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SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

New Delhi, the 1<sup>st</sup> March, 2011

Notification No. 3/2011-Central Excise (N.T.)

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. (a) These rules may be called the CENVAT Credit (Amendment) Rules, 2011.  
(b) Save as otherwise provided in these rules, they shall come into force on the 1st day of April, 2011.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2,-
  - (i) in clause (a), in sub-clause (A), after item (1), the following shall be inserted, namely:-  
“(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or”;
  - (ii) in clause (d), after the words “ rate of duty”, the words “and goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1<sup>st</sup> March, 2011 is availed” shall be inserted with effect from the 1<sup>st</sup> day of March, 2011;
  - (iii) in clause (e), after the words and figures “ section 66 of the Finance Act”, the following shall be inserted, namely:-  
“and taxable services 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.

*Explanation.*- For the removal of doubts, it is hereby clarified that "exempted services" includes trading” ;

- (iv) for clause (k), the following shall be substituted, namely:-

‘(k) “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 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 any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance 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 guesthouse, 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;’;

(v) for clause (l), the following shall be substituted, namely:-

‘(l) “input service” means any service, -

(i) used by a provider of taxable 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 modernisation, 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 services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction 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) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; 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 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;’;

(vi) for clause (naa), the following shall be substituted with effect from the 1<sup>st</sup> day of March, 2011, namely:-

‘(naa) “manufacturer” or “producer”,-

(i) in relation to articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;’;

3. In rule 3 of the said rules,-

(i) in sub-rule (1),-

(a) after clause (i) the following shall be inserted with effect from the 1<sup>st</sup> day of March, 2011, namely:-

“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 1<sup>st</sup> March, 2011 is availed;”;

(b) after clause (vii), the following shall be inserted with effect from the 1<sup>st</sup> day of March, 2011, namely:-

“Provided that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;”;

(ii) in sub-rule (4),-

(a) after the first proviso, the following shall be inserted with effect from the 1<sup>st</sup> day of March, 2011, namely:-

“Provided further that CENVAT credit shall not be utilised for payment of any duty of excise on

goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1<sup>st</sup> March, 2011 is availed:”;

(b) in the second proviso, for the word “further”, the word “also” shall be substituted with effect from the 1<sup>st</sup> day of March, 2011;

(iii) in sub-rule (5),-

(a) after the first proviso, the following shall be inserted , namely:-

“Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products:”;

(b) in the second proviso, for the word “further”, the word “also” shall be substituted;

(iv) in sub-rule (5B), for the words and letters “on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account then”, the words and letters “on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then” shall be substituted with effect from the 1<sup>st</sup> day of March, 2011;

4. In rule 4 of the said rules,-

(i) in sub-rule (2), in clause (a), after the words “provider of output service” the words, “or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory,” may be inserted;

(ii) after sub-rule (7), the following shall be inserted, namely:-

‘Provided that if any payment or part thereof, made towards an input service is returned, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount proportionate to the CENVAT credit availed in respect of the amount so returned.

Explanation I.- The amount mentioned in this sub-rule, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this sub-rule, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rule (7) shall be read respectively as “following quarter” and “quarter ending with the month of March”.’;

5. In rule 6 of the said rules,-

(i) for the marginal heading, the following shall be substituted, namely:-

“Obligation of a manufacturer or producer of final products and a provider of taxable service”

(ii) in sub-rule (1), for the words “input or input service which is used in the manufacture of exempted goods or for provision of exempted services”, the words “input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service 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” shall be substituted;

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

“(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for-

(a) the receipt, consumption and inventory of inputs used-

- (i) in or in relation to the manufacture of exempted goods;
- (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
- (iii) for the provision of exempted services;
- (iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services-

- (i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;
- (ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;
- (iii) for the provision of exempted services; and
- (iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).”;

(iv) in sub-rule (3),-

(a) for the word “either”, the words “ any one” shall be substituted;

(b) for clauses (i) and (ii), the following shall be substituted, namely:-

“(i) pay an amount equal to five per cent. of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:

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 five per cent. of the value so exempted.”;

(c) for Explanation II, the following shall be substituted, namely:-

“*Explanation II.*- For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.

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

(v) in sub-rule (3A),-

(a) in clause (b), in sub-clause (iii), after the words “manufacture of exempted goods”, the words “and their clearance up to the place of removal” shall be inserted;

(b) in clause (c), in sub-clause (iii), after the words “manufacture of exempted goods”, the words “and their clearance up to the place of removal” shall be inserted;

(vi) after sub-rule (3A), the *Explanations I, II and III* shall be omitted;

(vii) after sub-rule (3A), the following shall be inserted, namely-

‘(3B) Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.

(3C) Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to twenty per cent. of the CENVAT credit availed on inputs and input services in that month.

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

Explanation I. - “Value” for the purpose of sub-rules (3) and (3A),-

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made there under or, as the case may be, the value determined under section 3, 4 or

4A of the Excise Act, read with rules made thereunder.

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the purchase price of the goods traded.

Explanation II. - The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV.- In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, “following month” and “month of March” occurring in sub-rules (3) and (3A) shall be read respectively as “following quarter” and “quarter ending with the month of March”.’;

(viii) sub-rule (5) shall be omitted;

(ix) after sub-rule (6), the following shall be inserted with effect from the 1<sup>st</sup> day of March, 2011, namely:-

“(6A) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.”.

6. In rule 9 of the said rules, in sub-rule (7), in the proviso, for the words “twenty days”, the words “ten days” shall be substituted with effect from the 1<sup>st</sup> day of March, 2011.

[F. No. 334/3/2011-TRU]

  
(SAMAR NANDA)

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), dated the 10<sup>th</sup> September, 2004, vide notification No. 23/2004-Central Excise (N.T.), dated the 10<sup>th</sup> September 2004, [G.S.R. 600(E), dated the 10<sup>th</sup> September, 2004] and last amended vide notification No. 29/2010-Central Excise (N.T.), dated 24<sup>th</sup> September, 2010 [G.S.R. 778(E), dated the 24<sup>th</sup> September, 2010].

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