

CREDIT AVAILMENT BY HOTELS AND RESTAURANTS

Introduction

Under negative list based taxation, service tax is levied on service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

Without getting into validity of ST levy on supply of food or drink, we have examined whether credits can be availed by hotel when it pays service tax on abated values of services?

What is cenvat credit Scheme?

Cenvat scheme is a beneficent piece of legislation and unless it is shown that the items are specifically excluded from the definitions of the terms “inputs”, “input service” or “capital goods”, Cenvat Credit cannot be denied.

It should be ensured that the credits are not restricted as per definition of inputs, input services or capital goods prior to availment.

The provider of taxable output services can avail eligible cenvat credit on inputs, input services and capital goods used for providing taxable services.

Whether credits on exempted services can be availed?

The cenvat credit cannot be availed on inputs, input services, capital goods which are used to provide exempted services. Rule 2(e) of Cenvat Credit Rules defines exempted services to mean

- a. output services which are exempted from the whole of the service tax leviable thereon, or
- b. services on which no service tax is leviable under section 66B of Finance Act or
- c. **the output services whose part of the value is exempted on the condition that no credit of inputs and input services used for providing such output service can be taken.** But shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.'

Credit availment by hotels and restaurants

As far as the restaurant and also for accommodation service, on which a portion is exempted, there is no condition that **credit of inputs and input services used for providing such output service cannot be availed.** The cenvat credit of eligible inputs, input services and

capital goods in relation to restaurant (other than inputs of Chapter heading 1-22 of Central Excise Tariff) can be availed fully if company were doing only that activity.

Though under earlier service tax law till 1.7.12, when abatement option was opted for taxable services such as catering, restaurant, accommodation services, mandap keeper services **there was a specific restriction to avail the cenvat credit on inputs, input services and capital goods used for providing such taxable services.** The credit related to restaurant services are restricted till 1.7.12 and could not have been availed at that time.

Present position on cenvat credit availment is as follows for hospitality sector:

Taxable services	Taxable portion	Eligibility of cenvat credit
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises egmandap keeper services	70%	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. The credit on other inputs, input services and capital goods used for providing such taxable services can be availed.
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60%	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. The credit on input services used for providing such taxable services can be availed.
Restaurant service.	40%	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing

		the taxable service, has not been taken. The credit on other inputs, input services and capital goods used for providing such taxable services can be availed.
Outdoor catering	60%	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service cannot be availed. The credit on other inputs, input services and capital goods used for providing such taxable services can be availed.

The doubt in the industry is whether the abated portion is an exemption. Consequently the credit could be restricted. Some of the big players in hospitality sector are seen to be erring on side of caution even now. They are not availing credit on inputs and input services attributable to the abated values of services such as restaurant service.

In other words for example if credit like AMC, rentals of hotel premises is Rs 100000, value of total amount charged by restaurant from customers is Rs 100 Lakhs. The credit of merely Rs 40000(40%) is being availed by such service provider as follows - Rs 1 Lakh *40 Lakhs[taxable portion on which ST paid]/100 Lakhs. Though this is not prescribed by law, it is nevertheless being followed as a measure of abundant caution.

In opinion of paper writers eligible credit could be availed by the restaurant and accommodation services providers wef 1.7.12. However it maybe better to intimate the methodology of availment of credit by RPAD letter to range to avoid later demands and litigation in this regard.