

[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. 13/2016- Central Excise (N.T.)

New Delhi, the 1st March, 2016.

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

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2016.
(2) Save as otherwise provided, they shall come into force on the 1st day of April, 2016.
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2,-
 - (a) in clause (a), in sub-clause (A), -
 - (i) in item (i), for the word and figures “heading 6804”, the words and figures “heading 6804 and wagons of sub-heading 860692” shall be substituted;
 - (ii) in condition (1), the words, “but does not include any equipment or appliance used in an office” shall be omitted;
 - (iii) in condition (1A), after the words “generation of electricity”, the words “or for pumping of water” shall be inserted;
 - (b) in clause (e), after entry (3), for the long line, the following shall be substituted with effect from 1st March, 2016, namely:-

“but shall not include a service –

 - (a) which is exported in terms of rule 6A of the Service Tax Rules, 1994; or
 - (b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India;”;
 - (c) in clause (k),-
 - (i) in sub-clause (iii), after the words “or steam”, the words “or pumping of water” shall be inserted;
 - (ii) in sub-clause (iv), for the words “output service”, the words “output service; or” shall be substituted;

(iii) after sub-clause (iv) as so amended, the following sub-clause shall be inserted, namely:-

“(v) all capital goods which have a value upto ten thousand rupees per piece.”;

(iv) for item (C), the following item shall be substituted, namely:-

“(C) capital goods, except when,-

- (i) used as parts or components in the manufacture of a final product; or
- (ii) the value of such capital goods is upto ten thousand rupees per piece;”;

(d) in clause (m), after the words “ producer or provider”, the words “or an outsourced manufacturing unit” shall be inserted.

3. In rule 3 of the said rules, in sub-rule (4),-

(i) in the fifth proviso, for the words and figures “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”, the words, figures and brackets, “National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001)” shall be substituted with effect from the 1st March, 2016.

(ii) after the eighth proviso, the following shall be inserted with effect from the 1st March, 2016, namely,-

“Provided also that CENVAT credit shall not be utilised for payment of Infrastructure Cess leviable under sub-clause (1) of clause 159 of the Finance Bill, 2016.”.

4. In rule 4 of the said rules,-

(a) in sub-rule (2), in clause (a), for the Explanation, the following shall be substituted with effect from 1st day of March, 2016, namely:-

“*Explanation.* – For the removal of doubts, it is hereby clarified that-

(i) an assessee engaged in the manufacture of articles of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees twelve crore;

(ii) an assessee, other than (a) above, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees four hundred lakhs.”.

(b) in sub-rule (5), for clause (b), the following clause shall be substituted, namely:-

“(b) The CENVAT credit shall also be allowed to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer 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:

Provided that such credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises.”;

(c) in sub-rule (6), for the words “valid for a financial year”, the words “ valid for three financial years” shall be substituted.

(d) in sub-rule (7), after the fifth proviso, the following provisos shall be inserted namely,-

“Provided also that CENVAT Credit of Service Tax paid on the charges paid or payable for the service provided by way of assignment, by the Government or any other person, of the right to use any natural resource, shall be spread over such period of time as the period for which the right to use has been assigned. CENVAT Credit in the financial year in which the right to use is acquired and in the subsequent years during which such right is retained by the manufacturer of goods or provider of output service as the case may be, shall be taken of an amount determined as per the following formula:

Amount of CENVAT Credit that shall be taken in a financial year = Service Tax paid on the charges payable for the assignment of the right to use / No. of Years for which the rights have been assigned

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year:

Provided also that CENVAT credit of annual or monthly user charges payable in respect of any service by way of assignment of right to use natural resources shall be allowed in the same financial year in which they are paid.”;

5. In rule 6 of the said rules,-

(a) for sub-rule (1), the following shall be substituted, namely:-

- “(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

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

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.

Explanation 3. – For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a ‘service’ as defined in section 65B(44) of the Finance Act, 1994.

Explanation 4. – Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.”;

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

- “(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.”;

- (c) for sub-rule (3), the following sub-rule shall be substituted, namely:-

- “(3) (a) A manufacturer who manufactures two classes of goods, namely :-
(i) non-exempted goods removed;
(ii) exempted goods removed;

or

- (b) a provider of output service who provides two classes of services, namely:-
- (i) non-exempted services;
 - (ii) exempted services,

shall follow any one of the following options applicable to him, namely :-

- (i) pay an amount equal to six *per cent.* of value of the exempted goods and seven per cent. of value of the exempted services subject to a maximum of the total credit available in the account of the assessee at the end of the period to which the payment relates; or
- (ii) pay an amount as determined under sub-rule (3A):

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

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven *per cent.* of the value so exempted :

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two *per cent.* of value of the exempted services.

Explanation 1.- 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 2.- No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Explanation 3.- For the purposes of this sub-rule and sub-rule(3A),-

- (a) “non-exempted goods removed” means the final products excluding exempted goods manufactured and cleared upto the place of removal;
- (b) “exempted goods removed” means the exempted goods manufactured and cleared upto the place of removal;
- (c) “non-exempted services” means the output services excluding exempted services.”;

(d) for sub-rule (3A), the following sub-rule shall be substituted, namely :-

“(3A) For determination of amount required to be paid 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) 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 number 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 inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided ;

(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 final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely:-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called

eligible credit, denoted as B, and shall not be required to be paid;

- (iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-

$$C = T - (A + B);$$

Explanation.- Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

- (iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

$$D = (E/F) \times C;$$

where E is the sum total of –

- (a) value of exempted services provided; and
 - (b) value of exempted goods removed,
- during the preceding financial year;

where F is the sum total of-

- (a) value of non-exempted services provided,
 - (b) value of exempted services provided,
 - (c) value of non-exempted goods removed, and
 - (d) value of exempted goods removed,
- during the preceding financial year:

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty *per cent.* of the common credit;

- (v) remainder of the common credit shall be called eligible common credit and denoted as G, where,-

$$G = C - D;$$

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall

provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

- (vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen *per cent.* per annum;
- (c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-
- (i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A(Annual);
- (ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);
- (iii) common credit left for further attribution shall be denoted as C(Annual) and calculated as, -

$$C(\text{Annual}) = T(\text{Annual}) - [A(\text{Annual}) + B(\text{Annual})];$$

- (iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, -

$$D(\text{Annual}) = (H/I) \times C(\text{Annual});$$

where H is sum total of-

- (a) value of exempted services provided; and
 - (b) value of exempted goods removed;
- during the financial year ;

where I is sum total of -

(a) value of non-exempted services provided,
(b) value of exempted services provided,
(c) value of non-exempted goods removed; and
(d) value of exempted goods removed;
during the financial year;

- (d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, $[\{A(\text{Annual}) + D(\text{Annual})\} - \{(A+D) \text{ aggregated for the whole year}\}]$, where the former of the two amounts is greater than the later;
- (e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen *per cent.* per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;
- (f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, $[\{(A+D) \text{ aggregated for the whole year}\} - \{A(\text{Annual}) + D(\text{Annual})\}]$, where the former of the two amounts is greater than the later;
- (g) the manufacturer of the 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 the provisions of clauses (d), (e) and (f), the following particulars, namely :-
- (i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);
- (ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);

- (iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;
 - (iv) interest payable and paid, if any, determined as per the provisions of clause (e); and
 - (v) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.”
- (e) after sub-rule (3A), the following sub-rules shall be inserted, namely:-
 - “(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, *mutatis-mutandis* in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of fifteen *per cent.* per annum from the due date for payment of amount for each of the month, till the date of payment thereof.
 - (3AB) Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses (c), (d), (e), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30th June, 2016.” ;
- (f) for sub-rule (3B), the following sub-rule shall be substituted, namely:-
 - “(3B) A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.”;
- (g) for sub-rule (4), the following sub-rule shall be substituted, namely:-
 - “(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise

leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year:

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.”.

- (h) in sub-rule (7), after the words “when a service is exported”, the words “or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India” shall be inserted with effect from 1st March, 2016.

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

“7. Manner of distribution of credit by input service distributor.-The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :—

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;
- (c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;
- (d) the credit of service tax attributable as input service to all the units shall be distributed to all the units *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;
- (e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;
- (f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall

be distributed amongst the units excluding the outsourced manufacturing units.

Explanation.-The provision of this clause shall, *mutatis-mutandis*, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016;

- (g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

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

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

Provided that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

Explanation 3.- For the purposes of this rule, the ‘relevant period’ shall be, -

- (a) if the assessee has turnover in the ‘financial year’ preceding to the year during which credit is to be distributed for month or quarter, as the case maybe, the said financial year; or;
- (b) if the assessee does not have turn over for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

Explanation 4.- For the purposes of this rule, “outsourced manufacturing unit” means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.”.

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

“7B. Distribution of credit on inputs by warehouse of manufacturer. - (1) A manufacturer having one or more factories, shall be allowed to take credit on

inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of such inputs.

- (2) The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, *mutatis mutandis*, apply to such warehouse of the manufacturer. ” .
8. In rule 9 of the said rules, in sub-rule (1), in clause (a), in sub-clause (i), for the words “a manufacturer for clearance of” the words “a manufacturer or a service provider for clearance of”, shall be substituted.
9. For rule 9A of the said rules, the following sub-rule shall be substituted, namely:-
- “9A. Annual return.- (1) A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board.
- (2) The provisions of rule 12 of the Central Excise Rules, 2002, in so far as they relate to annual return shall, *mutatis-mutandis*, apply to the annual return required to be filed under this rule.”.
10. In rule 14 of the said rules, sub-rule (2) shall be omitted.

[F.No.334/8/2016-TRU]

(Mohit Tewari)
Under Secretary to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, notification No. 23/2004 - Central Excise (N.T.), dated the 10th September, 2004 vide, number G.S.R. 600(E), dated the 10th September, 2004 and last amended, vide, notification No. 02/2016- Central Excise (N.T.), dated the 3rd February, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide, number G.S.R. 142(E) , dated the 3rd February, 2016.