

(1) Mr. Balwan has started a Gymnasium in Mumbai. He has obtained service tax registration and wants to know whether he can set off the taxes paid by him on the following at the time of Payment of service Tax on his output services.

1) Treadmill Machines, Weights, Exercise Equipment. These are purchased from suppliers within India on which Excise duty is payable and also imported from outside India on which Import duty is paid. Annual Maintenance contracts have been entered into for the upkeep of these on which service tax is charged.

2) Trainers are hired (not employees) from Mumbai. They Charge Service Tax on their services.

3) Trainer hired (not employees) from outside India for his specialized knowledge.

4) The gymnasium is set up in a premise, which is taken on lease. The lessor charges service tax on the rent.

5) Mr. Balwan also spends on advertisements, Security services on which he is charged service tax.

- (2) Finserve Ltd. is into providing wide range of financial services. It has to work three shifts of eight hours each. It provides pick up and drop facility for its 50 employees for which they have hired a rent a cab operator. A substantial amount of service tax is paid on such facility. The company also purchased 5 cars (four sitter capacity) which are exclusively used for facilitating their clients when they visit the company premises. The Company paid service tax on its output services after claiming the CENVAT Credit of service tax paid to Rent a cab operator and the Excise duty paid on the cars purchased by them. Has the Company claimed correct set off. Please advise.

- (3) M Ltd. manufactures a product and sells it all over India. It has appointed various commission agents in different states to whom commission is paid. These agents charge service tax. M Ltd. took credit of such tax paid to it agents. However SCN was issued denying the credit of such service tax on the grounds that such service of commission agent has been used after the manufacture and clearance of final products upto the place of removal. Please advise.

- (4) Employer Ltd. providing taxable services has a pantry in its premises for which it avails the services of outdoor caterers, who charges service tax under the "Outdoor caterer services". The said pantry facility is been used by the Directors, employees and the guest such as vendors, auditors etc.

Whether the service tax paid on outdoor caterer services be claimed as CENVAT credit by Employer Ltd.

- (5) Mr. Learned is providing services of Coaching Classes since April, 2009. He has neither obtained registration nor collected & paid service tax till April, 2011. He applied for & obtained registration in May, 2011 and paid all the service tax due (calculated as per Section 67) since April, 2009 till date. As he was availing various input services on account of courier, telephone, audit fees, Advertising etc. during this period, he availed the credit of CENVAT and paid net amount of service tax.

After verifying his return the AC has issued SCN intending to reject the claim of CENVAT credit on the ground that he was not registered during the period April, 2007 to April, 2009 when input services were availed by him. Mr. Learned seeks your advice.

- (6) A beauty parlor was established in 2010 and took service tax registration under Beauty parlor service. Service tax was paid but not regularly. Taxes paid on inputs and input services used for providing beauty parlor service were not taken and utilised either. The Returns filed did not mention the availability of such CENVAT credit availability. In 2012 they were advised that they can take such accumulated credit and utilise for paying their future service tax liability. Is the advice correct.

- (7) Services Ltd. has engaged three advertising agencies for making advertisements for their 3 different brands of Services. As per the terms of contract the advertising agencies issue invoices inclusive of service tax mentioning in the invoice that the gross amount is inclusive of service tax. While discharging its service tax liability Services Ltd. makes backward calculations as permitted in section 67 (2) and paid service tax accordingly. Based on the invoices raised by the advertising agencies Services Ltd. has availed CENVAT credit by making backward calculations. The department denied the claim for CENVAT since the service tax is not shown separately. Please Advise.

- (8) Exporter Ltd is engaged in exporting manufactured products. Entire of their production is exported. They have accumulated substantial CENVAT credit. As allowed by rule 5 of CENVAT credit rules. They want to claim Refund CENVAT credit of duty paid on inputs/capital goods and service tax paid on input services. Please Advise.

- (9) ZED Ltd. has filed appeal with CESTAT and is contesting demand towards interest, penalty etc. The CESTAT has directed them to pay pre-deposit towards tax, interest and penalty. They have Cenvat credit balance available with them. ZED Ltd. wants to utilize its Cenvat credit balance to pay pre-deposit of tax, penalty and interest ordered by CESTAT. Please Advice.

(10) Foreign Ltd. produces a film outside India. It gives its copyright to an Indian Co. for distributing the Film in India to be displayed in theatres. As per agreement

(i) India Co. will pay 50% of the money collected by sale of tickets as royalty to Foreign Ltd.

(ii) India Ltd. will incur the advertising and publicity expenses to promote the film in India.

(all the bills are received in the name of the Indian Co.)

(iii) The entire advertising and publicity expenses including taxes on them will be reduced from the royalty amount and the balance will be remitted to Foreign Ltd.

The Indian company computed its service tax liability as under

Service Tax payable on the entire amount collected from sale of tickets (under copyright service)

Less: CENVAT Credit of

(i) service tax paid as service receiver on the import of copy right services from Foreign Ltd.

(ii) service tax paid on the advertising and publicity expenses incurred in India.

The AC has issued SCN denying service tax paid on the advertising and publicity expenses incurred in India on the grounds that Indian Co. has not borne the expenses itself. Please Advise.

REFERENCE MATERIAL FOR THE ISSUES

[1] CENVAT CREDIT RULES, 2004

[Notification No. 23/2004-C.E. (N.T.), dated 10-9-2004 as amended]

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

RULE 1. Short title, extent, and commencement. — (1) These rules may be called the CENVAT Credit Rules, 2004.

(2) They extend to the whole of India.

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

(3) They shall come into force from the date of their publication in the Official Gazette.

RULE 2. Definitions. — In these rules, unless the context otherwise requires, -

(a) "capital goods" means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

[(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or]

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zrp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

[(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zza) and (zzz) of clause (105) of section 65 of the said Finance Act;]

[(D) components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C);]

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed;]

(e) “exempted services” means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act [and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Explanation.- For the removal of doubts, it is hereby clarified that “exempted services” includes trading;]

(f) “Excise Tariff Act” means the Central Excise Tariff Act, 1985 (5 of 1986);

(g) “Finance Act” means the Finance Act, 1994 (32 of 1994);

(h) “final products“ means excisable goods manufactured or produced from input, or using input service;

(ij) “first stage dealer” means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

[(k) “input” means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service; but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for -

(a) construction 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 any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Explanation. - For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;]

[l] “input service” means any service, -

- (i) used by a provider of taxable 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, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

- (A) specified in sub-clauses (p), (zn), (znl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for -
 - (a) construction 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; or
- (B) specified in sub-clauses (d), (o), (zo) and (zzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

(m) “input service distributor” means an office of the manufacturer or producer of final products or pro-vider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards pur-chases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;

(n) “job work” means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly;

[(na) “large tax payer” shall have the meaning assigned to it in the Central Excise Rules, 2002;]

[(naa) “manufacturer” or “producer”,-

- (i) in relation to articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114 as the case may be] of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;
- (ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;]

(o) “notification” means the notification published in the Official Gazette;

(p) “output service” means [any taxable service, excluding the taxable service referred to in sub-clause (zpz) of clause (105) of section 65 of the Finance Act, provided by the provider of taxable service], to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions ‘provider’ and ‘provided’ shall be construed accordingly;

[* * * * *]

(q) “person liable for paying service tax” has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(r) “provider of taxable service” include a person liable for paying service tax;

(s) “second stage dealer” means a dealer who purchases the goods from a first stage dealer;

(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under notification No. 1/2011-C.E., dated the 1st March, 2011 is availed;]

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)];

Provided that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;]

[(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act [* * *]:

Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;]

(viii) the additional duty of excise, leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; [* * *]

[(ixa) the service tax leviable under section 66A of the Finance Act]

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]

[(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)].] :

Provided that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated, the 31st March, 2003.]

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,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted services and used for providing such service.

(4) The CENVAT credit may be utilized for payment of -

- (a) any duty of excise on any final product; or
- (b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
- (c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
- (d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or
- (e) service tax on any output service :

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be :

Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :]

Provided [also] that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003]; and
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

[Provided] also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * *] shall be utilised for payment of service tax on any output service :

[Provided] also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff :]

[Provided] also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010):]

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)], shall not be utilised for payment of said additional duty of excise on final products.]

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service :

[Provided] further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products :]

[Provided] [also] that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(a) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @5%
for each quarter in the fourth and fifth year @1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.]

[(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.]

[(5B) If the value of any,

- (i) input, or
- (ii) capital goods before being put to use,

[on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then] the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.]

[(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.]

(6) The amount paid under [sub-rule (5) and sub-rule (5A)] shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under [sub-rule (5) and sub-rule (5A)].

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4), -

- (a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner namely :-

Fifty per cent. of $[X \text{ multiplied by } \{(1+BCD/100) \text{ multiplied by } (CVD/100)\}]$, where BCD and CVD denote *ad valorem* rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

Provided that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification no. 23/2003-Central Excise dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] shall be equal to $[X \text{ multiplied by } [(1+BCD/200) \text{ multiplied by } (CVD/100)]]$:

Provided further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

- (A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the notification no. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003]; and
- (B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess

leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

shall be the aggregate of -

- (I) that portion of excise duty referred to in (A), as is equivalent to -
 - (i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;
 - (ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and
- (II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).]

[(b) CENVAT credit in respect of -

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
- (iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);
- [(iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]
- (iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
- (v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
- (vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);
- [(vii) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and]
- (viii) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)],

[shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), or the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005) respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service :]

Provided that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

Provided further that the credit of the Secondary and Higher Education Cess on excisable

goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services.]

Explanation. - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.]

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under [tariff items 2515 12 20 and 2515 12 90 respectively] of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square metre;

Explanation. - Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

RULE 4. Conditions for allowing CENVAT credit. — (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service :

[**Provided** that in respect of final products, namely, articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be] of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.]

(2)(a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year :

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year.

[**Provided** further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * * *] in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer.]

[**Provided** also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year.

Explanation. - For the removal of doubts, it is hereby clarified that an assessee shall be “eligible” if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.]

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [heading 6805, grinding

wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5)(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning [, or for the manufacture of intermediate goods necessary for the manufacture of final products] or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

[(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

- (i) another manufacturer for the production of goods; or
- (ii) a job worker for the production of goods on his behalf, according to his specifications.]

(6) The [Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be,] having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

[(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :

Provided that in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 :

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the

manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Explanation I. - The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rule (7) shall be read respectively as “following quarter” and “quarter ending with the month of March].

RULE [5. Refund of CENVAT credit. - Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

- (i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or
- (ii) service tax on output service,

and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification :

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilised for payment of service tax on any output service.

Explanation : For the purposes of this rule, the words ‘output service which is exported’ means the output service exported in accordance with the Export of Services Rules, 2005.]

RULE [5A. Refund of CENVAT credit to units in specified areas. — Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on

said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation : For the purposes of this rule, “duty” means the duties specified in sub-rule (1) of rule 3 of these rules.]

RULE 6. [Obligation of a manufacturer or producer of final products and a provider of taxable service.] — (1) The CENVAT credit shall not be allowed on such quantity of [input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services] except in the circumstances mentioned in sub-rule (2).

[**Provided** that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.]

[(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for -

- (a) the receipt, consumption and inventory of inputs used –
 - (i) in or in relation to the manufacture of exempted goods;
 - (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
 - (iii) for the provision of exempted services;
 - (iv) for the provision of output services excluding exempted services; and
- (b) the receipt and use of input services —
 - (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
 - (ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
 - (iii) for the provision of exempted services; and
 - (iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).]

[(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow [any one] of the following options, as applicable to him, namely :-

- [(i) pay an amount equal to five per cent. of value of the exempted goods and exempted services; or
- (ii) pay an amount as determined under sub-rule (3A); or
- (iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :

Provided that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing

such taxable service, shall be taken then the amount specified in clause (i) shall be five per cent. of the value so exempted.]

Explanation I. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation II.- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

Explanation III. - No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.]

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

- (a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-
 - (i) name, address and registration No. of the manufacturer of goods or provider of output service;
 - (ii) date from which the option under this clause is exercised or proposed to be exercised;
 - (iii) description of dutiable goods or taxable services;
 - (iv) description of exempted goods or exempted services;
 - (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;
- (b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-
 - (i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;
 - (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;
 - (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;
- (c) the manufacturer of goods or the provider of output service, shall determine finally the

amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-

- (i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;
 - (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;
 - (iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/N) multiplied by P, where [M] denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, ¹[N] denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and ¹[P] denotes total CENVAT credit taken on input services during the financial year;
- (d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;
- (e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;
- (f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;
- (g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-
- (i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),
 - (ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),
 - (iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,
 - (iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and
 - (v) credit taken on account of excess payment, if any, determined as per condition (f);
- (h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was

provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

- (i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.

*[Explanation I to III * * *]*

[(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.

(3C) Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to twenty per cent. of the CENVAT credit availed on inputs and input services in that month.

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

Explanation I. - “Value” for the purpose of sub-rules (3) and (3A),—

- (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;
- (b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or
- (c) in case of trading, [shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more].

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification

based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rules (3) and (3A) shall be read respectively as “following quarter” and “quarter ending with the month of March.”]

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

[(5) * * *]

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or]

(ii) cleared to a hundred per cent. export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602 (E), dated the 28th August, 1995; or

[(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of notification No. 6/2006-Central Excise dated the 1st March, 2006, number G.S.R. 96(E), dated the 1st March, 2006; or]

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No. 6/2006-Central Excise, dated the 1st March, 2006.].

[(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.]

RULE 7. Manner of distribution of credit by input service distributor. — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely :-

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or

(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be

distributed.

RULE [7A. Distribution of credit on inputs by the office or any other premises of output service provider. — (1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall mutatis mutandis apply to such office or premises of the provider of output service.]

RULE 8. Storage of input outside the factory of the manufacturer. — The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify :

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

RULE 9. Documents and accounts. — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

- (a) an invoice issued by -
 - (i) a manufacturer for clearance of -
 - (I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
 - (II) inputs or capital goods as such;
 - (ii) an importer;
 - (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
 - (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or
- (b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

- [(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.]
- (c) a bill of entry; or
- (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or
- (e) a challan evidencing payment of service tax by the person liable to pay service tax under [sub-clauses (iii), (iv), (v) and (vii)] of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994; or
- (f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or
- (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994 :

[Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]

[(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be], name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit]

[* * * *]

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him.

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within [ten days] after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board :

[**Provided** that the first stage dealer or second stage dealer, as the case may be, shall submit the said return electronically.]

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

[(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.]

[(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.]

RULE [9A. Information relating to principal inputs. — (1) A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products :

Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004 :

[* * * * *]

(2) If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him :

[* * * * *]

(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

[(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule.]

Explanation. - For the purposes of this rule, “principal inputs”, means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw-materials for the manufacture of unit quantity of a given final products.]

RULE 10. Transfer of CENVAT credit. — (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

RULE 11. Transitional provision. — (1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-

- (i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or
- (ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994(32 of 1994) and after deducting the said amount from the balance

of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.]

RULE 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim. — [Notwithstanding anything contained in these rules but subject to the proviso to clause (i) of sub-rule (1) of the rule 3], where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No. 57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003, [or No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

RULE [12A. Procedure and facilities for large tax payer. - Notwithstanding anything contained in these rules, the following procedure shall apply to a large tax payer, -

(1) A large tax payer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that -

- (a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or
- (b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, large tax payer unit in this regard are satisfied.

Explanation 1. — The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee :

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect

of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Explanation 2. — If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the manner as provided under rule 14 of these rules :

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];
- (iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];
- (vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; and
- [(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] :

Provided also that nothing contained in this sub-rule shall be applicable to a export-oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -

- (a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or
- (b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation. - For the purpose of this sub-rule 'intermediate goods' shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large tax payer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -

- (i) making an entry for such transfer in the record maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii) :

Provided that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3.

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];
- (ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];
- (iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];
- (iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];
- (vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; and
- [(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]].

(5) A large tax payer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(6) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, large tax payer unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer.]

RULE [12AA. Power to impose restrictions in certain types of cases. — Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by a notification in the Official Gazette, specify nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board.]

RULE 13. Power of Central Government to notify goods for deemed CENVAT credit. — Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of taxable service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the taxable service.

RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. — Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries.

[RULE 15. Confiscation and penalty. — (1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11AC of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of Section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.]

RULE [15A. General penalty. — Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.]

RULE 16. Supplementary provision. — [(1)] Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

[(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.]

[2] capital goods

First Schedule to CETA	
Chapters	82- tools, implements, spoons and forks of base metal and parts thereof of base metal 84- machinery and mechanical appliances and their parts 85- electrical and electronic machinery and equipment 90- Measuring , checking and testing machines
Headings	6804- grinding wheels and the like 6805- natural or artificial abrasive powder on a base of textile material

[3] capital goods

8702	Motor Vehicles for the transport of Ten or More persons, including the driver
8703	Motor Cars and Other Motor Vehicles Principally designed for the Transport of Persons (other than those of heading 8702), including station wagons and racing cars
8704	Motor Vehicles for the Transport of Goods
8711	Motor Cycles (Including Mopeds) and Cycles Fitted with an Auxiliary Motor, with or without Side – Cars

[4] capital goods

65 (105) (f) – Courier Agency Service
65 (105) (n) –Tour Operator Service
65 (105) (o) – Rent – a – cab service
65 (105) (zr) – Cargo Handling service
65 (105) (zrp) – Transport of goods by road in a goods carriage
65 (105) (zzt) – Outdoor caterer Service
65 (105) (zzw) – Pandal or Shamiana contractor

[5] capital goods

65 (105) (zzza) – Site formation and clearance, excavation and earthmoving and demolition Service
65 (105) (zzzy) – Mining of mineral, oil or gas Service

[6] Inputs

65 (105)(zn) – Port service
65 (105)(znl) – Other Port service
65 (105)(znm) – Airport Services
65 (105)(znp) – Commercial or industrial construction
65 (105)(znh) – Construction of Complex
65 (105)(znna) – Works Contract service

[7] input service

65 (105)(d) – general insurance business,
65 (105) (o) – renting of a cab
65 (105) (zo) – repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage
65 (105) (zzzj) supply of tangible goods for use, without transferring right of possession and effective control

[8] Input service

65 (105) (p) – Interior Decorator Service
65 (105) (zn) – Port service
65 (105) (zsl) – Other port service
65 (105) (zsm) – Airport services
65 (105) (zsq) – Commercial or Industrial Construction Service
65 (105) (zsh) – Construction of Complex Servicer
65 (105) (zsza) – Works Contract Sr

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No. 18/2012 – Central Excise (N.T.)

New Delhi, the 17th March, 2012

G.S.R. (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely : -

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2012.
(2) Save as otherwise provided in these rules, they shall come into force on the 1st day of April, 2012.
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, —
 - (a) in clause (a), -
 - (i) in sub-clause (A), -
 - (A) in item (vi), the word “and” occurring at the end, shall be omitted;
 - (B) in item (vii), for the words “storage tank,”, the words “storage tank; and” shall be substituted;
 - (C) after item (vii), as so amended, the following item shall be inserted, namely:—

“(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis,”;
 - (ii) in sub-clause (B), after the words “motor vehicle”, the words and figures “falling under tariff headings 8702, 8703, 8704, 8711 and their chassis,” shall be inserted;
 - (iii) for sub-clause (D), the following sub-clause shall be substituted, namely:—

“(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;”;

(b) in clause (l), for sub-clause (B), the following sub-clauses shall be substituted, namely:—

“(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) specified in sub-clauses (d) and (zo) of clause (105) of section 65 of the Finance Act, except when used by —

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or

(b) a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, in respect of a motor vehicle insured or reinsured by him; or”.

3. In rule 3 of the said rules,-

(a) in sub-rule (5), the third proviso shall be omitted with effect from the 17th day of March, 2012.

(b) for sub-rule (5A), the following sub-rule shall be substituted with effect from the 17th day of March, 2012, namely :-

“(5A) If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CEVAT Credit, namely:-

(a) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.”.

4. In rule 4 of the said rules,-

(a) in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.”;

(b) in sub-rule 2, in clause (a), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.”.

5. For rule 5 of the said rules, the following rule shall be substituted, namely:-

“5. Refund of CENVAT Credit. - (1) 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:

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Where,-

(A) “Refund amount” means the maximum refund that is admissible;

(B) “Net CENVAT credit” means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider

reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) “Export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) “Export turnover of services” means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(E) “Total turnover” means sum total of the value of -

- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement:

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax.

Explanation 1.- For the purposes of this rule,-

(1) “export service” means a service which is provided as per the provisions of Export of Services Rules, 2005, whether the payment is received or not;

(2) “relevant period” means the period for which the claim is filed.

Explanation 2.-For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.”.

6. In rule 6 of the said rules,-

(a) in sub-rule (3),-

(i) in clause (i), for the words “five per cent.”, the words “six per cent.” shall be substituted;

(ii) in the second proviso, for the words “five per cent.”, the words “six per cent.” shall be substituted;

(b) sub-rule (3C) shall be omitted;

(c) after sub-rule (3D), -

(i) in *Explanation I*, in clause (b), for the brackets figures and letter “(7), (7B)”, the brackets, figures and letters “(7),(7A),(7B)” shall be substituted;

(ii) in *Explanations II and III*, for the brackets, figures, letters and word “, (3B) and (3C)” wherever they occur, the word, brackets, figure and letter “and (3B)” shall be substituted.

7. For rule 7 of the said rules, the following rule shall be substituted, namely:—

‘7. Manner of distribution of credit by input service distributor. - The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Explanation 1.- For the purposes of this rule, “unit” includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2.- For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.’

8. In rule 9 of the said rules, in sub-rule (1), for clause (e), the following clause shall be substituted, namely:-

“(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or”.

9. After rule 10 of the said rules, the following rule shall be inserted, namely:-

“10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.— (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises may take CENVAT credit on the basis of the transfer challan:

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the

following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003];
- (viii) No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]; and
- (ix) No. 1/2010-Central Excise dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.”;

10. In rule 12A of the said rules, -

- (a) in sub-rule (1), in the third proviso, -
 - (i) in item (vii), the word “and” occurring at the end, shall be omitted;
 - (ii) in item (viii), for the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]”, the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]; and” shall be substituted;

(iii) after item (viii), as so amended, the following item shall be inserted, namely:-

“(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]”;

(b) in sub-rule (4), in the second proviso,-

(i) in item (vii), the word “and” occurring at the end, shall be omitted;

(ii) in item (viii), for the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]”, the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]; and” shall be substituted;

(iii) after item (viii), as so amended, the following item shall be inserted, namely:-

“(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]”;

11. In rule 14 of the said rules, with effect from the 17th day of March, 2012,-

(a) for the words “taken or utilised wrongly”, the words “taken and utilised wrongly” shall be substituted;

(b) for the word, figures and letters “and 11AB”, the word, figures and letters “and 11AA” shall be substituted.

[F. No. 334/1/2012-TRU]



(Samar Nanda)

Under Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, *vide* notification number 23/2004-Central Excise (N.T.), dated the 10th September, 2004, *vide* number G.S.R. 600(E), dated the 10th September, 2004] and was last amended *vide* notification number 3/2012- Central Excise (N.T.), dated the 12th March, 2012, *vide* number G.S.R. 138(E), dated the 12th March, 2012.