

Recent developments and credit availment by Hotels and Restaurants

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Introduction

Cenvat scheme is a beneficent piece of legislation and unless it is shown that the items are specifically excluded from the definitions of the terms “inputs”, “input service” or “capital goods”, Cenvat Credit cannot be denied to a manufacturer of final products or provider of output service.

The cenvat credit cannot be availed on inputs, input services, capital goods which are used to provide exempted services. Rule 2(e) of Cenvat Credit Rules defines exempted services to mean

- a. output 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 output services 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.’

Credit availment by hotels and restaurants

The taxable service providers who are paying service tax on restaurant and accommodation service could question whether cenvat credit on inputs, input services and capital goods could be availed when paying service tax on 40%/60% of gross amount charged from customer?

Post 1.7.2012 till 31.3.2016, as far as the restaurant and also for accommodation service, on which a portion is exempted, there is no condition that **credit of inputs and input services used for providing such output service cannot be availed.**

The cenvat credit of eligible inputs, input services and capital goods in relation to restaurant (other than inputs of Chapter heading 1-22 of Central Excise Tariff) can be availed fully if company were doing only that activity.

Recent development post Finance Bill 2016

Recently there has been an amendment in Cenvat credit Rules by Finance Bill 2016, whereby Explanation 3. has been set out to Rule 6 as follows

– For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service' as defined in section 65B(44) of the Finance Act, 1994.

In other words, exempted service shall cover activity which is not a service. As service definition excludes 'deemed sale' which covers supply of food or drink. Exempted service shall cover such transaction as well. **This is applicable wef 1.4.2016.**

The doubt which could arise is whether the abated portion is an exempted service. The abated portion is not specified under Service tax law or Rules to be the value of deemed sale by way of supply of food or drink. It may not be the intention of the law to restrict credit to extent of proportion of value on which service tax is being paid.

In the absence of any clarification restricting such credit, the restaurant and accommodation services providers could take a call to continue to avail 100% eligible credit post 1.4.2016. However it maybe better to intimate the methodology of availment of credit by RPAD letter to range to avoid later demands and litigation in this regard.

In case organisation is totally risk averse, availment in full and reversal under protest after due intimation could be an option.