

Compliance - Input Service Distributor- Central Excise / Service Tax

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Background

The manufacturers in the past few years have often multi locational factories and warehouses to cater to the needs of customers of Just In Time deliveries (JIT) or to have economies of nearness to raw material, peaceful labour etc. For the white goods industry as well as automobiles the need to have service centres as well as convenience of the new rich middle class is also imperative. The service industry in majority of cases is customer centric and therefore may need to be near to the customer to even survive. The cost of CST 2% which is not vatable has also led to opening of branches/ depots/ consignment agents in all states for large entities. This phenomenon has led to large number of distributed operations for manufactures and service providers. Goods are dispatched from the depots/ warehouses, services are provided at same places.

The cenvat credit of capital goods, inputs and input services at times could be as high as 90% of the duty/ tax payable of 12.36% i.e. 11%!!!. Input service credit however may not exceed 2% at most. The margin in trade today may exceed the credit only for a few niche players. Therefore there is a need to capture and avail the eligible credit. For the manufacturer the service credits for clearance of goods upto the place of removal is eligible. In most cases the place of removal is the customer's premises as no customer wishes to take the risk before the goods reach him.

Legal Provisions - ISD

Service providers have an option to go for **centralized registration** wherein all the places from which services provided are to be declared and added up as time progresses. In such a case the invoices addressed to the declared places as well as the central office would be eligible to be availed as long as they are eligible. There may at times be reasons to have zonalised centres or individual registrations under service tax. In such cases the service provider would have to go for Input Service Distributor registration to avail common / specific credits(addressed to CO).

Manufacturer having different locations may need to go for ISD. Earlier LTU could transfer credits which has now been done away with and therefore they may also have to go for ISD.

Rule 7 was introduced initially to ensure that the total credit could be distributed to any duty/ tax paying unit, not in excess of that taken. There was a presumption that the credit relating to units which were exempted was not being taken. However this was not expressly set out. W.E.F. 11.7.2012 specifically credits relating to exempted units was not to be availed.

The ISD would avail the eligible credits and raise an invoice on any unit where tax was short. This was challenged by the revenue but as the provisions did not restrict and cenvat scheme was beneficial, this

did not stand the test of the courts. Karnataka High Court held that it could be distributed to any unit. *Ecof Industries P Ltd – 2012 (277) ELT 317.*

Compliance Today

This led to the further change this year w.e.f. 1.4.2014 where it introduced credit allocable on usage. The provisions today therefore are as under:

1. For capital goods & Inputs [Rule 7A] On removal to be debited consignment wise as was the procedure for registered dealer under central excise.
2. For Input services:
 - a. Input services used by exempted units – not eligible- 0%.
 - b. Inputs used specific to a unit [even if bill/ invoice addressed to HO/ RO] – ONLY passed to that unit. This credit cannot be passed onto other units. Examples could be security charges, manpower supply, telephone, internal audit of unit, advertisement of product manufactured by that unit etc.
 - c. Common credits in other than that which was exclusively for exempted goods or services could be shared/ distributed with reference to the turnover of each of the units. This could consider the previous year turnover or the last quarter if year's information not available. If no past then on actuals the first time.
 - d. The credit passed should not exceed the credit availed.

Common Errors To be Avoided

- i. Not taking ISD registration at all – delayed.
- ii. ISD registration additional premises/ locations not included.
- iii. Availing credit used by unit manufacturing only exempted goods. Maybe located in excise exempted areas or manufacturing exclusively for defense or manufacturing nil rated goods.
- iv. Availing credit used by unit providing only exempted services. Road project at Jharkhand and quarters for Government Employees at Navi Mumbai- both exempted.
- v. Credit availed on invoice not having information as to registration etc of service provider.-
Defects to be rectified to avoid denial of credit.
- vi. Credits distributed as per need of credit to units. Not possible after 11.7.12. To be distributed based on turnover of units.
- vii. Credits specifically relating to 1 unit distributed. – If credit used by 1 unit then credit also to be passed only to that unit not to other units.

- viii. Credit not transferred by proper invoice.
- ix. Common Credit not distributed in proportion to turnover of units.
- x. Incorrect proportion used.
- xi. Transferring more than credit availed.
- xii. Maybe more

This article is to dispel doubts in the area of ISD and also alert one to get registered and avail common credit at HO/ CO which may have been not ben availed. Also to avoid common errors consequently enjoy the credit without fear or favor. It maybe kept in mind that procedures are the hand maidens of justice and non compliance with some procedural conditions should not invalidate credit claims. This was upheld by the Supreme Court in *Mangalore Chemical & Fertilisers Ltd. Vs DCCE – 1991 (55) ELT – 437*. For doubts host on pdicai.org.