

Notification	New Delhi, the 1 st March, 2007
No. 10/2007-Central Excise (N.T.)	10 Phalgun, 1928 (Saka)

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

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2007.
(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3,
 - (a) in sub-rule (1),
 - (i) after clause (vi), the following clause shall be inserted, namely:-
“(via) the Secondary and Higher Education Cess on excisable goods leviable under clause (126) read with clause (128) of the Finance Bill, 2007, which by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law;”;
 - (ii) in clause (vii), for the word, figures and brackets “and (vi)”, the word, figures, brackets and letter “, (vi) and (via)” shall be substituted;
 - (b) in sub-rule (7), in clause (b),-
 - (1) after sub-clause (iii), the following sub-clause shall be inserted, namely:-
“(iiia) the Secondary and Higher Education Cess on excisable goods leviable under clause (126) read with clause (128) of the Finance Bill, 2007, which by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law;”;
 - (2) after sub-clause (vii), in the portion beginning with the words “shall be utilized only towards” and ending with the words “after being partially processed or on any output service”, after the words “the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004”, the following shall be inserted, namely:-
“or the Secondary and Higher Education Cess on excisable goods leviable under clause (126) read with clause (128) of the Finance Bill, 2007, which by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law” shall be inserted;”;
 - (c) for the proviso, the following proviso shall be substituted, namely:-
“Provided that the credit of the education cess on excisable goods and the secondary and higher education cess on excisable goods and education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or secondary and higher education cess on excisable goods or for the payment of education cess on taxable services.”

3. In rule 6 of the said rules, in sub-rule (3), after Explanation II, the following condition shall be inserted with effect from the 1st day of April, 2007, namely:-

‘(d) notwithstanding anything contained in condition (c), the provider of output service referred to in sub-clause (d) of clause (105) of section 65 of the Finance Act has the option to utilise CENVAT credit attributable to inputs and input services used in providing taxable services subject to the following, namely:-

(i) while exercising the option under this condition, the provider of output service shall intimate his option in writing to the Superintendent of Central Excise giving the following particulars, namely:-

- (a) name and address of the provider of output service;
- (b) date from which the option under this clause is exercised or proposed to be exercised;
- (c) description of taxable services;
- (d) description of exempted services;
- (e) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(ii) the option given under part (i) for a financial year shall not be withdrawn during the remaining part of the financial year;

(iii) the provider of output service shall,-

(a) determine, provisionally, the amount equivalent to CENVAT credit attributable to exempted services, in the following manner, namely:-

CENVAT credit attributable to exempted services (provisional) = (A/B) multiplied by C, where A denotes total value of exempted services provided during the preceding financial year, B denotes total value of taxable and exempted services provided during the preceding financial year, and C denotes total CENVAT credit of inputs and input services taken during the month;

(b) pay the amount attributable to exempted services determined as above for each month, on or before 5th day of the following month;

(c) determine the CENVAT credit attributable to exempted services for the whole financial year in the following manner, namely:-

CENVAT credit attributable to exempted services = (X/Y) multiplied by Z, where X denotes total value of exempted services provided during the financial year, Y denotes total value of taxable and exempted services provided during the financial year, and Z denotes total CENVAT credit of inputs and input services taken during the financial year;

(d) pay an amount equal to the difference between the amount determined as per item (c) and the amount determined as per item (a), on or before the 30th June of the succeeding financial year, where the amount determined as per item (c) is more than the amount paid;

(e) in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date i.e. 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per item (c) is less than the amount determined and paid as per item (a), adjust the excess amount on his own, by taking credit of such amount;

(iv) the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of such payment or adjustment, the following particulars, namely:-

- (a) details of CENVAT credit attributable to exempted services, monthwise, for the whole financial year, determined provisionally as per part (iii) item (a),
- (b) the amount equivalent to CENVAT credit attributable to exempted services, determined provisionally for each month and paid monthwise as per part (iii) item (b),
- (c) CENVAT credit attributable to exempted services for the whole financial year as determined as per part (iii) item (c),
- (d) amount short paid determined as per part (iii) item (d), alongwith the date of payment of the amount short paid,
- (e) interest payable and paid, if any, on the amount short paid, determined as per part (iii) item (e), and
- (f) credit taken on account of excess payment, if any, determined as per part (iii) item (f);

(v) where the amount equivalent to CENVAT credit attributable to exempted services can not be determined provisionally since no taxable service referred to in sub-clause (d) of clause (105) of section 65 of the Finance Act has been provided, the provider of output service is not required to determine, provisionally, and pay CENVAT credit attributable to exempted services for each month but he shall determine the CENVAT credit attributable to exempted services for the whole year as prescribed in part (iii) item (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

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

4. In rule 9 of the said rules,-

(a) for sub-rule (2), the following sub-rule shall be substituted, namely:-

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

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of

Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit”;

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

(c) after sub-rule (10), the following sub-rule shall be inserted, namely:-

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

5. In rule 11 of the said rules, after sub-rule (2), the following sub-rules shall be inserted, namely:-

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

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994(32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.”;

6. In rule 15 of the said rules,-

(a) in sub-rule (1),-

(i) for the words , “without taking reasonable steps to ensure that appropriate duty on the said input or capital goods has been paid as indicated in the document accompanying the input or capital goods specified in rule 9 or contravenes”, the words, “in contravention of” shall be substituted;

(ii) with effect from the date on which the Finance Bill, 2007 receives assent of the President, for the words, “ten thousand rupees”, the words, “two thousand rupees” shall be substituted;

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

- (i) for the words, “without taking reasonable steps to ensure that appropriate service tax on the said input services has been paid as indicated in the document accompanying the input services specified in rule 9, or contravenes any of the provisions of these rules”, the words, “in contravention of any of the provisions of these rules” shall be substituted;
- (ii) with effect from the date on which the Finance Bill, 2007 receives assent of the President, for the words, “ten thousand rupees”, the words, “two thousand rupees” shall be substituted.

[F.No.334/1/2007-TRU]

(S.Bajaj)

Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary vide notification No. 23/2004-Central Excise (N.T.), dated the 10th September, 2004, vide GSR 600 (E), dated the 10th September 2004, and were last amended vide notification No.07/2007-Central Excise (N.T.), dated the 21st February 2007, vide G.S.R.100(E), dated the 21st February, 2007.