

## **CENVAT Credit Rules, 2001**

### CONTENTS

1. Short title, extent and commencement
2. Definitions
3. CENVAT credit
4. Conditions for allowing CENVAT credit
5. Refund of CENVAT credit
6. Obligation of manufacturer of dutiable and exempted goods
7. Documents and accounts
8. Transfer of CENVAT credit
9. Transitional provision
10. Special dispensation in respect of inputs manufactured in factories located in specified area of North East region and Kutch district of Gujarat
11. Power of Central Government to notify goods for deemed CENVAT credit
12. Recovery of CENVAT credit wrongly taken
13. Confiscation and penalty

## **CENVAT Credit Rules, 2001**

In exercise of the powers conferred by Sec. 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules, namely:

### **1. Short title, extent and commencement :-**

.

- (1) These rules may be called the CENVAT Credit Rules, 2001.
- (2) They extend to the whole of India.
- (3) They shall come into force on and from the 1st day of July, 2001.

### **2. Definitions :-**

. In these rules, unless the context otherwise requires,

(a) "Act" means the Central Excise Act, 1944 (1 of 1944).

(b) "capital goods" means,

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act;

- (ii) components, spares and accessories of the goods specified at (i) above;
  - (iii) moulds and dies;
  - (iv) refractories and refractory materials;
  - (v) tubes and pipes and fittings thereof;
  - (vi) pollution control equipment; and
  - (vii) storage tank, used in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office;
- (c) "exempted goods" means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;
- (d) "final products" means excisable goods manufactured or produced from inputs, except matches;
- (e) "first stage dealer" means a dealer who purchases the goods directly from,
- (i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise (No. 2) Rules, 2001 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or
  - (ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;
- (f) "input" means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, collants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1. The high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2. Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

(g) "manufacturer or "producer" in respect of goods falling under Chapter 62 of the said First Schedule shall include a person who is

liable to pay the duty of excise leviable on such goods under sub-rule (3) of Rule 4 of the Central Excise (No. 2) Rules, 2001;

(h) "Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(i) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

(j) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

### **3. CENVAT credit :-**

(1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT CREDIT) of

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under Sec.3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under Sec. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under Sec. 136 of the Finance Act, 2001 (14 of 2001); and

(vi) the additional duty leviable under the Sec.3 of Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above, paid on any inputs or capital goods received in the factory on or after the first day of July, 2001, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified, in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number GSR 547(E), dated the 25th March, 1986, and received by the manufacturer for use, in or in relation to, the manufacture of final products, on or after the first day of July, 2001.

Explanation For the removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit

of additional duty leviable under Sec. 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under heading No. 98.01 of the First Schedule to the said Customs Tariff Act, 1975 .

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

(3) The CENVAT credit may be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such :

Provided that while paying duty, the CENVAT credit shall be utilised only to the extent such credit is available on the fifteenth day of a month for payment of duty relating to the first fortnight of the month, and the last day of a month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by notification based on value of clearances in a financial year, for payment of duty relating to the entire month.

(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under Section 4 or Section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in Rule 7.

(5) The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4).

(6) Notwithstanding anything contained in sub-rule (1),

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured,

(i) in a free trade zone or a special economic zone and used in the manufacture of the final products in any other place in India; or

(ii) by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software Technology Park and used in the manufacture of the final products in any place in India, shall be restricted to the extent which is equal to the additional duty leviable on like goods under Sec. 3 of the Customs

Tariff Act, 1975 (51 of 1975) paid on such inputs or capital goods:

(b) CENVAT credit in respect of

(i) the additional duty of excise under Sec. 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(ii) the additional duty of excise under Sec. 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(iii) the National Calamity Contingent duty under Sec. 136 of the Finance Act, 2001 (14 of 2001); and

(iv) the additional duty under 4. 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise specified under clauses (i), (ii) and (iii) above,

section 136 of the Finance Act, 2001 (14 of 2001) respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed;

(c) The CENVAT credit, in respect of additional duty leviable under Sec. 3 of the Customs Tariff Act, 1975 (51 of 1975), paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Tariff Act shall be allowed to the extent of thirty rupees per square metre :

(d) The CENVAT credit of the duty paid on the inputs shall not be allowed in respect of texturised yarn (including draw-twisted or draw-wound yarn) of polyesters falling under heading No. 54.02 of the First Schedule to the Tariff Act, manufactured by an independent texturiser, that is to say, a manufacturer engaged in the manufacture of texturised yarn (including draw-twisted or draw-wound yarn) of polyesters falling under heading No. 54.02, who does not have the facility in his factory (including plant and machinery) for manufacture of partially oriented yarn of polyesters falling under sub-heading No. 5402.42 of the First Schedule to the Tariff Act.

Explanation. Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non-availability of credit of duty paid on any input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of these rules.

#### **4. Conditions for allowing CENVAT credit :-**

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer:

Provided that in respect of final products falling under Chapter 62 of the First Schedule to the Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who gets such final products manufactured on his account on job work subject to the condition that such inputs are used in the manufacture of such final products by the job worker.

(2)

(a) The CENVAT credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year;

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, if the capital goods, other than components, spares and accessories, refractories and refractory materials and goods falling under heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act, hire in the possession and use of the manufacturer of final products in such subsequent years.

Illustration. A manufacturer received machinery on April 16, 2001 in his factory CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2001-2002, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer claims as depreciation under Sec. 32 of the Income-tax Act, 1961 (43 of 1961).

(5)

(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or

memos or any other document produced by the assessee taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory.

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.

(6) The Commissioner of Central Excise having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job worker may, by an order, which shall be valid for a financial year, in respect of removal of such inputs or partially processed inputs, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

#### **5. Refund of CENVAT credit :-**

. Where any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette :

Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995 , or claims a rebate of duty under the Central Excise (No. 2) Rules, 2001, in respect of such duty.

#### **6. Obligation of manufacturer of dutiable and exempted**

**goods :-**

.

(1) The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).

(2) Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.

(3) The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:

(a) if the exempted goods are,

(i) tyres of a kind used on animal drawn vehicles or handcarts and their tubes, falling within Chapter 40 of the First Schedule to the Tariff Act;

(ii) newsprint, in rolls or sheets, falling within heading No. 48.01 of the said First Schedule;

(iii) final products falling within Chapters 50 to 63 of the said First Schedule, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to eight per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

Explanation. The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer by debiting the CENVAT credit or otherwise.

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is

granted based upon the value or quantity of clearances made in a financial year.

(5) The provisions of sub-rule (1), sub-rule (2), sub-rule (3) and sub-rule (4) shall be applicable in case the exempted goods are either

(i) cleared to a unit in a free trade zone; or

(ii) cleared to a unit in a special economic zone; or

(iii) cleared to a hundred per cent. export-oriented undertaking; or

(iv) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(v) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated 28th August, 1995; or

(vi) cleared for export under bond in terms of the provisions of the Central Excise (No. 2) Rules, 2001.

## **7. Documents and accounts :-**

.

(1) The CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely:

(a) an invoice issued by

(i) a manufacturer for clearance of

(I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) Inputs or capital goods as such;

(III) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise (No. 2) Rules, 2001;

(iv) a first stage dealer or a second stage dealer, in terms of the provisions of Central Excise (No. 2) Rules, 2001;

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise (No. 2) Rules, 2001 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where

the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under Sec. 3 of Customs Tariff Act, 1975 (51 of 1975) has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty;

(c) a bill of entry.

(2) The manufacturer or producer taking CENVAT credit on inputs or capital goods shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken the CENVAT credit are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

Explanation. The manufacturer or producer taking CENVAT credit on inputs or capital goods received by him shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier, as the case may be, issuing the document specified in Rule 7, evidencing the payment of excise duty or the additional duty of customs, as the case may be, either

(a) from his personal knowledge; or

(b) on the strength of a certificate given by a person with whose handwriting or signature he is familiar; or

(c) on the strength of a certificate issued to the manufacturer or the supplier, as the case may be, by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or the supplier has his place of business,

(3) The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(4) The manufacturer of final products shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or

capital goods have been purchased is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer taking such credit,

(5) The manufacturer of final products shall submit within five days from the close of each month to the Superintendent of Central Excise, a monthly return in the form annexed to these rules.

Explanation. In respect of a manufacturer availing of any exemption based on the value or quantity of clearances in a financial year, the provisions of this sub-rule shall have effect in that financial year as if for the expression "month", the expression "quarter" was substituted.

### **8. Transfer of CENVAT credit :-**

.

(1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(2) The transfer of the CENVAT credit under sub-rule (1) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Commissioner.

### **9. Transitional provision :-**

.

(1) Any amount of credit earned by a manufacturer under the Central Excise Rules, 1944 as they existed prior to the 1st day of July, 2001 and remaining unutilised on that day shall be allowable as CENVAT credit to such manufacturer under these rules, and be allowed to be utilised in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs before such option is exercised, shall be required to pay an amount

equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or used in any final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

**10. Special dispensation in respect of inputs manufactured in factories located in specified area of North East region and Kutch district of Gujarat :-**

. <sup>1</sup> Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999, No. 33/99-Central Excise, dated the 8th July, 1999 or No. 39/2001-Central Excise, dated the 31st July, 2001, the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.]

1. Substituted by the Notification No. F. 356/2/2001-TRU (No. 58/2001-Central Excise (N.T.)), dated 31.7.2001, published in the Gazette of India, Extraordinary, Part II-Sec. 3(i), No. 391, dated 31.7.2001 at page 9, vide G.S.R. 567(E).

**11. Power of Central Government to notify goods for deemed CENVAT credit :-**

. Notwithstanding anything contained in Rule 3, the Central Government may, by notification in the Official Gazette declare the inputs on which the duties of excise, or additional duty of customs paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow CENVAT credit of such duty deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

**12. Recovery of CENVAT credit wrongly taken :-**

. Where the CENVAT credit has been taken or utilized wrongly, the

same along with interest shall be recovered from the manufacturer and the provisions of Sees. 11-A and 11-AB of the Act shall apply mutatis mutadis for effecting such recoveries.

**13. Confiscation and penalty :-**

(1) If any person, takes CENVAT credit in respect of inputs or capital goods, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods has been paid as indicated in the document accompanying the inputs or capital goods specified in Rule 7, or contravenes any-of the provisions of these rules in respect of any inputs or capital goods, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit has been taken or utilized wrongly on account of fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of Sec.11-AC of the Act.

(3) Any order under sub-rule (1) or sub-rule (2) shall be issued by the Central Excise Officer following the principles of natural justice.