

CHAPTER IV CENVAT CREDIT OF SERVICE TAX

With effect from 16 August 2002, under the Service Tax Credit Rules, 2002, service tax on output services was allowed to be paid out of cenvat credit of service tax paid on input services. From 10 September 2004, the said Rules were integrated with the Cenvat Credit Rules, 2004. Under Cenvat Credit Rules, the credit availed can be utilised for payment of central excise duty on finished goods or service tax payable on output services subject to fulfilment of certain conditions. A few cases of incorrect grant of cenvat credit involving tax of ₹ 7.89 crore, noticed in test check, are described in the following paragraphs. These observations were communicated to the Ministry through 10 draft audit paragraphs. The Ministry/department had accepted (till December 2010) the audit observations in six draft audit paragraphs with money value of ₹ 5.38 crore of which ₹ 0.78 crore had been recovered.

4.1 Cenvat credit utilised for payment of tax on input service

Under rule 3(4)(e) of the Cenvat Credit Rules, 2004, the cenvat credit of service tax paid on input services can be utilised for paying service tax on output services.

4.1.1 M/s Thyssen Krupp Electrical Steel India Pvt. Ltd., in Nasik Service Tax commissionerate, availed cenvat credit on various input services. The assessee used this credit to pay service tax on the service received from foreign service provider and on the goods transport agency services (GTA). As the above services were input services, the utilisation of cenvat credit of ₹ 94.57 lakh in 2009-10 was irregular and recoverable with interest.

When we pointed this out (April 2010), the department intimated (April 2010) that action for recovery was being initiated against the assessee.

Reply of the Ministry had not been received (December 2010).

4.1.2 Four assesses, one each in Kolkata, Mumbai commissionerates of service tax, one each in Haldia and Pune III commissionerates of central excise, paid service tax of ₹ 48.88 lakh on GTA services out of accumulated cenvat credit during the period from April 2006 to March 2008. Since GTA is an input service, cenvat credit was wrongly utilised and the entire amount was required to be recovered alongwith interest.

When we pointed this out (between September 2008 to November 2009), the department admitted (between December 2009 to May 2010) the audit observations in all cases and reported recovery of ₹ 12 lakh in one case and initiation of recovery proceedings in remaining cases.

Reply of the Ministry had not been received (December 2010).

4.2 Premature availing of cenvat credit on input services

Rule 4(7) of Cenvat Credit Rules, 2004, provides that cenvat credit of tax paid on input services shall be allowed, on or after the day on which payment is

made for the input service and service tax. Further Rule 14 provides that where the cenvat credit has been taken or utilised wrongly, the same alongwith interest shall be recovered from the manufacturer or the provider of output service.

4.2.1 Two assesses, one each in Bhubaneswar I and Bhubaneswar II commissionerates, engaged in manufacturing of sponge iron, paid service tax for goods transport agencies (GTA) services for the month of October 2007, February 2008, April 2008 and February 2009 through TR-6 challans on 5th to 20th day of subsequent month but took the credit during the month prior to the payment of service tax. This resulted in premature availing of cenvat credit on service tax of ₹ 118.46 lakh which was incorrect.

When we pointed this out (between October 2008 to February 2010), the department (between February 2010 to March 2010) admitted the audit observation in the first case and stated that demand of ₹ 1.31 crore had been confirmed against the assessee and in other case it stated that the matter was under examination.

Reply of the Ministry had not been received (December 2010).

4.2.2 M/s Venkat Sai Media Pvt. Ltd., Hyderabad, in Hyderabad II commissionerate, engaged in providing business auxiliary services and cable operator services, availed service tax credit of ₹ 39.70 lakh to the end of 31 March 2009 on the basis of outstanding input service creditors bills. As it had neither paid for the input service nor the service tax thereon, the availing of such credit on outstanding bills was incorrect and the service tax credit availed was recoverable along with interest.

When we pointed this out (June 2009), the department reported (August 2009) the reversal of credit of ₹ 39.70 lakh by the assessee, but stated that no interest needs to be paid since the credit taken was not utilised by the assessee. The reply of the department was contrary to the Board's clarification of 3 September 2009 stating that interest had to be paid on reversal irrespective of whether the credit had been utilised or not.

Reply of the Ministry had not been received (December 2010).

4.3 Separate account for common input services used in taxable/exempted services not maintained

As per rule 6(2) of the Cenvat Credit Rules, 2004 where a provider of output service avails of cenvat credit in respect of any input services and provides such output services which are chargeable to tax as well as exempted from service tax, then the provider of output service shall maintain separate accounts for input services meant for use in providing output service and quantity of input services used in the exempted services. Further as per rule 6(3) of said Cenvat Credit Rules, provider of output services opting not to maintain separate accounts shall have an option either to pay an amount equal to eight per cent of the value of exempted service under rule 6(3)(i) or pay an amount equivalent to the cenvat credit attributable to inputs and input services used in or in relation to the manufacture of exempted goods or for provision of exempted services under rule 6(3)(ii) after compulsorily intimating in writing

to the Superintendent of Central Excise and pay provisionally for every month under rule 6(3A).

M/s Xavier Labour Relations Institute, in Jamshedpur commissionerate, provided taxable output services such as Management Consultancy, Mandap Keeper, Manpower Recruitment Agency, Renting of immovable Property etc. as well as exempted services such as Post Graduate Diploma in Management, Personal Management, Industrial Relations, Management Insurance and Human resources during April 2008 to March 2009. The assessee did not maintain separate account of input services for exempted & taxable services. It realised an amount of ₹ 2180.75 lakh on exempted services but did not pay amount of ₹ 1.74 crore being eight per cent of the value of exempted services

When we pointed this out (September 2009), the department stated (April 2010) that the amount of cenvat credit attributable to input service used for exempted services was ₹ 26.63 lakh in terms of rule 6 (3A)(C) of Cenvat Credit Rules which had been realised on 1 February 2010 and the assessee is further being persuaded to deposit the interest.

The reply of the department is not tenable as the assessee had neither exercised option under rule 6 (3)(ii) nor paid pro rata amount on monthly basis as required under Rule 6(3A). Hence he was not eligible to pay under rule 6(3A)(C) and amount of ₹ 1.74 crore was recoverable with interest under rule 6(3)(i).

Reply of the Ministry had not been received (December 2010).

4.4 Incorrect distribution of service tax credit on ineligible services

Rule 7 read with rule 2(1) of the Cenvat Credit Rules 2004, provides that, input service distributor (ISD) may distribute the cenvat credit of service tax paid on the input service to its manufacturing units or units providing output service, used in relation to manufacture of final products

M/s Bharat Petroleum Corporation Ltd., Kolkata, registered as Input Service Distributor, in Kolkata Service tax commissionerate, availed cenvat credit of ₹ 37.66 lakh during the period 2006-07 to 2008-09, on GTA services used for inward transportation of traded petroleum products manufactured by other oil companies like IOCL, HPL etc. The assessee distributed the credit to its manufacturing units. Since service so received did not have any nexus with the manufactured goods of its units, it fell outside the scope of input service. This resulted in incorrect availing and distribution of credit amounting to ₹ 37.66 lakh, which was recoverable with interest.

When we pointed this out (December 2008), the Department accepted the audit observation and reported (March 2010) that the show cause cum demand notice was under issue to the assessee.

Reply of the Ministry had not been received (December 2010).

4.5 Incorrect availing of cenvat credit on invalid documents

Rule 9(1)(f) of the Cenvat Credit Rules, 2004, provides that cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of an invoice, a bill or challan issued by a service provider of input service on or after the 10th day of September, 2004.

M/s DSC Ltd., Kota and M/s Bharti Hexagon Ltd., Jaipur, in Jaipur I commissionerate, engaged in providing services of technical inspection and certification services, GTA, consulting engineer services and cellular telephony services respectively, availed cenvat credit of service tax and education cess of ₹ 26.60 lakh on the basis of debit notes raised by the various service providers in the year 2008-09. The availing of service tax credit on the basis of invalid documents i.e. 'debit note' was irregular.

When we pointed this out (May 2010), the department intimated (March 2010) in one case that show cause notice was being issued and in another case department did not accept the audit observation and stated (June 2010) that the Board vide its circular dated 30 April 2010 had clarified that credit could be allowed under rule 4(7) of Cenvat Credit Rules, 2004 on the payment made through debit notes and credit notes.

Reply of the department was not tenable as the said circular had clarified the condition for availing cenvat credit under rule 4(7) of Cenvat Credit Rules, 2004 but it was silent about provisions of rule 9(1), which specified the documents required for availing cenvat credit.

Reply of the Ministry had not been received (December 2010).

4.6 Excess availing of cenvat credit

Rule 14 of the Cenvat Credit Rules, 2004 provides that where the cenvat credit has been availed or utilised wrongly, the same along with interest shall be recovered from the manufacturer or the provider of output service.

M/s Larsen and Toubro Ltd., New Delhi, in Delhi commissionerate of Service Tax, engaged in providing consulting engineering services and different construction services availed cenvat credit of ₹ 11.23 lakh during the period 2007-08 against the actual entitlement of ₹ 23,848. This had resulted in excess availing of cenvat credit of ₹ 10.99 lakh.

The matter was referred to the department in September 2009, their reply was awaited (May 2010).

Reply of the Ministry had not been received (December 2010).