

Utilisation of Accumulated CENVAT Credit

File No.137/72/2008-CX.4
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi

Dated : November 21, 2008

Subject : Utilization of accumulated CENVAT credit restricted in terms of Erstwhile Rule 6 (3) (c) CENVAT Credit Rules, 2004 - reg.

Kindly refer to your letter C.No.715/Hqrs/Audit/08 dated 20/11/2008 on the subject mentioned above wherein the issue of utilization of accumulated CENVAT credit has been raised.

The matter has been examined and the following points emerged during its consideration,-

Prior to 1.4.2008 [before the amendment in rule 6 (3)] the option available to the taxpayer, under rule 6(3), was that, he was allowed to utilize credit only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service. However, there was no restriction in taking CENVAT credit and also there was no provision about the periodic lapse of balance credit. This resulted in accumulation of credit in many cases.

W.e.f. 01.04.2008, under the amended rule 6(3), the following options are available to the taxpayers not maintaining separate accounts;

(i) Option No.1 - In respect of exempted goods, he may pay an amount equal to 10% of the value of exempted goods; and in respect of exempted/non taxable services, he may pay an amount equal to 8% of the value of such exempted/non-taxable service

OR

(i) Option No.2 - He may pay an amount equivalent to CENVAT Credit attributable to inputs and input services attributable to exempted goods

and non-taxable/exempted services.

As stated earlier, many taxpayers had accumulated CENVAT credit balance as on 01.04.2008. The matter to be considered was whether this credit balance should be allowed to be utilized for payment of service tax after 01.04.2008.

As no lapsing provision was incorporated and that the existing Rule 6(3) of the CENVAT Credit Rules does not explicitly bar the utilization of the accumulated credit, the department should not deny the utilization of such accumulated CENVAT credit by the taxpayer after 01/04/2008. Further, it must be kept in mind that taking of credit and its utilization is a substantive right of a taxpayer under value added taxation scheme. Therefore, in the absence of a clear legal prohibition, this right cannot be denied.

Pending issues may be decided accordingly.

GAUTAM BAHTTACHARYA
Commissioner (Service Tax)