

Chapter 4: Efficiency of department in ensuring compliance

After introduction of self assessment of duty/tax by the assessee, the department has to ensure compliance verification of duty/tax payment through the tool of scrutiny and internal audit. Audit observed that no detailed scrutiny was carried out by the department. Furthermore non-coverage of mandatory units for internal audit was also observed. Due to non-observance of the compliance verification mechanism as envisaged, we noticed various shortcomings while examining adherence to the rules and regulations of Cenvat Credit Rules, 2004. Some of the cases observed are illustrated below.

4.1 Cenvat credit on inputs and input services

Inputs and input service have been defined under rule 2(k) and 2(l) of Cenvat Credit Rules, 2004.

As per rule 3 *ibid*, a manufacturer or provider of output service is allowed to avail credit of duties/service tax specified therein which are paid on capital goods/inputs/input service.

Irregular availing and utilisation of Cenvat credit is recoverable along with interest and penalty in terms of rule 14 and rule 15A of Cenvat Credit Rules, 2004.

During scrutiny of the records of 2012-13 to 2014-15, we observed in 83 cases that Cenvat credit of ₹ 62.13 crore was availed on ineligible inputs/input services.

Some of the cases are illustrated below:-

4.1.1 Cenvat credit availed on ineligible input services

Rule 2(l) of Cenvat Credit Rules, 2004, defines input service, *inter alia*, as any service 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 *viz.*, modernisation, renovation etc., 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 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.

M/s. Jindal Steel and Power Ltd., in Bhubaneswar-II Commissionerate, has availed and utilised input service credit of ₹ 36.67 crore during the period of

review, for setting up of plant and for project work and services related to civil works viz., excavation for foundation, earth work etc., which are excluded from the definition of input services. This resulted in irregular availing and utilisation of Cenvat credit of ₹ 36.67 crore.

When we pointed this out (July 2015), the Ministry admitted the observation (February 2016).

4.1.2 Cenvat credit of input services for the period not covered by notification

According to notification dated 20 June 2012 effective from 1 July 2012, in respect of construction of a complex, building, civil structure or part thereof, intended for a sale to a buyer, Cenvat credit is available in respect of input services and capital goods only. No Cenvat credit is available on inputs used for providing the taxable services. Thus, Cenvat credit on such services provided upto 30 June 2012 was therefore not available.

M/s. AGC Realty Private Ltd., in Delhi ST Commissionerate, availed and utilised Cenvat credit on service tax paid on input services received prior to July 2012 in connection with its output service of construction of residential projects. Since, the services were consumed or received before July 2012 Cenvat credit was not admissible to the service provider. This resulted in inadmissible availing and utilisation of Cenvat credit of ₹ 91.07 lakh.

When we pointed this out (June 2015), the Ministry while admitting the objection intimated (February 2016) that SCN has been issued.

4.1.3 Cenvat credit availed on sales commission

As per rule 2(l) of Cenvat Credit Rules, 2004, sales promotion is an eligible credit, however sales commission is not included in the definition of input service. In the case of M/s. Cadila Healthcare Ltd., {2013(30)STR 3(Guj.)} it was held that the service rendered by the commission agents not being analogous to the activities mentioned in the definition, would not fall within the ambit of the expression activities relating to business or sales promotion. Consequently, Cenvat credit would not be admissible in respect of the commission paid to commission agents. Appeal in the case of M/s. Cadila Healthcare Ltd., was filed before the Hon'ble Supreme Court and the Apex Court had seized the matter and no stay order was granted in that case {2014 (34) S.T.R. 814 (Guj.)}.

M/s. Ballavpur Paper Manufacturing Ltd., in Bolpur Commissionerate, cleared kraft paper through various selling agents and paid commission on sale along with applicable service tax. The assessee then availed of credit of service tax so paid which was irregular. This resulted in irregular availing of Cenvat credit of ₹ 1.40 crore on sales commission during the period of review.

When we pointed this out (September 2014) the Ministry stated (February 2016) that the credit availed by the assessee was regular in the light of circular dated 29 April 2011 and the judgement of Gujarat High Court was not binding on the assessee.

The reply of the Ministry is not acceptable since if there is any conflict between jurisdictional High Court and Board's circular, the decision of jurisdictional High Court is binding to the department rather than its circular {2014 (34) S.T.R. 814 (Guj.)}.

4.1.4 Cenvat credit availed on exempted goods

Rules 6(4) and 6(1) of Cenvat Credit Rules, 2004, envisage that no Cenvat credit shall be allowed on capital goods or input service which are used exclusively for the manufacture of exempted goods or for providing exempted service.

M/s. Travancore Cochin Chemicals Ltd., in Kochi Commissionerate, established an Ammonium Per-chlorate Experimental Plant for ₹ 24 crore, exclusively for producing Sodium Chlorate crystal with the support of M/s. Vikram Sarabai Space Centre (VSSC). The finished goods were supplied to M/s. VSSC under exemption notification dated 1 March 1997. During scrutiny it was noticed that the assessee availed Cenvat credit on capital goods of ₹ 63.60 lakh on input services of ₹ 28.02 lakh used for the above plant which was not correct. This resulted in irregular availing of Cenvat credit of ₹ 91.62 lakh during the period of review.

When we pointed this out (July 2015), the Ministry stated (February 2016) that since the capital goods in question were used for manufacture of both dutiable and exempted goods rule 6(4) of Cenvat Credit Rules, 2004 is not attracted in this case.

The reply of the Ministry is not acceptable as it was observed in audit that there was no clearance of dutiable goods.

4.1.5 Cenvat credit of countervailing duty wrongly paid

As per explanation given under sub-section (1) of Section 5A of the Central Excise Act, 1944, where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

Further, as per rule 2(d) of the Cenvat Credit Rules, 2004, exempted goods means, excisable goods which are exempt from the whole of the duty of excise leviable thereon, and include goods which are chargeable to "Nil" rate of duty.

The Board in its circular dated 14 January 2011, clarified that- “if the assessee pays any amount as excise duty on exempted goods, the same cannot be allowed as Cenvat credit to the downstream units, as the amount paid cannot be treated as duty of excise under rule 3 of Cenvat Credit Rules, 2004”.

M/s. Jindal Steel and Power Ltd. and M/s. Ganesh Sponge Pvt. Ltd., in Bhubaneswar-II Commissionerate, availed Cenvat credit on imported coal on which CVD at the rate of two percent was paid. As the said goods falls under the category of exempted goods as per the rule cited supra, availing of credit on the same was irregular. This resulted in irregular availing of Cenvat credit of ₹ 3.50 crore (₹ 3.38 crore + 0.12 crore) during the period 2013-14 to 2014-15.

When we pointed this out (July 2015), the Ministry while admitting the observation stated (February 2016) that SCNs are being issued.

4.2 Reversal of Cenvat credit

As per rule 6(2) of Cenvat Credit Rules, 2004, where an assessee deals with both dutiable and exempted manufacture/service he shall maintain separate account of receipt, consumption and inventory of input/input services intended for use in dutiable manufacture/service and those intended for use in exempted manufacture/service and take credit of only the former portion. Further, the manufacturer of goods or the provider of output services, opting not to maintain separate accounts, shall pay an amount equal to six per cent of the value of the exempted good and exempted services or pay an amount as determined under sub-rule (3A) *ibid*.

During scrutiny of records we observed 18 cases in 12 Commissionerates, the assessee either had not paid or short paid the amount of ₹ 32.74 crore payable under rule 6 of Cenvat Credit Rules, 2004, during the period of review. A few cases are illustrated below:-

4.2.1 Section 64 of Chapter V of Finance Act, 1994, excludes the applicability of service tax in the State of Jammu and Kashmir. Since service tax is not payable in respect of services provided in Jammu and Kashmir, Cenvat credit of the related input services is not admissible. The term “exempted services” as defined in rule 2(e) means taxable services which are exempt from the whole of the service tax leviable thereon and also include services on which no service tax is leviable under Section 66 of the Finance Act, 1994.

M/s. Reliance Communications Ltd., in Mumbai-VII ST Commissionerate, was engaged in providing taxable, exempted and non-taxable telecommunication services. Scrutiny of records for the period of review revealed that assessee had provided non-taxable services to Jammu and Kashmir clients and earned

income of ₹ 222.27 crore. The assessee did not maintain separate accounts for input services used in the provision of taxable and non-taxable services. Further, no amount was paid as per rule 6(3A) against the non taxable services related to Jammu and Kashmir. This resulted in non-payment of ₹ 24.36 crore for years 2013-14 and 2014-15.

When we pointed this out (July 2015), the Ministry intimated (February 2016) that an SCN is being issued.

4.2.2 M/s. Rashtriya Chemical and Fertilisers Ltd., Thal, in Mumbai LTU Commissionerate, was engaged in the manufacture of dutiable and exempted products. The assessee has two manufacturing units at Trombay and Thal. Scrutiny of records of Thal unit for the years 2012-13 and 2013-14 revealed that, assessee had availed proportionate service tax credit on common input services which were received exclusively for the Thal unit for removal of dutiable goods and for provision of taxable services. While reversing the amount under rule 6(3) the assessee had considered the turnover ratio of the entire company (both units) which was not correct as the turnover ratio of Thal Unit alone was required to be considered. This resulted in excess availing of Cenvat credit ₹ 5.29 crore.

When we pointed this out (April 2015), the Ministry while admitting the observation intimated (February 2016) that the SCN is being issued.

4.2.3 As per rule 6(3B) of Cenvat Credit Rules, 2004, a banking company and a financial institution including a non-banking finance company (engaged in providing services by way of extending deposits, loans or advances) shall pay for every month equal to fifty per cent of the Cenvat credit availed on inputs and input services in that month with effect from 1 April 2011.

During scrutiny of records of M/s. Federal Bank Ltd., in Kochi Commissionerate, we observed that the assessee availed Cenvat credit of input services amounting to ₹ 32.83 crore during the year 2012-13 but reversed only ₹ 15.76 crore instead of ₹ 16.42 crore. This resulted in short reversal of ₹ 65.57 lakh.

When we pointed this out (March 2014) the Ministry intimated (February 2016) the reversal of Cenvat credit of ₹ 65.57 lakh along with interest of ₹ 19.75 lakh.

4.2.4 M/s. Jindal Steel and Power Ltd., in Bhubaneswar-II Commissionerate has cleared two exempted products viz., calcined lime and sulphur valuing ₹ 9.11 crore during the period 2013-14 and 2014-15 without payment of duty. However, the assessee had availed Cenvat credit on inputs viz. imported lime stone and imported quick lime lumps and input services viz., manpower agency services, goods transport agency on transportation of coal and other

input services. Since the assessee had not maintained separate accounts, as per rule 6(3) he is liable to pay an amount of ₹ 54.64 lakh.

When we pointed this out (July 2015), the Ministry while admitting the observation stated (February 2016) that the SCN is under process.

4.2.5 M/s. West Bengal Electronics Industry Development Corporation Ltd., in Kolkata-I ST Commissionerate, rendered various taxable and exempted services during the period of review. The assessee, however, did not exercise any option under rule 6 ibid for not maintaining separate accounts for common input services used for both taxable services and exempted service. Since the assessee had not maintained separate accounts, as per rule 6(3) he is liable to pay an amount of ₹ 37.36 lakh.

When we pointed this out (May 2015), the Ministry admitted the audit observation (February 2016).

4.3 Excess availing of Cenvat credit

Rule 3 of Cenvat Credit Rules, 2004, provides that a manufacturer/service provider shall be allowed to take Cenvat credit of duties specified therein paid on inputs, capital goods and input service received for use in or in relation to manufacturer of final products or provision of output service, on the basis of documents specified in rule 9 ibid.

During scrutiny of records we observed 22 cases, in 12 Commissionerates, availing of Cenvat credit was in excess of the admissible amount, which resulted in irregular availing of Cenvat credit of ₹ 20.20 crore during the period from 2012-13 to 2014-15. A few cases are illustrated below:-

4.3.1 M/s. Jindal Steel and Power Ltd., Angul in Bhubaneswar-II Commissionerate, has availed input credit of countervailing duty (CVD) and special additional duty (SAD) of ₹ 47.95 crore in August 2014, against the apportioned entitlement of ₹ 29.90 crore. The excess availing of credit is on account of credit pertaining to the other unit at Raigarh. This resulted in excess availing of credit of ₹ 18.05 crore.

When we pointed this out (April 2015), the Ministry while admitting the observation intimated (February 2016) that the SCN is being issued.

4.3.2 On audit examination of ER-1/Cenvat credit records of M/s. Pricol Ltd., in Pune-III Commissionerate, revealed that in the ER-1 returns, the service tax credit amount was taken both in input credit column as well as in service tax credit column in the month of May, June, October and November 2014. This resulted in double availing of Cenvat credit of service tax of ₹ 25.15 lakh.

When we pointed this out (June 2015), the Ministry intimated (February 2016) the recovery of ₹ 25.15 lakh along with interest and penalty of ₹ 5.48 lakh.

4.4 Irregular availing of Cenvat credit

4.4.1 On ineligible documents

Rule 9 of Cenvat Credit Rules, 2004, specifies the documents on the basis of which a manufacturer/service provider is allowed Cenvat credit of duty/service tax paid on input/capital goods or input service, which inter alia includes an invoice, bill of entry etc.

During scrutiny of records we observed 18 cases, in 10 Commissionerates, that Cenvat credit was availed on ineligible documents. This resulted in irregular availing of Cenvat credit of ₹ 2.36 crore during the period of review. A few cases are illustrated below:-

Scrutiny of records of M/s. BBM Accoustic India Pvt. Ltd., in Pune-III Commissionerate, revealed that the assessee availed Cenvat credit of ₹ 62.71 lakh on the basis of service tax payment challan copy of subsidiary company which is not correct. This resulted in irregular availing of Cenvat credit of ₹ 62.71 lakh.

When we pointed this out (June 2015), the Ministry while not admitting the observation stated (February 2016) that as per circular dated 30 April 2010 in case of 'Associated enterprises' credit of service tax can be availed when the payment has been made to the service provider.

The reply of the Ministry is silent on audit observation related to availment of credit on the copy of challan of subsidiary company which is inadmissible.

4.4.2 Cenvat credit on old invoices

Rule 4 of Cenvat Credit Rules, 2004, with effect from 1 September 2014, was amended to provide, inter alia, that Cenvat credit shall not be allowed after six months of the date of documents issued under rule 9, *ibid*.

During scrutiny of records we observed 14 cases in seven Commissionerates, that Cenvat credit of ₹ 2.83 crore was availed on invoices/documents which were older than six months. A few cases are illustrated below:-

4.4.2.1 M/s. Coca Cola India Pvt. Ltd., in Pune-III Commissionerate, availed credit of duty paid on inputs on the basis of invoices/documents which were older than six months between September 2014 and March 2015. This resulted in irregular availing Cenvat credit of ₹ 73.86 lakh.

When we pointed this out (June 2015), the Ministry intimated (February 2016) that an SCN was issued to assessee.

4.4.2.2 M/s. Ford India Pvt. Ltd., in Chennai LTU Commissionerate, availed Cenvat credit in November 2014 based on the invoices which were more than six months old. This resulted in irregular availing of Cenvat credit of ₹ 49.65 lakh.

When we pointed this out (June 2015), the Ministry stated (February 2016) that the credit availed against the invoices were in order as the time limit was extended to one year vide notification dated 1 March 2015.

The reply of the Ministry is not acceptable since the notification dated 1 March 2015 is effective from 1 March 2015 only.

Recommendation No.5

The government may consider inserting provision for furnishing detailed information regarding Cenvat credit availed by the assessee containing invoices/documents nos., date of invoices, name of goods with chapter heading, amount of credit taken etc. so that preliminary check may be exercised at Range level.

The Ministry intimated (February 2016) that the recommendation is under examination.

4.5 Self adjustment of Cenvat credit

A duty of excise/tax paid in excess shall be claimed as refund under Section 11B of the Central Excise Act, 1944. Therefore, any suo-moto adjustment of duty, once paid, shall lead to non-payment of duty and an assessee may get the excess duty paid earlier only by claiming refund from the department.

4.5.1 M/s. Vodafone Cellular Ltd., in Kochi Commissionerate, engaged in providing telecommunication and business support services, paid service tax based on the invoices issued by them as per rule 4A of the rules, *ibid*. However, while discharging their service tax liability during 2012-13 to 2014-15, the assessee adjusted ₹ 2.41 crore on account of excess service tax paid in earlier months by taking credit under the said rule. On further examination, we observed that whenever sales return transactions of pre-paid coupons and non-receipt of amounts of post-paid connections were noticed, corresponding service tax paid at the time of raising invoices were adjusted in current months service tax liability. Since, such adjustment can be done only when the assessee has refunded the payment received including service tax or issued a credit note for the same which was not the case in the instant observation, the adjustment made by the assessee was held to be irregular. This resulted in irregular availing and utilisation of credit of ₹ 2.41 crore.

When we pointed this out (June 2015), the Ministry intimated (February 2016) that an SCN is being issued.

4.5.2 Scrutiny of records of M/s. Titagarh Wagon Ltd., in Kolkata LTU Commissionerate, revealed that the assessee had raised an invoice to M/s. GATX India (P) Ltd. for 'Bogie Container Flat' on 31 December 2014, but the said goods were not actually cleared on that date. The goods were actually cleared on January 2015 and a separate invoice dated 28 January 2015 was again issued to M/s. GATX India Pvt. Ltd. The invoice raised by M/s. Titagarh Wagon Ltd. during December 2014 was then returned by M/s. GATX India Pvt. Ltd. and assessee availed suo-moto credit on the basis of this invoice. This resulted in irregular availing of Cenvat credit of ₹ 65.73 lakh during 2014-15.

Similarly, M/s. Prabhat Zarda Factory (India) Pvt. Ltd., in Noida Commissionerate availed suo-moto Cenvat credit of ₹ 3.20 lakh during 2012-13.

When we pointed this out (between May and June 2015) the Ministry intimated (February 2016) the recovery of ₹ 65.73 lakh in respect of M/s. Titagarh Wagon Ltd. The Ministry in the case of M/s Prabhat Zarda Factory (India) Pvt. Ltd. stated that the assessee was not eligible to take cenvat credit.

4.6 Availing of Cenvat credit without making payment

Sub-rule 7 of rule 4 of Cenvat Credit Rules, 2004, 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. Further, proviso to the said rule provides that in case the payment of the value of input service and service tax paid or payable as indicated in the invoice/bill is not paid within three months of the date of the invoice/bill, the service provider who has taken credit on such input service shall pay an amount equivalent to the Cenvat credit availed on such input service.

Further, this rule provides that if any payment or part thereof, made towards an input service is refunded or credit note is received by the manufacturer or the service provider who has taken credit on such input services, he shall pay an amount equal to the Cenvat credit availed in respect of the amount so refunded or credited.

During scrutiny of records we observed two cases in Delhi-I ST Commissionerate, the service providers availed Cenvat credit on input services in violation of above rule either by not making payment of value of input service along with service tax payable thereon within the prescribed time limit of three months or making delayed payment of the same. This

resulted in irregular availing of Cenvat credit of ₹ 1.49 crore during the period of review.

A case is illustrated below:-

Scrutiny of records of M/s. Saum Infra Pvt. Ltd., in Delhi-I ST Commissionerate, revealed that the assessee had availed and utilised Cenvat credit of ₹ 1.48 crore on input services in respect of which the assessee had not paid the value of input service till the date of audit (June 2015). This resulted in irregular availing of Cenvat credit of ₹ 1.48 crore during the period 2012-13 to 2013-14.

When we pointed this out (June 2015) the Ministry intimated (February 2016) the recovery of ₹ 2.34 crore.

4.7 Distribution of Cenvat credit by Input Service Distributor (ISD)

As per rule 2 (m) of Cenvat Credit Rules, 2004, "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, as the case may be. Rule 7 of Cenvat Credit Rules, 2004, prescribes the conditions for distribution of Cenvat credit by an input service distributor. One of the conditions is that the credit of service tax attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed. Further, the credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which were operational in that year.

During scrutiny of records we observed six cases in six Commissionerates credit of ₹ 1.05 crore was irregularly distributed and/or availed during the period 2012-13 to 2014-15. Two cases are illustrated below:-

M/s. Alok Industries, in Silvassa Commissionerate, is having five sister units (one situated at Vapi, three situated at Silvassa and one situated at Navi Mumbai). However, the assessee availed and utilised Cenvat credit in respect of input services of common nature viz. consulting fees, profession fees for arranging funds, SAP maintenance, etc. All these services are of common nature and pertain to M/s. Alok Industries Ltd., as a whole and not only to the assessee unit at Silvassa. Hence, availing of Cenvat credit of ₹ 64.64 lakh of common input services at one unit was irregular.

When we pointed this out (June 2015) the Ministry intimated (February 2016) the recovery of amount of ₹ 64.64 lakh.

4.8 Transfer of Cenvat credit

Rule 12A of Cenvat Credit Rules, 2004, defines the procedure and facilities for large tax payers who have registered under LTU. As per rule 12A(4) of the Cenvat Credit Rules, 2004, as amended from time to time, a large tax payer may transfer, Cenvat credit taken, on or before the 10 July 2014 by one of its registered manufacturing premises or premises providing taxable service to his other such registered premises subject to certain conditions.

M/s. Supreme Industries Ltd. (Silvasa Unit), in Mumbai LTU Commissionerate, availed and utilised the Cenvat credit of ₹ 60 lakh in 2014-15 on the basis of the transfer of credit by Halol Unit on 31 July 2014. Scrutiny of records of transferor unit (Halol unit) revealed that the credit of ₹ 10.17 lakh availed by it during the period from 11 July 2014 to 31 July 2014 was also transferred to Silvasa Unit. Thus, the amount of Cenvat credit transferred in excess to the balance of Cenvat credit as on 10 July 2014 by the transferor unit was not correct. This resulted in irregular availing and utilisation of Cenvat credit of ₹ 10.17 lakh by Silvasa Unit.

When we pointed this out (June 2015) the Ministry intimated (February 2016) the recovery of ₹ 10.17 lakh along with interest of ₹ 1.83 lakh.

4.9 Cenvat credit of fully/partially written off inputs or capital goods

Rule 3(5B) of Cenvat Credit Rules, 2004, provides that if the value of any input or 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 shall pay an amount equivalent to the Cenvat credit taken in respect of the said inputs or capital goods.

During scrutiny of records we observed four cases, in four Commissionerates, that value of inputs/capital goods, on which Cenvat credit was availed of, was either written off or provision for write off was made in the books of accounts before the same being put to use but corresponding Cenvat credit was not reversed. This resulted in non-reversal of Cenvat credit of ₹ 44.81 lakh during the period of review. A case is illustrated below: -

M/s Innovative Technomics Pvt. Ltd., in Pune-III Commissionerate, had discarded stock of ₹ 2.19 crore during the year 2012-13. Audit observed that though the Cenvat credit was availed on such stock, an amount equivalent to

Cenvat credit availed was not reversed by the assessee at the time of discarding of stocks. This resulted in irregular credit of ₹ 22.57 lakh.

When we pointed this out (June 2015), the Ministry while admitting the observation stated (February 2016) that the SCN is being issued.

4.10 Cenvat credit of education cess and secondary higher education cess wrongly paid

A manufacturer or producer of final products or a provider of output service is allowed to take Cenvat credit of all duties, taxes and cesses enlisted in rule 3(1) of Cenvat Credit Rules, 2004. After exemption of the education cess and the secondary and higher education cess on countervailing duty (CVD) vide Customs notifications dated 17 March 2012 availing of Cenvat credit of above cesses either in full or proportionate to the CVD will be irregular as cesses paid on the Custom is not included in rule 3(1) above.

During scrutiny of records we observed in 17 cases in 12 Commissionerates that assessee have taken credit of cesses paid on custom duty which resulted in irregular availing of Cenvat credit of ₹ 85.61 lakh during the period of review. A case is illustrated below: -

M/s. Concast Bengal Industries Ltd., in Bolpur Commissionerate, availed and utilised credit of education cess and secondary and higher education cess of ₹ 32.00 lakh paid on custom duty on the basis of bill of entry pertaining to imported inputs. This resulted in irregular availing of Cenvat credit of ₹ 32.00 lakh during the period of review.

When we pointed this out (September 2014), the Ministry while admitting the observation (February 2016) stated that the SCN is being issued.

4.11 Use of Cenvat credit for payment of service tax under reverse charge

As per explanation given below rule 3(4) of Cenvat Credit Rules, 2004, 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.

During scrutiny of records we observed three cases in three Commissionerates, wherein service tax was paid as recipient of service by utilizing Cenvat credit account. This resulted in irregular utilisation of Cenvat credit of ₹ 11.34 lakh during the period of review. A case is illustrated below:-

M/s. Ascent Buildtech Pvt. Ltd., in Delhi-I ST Commissionerate paid service tax of ₹ 4.50 lakh on input services under reverse charge mechanism as service recipient by utilizing Cenvat credit. This resulted in irregular utilisation of Cenvat credit of ₹ 4.50 lakh during the period of review.

When we pointed this out (June 2015) the Ministry intimated (February 2016) that the assessee deposited the amount.

4.12 Removal of capital goods after being used

Rule 3(5A) of Cenvat Credit Rules, 2004, provides that when 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 in the rule for each quarter of a year or part thereof from the date of taking the Cenvat credit. But, 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.

During scrutiny of records we observed four cases in three Commissionerates, that an amount of ₹ 13.30 lakh was not reversed upon removal of used capital goods during the period of review.

M/s Suvi International Pvt. Ltd. in Delhi-I Commissionerate had availed and utilised Cenvat credit of ₹ 30.04 lakh on the capital goods. The assessee later on sold these capital goods as waste and scrap. However, the proportionate Cenvat credit of ₹ 8.12 lakh had not been reversed.

When we pointed this out (June 2015), the Ministry stated (February 2016) that no dues are pending against the assessee.

The reply of the Ministry is silent on the aspect of the reversal of Cenvat credit or payment of duty on transaction value on selling of capital goods as waste and scrap.

4.13 Non-reversal of Cenvat credit on goods sent to job worker

Rule 4 (5a) of the Cenvat Credit Rules, 2004, if the inputs or capital goods, sent to a job worker for further processing, testing, repair etc. are not received back in the factory within one hundred and eighty days of their being sent to a job worker, the manufacturer or provider of output service shall pay an amount equivalent to the Cenvat credit attributable to the inputs or capital goods by debiting the Cenvat credit or otherwise.

Scrutiny of records of M/s. LanXESS India Pvt. Ltd., M/s. Nuberg Engineering Ltd., and M/s. Rahul Ferromet and Engineering Pvt. Ltd., in Bharuch Commissionerate, revealed that the inputs or capital goods, sent to a job worker for further processing, testing, repair etc. were not received back in the factory within one hundred and eighty days, but the manufacturer or provider of output service failed to reverse the credit attributable to inputs/capital goods not received or short received. This resulted in non-

reversal of Cenvat credit of ₹ 23.42 lakh (20.11 + 2.13 + 1.18) during the period of review.

When we pointed this out (June 2015) the Ministry intimated (February 2016) the reversal of Cenvat credit of ₹ 23.42 lakh.

4.14 Simultaneous availing of Cenvat credit and depreciation

As per rule 4(4) of Cenvat Credit Rules, 2004, 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.

M/s. Shubham Starch Chemicals Pvt. Ltd., in Faridabad-II Commissionerate, availed Cenvat credit of ₹ 2.95 lakh (including cess) on the capital goods during the year 2013-14 but also capitalised the whole amount including excise duty element on which the depreciation was claimed as per Section 32 of the Income Tax Act 1961. It resulted in irregular availing of Cenvat credit of ₹ 2.95 lakh.

When we pointed this out (July 2015), the Ministry while admitting the observation intimated (February 2016) the reversal of Cenvat credit of ₹ 2.95 lakh along with interest.

Similarly, M/s. Steelfab Building Systems, in Silvassa Commissionerate, irregularly availed Cenvat credit of ₹ 2.01 lakh during 2014-15.

When we pointed this out (April 2015), the Ministry while admitting the observation intimated (February 2016) the reversal of Cenvat credit of ₹ 2.01 lakh along with interest of ₹ 0.53 lakh.

4.15 Other issues

During scrutiny of records we observed in seven cases Cenvat credit was irregularly availed/utilised in violation of provision/notification involving revenue of ₹ 48.28 lakh. These cases are tabulated below: -

Sl. No.	Name of assessee	Commissionerate	Period	Revenue involved (₹ in lakh)
1.	M/S. Icon Household Product (P) Ltd.	Guwahati	2013-15	11.28
2.	M/s. R.P. Multimetals Private Ltd.	Chandigarh-I	2014-15	1.51
3.	M/s. Bubna Advertising	Delhi-I ST	2012-14	9.54
4.	M/s. Overseas Logistics Pvt. Ltd.	Delhi-I ST	2012-14	8.80
5.	M/s. Arihant Video Communication	Delhi-I ST	2013-15	3.66
6.	M/s. Suvi international Pvt. Ltd.	Delhi-I	2014-15	1.40
7.	M/s. Uttam (Bharat) Electricals Private Ltd., Unit-II, Jaipur	Jaipur	2012-15	12.09
	Total			48.28

When we pointed this out (between April and June 2015), the Ministry while admitting the observation in all cases intimated (February 2016) the recovery in six cases except for M/s. Uttam Electricals Pvt. Ltd.

4.16 Conclusion

Excessive use of Cenvat credit to the extent of seven to ten times of national average in service tax and seven times in central excise in some of selected Commissionerates could indicate the likelihood of misuse of Cenvat credit by assesseees. Moreover, around 90 per cent of Cenvat credit availed was not verified by the department through detailed scrutiny and internal audit in 16 ranges.

In view of the large amount of duty being paid through Cenvat credit, Audit is of the opinion that the department needs to strengthen its internal control mechanism using the existing man power judiciously.

New Delhi
Dated: 03 May 2016



(SANJEEV GOYAL)
Principal Director (Central Excise)

Countersigned

New Delhi
Dated: 03 May 2016



(SHASHI KANT SHARMA)
Comptroller and Auditor General of India