

Cenvat Credit on Outdoor catering Services

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Service providers / manufacturers avail various input services such as catering services, travelling services, insurance etc., which would be consumed by the employees. Such services would not be eligible for Cenvat credit when they are primarily consumed for personal purpose. However, consumption of these services purely for personal purpose would be rare and often these services are in relation to business of providing services or final dutiable products. In such cases, Cenvat credit shall not be denied.

After the amendment of definition of 'input service' in Cenvat credit Rules 2004 with effect from 01.04.2011, many of the assessee registered under Service tax and Central excise law started to forego Cenvat credit of service tax paid on major input services such as Construction / Works contract services, Rent-a-cab services, motor vehicle insurance service and outdoor catering services etc.

Even though services such as construction services and rent-a-cab services are restricted outright, there are many services like insurance, travel benefits and outdoor catering which are restricted only when they are **primarily used** for personal use or consumption of the employees. However, proving what is primarily used for personal use or consumption of the employees is not an easy task for assessee, especially during visits by departmental audit team.

For the benefit of the readers, the restriction provided in definition of input service Rule 2(l) clause (c) as contained in Cenvat Credit provisions is reproduced below:

'Input service' means any service,

- i) *Used by a provider of output service for providing an output service; or*
- ii) *Used by a manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, and includes.....*

But excludes

(A) ...

(B) ...

(BA) ...

...

(C) *such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits 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;***

Based on the restriction clause and regular audit objections, majority of the assessees do not avail the Cenvat credit on input services such as outdoor catering services, travelling services and employee group insurance, mediclaim etc based on the understanding that such services are restricted for Cenvat credit. In many instances, even if the credits have been availed, the department has been instructing the assessee to reverse the credit on these services.

Recently, the Mumbai Tribunal in case of ***Hindustan Coca Cola Beverages (P) Ltd. Vs. CCE 2014-TIOL-2460 CESTAT Mumbai*** has held that service tax paid on Outdoor Catering services which are used for business purpose is eligible for Cenvat credit. The period involved in this case was for period December 2011 to December 2012 during which the new definition was in existence.

In this case, the appellant argued that the outdoor catering services are used in relation to carrying out business of manufacturing excisable goods and the services are not for personal use of the employees. The reliance was also placed on the board circular no. Circular No.943/04/2011-CX dated 29.04.2011 wherein it was clarified that Cenvat credit is not allowed only when any goods and services are used *primarily for personal use or consumption* of employees.

Considering the arguments, the Tribunal held that Outdoor catering service is used in relation to business activities of the appellant and the service is used by all employees in general. The Tribunal also considered the argument of the appellant that the cost of outdoor catering services is borne by the appellant and not by the employee. As a result such cost forms part of the cost of the final product which would be cleared on payment of duty.

Therefore, the assessee based on the judgment as discussed above would be eligible to avail the Cenvat credit on Outdoor catering services especially when he could prove that such services are essential for business and forming part of cost of final goods or output services provided.

However, it shall be ensured that the credit is not availed on portion of the amount which would be recovered from the employees. In case of *Cema Electric Lighting Products India P. Ltd. Vs CCE 2015 (37) S.T.R. 718 (Guj.)*, the High court held that

assessee would not be entitled to Cenvat credit on such amount which has been recovered from employees. This view is logical as well as the intention of Cenvat credit is to avoid cascading effect of tax. When the assessee has not incurred the service tax, he should not be given the benefit of such tax. For instance, when Rs.30/- is being recovered from employee out of Rs.100/- payable to caterer, the employer would be eligible to take Cenvat credit of service tax paid only on Rs.70/- and not on entire Rs.100/-.

Whether catering services exempted from service tax?

Mega exemption notification no.25/2012 was amended through notification no.14/2013-ST dated 22.10.2013 to insert the following entry after serial no. 19. It reads:

*"19A. Services provided in relation to serving of food or beverages **by a canteen maintained in a factory** covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year"*

From the wordings in the above entry, it could be interpreted that the exemption is available to services provided by canteen to staff/ employees of factory and charges are directly recovered from staff and the exemption is not available when the services are provided by outdoor caterer to factory.

However, the intention of introducing the exemption seems to be to provide relaxation from service tax for the food supplied to employees. As the words used in the exemption entry is 'Services provided in relation to.....', the exemption should be available even for the services provided by outdoor caterer to the factories. Presently, different views are adopted by the outdoor caterers and service tax exemption being claimed by few caterers. The option of exemption could be explored by the assessee who does not wish to claim the Cenvat credit.

Conclusion: Based on the decision of the Tribunal, the Cenvat credit could be claimed on catering services (for the past 1 year if not claimed earlier). Where the amount of credit is significant a speed post letter intimating revenue that the credit is being availed based on the decision cited above maybe sent. The letter may also seek confirmation. This would go to prove bona fide belief.

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