

## A Convoluted Attempt to understand 'Input Services' – Apr 10, 2011

**Tax Management India.Com**

**A Convoluted Attempt to understand 'Input Services'**

**By: Mr. SUBRAMANI SIVAKUMAR**

When I first read the revised definition of 'Input Services', I was shattered. I thought, most of the employee linked input services would go out of the cenvat credit scheme. The Legislature has, however been very kind to the assesses and the consultants, alike, by using highly confusing terms and phrases and giving ample scope, for beneficial interpretation of these provisions.

I would confine myself to the exclusion provided in Clause (C) of Rule 2(I) which has incorporated the new definition for 'input service': but excludes services,-

(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 centre, 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;"

The critical part of the definition lies in the exclusion part contained in clause (C) of the definition. The words that draw one's attention here, are 'primarily' and 'personal'. Per se, it looks like, when the input service is used primarily for personal use or consumption of any employee, it would not be treated as an 'input service' for purposes of availment of cenvat credit.

Being inquisitive, I tried to get some dictionary meanings for the word 'primary' from the Net, some of which are given below:

From [www.answers.com](http://www.answers.com):

**'Primary' is an adjective, which means the following:**

- First or highest in rank, quality, or importance; principal
- Being or standing first in a list, series, or sequence.
- Occurring first in time or sequence; earliest.
- Being or existing as the first or earliest of a kind; primitive.

As per [www.businessdictionary.com](http://www.businessdictionary.com), 'primary' means that which is 'ranked first in importance'.

As per <http://ardictionary.com/>, 'personal' means 'of or pertaining to a particular person; relating to, or affecting, an individual, or each of many individuals; peculiar or proper to private concerns; not public or general; as, personal comfort;'

It does then, seems that, when the service is used mainly for the personal use or consumption of the employees, it would cease to be an input service, for purposes of

availment of cenvat credit. By applying the principles of ejusdem generis, we would need to read the word 'consumption' following the words 'personal use' as

Meaning 'personal consumption'. Unfortunately, it is very difficult to understand what the Government is actually seeking to do. However, Para 1.9 of the TRU Circular dated 28-2-2011, reproduced below, does throw some light:

1.9 On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.

When one reads the statutory provisions, in conjunction with the TRU Circular, the view that one gets is that, whatever input service, which the employees can use as a matter of right, forming part of the Cost to Company compensation, cannot confer the benefit of cenvat credit on the employer. By contrast, whatever services that the employer provides to the employees, on a voluntary basis, which do not form part of the CTC, would constitute input services, for cenvat credit purposes. Thus, mediclaim insurance costs, personal accident costs, life insurance costs, etc., which are not treated as part of the CTC, will qualify as input services, in my view, if these are not treated as part of the CTC package. Even, canteen services provided to the employees, would qualify as input services, if the employer does not recover the costs from the employees, in which case, it would not form part of the CTC remuneration.

Can an employer avail of cenvat credit, of the service tax paid to a fitness centre, which his employees are allowed to take benefit of? In my view, credit is available, so long as the employer does not treat this cost, as part of the CTC remuneration of the employees and the employees are not entitled to this benefit, as a part of the employment contract.

CTC is a concept, which is widely used in the IT Industry and most remuneration packages are decided on the basis of the CTC. While some Companies include most of the direct and indirect costs incurred for and on behalf of the employees in the CTC sheet, many others and especially, the MNCs, don't. From a legal perspective, if a cost incurred by the Company is treated as part of the CTC by the employer, then the employee gets a legal right to claim that benefit, as part of the employment contract. On the other hand, if the employer extends some benefits on a voluntary basis, the employee gets no legal right to enjoy that benefit.

Going forward, it seems that, the employer is not barred from availing of cenvat credit in respect of services which he has provided to his employees on a voluntary basis and

the costs pertaining to which, do not form part of the CTC package of the employees. Some of the services in respect of which cenvat credit can be claimed, on this basis, are canteen services, fitness centre services, medi-claim insurance costs, life insurance costs, personal accident insurance costs, club membership costs, etc. A further argument to this view would be to say that services such as canteen services, club membership services, etc. are also meant for being used for the assessor's customers and other business associates and it cannot be said that, these services are 'primarily' used by the employees.

**Before concluding...**

A good understanding of the wonderful English language and especially, its grammar is now, a pre-requisite for understanding and interpreting the cenvat credit provisions, in the light of the new definitions

The new definition for 'input services' could lead to highly subjective situations. How can the employer prove that the input services received by him are not 'primarily' used for the personal use of the employees? Or, for that matter, how will the Department prove that the canteen was used primarily by the employees, for their personal use? Is the employer required to keep a log book containing details of the people who have eaten food in the canteen, on a day to day basis? Is there a possibility of cenvat credit being denied on a proportionate basis, to an extent that the input service is attributable to the personal use by the employees?

Many IT Companies that I consult for, have 'employed' a lot of Consultants, as contrasted to employees and there is hardly any difference between the Company employees and the Consultants and their outsourced manpower. Almost, all of the Company's facilities including canteens, fitness centers, etc. are open to the Company employees as well as the outsourced staff/Consultants. Can a view be taken that, the expenses incurred for Consultants are not to be denied cenvat credit, as the new definition only talks of 'employees'?

There is little doubt that the new definitions would bring a lot of professional opportunities for Advocates and Consultants, as cenvat credit related litigation is bound to grow manifold.

**Dated: – April 10, 2011**