

**OFFICE OF THE CHIEF COMMISSIONER,
CUSTOMS, CENTRAL EXCISE & SERVICE TAX, NAGPUR ZONE,**

Post Box No. 81, Telengkhedi Road, Civil Lines, Nagpur.

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**MINUTES OF MEETING OF THE REGIONAL ADVISORY COMMITTEE, NAGPUR ZONE
HELD ON 09th JANUARY, 2017**

A meeting of the Regional Advisory Committee (RAC) of Nagpur Zone was held on 09.01.2017 at 15.00 Hrs at Central Excise Office, Civil Lines, Nagpur which was presided over by Shri A.K. Pandey, Chief Commissioner of Customs, Central Excise & Service Tax, Nagpur Zone, Nagpur and was attended by the following Members :-

1. Sh. Anand Khandelwal, CA, Nagpur Chamber of Commerce, Nagpur
2. Sh. Swapnil Ghate, CA, Institute of Chartered Accountants of India, Nagpur Chapter, Nagpur.
3. Sh. Amit S. Agrawal, CA, Institute of Chartered Accountants of India, Nagpur Chapter, Nagpur.
4. Sh. Praful Doshi, Vidarbha Industries Association, Nagpur.
5. Sh. Shelendra Manawat, Vidarbha Industries Association, Nagpur.
6. Sh. Ashish C. Saoji, MIDC Industries Association, Amravati.
7. Sh. Krishnamohan, MIDC Industries Association, Chandrapur.
8. Sh. Sudhir Agarwal, CHA Association, Nagpur.
9. Sh. A. Prasad, CHA Association, Nagpur.
10. Sh. John Andrew, Western Coalfields Ltd., Nagpur.
11. Sh. B. A. Gavane, Nasik Industries & Manufacturers Association, Nasik.

2. Following Departmental Officers were also present :-

1. Shri Sanjay Rathi, Commissioner, Audit-I, Nagpur.
2. Shri Ashish Chandan, Commissioner, Nagpur-II and Wardha Commissionerate.
3. Shri A. J. Verma, Additional Commissioner (CCO), Nagpur Zone, Nagpur.
4. Shri Rakesh Deepak, Joint Commissioner, Nagpur-II & Wardha Commissionerate.
5. Shri Pradip Gurusurthy, Deputy Commissioner (CCO), Nagpur Zone, Nagpur.
6. Shri B. C. Agrawal, Assistant Commissioner (CCO), Nagpur Zone, Nagpur.

3. The Chief Commissioner welcomed all the members of the RAC, present in the meeting. Thereafter, the following Agenda Points were taken up for discussion:-

**(A) POINTS SPONSORED BY CA ANAND KHANDELWAL, NAGPUR CHAMBER OF
COMMERCE LIMITED, NAGPUR**

POINT NO. 1

Time Limit for taking Cenvat credit in normal cases and in reverse charge:

As per proviso to rule 4(1) and sixth proviso to rule 4(7) of Cenvat Credit Rules (inserted w.e.f. 1.09.2014), Cenvat Credit must be taken within six months from date of issue of any duty paying documents (invoice, bill of entry, GAR-07 challan etc. as applicable)

What happens if payment is made to service provider after 6 months for the bills belonging to period prior to 01.03.2014 ?

As in many cases it is possible that assesses may pay to service provider after 6 months (12 months) for above referred bills and in that case, can he take cenvat credit on the basis of payment and not on the basis of original invoice, if not then it will be burden on the assessee as any amendments in law should be prospective and not retrospective.

Answer: - Proviso (3) to rule 4(1) of Cenvat Credit Rules so far as relates to inputs, reads as under:-

[**Provided** also that the manufacturer or the provider of output service shall not take CENVAT credit after [one year] of the date of issue of any of the documents specified in sub-rule (1) of rule 9.]

Proviso (5) of sub-rule 4(7) so far as it relates to input services are relevant:-

[**Provided** also that the manufacturer or the provider of output service shall not take CENVAT credit after [one year] of the date of issue of any of the documents specified in sub-rule (1) of rule 9 [, except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource :]]

(i) In view of the above provisions, the manufacturer or the provider of output service who is liable to pay service tax shall take credit within six months/one year from the issue of documents prescribed under rule 9(1) of the Cenvat Credit Rules 2004. Availment of credit in respect of these entities has nothing to do with payment of bill by manufacturer or service provider to respective input supplier or input service provider.

(ii) However, in case of services where the recipient of service is liable to pay service tax under reverse charge mechanism, proviso(1) to Rule 4(7) of the Cenvat Credit Rules 2004 is relevant which reads as under:-

[**Provided** that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:

Thus in such cases where the recipient of service makes the payment of service tax, he may take credit after payment of service tax but within one year of payment of such service tax.

(iii) In view of the above legal provisions, it is clear that Credit is to be taken within one year of issue of the documents as prescribed under Rule 9(1) of Cenvat Credit Rules 2004 both in the case of inputs and input services subject to other provisions of Rule 4 of Cenvat Credit Rules 2004.

Now coming to the query specifically raised, credit will not be admissible as on date in respect of the invoices issued prior to 01.03.2014 as the period of one year has also been over on 28/02/2016. However, in case where the recipient of service is liable to pay tax under RCM, in such cases, credit is admissible within one year of payment of service tax.

POINT NO.2

In case of availing **Common Input Service** used in both taxable / non taxable service & exempted / dutiable goods:

a) Whether the Liability calculated under Rule 6(3) of the Cenvat Credit Rules 2004 can exceed the amount of Common Input Credit availed?

Answer: - (a) In this context, the provision of clause (i) of Rule 6(3) is self explanatory which reads as under:-

As per the provisions of clause (i) of Rule 6(3), the liability to pay an amount equal to six *per cent.* of value of the exempted goods and seven *per cent.* of value of the exempted services is subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period; or].

(b) When an assessee has not intimated in writing to the Department as per Rule 6(3A), can assessee take the benefit of Proportionate method of payment of Duties and Taxes for the Previous period by intimating the Department on current date ?

Answer:-In this context also, the provisions of Rule 6(3AA) of Cenvat Credit Rules 2004 is self explanatory which reads as under:-

[(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, *mutatis-mutandis* in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of fifteen *per cent.* per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

POINT NO.3

Cenvat Credit on Rent-a-Cab Services:

Denying CENVAT credit on service of rent-a-cab is favourite to revenue officers. For the period upto 01.04.2011, courts/tribunals allowed the credit. However with advent of specific exclusion in the definition of 'Input service' so as to disallow the credit on rent-a-cab services, most of the assessee's became ineligible for the credit from the year 2011 onwards.

The relevant part of input service' definition reads below:

"(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods"

Thus the eligibility is linked with definition of 'capital goods' and in short, credit of rent-a-cab is eligible if the cab is capital goods.

And the relevant parts of 'capital goods' definition reads as under (as relevant to cab/motor vehicle):

"(C) Motor vehicle designed to carry passengers including their chassis, **registered in the name of the provider of service**, when used for providing output service of –

- (i) Transportation of passengers; or
- (ii) Renting of such motor vehicle; or
- (iii) Imparting motor driving skills;"

From the above, it seems that the eligibility of Capital Goods (including registration) shall be seen in the hands of person providing the service of 'cab rental' and not in the hands of person receiving the service.

In view of the above, please clarify whether service Tax credit can be availed towards hiring of motor vehicle used in business (i.e. for employee's in the factory, services hired at site (project/O&M) etc.)

Answer:-

Such credit is not allowed as the same is specifically excluded from the definition of 'input services' in terms of clause (B) to Rule 2(l) of the Cenvat Credit Rules 2004.

POINT No.4 SPONSORED BY SHRI SHELENDRA MANAWAT, VIDARBHA INDUSTRIES ASSOCIATION, NAGPUR

Redemption of CT-1 and Proof of Export are not being processed for want of certain documents which are not being made available by various authorities at various stages, due to which the re-credit of the Bond amount gets effected. The Assistant Commissioner who are looking into these matter's have to read and follow the CBEC manual 2015-16, Chapter 7 – Export Without Payment of Duty and has also to follow the Supplementary Instruction issued on 17th May, 2015.

"Para 13.7 clearly states as under :- In case of any loss of document, the Divisional Officer or the bond accepting authority may get the matter verified from the Customs authorities at the place of export or may call for collateral evidences such as remittance certificate, Mate's receipt etc. to satisfy himself that the goods have actually been exported."

In view of such clear instruction, it is requested to please issue clear guidelines to the field formation so that the Redemption of CT-1 take place at the earliest without any hassle.

Answer:- The Assistant Commissioners designated as Maritime Commissioner are directed to follow the instructions on Export without payment of Duty in general and the

procedure relating to export and re-credit against such proof of export in particular. As this is an individual grievance, the jurisdictional officer may be contacted.

Point No.5:- Disparity in the amount of rebate allowed under Notification No.39/2012-ST dated 20.6.12 as amended and Notification No.41/2012-ST dated 29.6.12.

Notification prescribes allowance of rebate of Swachh Bharat Cess as also the Krishi Kalyan Cess vide amending Notifications No.3/2016-ST dated 3.2.16 and 29/2016-ST dated 26/5/2016. The rebates of such cess are not allowed under the Notification No.41/2012-ST dated 29.06.2012 and omission of such amendments in the Notification No.41/2012-ST is unintended. It was requested to resolve the issue and instruct the field formation dealing with such claims.

Answer: - This issue is being taken up with CBEC.

POINT NO. 6:- SPONSORED BY SHRI B. A. GAVANE OF NASHIK INDUSTRIES & MANUFACTURER'S ASSOCIATION

- (i) **Show Cause Notices issued to Pvt Limited Companies where Full Time Directors are regular employees of the Companies. They are paid salaries like any other employees.**

Answer: (i) On this issue attention is invited to the Point No. 2 of the Minutes of the Meeting of the RAC held on 21.09.2016, which is reiterated as under :

*"The CBEC has issued Notification No. 45/2012-ST dated 07.08.2012, amending the Notification No. 30/2012-ST dated 20.06.2012, as per which "Taxable services provided or agreed to be provided **by a director of a company or a body corporate to the said company or the body corporate**" the recipient of said service is required to pay service tax. With effect from 07.08.2012, services provided by the director to the company will be covered under the reverse charge mechanism.*

*Service provided by Managing and Whole-time Directors/Executive Directors **(those who are under employment with the Company)** are governed by the exclusion clause contained in the definition of 'service' under Section 65B(44) which provides that service provided by employees to their employers in the course of or in relation to employment are exempt from service tax. Service provided by Part-time/Expert/Independent/Nominee directors, etc., **(those who are not under employment with Company)**, are in the nature of providing their professional/expert services to the company. Hence, the said Services would be chargeable to Service tax under Reverse charge by the Company w.e.f. 07.08.2012".*

- (ii) **It is requested to hold RAC meeting at Commissionerate level.**

Answer:- RAC Meetings are to be convened on a quarterly basis under the Chairmanship of the Zonal Chief Commissioner. In respect of the Zones covering Commissionerates in different cities, the Chief Commissioner may, in his discretion, hold the RAC meetings at different Commissionerate Headquarters in terms of Board's Circular No. 953/14/2011 issued under F. NO. 282/5/2008-CX.9(pt) dated 12.09.2011. The possibility of Chief Commissioner holding such RAC meetings at Nashik/Aurangabad is being explored.

- (iii) **It is requested that the frequency of Personal Hearing at Nashik may be increased for Appeals from Nashik.**

Answer:- Presently, Commissioner (Appeals), Nagpur is holding Personal hearings at Nashik and Aurangabad and the disposal of cases is very good. Depending on workload, direction will be issued to Commissioner (Appeals), to increase the frequency of hearing at Nashik and Aurangabad.

POINT No.7:- RAISED BY SHRI VISHAL KULKARNI, M/S ENDURANCE TECHNOLOGIES LIMITED, AURANGABAD

It is requested to give appropriate directive guidelines in respect of the applicability of Service Tax on Directors remunerations, particularly in two types of cases -

- (i) where Directors are employees of the company;

(ii) Where Directors are not employees of the company.

Also give directions related to the documents to be considered for establishing employee-employer relationship between the Company & Directors.

Answer: In case, where the Directors are employee of the Company, no Service tax is payable having the employer-employee relationship. In second situation where the Directors are not the employee of the Company, Service Tax will be payable on the remuneration received by them.

The documents required for establishment of the employee-employer relationship between the Company & Directors may be the Letter of appointment, Form-16 issued by the Company indicating the deduction of income tax at source, the provident fund contribution slips etc. The list is only illustrative and not exhaustive. Any other documents establishing the relationship of employee-employer between the Company & Directors may also be taken into consideration.

The Chairman requested the members to raise any other issue. However, no further issues were raised by the members present. The meeting concluded with the vote of thanks by the Chief Commissioner, Nagpur Zone, Nagpur.

AJ Verma
22/3/17

(A J VERMA)
ADDITIONAL COMMISSIONER
CHIEF COMMISSIONER OFFICE,
NAGPUR ZONE

F. No. I(22)4/RAC/CCU/NZ/2012/Pt.II/ ²⁶³⁰ Nagpur, Dt. .03.2017

To,

All the Members of RAC, Nagpur Zone

Copy to :-

The Director General, Directorate General of Taxpayers Services, C. R. Building, I. P. Estate, New Delhi-110 109.

The Ombudsman, Office of the Indirect Tax, Ombudsman, Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.

The Principal Commissioner / Commissioner, Central Excise Nagpur-I/Nagpur-II/Wardha/Nasik-I/Nasik-II and Aurangabad, with a request to give vide publicity.

✓ The Assistant Commissioner (Systems), Central Excise, Customs & Service Tax, Nagpur-I Commissionerate, Nagpur for uploading the Minutes of RAC on official website.

AJ Verma
23/3/17

(A J VERMA)
ADDITIONAL COMMISSIONER
CHIEF COMMISSIONER OFFICE,
NAGPUR ZONE