

Front and back on CCR

(G. Natarajan, Advocate, Swamy Associates)

While many of the amendments made in the Cenvat Credit Rules, 2004 signifies the forward looking and assessee friendly attitude of the Government, a few are against these avowed objectives.

The effect of the Hon'ble SC decision in Ind Swift Laboratories case, that interest will be payable even if the wrongly availed cenvat credit has not at all been used, has been nullified, by substituting "and" for "or" in Rule 14. Would have been better if this amendment was made retrospectively.

Little liberalization has been seen in allowing cenvat credit for certain motor vehicles and certain input services relating to motor vehicles.

Transfer of SAD credit from one unit to another unit would really be a boon for many. At the same time, why so many restrictions have to be imposed on transfer of credit by Input Service Distributors. If an assessee has several plants and ISD registration, the credit in respect of any particular plant has to be distributed only to such plant. In case of common services, the credit has to be distributed based on turnover of all units. These restrictions go against the fundamental principle of Cenvat Credit that there is no one to one correlation in the matter of credit.

The anomaly if capital goods are cleared after 10 years, as capital goods, no credit needs to be reversed and if they are sold as waste and scrap, amount equal to duty on sale price has to be paid, has been rectified. Now the amount payable would be either the amount calculated after allowing prescribed depreciation benefit or duty payable on transaction value, whichever is higher, in all cases of removal of capital goods, even as waste and scrap.

The reforms in Rule 5 refund are really laudable. The refund entitlement would be determined with reference to a simple formula, whereby the proportion of credit attributable to exports would be identified in proportion of such export turnover to the total turnover. Such proportion would be applied to the total credit availed during the relevant period and this would be the maximum amount that can be refunded. If the balance of credit during the relevant period is less than this amount, the entire balance could be refunded. The mundane process of establishing one to one correlation, hitherto prevalent has been buried for the best.