

Pre-registration credit for service providers

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Background

In order to start new business operations in any sector, the project costing has to factor in the indirect taxes. Basic Customs Duty(BCD), Excise duty and Countervailing duty[CVD], 3% Customs Cess and 4% Special Additional duty(SAD) are paid on materials/machines/equipment procured. Also service tax at present at 14.5% on input services from various vendors. Such taxes paid related to the new projects could be substantial coming to at least 8-10% of total project cost.

The proposed project could be for manufacture and clearance of final products on which excise duty is applicable or for providing output services in India on which service tax is paid. When the project is for manufacture of dutiable goods cleared by charging excise duty upto 12.5%, cenvat credit could be availed on eligible inputs, input services and capital goods by such assessee. Similarly when the project is for the provision of taxable services, the credit could be availed on eligible inputs, input services and capital goods. The cenvat credit is a beneficial scheme which is available to the manufacturer of dutiable goods or provider of taxable services.

It maybe noted credit could not be availed to extent it is attributed to manufacture of exempted goods [nil rated goods or goods cleared with 1%/2% concessional rate of duty]. Similarly credit could not be availed to extent related to provision of exempted services. However credit on eligible inputs, input services and capital goods used for manufactured excisable goods which are exported or provision of exported services could be availed.

There has been confusion in minds of assesses about availment of cenvat credit related to the period before commencement of operations. Due to ignorance this has led to the credit not being availed several times.

In this article the paper writer has sought to examine legality of availing pre-registration credit by service provider and recent decisions on the same.

Whether pre-registration credit is restricted under law?

Rule 3(1) of CCR 2004 sets out as under:

A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit of –;paid on-

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

In light of Rule 3(1), we can say that any person, who is manufacturer or a provider of output service can avail credits on inputs, input services and capital goods. There is no provision in the Cenvat Credit Rules to provide the credit benefit is available only to the registered manufacturer or service provider.

In the absence of any provision in the cenvat credit rules and the absence of a statutory provision which prescribes that registration is mandatory. It could be inferred even if such a registration is not made the assessee is entitled to the benefit of cenvat credit, after obtaining registration.

Whether credit could be denied if the pre-registration credit was availed after obtaining registration?

The eligibility to avail Cenvat credit should not be denied to assessee merely because of the fact that application for registration was not made. The failure to register if any is a procedural lapse and due to this substantial benefit of Cenvat credit should not be denied.

In view of paper writer all the eligible inputs, capital goods and input services were received and consumed could be availed. However the credit which is specifically restricted in the definition of inputs, input service and capital goods in CCR could not be availed.

However it maybe noted that wef 1.3.2015 the cenvat credit on inputs and input services has to be availed within 1 year of invoice date. If the credit is not availed within such time limit, the credit gets barred.

There is no such restriction for availment of credit on capital goods. However when the credit of duty paid on the capital goods is availed, the depreciation of duty paid portion cannot be claimed under Income Tax Act, 1961. This is due to reason that this leads to claim of two benefits at same time, which is not permissible. Credit on capital goods could be availed 50% in year of procurement and the balance thereafter.

Refund of pre-registration credit

As per Rule 5 of Cenvat credit Rules, a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a

service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

It could be noted that the exporter of final products or provider of output exported services could examine going for refund route **in respect of the pre-registration credit** attributable to the exported goods or services by following conditions and procedure prescribed in this regard.

Important Decisions

The Karnataka High Court in the case of mPortal India wireless Solutions Pvt. Ltd. vs. CST Bangalore (2011-TIOL-928-HC-KAR-ST) has held that registration with the department is not pre-requisite for availing the Cenvat Credit.

Further in recent decision in Prudential Process Management Services India Private Limited Vs CST, Mumbai Zone-II (2016-TIOL-287-CESTAT-MUM) held that there is no provision in law that Cenvat credit can be allowed only after registration of the unit, cenvat credit is allowed in respect duty suffered on input/input services and the said payment is nothing to do with the registration of the recipient of the services, therefore, registration cannot be made criteria to reject the refund claim. This view has been re-enforced by Tribunal in the following cases - M Portal India wireless Solutions Pvt Ltd (2011-TIOL-928-HC-KAR-ST), J.P. Morgan Services India Pvt Ltd. (2015-TIOL-226-CESTAT-MUM), Beico Industries Pvt Ltd (2014-TIOL-2817-CESTAT-AHM).

Conclusion

In this article the paper writer have examined the eligibility to cenvat credit during the gestation period. Due to grey areas in the law and the department officers being trigger happy, it is advisable that if pre-registration credit on eligible inputs, input services and capital goods is availed, intimate jurisdictional range by RPAD letter enclosing cenvat credit register copy containing details of credit availed and seek confirmation of understanding of correctness of availment of same. For any further queries please contact roopa@hiregange.com