

Chapter 4: Availment/Utilisation of 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 fulfilment of certain conditions.

During the course of this performance audit we observed 34 cases of irregular availing/utilisation of Cenvat credit involving an amount of ₹ 22.59 crore, out of which ₹ 1.09 crore has been recovered in 13 cases.

A few illustrative cases are given below:-

4.1 Ineligible credit of input services

As per rule 2 (I) (A) of the Cenvat Credit Rules, 2004, input service excludes service portion in the execution of a works contract and construction services used for construction or execution of works contract of a building or a civil structure, except for provision of WCS.

During the examination of records of **M/s. South Eastern Coalfields Ltd.**, in Bilaspur Commissionerate, we observed that the assessee took input service credit of ₹ 9.03 crore on WCS which is specifically excluded in the definition of input service. This resulted in irregular availment and utilisation of Cenvat credit of ₹ 9.03 crore, which is recoverable.

We pointed this out (December 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2 Inputs for both dutiable and exempted final products

As per rule 6(3) of Cenvat Credit Rules, 2004, any provider of output service opting not to maintain separate accounts shall have option either to pay an amount equal to six per cent of the value of exempted service or reverse Cenvat credit attributable to input services used in or in relation to the provision of exempted services under rules 6(3) (i) or 6(3) (ii) respectively, after exercising option under rule 6(3A).

As per notification dated 20 June 2012 service tax is exempted when the residential complexes are sold after the issuance of Completion Certificate by the competent authority.

4.2.1 During the examination of records of **M/s. Hill County Properties Ltd.**, in Hyderabad-IV Commissionerate, we observed that the assessee availed

exemption under WCS for sale of 45 flats for ₹ 44.57 crore upto March 2014, after obtaining the completion certificate issued by the competent authority. However, since the assessee did not maintain separate set of accounts in respect of input service credit of taxable and exempted service, the assessee is required to pay service tax of ₹ 2.67 crore.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2.2 During the examination of records of **M/s. Johnson Lifts Pvt. Ltd.**, in Chennai (LTU) Commissionerate, we observed that the assessee availed Cenvat credit on common input services of both dutiable and exempted WCS during 2011-12 to 2013-14. Since the value of exempted service is coming to ₹ 3.67 crore, the assessee is required to pay service tax of ₹ 20.81 lakh.

We pointed this out (December 2014), the department reported (February 2015) recovery of ₹ 20.81 lakh.

The reply of the Ministry is still awaited (June 2015).

4.2.3 Scrutiny of ST-3 returns of **M/s. Windsor Realty Pvt. Ltd.**, in Mumbai-I (ST) Commissionerate, revealed that the assessee had shown an amount of ₹ 1.18 crore as amount payable under rule 6(3) through Cenvat credit for the period July 2012 to March 2013. However, against the column for payment made (I3.1.3.7) this amount was not shown. Hence, it is evident that the above amount was not actually discharged by the assessee which need to be recovered.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.2.4 During the examination of records of **M/s. VA Tech Wabag Ltd.**, in Chennai (ST) Commissionerate, we observed that the assessee provided exempted and taxable services between July 2012 and March 2014 but did not maintain separate accounts on input services. They availed Cenvat credit on common input services viz., consultancy, audit fee, advertisement etc., amounting to ₹ 30.09 lakh during 2012-13 and 2013-14 on both exempted and taxable services which is recoverable.

We pointed this out (October 2014), the reply of the Department/Ministry is still awaited (June 2015). However, the assessee reversed the amount of ₹ 30.09 lakh.

4.3 Excess availment of Cenvat credit

A service provider can avail credit of service tax paid on input services related to his service activities and central excise duties paid on inputs and/or capital goods and can utilise credit so availed in payment of service tax.

4.3.1 During the examination of records of **M/s. Patel Realty (India) Ltd.**, in Mumbai-II (ST) Commissionerate, we observed from ST-3 returns that there was a difference between closing and opening balance of Cenvat credit of ₹ 3.51 crore as reflected in returns during September and October 2013. This resulted in excess avilment of Cenvat credit.

We pointed this out (January 2015), the reply of the Department/Ministry is still awaited (June 2015).

4.3.2 Similarly, in another case viz., **M/s. Wadhwa Group Holdings Pvt. Ltd.**, in Mumbai-I (ST) Commissionerate, we observed from ST-3 returns that there was a difference between closing and opening balance of Cenvat credit of ₹ 1.38 crore as reflected in returns during September and October 2012. This resulted in excess avilment of Cenvat credit.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).

4.3.3 As per Cenvat Credit Rules, 2004, a service provider is allowed to take Cenvat credit of duty paid on inputs, capital goods and input services received for providing output services. Further, rule 3(4) of the rule, *ibid*, stated that Cenvat credit shall be utilised only to the extent such credit is available on the last day of the month for payment of tax relating to that month.

During the examination of records of **M/s. Emersion Network Power (India) Ltd.**, in Kolkata (ST) Commissionerate, we observed that the assessee availed and utilised excess Cenvat credit during 2011-12 and 2012-13 of ₹ 57.29 lakh.

We pointed this out (November 2014), the department admitted the observation (March 2015).

The reply of the Ministry is still awaited (June 2015).

4.4 Ineligible Cenvat credit of inputs

As per rule 2(k) of Cenvat Credit Rules, 2004, defines 'inputs' and the same excludes vide (B) any goods used for (a) construction or execution or execution of works contract of a building or a civil structure or a part thereof or (b) laying of foundation or making of structure for support of capital goods except for provision of service provision in the execution of works contract or construction services. Further, rule 2A of Service Tax (Determination of Value) Rules, 2006, provides that the assessee under rule 2A(ii) shall not be

eligible to take the Cenvat credit of excise duties and cess paid on 'inputs' used in or in relation to the execution of such works contract.

During the examination of records of **M/s. Adarsh Noble Corporation Ltd.**, Bhubaneswar-I Commissionerate, we observed that the assessee availed and utilised the Cenvat credit of ₹ 61.71 lakh on inputs viz., electrodes, angle, channel etc. during the period 2012-13 and 2013-14 which is irregular.

We pointed this out (November 2014), the reply of the Department/Ministry is still awaited (June 2015).