

## Revenue Augmentation – 6 Month Restriction – Can One Avail post 1<sup>st</sup> September?

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Excise duty collections are expected to be about Rs. 2 Lakhs crores and Service Tax collections about 2.2 Lakhs crores for the year 2014-15. The cenvat credit accounts for about 50-60% of the total duty payment to be made by the manufacturing sector. For service providers credit may average about 20% of the duty payable. Therefore this year the credit to be availed would be in excess of Rs. 1.5 Lakhs crores. This translates to about 5% of the net profit or bottom line.

We analyse this retrograde step [a case of adopting of the worst practices under VAT for Central Law – instead of being progressive] – going back 10 years where time limit was withdrawn. We examine its impact under the following segments:

- I. Understanding the Change & Impact
- II. Importantly what it may not cover?
- III. Maximum Period Upto which past credit can be availed?
- IV. Are there any situations where this problem could be overcome?
- V. Listing of credits missed commonly

- I. Understanding the Change & Impact

This Finance Act (2) 2014 we see an atrocious notification no 21/14-CE(NT) dt 11.7.14 whereby the second proviso to Rule 4(1) has been added as under:

“ provided that the manufacturer or provider of output service shall not take cenvat credit after 6 months of date of issue of any of the documents specified in sub rule (1) of rule 9.”

- WEF 1<sup>st</sup> September 2014.

Similarly under Rule 4(7) for input services.

However capital goods credits have been spared as they are taken in installments.

Rule 9 (1) specifies- invoice by manufacturer, importer, depot, 1<sup>st</sup> stage, 2<sup>nd</sup> stage dealer, supplementary invoice, challan, bill of entry, certificate of appraiser and ISD document.

Rule 16 of the Central Excise Rules also talks of credit as inputs. The restriction under CCR would in our view be applicable to that also.

In earlier years at anytime when one comes to know that there is a credit missed to be availed, it would be taken at a later point of time. Delayed credits were also taken in the following situations:

- a. Case law overrules revenue contention on restriction to credit.

- b. At the time of internal audit/ statutory audit or any management verification where such issues come up.
- c. No credit availed as used for non taxable manufacture/ services, now made taxable.
- d. Pre-registration credits related to period earlier to taking excise/service tax registration.
- e. Top management feeling that there is some credit missed/ as proportion of duty being paid is more.

The major impact of the restriction could be as under:

- I. Manufacturer/ service providers would automatically lose out on eligible credit not availed upto February 2014 as on 1 day of September 2014.
- II. In future they need to ensure a completeness check is designed and confirm that credits are taken at periodic intervals- maybe a quarterly exercise.
- III. All doubtful credits can be availed now – Ex.- credit on outward GTA, illegal reversals made by audit parties but not utilised till clarity comes.
- IV. In future if there are any demands for longer period- possibility of no credit being allowed need to be factored in.

The transaction cost of these type of tax payer unfriendly provisions need to be represented and challenged in the courts to see that the excesses of the tax administrators today is exposed and reversed.

- II. Importantly what it may cover/ not cover?

Covers

- ➔ All input removals: Invoice (Excise), Supplementary Invoice, Bill of Entry, 1st & 2<sup>nd</sup> Stage dealers invoice, Importers/ depot invoices, Customers Invoice for returns/ rejects, Triplicate copy of Invoice (own for returns/ rejects), Courier BOE, Customs appraisers certificate, tax payment challan.
- ➔ All services – Invoice, bill, Supplementary Invoice, debit note, tax payment challan, proforma Invoice for advances (Service Tax), Input Service Distributor Invoice,

Does/ May Not Cover

- ➔ Rejected/ returned goods on which credit availed under Rule 16 of Central Excise Rules.
- ➔ Past Credits availed and reversed under protest due to oral/ written instructions from revenue officers.
- ➔ Re-credit of credit reversed for non receipt of inputs sent on job work.
- ➔ Re-credit of written off/ provision made inputs when put to use.
- ➔ Joint charge credit availed for which payment not made.

- III. Maximum Period Upto which past credit can be availed?

The list of credits could be intimated to the revenue with an appropriate covering letter by way of personal delivery or by speed post before 1<sup>st</sup> September 2014. This is an ideal situation however as many assesseees may have come to know of the impact of the law only in the last

few days may not be practically possible. Considering the purpose of the cenvat being beneficent scheme to avoid cascading a sudden change could possibly allow a transitional delays which maybe considered by the revenue or by courts. Considering the intent as also the fact that now a days the credit is only availed in the returns the following 2 possibilities exist:

- A. The manufacturer only paying excise duty may indicate the credits availed in the month of august as per returns where list of credits not separately sent earlier to 1<sup>st</sup> September 2014. This may also be available for delayed returns.
- B. The service provider may indicate the credits availed in august in that column while filing their return to be filed by 25<sup>th</sup> October 2014 or in the delayed return. It could also possibly be included in the revised returns.
- C. Where a manufacturer is also a service provider then 25<sup>th</sup> October return could include the inputs & input services used in services and the excise return for manufacture as per the current practice of the entity.

IV. Are there any situations where this problem could be overcome?

- A. Where payments are normally beyond 6 months, assessee can avail the credit in the month of receipt and reverse within the same month. The avail on cash basis the credit to be availed for all input services.
- B. When 6 months is exceeded and inputs/materials on which credit have not been availed, sent back to supplier as sales returns. Re-issued under current date invoice by manufacturer, dealer. As invoice now on current date avail credits on same within time.
- C. The goods could be returned back not just to manufacturer but also 1<sup>st</sup>/2<sup>nd</sup> stage dealer/ depot / importer who are dealers.
- D. Intimate the department that the credits availed is valid while overcoming the 6 month time bar/restriction.
- E. Delay in payment are many a times due to unhappiness of the customer/ client. As per rule 6(3) of ST Rules: On input services, even where the period of 6 months has lapsed, the credit can be availed when invoice was issued against a service which was not provided in whole or part or where amount is renegotiated due to deficient provision of service or any terms in contract, if the credit note issued for value of service not provided by vendor to person to whom invoice issued.

V. Listing of credits missed commonly

Manufacturers and Service Providers may like to ensure now that they have availed the credits. We have observed that the cenvat credit is not availed or delayed for a number of reasons as under:

1. Manufacturer/ Service Provider [ MSP] does not know that credit is available.
2. Credits not being availed on exported goods and exported services as excise duty/service tax was not paid.

3. MSP feels that it is not worth the record keeping requirements.
4. Department Officers especially preventive/ audit parties are always trying to deny credit. As a measure of caution or to buy peace it is reversed for the past and not availed for the future.
5. Decentralised units invoice not reaching the unit though payments made.
6. Poor purchasing policies- No insistence on buying from manufacturer directly or from dealers registered under central excise.
7. Lack of awareness of the fact that traders can be registered under Central excise and pass on credit not known.
8. Reversal of credit on oral / written instruction of target meeting officers without confirming the legal position. More importantly stopping future credits once reversed.
9. On claiming abatement under service tax [ GTA, Restaurant...] presuming that credit is not available.
10. Not having valid documents and therefore not availing credit like copy of Bill of Entry or courier bill of entry.
11. The credits not linked to accounts and a separate excel sheet prepared for eligible credits. Here the completeness of credit maybe missed.
12. Not availing common credits as there is a doubt.
13. Not using the Input Service Distributor mechanism for credits incurred in branches and other units.
14. Not having availed 100% credits for 16 specified services related to period earlier to 1.4.11 when used for both taxable and exempted services.
15. ...many many more.

We have also observed that the common areas of credits on inputs and input services which are missed could be:

#### Inputs:

- a. Capital Goods not specified in the definition of capital goods under Cenvat Credit Rules which if used in or in relation to manufacture or used for providing taxable services would be eligible as inputs. Ex: Capital goods of Iron & Steel which are not in Chapter 82/84 – railway tracks for providing freight , safe deposit lockers in Ch 83.
- b. Inputs like paint used in semi- conductor or pharmaceutical industries to keep dust free as well as fire resistant. Normally goods used in construction are not available but finishing material can be examined.
- c. Inputs being parts of plant & machinery in the nature of structures may also be eligible.
- d. Inputs used for providing a service such as explosives in quarrying, paper & inks used for study material in coaching or photography.
- e. Many more...

#### Input Services

- f. Credits prior to 1.4.2011 in respect of construction, outdoor catering and Rent a cab.

- g. Services used in modernization, renovation or repair are not excluded though construction/ WC is.
- h. Services of architect, interior decorator, project management consultants related to new construction as it is not restricted.
- i. GTA inward credit availed but outward not availed but is normally available as long as the consignments are on FOR basis as the place of removal in such cases would be the delivery at customer's premises.
- j. Mobile bill in names of employees used for business is available as credit. Maybe a small 5% could be voluntarily expunged as a measure of caution.
- k. Travel and hotel accommodation for business. As in above 5% can be expunged as a measure of caution.
- l. Bank charges as there is no invoice issued for the bank charges and bank advise does not indicate service tax separately.
- m. CHA invoices which include substantial reimbursements where service tax would have been paid by the other service providers.
- n. Logistics or freight forwarders who also claim reimbursements.
- o. Insurance charges (transit insurance) as they may not enter the normal accounting stream.
- p. Garden maintenance, event management, sales promotion
- q. Reverse charge payments especially for services received from outside India- maybe passed through journal entries, which can at times be substantial. Foreign bank charges
- r. One time services such as pest control,
- s. Works contract bills of sub contractor to main contractor. There is a restriction only for other than those involved in construction/ works contract.
- t. Many more....

Immediately however a cenvat credit locating, capturing and availment before end of august 2014 is the need of the hour. Further availment of credits especially considering short time available till 1.9.14 could be done. Capture in Excise/Service tax returns and utilization done only once it is paid [for invoices raised till 1.4.11] and thereafter utilize once the invoices are paid within 3 months period.

Hope this article could provide a few days breathing time to the manufacturers and a couple of month for the service providers. It is also meant to be an eye opener for the industry as to possible credits which are commonly reversed on departmental instructions though there are supporting case laws which many of the officers need to follow- but chose not to. For doubt please host on pdicai.org or mail roopa@hiregange.com