

Past Cenvat Credits- Last Chance?

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Revenue Augmentation by Way of Cenvat Credit Restrictions

[Past Credit Availment – Last Chance? – CE/ ST]

Excise duty collections are expected to be about ₹ 2 Lakhs crores and Service Tax collections about 2.2 Lakhs crores for the year 2014-15.

The cenvat credit accounts for about 50% of the total duty payment to be made by the manufacturing sector. For service providers it may average about 20% of the duty payable. Therefore this year the credit to be availed would be in excess of ₹ 1.5 Lakhs crores.

We have observed that the cenvat credit is not availed for a number of reasons as under:

1. Manufacturer/ Service Provider [MSP] does not know that credit is available.
2. MSP feels that it is not worth it.
3. Department Officers especially audit parties are always trying to deny credit.
4. Poor purchasing policies- No insistence on buying from manufacturer directly.
5. Fact that traders can be registered under Central excise and pass on credit not known.
6. Reversal of credit on oral instruction of target meeting officers.
7. More importantly stopping future credits once reversed.
8. On claiming abatement presuming that credit not available.
9. Not having valid documents and therefore not availing credit like Bill of Entry or courier bill of entry.
10. The credits not linked to accounts and a separate excel sheet prepared for eligible credits.
11. Not availing common credits.
12. Not using the Input Service Distributor mechanism.
13. ...many many more.

This budget we see an atrocious [Notification No. 21/14 dt 11.07. 2014](#) whereby the second proviso to [Rule 4\(1\)](#) has been added as under:

“ provided that the manufacturer or provider of output service shall not take cenvat credit after 6 months of date of issue of any of the documents specified in [sub rule \(1\) of rule 9.](#)”

- WEF 1st September 2014.

[Rule 9 \(1\)](#) specifies- invoice by manufacturer, importer, depot. 1st stage, 2nd stage dealer,

supplementary invoice, challan, bill of entry, certificate of appraiser and ISD document.

In earlier years at anytime when one comes to know that there is a credit missed to be availed, it would be taken. Delayed credits were also taken in the following situations:

- a. Case law overrules revenue contention on restriction to credit.
- b. At the time of internal audit/ statutory audit or any management verification where such issues come up.
- c. No credit availed as used for non taxable manufacture/ services, now made taxable.
- d. Top management feeling that there is some credit missed/ as proportion of duty being paid is more.

The major impact of the restriction is as under:

- I. Manufacturer/ service providers would automatically lose out on eligible credit not availed upto February 2014 as on 1 day of September 2014.
- II. In future they need to ensure a completeness check is deigned and confirm that credits are taken at periodic intervals- maybe a quarterly exercise.
- III. All doubtful credits can be availed now – ex credit on outward GTA but not utilised till clarity comes.
- IV. In future if there are any demands for longer period- possibility of no credit being allowed need to be factored in.

The transaction cost of these type of tax payer unfriendly provisions need to be represented and challenged in the courts to see that the excesses of the tax administrators is exposed and reversed. Immediately however a cenvat credit locating, capturing and availment before end of august is the need of the hour.