

CENVAT Credit to be availed within 6 months – a draconian development : 11-07-2014



By S Sivakumar, LL.B, FCA, FCS, ACSIMBA, Advocate

IN what could be termed a draconian development, Rule 4(1) of the CENVAT Credit Rules, 2004 is proposed to be amended with effect from September 1, 2014 to provide that the manufacturer or the service provider should avail of CENVAT credit of the duty paid on inputs or the service tax paid on input services, within 6 months from the date of the relevant document specified in Rule 9(1) of the CCR, 2004, eg. Invoice. The proviso to Rule 4(7), in terms of which, the service recipient who has taken CENVAT credit on the basis of the receipt of the documents referred to rule 9(1) of the CCR, 2004 is required to reverse the credit if the payment is not made within 3 months of the date of the input invoice, etc. stands.

As we know, there is no time limit, as of now, under the central excise law, for availment of CENVAT credit. Courts have held that, in the absence of a time limit prescribed under law, credit can be taken even at a later stage and in some cases, assesseees have been allowed to avail of credit, even after some years. This benefit is gone now, with the proposed amendment, fixing the time limit for credit availment, at 6 months from the date of the invoice, etc.

A combined reading of these sub-rules of Rule 4 makes it clear that, the assessee needs to meet the following two conditions for availment of CENVAT credit, on a cumulative/parallel basis, viz.

++ Credit to be availed within 6 months of the date of the input invoice

++ While credit can be availed on receipt of the invoice pertaining to input service, payment will have to be effected within 3 months from the date of the invoice, failing which, the credit availed should be reversed.

Assume a case, where the assessee actually receives the service provider's invoice dated September 1, 2014 on January 31, 2015. While the assessee can avail of credit on January 31, 2015 on receipt of the input invoice, he would still have to effect the payment for the value of the input service on or before February 28, 2015, as the last date for availment of credit in this case, is February 28, 2015, i.e. 6 months from the date of the input invoice. In other words, the benefit of 3 months' time frame for payment of the value of the input service, vis-à-vis availment of CENVAT credit, would be subject to the overall limit

of 6 months fixed for availment of credit by the new amendment. We do not have a similar provision under the VAT laws, fixing a time frame for availment of input tax credit. Further, availment of input tax credit is not linked to the payment for the purchase of inputs.

The proposed amendment, in respect of the reverse charge mechanism, in terms of which, the point of taxation in respect of services would be the date of the payment by the service receiver or the first day after 3 months of the date of the invoice, whichever is earlier, appears draconian, to say the least. Due to this amendment, the liability under RCM would get triggered on the earlier of, the date of payment of the invoice by the service recipient or the 91 st day from the date of the invoice. Prior to this amendment, the service recipient had a time frame of 6 months to effect the payment, failing which, the point of taxation was reckoned as the date of the invoice.