

Availment of Credit based on computer generated invoice: Pre and Post Budget 2015-16

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Availment of credit based on unsigned invoice or printed signature on computers generated invoice has at times been an area of audit objections by departmental official during the audit, verification, investigation. The law was silent on the issuance of computerized invoice and taking of credit based on computerized invoice.

Finance Act 2015 has provided specific provisions for issuance of digitally signed invoices and preservations of records in computerised form authenticated by digital signature. Notification No. 18/2015 has been issued specifying the conditions, safeguards and procedures to be followed. Paper writer has made an attempt to understand the requirement of new provisions and its impact on credit availment.

Document for availment of credit:

Rule 9 of CENVAT Credit Rules, 2004 prescribes eligible documents on the basis of which credit can be availed of tax paid on inputs and input services. An extract of the said rule has been produced below:

"Rule 9 of Cenvat Credit Rules, 2004, "The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a)...

(f)an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004.

(g)an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994

As per the said rule, a manufacturer or output service provider may take credit on the basis of invoice issued by provider of input service. But it important to note that the in clause (f) referred above, there is no specific mention of Rule 4A of Service Tax Rules whereas in clause (g) the reference of Rule 4A is specifically given. It may be inferred that for availing the credit, mere invoice issued by service provider would be sufficient even though not

issued in terms of Rule 4A of Service Tax Rules, 1994. However, there may be another interpretation also as per which Rule 4A was inserted w.e.f. 10.9.2004 and by making reference of the said date in the above rule, the legislature had intended that invoice would invariably be issued under that rule and may be due to which no explicit reference of Rule 4A has been made.

Reference of CCR and IT Act

It would be relevant to discuss certain other provision of law (Cenvat Credit Rules as well as Information Technology Act) which may be relevant in this regard:

- **CENVAT Credit Rules, 2004**

Rule 9 of CCR which prescribes the eligible documents for taking credit has proviso providing the following:

"Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]"

Hence, the said proviso clearly provides that even if signature is missing on the invoice, the AC/DC may allow the credit to service receiver.

Information Technology Act, 2000

Section 5 of the Information Technology Act, 2000 renders legal recognition to electronic signatures. The same has been produced below:

"Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is

*authenticated by means of **electronic signature** affixed in such manner as may be prescribed by the Central Government”*

The above section renders an overriding effect of the IT Act, 2000 over all other laws. Furthermore, explanation to the above section states *"For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.*

Hence, the above section provides that "signature" shall include any mark/ impression on the document that authenticates such document. Moreover, Rule 4 A (1) of Service Tax Rules state that invoice should be 'signed' but nowhere does it says that it should be signed in ink.

Judicial precedents:

On similar issue, certain judgments have been delivered which are summarized as below:

- **Dewshree Network Pvt. Ltd. v/s Commissioner of Central Excise & Service Tax, Surat, (2014-TIOL-246-CESTAT-AHM)STAY Matter (not final judgment):** held that CENVAT credit availed on the basis of computer generated invoices issued by service provider is *prima facie* ineligible as such practice is not in accordance with the Service Tax Rules read with the provisions of Rule 9 of the CENVAT Credit Rule, 2004.
- **CREATIVE ARCHITECTS & INTERIORS** (Commissioner Appeal): No signature on invoice - Invoice, computer-generated, no signature required - Credit allowable - Rule 3 of Cenvat Credit Rules, 2004
- **SUKAM GRAVURES LTD. 2008 (225) E.L.T. 66 (Tri. - Del.):** Documents for availing credit - Validity of - Computer generated copy of invoice containing name of appellant as hand written - Invoice containing all details viz. description of goods, assessable value, name and address of factory/warehouse etc. - C.B.E.C. Circular No. 441/7/99-C.X. dated 23-2-1999 stating that in such a case if assessee files declaration as contemplated under Cenvat Credit Rules, 2002, credit is permissible - Since procedural lapse is not a grave mistake and in the light of Board's circular, credit admissible - Rule 9 of Cenvat Credit Rules, 2004.

On perusal of above decisions, it is clear that there is no consensus among judiciary as to availment of credit based on computer generated invoice. As per settled principle of law,

substantive benefit cannot be denied on account of procedural lapses. Non-signing of invoice may, at the most, be considered as procedural lapse which in view of paper writer must not deny availment of credit which is otherwise eligible.

Amendment vide Finance Act 2015-16

Notification No. 5/2015-ST dated 1.3.2015 has been issued providing for the following:

- **Authentication by digital signature (Rule 4C of Service Tax Rules):** Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature.
- **Preservation of records authenticated by digital signature (Rule 5(4) of Service Tax Rules):** Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.

Further, it has been provided that Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee issuing digitally signed invoice and/or preserving digitally signed records. Notification No.18/2015-Central Excise (N.T.) dated 6th July 2015 has been issued in this regard.

Salient features/requirements of Notification: Following are main conditions which are required to be fulfilled by service provider intending to issue digitally signed invoices/preservation of records in electronic forms

- Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India to be used.
- Intimate following details to jurisdictional Assistant Commissioner/Deputy Commissioner (AC/DC) at least fifteen days in advance:
 - name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
 - name of the Certifying Authority;
 - date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:
- Every change to be intimated within 15 days of such change
- Assessee already using digital signature shall intimate to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise the above details within fifteen days of issue of this notification
- Assessee who has more than one factory or service tax registration shall maintain

separate electronic records for each factory or each service tax registration

- Records/invoice maintained and verified by means of digital signatures need to be provided to central excise officer through mail or any other storage device on being demanded
- Central Excise officer may ask for printouts of invoices and electronic records during an enquiry, investigation or audit and if so asked, the assessee would be required to furnish the same.
- The records shall be preserved for a period of five years.

Conclusion:

After issuance of notification, the earlier problem being faced by the trade and industry regarding availment of credit on computerized invoice is expected to come to an end. However, it is also important that now onwards issuance of computer generated invoice marking as "this is computer generated invoice and does not require signature" or invoice with the image of signatures or any other similar terms may no longer be valid for availment of credit. If one wants to issue computerized invoice, either this needs to be digitally signed or signed manually on printed copy. Every person availing credit is required to keep their vendor informed for such requirement so that their credit availment is not questioned by department.