



CENVAT CREDIT RULES 2004 – REMOVAL “AS SUCH”

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The CENVAT Credit Rules 2004 enable a manufacturer under central excise to avail the credit on “input services” which are used directly or indirectly in relation to the manufacture of the final products and clearance of the same from the place of removal. A large proportion of the services consumed by manufacturers therefore would now be an input service. Similarly the service provider is eligible for the CENVAT credit on the inputs and capital goods used for providing the output service.

The manufacturer or the service provider may procure the inputs or capital goods with the intention of using the same for his production or provision of service. At times the manufacturer or the service provider to get economies of scale on his purchases may procure more quantity and the excess maybe sold to other manufacturers/ service providers. These situations lead to removal of inputs or capital goods without having put the same into use, popularly referred to as “**as such**” removal.

Normally under central excise the control is based on movement as ownership is not relevant for the attraction of the levy unlike sales tax or VAT. Under Central Excise the removal of inputs or capital goods on which the credit has been availed is governed by a few rules as under:

Rule 3(1): A manufacturer or producer of final product or provider of taxable service shall be allowed to take credit of duty of excise, additional duty of excise (TTA & GSI), National Calamity Contingency Duty (NCCD), additional duty under Customs (also called CVD), the additional duty leviable under 3(5) of Customs Tariff Act (not available for service provider), the service tax leviable under Section 66B and 66A of the Finance Act 1994 and the additional duty of excise under Section 85 of FA 2005. *(In budget 2015-16, education cess and secondary higher education cess on excisable goods and taxable services has been subsumed in the excise duty rate of 12.5 percent and service tax rate of 14 percent respectively).* All these would be called the CENVAT credit, which has been availed.

Rule 3(3): The credit on the stocks in hand on or after 10.9.2004 is available to a taxable service provider subject to the condition that the same is duty paid and valid documents are available for the same. This would be the initial CENVAT credit.

Rule 3(4): This allows the CENVAT credit availed to be utilized for the payment of:

- the duty of excise on any final product,
- an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed,
- an amount equal to CENVAT credit taken if such capital goods are removed as such
- an amount under Rule 16(2) (returns)
- service tax on any output service.

Rule 3(5): Where the capital goods or inputs on which credit has been taken are removed as such from the factory, or premises of the manufacturer or service provider shall pay an amount equal to the credit availed under cover of an invoice.

Exception: Such payment shall not be required to be made

- where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service and
- inputs are removed outside the factory for providing free warranty for final products

Rule 3(5A): Where the capital goods are removed after usage, the manufacturer or provider of output service shall pay an amount equal to CENVAT credit taken on the said capital goods (except computers) reduced by 2.5% for each quarter of a year or part thereof from the date of taking the CENVAT credit. For computers and computer peripherals the manufacturer or provider of output service shall pay an amount equal to the CENVAT credit taken on the said capital goods as reduced by the percentage points calculated by straight line method as specified below for each quarter of year or part thereof from the date of taking CENVAT credit.

- for each quarter in the first year @ 10%
- for each quarter in the second year @ 8%
- for each quarter in the third year @ 5%
- for each quarter in the fourth and fifth year @ 1%

If the amount so calculated is less than the amount equal to the duty leviable there on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

In case the capital goods are cleared as waste or scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

Rule 3(5B): Where the value of any input or capital goods (before being put to use), on which CENVAT credit has been taken, is written off fully or partially or where any provision to write off fully or partially has been made in the books of account, the manufacturer or service provider shall pay an amount equivalent to the CENVAT credit taken in respect of the such input or capital goods.

Re-credit is possible where the goods are subsequently used in manufacture of final products or the provision of output services.

Rule 3(5C): Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted u/r 21 of Central Excise Rules 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods and the CENVAT credit taken on input services used in or in relation to the manufacture or production of the said goods shall be reversed. The above provisions of the Rules have created much debate and litigation. The rules have also changed in between allowing the transaction value for some time and again reverting to the present position. The issues, which are agitated, are discussed with possible solutions as under:

Explanation 1: The amount payable under sub rules (5), (5A), (5B), and (5C) unless specified otherwise, shall be paid by manufacturer of goods or the provider of service by debiting the CENVAT credit or otherwise on or before the 5th day of following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2: If the manufacturer of goods or the provider of service fails to pay the amount payable under sub-rules (5), (5A), (5B), and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.

A. Whether the manufacturer/ service provider who purchases the inputs and sells the same at different prices is allowed to discharge the duty based on the value?

The rule is quite clear that the amount to be debited is equal to the amount of credit. No less no more. However in computerized environment, where the stocks are not separated or where the manufacturer does not wish to disclose the margin he is earning on the trade, the option to pay on the transaction value (most times would be above the cost) would be chosen. However this appears to be incorrect as per the law. In practice most manufacturers adopt the transaction value.

However where the old stocks are being removed the payment of excise duty on the lower value would result in demand. This view was also confirmed by the decision of the larger bench of the Tribunal in the case of Eicher Tractors. {2005 (189) ELT 131(LB- ND)}.

This would not apply where the inputs have been issued for production and have been rejected as line rejections of a quality not up to the requirement. In such cases the excise duty may be paid on the transaction value.

B. Whether the manufacturer/ service provider who purchases the inputs and after a long lapse of time on the inputs being spoilt, writing off the same partially or wholly liable to reverse the duty?

This issue was long being objected and many companies have reversed the duty on this count at the time of audit. Though Central Excise Duty is payable on removal, where the values of old stocks are written off in books, the same would attract provisions of Rule 3(5B) pertaining to reversal of credits which has been explained earlier.

C. Whether the capital goods after being used in the manufacture for some time and then being removed can be said to be removed as such?

The matter has been settled now with the amendment to Rule 3(5A) as per which, the amount of credit payable/reversible would have to be calculated. This Rule has been explained earlier.

D. Whether credit to be reversed in case capital goods imported and sold as such?

As per earlier provision of Rule 3(5) of CENVAT credit rules, 2005 Where the capital goods on which credit has been taken are removed as such from the factory, or premises of the manufacturer or service provider shall pay an amount equal to the credit availed under cover of an invoice. In case of Imports should reverse the credit which is availed on SAD and CVD.

E. Whether reversal of credit is required when inputs are removed as such for export?

When inputs are removed as such for export then input credit on such goods need not be reversed. Confirmed by Tribunal in the case of Finolex Cables Ltd. Vs. CCEx., Goa – 2007 (210) E.L.T. 76 (Tri.-Mumbai).

F. Whether reversal of credit is required when capital goods are removed as such to 100% EOU?

When capital goods are removed as such to a 100% EOU against CT-3 in terms of notification no.22/2003-C.E., Credit need not be reversed. Held in the case of Manaksia Ltd. Vs. CCEx., Kolkata-IV – 2007 (216) E.L.T. 231 (Tri.-Kolkata).

G. What if removal of goods “as such” at a higher price than at actual purchase price?

The Hon'ble High Court of Gujarat, in its recent decision, in the case of CCE, Ahmedabad-II v/s Inductotherm (I) Pvt. Ltd. reported in 2012-TIOL-929-HC-AHM-CX, has held that when a manufacturer removes / sales goods “as such” at a higher price than purchase price and collects central excise duty on “transaction value” (i.e. sale value for easy understanding) then such manufacturer has to reverse equal amount of CENVAT credit which was availed at the time of receipt of such goods and the balance duty is required to be paid through Personal Ledger Account (i.e. in cash / bank) only though CENVAT credit balance is available in the books of accounts.

The purpose of this article was to examine some of the issues which arise in “as such” sales which seems to have spawned disputes which could have been avoided. Hope some of those issues would be clear.