



INDIRECT TAX NON TARIFF

CHANGES IN CENVAT CREDIT RULES 2004

I) Changes in the definitions under Rule 2 :

All the amendments in the said rule are applicable from 1st April 2011 except otherwise specified.

1) Exempted Goods:

The scope of the goods that are termed as "Exempted Goods" under Rule 2(d) has been enhanced by inserting the words "and goods in respect of which the benefit of an exemption under notification No. 1/2011 - CE, dated the 1st March, 2011 is availed".

The said notification i.e. 1/2011 has levied a nominal duty of 1% ad valorem on specified goods. These goods are thus treated as exempted goods for the purpose of CCR, 2004 w.e.f. 1st March 2011.

2) Exempted Service:

The meaning of the term "Exempted Service" under Rule 2(e) included only those services which are specifically exempted from the levy of service tax or those services on which no service tax is levied u/s 66. The scope of the same has been enhanced by including services on which abatement has been taken & notification providing abatement is subject to condition that no credit of duty on inputs or capital goods or service tax paid on input services. It also includes trading activity.

For example, 60% abatement is granted under Mandap keeper services. Thus, if a service provider is paying service tax under the said category, he shall be eligible for 40% of the cenvat credit as 60% value shall be considered as exempted service.

Similarly, a service provider providing any taxable service along with being engaged in trading activity, shall take the credit by taking into consideration the profit earned from such trading activity. The said amendment is in line with the observation made by the Tribunal in the case of M/s Orion Appliances.

3) Inputs:

The definition of 'input' contained in rule 2(k) has been revised. The scope of the definition is explained as follows:

a) Earlier, there was a specific requirement that the goods to be treated as inputs should be used in or in relation to the manufacture of final products whether directly or indirectly. The said condition has been replaced with the condition of good being used in the factory. Thus with this amendment all those goods which is used by the manufacturer of the final product in the factory shall be treated as inputs under Rule 2(k)(i) of the CCR, 2004.

b) The proposed amendment includes **any goods** including accessories cleared along with the final product. There is an additional condition imposed that the value of such goods cleared



along with the final product shall be included in the value of the final product. Also, goods used for providing free warranty have been included in the said definition.

c) Eligibility of goods used for providing output service remains the same.

Exclusions:

a) As earlier, the goods namely Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol continue to be excluded from the definition.

b) The goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods have been excluded. This exclusion shall not apply in case of some of the specified services as provided in the said clause.

c) Capital goods except when used as parts or components in manufacture of final product.

d) Earlier, the exclusion of motor vehicle was restricted merely to service provider. However, now the restriction has also been imposed on manufacturer.

e) The goods used primarily for personal use or for consumption of any employee including food articles etc. have expressly been excluded. Thus for example goods used in a guest house, residential colony, club or recreational facility or in a clinical establishment meant for personal use or consumption of the employees are not eligible.

f) Goods having no relationship with the manufacture of final product whatsoever have specifically been excluded. The said exclusion is in lines with earlier definition which provided that only those goods are to be treated as inputs which are used in or in relation to manufacture of final product.

4) Input services:

The definition of "Input Services" contained in Rule 2(I) has been revised. The inclusive part of the definition has been amended to exclude the words "activities relating to business" & accordingly credit is eligible only for the service specifically mentioned in the said inclusive clause.

Exclusions:

a) Certain specified services (Architect, Port, Other Port, Airport, Commercial or Industrial Construction, Construction of Residential Complex & Works Contract services) are not treated as input services if they are used for

- _ Construction of building or civil structure or part thereof or,
- _ Laying of foundation or making of structures for support of capital goods

b) Certain specified services (General insurance, Rent-a-cab, Authorised Service Station, Supply of Tangible Goods service) are not to be treated as input services if they relate to motor vehicle. However, the said exclusion shall not be applicable if the said motor vehicle is used for providing taxable service & the same is treated as capital goods under rule 2(a) of CCR '04.

c) Certain specified services (for example - outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance etc.) in the nature of staff welfare when used for personal use or consumption of any employee is not eligible for cenvat credit.

II) Changes in Rule 3:

1) As stated above, the notification i.e. 1/2011 has levied a nominal duty of 1% ad valorem on specified goods. The cenvat credit on such goods is not eligible. (This provision is made applicable from 1st March 2011)

2) Sub-rule 4 has been amended to provide that manufacturer availing benefit of exemption notification 1/2011 cannot pay the said nominal duty by utilizing cenvat credit. (This provision is made applicable from 1st March 2011)

3) As explained above, the definition of inputs has been amended to include goods which are used for providing free warranty for the final product. Accordingly, changes have been made in sub-rule 5 to provide that no duty is liable to be paid on removal of such goods from the factory. It must be noted that the rule is silent on removal of accessories or any other goods along with final product.

4) Earlier, manufacturer or service provider was liable to pay an amount equivalent to cenvat credit availed if inputs or capital goods before being put to use on which cenvat credit has been taken are fully written-off in the books of accounts. Sub-rule 5B has been amended to provide that even in the case of partial write-off the said rule shall be applicable. (This provision is made applicable from 1st March 2011)

III) Changes in Rule 4:

1) Sub-rule 7 provides that credit with respect to input services is eligible on payment basis. A proviso has been added in the said rule to provide that in case any payment or part thereof has been refunded on such services then the proportionate cenvat credit availed on the same will have to be paid.



OTHER CHANGES UNDER EXCISE

A. Changes effective from 1st April, 2011: -

1. Increase in the rate of interest for delayed payment of excise duty.

(Notification Nos: - 5/2011 C.E (N.T.) and 6/2011 C.E (N.T.)) - The rate of interest on delayed payment of duty is increased from 13% p.a. to 18% p.a.

B. Changes effective from the date enactment of the Finance Act, 2011: -

1. Changes in the 'Central Excise Act, 1944'.

(a) New section 11A governing recovery of short-paid or unpaid duty is proposed to be inserted in place of the existing provisions. The salient features of the new section are:

i. Closure of proceedings in case of duty paid with interest before issue of SCN in cases where there is no fraud, suppressions, willful misstatement, collusion, etc.

ii. A new provision to limit penalty to 50% of duty in cases where the extended period of limitation is invoked but the transactions to which such duty relates are entered in the specified records.

iii. In case short payment arises on account of fraud, suppressions, willful misstatement, collusion, etc and is detected in audit, investigations and verification the assessee has been given an option to pay the duty with interest and penalty equal to 1% of the duty amount per month subject to maximum of 25% of duty amount. On payment of such amount and communication of the same to the Central Excise Officer, there will be no issue of Show cause notice.

iv. U/s 11AC penalty is reduced to 25% of duty and interest within 30 days from the date of receipt of orders.

2. Modified section 11AA has been introduced for the imposing the payment of interest on all kinds of delayed payments of duty. The section 11AB is being deleted from such date.

3. Section 11DDA is introduced to provide a first charge on the assets of the defaulter after the dues against the specified acts such as Companies Act, Securitisation Act, etc have been met with.

4. Power has been granted to the Joint and Additional Commissioners of Central Excise for the search and seizure of the documents or books or things and to carry out such proceedings under the act.

5. New section 35R to bring the policy of filling of appeals by the Department in line with the National Litigation Policy. The same is being given retrospective effect from 20-10-2010.

C. Changes w.e.f 1st January 2012 - The First Schedule to the Central Excise Tariff Act (CETA) is being amended to incorporate latest editorial changes in the Harmonized System of Nomenclature (HSN).





SERVICE TAX CHANGES

1. Point of Taxation Rules, 2011 have been framed vide notification 18/2011-ST and made effective from 01.04.2011. These rules determine the point in time when the services shall be deemed to be provided. The general rule will be that the time of provision of service will be the earliest of the following dates:

- i. Date on which service is provided or to be provided
- ii. Date of invoice
- iii. Date of payment

2. Consequential changes have also been made in the Service Tax Rules, 1994 to alter the payment of service tax from receipt of payment to provision of service and also to permit adjustment of tax when service is not finally provided.

3. Rate of interest on delayed payments as excess collection has been increased from 13% to 18% vide Notification No. 15 and 16/2011-ST respectively.

4. Finance minister has announced in his budget speech that individual and sole proprietor assessee with a turnover upto Rs 60 lakh shall not be subject to audit.

5. Reduce interest rate by 3% for assesseees with a turnover of upto Rs. 60 Lakhs.