

Gearing Up for GST –Carry forward of accumulated credit to GST - Part 5

Published on 10.04.2017

By CA Madhukar N. Hiregange &

- CA Roopa Nayak

This article is based on the GST Bill 2017 which was released in public domain in last week of March 2017.

Background

There seems to be a doubt in assesses who are registered under central excise and service tax, whether the unutilized credit in excise and service tax returns can be c/f into GST and used to pay the output tax liability under GST.

The paper writer makes clear that under transition provisions of GST law, the accumulated cenvat credit under Cenvat credit rules, can be carried forward by manufacturer/service provider into electronic credit ledger and set off against future liability of tax paid on taxable outward supplies made under GST.

Accumulated credit means credit availed on inputs, input services and capital goods to extent attributed to dutiable goods or taxable services/exported goods+ exported services, availed in excise/service tax returns and not utilized but c/f as closing balance in return filed in pre-GST.

Such accumulated credit of central taxes, namely excise duty /CVD + eligible SAD [SAD credit-service provider cannot avail]paid on inputs and on capital goods+ service tax paid on input services can be c/f as Central tax(CGST). Similarly credit of input tax under VAT can be c/f as State tax (SGST).

In this article the relevance of carrying forward of unutilized cenvat credit into Central GST has been set out.

Transition provision regarding c/f of closing Cenvat credit to GST

A registered person, [other than a person opting composition] shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the last return relating to the period ending with the day preceding the GST implementation date, furnished by him under the existing law.

Such credit shall not be permitted in the following circumstances:—

- (i) where the credit is not admissible as input tax credit under CGST; or
- (ii) where all the returns required under the existing law were not filed for 6 months immediately preceding the date of GST implementation; or
- (iii) where the credit relates to goods manufactured and cleared under exemption notifications notified by the Government.

A registered person [other than person opting composition], can also take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.

Unavailed credit means the amount that remains after deducting CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from total amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

Credit on capital goods shall not be allowed unless the credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Relevance of complete availment of cenvat credit

1. Wef 1.3.2015, the credit on inputs and input services to be availed within 1 year from invoice date. No such restriction on capital goods such as plant and machinery, electrical and electronic appliances. However depreciation under IT Act cannot be claimed on the duty paid portion on which credit is claimed as it is double benefit which is not permitted under law.
2. This is one of the last chances for the manufacturer/service provider to avail all missed out credit, including credit of service tax paid under reverse charge/joint charge

Steps to be taken to ensure optimal availment of credit under present Cenvat provisions in ST-3 to be filed for Oct 2016 to March 2017:

- a) For VAT assesses reconciliation of the credit eligible and that availed can be examined. The time limit for credit maybe confirmed in the State VAT law. Credit availed in the next month return.
- b) For central excise assesses the inputs credit maybe reconciled and if anything missed availed within the limit of 1 years provided. Credit can be availed in the next return.
- c) For assessees under ST, avail credit from Oct 2015 onwards till March 2017 on eligible inputs, input services in ST-3 return which would be filed for Oct 2016 to March 2017.
- d) Missed out credit to be availed in ST-3 return filed under Service tax for period from Oct 2016 to March 2017. Due date 25th April 2017.

Note: IN all the cases above- the provision of revised returns if needed can be thought of to ensure that missed credits are availed.

- e) Could re-examine to once again re-avail past period credit which was reversed under protest /based on dept officer oral instructions.
- f) Similarly certain credit may have been considered doubtful by assessee. Examples could be:
 - a. Freight outwards when customer location is place of removal [FOR basis delivery],
 - b. Credit on outdoor catering though Factory compulsorily required to have canteen under Factories Act,
 - c. Rent a cab maybe available as per latest tribunal decision. After written advice may avail the credit.
 - d. Expenses [other than construction expenses] incurred for setting up new factory/premises by manufacturer/service provider such as on architect, project management consultant, consulting engineer service, soil testing, loan processing, financial charges, erection, commission & installation of machine works.

- 3. Due to above reasons or any other similar reasons, if the credit on inputs and input services was first availed in ER/ST-3 return and later was reversed under protest, **the time limit of 1 year from invoice date for subsequent re-availment of credit on**

inputs and input services is not applicable. Determine credit which was reversed earlier [such as reversed due to disputable nature of credit] as it should be availed in ST-3 return filed now.

- b. Ensure Credit verification of invoices dated from Oct 2015 to avail all missed out credits.
- c. Ensure completeness of availment of credit of tax paid under reverse charge/joint charge such as legal service, security agency service, manpower supply service, import of services inwards GTA, sponsorship service.
- d. Further if credit on bank charges was not availed earlier, get certificate from banker now with details of service tax paid. The credit could be availed for past years [say even 2011-12]based on the certificate issued at present date. This is seen to be a credit which is often missed out.
- e. Ensure goods including capital goods/input services are procured from manufacturers/excise dealers /registered service providers with applicable taxes.

Conclusion:

In this article the paper writers have examine the carry forward of cenvat credit into GST regime briefly The CGST Bill and esp transition provisions could be referred for further details.

For any clarifications kindly mail at madhukar@hiregange.com or roopa@hiregange.com.