

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification
No.10/2008-Central Excise (N.T)

New Delhi the 1st March, 2008,

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 (Amendment) Rules, 2008.
(2) Save as otherwise provided in these rules, they shall come into force on the 1st day of April, 2008
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2,-
 - (i) in clause (l), for the words “clearance of final products from the place of removal”, the words “clearance of final products, upto the place of removal,” shall be substituted;
 - (ii) in clause (p), for the words “any taxable service provided by the provider of taxable service”, the words “any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, provided by the provider of taxable service” shall be substituted with effect from the 1st day of March, 2008.
3. In rule 3 of the said rules,-
 - (i) in sub-rule (4), after the third proviso, the following proviso shall be inserted, with effect from the 1st day of March, 2008, namely:-

“Provided also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff:”;
 - (ii) in sub-rule (5),
 - (a) in the first proviso , after the words “where any inputs”, the words “ or capital goods” shall be inserted;
 - (b) second proviso shall be omitted.
4. In rule 6 of the said rules,-
 - (a) in sub-rule (1) for the words, “exempted goods or exempted services”, the words, “exempted goods or for provision of exempted services” shall be substituted;

(b) for sub-rule (3), the following sub-rules shall be substituted, namely,-

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

- (i) the manufacturer of goods shall pay an amount equal to ten per cent. of value of the exempted goods and the provider of output service shall pay an amount equal to eight per cent. of value of the exempted services; or
- (ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

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

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

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

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

- (i) name, address and registration No. of the manufacturer of goods or provider of output service;
- (ii) date from which the option under this clause is exercised or proposed to be exercised;
- (iii) description of dutiable goods or taxable services;
- (iv) description of exempted goods or exempted services;
- (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= $(B/C) \times D$, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = (M/N) multiplied by P, where L denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

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

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-

- (i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),
- (ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),
- (iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,
- (iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and
- (v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

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

Explanation I.- “Value” for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

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

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

5. After rule 7 of the said rules, the following rule shall be inserted, namely:-

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

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

6. After rule 15 of the said rules, the following rule shall be inserted with effect from the 1st day of March, 2008, namely:-

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

[F.No. 334/1/2008-TRU]

(S. Bajaj)

Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Part II, Section 3, sub-section (i) Extraordinary vide notification No. 23/2004-Central Excise (N.T.), dated the 10th September, 2004, G.S.R. 600 (E), dated the 10th September 2004, and last amended by notification No. 39/2007-Central Excise (N.T.) dated the 13th November, 2007, G.S.R. 709(E), dated the 13th November, 2007.