

Cenvat Credit Rules 2004 – Removal “as such”

Srikanth T Rao ACA

The Cenvat Credit Rules 2004 enable a manufacturer under central excise to avail the credit on “input services” which are used directly or indirectly in relation to the manufacture of the final products and clearance of the same from the place of removal. A large proportion of the services consumed by manufacturers therefore would now be an input service. Similarly the service provider is eligible for the cenvat credit on the inputs and capital goods used for providing the output service.

The manufacturer or the service provider may procure the inputs or capital goods with the intention of using the same for his production or provision of service. At times the manufacturer or the service provider to get economies of scale on his purchases may procure more quantity and the excess maybe sold to other manufacturers/ service providers. These situations lead to removal of inputs or capital goods without having put the same into use, popularly referred to as “as such” removal.

Normally under central excise the control is based on movement as ownership is not relevant for the attraction of the levy unlike sales tax or VAT. Under Central Excise the removal of inputs or capital goods on which the credit has been availed is governed by a few rules as under:

Rule 3(1): A manufacturer or producer of final product or provider of taxable service shall be allowed to take credit of duty of excise, additional duty of excise (TTA & GSI), National Calamity Contingency Duty (NCCD), additional duty under Customs (also called CVD), the additional duty leviable under 3(5) of Customs Tariff Act (not available for service provider), the service tax under Finance Act 1994 and the additional duty of excise under Section 85 of FA 2005, apart from education cess and Secondary Higher Education cess on excisable goods and taxable services. All these would be called the cenvat credit, which has been availed.

Rule 3(3): The credit on the stocks in hand as on 10.9.2004 is available to a taxable service provider subject to the condition that the same is duty paid and valid documents are available for the same. This would be the initial cenvat credit.

Rule 3(4): This allows the cenvat credit availed to be utilized for the payment of:

- the duty of excise on any product,
- **an amount equal to cenvat credit taken on inputs if such inputs are removed as such** or after being partially processed,
- **an amount equal to cenvat credit taken if such capital goods are removed as such**
- an amount under Rule 16(2) (returns)
- Service tax on any output service.

Rule 3(5): Where the capital goods or inputs on which credit has been taken are removed as such the manufacturer or service provider shall pay an amount equal to the credit availed under cover of an invoice. Where the capital goods are removed after usage, the manufacturer or provider of output service shall pay an amount equal to Cenvat credit taken on the said capital goods reduced by 2.5% for each quarter of a year or part thereof from the date of taking the Cenvat credit.

Rule 3(5A): Where capital goods are cleared as scrap and waste the manufacturer shall pay an amount equal to duty leviable on transaction value.

Rule 3(5B): Where the value of any input or capital goods (before being put to use), on which Cenvat credit has been taken, is written off fully or where any provision to write off fully has been made in the books of account, the manufacturer shall pay an amount equivalent to the Cenvat credit taken in respect of the said input or capital goods. Recredit is possible where the goods are subsequently used in manufacture of final products.

Rule 3(5C): Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted u/r 21 of Central Excise Rules 2002, the Cenvat credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

The above provisions of the Rules have created much debate and litigation. The rules have also changed in between allowing the transaction value for some time and again reverting to the present position. The issues, which are agitated, are discussed with possible solutions as under:

- A. Whether the manufacturer/ service provider who purchases the inputs and sells the same at different prices is allowed to discharge the duty based on the value ?***

The rule is quite clear that the amount to be debited is equal to the amount of credit. No less no more. However in computerized environment, where the stocks are not separated or where the manufacturer does not wish to disclose the margin he is earning on the trade, the option to pay on the transaction value (most times would be above the cost) would be chosen. However this appears to be incorrect as per the law. In practice most manufacturers adopt the transaction value.

However where the old stocks are being removed the payment of excise duty on the lower value would result in demand. This view was also confirmed by the decision of the Larger bench of the Tribunal in the case of Eicher Tractors. {2005 (189) ELT 131(LB-ND)}.

This would not apply where the inputs have been issued for production and have been rejected as line rejections of a quality not up to the requirement. In such cases the excise duty maybe paid on the scrap value.

B. Whether the manufacturer/ service provider who purchases the inputs and after a long lapse of time on the inputs being spoilt, writing off the same partially or wholly liable to reverse the duty?

This issue was long being objected and many companies have reversed the duty on this count at the time of audit. Though Central Excise Duty is payable on removal, where the values of old stocks are written off in books, the same would attract provisions of Rule 3(5B) pertaining to reversal of credits which has been explained earlier.

C. Whether the capital goods after being used in the manufacture for some time and then being removed can be said to be removed as such?

The matter has been settled now with the amendment to Rule 3(5) as per which, the amount of credit payable/reversible would have to be calculated. This Rule has been explained earlier.

The purpose of this article is to examine some of the issues which arise in as such sales.