



Cenvat Credit on Construction Sector

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There has been a lot of confusion in the minds of assesses on whether to avail credit on the construction of immovable property and allied services. The revenue assumes that none of the credits are available in this sector. This has led to non availment of eligible credit by assessee.

Further with the time limit on availment of credit having been put in place, the assessee who does not avail credit stands to face a situation whereby eligible credit could be time barred due to the lapse of 1 year from invoice date.

In this article the paperwriter has sought to examine eligibility to credit on the construction sector credit to service providers.

Introduction

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 Credit Rules 2004 at the same time specifically provides for denial of credit of tax paid on certain specified inputs, input services and capital goods. The restrictions lead to break in the credit chain and consequent cascading effect leading to sticking of taxes on goods and services. When the taxes become a cost, such costs are recovered by the manufacturers and service providers from the final consumers of their goods and services, leading to increase in costs of goods and services to end customer.

Further cenvat credit cannot be availed on the inputs, input services and capital goods which are used solely for exempted activity.

The paperwriter has examined legality of availment of credit on construction and its allied credit by service providers as per law applicable wef 1.7.12.

Cenvat Credit on capital goods

As per Rule 2(a) capital goods is defined to mean the following goods used for providing output service —

- (a) All goods falling under Chapter 82 (Tools & implements and parts thereof), 84 (Machinery, Mechanical Appliances and parts thereof), 85 (Electrical/Electronics Machinery and Equipment) or 90 (Optical, Photographic and surgical instruments), heading 6805, Grinding Wheels and the like, and parts thereof under heading 6804 of the First Schedule to the Central Excise Tariff Act;
- (b) pollution control equipment;
- (c) Components, spares and accessories of the goods specified in (a) and (b) above;
- (d) Moulds and dies, jigs and fixtures;
- (e) Refractories and refractory materials;
- (f) Tubes and pipes and fittings thereof;
- (g) storage tank;

The credit can be availed as capital goods on: all goods falling under Chapter 82, 84, 85, 90 and components, spares and accessories of the goods specified. The components, spares and accessories of the goods specified earlier, could fall in any chapter headings. The condition is that such goods should be used for providing taxable service.

50% credit could be availed in the year of acquisition and balance thereafter. The depreciation of the duty paid portion, cannot be taken when cenvat credit is availed, as it is double benefit which is not permissible as per the law.

Cenvat Credit on inputs

Input as defined in Rule 2 (k) makes it clear that 'input' means all goods used for providing any output service; Further there is exclusion in inputs definition for- any goods used for - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or (b) laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service under clause (b) of section 66E of the Act;.

Cenvat Credit on input services

The definition of input service as per Rule 2 (l) of CCR wef 1.7.2012– means any service (i) used by a provider of output service for providing an output service and includes services used

in relation to modernisation, renovation or repairs of premises of provider of output service or an office relating to such premises.

The input service definition excludes the following:

(A) Service portion in the execution of works contract, and construction services including service listed under clause (b) of section 66E of the Finance Act(hereinafter referred as **specified services**)

in so far as they are used for-

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

(b)laying of foundation or making of structures for support of capital goods,

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

The credit on 'setting up' premises of provider of output service was not restricted till 1.4.11 and was specifically covered in the earlier input service definition applicable till 31.3.2011.

Post 1.4.11 due to specific restriction, the creditfor works contract and construction service for construction of new building done by contractor, civil structure or laying foundation or making support structure to capital goods such as AC/generator is not eligible to any service provider other than a person engaged in providing construction and works contract service.

The credit on the other input services in course of construction of premises are eligible such as architect service, interior decorator, consulting engineer, installation service, project management consultant service and could be availed by any service provider of taxable services.

Credit related to exempted activity

Cenvat credit cannot be availed on the inputs, input services and capital goods used for manufacture of exempted goods or exempted services.

Exempted services are defined as under:

Rule 2(e) of Cenvat Credit Rules defines exempted services to mean

- a. taxable services which are exempted from the whole of the service tax leviable thereon, or
- b. services on which no service tax is leviable under section 66B of Finance Act or
- c. the taxable service **whose part of the value is exempted on the condition that no credit of inputs and input services used for providing such output service can be taken.** But shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.'

In this backdrop we examine some common issues which are raised relating to construction sector credit.

Issues in construction and allied credit

Capital goods

Issue: Whether service provider could avail the excise duty credit on purchase of Centering & Scaffolding material to pay 'service tax liability'?

Comment: *The centering material is a frame in which shape of the arch/ceiling etc or other structures is formed during construction, could be said to be a mould. Capital goods cover moulds and credit on centering material used during taxable services of construction could be availed.*

The definition of capital goods covers 'tubes and pipes and fittings thereof'. The scaffolding [pipes+tubes joined together] could be used for providing taxable services for construction of buildings by service providers. Credit could be availed on such scaffoldings used for providing output service, as capital goods covered at the limb 'tubes pipes and fittings thereof'.

Issue: Whether the credit on the lifts and gensets could be availed by the contractor executing works contract of construction?

Comment: *Lifts do fall under chapter 84 and D.G. Sets, transformers fall under chapter 85, which are specifically covered within the definition of 'capital goods'. Therefore these are to be considered as capital goods as per CENVAT Credit Rules, 2004.*

The cenvat credit on the specified capital goods, namely lifts and D.G. Sets and other capital goods would be available to the service provider when such goods are used in providing the taxable output services.

Availment of these credits could be risky as department could dispute and if opted to avail, better to avail under intimation by RPAD letter to range and not utilize. Wait for say a year for response, then send another RPAD letter referring to earlier letter [enclose old letter copy as well] and state that as the department has not come back, would proceed to utilize the said credits.

Inputs

Issue: Whether credit of duty paid on iron and steel which is used as inputs in storage tanks or pollution control equipment could be availed?

Comment: *A view is possible that the credits on inputs used for making tanks for storing effluent or pollution control equipment [not civil structure nor support of capital goods] is eligible and maybe availed.*

Issue: Whether the service provider executing works contract can avail credit on inputs such as steel, cement used for construction of building?

Comment: *No, the credit on inputs used for executing works contract [material plus labour contract] cannot be availed by contractor executing works contract post 1.7.12 due to specific restriction on availment of such credit as set out in Rule 2A of Service Tax Valuation Rules. The credit on eligible capital goods can be availed.*

Issue: Whether the service provider executing works contract can pay service tax on gross amount charged and avail credit on inputs such as steel, cement used for construction of building?

Comment: *No, due to specific restriction to avail credit on inputs, it is possible such credit could be denied even if service tax was being paid on gross amount of contract.*

Input services

Issue: Whether the credit of service tax charged on renovation of commercial complex given on rental basis could be availed by the landlord?

Comment: *Yes there is no restriction to avail such credit. There is a restriction on input credit of service tax of construction for the output service namely renting of immovable property service in Circular No. 98/1/2008-S.T., dated 4-1-2008. The said circular maybe invalid as it is not in line with the credit provisions, as no restriction per se is there in the CCR, 2004.*

The credit on the renovation services are specifically covered in input service definition and could be availed by the landlord providing taxable services of renting of immoveable property service.

Issue: Whether the credit could be availed on the service tax charged by vendor for repair of the flooring in the office of chartered accountant firm?

Comment: *Yes, such credit could be availed as this is of nature of repair services which is specifically covered in the input service definition.*

Issue: Whether the service provider engaged in the provision of technical testing services could avail credit on the services of installation of the machineries done in its office?

Comment: *Yes, such installation credit could be availed.*

Issue: Whether credit of service tax paid on sub-contractor's construction bill under joint charge could be availed by the construction company?

Comment: *Yes, as such construction services are used for providing taxable output service of construction. The credit could be availed based on the service tax payment challan.*

Conclusion

In this article paper writer has sought to cover aspects faced by the assessee in respect of availment of credit related to construction sector. There is a chance of department objecting in the same lines for all construction related credit, and assessee may have to undergo such proceedings if initiated. Therefore it is suggested to intimate by way of speed post the fact of availment of eligible credit to avoid any penal consequences and seek the revenue confirmation.