

Cenvat Credit on Construction, Repairs & Works contract Services

CA Madhukar N. Hiregange

& CA Roopa Nayak

Introduction

Cenvat Credit is a beneficial scheme wherein the duty paid at earlier stage on inputs and input services is allowed to be set off against the liability on manufactured goods or output services provided. As a result what is taxed is only the value addition made by the manufacturer or the output service provider.

Cenvat Credit Rules 2004 at the same time specifically provides for denial of credit of tax paid on certain specified inputs, input services and capital goods. The restrictions lead to break in the credit chain and consequent cascading effect leading to sticking of taxes on goods and services even when the same are exported. When the taxes become a cost, such costs are recovered by the manufacturers and service providers from the final consumers of their goods and services, leading to increase in costs of goods and services to end customer. Unfortunately restricting the credit is a method used to augment revenue.

Further cenvat credit scheme is a beneficial scheme the benefit of which should not be denied by taking a very strict technical interpretation, leading to denial of credit. This would defeat the very purpose of avoiding cascading and moving towards GST. The revenue/ audit officers are hell bent to seek reversal of credit many a times on perverse interpretation.

There has been confusion prevailing among manufacturers and service providers on eligibility to credit on input services relating to construction, repair, renovation, modernization of factory or premises. This has led to blanket non availment of credit on all input services directly or indirectly used not just for construction, but also other allied credit such as architect, consulting engineer service. Similarly credit on input services of repairs/refurbishment of plant, machinery, equipment, and other capital goods is also not being availed due to a common thought process that such credit is not available.

The paperwriters have examined legality of availment of credit on construction, repairs and allied credit in light of the input service definition as applicable wef 1.7.12 and recent legal developments.

Input service definition

The definition of input service as per Rule 2 (I) of CCR wef 1.7.2012– means any service (i) used by a provider of output service for **providing an output service or**

(ii) **used by a manufacturer**, whether directly or indirectly, **in or in relation to the manufacture of final products and clearance of final products** upto the place of removal, and includes **services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service** or an office relating to such factory or premises,.....

But excludes

(A) Service portion in the execution of works contract, and construction services including service listed under clause (b) of section 66E of the Finance Act(hereinafter referred as **specified services**)

in so far as they are used for-

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods,

EXCEPT for the provision of one or more of the specified services.....

Cenvat credit on construction/repair service and works contract service for manufacturer of dutiable goods or service provider of taxable services[including exported service]

In the definition of input service, there is exclusion for:works contract service and construction service, when these services are used for

- construction or execution of works contract of a complex, building , civil structure or
- for laying foundation or making structures for support of capital goods.

The inclusive portion of the definition of input service covers services relating to modernisation, renovation or repairs of a factory, premises of provider of output service. However post 01.04.11 due to the above specific restriction, there was a chance of department objecting **for all the credit related directly or indirectly to** services relating to modernisation, renovation or repairs of a factory, when the services are in the nature of works contract[material plus labour contract]orlabour service (including for additions, alterations, replacements or remodelling of any existing civil structure) for building, civil structure or laying foundation or making support structure to capital goods citing that the same is excluded from the scope of input services.

This interpretation may not be correct in the view of the paper writers. The credit on services which are in the nature of pure labour contract or works contract services related to

modernisation, renovation or repairs of a factory, premises of provider of output service or works contract service, including additions, alterations, replacements or remodelling of any existing civil structure for building, civil structure or laying foundation or making support structure to capital goods could be eligible as input services.

In addition credit could be availed on the repairs, maintenance, refurbishing of plant, machinery, equipment/structures. Further the credit such as on architect, interior decorator, consulting engineer, project management consultant, landscaping services used for setting up or construction of new factory or premises could also be availed in the absence of any specific exclusion or restriction given in the input service definition.

Recent decision

In Red Hat India Pvt Ltd vs. Principal Commr, Service Tax, Commissionerate, Pune (2016-TIOL-1300-CESTAT-MUM) appellants are engaged in the providing export of services and filed refund claim under Rule 5 of Cenvat Credit Rules, 2004.

As regards Works contract service, credit has been taken as this service is related to monthly maintenance of photocopier, computer and building premises of the appellant. Inasmuch as the exclusion of 'Works contract service' as provided in the definition of input service (rule 2(I) of CCR, 2004) is only in respect of works contract which is used for construction services, whereas in the present case the subject works contract service is for maintenance of various equipment and building and not for building construction.

After extracting rule 2(I) of the CCR, the Bench held -As per rule 2(I) of CCR, 2004, Works Contract Services are **excluded only when used for construction services** - Works contract services used for maintenance of office equipment and building are to be treated as Input Services, credit admissible and eligible for refund.

Conclusion

In view of the paper writer the recent decision is step in right direction. This gives right signals on eligibility to the specified credit on input services to the manufacturers and service providers. The paper writer has sought to clarify the position as per the present input service definition. Though there is a favourable decision there is a chance department could continue to object for similar credit even in future, and assessee may have to undergo such proceedings if initiated. It is suggested to proactively intimate the fact of availment of eligible credit by RPAD to avoid any penal consequences and protect from demand beyond limitation period.

For any further queries mail at madhukar@hiregange.com , roopa@hiregange.com.