

CENVAT CREDIT UNDER SERVICE TAX

1.1. CENVAT Credit

In order to remove the cascading effect of excise duty and service tax, the Excise Duty paid on the inputs, capital goods and input services, which are used in or in relation to the manufacture of final product or for providing output services is permissible to be set-off against the excise duty liability on the final products or paying service tax under the CENVAT Credit Rules, 2004. These rules have been notified to regulate the availment and utilization of the CENVAT credit.

1.1.1. Availability of Cenvat credit

Rule 3 of Cenvat Credit allows the credit of the following duties and taxes to the **provider of output service**:

- the duty of excise specified in the First Schedule to the Excise Tariff Act
Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods—
 - in respect of which the benefit of an exemption under Notification No.1/2011-CE, dated the 1st March, 2011 is availed; or
 - specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CE, dated the 17th March, 2012 is availed;
- the duty of excise specified in the Second Schedule to the Excise Tariff Act
- the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
- the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001;
- the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004;
- the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007
- the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via)
- additional duty of excise leviable under section 157 of the Finance Act, 2003
- service tax leviable under section 66, 66A and 66B of the Finance Act, 1994
- Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004
- Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007
- additional duty of excise leviable under section 85 of Finance Act, 2005

Service provider cannot avail credit of Additional duty of Customs

It is pertinent to mention that it has been specifically provided in Rule 3(1) (viiia) that the provider of a taxable service cannot take credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.

1.1.2. Utilisation of available Cenvat credit

The Cenvat credit so available can be used for the following purposes to a service provider:

- an amount equal to Cenvat credit taken on inputs if such inputs are removed as such or after being partially processed
- an amount equal to the Cenvat credit taken on capital goods if such capital goods are removed as such
- service tax on any **output service**

1.1.3. Conditions for availing Cenvat credit on Inputs

Cenvat Credit in respect of inputs may be taken by the provider of an output service without any restriction of receipt in his premises. It is further provided that in case documentary evidence of delivery and location of inputs is required to be maintained.

What is Input

Rule 2(k) of Cenvat Credit rule, 2004 defines input as follows:

“input” means—

- (i) *all goods used in the factory by the manufacturer of the final product; or*
- (ii) *any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or*
- (iii) *all goods used for generation of electricity or steam for captive use; or*
- (iv) *all goods used for providing any output service;*

but excludes—

- (A) *light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;*
- (B) *any goods used for -*
 - (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*
 - (b) *laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;*
- (C) *capital goods except when used as parts or components in the manufacture of a final product;*
- (D) *motor vehicles;*
- (E) *any goods, such as food items, goods used in a guest house, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and*
- (F) *any goods which have no relationship whatsoever with the manufacture of a final product*

Explanation.—For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

1.1.4. Conditions for availing Cenvat credit on Capital Goods

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.

What is Capital Goods

Rule 2(a) of Cenvat credit rules 2004, defines capital goods as:

“capital goods” means:—

- A. *the following goods, namely:—*
- i. *all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;*
 - ii. *pollution control equipment;*
 - 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; and*
 - viii. *motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers, used—*
 1. *in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or*
 - 1A. *outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or*
 2. *for providing output service,*
- B. *motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-*
 - (i) *providing an output service of renting of such motor vehicle; or*
 - (ii) *transportation of inputs and capital goods used for providing an output service;*

or

 - (iii) *providing an output service of courier agency*
- C. *motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-*
 - (i) *transportation of passengers; or*
 - (ii) *renting of such motor vehicle; or*
 - (iii) *imparting motor driving skills*
- D. *components, spares and accessories of motor vehicles which are capital goods for the assessee”*

1.1.5. Conditions for availing Cenvat credit on Input Services

Cenvat Credit in respect of inputs may be taken by the provider of an output service without any restriction of receipt in his premises. It is further provided that in case documentary evidence of delivery and location of inputs is required to be maintained.

What is Input Services

Rule 2(l) of Cenvat Credit rule, 2004 defines input services as :

“input service” means any service,—

- (i) used by a provider of output service for providing an output service; or*
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes,—

- (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for—*
 - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or*
 - (b) laying of foundation or making of structures for support of capital goods,*
except for the provision of one or more of the specified services; or
- (B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or*
- (BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by—*
 - (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
 - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or*
- (C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;*

1.1.6. Eligible documents for claiming CENVAT Credit :

- Original or Duplicate Invoice,
- Dealer’s Invoice,
- Bill of Entry,
- Supplementary Invoice,
- A certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office,

- A challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii) and (v) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1944,
- An invoice, bill or challans issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

1.1.7. CENVAT Credit on following Inputs & Input services not allowed :

- Goods on which 1% excise duty is paid [proviso to Rule 3(i)].
- Goods and services used for civil construction are not eligible, except when used for construction itself.
- Rent-a-cab service, Insurance of Motor Vehicles, Repair of Motor Vehicles not eligible, except where Motor Vehicle is eligible as 'capital goods'
- Architect and Construction services for building, civil structure, laying of foundation or structures for capital goods – except when used for construction itself
- Canteen, Club Membership of Employees, Insurance of Employees, LTA of Employees – not eligible.

1.1.8. Conditions on availment of Cenvat credit in case of provider of both Taxable and exempt Services

A service provider can be providing taxable services completely, or exempt services completely, or both. The availability of Cenvat Credit shall be provided in the following manner:

Type of services provided	Treatment of Cenvat credit
All exempt services	No Cenvat credit available
All taxable services provided	All eligible credit on inputs, input services and capital goods available
Both taxable as well as exempt services provided	Cenvat Credit available as per Rule 6(3) of Cenvat Credit Rules, 2004

Exempted Goods

Rule 2(d) of Cenvat Credit rule, 2004 defines exempted goods as:

“exempted goods” means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “Nil” rate of duty goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE, date the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-CE, dated the 17th March, 2012 is availed;

Exempted Services

Definition of exempted services has been amended w.e.f. July 1, 2012. The new definition reads as follows:

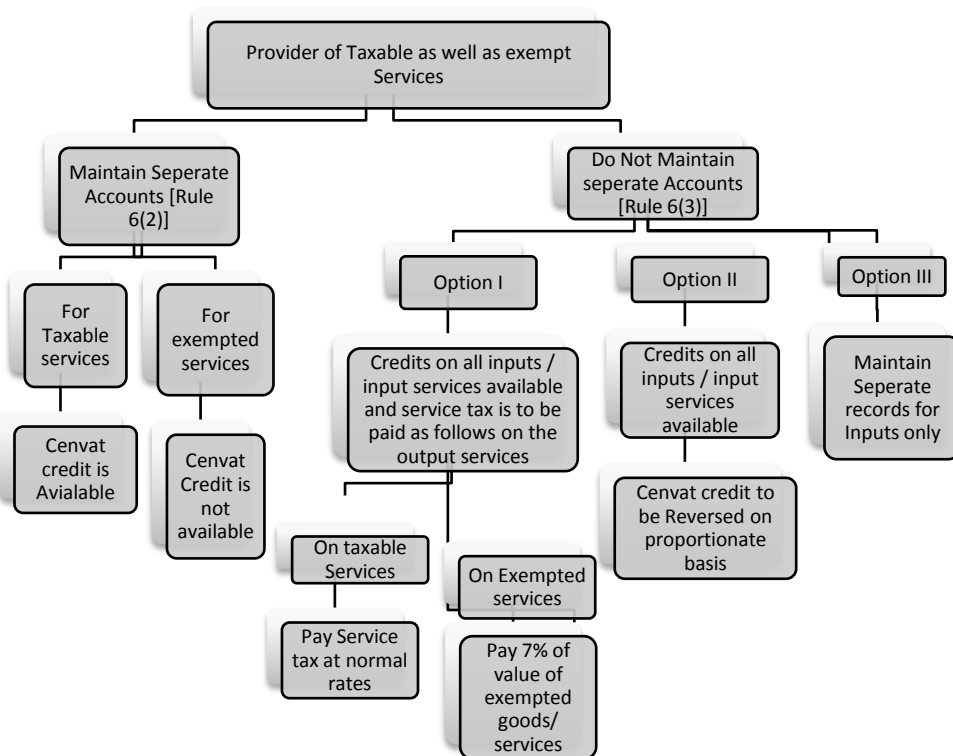
“(e) “exempted service” means a-

- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.”

Exempted services includes Trading (as trading is specified in Negative list – Section 66D).

Options available to provider of both taxable as well as exempted Services:



Options under Rule 6(3) –not maintaining separate accounts

Under Rule 6(3), an output service provider using inputs or input services both for exempted as well as taxable services and opting not to maintain separate records in respect of utilization of such input goods and services can opt for any one of the following:

- i. Pay an amount equal to 7% (6% prior to June 1, 2015) (5% prior to April 1, 2012) of the value of the exempted services or 6% on value of exempted goods, as the case may be and avail all available Cenvat credit.

OR

- ii. Pay an amount equivalent to the Cenvat credit attributable to inputs and input services used for the provision of exempted services. Rule 6(3A) prescribes the conditions and procedure to determine the amount of Cenvat credit attributable to exempted services.

OR

- iii. Avail specific credit in respect of Inputs by maintaining separate accounts for inputs and avail proportionate Cenvat Credit in respect of Input services and not maintaining separate records for Input Services

Availability of Cenvat Credit on Capital goods used in the provision of both taxable as well as exempted services

The provisions for availability of Cenvat credit in respect of Capital goods used for providing both taxable as well as exempted services is explained by way if following diagram:

