposed to be exercised**
  - **Description of dutiable goods or taxable services**
  - **Description of exempted goods or exempted services**
  - **Balance of Cenvat credit of input and input services lying on the date of exercising the option.**

# Rule 6(3) amended

- **Computation of attributable credit for exempted goods or services;**

- Determine and pay/adjust provisionally every month;
- For Cenvat credit on inputs

$$\frac{\text{PES}}{\text{PDG} + \text{PTS} + \text{PES}} \times (\text{IC}-\text{A})$$

- PES – Value of Exempted Services provided during PFY
- PDG – Value of Dutiable Goods manufactured and removed during PFY
- PTS - Value of Taxable Services provided during PFY
- IC - Total Cenvat credit take on inputs during the month
- A - Cenvat credit attributable to inputs used in or in relation to manufacture of exempted goods during the month
- To pay or adjust amount computed as above *plus A*

# Rule 6(3) amended

- **Computation of attributable credit for exempted goods or services;**
  - Determine and pay/adjust provisionally every month;
  - For Cenvat credit on input service

$$\frac{\text{PEG} + \text{PES}}{\text{PDG} + \text{PEG} + \text{PTS} + \text{PES}} \times \text{ISC}$$

- PEG- Value of Exempted Goods manufactured and removed during PFY
- PES – Value of Exempted Services provided during PFY
- PDG – Value of Dutiable Goods manufactured and removed during PFY
- PTS - Value of Taxable Services provided during PFY
- ISC - Total Cenvat credit take on input services during the month

# Rule 6(3) amended

- **Computation of attributable credit for exempted goods or services;**
  - **Determine finally for Financial Year;**
  - **For Cenvat credit on inputs**

$$\frac{\text{ES}}{\text{DG} + \text{TS} + \text{ES}} \times (\text{IC} - \text{B})$$

- **ES - Value of Exempted Services provided during FY**
- **DG – Value of Dutiable Goods manufactured and removed during FY**
- **TS - Value of Taxable Services provided during FY**
- **IC - Total Cenvat credit take on inputs during the FY**
- **B - Cenvat credit attributable to inputs used in or in relation to manufacture of exempted goods during the FY**
- **To compute amount as above *plus* B**

# Rule 6(3) amended

- **Computation of attributable credit for exempted goods or services;**

- Determine finally for Financial Year;
- For Cenvat credit on input service

$$\frac{\text{EG} + \text{ES}}{\text{DG} + \text{EG} + \text{TS} + \text{ES}} \times \text{ISC}$$

- EG - Value of Exempted Goods manufactured and removed during FY
- ES - Value of Exempted Services provided during FY
- DG – Value of Dutiable Goods manufactured and removed during FY
- TS - Value of Taxable Services provided during FY
- ISC - Total Cenvat credit take on input services during the FY

# Obligation of Mf and SP

- **Value of turnover for proportionate reversal of credit under Rule 6(3A);**
  - Gross value of taxable service or assessable value of final products.
  - In case where special rate of tax scheme is availed the value to be computed by backward calculation i.e. service tax amount divided by rate of tax.
  - In case of trading, difference between sale price and cost of goods sold (excluding exp incurred towards purchases) or 10% of cost of goods sold, whichever is more.
  - In case of trading of securities, difference between sale price and cost of securities sold or 1% of purchase price of securities traded, whichever is more.
  - **Interest/discount on Loans, advances etc. not to be considered for proportionate reversal.**



# Rule 6(3) amended

- **If the aggregate of provisional reversals for the FY is less than the final reversals for the entire FY then the said is to be paid by 30<sup>th</sup> June of succeeding FY. If the payment is not made by 30<sup>th</sup> June then Interest is to be paid @ 24% p.a. for delay.**
- **If the aggregate of provisional reversals for the FY is more than the final reversals for the entire FY then the said is to be credited back by 30<sup>th</sup> June of succeeding FY.**
- **Whether payment or credit the same is to be intimated within 15 days from the date of payment/adjustment to jurisdictional Superintendent of Central Excise along with following;**
  - **Details of Provisional Reversals for FY**
  - **Detail of Final Reversals for FY**
  - **Amount of Short Reversals and Date of payment**
  - **Interest paid if any for delayed payment**
  - **Amount of Excess Reversal**

## Rule 6(3) amended

- If no dutiable goods manufactured or no taxable services provided during previous FY then provisional reversal is not required to be computed and final reversal is to be computed and short or excess reversal to be paid/credited accordingly before 30<sup>th</sup> June of succeeding FY.
- Payment of provisional reversal is to be paid or debited to Cenvat Credit before 5<sup>th</sup> day of following month and for March, by 31<sup>st</sup> March.
- If short reversal is not paid the same will be recovered under Rule 14 as wrong credit taken.

# Obligation of Mf and SP

- **Special Cases**

Nature of Service	Special Payments
Banking company, financial institution or NBFC engaged in providing services by way of extending deposits, loans or advances	Pay 50% of the amount claimed as credit on input and input services for respective month

# Obligation of MF and SP

- **Special Cases**
- **Clarification by CBEC - Circular No. 943/04/2011-CX**

11	Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?	The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premises, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.
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# Others

- **Payment of 6% on exempt value amounts to non-availment of cenvat credit in case of exemption granted subject to the condition of non-availment of credit.**
- **Cenvat credit can be claimed on inputs, input services, capital goods used for providing services to SEZ developers and units in SEZ and export of service.**
- **Services provided to SEZ and export of service will not be treated as exempted services for availing cenvat credit.**
- **Export of service will not be treated as exempt service if the conditions mentioned in rule 6A of STR, 1994 are satisfied and the consideration for the same is not received in convertible foreign exchange within 6 months or within further time extended by RBI.**
  - **If payment is received within one year from such period, then credit reversed can be claimed back to the extent of payment received on the basis of documents.**



# Utilization of Credit

- **Utilization of cenvat credit for payment of;**
  - **Duty of excise**
  - **Reversal of credit availed on inputs or CG removed as such or after use OR as scrap or waste (duty liability))**
  - **Service tax on OS**
- **No utilisation for payment of service tax in respect of services where the person liable to pay tax is the service recipient (Reverse Charge Mechanism).**
- **No utilization for payment of interest/penalty/fine**
- **Amount available at the end of month/quarter can be utilized**
- **Credit of certain duties to be utilized against payment of such duties only.**
- **Ed. Cess on inputs/IS can be used for payment of Ed. Cess on FP/OS**

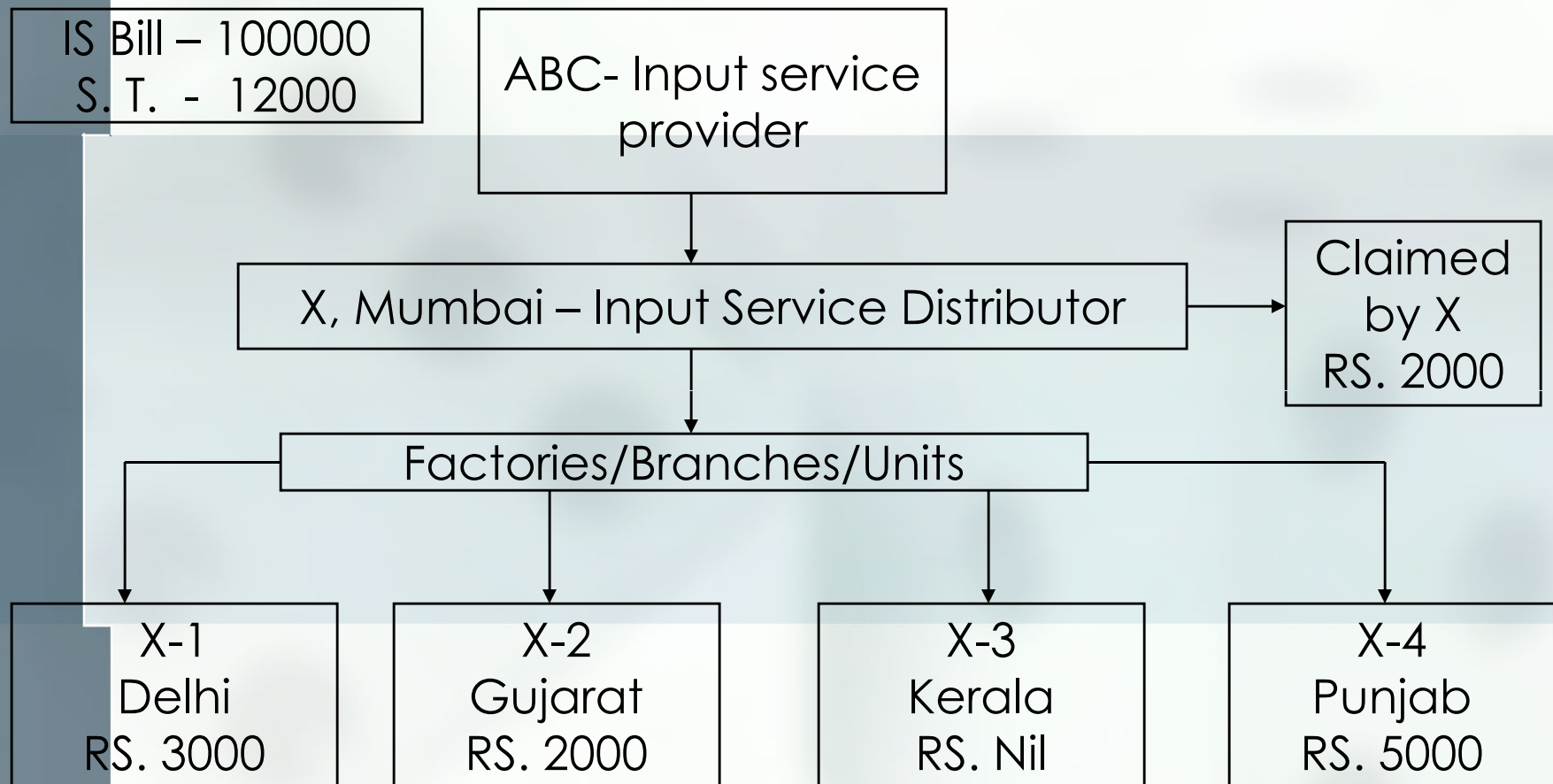


# Input Service Distributor - ISD

- **Concept:**

- Basically a system whereby the credit on common IS (say at HO) could be distributed to the various units/branches manufacturing dutiable goods or providing taxable service
- Obtain registration with 30 days of commencement of business or 16/6/2005, whichever is later.
- **Distribution by single entity and not by group consisting of multiple entities**
- **Distribution of credit on the basis of turnover w.e.f 01/04/2012.**

# Input Service Distributor – ISD Mechanism



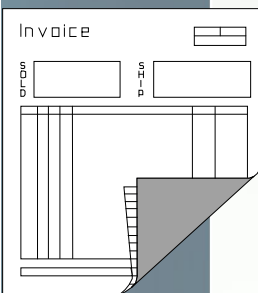


# Input Service Distributor

- **Conditions for distributing credit;**
  - *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 by one or more 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 by a unit shall be distributed only to that unit; and*
  - *(d) credit of service tax attributable to service used by more than one unit shall be distributed *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.*

# Input Service Distributor

- (a) if the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or
- (b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.]
- **ISD to issue an invoice containing;**
  - Name, address and Regn. No of Input service provider
  - Sl. No. and date of invoice of input service provider
  - Name and address of the ISD
  - Name and address of the recipient of the credit
  - Amount of credit distributed (*rule 4A(2) STR, 1994*)





# Input Service Distributor

- **Input Service Distributor (ISD) can also take Cenvat credit of inputs and capital goods on the basis of invoice received by them towards purchases of the same.**
  - **Procedure applicable to First/Second stage dealer would be applicable to ISD for distribution of such Cenvat credit to its branch/units.**



## Refund of Cenvat Credit - Export

- **Cenvat credit in respect of Inputs and IS used in FP or OS, which are exported can be utilized for payment of;**
  - duty on home consumption or on export of FP or
  - tax on output service.
- **Option is also available to MF/OSP to claim refund of Cenvat credit in proportion of Exports to Total Turnover.**
- **No refunds if duty drawbacks/rebates claimed.**
- **Detailed procedure to claim refund of cenvat credit is prescribed vide *Notification No. 27/2012- CE(NT) dt. 18/06/2012***

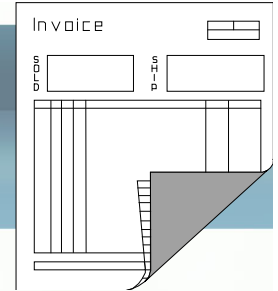


## □ Refund of Cenvat Credit- Reverse Charge

- **Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.-**
- **A Service provider providing services notified under section 68(2) of the FA and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.**
- **Refer Notification No. 12/2014-CE(NT), dated 03/03/2014 for refund to Rent-a-cab, Manpower and WC Service (Partial RCM).**



# Document & Accounts



- **Prescribed documents for claiming credit;**
  - Invoice of Manufacturer/Importer or his agent including Supplementary Invoice (not on account of fraud etc).
  - Invoice of Input service provider issued on or after 10/9/2004 including Supplementary Invoice (not on account of fraud etc).
  - Invoice of Input Service Distributor
  - Invoice of First/Second stage dealer
  - Bill of Entry
  - Certificate of Appraiser of Customs in respect of goods imported through foreign post office
  - Challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax.

## Document & Accounts

- **In case prescribed documents are not containing all the details, credit not to be denied if;**
  - **Invoice contains**
    - **Details of payment of duty/tax**
    - **Description of goods and services**
    - **Value of goods/services**
    - **Name, address and registration no. of the manufacturer/input service provider**
  - **DC/AC to be satisfied that duty/tax has been paid and the CG/inputs/IS are used in the manufacture of FP or for providing OS and they have been accounted for in the books of accounts.**



# Document & Accounts

- **Claiming credit for goods purchased from first/second stage dealer;**
  - Dealer to maintain records that supply made from duty paid stock of manufacturer
  - Only pro-rata duty charged in his invoice.
- **Records:**
  - The receipt, disposal, consumption and inventory of inputs and capital goods
  - The receipt and consumption of Input services
  - Record to indicate – value, duty/tax paid, credit taken and utilized, name, address of supplier etc.





# Returns/Statements



Person	Periodicity	Due date
MF	Monthly / Quarterly	10 days from the close of Month / Quarter
FSD or SSD	Quarterly	15 days from the close of Quarter
OSP availing CENVAT Credit	Half yearly	End of the month following the <del>Quarter</del> / Half year - <b>Revised return within 60 days (ST Rules 90 days)</b>
ISD	Half yearly	End of the month following the Half-year - <b>Revised return within 60 days (ST Rules 90 days)</b>

# Interest



- **No interest is payable in cases where cenvat credit wrongly taken remains unutilised and not adjusted against tax liability.**
- **Interest is payable in cases where wrongly taken credit is utilised. The mechanism to determine credit utilisation is as follows;**
  - The opening balance of the month will be deemed to have been utilised first;
  - Thereafter the eligible credit taken during the month will be deemed to have been utilised; and
  - Thereafter the wrongly availed credit taken during the month will be deemed to have been utilised.
  - **Rate of Interest is as prescribed under section 75.**



## Penalty/Confiscation

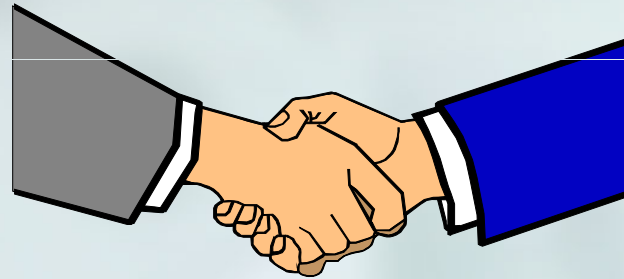


- **For wrong availment or utilisation of credit penalty as prescribed under section 76 is imposable**
- **In case of concealment or suppression penalty is imposable under section 78.**
- **Penalty to be imposed after granting opportunity of hearing.**
- **General penalty up to Rs 5,000/- is provided for any contravention of CCR, 2004, where no specific penal provisions exist.**

Knowledge speaks

but

Wisdom listens



*Thanks*