

Eligibility of Input Service Credits

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The definition of 'input service' was once understood to be of widest amplitude, earlier to substituted definition introduced in the year 2011. The new definition has brought in multiple limitations. Although, the Finance Minister, in his budget speech, stated that the amendments were intended to "achieve a more realistic balance between input credits and output tax and to harmonise the provisions of the scheme across goods and services", it appears that the amendments have limited the eligibility of cenvat credit to ensure revenue augmentation

Background

Cenvat Credit is a beneficial scheme wherein the duty paid at earlier stage on inputs and input services is allowed to be set off against the liability on manufactured goods or output services provided. As a result what is taxed is only the value addition made by the manufacturer or the output service provider. Cenvat scheme is a beneficent piece of legislation and unless it is shown that the items are specifically excluded from the definitions of the terms "inputs", "input service" or "capital goods", Cenvat Credit cannot be denied.

As the time passed through the industry started to understand the concept of cenvat credit with various judicial decisions bringing in the clarity in the scope and intent of the rules. In this article, the paper writers have examined the eligibility of cenvat credits on certain specified items of expenses as also implications of important decisions.

Definition of input service

Effective from 1.7.2012

ANY SERVICE used by a provider of output service for providing output service; or

Used by a manufacturer, whether directly or indirectly, in or in relation to

- the manufacture of final product and
- clearance of final products upto the place of removal

and includes service used in relation to,

- Modernization, Renovation or repair of a factory, premises or an office relating to such factory/ premises,

- Advertisement or Sales promotion,
- Market research,
- Storage upto the place of removal,
- Procurement of input,
- Accounting, Auditing, Financing,
- Recruitment and Quality control,
- Credit rating, Computer networking,
- Coaching and training,
- Computer networking
- Credit rating,
- Share registry,
- Security, Business exhibition,
- Legal service,
- Inward transportation of input or capital goods and outward transportation upto the place of removal.

But **Excludes**

(A) **Following declared services:**

- Service portion in the execution of works contract,
- Construction services including services listed under [clause \(b\) of section 66E](#) of the [Finance Act](#)- Declared Service

in so far as they are used for

construction or execution of works contract of a building or a civil structure or a part thereof; of

laying of foundation or making of structures for support of capital goods,

EXCEPT for the provision of one or more of the specified service.

(B) **Following specified services:**

- Renting of motor vehicle – in so far as they relate to a motor vehicle which is not a capital goods
- General insurance service, servicing, repair and maintenance- in so far as they relate to a motor vehicle which is not a capital goods,

EXCEPT when used by- manufacturer of a motor vehicle,

- Insurance company in respect of motor vehicle insured or reinsured.

(C) **Services such as those provided in relation to**

- Outdoor catering,
- Beauty treatment, health service, cosmetic and plastic surgery,
- Membership of a club, Health and fitness centre,
- Life insurance, Health insurance and
- Travel benefit is extended to employees on vacation such as leave or home travel concession,

When such services are used primarily for PERSONAL USE or consumption of any EMPLOYEE.

Eligibility of various services as input services

Though the Bombay High Court in [Coca Cola India Pvt. Ltd. v. CCEx., Pune, 2009 \(8\) TMI 50 - BOMBAY HIGH COURT](#) held that all and any activities relating to business are covered under input service provided there is a relation between manufacture and such activity.

After considering the decision of the Hon'ble Supreme Court, Hon'ble Bombay High Court in the case of [C.C.E. vs. Ultratech Cement Ltd. \[2010 \(10\) TMI 13 - BOMBAY HIGH COURT\]](#) held that if the activity is related to business of the manufacturer and the service is covered by inclusive definition, credit would be admissible. That decision was also rendered in the case of a manufacturer and not in the case of an output service provider.

In the new definition the word, “activities relating to business” removed from the inclusive part of the definition which gives another twist to the controversy that whether these changes in-fact would have any impact. While various other clauses of the definition are self explanatory, however this one merits attention since most of the litigation with regard to input services and CENVAT Credits of Service tax paid on input services pertains to services which primarily fall under this clause.

The following is summary of various input services eligible and not eligible. Of course, some of these credits could be disputable.

Service	Comment about eligibility
Accounting Expenses	Eligible as specifically included in definition
Advertisement (may be for recruitment, tenders, sales promotion, legal notices	Eligible as specifically included in definition

etc. as no restriction)	
Auditing Service	Eligible as specifically included in definition
Banking and other financial services	Eligible under 'Financing'
Canteen Expenses for employees	Not Eligible as specifically excluded
Commercial Coaching and training	Eligible as specifically included in definition
Computer networking	Eligible as specifically included in definition
Construction of a building or a civil structure or a part thereof	Not eligible if used for 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. If the service is used for other purposes, e.g. finishing services, repair, alteration or restoration, these should be eligible.
Financing (Bank charges, Lease, Hire Purchase)	Eligible as specifically included in definition
Foundation or support of capital goods	Specifically excluded – Hence not eligible except for construction or works contract service
Health Insurance	Insurance of employees not eligible [Insurance of a director (who is not employee) would be eligible]
Legal Consultancy	Specifically included under 'legal services'
Market Research	Eligible as specifically included in definition
Outdoor catering	Not eligible when given to employee – should be eligible if used for sales promotion, training, or to directors who are not employees
Outward transportation	Outward transportation upto the place of removal is eligible

Personal Insurance of employees	Not eligible
Quality Control	Eligible as specifically included in definition
Recruitment	Eligible as specifically included in definition
Renovation of factory or office building	Renovation of a factory, premises of provider of output service or an office relating to such factory or premises is eligible
Renting of a cab	Specifically excluded – Hence not eligible except where motor vehicle is eligible as capital goods.
Renting of immovable property	Eligible if in relation to manufacture or provision of taxable goods/services

Important decisions:

Construction services: The Hon'ble Gujarat High Court in the case of [C.C.E. & C. vs. Gujarat Heavy Chemicals Ltd. reported in 2011 \(5\) TMI 132 - GUJARAT HIGH COURT](#) and the decision of Hon'ble High Court of Bombay in the case of [C.C.E., Nagpur vs. Manikgarh Cement 2010 \(10\) TMI 10 - BOMBAY HIGH COURT](#) to submit that in both the decisions, it was held that services of repair, maintenance and civil construction used in residential colony is not admissible.

AP High Court decision in [Commissioner of Central Excise Visakhapatnam II vs. Sai Samhita Storages \(P\) Ltd. 2011 \(2\) TMI 400 - ANDHRA PRADESH HIGH COURT](#) upholding the Tribunal's decision [[2010 \(4\) TMI 484 - CESTAT, BANGALORE](#)] holding that inputs used for construction of warehousing, for providing services of "storage and warehousing", are eligible CENVA Table inputs

Insurance expenses: In [Comm. of C.Ex & Service Tax Vs. Micro Labs Ltd. \[2011 \(6\) TMI 115 - KARNATAKA HIGH COURT \]](#), the Karnataka High Court held that service tax paid on group health insurance policy of employees is admissible as credit on the basis of reasoning that the same is an obligation of employer u/s 38 of the Employee State Insurance Act, 1948 and the activity relates to the business as per the definition of 'input service'.

Staff Colony expenses: In [CC & CE, Hyderabad Vs M/s ITC Limited \(2011 \(11\) TMI 516 - ANDHRA PRADESH HIGH COURT \)](#) held that the staff colony, provided by the respondent Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from

consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as 'input services' falling within the ambit of [Rule 2\(l\)](#) of the [CENVAT Rules, 2004](#).

Outdoor catering: In the case of [Stanzen Toyotetsu India \(P\) Ltd. 2011 \(4\) TMI 201 - KARNATAKA HIGH COURT](#) the Hon'ble High Court adverted to the mandatory provisions of Section 46 of the Factories Act and took the view that CENVAT credit could not be denied in respect of outdoor catering service as it was their statutory liability to maintain a canteen where the number of employees was more than 250.

The above are decisions covering the period before the substituted definition of input service restricting various credits was introduced.

Conclusion

In this article the paper writers, have looked to examine the eligibility of cenvat credit on input services after recent changes in input services definition. The relevant case laws would also provide a clue on the interpretation in future. This understanding could be a pointer to many manufacturers and service provider who are NOT availing the credit as well as those who are. It could also avoid unnecessary disputes by reversing/ not availing when not admissible well in advance.