Service Tax Credit Rules, 2002

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In exercise of the powers conferred by clause (ee) of sub-section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement :-

(1) These rules may be called the ServiceTax Credit Rules, 2002.

(2) They shall come into force on the 16th day of August, 2002.

2. Definitions :-

(1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "output service" means any taxable service rendered by the service provider to a customer, client, subscriber, policy holder or any other person, as the case may be;

(c) "input service" means any taxable service received and consumed by a service provider in relation to rendering of output service;

3. Service tax credit :-

(1) An output service provider shall be allowed to take credit (hereinafter referred to as service tax credit) of the service tax paid on such input services, which fall in the same category of taxable service as that kof output service, for which invoice/bill is issued on or after sixteenth day of August, 2002.

(2) For the purposes of these rules, two services shall be deemed to be falling in the same category of taxable service, if the input service and output service fall in the same sub-clause of clause (90) of Section 65 of the Finance Act, 1994 :

Provided that the taxable services defined in sub-clause (zm) and (zp) of clause 90 of Section 65 of the Finance Act, 1994 shall be deemed to be falling within the same category. Illustration:

(i) A photography studio in course of providing photography services avails service of processing labs for developing and processing of exposed film and printing of photographs. In this case service provided, by the colour lab to photography studio and by the photography studio to a customer, both fall in the same category of service i.e. photography service. Therefore, photography studio is entitled to take credit of service tax paid by the processing lab.

(ii) A stevedore hires dock labour from the port trust and provides such labour to his client. In the case the service provided, by the port trust to stevedore and by stevedore to client, both fall in the category of port service. Therefore, stevedore is entitled to take credit of service tax paid by the port trust.

(iii) An advertising agency may avail services of a photography studio and or a sound recording studio and/or a video tape production agency during the course of rendering service to it's client. Service provided by the photography studio or the sound recording studio or the video tape production agency, as the case may be, does not fall in the category of advertising agency service. Therefore, advertising agency is not entitled to take credit of service tax paid by a photography studio or a sound recording studio or a video tape production agency.

(3) No service tax credit shall be allowed on input service received and consumed in relation to rendering of such output service which is exempt from whole of the service tax leviable thereon.

4. Utilisation of service tax credit :-

(1) The service tax credit availed on input service may be utilised for payment of service tax on the output service.

(2) Refund of service tax credit availed on input service shall not be allowed under any circumstance.

5. Documents and accounts :-

(1) The service tax credit shall be availed on the basis of an invoice or bill or challan issued by the service provider of. input service on or after 16th day of August, 2002, indicating clearly the serial number of document, date of issue, description and value of the input service, the service tax paid/payable, service tax registration No. and address of input service provider.

(2) The output service provider availing service tax credit shall take reasonable steps to ensure that the input services in respect of which he has availed the service tax credit are the service on which the service tax, as indicated in the documents on the basis of which credit is availed, has been paid.

Explanation: The output service provider availing service tax credit shall be deemed to have taken reasonable steps, if he satisfies himself about the identity and address of the input service provider, issuing the documents on the basis of which the service tax credit is availed and that the details regarding description and value of input service received by him has been furnished correctly in the documents.

(3) The output service provider availing service tax credit shall maintain proper records in which the relevant information regarding the SI. No. and date of document on which service tax credit is availed, service tax registration No. and name of the input service provider, description and value of input service, service tax credit availed, service tax credit utilised for payment of service tax on output service shall be recorded. The burden of proof regarding the admissibility of service tax credit shall lie upon the person taking such credit.

(4) The output service provider availing service tax credit shall submit to the Superintendent of Central Excise, a return in the form annexed to these rules along with the Form ST-3 as specified in rule 7 of the Service Tax Rules, 1994.

6. Recovery of service tax credit :-
Where the service tax credit has been wrongly availed or utilised or service tax has not been paid by the input service provider for any reason, whatsoever, such credit along with interest shall be recoverable from the person availing such service tax and the provisions of Section 73 OF THE Finance Act, 1994 Section 75 OF THE Finance Act, 1994 S.76 FinanceAct, 1994and Section 78 of

the Finance Act, 1994 shall apply mutatis mutandis for effecting such recoveries.