



8. Cenvat credit

A provider of taxable services can, in terms of rule 4 of the Cenvat Credit Rules, 2004, avail credit of excise duty paid on inputs and capital goods and service tax paid on any input service. The credit can be utilised towards payment of service tax subject to the fulfillment of certain conditions.

We observed incorrect and excess availing and utilisation of cenvat credit totalling ₹ 26.46 crore, by providers of CCS, CON and WCS in 41 cases. Interest of ₹ 90.80 lakh and penalty of ₹ 5.75 crore was also leviable in these cases. The department has accepted audit observations involving revenue of ₹ 6.77 crore, recovered ₹ 90.70 lakh and issued SCNs for ₹ 6.32 crore.

A few cases are illustrated in the following paragraphs: -

8.1 Ineligible input services

As per Rule 2(1) of Cenvat Credit Rules, 2004, the term 'input service' includes services used in relation to setting up, modernisation, renovation or repairs of the premises of provider of output service, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relation to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs, or capital goods and outward transportation upto the place of removal.

M/s. Consolidated Construction Consortium Ltd., in Chennai ST commissionerate, availed cenvat credit on input services relating to issue of initial public offering (IPO) during the period April 2007 to March 2008. This service did not fall under the definition of input service and hence did not qualify for credit under 'input service'. This resulted in irregular availing of cenvat credit of ₹ 87.91 lakh.

8.2 Excess cenvat credit availed on capital goods

Rule 4 (2) (a) of the Cenvat Credit Rules, 2004, stipulates that maximum of 50 per cent of the cenvat credit can be taken for duty paid on capital goods in the relevant financial year and the balance 50 per cent in the subsequent financial year. Rule 14 provides that where the cenvat credit has been availed or utilised wrongly, it will be recovered with interest.

M/s Shapoorji Pallonji & Co. and M/s Tirath Ram Ahuja Pvt. Ltd., in Delhi commissionerate, registered under WCS, availed the full credit of ₹ 3.30 crore for duty paid on capital goods procured during the year 2007-08 as against the admissible credit of ₹ 1.65 crore. This resulted in excess availing of credit of ₹ 1.65 crore which was recoverable with interest.

On this being pointed out by us (August 2008), the Department stated (February 2009) that M/s Shapoorji Pallonji & Co was entitled to avail the cenvat credit in next financial year 2008-09. Therefore, no such demand could be made from the assessee. The reply was not acceptable. According to provisions stated, the excess had to be recovered with interest and could be credited thereafter in the next financial year. In case of M/s Tirath Ram Ahuja it was stated in August 2010 that the assessee had been asked to comply with the audit objection.

8.3 Credit availed on input services not used for output service

A service provider can avail Cenvat credit on the basis of documents listed under Rule 9 of the Cenvat Credit Rules.

Scrutiny of records of M/s. NITCO Paints, in Mumbai ST commissionerate, revealed that the assessee had availed Cenvat credit of ₹ 367.86 lakh during the period from 2005-06 to 2006-07, whereas as per the documents of duty paid on inputs during the said period, the total cenvat credit available to the assessee was ₹ 289.25 lakh. This resulted in excess availing of Cenvat credit amounting to ₹ 78.61 lakh.

On this being pointed out by us (August 2009), the department intimated (June 2010) that a show cause notice of ₹ 78.61 lakh had been issued in February 2010.

8.4 Interest on delayed payments

Section 75 of the Finance Act, 1994, stipulates that if a person fails to credit the tax due or any part thereof within the prescribed period, it shall have to pay simple interest at prevalent rate. Section 76 of Finance Act, 1994, provides for levy of penalty for failure to pay service tax.

Scrutiny of records of M/s BHEL, in Kolkata ST commissionerate, revealed that it paid service tax of ₹ 2.50 crore on services received from NBCC Ltd. It took cenvat credit of input service for this amount twice in the months of October 2007 and December 2007. The tax paid for December 2007 was adjusted from the second irregular credit. This resulted in short payment of service tax of ₹ 2.50 crore in December 2007. This short payment was detected later and adjusted in the month of March 2008. However, no interest was paid for the delay in payment of service tax from December 2007 to March 2008. Interest of ₹ 7.66 lakh and penalty upto ₹ 14.34 lakh were leviable.

8.5 Excess utilisation of Cenvat credit beyond the admissible limit

The Cenvat Credit Rules, 2004, provides that a service provider who avails of Cenvat credit on input or input services and provides both exempted and taxable output services, has to maintain separate accounts in respect of both category of services. If he does not do so, then he can utilise credit only to the extent of an amount not exceeding twenty per cent of the service tax payable on the output services.

8.5.1 M/s Consolidated Construction Consortium. Ltd., in Chennai ST commissionerate, availed cenvat credit on input services. It provided both taxable and exempted output services but did not maintain separate accounts for the year 2007-08. It did not restrict utilisation of cenvat credit to 20 per cent of applicable service tax on output services and this resulted in excess utilisation of cenvat credit by ₹ 5.49 crore. The assessee was also liable to pay interest of ₹ 71.42 lakh and penalty upto ₹ 5.49 crore.

8.5.2 M/s Rajdeep Buildcon Pvt. Ltd, in Ahmednagar commissionerate, had provided taxable as well as exempted services during 2006-07 and 2007-08. It had wrongly availed cenvat credit of service tax on input services, such as telephone services, courier service, legal and professional services, authorised service station services, rent a cab service, advertising service etc., which were not valid input services as per rules. The total amount of such inadmissible credit was required to be ascertained and reversed. Moreover, the assessee was providing taxable as well as exempted services but did not maintain separate accounts of input services. Therefore, the assessee was eligible to utilise service tax credit to the extent of ₹ 3.06 crore against the total liability of service tax of ₹ 15.31 crore on output service during April 2005 to March 2008. The assessee utilised service tax credit amounting to ₹ 8.43 crore which resulted in excess utilisation of credit of ₹ 5.37 crore. The assessee was liable to pay service tax of ₹ 5.37 crore and interest of ₹ 69.84 lakh.

On this being pointed out by us (January 2009), the department replied (September 2009) that the audit observation was accepted and SCN for ₹ 5.37 crore plus interest and penalty applicable under the provisions had been issued in August 2009.

8.6 Mis-statement of balance of cenvat credit

M/s. SPACE, Ernakulam, in Cochin commissionerate, engaged in providing CON switched over to WCS and started availing cenvat credit on input services from June 2007. We found that it availed cenvat credit of ₹ 23.83 lakh on input services and utilised the same during the period June 2007 to September 2007. Consequently, there was nil credit of input service as on 30 September 2007. However, the assessee showed an opening balance of ₹ 11.58 lakh as on 1 October 2007 and utilised this amount during October 2007 to December 2007. This mis-statement resulted in irregular utilisation of credit of

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₹ 11.58 lakh which was recoverable. The company was also liable to pay interest of ₹ 2.25 lakh, and penalty upto ₹ 11.58 lakh.