

**ISD – Always complex
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Circular No. 178/4/2014 ST Dt. 11.07.2014 has been issued to clarify the manner of distribution of credit by Input Service Distributor.

The malady which necessitated the issue of this circular can be explained as under. The relevant provision, which led to doubts was,

"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 are operational in the current year, during the said relevant period"

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 may be, 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."

(Introduced vide Notification 5/2014 C.E. N.T. Dt. 28.02.2014)

Let us assume that an assessee has 4 factories, A, B, C & D, the turnover of which are Rs.2 lakhs, 5 lakhs, 3 lakhs, 6 lakhs respectively. A particular input service, involving service tax of Rs.12,000 has been used by factories A and B only. Then the manner of distribution would be as below:

For factory A = Rs. 2 lakhs/Rs. 16lakhs * Rs.12000 = Rs.1,500.

For Factory B = Rs.5 lakhs / Rs.16 lakhs * Rs.12000 = Rs.3,750.

The balance credit of Rs.6,750 cannot be distributed at all and would go waste.

Now it has been clarified, that the distribution should be as below, irrespective of the utilisation or non utilisation of such service in any factory.

For factory A = Rs. 2 lakhs/Rs. 16lakhs * Rs.12,000 = Rs.1,500.

For Factory B = Rs.5 lakhs / Rs.16 lakhs * Rs.12,000 = Rs.3,750.

For Factory C = Rs.3 lakhs / Rs.16 lakhs * Rs.12,000 = Rs.2,250.

For Factory D = Rs.6 lakhs / Rs.16 lakhs * Rs.12,000 = Rs.4,500

Thus the total credit is distributed and the malady seems to have been remedied.

But, what if factory C is manufacturing exempted goods or both dutiable and exempted goods?" The portion of credit in proportion to the turnover of such exempted goods would be reversed in terms of Rule 6 in factory C. But the fact remains that the said service has not at all been used in factory C, but only in factories A and B.

The clarification should have been to the effect that the manner of distribution should be based on the turnover of A and B, to the total turnover of Factories A and B only. i.e.

For factory A = Rs. 2 lakhs / Rs. 7 lakhs * Rs.12000 = Rs.3,429
For Factory B = Rs.5 lakhs / Rs. 7 lakhs * Rs.12000 = Rs.8,571.

But it may be observed that the pre amended provision (before 28.02.2014) stood as below.

*credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit **to the sum total of the turnover of all the units to which the service relates** during the same period*

Explanation 3. - (a) The relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

(b) In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed.

(c) In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available."

A careful reading of the pre existing provisions reveal that the problem had its root in the Explanation and not in the main provision. Only the explanation could have been amended. But the main provision has been amended, which brought further problems, necessitating this circular. But, this circular has created some other problems as explained above.

Why not the distribution of eligible credit to any factories of a manufacturer, in whatever proportion they want based on their requirements be allowed, as it was the case prior to 01.04.2012?