

Rule 6(3A) of Cenvat credit rule – Time to apply logical interpretation

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The very reason beyond introducing rule 6 in Cenvat Credit Rules 2004 could be that, not to extend the benefit of Cenvat credit to a manufacturer or service provider who is engaging in manufacture or providing of **exclusively** exempted goods or services as the case maybe.

However, here a situation could be that, an assessee is adopted practice of not availing credit of input/input service which are used for manufacture or providing of exempted goods/services. In such cases, what is the remedy for availing credits of common inputs or common input services which cannot be identified with dutiable goods/taxable services?

In case of Thyssenkrupp Industries India Private Limited V/s Commissioner of Central Excise, Pune 2014 (310) E.L.T 317 (Tri. Mumbai) **Assessee contended that, for payment under Rule 6(3A) only total Cenvat credit taken on common inputs/services to be considered and not total Cenvat credit taken during financial year.** However, revenue has not given relief, saying It is a well settled position in law that while interpreting statutes, no words can be added or removed/deleted from the statute and also said that, the reliance placed by the appellant in the case of Sify Technologies Ltd., the same is only an interim order and does not lay down any ratio. Further in the said order, there is no reason given as to why only the value of Cenvat Credit taken on common input services should be taken when the rules specifically provides for taking the total of the Cenvat Credit taken on input services.

This view once again clarified by the department vide number CBEC Instruction in F.No.96/85/2015-CX.I., Dated: December 07, 2015 instructing same as concluded in above referred case law.

Interim order of M/s Sify Technologies Limited as referred in above case, now in final order bearing order number 40058/2016 dated on 8th January 2016. it was held that,

formula needs to be applied on total Cenvat credit of common input or input services not on total Cenvat credit.

Further, it is to be understood by the revenue that, Cenvat credit rules being beneficial limb of law it should be interpreted by applying principle of logical interpretation rather than grammatical interpretation. Hence, the concerned board should come up with notification or circular to amend or provide the clarity to trade and industry. Otherwise, it would lead unnecessary disputes between revenue department and assesses.