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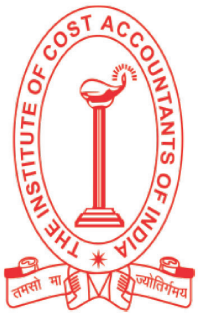
GUIDANCE NOTE ON ANTI PROFITEERING

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

Guidance Note on Anti Profiteering



The Institute of Cost Accountants of India
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Message from President

The main aim of GST, which Prime Minister Narendra Modi termed as Good and Simple Tax, is to simplify the taxation process, reduce the burden of taxes (which will eventually happen automatically) and ensure compliance of tax payment.

The GST law contains a unique provision relating to anti - profiteering measure vide section 171 of CGST Act. The idea is that the taxable person should pass on the benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to the customer as reduction in prices.

Anti-profiteering rules are needed as lessons learnt from other countries show that there has been inflation and prices have increased after GST implementation. For example, Singapore saw a hike in inflation when it introduced GST in 1994. It makes it more important for Indian administrators to keep tabs on prices after implementation of GST. India is doing what many countries did: initiate anti-profiteering measures at the retail level to protect consumers from price swindling.

I firmly believe that the Cost and Management Accountants will play a pivotal role under section 66(1) of the CGST Act. The organizations can also undertake voluntary audit by the Cost Accountants with respect to benefits received due to implementation of GST. Training and awareness programs on anti-profiteering provisions can also be conducted by Cost Accountants.

I wish the efforts of the contributors to be a big success.

CMA Sanjay Gupta
Date: 27th January, 2018

Message from Vice - President

Goods and Services Tax (GST) is a reformatory legislation which is a single tax on the supply of goods and services, right from the manufacturer to the consumer. In order to become a more economically developed nation, we need a transparent, equitable and fair taxation system that is easy to administer.

It gives me immense pleasure to share that the Institute has come out with the "Revised Edition on Guidance Note on Anti - Profiteering" to provide necessary information and guidance to Cost Accountants. The comprehensive guidance note deals with the provisions under GST Act and covers topics on various taxes Subsumed in GST and Cesses Abolished, Pre and Post GST factors to be considered while comparing, Pre Packaged Commodities and GST, Anti - Profiteering Rules, Input Tax Credit , Role of Cost Accountants under such rules.

I would like to acknowledge the hard work of the eminent contributors CMA Dr. Sanjay Bhargave, CMA V S Datey, CMA Amit Sarker, CMA S P Padhi & CMA B M Gupta for their efforts and support in releasing this guidance note.

I am very sure that that this Guidance note will not only benefit the professionals and practicing Cost Accountants but also to Government Departments, Regulators, Industrial Houses, Banks and Financial Institutions.

CMA H Padmanabhan
Date: 27th January, 2018

Message from Chairman, Professional Development, Banking and Insurance committee

I am very happy to share with you "Revised Guidance Note on Anti - Profiteering". I hope that the ready resource will be beneficial for the professionals, industry and stakeholders dealing with provisions under GST Act.

The Anti-Profiteering committee will decide on some rules and guidelines to make sure that the GST benefits, in the form of low tax rates and input tax credits, reach the end consumers.

As per the anti-profiteering form released by the government, the complainant will have to file the application form before the standing committee on anti-profiteering for pan-India complaints or before the state screening committees if the profiteering is of a local nature.

Consumers looking to file complaints against businesses for not passing on benefits of lower taxes in the goods and services tax (GST) regime will have to furnish details of the price of the product and the applicable tax rates both in the pre and post GST era. The government has released the Anti-Profiteering Application Form (APAF - 1) using which a complaint can be filed by a consumer of goods or services before the anti-profiteering committee.

I am delighted to note that the revised booklet is comprehensive and will serve the stakeholders with very good knowledge and information.

CMA Amit Anand Apte
Date: 27th January, 2018

Message from Chairman Taxation Committee

It gives me immense pleasure to present before you that "Revised Guidance note on Anti Profiteering" I am sure, this publication would be a ready resource for professionals, industry and other stakeholders.

With initial teething issues concerning the rollout of the GST law being addressed by the Government in an expedited manner at every GST Council meeting, the focus is now shifting to implementation of Anti-Profiteering measures. This is a new concept being tried out for the first time and is claimed as a major tax reform. The intention is to make it sure that whatever tax benefits are allowed, the benefit of that reaches the ultimate customers and is not pocketed by trade.

With states also simultaneously constituting Screening Committees combined with a deadline of 2 years that has been set for the NAA, the expectation is that industries will have to face a fresh onslaught of investigations where their pricing policies will be reviewed to ensure the benefit of reduced rates and input tax credit have been passed on to the recipients.

Further it is crucial for each industry to toe the line by keeping track of the ever-changing GST rates for services and goods. Most The Government expects reduction in GST rates to result in a commensurate lowering of sales price to the customer.

I express my sincere thanks to CMA Dr. Sanjay Bhargave, CMA V S Datey, CMA Amit Sarker, CMA S P Padhi & CMA B M Gupta for the solemn effort and support to publish this guidance note in time.

CMA Niranjan Mishra
Date: 27th January, 2018

PREFACE

This is an honour to introduce the Revised Edition of Guidance Note on Anti Profiteering. The first edition was published on 14th November, 2017. After carrying on in-depth research on the subject of Anti Profiteering, our eminent experts have revised the booklet. The booklet contains background on introduction of GST in India, input & input services, Pre Packaged Commodities and GST, Anti Profiteering Rules, Role of Cost Accountants, Format for filing complaint etc. The subject matter in the book is segregated in different chapter & one of the important chapters amongst all is the '**Role of Cost and Management Accountants**'.

Anti-Profiteering rules are set of rules which prevent entities from making excessive profits due to the GST. Since the introduction of GST, along with the input tax credit, is eventually expected to bring down prices, a National Anti-profiteering Authority (NAA) has been set up to ensure that the benefits that accrue to entities due to **reduction in costs** is passed on to the consumers. Also, entities that hike rates inordinately, citing GST as the reason, will be checked by this body.

Now, there is a question "What Factors need to be kept in mind for deciding whether there is actual reduction in costs or not?"

The answer of the above question can be effectively given by a Cost and Management Accountant.

This book describes the important role a Cost and Management Accountant can play by virtue of their professional knowledge.

A CMA possesses quality skill required to ensure that the objective of implementation of GST in the Country is achieved by helping the authorities to frame proper mechanism to ensure reduction in costs due to implementation of GST is passed on to the consumers.

We are confident that this revised guidance note will support to achieve the true objective of laws and provisions framed under the Act and will be referred by stakeholders for various assistance.

Further, we would like to acknowledge the sincere efforts put by CMA Dr. Sanjay Bhargave, CMA V S Datey, CMA Amit Sarker, CMA S P Padhi & CMA B M Gupta. Without their sincere efforts this accomplishment could not have been possible.

Tax Research Department

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Team-Tax Research Department

CMA Rajat Kumar Basu
Joint Director, Tax Research
CMA Rashmi Gupta
Deputy Director -Tax Research
Ms. Debjani Mukherjee
Tax Consultant
CMA Priyanka Roy
Asst Director- Tax Research
CMA Amit Dey
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CMA Debasmita Jana
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CMA Niranjan Swain (Co-opted)

Secretary
CMA Rajat Kumar Basu

Team-Tax Research Department

CMA Rajat Kumar Basu
Joint Director, Tax Research

CMA Rashmi Gupta
Deputy Director -Tax Research

Ms. Debjani Mukherjee
Tax Consultant

CMA Priyanka Roy
Asst Director- Tax Research

CMA Amit Dey
I-CMA Cadre

CMA Debasmita Jana
Tax Consultant

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Chapter - 1

Background

The structure of indirect taxes in India , till 30th June 2017 was based on the three lists in Seventh Schedule to Constitution of India i.e Union List, State List and Concurrent List wherein powers of the Central Government, State Governments and Local Bodies were unambiguously defined. These lists were mostly based on Government of India Act,1935 and therefore were based on the situation prevailing in 1935. The structure became outdated due to changes in situations, technology etc.

1.1. Major defects in earlier structure of indirect taxes.

Following can be summarized as major defects in structure of indirect taxes, as existing upto 30.06.2017.

- Central Sales Tax (CST) was payable @ 2% for every movement of goods from one State to other. Even in case of stock transfers or branch transfers, there is incidence of tax as input service credit (set off) of input taxes was not fully available.
- Cascading effect of taxes could not be avoided due to CST and Entry Tax. State Vat was payable on Central Excise element also.
- Movement of goods in European Union (EU) is free across all countries without any incidence of tax. However, in India, movement of goods from one State to other was not tax free due to entry tax.
- India did not have a national market due to invisible barriers of Central Sales Tax, Entry Tax and State Vat and visible barriers of check posts.
- Millions of man-hours and truck hours were lost at check posts. Besides, huge corruption is involved.
- Central Government could not impose tax on goods beyond manufacturing level. State Government could not impose Service Tax.
- Over the years, distinction between goods and services had become hazy, due to

which there is overlapping of State Vat and Central Service Tax on transactions like works contract, food related services (restaurants, outdoor catering, mandap services), Software, IPR Related services, lottery, SIM cards, operating lease / renting of goods etc.

- Same transaction was taxed both by Central and State Government which created confusion, litigation and double taxation in many cases.
- Each State had its own State Vat Laws with different provisions, different Vat rates different forms and different procedures. Thus, taxable person having business in more than one States found it extremely difficult to keep pace with tax laws of each State.

1.2 To overcome the above mentioned defects and following the worldwide trend of Goods and Service Tax (GST), the Government of India also, as a part of Tax Reform process , moved to GST on 1st July 2017. As per Statement of Objects and Reasons appended to One Hundred and First Constitution Amendment Bill, the object of GST is

(a) to have common market, and

(b) avoid cascading effect of taxes.

1.3 The major defects in the earlier tax system are expected to be removed in the GST system. Following are the major features of the GST:

- One Nation, One Tax-Uniformity in tax rates and structures
- No Different Valuation basis
- No Different Adjudications
- Reduction in Cascading of Taxes. – Seamless flow of input tax credit.
- Common Economic Market – Hassel free movement of goods – No entry tax.
- GST being a consumption based tax – equity embedded.
- No ambiguity under GST as against prevailing Service Tax & VAT in case of Restaurant Services, Works Contract, Right to use of Movable goods, Software and IPR
- No ambiguity under GST as against prevailing Excise & Service tax for Drawings and Designs, Software, Commissioning & Installation
- Change in Taxable Event in case of Excise from Manufacture/ Deemed Manufacture to "SUPPLY"
- Pruning of exemptions under earlier tax laws.

1.4 After implementation of GST, the taxpayers are able to avail Input Tax Credit in a much simpler form as compared to earlier Indirect Tax regime. The input tax

credit under GST has widened after implementation of GST as compared to other pre GST regime. As a business is expected to have increased credits as compared to other pre GST regime due to widening of the input tax credit provisions which, in turn, would lead to lowering of cost of products and services, it is expected from the businesses to pass on the benefits of cost savings to the consumers by reducing their prices of goods sold or services provided. Further, GST has also resulted in lowering the incidence of indirect taxes due subsuming of various indirect taxes applicable earlier and also on account of rationalization of rates.

1.5 Introduction of a new indirect tax regime across the world has witnessed an inflationary economy in certain cases. At the same time, introduction of an efficient and uniform structure brings benefits to the business houses in the form of additional tax credits, eliminating tax cascading and leading to reduction of tax indirect costs for doing business. It is with these objectives that Governments across the world have implemented anti profiteering provisions to deter the tendency of businesses enriching by way of retention of benefits or additional profits arising from an efficient indirect tax regime.

1.6 The Indian GST law contains a provision on anti-profiteering to curb the practice of enjoying unjust enrichment in terms of profit arising out of implementation of GST in India. The Governmentwants that GST should not lead to general inflation , as feared by the common man and for this it was necessary to set up a mechanism to ensure that benefits arising out of GST implementation are passed on to the customer.

1.7 Section 171 of the Central Goods and Services Tax Act, 2017 provides for Anti Profiteering measure. As per Sub Section 1 of Sec 171 of CGST ACT, 2017 ,"*Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*"

1.8 Thus it makes mandatory for every taxpayer to pass on the benefits arising out of following to the recipient of the goods or services or goods and services.

- Reduction of rate of tax on any supply of goods or services.
- Benefit of input tax credit

In addition to the above, a business is also mandated to reduce prices in case of tax credits claimed on transition stock. Thus, the GST law envisages that in case of additional credits claimed by a business, the benefit of such credit needs to be passed on to consumers by commensurate reductionin prices both at a holistic level and also in specific cases (deemed credits on transition stock).

Chapter 2 :

Taxes Subsumed in GST and Cesses Abolished

2.1 Following Central and State Taxes levied in old system are subsumed in GST

Central Taxes

- Central Excise Duty,
- Additional Excise Duties on Goods of special importance, Textile
- Countervailing Duty and Special Additional Duty levied under Customs Act.
- Excise Duty levied under the Medicinal and Toilet preparations (Excise Duties) Act, 1955.
- Service Tax,
- Central Surcharges and Cesses on Excise/Service tax

States Taxes

- State VAT/Sales Tax, Purchase Tax
- Entertainment tax (unless it is levied by the local bodies), Central Sales tax (levied by Centre and collected by States)
- Octroi and Entry Tax, Luxury Tax, Taxes on lottery, betting and gambling.
- State Surcharges and Cesses

2.2 Cesses Abolished Since 2015.

No.	S. No. Name of the Cess	Date of Abolition
1.	Education Cess on taxable services	01.06.2015
2.	Secondary & Higher Education Cess	01.06.2015
3.	Education Cess on excisable goods	Exempted with effect from 01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.

No.	S. No. Name of the Cess	Date of Abolition
4.	Secondary & Higher Education Cess on excisable goods	Exempted with effect from 01.03.2015. Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
5.	The Mica Mines Labour Welfare Fund Act,2016.	21.05.2016
6.	The Salt Cess Act, 1953	21.05.2016
7.	The Merchant Shipping Act, 1958	21.05.2016
8.	The Textile Committee Act, 1963	21.05.2016
9.	The Limestone and Dolomite Mines Labour Welfare Funds Act, 1972 [2 Cesses]	21.05.2016
10.	The Tobacco Cess Act, 1975	21.05.2016
11.	The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976 [3 Cesses]	21.05.2016
12.	The Cine-workers Welfare Cess Act, 1981	21.05.2016
13.	Cess on cement [by notification]	Exempted in 2016., Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
14.	Cess on strawboard [by notification]	Exempted in 2016. Abolishedy with effect from 01.07.2017 by the Taxation Laws (Amendment) Act, 2017.
15.	Research & Development Cess	01.04.2017
16.	The Rubber Act, 1947 – Cess on Rubber	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
17.	The Industries (Development and Regulation). Abolished with effect from Act, 1951, Cess on Automobile	01.07.2017 by the Taxation laws (Amendment) Act.
18.	The Tea Act, 1953 – Cess on Tea	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
19.	The Coal Mines (Conservation and Development) Act, 1974 – Cess on Coal	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
20.	The Bidi Workers' Welfare Cess Act, 1976 – Cess on Bidis	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.

No.	S. No. Name of the Cess	Date of Abolition
21.	The Water (Prevention and Control of Pollution) Cess Act, 1977 – Cess levied on water Consumed by certain industries and by Local authorities.	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
22.	The Sugar Cess Act, 1982, Cess on Sugar The Sugar Development Fund Act, 1982–	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act
23.	The Jute Manufacturers Cess Act, 1983 – Cess on jute goods manufactured or produced wholly or in part of jute	Abolished w.e.f. 01.07.2017 by the Taxation Laws (Amendment) Act.
24.	The Finance Act, 2010 – Clean Energy Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
25.	The Finance Act, 2015 – Swachh Bharat Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act.
26.	The Finance Act, 2016 – Infrastructure Cess and Krishi Kalyan Cess	Abolished with effect from 01.07.2017 by the Taxation Laws (Amendment) Act

As a result of the above multiple taxes being subsumed and abolition of cess which would impact cost of goods and services whether directly or indirectly, businesses are expected to witness an improvement in the cost structure of goods and or services supplied by them.

Chapter 3 :

Input and Input Service

Availability of input tax credit on goods and services for payment of output tax is one of the key features of GST. Input Tax Credit (ITC) provisions help in avoiding cascading effect of taxes. The input tax credit provisions under the central excise and service tax and GST are different. Input Tax credit provisions under GST are more liberal as compared to Cenvat Credit Rules. On comparison of the ITC provisions under Cenvat Credit Rules and GST, it can be seen that the scope of inputs, input service and capital goods is wider in GST. More ITC is allowed to taxpayers under GST.

Therefore it is important to understand the concept of inputs, input service and capital goods under Cenvat Credit Rules (CCR) and GST.

3.1 "Input" under CCR

As per Rule 2 (k) of Cenvat Credit Rules, 2004- 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 or execution of works contract 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 service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the 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;

3.2 Input as per GST

As per Sec. 2(59) of CGST Act, 2017, "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

3.3 Input Service as per CCR

As per Rule 2 (l) of Cenvat Credit Rules, 2004- "Input service" means any service,-

i) used by a provider of output service for providing an output service; or

ii) **used by the 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 modernization, 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. service portion in the execution of works contract and construction service including service listed under clause (b) of section 66E of the Finance Act in so far as they are used for –

a) Construction or execution of works contract of a building or a civil structure or 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. Services provided by way of renting of a motor vehicle, in so far as they relate to motor vehicle which is not a capital goods; or

BA.Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by – (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person or (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; 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;

3.4 Input service as per GST

As per Sec. 2 (60) of CGST, 2017 "Input Service" means any service used or intended to be used by a supplier in the course or furtherance of business;

3.5 Blocked credit as per GST

Sec 17 of CGST Act, 2017 restricts the scope of input, input service and capital goods.

Input tax credit is not admissible on the following Inputs and Inputs Services.

Input and input services:

(a) supply of goods or services or both, namely,

food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(b) works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service;

(c) goods or services received by a taxable person for construction of an immovable property (Other than Plant and Machinery) on his own account,

other than plant and machinery, even when used in the course or furtherance of business;

Explanation 1.- For the purpose of (c) & (d), the word "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

(d) goods on which tax has been paid under composition scheme

(e) goods used for personal consumption;

(f) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

"plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

3.6 Scope of "in the course or furtherance of business".

"In the course or furtherance of business "can be used synonymously to "in relation to business". The concept of "in relation to" has been discussed in series of decisions by Hon. Courts and Tribunals. For the ready reference few of them are given below.

- Hon. Supreme Court in the case of **Doypack Systems Pvt. Ltd. V/s UOI 1988 (036) ELT 0201 (S.C.),** held that the scope of words "in relation to" is very wide.
- In the case of **ABB Ltd. v. CCE (CEGAT Bangalore – 3 member large bench)** (Appeal No. ST/336/2007 decided on 18-5-2009) various aspects of definition of 'input service' have been clarified'. It has been held that any activity relating to business is 'input service' - There is no qualification to the word 'activities'. There is no restriction that activities relating to business should be relating to only main activities or essential activities. All activities relating to business fall within the definition of 'input service'. It was further held that Definition of input service' is not confined to 'manufacture' but has to be interpreted on basis of requirements of business - The definition of 'input service' has to be interpreted in the light of the requirements of business and cannot be read restrictively so as to confine only upto the factory or only upto depot of manufacturers.
- In the case of **CCE v. Ultratech Cement Ltd (2010) TIOL-745-HC-MUM-ST,** Hon Bombay High Court held that concept of Input Service extends to all services used in relation to the business of manufacturing the final product. The definition of "input service" is very wide and covers not only services,

which are directly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final product , be it prior to the manufacture of final products or after the manufacture of final product. To put it differently, the definition of input service is not restricted to services used in or in relation to the business of manufacturing the final product. ...

Thus in GST, scope of input and input service is wider than CCR. Any input or input service, barring the specific exclusion under Sec 17 of CGST Act, used in the course or furtherance of business shall be treated as "input" or "input service" for the purpose on ITC.

Chapter - 4

Pre GST and Post GST Factors to be considered while comparing

Following are the major areas, where the taxpayer will get benefit of input tax credit, which was not available under the subsumed tax laws.

4.1 Central Sales Tax.

Central Sales Tax was leviable on interstate transactions with respect to sale of goods. The taxpayer was not entitled to avail setoff of CST paid by him on his purchases. CST is subsumed in GST and now on interstate transactions Integrated GST (IGST) is leviable. The taxpayer is entitled to avail input tax credit of IGST paid by him on his inward supply of goods, services or goods and services. Effectively there will be direct reduction in landed cost of inward supplies.

4.2 Stock Transfers to Depots.

Since Customers were not ready to absorb cost of CST, many companies have opened depots in different states. At the time of stock transfers to depot outside the state, VAT/CST was not payable against form "F". However, set off of input tax was disallowed to taxpayer proportionate to value of interstate stock transfers. Now every interstate transaction including stock transfers will attract IGST. The input tax credit of IGST is available to tax payer. Therefore the disallowance of set off will not be a cost anymore.

4.3 Entry Tax, Octroi , Local Body Tax (LBT).

Some states were charging entry tax on goods. Similarly some local bodies such as municipal corporations were charging Octroi or Local Body Tax on the goods entering into the respective areas. Now Entry Tax, Octroi and LBT is subsumed in State Goods and Services Tax (SGST). Input tax credit of Entry Tax, Octroi and LBT was not available therefore it was cost to the taxpayer. Under GST, taxpayer is entitled to avail input tax credit of SGST and therefore Entry Tax, Octroi and LBT is not a cost anymore.

4.4 Savings arising from non payment of Luxury Tax , Entertainment Tax.

Luxury Tax and Entertainment Tax are abolished from the appointed day and are subsumed in SGST. Since input tax credit of Luxury Tax and Entertainment Tax was not available, it was a cost .

4.5 Non reversal of proportionate Cenvat credit under Rule 6(3) of Cenvat Credit Rules,2004.

Cenvat credit was not available on inputs and input services used in manufacture of exempted goods and trading activity if he is engaged in manufacture of excisable and exempt goods or trading. Now, input tax credit of CGST is available on trading activities also. Also the list of exemptions from tax is reduced to a great extent. Therefore the cost on account of reversal of Cenvat credit on provision of exempted services, manufacture of exempted goods and trading activities will be saved.

4.6 Carrying out process which does not amount to manufacture.

Certain processes like kitting, making cable jointing kits, cutting, slitting, testing etc do not amount to manufacture under sec 2(f) of the Central Excise Act,1944. Therefore persons engaged in doing such processes were not entitled for Cenvat credit. Now every commercial activity will attract GST and therefore the persons engaged in doing these processes will be entitled to take input tax credit of GST on inward supplies of goods as well as services. This will reduce landed cost of input services and inputs.

4.7 Input tax credit is available to wholesalers, retailer hotel, restaurants, outdoor caterers etc.

Prior to GST, traders, wholesalers and retailers, hotel restaurants, outdoor caterers etc were not entitled for Cenvat credit of service tax paid on input services. Now since they are required to pay GST, they will be entitled for input tax credit on inward supplies

4.8 Availability of credit on opening stock.

Companies engaged in manufacture of exempted goods, warehouses and depots of goods from where goods were sold to consumers or in retail market , wholesalers, retailers , may have opening stock on the appointed day. Since GST will have to be paid on supply of goods from such places, they are entitled to take input tax credit of Central Taxes on opening stock of inputs, input contained in semi finished goods and finished goods as per the transitional provisions. This will reduce their landed cost of goods in stock.

In case of real estate, they are to be treated as services and in the Transition provisions they have not used the word for services. This can have an impact on the price reduction.

4.9 LBT on job work.

Job workers were exempt from LBT subject to prior permission of Municipal Corporation. If prior permission is not obtained, then LBT was payable on 10% of the value of the goods received for job work from outside the corporation limit. Since LBT is subsumed in GST, job workers are not required to pay LBT on job work charges.

4.10 Purchase Tax/ URD.

In some states, buyers were required to pay tax on the goods purchased from unregistered dealers. Input tax credit of the same was not allowed. Under GST, Input Tax credit of the tax paid under reverse charge is also allowed subject to restrictions provided under Sec 17 of the CGST Act, 2017.

4.11 Cenvat Credit on Furniture, Storage racks, Assets used in Office etc capitalized in books of account.

As per Rule 2(a) of the Cenvat Credit Rules, 2004 as amended,

capital goods" means :

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank, [and]

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers], used -

(1) in the factory of the manufacturer of the final products, or

(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency;

(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;

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

The definition of capital goods as per rule 2(a) of Cenvat Credit Rules was entirely different from the capital goods as understood in accounting principles for income tax or even for Companies Act. Generally spare parts, tools, tubes, fittings etc are not capitalized in books of account. But for cenvat purpose they were capital goods.

Further, as per the definition, the goods should be used in the factory of the manufacturer of the final products or outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory. Thus equipments, appliances or machines used in the office of the manufacturer were not entitled for availing cenvat credit, though they are capitalized in the books of account.

The term capital goods is defined in section 2(19) of CGST Act. Capital Goods means goods , the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

Sec 17 of the CGST Act excludes the following goods from the scope of Capital Goods :

a) motor vehicles and other conveyances except when they are used

(i) for making the following taxable supplies, namely

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

Thus the scope of capital goods for the purpose of ITC is wider in GST. ITC can be claimed on the equipments, appliances etc irrespective of their use in the office of the manufacturer. This is an additional benefit to the manufacturers. Even Traders, Wholesalers, Retailers, Service Providers can also claim ITC on capital goods.

4.11 Admissibility of input tax credit on inputs (ED as well VAT) used by service providers.

Service providers were not entitled for credit (Set off) of VAT on input material used for providing output services. Under GST, suppliers of service as well as traders, dealers, wholesalers, retailers are entitled for input tax credit of GST. This will reduce their input cost.

Further, credit of Special Additional Duty (SAD) was not admissible to service providers. Since SAD is subsumed in GST, input tax credit can be availed by service providers. This will reduce their input cost.

4.12 Developers, Builders, Construction contractors.

Under Cenvat credit scheme, builders, developers, Construction contractors were not entitled for Cenvat credit of duty paid on inputs. Under GST, input tax credit on their inputs such as cement, steel, is allowed to them. They are also entitled for input tax credit on the opening stock of inputs and input contents in work in progress and unbilled finished work. This will result in bringing down cost of material used in the work substantially.

4.13 Price Reduction on input supplies by vendors.

GST law provides that the benefits arising out of GST are to be passed on to customers. Therefore prices of inward supply will also be reduced. Of course this can be done through negotiations with suppliers. This will reduce cost of inward supplies.

4.14 Refund of accumulated credit on account of inverted duty structure.

In many cases, the duty payable on the finished goods was less than the credit available to the manufacturer. For example, the duty payable on pharmaceutical products was 6% whereas the inputs like bulk drugs, packing material etc attract duty @ 12.5%. Thus credit availed on inputs use to remain accumulated with the manufacturer of the pharmaceutical products. The credit could not be used as credit on inputs, capital goods and input services was more than duty paid on finished goods. The GST Act specifically provide for refund of such unutilized input tax credit. This will reduce the cost of production of such products.

4.15 Duty paid on captively consumed goods.

Notification No. 67/1995-CE provide exemption from payment of duty on intermediate goods or capital goods further used in manufacture of excisable goods. In case of final product exempted from duty, the exemption was not available. Since there is no concept of captive consumption and the GST is leviable on supply, no GST is payable on the goods used further by the same taxpayer.

4.16 Abolition of Cesses.

As many as 13 cesses have ceased to exist with the rollout of GST, from 1st July 2017. which include Krishi Kalyan Cess and Swacha Bharat Cess.

During the period 2015 to June 2017 as many as 13 cesses levied by the Central Government along with Central Excise and Service Tax have been abolished. These include Education cess, Secondary ad Higher Education Cess. Thus total 26 cesses have been abolished in the last two year. This also has an impact on cost of production. List of Cesses abolished has been given below.

4.17 Transitional provisions

The impact of transitional provisions on input tax credit needs to be analyzed in terms of provisions of Sec 140 to 143 of CGST and SGST Acts. Though this will be limited to the extent of opening stock in hand, it will provide more insight on assessing the impact of other factors.

Negative impact

4.18 Adverse impact due to increase in tax rate on services, where input tax credit is not available.

Services were liable to Service tax @ 14%, Krishi Kalyan Cess, @ 0.5% and Swacha Bharat Cess @ 0.5%. Now services attract GST @ 18% in general.

Sec 17 of CGST Act provides list on inputs and input services, where input tax credit is not available. On most of the services listed in Sec 17 of the CGST Act, Cenvat credit was also not allowed. Since these services are leviable to GST @ 18% as against Service Tax @ 15% including cesses, these services will become costlier.

4.19 Impact on working capital due to delay in getting input tax credit.

Working capital will be affected due to following.

- Input tax credit is admissible only after matching details of transactions with suppliers' Returns.
- GST is payable on advances received from the customers.

- GST is payable on interstate stock transfers.
- GST is payable on goods and services received from unregistered suppliers.
- Interest cost on working capital may increase due to this.

4.20 Pruning of exemption list.

Many exemptions available under Central Excise, Service Tax, and VAT are removed in GST. The incidence of tax on said goods will increase the price of the goods.

4.21 Compliance cost.

The compliance by way filing returns, audit, reconciliation of input tax credit etc. is more in GST. However, this cannot be quantified in monitory terms.

4.22 How to determine impact

The impact of the above factors for each organization will vary. If the organization is having multiple units then unitwise impact will vary. The impact needs to be worked out considering the provisions of input tax credit under the erstwhile tax laws and provisions under GST.

A comparison of provision applicable to the respective organization or unit can be prepared. The quantum can be worked out on the basis of past two- three years actual and also considering the budgeted product mix, sales mix, purchase mix and interstate stock transfers etc. The impact in terms of percentage of turnover will be more appropriate for reducing the price of the goods or services.

4.23 Broad Guidelines for Assessment of Impact

A business may need to consider the following aspects while working on the aspects of compliance with the anti- profiteering provisions. As the GST law on anti-profiteering envisages a reduction in prices to comply with the provision, a reduction in price could be derived by way comparing the following:

- Difference in tax rates pre and post GST to depict the reduction in prices specially in case of MRP based goods
- Difference in input tax credit pre and post GST and thus resultant reduction in cost of goods and services

It is important to mention that methodology for determining the quantification of benefits would vary from business to business depending on the products and services offered by them. In the absence of broad guidelines in the GST law, some indicative factors which may need to be considered while assessing the impact could be as under:

- Nature of business- manufacturing, trading, retail, services, etc.
- Assessment of impact at product level and/ or at an organization level

- Nature of product, location of manufacture, factors impacting manufacture and its cost
- Nature of services, mode of delivery, capital goods and inputs used for provision of services
- Identifying the quantifiable benefit at product level – in case of product wise approach and thus depend on product costing system
- Benefits arising from transition credits and broad methodology to deal Identification of credits flow pre and post GST at the product level and at the organizational level and quantification of the incremental benefits
- Impact of indirect taxes pre and post on cost of goods and services dealt in by the business
- Impact of indirect taxes on cost of marketing, selling and distribution of goods and services
- Benefits arising from transition credits and broad methodology to deal with such benefits vis a vis on going benefits
- Relevance of Legal Metrology provisions and need to declare the MRP or otherwise
- Impact of reduction in tax rates on goods and services flowing from decrease in tax rates both in pre and post GST regime

Chapter - 5

Pre Packaged Commodities and GST

The reduction in the price in the case of commodities covered under Legal Metrology (Packaged Commodities) Rules, 2011/ MRP provisions under Central Excise needs to be reflected by way of reduction in MRP. Just reduction in selling price to dealers or distributors will not suffice the purpose.

5.1 Meaning of 'Retail Sale Price'

As per Rule 2(1) of Legal Metrology (Packaged Commodities) Rules [Earlier rule 2 (r) Standards of weights and Measures (Packaged Commodities) Rule], 'retail sale price', in relation to a commodity, means the maximum price at which the commodity in packaged from may be sold to ultimate consumer, and the price shall be printed on the package in the manner given below- 'Maximum or Max Retail Price ……..… inclusive of all taxes' or 'MRP……... Incl. Of taxes'

Fraction of 50 paise is permissible but any other fraction of paise is not permissible.

In view of different rates of taxes in different States, a manufacturer can print different rates for sale in different States/areas. A retailer can sell the goods below MRP printed on the package.

5.2 Definition of MRP under Central Excise Act –

Explanation 1 to section 4A (4) of Central Excise Act defines 'retail sale price' as the maximum price at which the excisable goods in packaged from may be sold to the ultimate consumer and include all taxes local or otherwise, freight, transport charges commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale. However, if any Act, Rules or other law requires that price declared on a package should be exclusive of any taxes, then 'retail sale price' in such cases, will be exclusive of such taxes.

5.3 MRP under Drugs (Prices Control) Order, 2013

Earlier, in case of drugs, prices were to be indicated exclusive of taxes. However,

under Drugs (Prices Control) Order, 2013 (DPCO Order) (earlier 1995 order) these packages are also required to indicate MRP inclusive of all taxes.

5.4 Payment of duty and taxes on goods covered under MRP.

Thus, MRP is inclusive of all taxes, duties , dealers margin and all incidental expenses. Goods covered under MRP are sold to dealers or distributors at much lower price than the printed MRP. Excise duty on the goods covered under MRP provisions was leviable under Sec 4A of the Central Excise Act, 1944.

Section 4A of CEA empowered Central Government to specify goods on which duty will be payable based on 'retail sale price'. Excise duty on the goods covered under MRP was payable on value equal to MRP less abatement prescribed under Notification No. 49/2008-CE(NT) dt. 24.12.2008, as amended from time to time, irrespective of the actual selling price of the goods. VAT was payable on the actual selling price plus excise duty paid on it.

The provisions for valuation on MRP basis under Central Excise are summarized below.-

(a) The goods should be covered under provisions of Legal Metrology Act and Rules [earlier Standards of Weights and Measures Act or Rules] [section 4A (1)].

(b) Central Government has to issue a notification in the Official Gazette specifying the commodities to which the provision is applicable and the abatements permissible. Central Government can permit reasonable abatement (deductions) from the 'retail sale price' [section 4A (2)].

(c) While allowing such abatement Central Government shall take into account excise duty, sale tax and other taxes payable on the goods [section 4A(3)].

(d) The 'retail sale price' should be the maximum price at which excisable goods in packaged forms are sold to ultimate consumer. It includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges etc. If under certain law, MRP is required to be without taxes and duties, that price can be the 'retail sale price' [Explanation1 to section 4A].

(e) If more than one 'retail sale price' is printed on the same packing, the maximum of such retail price will be considered [Explanation 2(a) to section 4A]. If different MRP are printed on different packages for different areas, each such price will be 'retail sale price' for purpose of valuation [Explanation 2(c) to section 4A].

(f) Removing excisable goods without MRP or wrong MRP or tampering, altering of removing MRP declared on a package is an offence and goods are liable to confiscation [section 4A (4)]. If price is altered such increased price will be the 'retail sale price' for purpose of valuation [Explanation 2 (b) to section 4A].

5.5 Tax incidence on the goods covered under MRP under earlier tax regime.

The payment of Excise Duty and VAT was to be worked out as per the following.

Assumptions
MRP Rs.100/- ,
Abatement 30%
Actual selling price to dealer ₹55/-
Excise Duty 9%
VAT 9%

Value under Sec 4A of the Central Excise Act - ₹100 less abatement @30% = ₹70
Excise duty @9% on ₹70/- = ₹6.30
Value for VAT - Selling price ₹55/- plus Excise duty at actual i.e 6.30 =₹61.30
VAT @ 9 % on ₹63.75 = ₹5.52
Total Tax and duty payable = ₹11.82

5.6 GST on goods covered under MRP.

Under GST, tax is payable on the transaction value of the goods. As per Sec 15(1) of the CGST Act, 2017 the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

As per Sec 15(2) of the CGST Act 2017, the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this act (CGST). Value shall also include incidental expenses, including commission and packing, interest and late fee or penalty for delayed payment of any consideration for any supply, subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. The value shall not include discounts.

Unlike Excise law, no separate method for valuation of goods covered under MRP is provided under GST. Therefore GST on the goods covered under MRP needs to be worked out treating the MRP inclusive of taxes.

For Example if the MRP is ₹100/- and GST is applicable @ 18%, the value and GST payable on it is to worked out as per the following –

Value	100 / 118 * 100	= 84.75
Tax	84.75* 18%	= 15.25
Total		=100.00

From the above examples, it can be seen that even though the value and tax rate are same, the incidence of taxes under Excise and VAT and GST is different.

In the transitional phase, because of the change in the tax rate as compared to earlier tax regime, the MRP may undergo a change. The unsold stock will have impact of the same.

5.7 Pre Packaged Commodities – impact of GST on unsold stock.

The impact needs to be determined for the goods covered under MRP provisions also. The MRP printed on the package needs to be modified suitably to comply with the anti profiteering provisions.

Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, vide instruction No. WM-10(31)/2017 Dt.04.07.2017, has permitted the manufacturer or packer or importers of pre packaged commodities to declare the changed retail sale price (MRP) on the unsold stock of manufactured / packed / imported prior to 1st July after inclusion of the increased amount of tax due to GST if any, in addition to the existing retail sale price (MRP) for three months w.e.f.1st July 2017 to 30th September 2017.

It has been clarified that declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing, as the case may be, after complying with the following conditions:

(i) The difference between the retail sale price originally printed on the package and the revised pride shall not, in any case, be higher, than the extent of increase in the tax if any, or in the case of imposition of fresh tax, such fresh tax, on account of implementation of GST Act and Rules.

(ii) The original MRP shall continue to be displayed and the revised price shall not overwrite on it.

(iii) Manufacturers or packers or importers shall make at least two advertisements in one or more newspapers in this regard and also by circulation of notices to the dealers and to the Director of Legal Metrology in the Central Government and Controllers of Legal Metrology in the States and Union Territories, indicating the change in the price of such packages.

It has been further clarified that under sub-rule (3) of rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 "for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer or importer, as the case may be, on the label of the package".

It is also clarified that any packaging material or wrapper which could not be exhausted by the manufacturer or packer or importer prior to 1st July, 2017, may be used for packing of material upto 30th September, 2017 or till such date the packing material or wrapper is exhausted, whichever is earlier, after making corrections required in retail sale price (MRP) on account of implementation of G.S.T. by way of stamping or putting sticker or online printing.

Chapter - 6

Documents to be verified for assessing impact.

Following information / documents may be obtained for Impact Analysis.

Document	Purpose
ER1.	Reversal under Rule 6 of CCR. Clearance of Exempt Goods.. Stock Transfers. Duty paid on captively consumed goods.
ER4	Discounts, Freight, Valuation.
ST3	Service Tax under RCM. In-admissible service tax on rent a cab, Works contract, Repairs & Maintenance, Employee related services etc.
Cost Audit Report	Indirect Taxes reconciliation. Impact of disallowance of Cenvat credit u/r 6 of CCR, inadmissible inputs and input services.
Summary of VAT Returns.	Disallowance of set off on account of Interstate stock transfers.
VAT Audit Report.	Purchase Tax, Disallowance of set off, CST payment etc.
Trial Balance	Payment of LBT, Octroi, Entry Tax, Purchase Tax. Other Taxes and Cesses Repairs and Maintenance Cost.
Tax Audit Report	Details of capital goods on which Cenvat Credit is not availed. Furniture Fixtures etc.

Other details which may be useful for assessing financial impact.

- Comparison of inputs under Cenvat Credit Rules and GST
- Comparison of input services under Cenvat Credit Rules and GST

- Comparison of capital goods under Cenvat Credit Rules and GST
- Details of capital goods received from customers, Financial Institutions etc.
- Standard Operating Procedures (SOP) followed by the organization.
- Pending cases under Excise, VAT, Customs and Service Tax and other indirect Taxes.
- Details of Warehouses, C & F Agents and stock transfers – intra state and interstate.
- Details of imports.
- Inventory at Warehouses, C & F Agents outside state.
- Open contracts, Purchase Orders.
- Price Lists – pre GST and post GST
- Discount Structure and various discount schemes – pre GST and post GST.
- Tax rates – pre GST and post GST.

Chapter 7:

Anti-Profiteering Rules.

Provision relating to anti-profiteering measure has been introduced vide section 171 of CGST Act. The idea is that the taxable person should pass on benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to the customer as reduction in prices.

7.1 Gist of rules.

In exercise of the powers conferred by section 164 read with section 171 of the CGST Act, 2017, the Central Government has issued Anti Profiteering Rules.

As per Sec 171(2) of CGST Act, The Central Government may, on recommendation of GST Council by notification, constitute an Authority, or empower any existing Authority constituted under any law, to examine whether input tax credits availed by any registered person or the reduction in the tax rate actually have resulted in a commensurate reduction in the price of the said goods or services or both supplied by him.

The Authority referred to in section 171(1) shall exercise such functions and have such powers as may be prescribed – section 171(3) of CGST Act.

An Authority will be constituted with Chairman and four technical members. Standing Committee and Screening Committees will be constituted. State Level Screening Committees will also be constituted

The Authority will determine methodology and procedures to determine whether reduction in rate of supply and benefit of ITC has been passed on to the recipient –

7.2 Duties of the Authority

1. To determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.
2. To identify the registered person who has not passed on the benefit of

reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

3. To order

(a) Reduction in prices.

(b) Return to recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is no identifiable , and depositing the same in the fund referred in sec 57 of the CGST Act.

(c) Imposition of penalty as prescribed under the Act ; and

(d) Cancellation of registration under the Act.

7.3 Scrutiny of the applications and investigation:-

Applications will be scrutinized by Standing Committee within two months. Applications of local nature will be scrutinized by State Level Screening Committee and then forward to Standing Committee for further action

The Standing Committee will scrutinize the cases. If prima facie evidence of profiteering is found, the matter shall be referred to Director General of Safeguards.

The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

Before initiation of investigation, the Director General of Safeguards will issue notice to interested parties who may have information. He will collect evidence within three months. He will submit his report within three months to standing committee.

Director General of Safeguards can take assistance of other authorities. He has powers to summon persons to give evidence and produce documents.

As per Rule 130 of CGST and SGST Rules, 2017, provisions of section 11 of RTI Act relating to disclosure of confidential information supplied by third party will apply to information received by Director General of Safeguards -

On receipt of report of Director General of Safeguards, the Authority will give opportunity of hearing to interested parties.

7.4 Order of the Authority.

After investigation and hearings, the Authority may order

(a) reduction in price

(b) return amount to recipient

(c) impose penalty ((which is maximum ₹ 25,000)
(d) cancellation of registration under GST Act - Rule 133(3) of CGST and SGST Rules, 2017

Rule 135 of CGST and SGST Rules, 2017 provides that if the taxable person does not comply, recovery proceedings can be initiated as per provisions of CGST, SGST and UTGST Act .

7.5 Penalty.

Interestingly, there is no provision for penalty for imposing penalty or recovering excess profit. Even if profiteering is discovered, maximum penalty that can be imposed is residual penalty of ₹25000/- under Sec 125 of CGST and SGST Act.

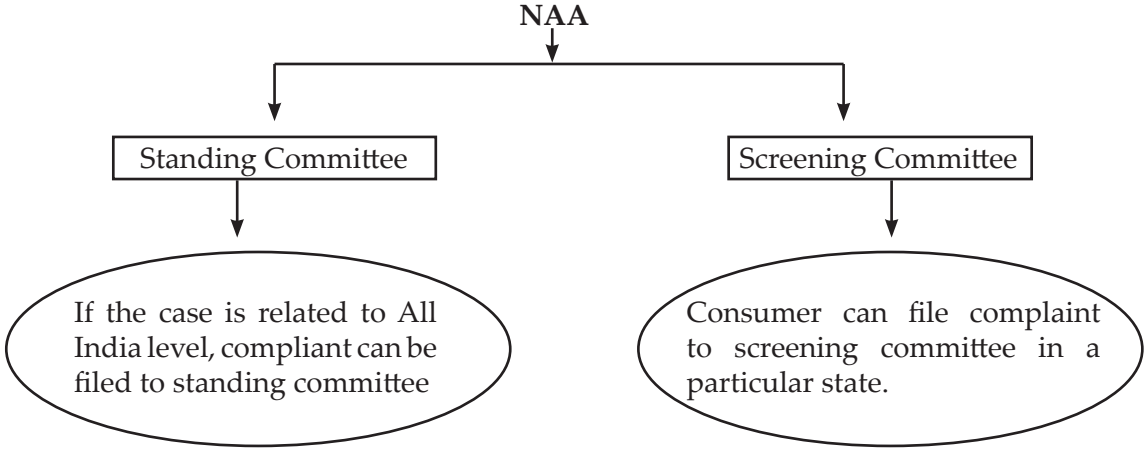
However, Rule 21(c) of CGST and SGST Rules,2017 provides for cancellation of registration for violation of provisions relating to anti profiteering.

7.5 Sunset Clause:

As per Rule 137 of CGST and SGST Rules, 2017, Anti profiteering clause has sunset clause of two years.

Structure of Anti Profiteering Authority:

National Anti Profiteering Authority will be a composition of One Chairman and 4 Technical members.



Powers and functions...

If NAA finds that company has not passed on benefits of tax reduction, it can direct entity to pass on benefits to consumers along with interest from the date of collection of the higher amount till date of return of such amount. If the beneficiary cannot be identified, NAA can ask company to transfer amount to the 'Consumer Welfare Fund', as provided under Section 57 of CGST Act. In extreme cases NAA can impose a penalty on defaulting business entity and even order cancellation of its registration under GST.

NAA also has power to cancel registration of any entity or business if it fails to pass on benefit of lower taxes under GST regime to consumers, and empowers consumers to approach it in case of any complaint.

Chapter 8 :

Role of Cost and Management Accountants

If the power to deregister or cancellation of registration is invoked frequently and lightly by the authority under Anti Profiteering provisions, it will create fear and distrust amongst the trade.

Therefore, before taking any such action, the Authority can order special audit by Cost and Management Accountants under Sec 66(1) of the CGST Act which will be very useful in taking any such decision.

The organizations can also undertake voluntary audit by the Cost and Management Accountants with respect to benefits received due to implementation of GST.

The anti-profiteering rules provide for constitution of screening committees in each state and also the standing committee. These committees may refer matters to Cost and Management accountants or Cost and Management accountants can approach them for assistance in verification of data for assessing the impact.

Cost and Management Accountants should be prepared with the detailed knowledge of GST law and its applications to the different transactions and procedures followed by the respective organizations.

Training and awareness programs on anti-profiteering provisions also can be conducted by Cost and Management Accountants.

Suggested Format for Certificate to be issued by Cost and Management Accountant.

Name of the Supplier :

Address of the Supplier :

GSTIN Number :

Product Description :

Sales value of the product :

Sr. No.	Details of tax benefit		Impact of Tax on Cost and Management prior to GST	Impact of Tax on Cost and Management after GST
1	CST purchases			
2	Inter unit Stock Transfers			
3	Product exempt prior to 1.7.17, now taxable.			
4	Disallowances under VAT on account of interstate stock transfers and others			
5	Cess on imported goods.			
6	Reversal on account of exempted goods and services if now taxable.			
7	Octroi / LBT paid earlier.			
8	Dealers –Excise duty / CVD included in Cost and Management, now available as ITC			
9	Services -			
	Impact of ITC on services where credit is not admissible. Such as outdoor catering, rent a cab, and other services			
10	Credit on furniture, office equipment, now available.			
11	Purchase tax / URD under VAT Acts.			
12	Impact of Special Additional Duty w.r.t service providers			

13	Increase in working capital due to increased burden of tax, delay in set off etc.			
14	Price reduction, if any, received from vendors.			
15	Refund of accumulated credit on account of lower tax rates than inputs.			
16	Increase in Cost and Management due to withdrawal of exemptions			
17	Any other impact specific to the industry.			
Others (Please specify)				
Total tax benefit				
% to sales value.				
MRP based products -				
MRP declared				

TO WHOM SO EVER IT MAY CONCERN

I / We have verified the records of ---------- relating to the product ---------- under consideration.

The Tax benefit statement preparation is the responsibility of the Company's Management. My / our audit including examining, on test basis, evidence supporting these statements to verify that these statements are free of material mis-statement. My / our observations and suggestions are based on the information contained in these statements.

On the basis of documents produced before me / us and explanations and information provided by the concerned officials, I / we hereby certify that the tax benefit arising on account of Goods and Services Tax as compared to taxes prior to 1st July, 2017, for the product under consideration is _____% to sales value of the product.

Place :

Date : Cost and Management Accountant

Membership No.

Explanatory notes – The basis and parameters used for determining impact may be given by the Cost and Management Accountant.

Chapter 9:

Format for filing complaint

Format for filing complaint -- To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]

Any person (consumer) who feel that the benefit of reduction in prices on account of GST is not being passed on to him when he purchases any goods or services may apply for relief to Screening Committees in the particular state. In case the incident of profiteering relates to an item of mass impact all over India, the application may be directly made to the Standing Committee. After forming a prima facie view that there is an element of profiteering, the standing committee shall refer the matter for detailed investigation to Director General of Safeguards, CBEC , which shall report its findings to NAA.

Anti Profiteering Application Form (APAF-1), to be filed before Standing Committee / State level Screening Committee in terms of Rule 128 of CGST Rules 2017 has been issued. The application can be made by recipient of the goods or services, Commissioner of GST or any other person.

The application form is divided into four parts.

1. In part A of the application, the applicant has to provide general information about the applicant such as name of the applicant, address, GST registration number , proof of identity, contact details etc..
2. In part B, the general information about the supplier who has not passed on the benefit is to be provided. This includes name of the supplier, category i.e. manufacturer, service provider, trader or other, Address of the supplier, GST Registration number, Contact details etc.
3. Part C is about the details of goods and services. Description of the goods or services, HSN or SAC, Actual Price / value charged per unit – pre GST and Post GST. In case goods are covered under MRP , then pre GST and post GST MRP and comparative price / value pre GST and post GST after considering

any discount / rebate given by other supplier. It is pertinent to note that this comparison is to be given by the applicant only.

4. Part D consists of the details of reduction in Tax rate / benefit of input tax credit. The applicant has to provide details of pre GST tax structure, post GST tax structure, Pre GST total tax per unit and post unit. Post GST tax reduction in amount of tax per unit, benefit of input tax credit i.e. details of input tax credit which was not available pre GST and available now , transitional credit and post GST per unit value to be reduced.

- The instructions for filling Anti profiteering application form are also annexed to the form. It is specified that following information is to be provided by the applicant
- Rate of Pre-GST Indirect Taxes (Such as Excise Duty, Value Added Tax, Central Sales Tax, Luxury Tax, Service Tax etc.) or earlier Goods & Service Tax (Including compensation cess) applicable on the goods/ services and the assessable/ taxable/ base amount per unit to the extent possible on which such rate of Indirect Taxes were applied in arriving at effective Pre-GST amount of Tax per unit or earlier GST (Including compensation cess) amount of Tax per unit.
- GST Rates viz. CGST, SGST/UTGST, IGST, Compensation Cess and other indirect taxes effective after change in Rates, if any by Central Government on recommendation of Goods & Services Tax Council after GST implementation applicable on the goods/services and the assessable /taxable/base amount per unit on which such rate of Indirect Taxes are applied in arriving effective Post-GST/later GST amount of Tax per unit.
- Post GST reduction in Tax per unit by deducting Post-GST tax amount per unit from Pre-GST tax amount per unit as calculated above.
- Attach working sheets for computation of the Input Taxes/Duties Pre-GST per unit, credit of which was not available to the supplier before implementation of GST (out of the Taxes/Duties subsumed in GST, Illustrative list is given below):

    a. Central Excise duty
    b. Duties of Excise (Medicinal and Toilet Preparations)
    c. Additional Duties of Excise (Goods of Special Importance)
    d. Additional Duties of Excise (Textiles and Textile Products)
    e. Additional Duties of Customs (commonly known as CVD)
    f. Special Additional Duty of Customs (SAD)
    g. Service Tax
    h. Central Surcharges and Cesses so far as they relate to supply of goods and services
    i. State VAT

j. Central Sales Tax
k. Luxury Tax
l. Entry Tax (all forms)
m. Entertainment and Amusement Tax (except when levied by the local bodies)
n. Taxes on advertisements
o. Purchase Tax
p. Taxes on lotteries, betting and gambling
q. State Surcharges and Cesses so far as they relate to supply of goods and services.

- It has been specified not to include details of Taxes/Duties, credit of which was available prior to GST and provide information only in respect of Input Taxes/ Duties, credit of which was not available to the supplier before implementation of GST.
- Transitional Input Tax Credit availed in terms of Section 140(3) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 which is not passed on to the recipient.
- The change in actual price/value charged per unit by deducting Actual price/ value charged per unit Pre-GST from Actual price/value charged per unit Post-GST.
- The total amount of benefit not passed on by adding Post-GST reduction in amount of Tax per unit + Post-GST benefit of Input Tax Credit per unit on inputs + Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit.
- The GST on amount of benefit not passed on by multiplying amount of benefit not passed on as calculated in and total GST rate (in percentage) calculated in.
- The Post-GST per unit price/value to be reduced from actual price/value charged per unit Post-GST.

After detailed scrutiny of the application, in the event the NAA finds that there is a necessity to apply anti profiteering measures, it has the authority to order the following

- Order the supplier to reduce the prices or return the undue benefit availed by the supplier, with interest to the recipient of the goods or services.
- If the benefit cannot be passed on to the recipient, it can be ordered to be deposited in the Consumer Welfare Fund.
- Impose a penalty on the defaulting business entity or even order the cancellation of its registration under GST.

Anti-Profiteering Application Form (APAF - 1)

[To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]

Please follow the accompanying instructions for filling up the form. Fields marked with asterisk (*) are mandatory.

A.	**General information about the Applicant**			
A.1*	Name			
A.2*	Category (Provide code)			
A.3	GST Registration No. (GSTIN)			
A.4*	Address			
A.5*	Contact Number			
A.6	E-mail ID			
A.7*	Proof of identity (Provide code)			
B.	**General information about the Supplier who has not passed on the benefit**			
B.1*	Name			
B.2*	Category (Provide code)			
B.3*	Address			
B.4*	GST Registration No. (GSTIN)			
B.5	Contact Number			
B.6	Email ID			
B.7	Website address			
C.	**Particulars of Goods/Services**			
C.1*	Description			
C.2	HSN/SAC			
C.3*	Actual Price/Value charged per unit Pre-GST	₹		
C.4*	Actual Price/Value charged per unit Post-GST	₹		
C.5	If Goods are covered under MRP Provisions			
C.5a	MRP Pre-GST	₹		
C.5b	MRP Post-GST	₹		
C.6	Comparative per unit actual Price/Value of like Goods/Services charged by other supplier	Name GSTIN		
C.6a	Pre-GST	₹		
C.6b	Post-GST	₹		
D.	**Details of reduction in Tax rate/ benefit of Input Tax Credit**			
D.1	**Particulars of Taxes on output Goods/ Services**	**Rate of Tax (%) [1]**	**Per Unit value for Tax (in ₹) [2]**	**Per unit amount of Tax (in ₹) [3 = (1*2)]**
D.2*	**Taxes - Pre GST/Earlier Rate**			
D.2a	Excise Duty			
D.2b	Value Added Tax (VAT)/Central Sales Tax (CST)			
D.2c	Service Tax			
D.2d	Luxury Tax			
D.2e	Others including Cesses (Specify)			
D.2f	Earlier GST Rate (Including compensation cess)			
D.3*	**Total Tax per unit [Total of D.2a to D.2e] or [D.2f]**			₹
D.4*	**Taxes - Post GST/Later Rate**			
D.4a	CGST			
D.4b	SGST/UTGST			
D.4c	IGST			
D.4d	Compensation Cess			
D.4e	Others including Cesses (Specify)			
D.5*	**Total Tax per unit [Total of D.4a to D.4e]**			₹
D.6*	**Post-GST reduction in amount of Tax per unit (D.3 - D.5)**			₹
D.7	**Benefit of Input Tax Credit** **Input Taxes/Duties Pre-GST per unit, credit of which was not available (out of the Taxes/Duties subsumed in GST) and Transitional Input Tax Credit, if any. Attach working sheets.**			₹
D.8	Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit [C.4 - C.3]			₹
D.9	Amount of benefit not passed on after adjusting difference between Post-GST and Pre-GST actual price/value [D.6 + D.7 + D.8]			₹
D.10	GST on amount of benefit not passed on [D.9 x Rate of GST (including compensation cess, if any)]			₹
D.11	**Post-GST per unit price/value to be reduced by [D.9+D.10]**			₹
D.12	Additional information, if any			

Note-1: Self-attested copies of all documentary evidences like proof of identity, invoice, Price List, detailed working sheet etc. are to be attached.

Note-2: Pre-GST includes earlier GST Rates **and** Post-GST includes later GST Rates after implementation of Goods & Services Tax.

Declaration:

I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information in this application form will make the application invalid.

Date:
Place:

Signature of the Applicant

Instruction for filling Anti-Profiteering application form

The table below provides row-wise detailed instruction for filling up the application form. The fields marked with asterisk (*) are mandatory.

S. No. of Form	Field name	Instruction	
General Instruction			
1	Fill up the application form legibly in **BLOCK LETTERS** only.		
2	Terms used in application form:		
	GSTIN	Goods and Services Tax Identification Number	
	CGST	Central Goods and Services Tax	
	SGST	State Goods and Services Tax	
	UTGST	Union Territory Goods and Services Tax	
	IGST	Integrated Goods and Services Tax	
	HSN	Harmonized System Nomenclature	
	SAC	Services Accounting Code	
3	This application form is with reference to a single Good/Service. In case of application for multiple Goods/Services, please make separate application for each Good/Service.		
4	After admitting the application, applicant may be asked to furnish any additional details as deemed necessary.		
5	Application filled without attaching required documents/working sheets will not be treated as a valid application.		
6	Filled application from must be send to State level Screening Committee (in case issues is of local nature) or to Standing Committee.		
7	**Contact details of Central Standing Committee on Anti-profiteering:** 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110 001. Tel No.: 011-23741537 Fax. No.: 23741542, E-mail: anti-profiteering@gov.in **Contact details of State Screening Committee on Anti-profiteering:** Contact details of State Screening Committee on Anti-profiteering are available at URL: goo.gl/eYJXnK		
A	**General information about the Applicant**		
A.1*	Name	Enter name as recorded on proof of identity submitted with this application form.	
A.2*	Code of Applicant	01	Interested party+
		02	Commissioner
		03	Any other person
		+Interested Party includes suppliers or recipients of goods or services under this application.	
A.3	GST Registration No.	Enter the 15 digit alphanumeric GSTIN of the applicant. Eg. 07ABCPM1234R1ZF.	
A.7*	Proof of identity	Attach a copy of any one proof of identity listed below:	
		Code	**Proof of Identity**
		01	Aadhaar Card issued by the Unique Identification Authority of India
		02	Voter ID
		03	Permanent Account Number (PAN) card
		04	Driving Licence
		05	Passport
		06	Ration card having photograph of the applicant
		07	Any other proof of Identity (Specify)
B	**General information about the Supplier who has not passed on the benefit**		
B.1*	Name	Enter name of supplier as mentioned on the supporting documents like Invoice etc.	
B.2*	Code of Supplier	01	Manufacturer
		02	Service Provider
		03	Trader
		04	Others (Specify)
C	**Particulars of Goods/Services**		
C.1*	Description	Specify the nature of goods/services as mentioned in invoice/price list etc.	
C.2	HSN/SAC	Specify HSN/SAC of goods/services as mentioned in invoice/price list/GST rate list etc.	
C.3*	Actual Price/Value charged per unit Pre-GST	Provide Pre-GST actual price/value and Post-GST (current) actual price/value charged per unit of the goods/service (of the same quantity) after considering any discount/rebate given by the supplier.	
C.4*	Actual Price/Value charged per unit Post-GST		
C.5	If Goods are covered under MRP Provisions	Provide Pre-GST MRP and Post-GST (current) MRP of the goods printed on the pack of the goods of the same quantity.	
C.5a	MRP Pre-GST		
C.5b	MRP Post-GST		
C.6	Comparative per unit actual Price/Value of like Goods/Services charged by other supplier	Mention name and GSTIN of other supplier. Provide Pre-GST and Post-GST (current) actual price/value charged per unit of the like goods/service after considering any discount/rebate given by other supplier.	
C.6a	Pre-GST		
C.6b	Post-GST		

D	Details of reduction in Tax rate/ benefit of Input Tax Credit	
D.2*	Taxes - Pre GST/Earlier GST Rate	Specify the Rate of Pre-GST Indirect Taxes (Such as Excise Duty, Value Added Tax, Central Sales Tax, Luxury Tax, Service Tax etc.) or earlier Goods & Service Tax (Including compensation cess) applicable on the goods/services and the assessable/taxable/base amount per unit to the extent possible on which such rate of Indirect Taxes were applied in arriving at effective Pre-GST amount of Tax per unit or earlier GST (Including compensation cess) amount of Tax per unit.
D.4*	Taxes - Post GST/Later GST Rate	Specify the GST Rates viz. CGST, SGST/UTGST, IGST, Compensation Cess and other indirect taxes effective after change in Rates, if any by Central Government on recommendation of Goods & Services Tax Council after GST implementation applicable on the goods/services and the assessable/taxable/base amount per unit on which such rate of Indirect Taxes are applied in arriving effective Post-GST/later GST amount of Tax per unit.
D.6*	Post-GST reduction in amount of Tax per unit.	Specify the Post GST reduction in Tax per unit by deducting Post-GST tax amount per unit from Pre-GST tax amount per unit as calculated above.
D.7	Input Taxes/Duties Pre-GST per unit, credit of which was not available (out of the Taxes/Duties subsumed in GST). Attach working sheets.	Specify and attach working sheets for computation of the Input Taxes/Duties Pre-GST per unit, credit of which was not available to the supplier before implementation of GST (out of the Taxes/Duties subsumed in GST, Illustrative list is given below): a. Central Excise duty b. Duties of Excise (Medicinal and Toilet Preparations) c. Additional Duties of Excise (Goods of Special Importance) d. Additional Duties of Excise (Textiles and Textile Products) e. Additional Duties of Customs (commonly known as CVD) f. Special Additional Duty of Customs (SAD) g. Service Tax h. Central Surcharges and Cesses so far as they relate to supply of goods and services i. State VAT j. Central Sales Tax k. Luxury Tax l. Entry Tax (all forms) m. Entertainment and Amusement Tax (except when levied by the local bodies) n. Taxes on advertisements o. Purchase Tax p. Taxes on lotteries, betting and gambling q. State Surcharges and Cesses so far as they relate to supply of goods and services. Do not include details of Taxes/Duties, credit of which was available prior to GST and provide information only in respect of Input Taxes/Duties, credit of which was not available to the supplier before implementation of GST. Also specify Transitional Input Tax Credit availed in terms of Section 140(3) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 which is not passed on to the recipient.
D.8	Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit	Specify the change in actual price/value charged per unit by deducting Actual price/value charged per unit Pre-GST (C.3) from Actual price/value charged per unit Post-GST (C.4).
D.9	Amount of benefit not passed on after adjusting difference between Post-GST and Pre-GST actual price/value	Specify the total amount of benefit not passed on by adding Post-GST reduction in amount of Tax per unit (D.6) + Post-GST benefit of Input Tax Credit per unit on inputs (D.7) + Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit (D.8).
D.10	GST on amount of benefit not passed on	Specify the 'GST on amount of benefit not passed on' by multiplying amount of benefit not passed on as calculated in D.9 and total GST rate (in percentage) calculated in D.5.
D.11	Post-GST per unit price/value to be reduced by	Specify the Post-GST per unit price/value to be reduced from actual price/value charged per unit Post-GST by adding D.9 & D.10 as calculated above.

Annexure - I

INPUT TAX CREDIT

SECTION 16. ELIGIBILITY & CONDITIONS FOR TAKING INPUT TAX CREDIT

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

SECTION 17. APPORTIONMENT OF CREDIT OR BLOCKED CREDIT

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(*a*) motor vehicles and other conveyances except when they are used—

(*i*) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(*ii*) for transportation of goods;

(*b*) the following supply of goods or services or both—

(*i*) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(*ii*) membership of a club, health and fitness centre;

(*iii*) rent-a-cab, life insurance and health insurance except where—

(*A*) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(*B*) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(*iv*) travel benefits extended to employees on vacation such as leave or home travel concession;

(*c*) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service

for further supply of works contract service;

(*d*) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (*c*) and (*d*), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

(*e*) goods or services or both on which tax has been paid under section 10;

(*f*) goods or services or both received by a non-resident taxable person except on goods imported by him;

(*g*) goods or services or both used for personal consumption;

(*h*) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(*i*) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(*i*) land, building or any other civil structures;

(*ii*) telecommunication towers; and

(*iii*) pipelines laid outside the factory premises.

SECTION 18. AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

(1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and

inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(e) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

SECTION 19. TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS & CAPITAL GOODS SENT FOR JOB WORK -

(1) The principal shall, subject to such conditions and restrictions as may be prescribed, are allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, "principal" means the person referred to in section 143.

SECTION 20. Manner of distribution of credit by Input Service Distributor –

(*1*) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be ***pro rata*** on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be ***pro rata*** on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

(***a***) the "relevant period" shall be—

(***i***) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(***ii***) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year

during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(*b*) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(*c*) the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

SECTION 21. MANNER OF RECOVERY OF CREDIT DISTRIBUTED IN EXCESS –

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, ***mutatis mutandis***, apply for determination of amount to be recovered.

Annexure II

Input Tax Credit

(Extracts from Central Goods and Services Tax Rules, 2017)

Rule 36 - Documentary requirements and conditions for claiming input tax credit

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for assessment of integrated tax on imports;

(e) an ISD invoice or ISD credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice.7.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in Chapter ---- (*Invoice Rules*) are contained in the said document, and the relevant information, as contained in the said document, is furnished in **FORMGSTR-2** by such person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

Rule 37 - Reversal of input tax credit in case of non-payment of consideration

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of issue of invoice.

Provided that the value of supplies made without consideration as specified in Schedule I shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this chapter that had been reversed earlier.

Rule 38 - Claim of credit by a banking company or a financial institution

A banking company or a financial institution, including a non -banking financial company, engaged in supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the procedure specified below -

(a) the said company or institution shall not avail the credit of,-

  (i) tax paid on inputs and input services that are used for non-business purposes, and

  (ii) the credit attributable to supplies specified in sub-section (5) of section 17,

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax

credit admissible to the company or the institution and shall be furnished in **FORM GSTR-2**;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

Rule 39 - Procedure for distribution of input tax credit by Input Service Distributor -

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the conditions specified below-

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter VIII of these rules. ;

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients *'R_1'*, whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C_1", to be calculated by applying the following formula:-

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t_1" is the turnover, as referred to in section 20, *of person R_1 during the relevant period, and*

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20,;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax or Union territory tax shall,

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) The Input Service Distributor shall issue an ISD invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

(h) The Input Service Distributor shall issue an ISD credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

(i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6.**

(j) Any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which input tax credit contained in the original invoice was distributed in terms of clause (d) above, and the amount so apportioned shall be,-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the

process prescribed in clause (j) of sub-rule (1) shall apply, *mutatis mutandis,* for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the ISD credit note specified in clause (h) of sub-rule (1), issue an ISD Invoice to the recipient entitled to such credit and include the ISD credit note and the ISD Invoice in the return in **FORMGSTR-6** for the month in which such credit note and invoice was issued.

Rule 40 - Manner of claiming credit in special circumstances

(1) Input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely -

(a) The input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

(b) The registered person shall within thirty days from the date of his becoming eligible to avail of input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the Common Portal in **FORM GST ITC-01** to the effect that he is eligible to avail of input tax credit as aforesaid.

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18,

(ii) on the day immediately preceding the date of grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18,

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18,

(iv) on the day immediately preceding the date from which supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18.

(d) The details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of claim on account of Central Tax, State Tax, Union territory Tax and Integrated Tax exceeds two lakh rupees.

(e) The input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR-4**, on the Common Portal.

(2) The amount of credit in case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of issue of invoice for such goods.

Rule 41 - Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger**,** amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02,** electronically on the Common Portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.

(3) The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Rule 42 - Manner of determination of input tax credit in respect of inputs or input services and reversal thereof -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly

for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for purposes other than business, be denoted as 'T_1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T_2';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T_3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C_1' and calculated as:

$$C_1 = T- (T_1+T_2+T_3);$$

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T_4';

(g) 'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at the invoice level in **FORM GSTR-2**;

(h) input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C_2' and calculated as:

$$C_2 = C_1- T_4;$$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D_1' and calculated as:

$$D_1= (E\div F) \times C_2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall calculated by taking values of 'E' and 'F' of the

last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to calculated;

Explanation: For the purposes of this clause, the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D_2', and shall be equal to five per cent. of C_2**;** and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C_3', where,-

$$C_3 = C_2 - (D_1+D_2);$$

(l) the amount 'C_3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(m) the amount equal to aggregate of 'D_1' and 'D_2' shall be added to the output tax liability of the registered person**:**

Provided that where the amount of input tax relating to inputs or input services used partly for purposes other than business and partly for effecting exempt supplies has been identified and segregated at invoice level by the registered person, the same shall be included in 'T_1' and 'T_2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T_4'.

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner prescribed in the said sub-rule and,

(a) where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from first day of April of the

succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Rule 43 - Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2** and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in **FORM GSTR-2** and shall be credited to the electronic credit ledger;

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18 if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit

ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as:-

$$\mathbf{T_m = T_c \div 60}$$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:

$$T_e = (E \div F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to calculated;

Explanation: For the purposes of this clause, the aggregate value of exempt supplies and totalturnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

Rule 44 - Manner of reversal of credit under special circumstances

(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner namely,-

(a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input;

(b) for capital goods held in stock the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Illustration

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month Input tax credit taken on such capital goods= Ç

Input tax credit attributable to remaining useful life= C multiplied by 5/60

(2) The amount, as prescribed in sub-rule (1) shall be determined separately for input tax credit of Central , State Tax, Union territory tax and Integrated tax .

(3) Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.

(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03**, where such amount relates to any event specified in sub-section (4) of section 18 and in **FORM GSTR-10**, where such amount relates to cancellation of registration.

(5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.

(6) The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as prescribed in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of Central Tax, State Tax, Union Territory Tax and Integrated Tax.

Provided where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR1.

Rule 45 - Conditions and restrictions in respect of inputs and capital goods sent to the job worker

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker.

(2) The challan issued by the principal to the job worker shall contain the details specified in rule Invoice.8:

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a tax period shall be included in **FORM GST ITC-4** furnished for that period.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-

(i) The expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;

(ii) for determining the value of an exempt supply as referred to in sub-section (3) of section 17:-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b) the value of security shall be taken as one per cent. of the sale value of such security.

Annexure – III

CENVAT CREDIT RULES, 2004

[Notification No. 23/2004-C.E. (N.T.), dated 10-9-2004 as amended]

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) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :

Short title, extent and commencement.

RULE 1. — (1) These rules may be called the CENVAT Credit Rules, 2004.

They extend to the whole of (2) India :

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

They shall come into force from the date of their (3) publication in the Official Gazette.

Definitions.

RULE 2. — In these rules, unless the context otherwise requires, -

(a) "capital goods" means

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and *] * fittings thereof;

(vii) storage tank, [and]

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers], used -

(1) in the factory of *]; or * the manufacturer of the final products,

[(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency;

(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;

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (b) (51 of 1975);

(c) "Excise Act" means the Central Excise Act, 1944 (1 of (c) 1944);

(d) "exempted goods" means excisable goods which are exempt (d) from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty [[and] goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed];

(E) "exempted service" means a -

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service 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;

[but shall not include a service -

(a) which is exported in terms of rule 6A of the Service Tax Rules, 1994; or

(b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India;

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

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

(H) "final products" means excisable goods manufactured or produced from input, or using input service;

(IJ) "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 Rules, 2002 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;

(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 [or pumping of water] for captive use; or

(iv) all goods used for providing any [output service, or];

(v) all capital goods which have a value upto ten thousand rupees per piece.]

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit commonly known as petrol;

(B) any goods used for -

(a) construction or execution of works contract 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 service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

(C) capital goods, except when,-

(i) used as parts or components in the manufacture of a final product; or

(ii) the value of such capital goods is upto ten thousand rupees per piece;

(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;

(L) "input service" means any service, -

(i) used by a provider of [output 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

modernization, 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], -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract 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

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

(B) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; 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;

Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

(M) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, [or an outsourced manufacturing unit] as the case may be;

(N) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

"large tax payer" shall have the meaning assigned to it in [(na) the Central Excise Rules, 2002;]

(NAA) "manufacturer" or "producer", -

(i) in relation to articles of jewellery or parts of articles of [(i) jewellery or both, 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 9 of the Articles of Jewellery (Collection of Duty) Rules, 2016;"

(ii) in relation to articles of precious metals falling under (ia) heading 7114 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;]

(iii) 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;]

(O) "notification" means the notification published in the (o) Official Gazette;

(P) "output service" means any service provided by a provider of service located in the taxable territory but shall not include a service, -

(1) specified in section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.

(Q) "person liable for paying service tax" has the meaning as (q) assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(QA) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed;]

(R) "provider of taxable service" include a person liable for (r) paying service tax;

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

(T) words and expressions used in these rules and not defined (t) but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

RULE 3. CENVAT credit.

(1) A manufacturer or producer of final products or a [provider of output service] 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 Excise Tariff Act, leviable under the Excise Act :

[**Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;]

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

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

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

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

(vi) the Education Cess on excisable goods leviable under section 91 read

with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) [, (vi) and (via)]:

*] * [*

(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act [*] : * *

Provided that a provider of [output] service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax *] * leviable under section 66 of the Finance Act; [*

(ixa) the service tax leviable under section 66A of the Finance Act;

(ixb) the service tax leviable under section 66B of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),:

paid on -

(i) any input or capital goods received in the factory of manufacture of final product or [by] the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, 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 G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer

for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004 :

[**Provided** that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of de-bonding of the unit in terms of the para 8 of Notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), vide number G.S.R. 265(E), dated, the 31st March, 2003.]

Explanation. - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(1a) A provider of output service shall be allowed to take [(1a) CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016)].

(2) Notwithstanding anything contained in (2) 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 manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in (3) sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(4) The CENVAT credit may be utilized for payment of

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on any output service :

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be :

Provided further that CENVAT credit shall not be utilized for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :

Provided [also] that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; and

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

[**Provided** also that no credit of the additional duty *] * leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* shall be utilized for payment of service tax on any output service :

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the [National Calamity Contingent duty leviable

under section 136 of the Finance Act, 2001 (14 of 2001) :]]

[**Provided** also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010) :]

[Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) :]

Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005)], shall not be utilized for payment of said additional duty of excise on final products :]

[**Provided** also that CENVAT credit shall not be utilized for payment of Infrastructure Cess leviable under [sub-section (1) of section 162 of the Finance Act, 2016 :]]

[**Provided** also that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016 (28 of 2016);]

[Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.]

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided that such payment shall not be required to be made where any inputs [or capital goods] are removed outside the premises of the provider of output service for providing the output service : *] * [*

[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 :]

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

If the capital goods are cleared as waste and scrap, the (b) manufacturer shall pay an amount equal to the duty leviable on transaction value.]

(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

[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] the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of [output] services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.]

[(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods [and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods] shall be reversed.]

[Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), 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, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilized.]

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

(7) Notwithstanding anything contained in sub-rule (1) [, sub-rule (1a)] and sub-rule (4), -

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated the 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely :-

Fifty per cent of [X multiplied by {(1+BCD/100) multiplied by (CVD/100)}], where BCD and CVD denote *ad valorem* rates, in per cent. of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

[**Provided** that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003] shall be equal to [X multiplied by [(1+BCD/200) multiplied by (CVD/100)]] :

[**Provided** further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

(A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 [G.S.R. 266(E), dated the 31st March, 2003]; and

(B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A), shall be the aggregate of -

(1) that portion of excise duty referred to in (A), as is equivalent to -

(i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;

(ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and

(II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).

(b) CENVAT credit in respect of

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

(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

[(iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);]

(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;

(v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on taxable services leviableunder section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(vii) the additional duty of excise leviable under [section 85 of the Finance Act, 2005 (18 of 2005)],

[shall be utilized towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), or the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005) 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 or on any output service :]

[**Provided** that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services :]

[**Provided** also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act :

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act :

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act :]

[**Provided** also that the credit of Education Cess and Secondary and Higher Education

Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service :

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service :

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service.

Explanation. - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.]

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under [tariff items 2515 12 20 and 2515 12 90 respectively] of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square meter;

(d) Cenvat credit in respect of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016) shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016).

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

RULE 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 or in the premises of the provider of output service [or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be] :

[**Provided** that in respect of final products, namely, articles of [jewellery or other articles of precious metals falling under Heading 7113 or 7114, as

the case may be] of the First Schedule to the Excise 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 get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker :]

[**Provided** further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs :]

[**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.]

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, [or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be]] 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 :

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year :

[**Provided** further that the CENVAT credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, [* * * *] in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of a manufacturer :]

Provided also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year :

[**Provided** also that the CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.]

[***Explanation.*** - For the removal of doubts, it is hereby clarified that-

(i) an assessee engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees fifteen crore;].

(ii) an assessee, other than (a) above, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees four hundred lakhs.]

(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, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years.

Illustration. - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service 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 or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

(5)(a) (i) The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT

credit that the inputs or the products produced therefrom are received back by the manufacturer or the provider of output service, as the case may be, within one hundred and eighty days of their being sent from the factory or premises of the provider of output service, as the case may be :

Provided that credit shall also be allowed even if any inputs are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of one hundred and eighty days shall be counted from the date of receipt of the inputs by the job worker;

(ii) the CENVAT credit on capital goods shall be allowed even if any capital goods as such are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the capital goods are received back by the manufacturer or the provider of output service, as the case may be, within two years of their being so sent :

Provided that credit shall be allowed even if any capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of two years shall be counted from the date of receipt of the capital goods by the job worker;

(iii) if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise, but the manufacturer or the provider of output service may take the CENVAT credit again when the inputs or capital goods, as the case may be, are received back in the factory or in the premises of the provider of output service.

(c) The CENVAT credit shall also be allowed to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer to, -

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf, according to his specifications :

Provided that such credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises.

(6) The [Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be,] having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be [valid for three financial years], in respect of removal of such input or partially processed input, 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.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :

[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 :

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :]

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 :

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 :

[Provided also that CENVAT Credit of Service Tax paid in a financial year, on the one-time charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years :

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year].

Explanation I.- The amount mentioned in this [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 [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.]

RULE [5. Refund of CENVAT Credit. —

(1) A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette :

Refund amount	=	(Export turnover of goods + Export turnover of services) / Total turnover	×	Net CENVAT credit

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net CENVAT credit" means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

(C) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) "Export turnover of services" means the value of the export service calculated in the following manner, namely :-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period;

(E) "Total turnover" means sum total of the value of -

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and

(c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

(2) This rule shall apply to exports made on or after the 1st April, 2012:

Provided that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement :

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the [Service Tax Rules, 1994] in respect of such tax.

Explanation 1. - For the purposes of this rule, -

(1) "export service" means a service which is provided as per [rule 6A of the Service Tax Rules, 1994];

(1A) "export goods" means any goods which are to be taken out of India to a place outside India.

(2) "relevant period" means the period for which the claim is filed.

Explanation 2. - For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rules (3) and (3A) of rule 6 is determined.

RULE [5A. Refund of CENVAT credit to units in specified areas.

Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

Explanation : For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.]

RULE[5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.]

RULE 6.[Obligation of a manufacturer or producer of final products and a [provider of output service]].

[(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is 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 and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs

are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder.

Explanation 3. - For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services].

Explanation 4. - Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.]

[(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.]

[(3)	(a)	A manufacturer who manufactures two classes of goods, namely :-
		(i) non-exempted goods removed;
		(ii) exempted goods removed;
		Or
	(b)	a provider of output service who provides two classes of services, namely :-
		(i) non-exempted services;
		(ii) exempted services,
	shall follow any one of the following options applicable to him, namely :-	
	[(i)	pay an amount equal to six *per cent.*of value of the exempted goods and seven *per cent.* of value of the exempted services 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]
	(ii)	pay an amount as determined under sub-rule (3A) :

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 seven *per cent.*of the value so exempted:

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two *per cent.* of value of the exempted services.

Explanation 1. - If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

Explanation 2.- No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

Explanation 3. - For the purposes of this sub-rule and sub-rule (3A),-

(a) "non-exempted goods removed" means the final products excluding exempted goods manufactured and cleared upto the place of removal;

(b) "exempted goods removed" means the exempted goods manufactured and cleared upto the place of removal;

(c) "non-exempted services" means the output services excluding exempted services.]

For determination of amount required to be paid under [(3A) clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i)	name, address and registration number of the manufacturer of goods or provider of output service;
(ii)	date from which the option under this clause is exercised or proposed to be exercised;
(iii)	description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv)	description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;
(v)	CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i)	the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;
(ii)	the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;
(iii)	credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,- C = T - (A + B);

Explanation. - Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv)	the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, - D = (E/F) x C;
	wwwhere E is the sum total of –
	(a) value of exempted services provided; and
	(b) value of exempted goods removed, during the preceding financial year;
	wwwhere F is the sum total of -

	(a) value of non-exempted services provided,
	(b) value of exempted services provided,
	(c) value of non-exempted goods removed, and
	(d) value of exempted goods removed, during the preceding financial year :
	Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty *per cent.* of the common credit;
(v)	remainder of the common credit shall be called eligible common credit and denoted as G, where,- G = C - D;
	Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.
(vi)	where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen *per cent.* per annum;

(c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-

(i)	the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A(Annual);
(ii)	the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);

(iii)	common credit left for further attribution shall be denoted as C(Annual) and calculated as, - C(Annual) = T(Annual) – [A(Annual) + B(Annual)];	
(iv)	common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, - D(Annual) = (H/I) x C(Annual);	
	where H is sum total of-	
	(a)	value of exempted services provided; and
	(b)	value of exempted goods removed; during the financial year;
		where I is sum total of -
	(a)	value of non-exempted services provided,
	(b)	value of exempted services provided,
	(c)	value of non-exempted goods removed; and
	(d)	value of exempted goods removed; during the financial year;

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [{A(Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later;

(e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen *per cent.* per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

(f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}], where the former of the two amounts is greater than the later;

(g) the manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f) , the following particulars, namely :-

(i)	details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);
(ii)	CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);
(iii)	amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;
(iv)	interest payable and paid, if any, determined as per the provisions of clause (e); and
(v)	credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.]

[(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.

(3AB) Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses (c), (d), (e), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30th June, 2016.]

[(3B) A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to 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)*] * * *

(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 thereunder 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), (7A), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B 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;

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more;

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more;

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

Explanation II. - The amount mentioned in sub-rules (3), (3A) [and (3B)], 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-rules (3), (3A) [and (3B)], 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".]

[(4) No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services 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 or services provided in a financial year :

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods.]

(5)*] * * [

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

(i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations; or]

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

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

(iv) 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 the 28th August, 1995, number G.S.R. 602(E), dated the 28th August, 1995; or

(iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. [12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012]; or]

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]

[(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of Notification No. [12/2012-Central Excise, dated the 17th March, 2012];

[(viii) supplies made for setting up of solar power generation projects or facilities.]

[(ix) *] * * * * *

(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 authorized operations.]

[(7) 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 authorized operations or when a service is exported [or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.]

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and

(b) such payment has not been received for a period of six months or such extended period as may be allowed from time-to-time by the Reserve Bank of India, from the date of provision

[**Provided** that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub-rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received.

[RULE 7. Manner of distribution of credit by input service distributor. —

The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;

(c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;

(d) The credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

Explanation. - The provision of this clause shall, mutatis-mutandis, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016;

(g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

Explanation 1. - For the purposes of this rule, "unit" includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5 :

Provided that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

Explanation 3. - For the purposes of this rule, the 'relevant period' shall be, -

(a) if the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case maybe, the said financial year; or;

(b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

Explanation 4. - For the purposes of this rule, "outsourced manufacturing unit" means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.

RULE [7A. Distribution of credit on inputs by the office or any other premises of output service provider. —

(1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall *mutatis mutandis* apply to such office or premises of the provider of output service.]

RULE 7B. Distribution of credit on inputs by warehouse of manufacturer.

(1) A manufacturer having one or more factories, shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of [documents specified under Rule 9], towards the purchase of such inputs.

(2) The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, *mutatis mutandis*, apply to such warehouse of the manufacturer.

RULE 8. Storage of input outside the factory of the manufacturer. —

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify :

Provided that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

RULE 9. Documents and accounts. —

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by -

(i) a manufacturer or a service provider for clearance of -

(I) inputs or capital goods from his factory or 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;

(ii) 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 Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or 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 leviable under section 3 of the Customs Tariff Act, 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 willful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of

additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

[(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; [or, as the case may be, an Authorized Courier, registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the Customs airport,]

[(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

[(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or]

(g) an invoice, bill or challan issued by an input service distributor under Rule 4A of the Service Tax Rules, 1994 :

[**Provided** that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible.]

[(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, [assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be,] name and address of the factory or warehouse or premises of first or second stage

dealers or [provider of output service], and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.]

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

[**Provided** that provisions of this sub-rule shall apply *mutatis mutandis* to an importer who issues an invoice on which CENVAT credit can be taken.]

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within [ten days] after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer [or a registered importer], as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board :

[**Provided** that the first stage dealer or second stage dealer [or a registered importer], as the case may be, shall submit the said return electronically.]

(9) The provider of output service availing CENVAT credit shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

[RULE 9A. Annual return.

(1) A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board.

(2) The provisions of rule 12 of the Central Excise Rules 2002, in so far as they relate to annual return shall, *mutatis-mutandis*, apply to the annual return required to be filed under this rule.]

RULE 10. 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) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(3) The transfer of the CENVAT credit under sub-rules (1) and (2) 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 or business premises 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 Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

RULE [10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act. —

(1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilized CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan :

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely :-

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003];

(viii) No. 20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307(E), dated the 25th April, 2007]; and

(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.]

RULE 11. Transitional provision. —

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized 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 or input services 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 in process or contained in 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.

[(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, 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 other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, 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 or for payment of service tax on any other output service, whether provided in India or exported.

RULE 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim.

—Notwithstanding anything contained in these rules, [but subject to the proviso to clause (i) of sub-rule (1) of Rule 3], 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 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No. 57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003, [or No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] [or No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]] 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.

RULE [12A. Procedure and facilities for large tax payer. —

Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer, -

(1) A large tax payer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (herein after referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (herein after referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that -

(a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or

(b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises,

and that any other conditions prescribed by the [Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be], Large Tax payer Unit in this regard are satisfied.

Explanation 1. — The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee :

Provided that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Provided further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

Explanation 2.— If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the manner as provided under rule 14 of these rules :

Provided also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; *] * [*

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007, and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010 :]

Provided also that nothing contained in this sub-rule shall be applicable to an export-oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -

(a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or

(b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

Explanation. - For the purpose of this sub-rule "intermediate goods" shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large tax payer may transfer, CENVAT credit taken, on or before the 10th July, 2014, by one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -

(i) making an entry for such transfer in the record maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii) :

Provided that such transfer or utilization of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3 :

Provided further that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

(i) No. 32/99-C.E., dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];

(ii) No. 33/99-C.E., dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];

(iii) No. 39/2001-C.E., dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(iv) No. 56/2002-C.E., dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-C.E., dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-C.E., dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003];

(vii) No. 71/2003-C.E., dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003]; *] * [*

[(viii) No. 20/2007-C.E., dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]; and]]

[(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010.]

(5) A large tax payer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(6) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be], Large Tax Payer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer.]

RULE [12AAA. Power to impose restrictions in certain types of cases.—

Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, [registered importer] first stage and second stage dealer [provider of taxable service] or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of [an importer or] a dealer and type of facilities to be withdrawn and procedure for issue of such order by the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be].

Explanation. - For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under Notification No. 5/2012-C.E. (N.T.), dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly.]

RULE 13. Power of Central Government to notify goods for deemed CENVAT credit.

Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid

at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of [output] service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the [output] service.

[RULE 14. Recovery of CENVAT credit wrongly taken or. erroneously refunded. —

(1)(i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilized wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

(2)*] * * [

[RULE 15. Confiscation and penalty. —

(1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty [in term of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be].

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of [clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act.]

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion

or any willful misstatement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of [sub-section (1) of section 78] of the Finance Act.

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

RULE [15A. General penalty. —

Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.]

RULE 16. Supplementary provision. —

(1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the [Principal Chief Commissioner of Central Excise or Chief Commissioner of Central Excise, as the case may be] or the [Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be], and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.

Annexure – IV

Extracts from Central Goods and Services Tax Rules, 2017 – Anti-profiteering

Rule 122 : Constitution of the Authority

The Authority shall consist of

(3) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and

(4) four Technical Members who are or have been Commissioners of State tax or central tax or have held an equivalent post under the existing law, -to be nominated by the Council.

Rule 123 : Constitution of the Standing Committee and Screening Committees.-

(iii) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it .

(e) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-

(a) one officer of the State Government, to be nominated by the Commissioner, and

(b) one officer of the Central Government, to be nominated by the Chief Commissioner.

Rule 124 : Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-

(e) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council

(f) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay :

Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.

(g) The Technical Member shall be paid a monthly salary of Rs. 2,05,400 (fixed) and shall be entitled to draw allowances as are admissible to a Government of India officer holding Group 'A' post carrying the same pay :

Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary of Rs. 2,05,400 reduced by the amount of pension.

(h) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment :

Provided that person shall not be selected as the Chairman if he has attained the age of sixty-two years.

(i) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment :

Providedthat person shall not be selected as a Technical Member if he has attained the age of sixty-two years.

Rule 125 : Secretary to the Authority :

The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.

Rule 126 : Power to determine the methodology and procedure:-

The Authority may determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

Rule 127 : Duties of the Authority- It shall be the duty of the Authority:-

(i) to determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices;

(ii) to identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iii) to order,

reduction in prices;

return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57

imposition of penalty as prescribed under the Act; and

cancellation of registration under the Act.

Rule 128 : Examination of application by the Standing Committee and Screening Committee.-

(1) The Standing Committee shall, within a period of two months from the date of receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is *prima-facie* evidence to support the claim of the applicant that the benfit of reduction in rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Rule 129 : Initiation and conduct of proceedings:-

(v) Where the Standing Committee is satisfied that there is a *prima-facie* evidence to show that the supplier has not passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to Director General of Safeguards for a detailed investigation.

(vi) The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(vii) The Director General of Safeguards shall, before initiation of investigation, issue a notice to the interested parties containing, *inter alia,* information on the following, namely:-

the description of the goods or services in respect of which the proceedings have been initiated;

summary of statement of facts on which the allegations are based; and

the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(viii) The Director General of Safeguards may also issue notices to such other persons as deemed fit for fair enquiry into the matter.

(ix) The Director General of Safeguards shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(x) The Director General of Safeguards shall complete the investigation within a period of three months of receipt of reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority a report of its findings, along with the relevant records.

Rule 130 : Confidentiality of information:-

Notwithstanding anything contained in sub-rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005) shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

The Director General of Safeguards may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised , such party may submit to the Director General of Safeguards a statement of reasons why summarization is not possible.

Rule 131 : Cooperation with other agencies or statutory authorities:-

Where the Director General of Safeguards deems fit, he may seek opinion of any other agency or statutory authorities in discharge of his duties.

Rule 132 : Power to summon persons to give evidence and produce documents:-

The Director General of Safeguards, or an officer authorized by him in this behalf, shall be deemed to be the proper officer to exercise power to summon any person whose attendance he considers necessary either to give evidence or to produce a

document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

Rule 133 : Order of the Authority:

(1) The Authority shall, within a period of three months from the date of receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(b) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

(c) Where the Authority determines that a registered person has not passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order -

reduction in prices;

return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eithteen percent from the date of collection of the higher amount till the date of return of such amount or recovery of the amount including interest not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

imposition of penalty as prescribed under the Act; and

cancellation of registration under the Act.

Rule 134 : Decision to be taken by the majority:

If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.

Rule 135 : Compliance by the registered person:-

Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union Territory Goods and

Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

Rule 136 : Monitoring of the order:

The Authority may require any authority of central tax, State tax or Union territory tax to monitor implementation of the order passed by it.

Rule 137 : Tenure of Authority.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Explanation - For the purpose of this Chapter,

a) "Authority" means the National Anti-Profiteering Authority constituted under rule 122;

b) "Committee" means the Standing Committee on Anti-Profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;

c) "interested party" includes –

(i) suppliers of goods or services under the proceedings; and

(ii) recipients of goods or services under the proceedings;

d) "Screening Committee" means the State Level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.

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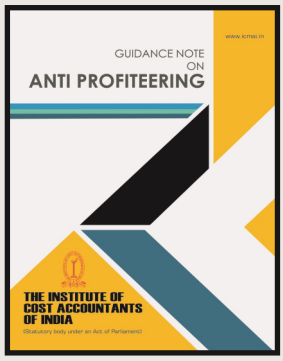

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata - 700 016
Ph: +91-33-2252-1031/34/35/1602/1492/1619/7373/7143
Fax: +91-33-2252-7993/1026/1723

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road, New Delhi - 110003
Ph: +91-11-24666100/24666124/24666122
Fax: +91-11-43583642