

**CENVAT CREDIT**

**INTRODUCTION:**

The concept of CENVAT credit was introduced with an intention to avoid cascading effect of taxes. The Central Value Added Tax [CENVAT] allows the credit of the duty paid on the inputs and capital goods and service tax paid on input services, which is to be utilized for the payment of excise duty on final products or service tax on output services.

**FEATURES:**

- No one-to-one correlation required between input/input services and final product/output service.
- Excise duty and Additional duty of customs paid on Inputs and capital goods and service tax paid on Input services used in or in relation to the manufacture of final product or rendering output service are eligible for credit.
- No credit shall be allowed in respect of Basic Customs duty paid on inputs or capital goods.
- No credit shall be allowed if the final product or out put service are wholly exempted.
- CENVAT credit shall be allowed only on the basis of specified duty paying documents.
- Credit of excise duty shall be allowed only on receipt of inputs and/or capital goods in the premises of manufacturer or provider of output service irrespective of the fact whether payment is made or not.
- Credit of service tax on input services shall be allowed only on making of payment to service provider.
- Credit of duty paid on capital goods shall be allowed to the extent of 50% in the year of receipt of capital goods and balance in subsequent years subject to the availability of possession of said capital goods. However, 100% of the duty component shall be allowed as credit in the first year if the capital goods are in the nature of tools, dies, jigs, etc.

**DEFINITION AND ANALYSIS OF DEFINITION OF INPUT SERVICE:**

As per section 2(l) of CENVAT Credit Rules, 2004, the term "Input Service" ***means*** any service:

- a. used by the provider of taxable service for providing output service.
- b. Used by the 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***:

- a. services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises
- b. services relating to advertisement, sales promotion, market research, storage up to the place of removal, procurement of inputs.
- c. Services used in relation to inward transportation of inputs and capital goods and outward transportation up to the place of removal.
- d. Activities relating to business **such as** accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security.

The term "Input Service" is broadly in two parts – first i.e., main part and second i.e., inclusive part. First part of the definition is restrictive in scope and covers all services directly or indirectly used in providing output service or used in relation to manufacture or clearance of final products. However, second part of the definition expands the scope much beyond the coverage of first part.

The general rule to be applied while deciding on the eligibility of credit of tax paid on a particular service is:

"I am eligible to take credit unless someone reasonably proves as to why I shouldn't take it".

The inclusive part of the definition widens the scope given by exhaustive definition of the first part. It has been held by 3 member large bench of CESTAT – Bangalore in *ABB Limited case* that each of the above list is an independent benefit/concession. Each item in the list has to be read individually and if any service fits into the scope of any item above, the same shall be treated as input service notwithstanding the conditions mentioned in other items of the list.

#### **WHETHER OUTWARD TRANSPORTATION UPTO CUSTOMER PLACE CAN BE DEEMED AS INPUT SERVICE?**

The issue arises since the definition of input service specifically includes outward transportation up to the place of removal. However, It has been held by larger bench of Bangalore tribunal that all the items in the inclusive definition are distinct and are to be read accordingly. The Item (d) above uses the term "activities relating to business". There is no further restriction that activities relating to business should be relating to only main activities or essential activities of the business. Therefore, the definition of "Input Service" has to be interpreted in the light of requirements of the business and cannot be read restrictively so as to confine only up to the place of removal. All the services relating to business will qualify as input service.

However, in the case of *Gujarat Ambuja Cements Limited*, the tribunal held that outward transportation of goods is not an input service and, therefore, not eligible for credit. Credit beyond the point of removal of goods would be contrary to the scheme of Cenvat Credit Rules, 2004.

Since there is an anomaly over the interpretation of the scope of definition of input service, it is necessary to ensure that the outward transportation service is *prima facie* classified as input service. Following conditions are to be satisfied before classifying outward freight as input service:

- Goods are sold on FOB basis.
- Ownership of goods remain with the seller till delivery at customer's doorstep.
- Transit insurance is borne by the assessee.
- Property in goods is not transferred till the delivery at doorsteps of the customer.
- Cost of transport is included in the assessable value of the goods.