Chapter 7
Availment and Utilisation of CENVAT Credit

Initially, when Service Tax Credit Rules were promulgated for the first time w.e.f. 16-08-2002, they provided service tax credit on one-to-one basis i.e. credit could be availed only if the “input service” and the “output service” belonged to the same category. This was the position till 13-05-2003. Thereafter, w.e.f. 14-05-2003, these Rules were amended to provide service tax credit even if the “input service” and “output service” belonged to different categories. This widened the horizon to some extent but did not provide much relief to the service providers, for no credit was available in respect of excise duty, which was paid on the goods used for providing output services. This lacuna was removed with the introduction of CENVAT Credit Rules, 2004. These Rules superseded erstwhile CENVAT Credit Rules, 2002 (applicable for availing credit of excise duty) and also Service Tax Credit Rules, 2002 (applicable for availing credit of service tax). The supersession of both of the Rules paved way for availing credit of service tax and excise duty across goods and services. This Chapter discusses those provisions of CENVAT Credit Rules, 2004, which are applicable to the service providers.

1. Scheme of CENVAT Credit
CENVAT Credit Rules, 2004 extend to the whole of India except the State of Jammu and Kashmir where nothing contained in these rules relating to availment and utilisation of credit of service tax, shall apply.

Under the scheme of CENVAT Credit, the person who is liable to pay service tax on the services provided by him (output service) can set off this liability by claiming credit for the amount of duties and cess he has paid on the goods (input goods as well as capital goods) he used and also the amount of service tax and cess he has paid on the services he used (input services) to provide such taxable services.

To understand the scheme of CENVAT credit, it is required to understand the meaning of the terms–output service, input goods, capital goods and input service which has been explained below:

(i) Meaning of Output Service: It is the output service in relation to which CENVAT Credit can be utilised. Rule 2(p) of the CENVAT Credit Rules, 2004 defines “output service”. It means any taxable service provided by the provider of taxable service, to—

   (i) a customer;
   (ii) a client;
   (iii) a subscriber;
   (iv) a policyholder; or
   (v) any other person.
As per the above definition, it is the taxable service provided by a service provider which is considered as output service. Effective from 01-04-2008, GTA services have been specifically excluded from the purview of output services.

It may be noted that prior to 18-04-2006, by virtue of the Explanation to clause (p) of Section 2 of the CENVAT Credit Rules, where a person liable to pay service tax did not provide any taxable service, the service for which he was liable to pay service tax was considered as output service. Based on this Explanation, in India Cements Ltd. v. CCE and also in CCE v. Nahar Industrial Enterprises Ltd., it was held that payment of service tax for receipt of Goods Transport Agency (GTA) services can be made by way of utilisation of CENVAT credit as by virtue of above mentioned explanation in the definition of “output service”, GTA service would be deemed to be an output service for which service tax may be paid by setting off input credits.

The Finance Act, 2006, has omitted the aforementioned “Explanation” from the definition of output service. Consequently, effective from 18-04-2006, only such taxable service as is provided by a service provider shall be considered as output service. Service received by a person cannot be termed as his output service in any circumstance.

The Finance Act, 2008, has again amended the definition of output service w.e.f. 01-04-2008, by specifically excluding GTA service from its coverage. Consequently, GTA service provider is not eligible to claim CENVAT credit on such services provided by him. However, recipient of such services would remain eligible to take input credit for the service tax paid by him on GTA services as GTA service is still an eligible input service.

(ii) Meaning of Input Goods (Inputs): The definition of “input” is given by Rule 2(k) of the CENVAT Credit Rules, 2004. However, in the context of service providers, clause (ii) of Rule 2(k) is relevant. It provides that “‘input’ means all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service”.

It is specifically provided by way of explanation that the light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever. Further, in relation to service provider motor vehicles are also not to be considered as inputs. However, as will be noted from the definition of capital goods, motor vehicles shall be considered as capital goods, but only in relation to certain prescribed services. Thus, all the goods except the excluded ones, which are used by the provider of service for providing output service, shall fall within the definition of inputs. It may be noted that the inputs must be used directly for providing output service. Further, for claiming CENVAT Credit, it is not necessary that the value of duty paid input should be included in the value of service charged to the customer.

It may be noted that input goods received on or after 10-09-2004 are eligible for CENVAT credit. Further, such inputs should have been received in the premises of the provider of output service.

(iii) Meaning of Capital Goods: An output service provider, in order to avail CENVAT credit is required to use eligible capital goods for providing output service. As in the case of inputs, the credit is available only for those capital goods which are received on or after 10-09-2004 and used directly in providing output service. Further, such capital goods should be received in the premises of the provider of output service.

Rule 2(a) of the CENVAT Credit Rules, 2004 defines the term “capital goods”. The definition has two segments. In the first segment, it has mentioned certain specific goods which may be considered as capital goods, and in the second segment it has considered motor vehicle as capital good in context of certain categories of services. The details are as under:

A. Specific goods which are considered as capital goods: These goods if used in providing taxable services are considered as capital goods irrespective of the type of service they are used for:

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1. 2007-TIOL-645-CESTAT-MAD.
2. 2007-TIOL-555-CESTAT-DEL.
(i) Following goods falling under the Chapters, heading or sub-heading of First Schedule to the Excise Tariff Act, 1985:

(a) all goods falling under Chapter 82 (i.e. tools, implements, cutlery, spoons, forks and parts of these goods, made of base metal);
(b) all goods falling under Chapter 84 (i.e. machinery and mechanical appliances and parts thereof);
(c) all goods falling under Chapter 85 (i.e. electrical or electronics machinery and equipments);
(d) all goods falling under Chapter 90 (i.e. photographic, measuring, checking, precision instruments and apparatus, etc.);
(e) all goods falling under CET Schedule [heading number 6805, grinding wheels and the like and parts thereof falling under heading 6804].

(ii) Pollution control equipments;

(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;

(vii) Storage tank.

B. Motor Vehicles considered as capital goods for specified services only: For the purpose of CENVAT Credit, capital goods comprise “motor vehicles” in relation to only prescribed services. Rule 2(a) thereof provides that motor vehicles shall be considered as capital goods for providing certain specific services as defined in the Finance Act, 1994 and stated as below:

(i) Courier Agency’s Services specified in Section 65(105)(f);

(ii) Tour Operators’ Services specified in Section 65(105)(n);

(iii) Rent-a-Cab Scheme Operators’ Services specified in Section 65 (105)(o);

(iv) Cargo Handling Agency’s Services specified in Section 65(105)(zr);

(v) Goods Transport Agency’s Services specified in Section 65(105)(zzp);

(vi) Outdoor Caterers’ Services specified in Section 65(105)(zzt); and

(vii) Pandal or Shamiana Contractors’ Services specified in Section 65(105)(zzw).

Meaning of Motor Vehicle: CENVAT Credit Rules do not define a motor vehicle. However, Section 65(73) of the Finance Act, 1994 states that the “motor vehicle” has the meaning assigned to it in clause (28) of Section 2 of the Motor Vehicles Act, 1988. The said Section 2(28) defines “motor vehicle” as follows: “Motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimetres.

Registration of Motor Vehicle: For availing CENVAT Credit, it is a must that the motor vehicles are registered in the name of provider of output service who is providing abovementioned taxable services.

C. Dumpers or tippers considered as capital goods for specified service providers. Effective from 22-06-2010, 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 (zzza) and (zzzy) of clause (105) of section 65 of the said Finance Act, are included in the definition of capital goods.

It may be noted that “capital goods” have been given a restricted meaning under the Credit Rules. Practically, only some specified machineries and equipments qualify the definition of

capital goods for the purpose of credit, which leaves majority of industries in a state where they
are not in a position to claim CENVAT credit for the capital goods actually utilised
by them for provision of taxable services or production of excisable goods. The definition of capital goods
requires modification in order to truly implement the concept of value added taxes in relation to
CENVAT.

(iv) Meaning of Input Service: Input service is used by the service provider to provide output
service. Tax paid on the input service can be utilised as CENVAT Credit. Rule 2(l)(i) states that
“input service” shall be any service being used by “a provider of taxable service for providing an
output service”. This implies that input service can be any service but it must be utilised for
providing output service. For example, an advertising agency may use the services of a market
research agency for providing advertising services. In this case, the services of market research
agency are input services.

Besides the above, the definition of “input service” also includes services used in relation to:
- setting up, modernisation, renovation or repairs of the premises of provider of output
  service or an office relating to such premises;
- advertisement or sales promotion;
- market research;
- storage up to the place of removal;
- procurement of inputs;
- activities relating to business, such as accounting, auditing, financing, recruitment and
  quality control; coaching and training; computer networking; credit rating; share
  registry; security; inward transportation of inputs or capital goods; and outward
  transportation up to the place of removal.

It may be noted that above activities are related to setting up and running of a business. These
activities help the service provider to provide output services. Any input service used for such
activities is also eligible for CENVAT Credit. It is pertinent to note that in this case there is no
direct use of input service for providing output service but the CENVAT Credit equivalent to tax
paid is still available.

From the above discussion, it becomes clear that “input service” can be any service and not
necessarily a particular service finding place in service tax law. But the CENVAT Credit shall be
available only when the provider of “input service” has paid service tax in respect of that service.

Coverage of input services of GTA under the definition of input services: The position is
different for the period prior to 01-04-2008 and post 01-04-2008. Effective from 01-04-2008, the
Finance Act, 2008 amended the definition of input service under the CENVAT Credit Rules, to
clearly provide that the definition covers only such services in relation to clearance of final
products which are provided/procured upto the place of removal of final products.

Prior to 01-04-2008, the definition of “input service” contained a clause covering the services in
relation to clearance of final products from the place of removal with another inclusive clause
covering GTA services upto the place of removal.

Accordingly, legal position is different. For the period prior to 01-04-2008, after a long drawn
dispute, it is now been held in number of cases that both inward GTA services as well as outward
GTA services procured by a manufacturer are eligible for CENVAT credit. However, for the
period beginning from 01-04-2008, credit for outward GTA services may not be available to
manufacturers. For a detailed discussion in this regard, please refer Chapter on GTA Services in
Part C of this Book.

2. The Duties and Taxes for which CENVAT Credit can be Availed

A provider of taxable service is allowed to take credit (i.e. CENVAT credit) for the following
duties, taxes and cess paid by him on input goods, capital goods and input services:
<table>
<thead>
<tr>
<th>Nature of the Duty</th>
<th>Availability of credit against excise duty (CENVAT)</th>
<th>Availability of credit against service tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional duty of customs levied on excisable goods as basic excise duty (i.e. BED) This duty is also levied on imported goods under the Customs Tariff Act, 1975 as additional duty (also known as countervailing duty i.e. CVD)</td>
<td>Available against CENVAT</td>
<td>Available against service tax</td>
</tr>
<tr>
<td>Service tax</td>
<td>Available against CENVAT</td>
<td>Available against service tax</td>
</tr>
<tr>
<td>Education Cess levied on excise duty, on CVD paid on imported goods, and on service tax</td>
<td>Such credit can be utilised for payment of education cess or secondary or higher education cess</td>
<td>Such credit can be utilised for payment of education cess or secondary or higher education cess</td>
</tr>
<tr>
<td>Secondary and Higher Education (SHE) Cess levied on excise duty, on CVD paid on imported goods, or on service tax</td>
<td>From 01-03-2007 to 11-05-2007 Such credit can be utilised for payment of education cess or secondary or higher education cess From 12-05-2007 Such credit can be utilised for payment of secondary or higher education cess</td>
<td>From 01-03-2007 to 11-05-2007 Such credit shall be utilised for payment of education cess (or SHE for one day, i.e. 11-05-2007) From 12-05-2007 Such credit can be utilised for payment of secondary or higher education cess</td>
</tr>
<tr>
<td>Other special duties like Additional duty of excise on textiles and textile articles</td>
<td>Available only against respective special duties</td>
<td>Not available</td>
</tr>
</tbody>
</table>

Above duties/tax/cess, paid on or after the 10th day of September, 2004 on any input or capital goods or any input service, shall be available for utilisation as CENVAT Credit. Till 09-09-2004, credit of service tax to a provider of output service is available under Service Tax Credit Rules, 2002.

**Note:** In terms of Rule 11, any amount of credit earned by a provider of output service under the erstwhile Service Tax Credit Rules, 2002, which remained unutilised shall be allowed as CENVAT Credit for utilisation in accordance with CENVAT Credit Rules, 2004.

### 3. Limitations on the Amount of CENVAT credit available

The above para 2 lists out the duties and taxes against the payment of which, CENVAT credit can be availed. As a general rule the CENVAT credit can be availed to the extent of the amount of payment made for eligible duties and taxes. However, certain limitations have been placed in respect of some specific kind of eligible duties. Such cases are mentioned in Rule 3(7) of the

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4. *Vide* Notification No. 35/2007-C.E.(N.T.), dated 14-09-2007 (w.e.f. 14-09-2007), 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.
CENVAT Credit Rules. These limitations or restrictions as applicable in relation to service tax are discussed below:

(i) Where inputs or capital goods are produced or manufactured, by a 100% export-oriented undertaking (100% EOU) or by a unit in an Electronic Hardware Technology Park (EHTP) or in a Software Technology Park (STP) which does not pay 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, and used in providing an output service, in any other place in India, in case the unit producing output goods pays excise duty under Section 3 of the Excise Act read with serial number 2 of the above-mentioned Notification, CENVAT Credit is admissible equivalent to the amount calculated in the following manner, namely:—

Where the input goods are cleared by the 100% EOU or EHTP or STP prior to 01-03-2006, Fifty per cent of \[X \times \frac{(1+\text{BCD})}{100}\times \frac{(\text{CVD})}{100}\];

Where the input goods are cleared by the 100% EOU or EHTP or STP on or after 01-03-2006, Fifty per cent of \[X \times \left(\frac{1+\text{BCD}}{100}\times \frac{\text{CVD}}{100}\right),\]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.

It may be noted that where the CENVAT credit is in respect of inputs and capital goods cleared on or after 7th September, 2009 from an EOU or EHTP unit or an STP unit, and such unit has paid Excise duty under Section 3 of the Excise Act read with serial number 2 of the above-mentioned Notification, CENVAT Credit shall be equivalent to the aggregate of—

1. that portion of excise duty paid as is equivalent to the additional duty leviable under Section 3(1) of the Customs Tariff Act (CTA), which is equal to the duty of excise under Section 3(1)(a) of the Excise Act;
2. the additional duty leviable under Section 3(5) of the CTA; and
3. the Education Cess and the Secondary and Higher Education Cess paid by the EOU/EHTP/STP.

(ii) 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]\(^5\) respectively of the First Schedule to the Excise Tariff Act, CENVAT Credit is allowed to the extent of Rs 30 per square meter. In other words, ad valorem rate chargeable as excise duty on such goods is not allowed to be claimed as CENVAT Credit.

(iii) Effective from 01-03-2008, CENVAT credit of any duty except the National Calamity Contingent duty, shall not be utilised 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.

(iv) 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.

(v) 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.

(vi) CENVAT Credit of Education Cess or Secondary or Higher Education cess (both in respect of excisable goods and input services) can be used for payment of the education cess or secondary or higher education cess, as the case may be, leviable on output services or on excisable goods. CENVAT Credit of such education cess(s) thus, can not be utilised for payment of “service tax” on output service. However, CENVAT Credit of other duties and of service tax can be utilised for payment of “service tax, education cess and secondary or higher education cess” on output service.

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4. Conditions for Availing CENVAT Credit

CENVAT credit is allowed on the duties and taxes paid on purchase of input goods, capital goods and services. To ensure proper use of the credit mechanism, certain conditions have been imposed by Rule 4 of the CENVAT Credit Rules subject to which such credit can be availed.

(i) Conditions for availing credit for input goods (inputs)

(ii) Conditions for availing credit for capital goods

(iii) Conditions for availing credit for input services

(i) Conditions for availing credit for input goods (inputs): The conditions for availing credit on inputs broadly relate to the time when inputs become eligible for the credit and the amount of duty and taxes available for credit.

CENVAT Credit in respect of inputs may be taken immediately on receipt of the inputs in the premises of the provider of output service. [Rule 4(1)]

CENVAT Credit is allowed only for such inputs which are used in providing taxable output services.

CENVAT Credit is equivalent to duties paid on inputs received on or after 10-09-2004, as shown in the invoice of the supplier can be availed for payment of service tax on output services.

CENVAT Credit is limited to the duty shown in the invoice of the supplier. Where the output service provider is of the opinion that the duty paid by the supplier is less than what is actually required to be paid, he cannot at his own take CENVAT Credit equal to increased duty. Later on, when the supplier raises supplementary invoice for the differential duty, the CENVAT Credit equal to differential duty can be availed at that point of time. It may be noted that in case where supplier first charges duty on the amount of invoice and later offer trade discount, thereby accepting lesser amount for value of goods but does not reduce duty paid amount accordingly, CENVAT credit is available on the entire duty paid. (Circular No. 877/15/2008-CX (F.No. 267/54/2008-CX-8), dated 17-11-2008).

When input goods are removed from the premises of the output service provider without being used in providing output services, CENVAT credit availed thereon has to be reversed. In case inputs on which CENVAT credit has been availed are removed as such from the premises of provider of output service, Rule 3(5) permits such removal but only after the service provider makes payment of an amount equal to CENVAT Credit earlier availed in this respect. It is provided that removal shall be made on the basis of invoice as prescribed by Rule 9.

In terms of Rule 3(3) the amount equal to CENVAT Credit can be paid through CENVAT Credit account maintained by the service provider. The reversal of CENVAT Credit made at the time of removal of goods shall be eligible as fresh CENVAT Credit in the hands of the person who takes delivery of such inputs [Rule 3(6)].

In some cases removal of goods from the premises of output service provider does not require reversal of CENVAT credit availed thereon:

(a) When the input goods are removed from the premises of output service provider for the purpose of providing output services, the CENVAT Credit need not to be paid back or reversed. [As per First Proviso to Rule 3(5)]

(b) The CENVAT Credit is allowable even if any input goods are sent as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning, etc. However, CENVAT Credit shall be allowed only if it is established by the output service provider taking the CENVAT Credit that the input goods are received back within 180 days of their being sent to a job worker. This fact may be established from the records or challans or memos or any other document produced by him.

In case such goods are not received back within 180 days, the provider of output service shall pay an amount equal to the CENVAT Credit attributable to the inputs by debiting the CENVAT Credit or otherwise. However, the CENVAT Credit can be taken again
when the inputs are received back in the premises of the provider of output service. [As per Rule 4(5)]

**(ii) Conditions for availing credit for capital goods:** CENVAT credit in respect of capital goods is allowed even if capital goods are acquired by the service provider on lease, hire purchase or loan agreement, from a financing company.

*CENVAT Credit in respect of capital goods is allowed to be taken in two different years.* In the first instance when capital goods are received in the premises of the provider of output service during a given financial year, he can take credit to the extent of 50% in that financial year. The balance of CENVAT credit may be taken in any subsequent financial year. The only condition is that the capital goods should be in the possession of the provider of output service in such subsequent years. However, components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under CET Sch. heading 6805, grinding wheels and the like and parts thereof falling under heading 6804 have been exempted from the condition of possession. Accordingly, they need not be in his possession in these subsequent years when balance CENVAT Credit on capital goods is availed.

*However, CENVAT Credit is 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.*

Further, effective from 27-02-2010, where an assessee is eligible to avail of the exemption under a notification based on the value of clearances (not exceeding Rs. 400 lacs) 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.

*CENVAT Credit is not allowed for the amount of duty which has been claimed as depreciation (showing it as part of cost of capital goods).* CENVAT credit shall not be allowed in respect of that portion of value of capital goods which represents amount of duty if the same is claimed as depreciation under Section 32 of the Income Tax Act, 1961 by the provider of output service. In view of this, depreciation should not be claimed on the duty part of the capital goods if CENVAT Credit is desired to be availed. [As per Rule 4(4)]

**When capital goods are removed from the premises of the output service provider, CENVAT Credit availed thereon has to be reversed barring the specified situations.** In case capital goods on which CENVAT Credit has been availed are being removed as such from the premises of provider of output service, Rule 3(5) permits such removal but only after the service provider makes payment of an amount equal to CENVAT Credit earlier availed in this respect. Effective from 13-11-2007, if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the CENVAT Credit. It is provided that removal shall be made on the basis of invoice as prescribed by Rule 9. It may be noted that effective from 27-02-2010, if the capital goods so removed are computers or computer peripherals, the amount to be paid would be CENVAT Credit taken on the said goods reduced by the following percentages –

- 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%

In terms of Rule 3(3) the amount equal to CENVAT Credit can be paid through CENVAT Credit account maintained by the service provider. The reversal of CENVAT Credit made at the time of removal of goods shall be eligible as fresh CENVAT Credit in the hands of the person who takes delivery of such capital goods [Rule 3(6)].

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**Specified cases in which removal of capital goods from the premises of output service provider does not require reversal of CENVAT credit availed thereon:**

(a) The CENVAT Credit is not required to be reversed where the service provider removes any capital goods outside his premises for providing the output service. Prior to 01-04-2008, there was a condition to bring back the capital goods by the output service provider to his premises within 180 days of removal so as to avail the facility of non-reversal of credit in this regard. [As per Second Proviso to Rule 3(5)]

(b) The CENVAT Credit is allowable even if any capital goods are sent as such or after being partially processed to a job worker for further processing, testing, repair, reconditioning, etc. However, CENVAT Credit shall be allowed only if it is established by the output service provider taking the CENVAT Credit that the capital goods are received back within 180 days of their being sent to a job worker. This fact may be established from the records or challans or memos or any other document produced by him. *In case such capital goods are not received back within 180 days*, the provider of output service shall pay an amount equal to the CENVAT Credit attributable to the capital goods by debiting the CENVAT Credit or otherwise. However, the CENVAT Credit can be taken again when the capital goods are received back in the premises of the provider of output service. [As per Rule 4(5)]

Effective from 27-02-2010, 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. [As per Rule 4(5)]

(iii) Conditions for availing credit for input services: CENVAT Credit in respect of input service shall be allowed, *only after the payment is made for the value of input service* (including service tax) as is indicated in invoice. [As per Rule 4(7)]

It is pertinent to note that CENVAT Credit cannot be claimed merely by making payment of service tax portion, but the whole amount inclusive of service tax as shown in the invoice should be paid. However, it may happen that the recipient of input service, instead of making full payment as per invoice, may deduct certain amount. In such an eventuality, payment towards service tax shall be reduced proportionately and so also the amount of CENVAT Credit.

It may be noted that the above rule was framed when service tax was chargeable on the incidence of receipt/payment of value of service. With the introduction of provisions relating to payment of service tax on the basis of book entry in case of associated enterprises, the position is that the associate company is liable to discharge service tax amount without receiving the value of service, and another associate company is not in a position to claim CENVAT credit for such service tax paid because value of service is not paid by it.

Thus, the existing Rule 4(7) became very harsh on businesses where one associate company is paying service tax and the other cannot take benefit of it simultaneously. The Government considered this aspect and many other tangents of Rule 4(7) and has issued some clarifications in this regard vide **CBEC Circular No. 122/1/2010 – ST, dated 30-04-2010, which are as under** –

(a) When the substantive law i.e. section 67 of the Finance Act, 1994 treats book adjustments etc., as deemed payment, there is no reason for denying such extended meaning to the word ‘payment’ for availment of credit. As far as the provisions of Rule 4 (7) are concerned, it only provides that the CENVAT credit shall be allowed, on or after the date on which payment is made of the value of the input service and of service tax. The form of payment is not indicated in the same and the rule does not place restriction on payment through debit in the books of accounts. *Therefore, if the service charges as well as the service tax have been paid in any prescribed manner which is entitled to be called ‘gross amount charged’ then credit should be allowed under said rule 4 (7).* Thus, in the case of “Associate Enterprises”, credit of service tax can be availed of when the payment has been made to the service provider in terms of section 67 (4) (c) of Finance Act, 1994 and the service tax has been paid to the Government Account.

(b) In the cases where the receiver of service reduces the amount mentioned in the invoice/bill/challan and makes discounted payment, then it should be taken as final payment towards the
provision of service. The mere fact that finally settled amount is less than the amount shown in
the invoice does not alter the fact that service charges have been paid and thus the service
receiver is entitled to take credit provided he has also paid the amount of service tax, (whether
proportionately reduced or the original amount) to the service provider. The invoice would in
fact stand amended to that extent. The credit taken would be equivalent to the amount that is paid
as service tax. However, in case of subsequent refund or extra payment of service tax, the credit
would also be altered accordingly.

5. The Payments for which CENVAT Credit can be Utilised
Rule 3(4) provides that CENVAT Credit may be utilised for payment of:

(i) service tax on any output service;

(ii) (return of) an amount equal to CENVAT Credit already taken on inputs if such inputs
are removed as such or after being partially processed;

(iii) (return of) an amount equal to CENVAT Credit already taken on capital goods if such
capital goods are removed as such.

Thus, the amount of CENVAT credit available to an assessee may be utilised either against his
service tax dues on output service, or against his liability to repay the CENVAT credit availed
earlier for which he became disentitled at a later date.

According to proviso to Rule 3(4), CENVAT Credit which is available on the last day of the
month or quarter shall be available for utilisation towards payment of excise duty or service tax
related to that month or the quarter. It may be noted that w.e.f. 01-04-2005 service tax becomes
payable by 5th of the following quarter in case of individuals/proprietorships/partnership firms,
while in case of other service providers it becomes payable by 5th of the following month (earlier
it was 25th of the following quarter or month). However, advancement of payment date by 5
days does not mean, in view of the above proviso that the CENVAT Credit which has been
accumulated during this period of five days can also be utilised for payment of service tax
relating to the last month or quarter.

For example, AR (Pvt.) Limited is required to pay Rs 50,000 by 5th of July, 2005 to discharge its
service tax liability for the month of June 2005. As on 30th June, 2005, the CENVAT Credit
available for utilisation was Rs 45,000 whereas by 5th of July, 2005 it accumulated up to Rs
60,000. However, for discharging its liability of Rs 50,000, CENVAT Credit of Rs 45,000 can
only be utilised (and not Rs 60,000) and remaining Rs 5000 are required to be paid in cash.

6. To what extent a service provider or manufacturer can avail and utilise CENVAT
Credit

When an output service provider or manufacturer is engaged in providing only taxable
services or in manufacture of dutiable final products, he may use the entire amount of
CENVAT Credit available to him as against his liability to pay service tax on the taxable
services.

Where output service provider is providing both taxable and exempted services or
manufacturer is producing both dutiable and exempted goods, the relevant provisions for
utilisation of CENVAT Credit have been discussed below:

(i) The CENVAT Credit shall not be allowed on such quantity of inputs or input services which
is used exclusively for exempted services. [Rule 6(1)]

(ii) In respect of following “specified input services”, the credit of the whole of service tax paid
thereon shall be allowed even if they are used partly for exempted service and partly for taxable
services or for dutiable and non dutiable products. This provision applies irrespective of the
quantum used for providing taxable services. It may be bare minimum also. Such “specified
services” are:

1. Consulting Engineers’ Services [Section 65(105)(g)];
2. Architects’ Services [Section 65(105)(p)];
3. Interior Decorators’ Services [Section 65(105)(q)];
4. Management Consultants’ Services [Section 65(105)(r)];
5. Real Estate Agents’ Services [Section 65(105)(v)];
6. Security Agency’s Services [Section 65(105)(w)];
7. Scientific and Technical Consultancy Services [Section 65(105)(za)];
8. Banking and Other Financial Consultancy Services [Section 65(105)(zm)];
9. Insurance Auxiliary Services concerning life insurance business [Section 65(105)(zy)];
10. Erection, Commissioning or Installation Services [Section 65 (105)(zd)];
11. Maintenance or Repair Services [Section 65(105)(zg)];
12. Technical Testing and Analysis Services [Section 65(105)(zh)];
13. Technical Inspection and Certification Services [Section 65(105)(zi)];
14. Foreign Exchange Brokers’ Services (except those brokers in relation to banking and other financial Services) [Section 65(105)(zk)];
15. Construction Services [Section 65(105)(zq)];
16. Intellectual Property Services [Section 65(105)(zr)].

In the context of above services, CBEC Instruction Letter (F. No. 137/ 203/ 2007-CX. 4), dated 01-10-2007 provides that the basic purpose of identifying 17 (practically these are 16 in number) specified services for special dispensation is that these services are used in relation to the entire activities of the service provider and cannot be co-related or apportioned with any individual service (whether taxable or exempted) provided by such service provider. For example service tax paid on construction of an office of a service provider (who provides more than one service) cannot be linked with any particular service provided by him as it may be being used for various purposes and for all services provided by him. Thus, these services are similar in nature to capital goods which is a part of fixed assets/cost that cannot be apportioned for maintaining separate records. It is for this reason that there is no restriction in taking and utilisation of credit on these services, so far as they are used for providing some taxable services.

(iii) In respect of capital goods, the credit of the whole of the excise duty paid thereon shall be allowed even if they are used partly for exempted service and partly for taxable services or for dutiable and non dutiable products. This provision applies irrespective of the percentage of use of such goods for taxable and non taxable services or goods.

(iv) The output service provider or manufacturer using inputs or input services (other than those specified above) both for exempted as well as taxable services can opt for any of the following:

(a) He may maintain two separate sets of accounts for receipt, consumption and inventory of input and input service. One set will account for inputs or input services used for providing exempted services and the other set will account for inputs or input services used for providing taxable services. He can take CENVAT Credit only on that quantity of input or input service which is intended for use in providing taxable output service.

(b) He may opt not to maintain two separate sets of accounts. In such a case, effective from 01-04-2008, he may utilise CENVAT Credit in any of the following manner—

(i) Pay an amount equal to 5% (10% prior to 07-07-2009) of the value of the exempted goods or 6% (8% prior to 07-07-2009) of the value of the exempted services, as the case may be. Exempted service includes non-taxable service also. Value of the exempted goods is the transaction value as determined in terms of Section 4 of the Central Excise Act, 1944 or value determined under Section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under Section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].

OR

(ii) Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of exempted services.
Rule 6(3A) prescribes the conditions and procedure to determine the amount of CENVAT credit attributable to exempted outputs. For the purpose of the calculation of amount under formula given under Rule 6(3A), the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services. Further, the credit attributable to services mentioned in sub-rule (5), i.e., 16 specified services, shall not be taken into account for determination of amount under Rule 6(3A).

An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (FY) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year. The output service provider shall intimate his option in writing to the Superintendent of Central Excise giving the following particulars:

- his name, address and registration number
- date from which the above option is to be exercised
- description of taxable services or dutiable goods
- description of exempted services or goods
- CENVAT Credit of inputs and input services lying in balance as on the date of exercising this option

In the above context, CBEC Circular No. 868/6/2008-CX(NT), dated 09-05-2008, states that the credit on such inputs and input services is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services. However, an assessee following option (i) or (ii) under Rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.

Clarification regarding utilisation of accumulated CENVAT credit as on 01-04-2008: CBEC Instruction Letter (File No. 137/72/2008-CX. 4), dated 21-11-2008, clarifies that, Prior to 01-04-2008 [before the amendment in Rule 6(3)] the option available to the taxpayer, under Rule 6(3), was that, he was allowed to utilise credit only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. However, there was no restriction in taking CENVAT credit and also there was no provision about the periodic lapse of balance credit. This resulted in accumulation of credit in many cases. W.e.f. 01-04-2008, under the amended Rule 6(3), the following options are available to the taxpayers not maintaining separate accounts;

**Option No. 1.**—In respect of exempted goods, he may pay an amount equal to 10% (now 5%) of the value of exempted goods; and in respect of exempted/non taxable services, he may pay an amount equal to 8% (now 6%) of the value of such exempted/non-taxable service, OR

**Option No. 2.**—He may pay an amount equivalent to CENVAT Credit attributable to inputs and input services attributable to exempted goods and non-taxable/exempted services.

As stated earlier, many taxpayers had accumulated CENVAT credit balance as on 01-04-2008. The matter to be considered was whether this credit balance should be allowed to be utilised for payment of service tax after 01-04-2008.

As no lapsing provision was incorporated and that the existing Rule 6(3) of the CENVAT Credit Rules does not explicitly bar the utilisation of the accumulated credit, the department should not deny the utilisation of such accumulated CENVAT credit by the taxpayer after 01-04-2008. Further, it must be kept in mind that taking of credit and its utilisation is a substantive right of a taxpayer under value added taxation scheme. Therefore, in the absence of a clear legal prohibition, this right cannot be denied.

**CENVAT Credit allowable if a service ceases to be exempted service:** Where a service ceases to be exempted service and the duty paid inputs received on or after 10-09-2004 which are lying
in stock, are used in relation to such service, the provider of such output service shall be allowed CENVAT Credit equal to the duty paid in respect of the inputs so used. In other words, it is not necessary that the inputs must be received only after the date on which a particular service ceases to be exempted service. CENVAT Credit equivalent to the duty paid for inputs lying in the stock on the date when exempted service ceases to be as such, and used for providing such service, shall be allowed. This is provided by Rule 3(3).

7. Input Credit Distribution

CENVAT Credit Rules provide a mechanism to distribute input credit received in one office of a service provider to its other offices both on account of input services credit and input goods credit. It may be noted that the mechanism to distribute credit on input services was already there in the Credit Rules, the mechanism to distribute credit on input goods has been introduced with effect from 01-04-2008.

Mechanism to distribute credit on input services available to both service provider and manufacturer: The CENVAT Credit Rules have a concept of “input service distributor” through which an office of a service provider can distribute credit on input services centrally received to the other offices of such service provider. Rule 2(m) of the Credit Rules defines “input service distributor” to mean

(i) an office of the manufacturer; or
(ii) an office of the producer of final products; or
(iii) an office of the provider of output service,

which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases 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.

CENVAT Credit Rules, 2004 and Service Tax Rules, 1994 have imposed certain responsibilities upon an Input Service Distributor who is required to distribute the credit as discussed below:

(a) Credit distribution subject to conditions: According to Rule 7 of the CENVAT Credit Rules, an Input Service Distributor, while distributing CENVAT Credit to its units shall adhere to the following conditions, namely:

(i) The credit distributed against a bill/invoice, etc. should not exceed the amount of service tax paid thereon;

(ii) Credit of service tax should not be so distributed if it is attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing exempted services.

(b) To issue an invoice/bill/challan for distribution of credit: Rule 4A(2) of Service Tax Rules, 1994 requires the Input Service Distributor to issue a duly signed invoice or a bill or a challan in respect of credit distributed for each of the recipient of such credit. This document is to be signed by the distributor himself or the person authorised by him and shall be serially numbered. It shall contain the following particulars:

(i) the name, address and registration number of the person providing input services and also the serial number of that invoice/bill/challan through which the credit has been made available to the distributor by the input service provider;

(ii) the name and address of the input service distributor;

(iii) the name and address of the recipient of the credit distributed;

(iv) the amount of the credit distributed.

Note: In case the input service provider is an office of a bank/financial institution (including NBFC)/body corporate/commercial concern, an exception has been provided in respect to the

invoice/bill/challan. Thus, the invoice/bill/challan can be any document and it need not be serially numbered but it should contain the required information as mentioned above.

(c) To submit half-yearly return: Effective from 16-06-2005 Rule 9(10)\footnote{Subs. vide Notification No. 28/2005-C.E.(N.T.), dated 07-06-2005 (w.e.f. 16-06-2005).} requires the Input Service Distributor (ISD) to submit a half-yearly return in the prescribed form\footnote{Form ST-3.}, giving details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise. This should be submitted not later than the last day of the month following the half-year to which it relates. Effective from 01-03-2007, an ISD has an option to file revised return to correct a mistake or omission within 60 days from submission of the original return.

\textbf{Mechanism to distribute credit on input goods and capital goods available only to service provider:} As per Rule 7A of the CENVAT Credit Rules, effective from 01-04-2008, 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.

The provisions of CENVAT Credit 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 \textit{mutatis mutandis} apply to such office or premises of the provider of output service.

\section*{8. Documents and Records required for CENVAT Credit}

CENVAT Credit Rules require an assessee availing CENVAT Credit to keep certain documents and maintain certain records in order to avail the Credit.

\textbf{(i) Requirements relating to documents:} Rule 9(1) provides that the CENVAT Credit can be taken by the manufacturer/provider of output service/input service distributor on the basis of the following documents:

\begin{itemize}
  \item[(a)] Invoice issued by a manufacturer;
  \item[(b)] Invoice issued by an importer;
  \item[(c)] Invoice issued by an importer from his registered depot or from the registered premises of his consignment agent;
  \item[(d)] Invoice issued by a registered first stage dealer/second stage dealer;
  \item[(e)] Supplementary invoice;
  \item[(f)] Bill of entry;
  \item[(g)] Certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office;
  \item[(h)] Invoice/bill/challan issued by a provider of input service;
  \item[(i)] Invoice/bill/challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994.
\end{itemize}

\textbf{Particulars to be mentioned on the invoice for the purpose of CENVAT Credit.} According to Rule 9(2) of the CENVAT Credit Rules, all the particulars mentioned in the Central Excise Rules, 2002 should be mentioned on the invoice. However, if an invoice contains details of payment of duty or service tax, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or provider of taxable service and the jurisdictional Deputy Commissioner/Assistant Commissioner of Central Excise is satisfied that the goods or services covered by the said document have been received or accounted for in the books of account of the receiver, he may allow the CENVAT credit.

\textit{The assessee was required to take reasonable steps to ensure that duties/taxes for which CENVAT Credit has been availed are paid prior to 01-03-2007. However, this requirement has been dispensed with from the above date.}

\textbf{(ii) Requirements relating to maintenance of records:} Following records are required to be maintained in context of CENVAT Credit:
Records to be kept by dealer of input goods/capital goods. The CENVAT Credit in respect of first stage dealer or second stage dealer is allowed only if such of first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods were 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. [Rule 9(4)]

Records regarding input/capital goods to be kept by the output service provider. The provider of output service is required to 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 utilised, the person from whom the input or capital goods have been procured is recorded. [Rule 9(5)]

Records regarding input services to be kept by the output service provider. The provider of output service is required to 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 utilised, the person from whom the input service has been procured is recorded. [Rule 9(6)]

Note: The maintenance of proper records becomes absolutely necessary because the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the provider of output service taking such credit.

9. Submission of Return

An input service distributor and a provider of output services availing CENVAT credit is required to file half yearly return in Form ST-3. Effective from 01-03-2007, he has an option to file revised return in case of error or mistake, within 60 days of submission of the original return.

10. Refund of CENVAT Credit to Exporters of Goods or Services

Rule 5 of the CENVAT Credit Rules, as substituted w.e.f. 14-03-2006, prescribes the conditions and procedures subject to which the refund of CENVAT credit can be claimed by the persons exporting goods or services.

Accordingly, the CENVAT credit with respect to the input goods or services used in:

(a) the manufacture of final product cleared for export under bond or letter of undertaking, or
(b) the intermediate product cleared for export, or
(c) used in providing output service which is exported

can be utilised by the manufacturer or provider of output service towards the payment of:

(a) duty of excise on any final product cleared for home consumption or for export on payment of duty; or
(b) service tax on output service

Where for any reason such adjustment is not possible, the manufacturer or provider of output service shall be allowed refund of CENVAT credit with respect to the input goods or services used in:

(a) the manufacture of final product cleared for export under bond or letter of undertaking, or
(b) used in providing the services which have been exported without the payment of service tax

The refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilise the input credit or input service credit allowed under Rule 3 of the said rules against goods exported during the quarter or month to which the claim relates (hereinafter referred to as “the given period”).

13. Refer Part E-Appendix I for the format of Form ST-3.
Refund claim is to be computed in terms of given period, which may be a quarter or a month depending upon the following:

(a) In case of Export Oriented Unit (EOU), given period to claim refund is one month;

(b) In case of a person whose average export clearances of final products or the output services in value terms is 50% or more of the total clearances of final products or output services, as the case may be, in preceding quarter, given period to claim refund is one month;

In all cases other than above, given period to claim refund is a quarter. In this context, it is relevant to note that the CBEC Circular No. 120/1/2010 – ST, dated 19-01-2010, has clarified that, “As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an exporter may avail of Rs.1 crore as input credit in the April – June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs. 50 lakh and domestic clearances of Rs. 25 lakh are made. The exporter should be permitted a refund of Rs. 66 lakh (as his export turnover is 66% of the total turnover in the quarter) from the CENVAT credit of Rs.1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of CENVAT credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services, and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him.”

For claim of refund under Rules 5 of the CENVAT Credit Rules, 2004, Notification No. 5/2006-CE (NT) dated 14.03.2006 provides the conditions, safeguards and limitations for obtaining refund of such credit. As per the wordings of this notification, refund was permitted of duties/taxes paid only on such inputs/input services which were either used in the manufacture of export goods or used in providing the output services exported. As against this, the phrases used in the CENVAT Credit Rules permit credit of services used “whether directly or indirectly, in or in relation to the manufacture of final product” or “for providing output service”.

Because of above, the Departmental authorities were taking the view that for eligibility of refund, the nexus between inputs or input services and the final goods/services had to be closer and more direct than that was required for taking credit. Even if a nexus is considered acceptable, the officers processing the refund claims find it difficult to co-relate goods or services covered under a particular invoice with a specific consignment of export goods or specific instance of export of service. This became a contentious issue and the assesses were not able to get the refund appropriately.

The other issue in export refund was in relation to verification of invoices of the assessee. For large exporters, the procurement of inputs/input services in a quarter is substantial, resulting in each refund claim being accompanied with hundreds of invoices. Verification of these documents with corroborative documents showing exports (such as export invoices, bank certificates, shipping bills) consumes a long time. Though the notification prescribes that refund claims should be filed quarterly in a financial year, it is not clear whether the refund is eligible only of that credit which is accumulated during the said quarter or the accumulated credit of the past period can also be refunded. Further, in certain cases, the invoices accompanying the refund claim are incomplete in as much as either the description of service or its classification is not mentioned, and in some cases, even the name of the receiver of the inputs/input services is also not mentioned. Thus, the refund claims remain pending for want of verification and completeness of invoices.

Taking cognizance of the situation, the Government issued CBEC Circular No. 120/1/2010 – ST, dated 19-01-2010, which provided that “it is necessary to understand that the entire purpose of
Notification No. 5/2006-CX (NT) is to refund the accumulated input credit to exporters and zero-rate the exports.” The circular further clarified as under:

“As regards the extent of nexus between the inputs/input services and the export goods/services, it must be borne in mind that the purpose is to refund the credit that has already been taken. There cannot be different yardsticks for establishing the nexus for taking of credit and for refund of credit. Even if different phrases are used under different rules of CENVAT Credit Rules, they have to be construed in a harmonious manner. To elaborate, the definition of input services for manufacturer of goods, as given in Rule 2 (i) (ii) of CENVAT Credit Rules, 2004, includes within its ambit all services used “in or in relation to the manufacture of final products” and includes services used “directly or indirectly”. Similarly Rule 2 (i) (i) of CENVAT Credit Rules also gives wide scope to the input services for provider of output services by including in its ambit services “used....for providing an output service”. Similar is the case for inputs. Therefore, the phrase, “used in” mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication services; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need.”

To give the legal backing to the clarification made in the above circular, leading to faster and fair settlement of the refunds claims, changes have been affected in Notification No. 5/2006-CE (NT) by the Government. Some of the changes have been made retrospective so that the pending cases are also covered. Other changes are brought in prospectively, and are aimed at assisting the Departmental officers in faster processing of refund claims. The retrospective amendments are contained in clause 73 of the Finance Bill15, 2010 while the prospective changes are contained in Notification no.7/2010- Central Excise (Non Tariff) dated the 27th February, 2010. Both these documents may be carefully read together for appreciating the full impact of the changes. The salient features of these changes are as follows:-

Retrospective changes effected from 14-03-2006 (i.e. from the date of issue of notification)

1. The words “in relation to” have been added in main condition (a) of the Notification.

2. The word “in” contained in main condition (b) of the said Notification has been replaced with “for”.

The above two changes ensure that the provisions of the refund notification and the CENVAT Credit Rules are aligned and that refund is granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services.

3. The illustration given in condition 5 of the Appendix to the Notification has been deleted. This ensures that refund of CENVAT credit which has been availed in the period prior to the quarter/period for which the refund has been claimed is also eligible for refund. The refund claims should be calculated only on the basis of the ratio of the export turnover to the total turnover of the claimant. Thus, if the CENVAT credit available to the exporter at the end of the quarter, or month, as the case may be, is Rs. 1 crore, and the ratio of export to total turnover during the quarter is 50%, then Rs. 50 lakh should be refunded to the exporter. The essence of the changes

15. That is, clause 74 of the Finance Act, 2010.
is that refund shall be available for all goods, or input services, on which CENVAT is permissible and should be processed accordingly. Further, refund of CENVAT should not be linked to CENVAT taken in a particular period only.

**Prospective changes**

1. The conditions A and B given in the Annexure to the Notification are being deleted, and the details required to be given under these conditions, along with certain additional details, are to be furnished by the claimant in a table, which has been prescribed in condition A. The table should be certified by a person authorized by the Board of Directors (in the case of a limited company) or the proprietor/partner (in case of firms/partnerships) if the amount of refund claimed is less than Rs.5 lakh in a quarter. In case the refund claim is in excess of Rs.5 lakh, the declaration should also be certified by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be. This verification is aimed at reducing the checking of voluminous records which is required to be done by the officers processing the refund claims and ensure faster processing of refund claims.

2. Consequential changes by introducing the words “in relation to” and “for” in the Annexure to the Notification have been brought to bring them in line with the amendments made in the main conditions of the Notification.

Apart from the above, the other issue was in relation to invoices, which was also clarified by the CBEC Circular No. 120/1/2010 – ST, dated 19-01-2010 as under:

**“One-to-one co-relation between inputs and outputs and scrutiny of voluminous record:”** Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme [Notification No. 41/2007-ST dated 06-10-2007] which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009-ST] where under an exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under notification No. 5/2006-CE (NT). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect.

**Incomplete invoices:** In case of incomplete invoices, the department should take a liberal view in view of various judicial pronouncements by Courts. It had earlier been prescribed in circular No. 106/09/2008-ST dated 11-12-2008 that the invoices/challans/bills should be complete in all respect. This circular was issued with reference to notification No.41/2007 dated 06-10-2007 as specific services eligible for refund under the notification has been specified. Thus, a stricter requirement exists under the said notification for ascertaining the actual service which has been used in the export of goods. In the case of refund under Rule 5, (i) so far as the nature of the service which has been received by the exporter can be ascertained; (ii) tax paid therein is clearly mentioned; and (iii) other details as required under Rule 4(a) are mentioned, the refund should be allowed if the input service has a nexus with the service/goods exported as discussed earlier. In any case, the suggested Chartered Accountant’s certificate should clearly bring out the nature of the service and this will assist the officer in taking a decision.”

With the above clarification, the issues relating to invoice verification can be mitigated.

**Form to apply for CENVAT credit refund:** The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are to be filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be.

**Time period to apply for CENVAT credit refund:** The application for CENVAT refund has to be made before the expiry of the period specified in Section 11B of the Central Excise Act, 1944.
Further, the claims for such refund are to be submitted not more than once for any quarter or month (in accordance with the given period as explained in the above discussion) in a calendar year.

**Jurisdiction to apply for CENVAT credit refund:** The refund application is to be submitted to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, in whose jurisdiction,—

(a) the factory from which the final products are exported is situated;

(b) the registered premises of the service provider from which output services are exported is situated.

The refund of excise duty or service tax is allowed by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be.

Further, as clarified by the CBEC Instruction Letter (F. No. 137/82/2007-CX.4 (Pt.)), dated 24-10-2007, the rebate or refund of unutilised credit in respect of inputs and input services used in relation to manufacture of goods which are exported by EOUIs would be processed and disbursed by the jurisdictional central excise or customs authority and not by the service tax commissionerate. However, if an EOU provides/exports taxable services it would register itself with the jurisdictional service tax commissionerate and refund or rebate in respect of inputs or input services used for export of such services would be sanctioned by the service tax commissionerates. Other controls relating to registration, filing of return etc. in respect of EOUIs liable to pay service tax or engaged in provision of taxable service would remain the same as it exists at present i.e they should be registered with the service tax commissionerates.

**Circumstances when refund is not allowed:** Rule 5 of the CENVAT Credit Rules provides that the refund of CENVAT Credit shall not be allowed where the manufacturer or provider of output service:

(i) avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995; or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty, or

(ii) claims rebate of service tax under the Export of Service Rules, 2005 in respect of such tax.

**Note:** No credit of additional duty leviable under sub-section (5) of Section 3 of the Custom Tariff Act, can be utilised for payment of service tax on output service.

**11. Recovery and Penalty**

The assessee may commit default on any of the grounds such as:

(i) The CENVAT Credit is availed wrongly, or

(ii) Contravention of any of the rules of the CENVAT Credit Rules, 2004 has been committed.

Following are the provisions regarding recovery and penalty in such cases:

(i) If CENVAT Credit is taken or utilised wrongly, the Department can recover the amount of wrongly taken credit along with the interest from the provider of the output service and the penal provisions of Sections 73 and 75 of the Finance Act, 1994 shall apply mutatis mutandis for affecting such recoveries. The present rate of interest is 13% p.a. 16[Rule 14]. In this regard, the Government has recently issued a clarification vide CBEC Circular Letter No. 897/17/2009-CX(F.No.267/83/2009-CX-8), dated 03-09-2009, stating that even if an assessee avails CENVAT credit wrongly, and is yet to utilise it, he would be liable to interest on wrong availing of such credit. It may be noted that this view of the Government is not in line with the interpretation of the judiciary in past cases in this context.

(ii) In case of default committed by wrongly taking the CENVAT Credit in respect of input goods/capital goods, such goods are liable to confiscation and the output service

provider shall be liable to a penalty not exceeding the duty on excisable goods in respect of which any contravention has been committed, or [two thousand rupees]\textsuperscript{17}, whichever is greater. [Rule 15(1)]

(iii) In case of default committed by wrongly taking the CENVAT Credit in respect of input services for wilful default, then, the provider of output service shall also be liable to pay penalty in 78 of the Finance Act.\textsuperscript{18} [Rule 15(3)]

(iv) In case of default committed by wrongly taking the CENVAT Credit in respect of input services by reason of fraud, collusion, wilful mis-statement, suppression of facts, or contravention of any of the provisions of the Finance Act, 1994 or of the rules made thereunder, the provider of output service shall also be liable to pay penalty in terms of Section 78. This implies that the penalty at the minimum shall be equal to the CENVAT Credit availed and at the maximum it will be equal to double the credit availed. [Rule 15(4)]

(v) 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.\textsuperscript{19}[Rule 15A]

Please note that for levying any penalty under these Rules, principles of natural justice have to be followed by the Central Excise Officer, i.e., the assessee must be given an opportunity of being heard before imposing such penalty.

12. Transfer of CENVAT Credit

Transfer of CENVAT Credit under certain circumstances is permitted by Rule 10. Thus, if the output service provider shifts or transfers his business—may be 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, he shall be allowed to transfer the unutilised CENVAT Credit to such transferred, sold, merged, leased or amalgamated business. [Rule 10(2)]

However, the transfer of CENVAT credit is allowed only when 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. Further, the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner/ Assistant Commissioner of Central Excise. [Rule 10(3)]

13. Judicial views on CENVAT Credit

Following are some of the recent judicial views on the availability of CENVAT Credit under the Credit Rules.

A. CENVAT Credit eligibility of input services

In \textit{CCE v. Videocon Industries Ltd.}\textsuperscript{20}, it has been held that service tax paid on GTA service in respect of cement, steel, etc., related to setting up of the factory is eligible for credit.

In \textit{CCE v. Fine Care Biosystems}\textsuperscript{21}, in the Tribunal, it has been held that custom house agent services availed at the port for export of goods are eligible input services.

\textsuperscript{17} Subs. for “ten thousand rupees” \textit{vide} Notification No. 10/2007-C.E.(N.T.), dated 01-03-2007 w.e.f. 11-05-2007.
\textsuperscript{18} \textit{Vide} Notification No. 6/2010-CE(NT), dated 27-02-2010 (w.e.f. 27-02-2010).
\textsuperscript{19} \textit{Ins. vide} Notification No. 10/2008-C.E.(N.T.), dated 01-03-2008 (w.e.f. 01-03-2008).
\textsuperscript{20} (2010) 24 STT 392.
\textsuperscript{21} (2010) 17 S.T.R. 168
In *CCE v. Hyderabad Industries Ltd.* 22, in the Tribunal, it has been held that tour operator services and travel services used for picking up and dropping staff to factory are eligible input services.

In *Pan Asia Corporation v. CCE* 23, in the Tribunal, it has been held that commission agent service received by appellants for procuring purchase orders as well as for collection of sale price is an eligible input service as such service is one integrated service and received as such.

In *Tata Auto Comp Systems Ltd. v. CCE* 24, in the Tribunal, it has been held that transportation services provided to employees from residence to factory and vice versa are eligible input services.

In *CCE v. Hindustan Zinc. Ltd.* 25, it has been held that service tax paid on security services used in the colony, transport services for employees and guest house maintenance services are all eligible input services, since the scope of input service is wide enough to cover activities which are indirectly used in or in relation to the manufacture of final products.

In *ITC Ltd. v. CCE* 26, it has been held that where the appellant is under an obligation to maintain a colony, all services received in maintaining such a colony would qualify as input services as the scope of definition of ‘input service’ is wide.

In *CCE & C v. CCL Products (India) Ltd.* 27, it has been held that insurance premium, repair of vehicles, annual maintenance contract charges on telecom equipment and courier charges incurred in respect of business activities are all eligible input services.

In *CCE v. Vikram Cement* 28, it has been held that services received outside the factory in relation to manufacture of final products are eligible input services.

In *CCE, Mumabi-V v. GTC Industries Ltd.* 29, it has been held that expenditure which forms part of the cost of production under Cost Accounting Standard (CAS-4), are to be taken as input service and CENVAT credit is allowable thereon. Outdoor Canteen Service is also the part of CAS-4 under the head of Direct Wages & Salary, and therefore, is to be taken as Input Service & CENVAT credit on this is allowable.

In *CCE & C, Aurangabad v. Endurance Systems India (P) Ltd.* 30, it was held that service tax paid on Group Mediclaim Policy & Workmen’s Accident policy is available as credit as they form part of manufacturing cost as perCAS-4.

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22. (2010) 24 STT 348
23. (2009) 95 RLT 863
24. (2010) 96 RLT 181
27. (2009) 94 RLT 848
28. (2009) 94 RLT 748
29. 2008-TIOL-1634-CESTAT-MUM-LB.
30. 2009-TIOL-210-CESTAT-MUM.
In *Stanzen Toyotetsu India (P) Ltd. v. CCE*\(^{31}\), it has been held that canteen services, rent a cab services and group health insurances services of factory workers are all eligible ‘input services’.

In *CCE v. Raipur Rotocast Ltd.*\(^{32}\), it has been held that premium paid for insuring capital goods and for effecting group insurance of employees is an eligible input service.

In *H.E.G. Ltd. v. CCE*\(^{33}\) it has been held that an assesee is entitled to take credit of input service tax paid on landline telephones, cleaning and gardening and pandal and shamiana services provided these expenses relate to business activities.

In *Cadila Healthcare Ltd. v. CCE*\(^{34}\), the Tribunal has held that input services used for research and development of pharmaceutical products are eligible for credit regardless of whether such products reach the stage of commercial production.

In *CCE, Nasik v. Cable Corpn. of India Ltd.*\(^{35}\), it was held that scope of inclusive part of definition of “input service” much larger than just “being used directly or indirectly in relation to manufacture”, Since Rent-a-Cab Service is used for bringing employees to work in the factory for manufacture of goods it has to be considered as being used indirectly in relation to the manufacture or as part of business activity for promoting the business as any facility given to the employees will result in greater efficiency and promotion of business.

In *Indian Rayon & Industries Ltd. v. CCE*\(^{36}\), it was held that *input service tax credit is available on mobile phone bills* where the mobile connections are provided by the service providers to their employees for carrying out business functions. In *Nice Telecommunications (P) Ltd. v. CCE*\(^{37}\), it was held that service tax paid on mobile phones used in rendering output services is available as input credit.

In *Gujarat Ambuja Cements Ltd. v. CCE*\(^{38}\), the Tribunal held that service taxes paid on the cost of transportation of goods from the factory/depots to the buyer’s premises would not be available as credit to the manufacturer. This view no longer holds good in view of the larger Bench judgment in the case of *ABB Ltd. v. Commissioner of C. Ex. & ST*\(^{39}\), wherein the court has analysed in detail the definition of input service in context of outward transport of manufactured goods and held that, “the services availed by a manufacturer for outward transportation of final products from the place of removal be treated as an input service in terms of Rule 2(1)(ii) of the CENVAT Credit Rules, 2004 and thereby enabling the manufacturer to take credit of the service tax paid on the value of such services.”

In *U. Flex Ltd. v. CCE*\(^{40}\), it has been held that service tax paid on goods transport agency services availed for outward transportation of final products from the place of removal is eligible for input credit.

\(^{31}\) 2009 STT 321
\(^{32}\) 2009 RLT 319
\(^{33}\) 2009 STT 157
\(^{34}\) 2009 RLT 447
\(^{35}\) 2008-TIOL-1180-CESTAT-MUM.
\(^{36}\) 2006 STR 79.
\(^{37}\) 2007 STJ 29.
\(^{38}\) 2007 TIOL 539.
\(^{40}\) 2010 (24) STT 396.
In *Hindustan Coca Cola Beverages Pvt. Ltd. v. CCE*[^41], it has been held that CENVAT credit is admissible on outward transportation beyond the place of removal where the risk and reward remains with the seller until the goods are delivered at the buyer’s premises.

In *Manikgarh Cement v. CCE& Customs*[^42], it has been held that services of repair & maintenance and civil construction used in the residential colony of employees of a factory situated in a remote area are eligible input services for availing CENVAT Credit.

In *Metro Shoes (P) Ltd. v. CCE*[^43], it was held that the retail showroom of a manufacturer can be considered as a place of removal of goods for the purposes of CENVAT Credit Rules and therefore the related input services procured by the manufacturer upto the retail showroom can be set off against his excise duty liability.

In *Keltech Energies Ltd. v. CCE*[^44], it was held that mobile phones and landline phones installed at the director’s residence for business purposes are input services and are eligible for CENVAT Credit.

In *Victor Gaskets India Ltd. v. CCE*[^45], it was held that the Canteen Services provided within the factory, exclusively for the factory workers, is an activity in relation to the business and is hence eligible for CENVAT Credit.

In *International Testing Centre v. CCE, Panchkula*[^46], where CENVAT credit was taken by the provider on personal phone installed at the residence of assessee, it was held that it cannot be laid down that as a rule, telephone services installed at the residence cannot be used for business or professional purpose.

In *Coco Cola India (P) Ltd. v. CCE, Pune-III*[^47](Intervener in the case was Pepsi Foods Private Limited), where assessee was manufacturing concentrates to be used by the bottlers in production of aerated water and advertisements were undertaken for promotion of aerated water, the Mumbai High Court held that such advertising and marketing services would qualify as input services for the assessee in terms of Rule 2(l) of CENVAT Credit Rules, 2004 and service tax paid thereon is eligible for credit.

In *HEG Ltd. v. CCE, Raipur*[^48], it was held that service tax paid on personal accident insurance, garden maintenance, canteen building and repairing of street lights do not fall under the definition of input service.

In *Force Motors Ltd. v. CCE, Pune*[^49], it was held that service tax charged by Airports Authority of India for parking the aircraft at the airport are eligible for CENVAT credit, in respect of the aircraft is owned by the company (appellant) and is used by the executives for business purposes.

In *Maresk India (P) Ltd. v. CCE, Raigad*[^50], it was held that once the payment of duty is not denied, the availing of credit also cannot be denied, as the excise authorities at the receiver’s end has no jurisdiction to re-assess the duty at the supplier’s end. Therefore, once the duty has been paid, it can be taken as CENVAT credit without going at the supplier’s end.

In *CCE v. J.K. Cement Works*[^51], the Tribunal has held that the definition of “input service” as per the relevant rules would extend to both direct and indirect service. Consequently, the Tribunal has held that repair and maintenance of office motor vehicles, photography services relating to capital equipment and Rent-a-Cab Services for transportation of people are all eligible input services.

[^41]: 2010 (17) S.T.R. 140.
[^44]: 2008-TIOL-419.
[^47]: 2009-TIOL-449-HC-MUM-ST.
[^49]: 2008-TIOL-1199-CESTAT-MUM.
[^50]: 2008-TIOL-1477-CESTAT-MUM.
In *Choice Sanitaryware Industries v. CCE, Bhavnagar*\(^{52}\), it was held that service tax paid on GTA service for bringing empty containers into factory premises and tax paid on handling/agency charges at the port of export entitled for credit.

**Departmental clarifications on CENVAT Credit eligibility of input services**

1. GTA services up to the place of removal are eligible input services for a manufacturer and service tax paid on mobile telephones used for business would constitute eligible input service. (CBEC Circular No. 97/8/2007-ST, dated 23-08-2007)

2. CENVAT Credit not available on towers and parts thereof such as angles, channels, Beam of steel etc., and pre-fabricated shelter/PUF panels to cellular phone service providers. (CBEC Instruction Letter (F. No. 137/315/2007-CX. 4, dated 26-02-2008)

**B. CENVAT Credit on capital goods**

In *Keihin FIE (P) Ltd. v. CCE*\(^{53}\), the Tribunal has held that the CENVAT credit on capital goods can be claimed to the extent of 100% in the subsequent financial year if no credit is availed in the first financial year in which such capital goods were received.

In *DCW Limited v. CCE*\(^{54}\), the Tribunal has held that the restriction on availment of CENVAT credit on capital goods to the extent of 50% each year applies to the education cess as well.

In *Suprajit Engg. Ltd. v. CCE*\(^{55}\), the Tribunal has held that in terms of the Credit Rules, an assessee can avail 50% credit on capital goods in the first year, claim depreciation in the same year on the balance 50% and thereafter avail CENVAT credit of the balance 50% in the second year.

In *Supreme Marble & Granite Ltd. v. CCE*\(^{56}\), it was held that a principal is allowed to avail CENVAT credit on capital goods sent directly to the job worker’s premises from the vendor’s premises which are subsequently received back from the job worker after the completion of the job work.

In *Vizianagara Iron & Steel Products (P) Ltd. v. CCE*\(^{57}\), the Tribunal has held that CENVAT credit is not deniable on capital goods on which depreciation which had been claimed earlier was subsequently reversed by filing a revised income tax return.

In *Arani Agro Oil Industries Ltd. v. CCE-II, Visakhapatnam*\(^{58}\), it was held that when finished goods become exempt in subsequent year balance 50% of CENVAT Credit on capital goods solely used for manufacture of exempt goods not allowable.

In *CCE, Coimbatore v. Ennat Spinning Mills*\(^{59}\), the court observed that in the year of receipt of capital goods, manufacturers claimed CENVAT credit on capital goods & also depreciation on it without deducting the duty, however in the Income Tax Return filed in the subsequent year, they deducted the duty element in question which would mean that the depreciation though initially claimed had not been availed. It was held that it is not a case of double benefit & CENVAT credit was admissible.

**C. Utilisation and Distribution of CENVAT Credit**

In *Ecof Industries Pvt Ltd v. CCE*\(^{60}\), in the Tribunal, it has been held that there is no restriction on distribution of input credit relating to one unit of a manufacturer / service provider to another unit of the same manufacturer / service provider subject to the fulfillment of the prescribed conditions under Rule 7 of the CENVAT Credit Rules, 2004.

\(^{52}\) 2009-TIOL-636-CESTAT-AHM.  
\(^{54}\) (2009) 93 RLT 295  
\(^{55}\) (2007) 212 ELT 394.  
\(^{56}\) (2007) 81 RLT 55.  
\(^{57}\) (2007) 82 RLT 383.  
\(^{58}\) 2008-TIOL-1883-CESTAT-BANG.  
\(^{59}\) 2009-TIOL-814-CESTAT-MAD.  
\(^{60}\) 2009- TIOL-2109
In Mahaveer Surfactants (P) Ltd. v. CCE, Pondicherry\(^{61}\), it was held that credit is allowed on the duty leviable and ―paid‖ on the inputs—credit cannot be restricted on the ground that there is subsequent reduction in the assessable value of the inputs supplied.

In Jindal Steel & Power Ltd. v. CCE, Raipur\(^{62}\), it was held that service tax paid by the service provider is available as credit even before rendering taxable output service and can be utilised for payment of service tax on output services and also there is no time-limit prescribed for availing CENVAT credit.

In CCE, Raigad v. Maharashtra Seamless Ltd.\(^{63}\), it was held that interest liability cannot be discharged through CENVAT Credit A/c—Interest payment to be made through PLA/cash only.

In Sutham Nylocots v. CCE, Coimbatore\(^{64}\), it was held that CENVAT credit cannot be disallowed if the assessee is registered at the time when they intend to utilise the CENVAT though, he is not registered when CENVAT is available to him.

In Vijayanand Roadlines Ltd. v. CCE\(^{65}\), it was held that there is no time-limit for utilisation of accumulated input tax credit for the payment of output service tax liability.

In CCE v. Shri Bhavani Distilleries (India) (P) Ltd.\(^{66}\), it was held that CENVAT credit cannot be utilised for the payment of interest and penalty.

In Prag Bosimi Synthetics Ltd. v. CCE\(^{67}\), it was held that CENVAT credit of basic excise duty is available as an offset against the payment of the National Calamity Contingent Duty (NCCD) on manufactured goods.

In Ugar Sugar Works Ltd. v. CCE\(^{68}\), it was held that the reversal of proportionate credit on inputs used in the manufacture of exempted goods is sufficient compliance with the Credit Rules relating to use of common inputs in the manufacture of both dutiable and excisable goods.

In CCE, Thane–I v. Hindustan Coca Cola Beverages (P) Ltd.\(^{69}\), it was held that if once credit is availed of and same has been reversed, the same has to be treated as assessee not availing the credit. [Following Eicher Motors Ltd. v. Union of India\(^{70}\)]. Similarly, in Satyakala Agro Oil Products Ltd. v. CCE, Guntur\(^{71}\), where entire credit along with interest was reversed attributable to inputs used in manufacture of exempted final products, it was held that assessee cannot be said to have taken credit.

In Ruchi Soya Industries Ltd. v. CCE\(^{72}\), it was held that no amount under Rule 6 of the Credit Rules is payable where the CENVAT credit attributable to common inputs used in exempted final product has been reversed by the assessee.

In Godavari Sugar Mills Ltd. v. CCE\(^{73}\), it was held that CENVAT credit is admissible on common inputs used in both exempted and dutiable goods if the credit attributable to inputs used in exempted goods is reversed or paid back.

In PepsiCo India Holdings (P) Ltd. v. CCE\(^{74}\), it was held that Rule 6(2) of CCR, 2002 (Rule 6 of CCR, 2004 also follows the same principle), is applicable in case of virgin inputs and not those credit availed inputs which have been already accounted once but find repeated use in manufacturing of final product.

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61. 2008-TIOL-1447-CESTAT-MAD.
62. 2008-TIOL-1450-CESTAT-DEL.
63. 2009-TIOL-84-CESTAT-MUM.
64. (2005) 188 ELT 26 (Tri-Chennai).
68. (2007) 214 ELT 337.
70. (1999) 106 ELT 3 (SC).
73. (2007) 80 RLT 850.
74. (2007)-TIOL-966-CESTAT-DEL.
In *CCE, Ahmedabad v. Arvind Mills Ltd* 75, it was held that cross utilisation of CENVAT credit of additional duty of excise under Textile and Textile Articles Act for payment of Additional duty under Goods of Special Importance Act is allowable. In *Kyungshin Industrial Motherson Ltd. v. CCE, Chennai* 76, it was held that CENVAT credit taken wrongly, but not utilised and reversed before the issue of show-cause notice—No interest and penalty recoverable in such instances.

In *CCE v. Bodal Chemicals Ltd* 77, it has been held that no interest is payable on erroneous availment of credit if the balance available in the CENVAT account is higher than such irregular availed credit during the relevant period.

In *Ind-Swift Laboratories Ltd. v. Union of India* 78, the Punjab and Haryana High Court has held that interest under Rule 14 of the CENVAT Credit Rules, 2004 (‘CCR’) was payable only from the date of utilisation and not from the date of wrong availment of CENVAT credits.

**D. Documents required for availing and utilizing CENVAT Credit**

In *Manipal Advertising Services (P.) Ltd. v. CCE* 79, in the Tribunal, it has been held that where the service tax liability was discharged on the basis of centralized registration for services provided by branches as well, the benefit of Cenvat credit on input services cannot be denied on the ground that the invoices were in the name of branch offices.

In *CCE v. United Vanaspati Ltd.* 80, in the High Court of Himachal Pradesh, it has been held that eligible CENVAT Credit availed by an assessee on inputs lying in stock or in process or contained in final product is not required to be reversed upon a subsequent exemption from duty on the final product.

In *UOI v. Kataria Wires Ltd* 81, the Madhya Pradesh High Court has held that MODVAT credit is not deniable merely for the reason that the original and duplicate copies of invoices are not available where the receipt and use of inputs is not in dispute and the manufacturer has also produced a copy of invoices certified by the Range Superintendent.

In *Kunststoff Polymers Ltd v. CCE* 82, the Tribunal has held that the invoice indicating the manufacturer as the consignee and the trader as the buyer is a valid document for availing CENVAT credit as long as the goods are directly received in the premises of the manufacturer.

The Tribunal, in *Essar Steel Ltd v. CCE* 83, has held that a manufacturer is eligible to utilize CENVAT credits for payment of duty on supplementary invoices even if such credits do not pertain to inputs used in the manufacture of goods in respect of which such supplementary invoices are issued.

In *CCE v. DNH Spinners* 84, the Tribunal has held that CENVAT credit cannot be denied merely for the reason that the duty paid documents are issued in the name of the head office instead of the factory where use of inputs in the factory is not in doubt.

In *Maschmeijer Aromatics (India) Ltd. v. CCE, Chennai* 85, it was held that inputs received not under prescribed documents—when the transaction was genuine, identity of supplier of inputs is

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75. (2008) TIOL-1038-CESTAT-AHM.
76. (2008) TIOL-1055-CESTAT-MAD.
84. (2009) 244 ELT 65.
established, document showing duty payment is supported by facts and records of supplier of inputs shows that it had purchased duty paid inputs before resale and passed on the credit of duty thereon, credit cannot be denied on procedural issues.

In *Raaj Khosla & Co. (P) Ltd. v. CST, Delhi*<sup>86</sup>, it was held that credit cannot be denied as address given in the invoices was not registered with the Revenue. However, the registration certificate was later amended and the address was corrected.

In *CCE, Vapi v. Jindal Photo Ltd.*<sup>87</sup>, it was held that on the basis of invoices issued by the Input Service Distributor which is not registered, credit cannot be denied only on the lack of procedural requirements.

In *CST, Delhi v. Convergys India (P) Ltd.*<sup>88</sup>, the Tribunal has held that the substantive benefit of refunds/rebates cannot be denied on procedural grounds. Further, it has held that input services used for procurement of other eligible input services would also qualify as eligible input services.

In *Controls & Drives Coimbatore (P) Ltd. v. CCE, Coimbatore*<sup>89</sup>, where credit of CVD was taken on the basis of photocopy of courier bills of entry, it was held that credit which is otherwise admissible cannot be denied on the technical ground of use of photocopy instead of original document.

In *Hyundai Motors India Ltd. v. CCE, Chennai-IV*<sup>90</sup>, it was held that credit taken of differential duty paid on supplementary invoice cannot be taken as a ground to attract exception in Rule 7(1)(b) and was thus allowed.

In *Seshasayee Paper and Boards Ltd. v. CCE, Salem*<sup>91</sup>, it was held that bill of entry is one of the documents specified under Rule 9(1) for availment of CENVAT Credit and hence appellants were entitled to credit of amounts debited in DEPB as certified in Bills of Entry.

In *Sheela Dyeing & Printing Mills Pvt. Ltd. v. CCE*<sup>92</sup>, it was held that credit is not admissible on basis of an invoice issued by the second stage dealer in case the invoice issued by the first stage dealer is not valid.

In *CCE v. Essel Pro-Pack Ltd.*<sup>93</sup>, it was held that CENVAT credit is admissible on the basis of TR-6 challans evidencing payment of service tax.

In *Godrej Industries v. CCE, Mumbai II*<sup>94</sup>, it was held that the prohibition to take credit on supplementary invoices operates only in the case of sale. In the case of stock transfer, prohibition under Rule 7(1)(b) of the CENVAT Credit Rules is not applicable, hence in the case of stock transfer CENVAT Credit is available on the basis of supplementary invoices.

### E. Refund of CENVAT Credit

In *CST v. Mohanlal Services*<sup>95</sup>, it has been held that the provisions relating to unjust enrichment are not applicable to claims for refund arising on account of export of services.

In *Semco Electrical (P) Ltd. v. CCE*<sup>96</sup>, it has been held that refund claim of service tax cannot be denied with respect to service tax paid on input services viz. rent a cab service, outdoor catering service, air travel booking, telephone / mobile service, steamer agent’s services used in relation to business activities, even if not directly used in relation to manufacture of final product.

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85. (2009)-TIOL-112-CESTAT-MAD.
86. 2008-TIOL-1703-CESTAT-DEL.
87. 2009-TIOL-359-CESTAT-AHM.
88. 2009-TOIL-888-CESTAT-DEL.
94. 2008-TIOL-1061-CESTAT-MUM.
In *Noble Grain India Pvt. Ltd. v. CCE*\(^97\), it has been held that refund of CENVAT credit is admissible even in respect of export of final product chargeable to nil duty.

In *KSH International Pvt. Ltd. v. CCE*\(^98\), it has been held that rebate of service tax is available as long as the benefits of the services accrue outside India, even where all the relevant activities take place in India.

In *NBM Industries v. CCE* \(^99\), it has been held that supplies to 100% EOUs are ‘deemed exports’ and refund of CENVAT credit is hence available in respect of inputs used in such supplies.

In *CCE v. Sameer Linkages Pvt. Ltd.*\(^100\), it has been held that refund of unutilized credit under Rule 5 of CENVAT Credit Rules, 2004 is available only in respect of input services used in the manufacture of export goods and is not available for services used outside the factory of manufacture.

In *Malbros Stone Exports v. CCE*\(^101\), it has been held that the refund of unutilised input credits is available even if the inputs to which the credits relate have been used in the manufacture of intermediate products and not in the manufacture of final products, exported under bond.

In *CCE v. DIL Ltd.*\(^102\), it has been held that the recipients of services were eligible to claim CENVAT credit of the service taxes paid on services which, as per the Department, were exempt from the tax.

In *Devasthan Vibhag v. CCE*\(^103\), the Tribunal remanded the case holding that an eligible refund claim cannot be rejected on the ground that the service tax (which was demanded as refund) had been deposited within the jurisdiction of different adjudicating authority.

In *WNS Global Services (P) Ltd. v. CCE*\(^104\), it has been held that where a refund claim for unutilised credits was filed under Rule 5 of the CENVAT Credit Rules, 2004 as amended w.e.f 14-03-2006, such a claim cannot be rejected on the ground that it pertained to services exported prior to 14-03-2006.

\[^{94} (2009) 95 RLT 864.\]
\[^{95} (2010) VIL 05.\]
\[^{99} (2009) 94 RLT 367.\]
\[^{100} (2009) 95 RLT 311.\]
\[^{101} (2007) 217 ELT 289.\]
\[^{102} (2008) 9 STR 411.\]
\[^{103} (2008) 10 STR 415.\]
\[^{104} (2008) 10 STR 273.\]