

Utilisation of Cess credit for Service tax payment

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After removing the concept of Education cess (EC) and Secondary & Higher Education cess (SHEC) on taxable services, service providers were not clear about treatment of Cenvat credit lying unutilised in form of Cess which paid on inputs, capital goods and input services.

To address this issue, the CBEC vide notification no. 22/2015-CE (N.T.) dated 29 October, 2015 amended Cenvat credit provisions to allow the following for payment of service tax:

1. Credit of EC/ SHEC paid on inputs, capital goods received by services providers on or after 1st June 2015.
2. 50% balance credit of EC/ SHEC paid on capital goods received in FY 2014-15
3. EC/ SHEC paid on input services where the documents invoice, bill, challans etc., are received on or after 31st May, 2015.

Though marginal relief has been granted through this amendment, the assesseees are still not clear on treatment of EC / SHEC credit lying unutilised as on 31st May 2015 and advance tax of EC / SHEC paid. Recently, vide para B-21 of CBEC Instruction in F.No.96/85/2015-CX.I/07.12.2015, the board has expressed its view that there is no vested right in the past accumulated credit and therefore, there is no need to amend the law granting credit. This view may not be in line with the scheme of Cenvat.

One should really hope that this clarification is withdrawn and suitable amendment is made to allow past credit as well. It shall be noted that as per Rule 14 of Cenvat Credit Rules 2004, any wrong credit availed but not utilised could be recovered with penalty. The department could demand reversal of such accumulated credit with penalty. Therefore, the assesseees are advised to reverse such accumulated credit under protest with intimation to department. If credit is held to be eligible in future, then the refund of such credit reversed in protest can be claimed without any time limit.