FREQUENTLY ASKED QUESTIONS (FAQ) ON SERVICE TAX, CENVAT CREDIT ISSUES AND RELATED PROCEDURAL MATTERS IN INDIAN RAILWAYS

Check Note

These FAQ have been compiled by the Taxation Cell of Railway Board based on the queries received from time to time and raised during Service tax seminar. These are purely intended for general guidance and should not be construed as legal or professional opinion. The solution could differ in different situations or in a given set of facts. The clarifications given in FAQ have to be read in light of the applicable law and rules as prevalent from time to time. **In case of doubt and for further clarification please contact and consult the Service Tax Consultant engaged by Zonal Railways/Production Units**

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A. TAXABLE SERVICES OF INDIAN RAILWAY

1. Which all services provided by Railways are taxable under Service Tax?

Under the Negative List regime, all the services have been brought under Service Tax net except those exempted by way of Mega Exemption Notification No. 25/2012 dated 20.06.2012 or mentioned in the Negative List (Section 66D)of the Finance Act, 1994. Broadly, the following services provided by the Indian Railways are taxable:

1. Transportation of goods except:

    a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
    b) defence or military equipments;
    c) newspaper or magazines registered with the Registrar of Newspapers;
    d) railway equipments or materials;
    e) agricultural produce;
    f) Food stuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
    g) Chemical fertilizers, organic manure and oil cakes;
    h) Cotton, ginned or baled.

2. Transport of passengers [only in A.C coach (1AC, 2AC, 3AC or CC) or 1st class]. For example, AC coach includes coaches of Garib Rath Express, Shatabdi Express, Rajdhani Trains etc. but 1st class coach may or may not be A.C coach.

3. Loading and unloading of goods except related to agricultural produce, rice cotton, ginned or baled.

4. Maintenance charges for railway private sidings.

5. Godown / rental charges in lieu of leasing / licensing of premises.

6. In other words, services under negative list and exemptions are as under:

    - Under Negative List (extracts of entries applicable and relevant to Indian Railways):

        (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

            (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

The expression "Support Services" is defined in section 65B(49) as under:-

> *"(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;"*

(d) services relating to agriculture or agricultural produce by way of —

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

The expression "*agricultural produce*" is defined in section 65B(5) as under:-

> (5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(g) selling of space for advertisements in print media;

(m) services by way of renting of residential dwelling for use as residence;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) a stage carriage;

(ii) railways in a class other than—

(A) first class; or

(B) an airconditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

- Under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 (Extracts):

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2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

9. Services provided,—
   (a) by an educational institution to its students, faculty and staff;
   (b) to an educational institution, by way of,—
      (i) transportation of students, faculty and staff;
      (ii) catering, including any mid-day meals scheme sponsored by the Government;
      (iii) security or cleaning or house-keeping services performed in such educational institution;
      (iv) services relating to admission to, or conduct of examination by, such institution

11. Services by way of sponsorship of sporting events organised,—
   (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state, zone or Country;

   (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

   (c) by Central Civil Services Cultural and Sports Board;

   (d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

18. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of airconditioning or central air-heating in any part of the establishment, at any time during the year

19A. Services provided in relation to serving of food or beverages by a Canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods —

(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(b) defence or military equipments;

(c) newspaper or magazines registered with the Registrar of Newspapers;

(d) railway equipments or materials;

(e) agricultural produce;

(f) foodstuff including flours, tea, coffee, jaggery, sugar, milk and milk products, salt and edible oil, excluding alcoholic beverages;

(g) chemical fertilizer, organic manure and oil cakes;

(h) cotton, ginned or baled.

25. Services provided to Government, a local authority or a governmental authority by way of —
    (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or
    (b) repair or maintenance of a vessel

40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;

7. Other service may include parking, advertisement (except print media), catering except on contract basis, leasing of land, telephone booth, platform ticket, retiring rooms (where tariff rate exceeds Rs. 1000 per day) etc.

B REGISTRATION

2. Whether Permanent Account Number (PAN) is required in case of Railways (being part of Government) for the purpose of registration under Service Tax department?

Yes, Railways will have to take PAN (Permanent Account Number) under Income Tax Act, 1961 through which it can apply for Service Tax Registration Number (STRN) under Service Tax Rules. Under Service Tax Law, registration is granted which is PAN based.

3. Whether Railways are required to get itself registered under Service Tax?

Yes, Railways are required to get itself registered under Service Tax. However, production units are required to be registered under Central Excise Rules as manufacturer of excisable products.

In units, where both, goods are manufactured and services are also rendered, registrations under Service Tax and Central Excise are required to be obtained separately.

4. What type of registration should be taken by Zonal Railways- centralized registration or single registration?

4.1 The Railways may opt for centralized registration at Railway Board Level(Indian Railways) or Zonal Level / Production Unit Level. Every zone should add the names of all divisions & workshop which fall under the jurisdiction / control of that zone.

4.2 Because of operational issues, one registration for Railways Board as a whole may not be feasible. Similarly, registrations at division / station level may also result in compliance related complex issues.

4.3 Further, such units of Zonal Railways which procure input services are required to take registration as Input Service Distributor (ISD) for distributing the CENVAT Credit in respect of the Service Tax paid on the input services to its manufacturing units or units providing output services. The provisions regarding manner and extent of distribution of CENVAT Credit by ISD are explained later under the heading "CENVAT CREDIT RULES, 2004".

4.4 As regards Zonal Railways and their production units procuring material on behalf of other Zonal Railways and their production units, the Cenvat Credit of the excise duty paid on the materials procured can be passed on to the concerned Zonal Railways/production units by the procuring Zonal Railways/production units only if the procuring Zonal Railway/ production units take registration under Central Excise Act, 1944 as "First Stage Dealer".

For Example, If Central Railway has procured certain material which is transferred to Northern Railway, then the Cenvat Credit of Excise Duty paid on those materials can be availed by the Northern Railway only when

Central Railway take registration under Central Excise Act, 1944 as first stage dealer.

4.5 Similarly, if COS Shipping Mumbai imports any material which is transferred to say Eastern Railway, then Eastern Railway can take the CENVAT Credit of the duty paid at the time of import of material only when COS Mumbai takes registration under Central Excise as an Importer Dealer.

5. Whether production units are also required to be registered?

Production units of Railways are also required to get themselves registered under Central Excise Act and Service Tax Law as applicable.

6. Whether unit like COFMOW which is engaged in centralized purchasing of machinery etc. should also get registered?

Generally No. However for the purpose of passing on CENVAT credit benefit to Railway Units/ Production Units, COFMOW shall get itself registered under Central Excise as first stage dealer or importer dealer, as the case may be.

7. Whether the registration once obtained can be surrendered? Explain the conditions of de-registration / surrender of registration of a unit of manufacturer or Service Provider?

Yes, the registration once obtained, whether under Central Excise or Service Tax, can be surrendered, if circumstances so warrant.

The provisions for surrender / de-registration under Central Excise / Service Tax are as follows:

De-registration under Central Excise Act

Registered person is required to apply electronically for de-registration if it ceases to carry on operations for which assessee is registered. It has to apply in prescribed Form (Annexure III) and surrender original registration

certificate. Till its registration is cancelled, assessee is required to submit 'NIL' returns.

As per the Annexure III, the registered unit has to declare that no Government dues are pending against it under Central Excise Act, 1941 as on the date of surrendering the registration certificate. If any demands are outstanding due to litigation / appeals pending before appellate authority, Tribunal or Courts, an Undertaking will have to be given to Central Excise Authority.

De-registration under Service Tax Law

If the assessee ceases to provide taxable services, it may apply for surrender of certificate of registration. As per Rule 4(7) of Service Tax Rules, registration certificate for surrender has to be submitted to the jurisdictional Superintendent of Central Excise.

Assessee should file up-to-date returns and apply for cancellation / surrender of RC. Application for cancellation / surrender is required to be submitted electronically.

C. POINT OF TAXATION (POT)

8. What is Point of Taxation and what is its relevance in Service Tax?

As per Rule 2 (e) of the Point of Taxation Rules, 2011, 'Point of Taxation' means the point in time when a service shall be deemed to have been provided, i.e., it is the time at which the payment of Service Tax to the Government becomes due. The Point of Taxation (POT) Rules are relevant for the purpose of collection of service tax and determination of rate of Service Tax.

Adoption of Point of Taxation would shift the basis for tax collection from cash to accrual. In other words, the remittance of Service Tax to Government account by the person liable to pay service tax need not depend on whether

he has actually realized (either in part or in full) the payment for services provided, but must depend upon the date of completion of the provision of the service or the date of issue of invoice / bill / challan (since on that date, payment accrues to assessee.)

9. What are the provisions in relation to POT on railway services?

In case of Railways, Rule 3 of Point of Taxation Rules, 2011, is applicable as mentioned hereunder:-

Point of taxation shall be as follows –

a) For advances received towards the provision of service – Date of receipt of such advance

b) If service is provided and invoice is raised within 30 days but payment is received subsequently - Date of invoice

c) If service has been provided or is to be provided and invoices are not issued within 30 days and payment is received subsequently - Date of completion of service.

10. What will be the point of taxation if there is change in rate of tax?

Rule 4 of Point of Taxation Rules, 2011 deals with the determination of point of taxation in case of change in rate of tax. The Point of Taxation in cases where there is change in rate of tax in respect of a service, shall be determined based on the following two situations:

a) In case a taxable service has been provided before the change in rate.
b) In case a taxable service has been provided after the change of rate.

In case a taxable service is provided before the change in effective rate of tax, the Point of Taxation will be as follows:

- Where both, the invoice has been issued and the payment has been received, after the change in effective rate of tax, the point of taxation

shall be the date of the date of invoice or the date of payment, whichever is earlier.

- If the invoice is issued before the change in effective rate of tax and the payment is made after the change in effective rate of tax, the point of taxation shall be the date of invoice.
- If the payment is received before the change in effective rate of tax and the invoice is issued after the change in effective rate of tax, the point of taxation shall be the date of payment.

<u>In case a taxable service has been provided after the change in effective rate of tax, the Point of Taxation will be as follows:</u>

- If the payment is made after the change in effective rate of tax but the invoice is issued before the change in effective rate of tax, the point of taxation shall be the date of payment.
- If the invoice is issued and the payment is also made before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or the date of invoice, whichever is earlier.
- If the invoice is raised after the change in effective rate of tax but the payment is made before the change in effective rate of tax, the point of taxation shall be the date of invoice

11. **What will be the point of taxation when a service is taxed for the first time?**

As per Rule 5 of Point of Taxation Rules, 2011, if a service is taxed for the first time, then no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable; and

Also, no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service tax is taxed for the first time.

12. **What will be the Point of Taxation when recipient of service is liable to pay service tax under the Reverse Charge Mechanism ?**

As per Rule 7 of POT Rules, the point of taxation in the case of service recipient liable to discharge service tax under reverse charge mechanism is the date on which payment is made to the vendor/service provider. For example, if the legal consultant /Advocate submits his professional invoice to Northern Railway on 10th July, 2014 and after processing, the Northern Railway makes payment to the legal consultant/Advocate on 15th Sept., 2014, by way of cheque/draft, the point of taxation shall be the date of payment (15.09.2014). Accordingly the Northern Railway will be required to discharge service tax on the professional payment by 5th/6th of Oct., 2014 as their RCM liability.

It is further provided that in case payment is not made within 3 months from the date of vendor's invoice, the point of taxation shall be the date immediately on expiry of said 3 months.

D. PAYMENT OF SERVICE TAX

13. **How will be the rate of tax, rate of exchange and value of taxable services reckoned ?**

As per section 67A of the Finance Act, 1994 inserted w.e.f. 01.07.2012, the rate of service tax, rate of exchange and value of taxable services shall be the rate of service tax or rate of exchange and value of taxable services as applicable at the time when the taxable service has been provided or agreed to be provided.

Rate of exchange shall be the rate as notified by CBEC.

14. **What are the due dates for payment of Service Tax?**

As per Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, the due date of payment of Service Tax for Railways is monthly (i.e., 6th day of the following month after the end of relevant month). For the month of March of any year, the payment is required to be made in same calendar month (i.e. upto 31st March).

15. **What is the mode of payment to be followed by Railways in respect to payment of Service Tax?**

W.e.f 1.10.2014, CBEC has made it mandatory for all assessees to make payment of Service Tax electronically. Though Indian Railways is mandatorily required to pay Service Tax electronically (e.g. NEFT, Online Transfer etc.) however a reference has been made by MOR to Ministry of Finance to permit existing practice/procedure of making payment of Service Tax through inter ministry adjustment.

16. **Whether the arrears (from date of applicability till date) of Service Tax on different ancillary services provided by Railways needs to be billed to the parties / collected from them and remitted to Service Tax Authorities?**

Yes, if the various ancillary services are liable to Service Tax, bills must be raised against the parties including Service Tax and the same shall be deposited to the credit of Central Government in prescribed time.

17. **In case the arrears of Service Tax are not likely to be recovered / collected from parties, whether the Railways (i.e. Service provider) would still be liable to deposit the arrears of Service Tax with the Service Tax authorities?**

Service Tax is payable on accrual basis irrespective of actual collection from the parties. In case the arrears are not recoverable from the parties, the consideration received shall be deemed to be inclusive of Service Tax and accordingly, calculation shall be done for the same and tax shall be deposited. This is, however, subject to Rule 6(3), 6(4) and 6(4A) of Service Tax Rules, 1994.

18. **In case of short payment of Service Tax by parties or non-recovery, can credit note be issued for re-negotiated price and / or Service Tax liability adjusted?**

Where Railways have issued an invoice, or received any payment against a service to be provided which is not so provided by it, either wholly or partially for any reason or where the amount of invoice is re-negotiated due to deficient provision of service or any terms contained in a contract, Railways may take credit of such excess service tax paid by it, if the following conditions are fulfilled:-

(i) Railways has refunded the payment or part thereof, so received for the service provided to the person from whom it was received , or

(ii) Railways has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

This is in terms of Rule 6(3) of the Service Tax Rules, 1994.

E INTEREST ON DELAYED PAYMENT OF SERVICE TAX

19. **What is the interest provision in case of delayed payment of Service Tax?**

In case of delayed payment of Service tax, simple interest is payable at rates per annum prescribed under section 75 of the Finance Act, 1994. W.e.f. 01.10.2014, interest rates shall vary on the basis of extent of period of delay in payment of Service Tax as follows :

(A) Upto 30th September, 2014:-

LIMITS	SIMPLE INTEREST RATE PER ANNUM
In case value of taxable services provided in a financial year is ₹ Sixty lakh or more	18%

(B) From 1st October, 2014:-

EXTENT OF DELAY	SIMPLE INTEREST RATE PER ANNUM
Upto initial 6 months of delay.	18%
Next 6 months.	24%
Beyond 1 year.	30%

F. RETURNS OF SERVICE TAX

20. **What will be the due dates of filling Service tax Returns in respect of Railways?**

The due date of filling Service tax Returns (Form ST-3) is prescribed in Rule 7 of the Service Tax Rules, 1994.

According to Rule 7, every assessee (including Railways) shall submit a half-yearly return in Form ST-3 electronically as follows :

For the half year:	*To be filed by*
1st April to 30th September	25th October
1st October to 31st March	25th April

21. **Can the Service Tax returns once filed be revised? How?**

(i) Rule 7B of Service Tax Rules, 1994 provide for filing of revised return to correct any mistake or omission within a period of 90 days from the date of submission of original Service Tax returns (ST-3).

(ii) It may be noted that the period of 90 days shall be reckoned from the actual date of filing the return and not from the due date of filing the return.

(iii) If any mistake is identified after 90 days, then the same cannot be rectified by way of revised return. However, assessee may intimate to the Department in writing by way of a letter about such discrepancy and the Department may take it on record.

G SERVICES PROVIDED BY RAILWAYS – TAXABLE

22. **Whether Annual Maintenance Contracts (AMC) entered by Railways for its equipments maintenance i.e. computer, machinery etc. are liable to Service Tax?**

The services of annual maintenance contracts for maintenance and repair etc. are liable to Service Tax. These would be taxable as works contracts treated as Declared Service u/s 66E (h) of the Finance Act, 1994. The provisions of reverse charge mechanism are only applicable when service provider is an individual / partnership firm / HUF / AOP/ BOI and service receiver is business entity registered as a body corporate located in the taxable territory. Since Railways is not a body corporate, therefore reverse charge provisions will not be applicable and contractor will discharge the entire Service Tax liability on his own. Being indirect tax, contractor will charge Service Tax to Railways, subject to the works contract entered into.

However, in case when the turnover of the service provider is below Rs. 10 lakh (which is not likely to be in case of Railway contractors), service provider will not be liable to pay Service Tax. In such cases, service provider may or may not be registered under Service Tax.

23. **Whether the maintenance charges collected by Railways from private parties to maintain their private sidings are taxable? If yes, whether there is any specific abatement on the same?**

The charges collected by Railways for maintenance of private sidings shall be taxable and there is no specific abatement or exemption for the same. Thus, Service Tax is required to be paid @ 12.36% (current tax rate) on maintenance services rendered by Railways.

24. **Whether the amount charged in the name of interest on capital cost of sidings by Railways from private parties shall be taxable?**

The amount charged as interest on capital cost for the railway sidings is a consideration for the services so rendered and shall be taxable. Only the amount of interest on loans / advances which is in the form of consideration represented by way of interest or discount is in negative list under section 66D (n) of the Finance Act, 1994. The amount of interest on capital cost is not an interest on loan or advance and therefore, not covered under negative list.

25. **Whether supply of manpower for loading / unloading of goods from or to railway wagons for private parties is a taxable service? If yes, whether this transaction is covered under RCM?**

The services of providing manpower by Railways to private parties for loading or unloading of goods in or from wagons are taxable services. The provisions of Reverse Charge Mechanism (RCM) will not apply in view of status of Railways being Government. Therefore, service provider (Railways) will be liable to charge and deposit Service Tax (100%) on this transaction.

RCM is applicable only when service provider is an individual / partnership firm / HUF /BOI / AOP and the service receiver is business entity registered as body corporate. Since Railways are not an individual / partnership firm / HUF / AOP / BOI, the RCM provisions are not applicable.

Even if this service is considered as cargo handling service, Railway will be liable to Service Tax.

H SERVICES PROVIDED BY RAILWAYS –EXEMPTED

26. **Whether Service Tax is leviable on the services provided by Railways prior to 1st October, 2012?**

As per Section 99 of the Finance Act, 1994(as amended by Finance Act, 2013), a special provision for taxable services provided by Indian Railways was introduced which provides as under:

(1) Notwithstanding anything contained in Section 66 of the Finance Act 1994, as it stood prior to the 1st day of July, 2012, or in Section 66B of the Finance Act 1994, no Service Tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of October, 2012.

(2) No refund shall be made of Service Tax paid in respect of taxable services provided by the Indian Railway during the said period prior to 1st day of October, 2012.

Thus, no service provided by Railways prior to 1st October, 2012 was liable to Service Tax. This provision would apply to all taxable services provided by Railways.

27. **Whether maintenance charges collected from the National Highway Authorities (NHAI) or State Government for maintenance of road and under / over bridges by Railways be subject to Service Tax?**

Notification No. 25/2012-ST dated 20.6.2012, entry No. 13 *inter alia* provides that services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by general public are exempted.

Therefore, maintenance charges collected by Railways from NHAI or State Government for maintenance, repair etc. of road and over / under bridges shall not be subject to Service Tax.

28. **Whether cleaning and sanitation services received by Railways in relation to railway platform be exempted from Service Tax?**

Perhaps yes. In terms of Notification No. 25/2012-ST dated 20.06.2012, vide entry No. 25, services in relation to carrying out any activity in relation to any functions ordinarily entrusted to a Municipality in relation to water supply, public health , sanitation conservancy, solid waste

management, slum improvement etc. are exempt from Service Tax. W.e.f. 11.07.2014, this exemption is for services provided by way of water supply, public health, sanitation conservancy, solid waste management and slump improvement.

It may be noted that while such services of cleaning and sanitation of platform are exempt from service tax, if such services are rendered by the contractor / service provider by way of 'supply of manpower', it would be liable to Service Tax.

29. **Whether warehousing facilities provided by the Railways to Food Corporation of India (F.C.I) be taxable under Service Tax?**

The warehousing facilities provided by Railways to Food Corporation of India (F.C.I) shall be exempt from service tax, if provided in relation to 'agricultural produce'. The services of loading, unloading, storage or warehousing of agricultural produce are not taxable being covered in the Negative List.

The expression “Agricultural produce” has been defined under Section 65B(5) of the Finance Act, 1994 to mean any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

However, exemption will be applicable only if Railways is storing/ warehousing the specified agricultural produce in their warehouse as Warehouse Keeper. In case the Railways let out the premises to FCI against, say monthly / fixed charges, the renting activity will be taxable as such, even if FCI uses the premises for storage of foodgrain and other agricultural produce.

Further, the services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled are also exempted from Service Tax.

I. INVOICES / BILLS / CHALLANS

30. **What are the requirements in relation to invoices for Service Tax?**

30.1 The invoice to be prepared by the service provider has to be in accordance with Rule 4A of the Service Tax Rules, 1994. The invoice should contain at least the following information:-

(i) running serial number and date;

(ii) the name, address and the registration number of service provider;

(iii) the name and address of the person receiving taxable service;

(iv) description, classification and value of taxable service provided or to be provided ; and

(v) the Service Tax payable thereon.

30.2 However, as per proviso to Rule 4A of the Service Tax Rules, 1994, in case the provider of taxable service is providing the service of transport of passengers (for ex. by Railways) , an invoice, a bill or as the case may be, challans shall include **ticket** in any form whether or not containing registration no. of the provider of the service and address of the recipient of the service but containing other information on such ticket/ document as required above.

Therefore, Railways being engaged in transportation of passengers are not required to issue invoice/ ticket in terms of Rule 4A of the Service Tax Rules, 1994.

31. **Whether Railway contractors should prepare the bills in the manner as required above?**

Yes, invoices are required to be prepared strictly as per provision of rule 4A, signed by the contractors and are supposed to be issued by them to the Railways.

32. **Whether the Contractor / Vendor (Service Provider) need to compulsorily indicate the Service Tax Registration Number on the invoices? What if he is not registered with Service Tax authorities?**

Yes, the contractor/vendor (service provider) needs to compulsorily indicate the Service Tax Registration Number (STRN) if he is a taxable service provider and not exempt otherwise. In the absence of registration number, there can be following consequences:-

1) Service provider may not be able to charge Service Tax on the same.

2) The particular invoice shall not be a valid invoice for availment of Cenvat Credit of the Service Tax paid.

The contractors/vendors/service providers should ensure the above particulars in their invoice(s). In case the Railways prepare these invoices, it should be ensured that invoices are complete and signed by the contractors.

In case the contractor is only providing exempted services, then he is not required to get registered and quote his STRN on his invoice.

33. **How to ensure *compliance of Rule 4A of the Service Tax Rules, 1994 in relation to invoices? Should the bills be returned if the same are found to be deficient?***

For ensuring compliance of Rule 4A of the Service Tax Rules, 1994 on contents of invoices, the Railway administration should insist for proper invoices and get the invoices rectified from the vendors. If necessary, it may return the bills if they are found to be deficient for rectification and re-submission thereafter to avoid disallowance of Cenvat credit.

J PLACE OF PROVISION OF SERVICE

34. **How will the taxability of a service be determined in terms of Place of Provision of Services Rules (POP Rules)?**

In terms of section 66B of the Finance Act, 1994, a service is taxable only when, *inter alia*, it is “provided or agreed to be provided in the taxable territory”. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:—

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?

2. What is the place of provision of the service in terms of the above rule?

3. Is the place of provision in taxable territory? If yes, Service Tax will be payable. If not, Service Tax will not be payable.

4. Is the provider ‘located’ in the taxable territory? If yes, he will pay the Service Tax.

5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay Service Tax on reverse charge basis.

6. Is the service receiver an individual or government receiving services for a non-business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.

7. If not, he is liable to pay Service Tax.

35. **What is meant by taxable territory and non-taxable territory for the purpose of Service Tax?**

Taxable territory has been defined under section 65B(52) of the Finance Act, 1994 and accordingly, taxable territory means the territory to which the provisions of Service Tax will apply. It extends to whole of India except the State of Jammu and Kashmir.

On the other hand, non-taxable territory is the territory which is not a taxable territory. Thus, non-taxable territory would cover the State of Jammu & Kashmir and rest of world.

36. **What is general rule for place of provision of services?**

As per Rule 3 of POP Rules, 2012, the place of provision of service shall be the location of the recipient of service. This is the general rule to determine place of provision of a service. However, in case the location of the service receiver is not available in the ordinarily course of business, the place of provision shall be the location of the provider of service.

37. **What is the applicable rule for determining taxability of passenger transportation services?**

Rule 11 of the POP Rules, 2012 will apply on the passenger transportation services. Accordingly, the place of provision of service of passenger transport service shall be the place from where the passenger embarks on the conveyance (i.e. train) for a continuous journey.

38. **Whether Service Tax is payable on passenger reservation for a journey which is to commence from Mumbai to Jammu Railway station?**

As per Rule 11 of POP Rules, 2012, the place of provision of service in respect of passenger transportation shall be the place where the passenger embarks on the conveyance for a continuous journey. Where a passenger books a ticket for journey in Jammu Tawi Express from Mumbai to Jammu and embarks at Mumbai, the place of provision of service would be Mumbai which is in taxable territory and as such, Service Tax shall be applicable.

39. **What would be the Service Tax liability in reverse case, i.e. journey in rail from Jammu to Mumbai?**

In the reverse situation, the passenger shall embark at Jammu station for journey from Jammu to Mumbai in Jammu Tawi Express. Here, the place of provision of service would be Jammu being place of embarking on journey and Jammu being in non-taxable territory, no Service Tax would be payable.

Therefore, no Service Tax is payable on passenger reservation / journey which is to commence from the State of Jammu & Kashmir to anywhere in India.

40. **Whether Service tax will be levied on the commission paid/payable to the General Sales Agent (GSA)?**

General Sales Agent (GSA) is the commission agent who works on behalf of the Indian Railways. As per section 65B(51) of the Finance Act, 1994, taxable service means any service provided or to be provided to a client by any person and which is taxable under section

66B. So in such scenario as commission is included in definition of service therefore, service tax is applicable on commission paid/payable to GSA. The liability to discharge service tax will rest upon GSA and not on Railways.

41. **Who is liable to pay service tax in case of GSA located in non-taxable territory?**

Where GSA is located in non-taxable territory then service tax liability will be on Indian Railways under Reverse charge mechanism.

As per entry No. 10 of Notification No. 30/2012-ST dated 20.06.2012, if any service provider is located in non-taxable territory, then the service receiver will be liable to pay Service Tax in full under RCM. Hence, Indian Railways shall be liable to pay Service Tax.

42. **Who will be liable to pay service tax if the agents are located in J&K?**

In case a service provider is located in a non-taxable territory, then the service receiver located in the taxable territory will be liable to pay the service tax as per reverse charge notification No. 30/2012-ST dated 20.06.2012 (sl. No. 10). Therefore, J&K being a non- taxable territory, Indian Railways shall be liable to pay Service Tax on the commission/service charges remitted to the J&K agents.

43. **What is the applicable rule for determining place of provision of Services in case of transportation of goods by train?**

Rule 10 of the POP Rules, 2012 will apply in such cases. Rule 10 provides that the place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.

For Example: A consignment of cement is consigned from Chennai to Jammu. The place of provision of goods transportation service will be Jammu (non-taxable territory) and hence not liable to Service Tax. Conversely, if a consignment of cement is consigned from Jammu to New Delhi, the place of provision will be New Delhi and hence liable to Service Tax.

44. **What is the status of 'Railways' for the purpose of Service Tax?**

The term 'person' has been defined under section 65B(37) of the Finance Act, 1994. The following shall be considered as 'person' for the purposes of Service Tax:

Person includes,-

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a society,

(v) a limited liability partnership,

(vi) a firm,

(vii) an association of persons or body of individuals, whether incorporated or not,

(viii) Government,

(ix) a local authority, or

(x) every artificial juridical person, not falling within any of the preceding sub-clauses.

Railway being a Government, falls under the category of "person" in the capacity of 'Government'.

The phrase 'Government' has not been defined in the Act. However, as per clause (23) of section 3 of the General Clauses Act, 1897 'Government' includes both Central Government and any State Government. As per clause (8) of section 3 of the said Act 'Central Government', in relation to anything done or to be done after the

commencement of the Constitution, mean the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

For the purpose of Service Tax, Railways would be considered as person (being covered under Government)

45. **Can Railways be considered as a 'Body Corporate'?**

No, Railway are not body corporate but enjoy the status of Government. The term 'Body corporate' is defined in clause (11) of section 2 of the Companies Act, 2013 which applies to Service Tax also. Accordingly, 'body corporate' or 'corporation' includes a company incorporated outside India, but does not include –

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

Even under the erstwhile Companies Act, 1956 the Railways were not treated as a body corporate or Corporation and it enjoyed the status of 'Government'.

Thus, by virtue of above definition of body corporate, it can be said that Railways is not a 'body corporate'. The status of Railways is that of a Government only but it is a business entity.

K. REVERSE CHARGE MECHANISM

46. **What is the concept of Reverse Charge Mechanism (RCM) in service tax?**

The general principle is that liability to pay Service Tax is on the service provider. However, the provisions of Section 68(2) of the Finance Act, 1994 read with rule 2(1(d) of Service Tax Rules, 1994 and Notification No. 30/2012-ST dated 20.06.2012 provide for service receiver to be one of the persons liable to pay Service Tax in certain cases. The liability of payment of Service Tax could, therefore be discharged by any one of the following -

- Service provider in ordinary course
- Service receiver under reverse charge cases
- Jointly by service provider and service receiver (partial reverse charge)

Thus, for specified services as per Notification No. 30/2012-ST dated 20.06.2012 and conditions stipulated therein, the liability to deposit the Service Tax to the credit of Central Government shall be on service receiver to the extent notified.

47. **What is full RCM and partial or joint RCM?**

Under full reverse charge mechanism, the liability to pay 100% Service Tax is on the service receiver. In respect of certain services as specified, 100% Service Tax is to be paid by the service receiver and there is no obligation on the part of the service provider to pay Service Tax. (For example, legal services, GTA services, Govt. support services, services provided by non-residents etc.).

Under partial or joint reverse charge mechanism, liability of payment of Service Tax shall be both, on the service provider and the service recipient in some ratio. Usually reverse charge tax liability may be fixed either on the service provider or the service recipient, but in specified services and after fulfillment of specified conditions, such tax liability shall lie on both the service provider and the service recipient. Both will pay their respective portion of the Service Tax to the Government and file their returns as taxpayers. (For example, manpower supply services, works contract etc.)

The extent to which tax liability has to be discharged by the service receiver and Service provider under partial or joint RCM is specified in Notification No.30/2012-ST dated 20.6.2012.

48. **What are the services covered under Reverse Charge Mechanism?**

As per Notification No. 30/2012 dated 20th June 2012 (as amended), the following specified services are covered under RCM:

1. Services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business.

2. Services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

   (a) any factory registered under or governed by the Factories Act, 1948;

(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made there-under;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

3. Service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory.

4. Services provided or agreed to be provided by,-
   (a) an arbitral tribunal, or
   (b) an individual advocate or a firm of advocates by way of legal services, or
   (c) Government or local authority by way of support services excluding,-
      (1) renting of immovable property, and
      (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994,

   to any business entity located in the taxable territory.

5. Any taxable service provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory.

6. Services provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business (Joint RCM).

7. Services provided or agreed to be provided by way of supply of manpower or security services for any purpose (Joint RCM).

8. Services provided or agreed to be provided in execution of works contract (Joint RCM).

9. Services provided by Director to the company/ body corporate.

10. Services provided by recovery agents to banks/financial institutions/NBFC's.

In the case of Sr. No. 6, 7 and 8, the RCM provisions will apply only when service provider happens to be an individual, HUF, AOP or partnership firm located in the taxable territory and service recipient is a body corporate (business entity) also located in the taxable territory. Since Railways is a Government and not a body corporate, the RCM provisions contained in Sr. No. 6, 7 and 8 will not apply in their case.

49 Whether Reverse Charge Mechanism (RCM) shall be applicable on the works contract services provided to Railways?

As explained above, provisions of partial Reverse Charge Mechanism are applicable on service portion in execution of works contract, if such services are provided by any Individual, Hindu Undivided Family (HUF) or Partnership firm, whether registered or not including Association of Persons (AOP), to a business entity registered as body corporate located in the taxable territory.

Since Railways is a business entity but not a body corporate, the provisions of partial reverse charge mechanism on works contract shall not be applicable on Railways and whole of Service Tax shall be payable by service provider irrespective of its status. The same position would prevail for other partial reverse charge services.

50. Whether services provided by Railway officials as arbitrator will be liable to Service Tax? If yes, what will be the value for charging Service Tax?

50.1 If Railway officers act as arbitrator in course of employment and salary/remuneration is received in course of employment, it may not be subject to Service Tax. Further, if these persons provide services to Railways other than in capacity of an employee i.e. in their individual capacity, same shall be exempted from Service Tax subject to turnover of business entity being below Rs. 10 lakh in the preceding financial year. In case the turnover of business entity to whom arbitrator services are provided is Rs.10 lakh or more in the preceding financial year, Service tax would be payable under reverse charge mechanism by such business entity.

50.2 Entry No. 6 of exemption Notification No. 25/2012-ST dated 20.6.2012 states that services provided by an arbitral tribunal to any person other than a business entity or a business entity with a turnover up to rupees ten lakh in the preceding financial year, shall be exempt from Service Tax. The services of arbitral tribunal are under reverse charge and service receiver will be liable to pay Service Tax.

50.3 The value for charging Service Tax shall be the gross amount / consideration received.

51. **Will the position of taxability of 'legal services' differ from 'arbitral services'?**

In case of legal services, being under RCM, service receiver is liable to deposit Service Tax to the credit of Central Government. Service receiver could be any person who is a business entity located in the taxable territory . As such, Railways shall be liable to pay Service Tax under RCM on legal services availed by it.

52. Railways also receive certain services on which payment of Service Tax is required to be made by recipient under RCM. Whether Railways would be required to discharge Service Tax liability under RCM?

In case the business support services are provided by Government, the service receiver is generally liable to deposit the Service Tax to the credit of the Central Government under RCM.

The only services on which Railways may be liable to pay Service Tax under RCM are arbitrator services and legal services. Railways not being a body corporate, the provisions of partial or joint reverse charge are not applicable to Railways.

53. Who is liable to pay the Service tax in case of sponsorship services? What is applicable rate of Service tax?

53.1 As per clause (C) of Rule 2(1) (d) "in relation to sponsorship service provided to anybody corporate or partnership firm located in taxable territory, the body corporate or, as the case may be, the partnership firm who receives such sponsorship service" shall be liable to pay service tax.

However, since Indian Railway is neither a body corporate nor partnership firm, hence Indian Railways is not liable to pay Service tax as service recipient. In such a scenario, the organization who is providing the sponsorship service to the Indian Railways will be liable to pay service tax as service provider.

53.2 In case sponsorship services are provided by Indian Railway to an entity which is a body corporate or partnership firm located in the taxable territory, service tax will be paid by the recipient (body corporate or partnership firm) under reverse charge mechanism.

The applicable rate of service tax is 12% plus 2% education cess and 1% secondary and higher education cess.

53.3 If the entity receiving sponsorship service from Indian Railway is neither a body corporate nor a partnership firm, say a Society or Trust, the service tax will be paid by Indian Railway as service provider.

53.4 The applicable current rate of service tax is 12% plus 2% primary Education cess and 1% Secondary and Higher Education cess (SHE Cess). The effective tax rate is 12.36%.

L CENVAT CREDIT RULES, 2004

54. What is the concept of Cenvat Credit in Service Tax?

CENVAT is the Central Value Added Tax which is based on the VAT system of taxation wherein the credit of duty paid on inputs , input services and capital goods can be claimed by the output service provider or the manufacturer.

Cenvat is basically a scheme under Central Excise law which enables manufacturer and service provider to take credit of specified duties or taxes paid on eligible inputs, capital goods and input services for manufacture of dutiable final products or provision of taxable services and utilize such credit towards payment of duties or taxes on any final product or output service.

55. What is meant by input service and what are the tests for any service to be considered as input service?

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 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

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

Any input service to be eligible for Cenvat Credit must satisfy the following two tests –

i) it must fall within the framework/ scope of definition of input service defined under rule 2(l) of Cenvat Credit Rules and

ii) it must be used for rendering of output service or for manufacture of final products.

56. Whether modernization or renovation of a factory of the manufacturer or office / premises of service provider would be eligible as input services?

Yes, modernization or renovation of factory / office premises will be eligible as 'Input service' in terms of Rule 2(l) of CENVAT Credit Rules, 2004. The inclusive portion of the definition specifically refers to *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,………………*

Therefore, CENVAT credit on such input services shall be allowed. However, construction services in relation to initial setting up/ expansion of factory or office premises of the manufacturer or of output service provider will not qualify for CENVAT Credit.

57. **Will the services of accounting, auditing and financing qualify for input service tax credit ?**

Yes, these services are eligible as input services in view of the definition of 'Input service' which *inter alia* includes services in relation to accounting, auditing, financing, recruitment and quality control .... for the purpose of providing output services.

58. Whether legal services can be treated as input services?

Yes, legal services are also considered as input services as these are specifically included in the definition of input service. However, these should be used for business purposes.

59. Whether inward transportation of inputs or capital goods covered within the definition of 'input service'?

Yes, inward transportation charges incurred in relation to inputs or capital goods are eligible input services as per the definition of 'Input service' in Rule 2(l) of the Cenvat Credit Rules, 2004.

60. Whether outward transportation will be an eligible input service?

Yes, the outward transportation of goods but only upto the place of removal will be considered as an eligible input service.

61. Whether advertisement or sales promotion services qualify as input service?

Yes, Cenvat credit will be available on services of advertisement or sales promotion as input services under the Cenvat Credit Rules, 2004

62. Whether Cenvat credit will be available on computer networking services ?

Yes, this service is considered as an input service as per the definition of input service.

63. Whether servicing, repair and maintenance services in relation to motor vehicle will be covered in the definition of input service?

Servicing, repair and maintenance services relating to a motor vehicle which is not a capital good would be out of the purview of the scope of input service. However, if such services are used by a manufacturer of a motor vehicle in respect of motor vehicles manufactured by him or an insurance company in respect of a motor vehicle insured or reinsured by the said company, Cenvat credit would be available to the manufacturer or an insurance company.

64 Whether coaching and training services are an eligible input service?

Yes, coaching and training are covered within the definition of input service under rule 2 (l) of the Cenvat Credit Rules, 2004 and hence eligible for Cenvat credit. Thus service tax paid by All India Railway Training Institutes like NAIR is available as cenvat credit in the hands of Zonal Railways.

65. Whether Cenvat credit is available on security services?

Yes, security services are specifically mentioned in the inclusive part of the definition of input services and if used in relation to manufacture of excisable goods or output taxable services, Cenvat credit can be allowed.

66. Whether Service Tax paid on health and fitness centre services would be available as Cenvat credit?

No, as the same are excluded from the definition of input service being used primarily for personal use and consumption of employees.

67. There are various zonal training institutes which impart trainings to Railway officials for operation of trains. Whether Service tax paid on services like AMC, teaching services are Cenvattable?

Since, training is an essential part to enable the employees to render the services, Cenvat Credit shall be available on such input services. Further, service tax paid on services such as AMC charges, training etc. will be available.

68. Whether Service Tax paid on service portion of all works contracts is available as Cenvat Credit?

No, works contracts in relation to construction of complex, building or civil structure would not qualify as input service under the scope of input services. However, other work contracts, such as maintenance of plant and machinery, equipments etc. shall be considered as an eligible input service for taking Cenvat credit.

69. What is 'input'? What does it include and exclude?

As per Rule 2(k) of the 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 Finance Act, 1994;

(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.

Inclusions & Exclusions in the scope of 'Input' are as follows-

Inclusions	**Exclusions**
All goods used in the factory by the manufacturer of the final product	Light Diesel Oil (LDO), High Speed Diesel (HSD) oil and petrol.
Any goods including accessories cleared along with the final product and goods used for providing free warranty.	Any goods used for construction or execution of a works contract of a building or a civil structure or part thereof, or for laying of foundation or making of structures for the support of capital goods.
Any goods used for generation of electricity or steam for captive use.	Capital goods except when used as parts and components in manufacture of final products.
All goods used for providing any output service	Any goods such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment when used primarily for personal use or consumption of any employee. Goods having no relationship *whatsoever* with the manufacture of final product.

70. **Whether Cenvat credit on inputs is available to provider of output service?**

Yes, the provider of output service can avail Cenvat credit of duty paid on all goods which are covered under definition of input and are used for providing the output service.

71. Whether Cenvat credit will be available on goods which are not having any correlation with the final product of the manufacturer?

No, the definition of 'input' precludes Cenvat credit on any goods which have no relationship *whatsoever* with the manufacture of the final product. The presence of the word 'whatsoever' indicate that this exclusion will apply in strict cases when even remote nexus with the manufacturing activity can not be established.

72. Whether Cenvat credit on inputs used for generation of electricity is available to the manufacturer?

Yes**,** Cenvat credit on inputs used for generation of electricity should be available to the manufacturer as the definition of 'Inputs' under Rule 2(k) of CENVAT Credit Rules, 2004 *inter alia* provides that 'input' means all goods used for generation of electricity or steam for captive use.

73. Whether diesel and petrol be eligible as 'Inputs' as per Rule 2(k) for availing CENVAT credit ?

No. Diesel (namely HSD oil and LDO) and petrol (motor spirit) are not eligible for CENVAT credit as these have been specifically excluded from the definition of 'Inputs' under Rule 2(k) of CENVAT Credit Rules,2004.

74. What is the scope of exempted service?

As per Rule 2(e) of Cenvat Credit Rules, "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 which is exported in terms of rule 6A of the Service Tax Rules, 1994.

It has been clarified that “exempted services” includes trading.
Thus, exempted services should be —

(i) taxable services exempt from service tax through some exemption notification, or

(ii) services on which service tax has not been levied; e.g. services covered by the negative list.

One of the essential conditions is that in case of taxable services, exemption must be from whole of service tax, and services subject to partial exemption are not covered as exempted services. Service which are not rendered to another person but used for self use are also not subject to levy of service tax but cannot be considered as exempted services.

75. Whether services covered under the Negative List will be considered as exempted services?

Yes, services covered under the Negative List are to be considered as ‘exempted services’ for the purpose of Cenvat Credit because as per Rule 2 (e) of CENVAT Credit Rules, 2004, exempted service includes service on which no Service Tax is leviable under Section 66B of the Finance Act, 1994 and services which are exempt from whole of Service Tax.

Since no Service Tax is leviable on services covered in the Negative List under Section 66D of the Finance Act, 1994, it shall qualify to be 'Exempted Service' for the purpose of Cenvat Credit.

76. Whether taxable services whose part value is exempted by way of abatement would be considered as exempted service?

Only those services whose part of value is exempted on the condition that no credit of inputs and input services are allowed for providing such output services shall be treated as exempted services.

77. What type of goods are included in Capital Goods?

As per section 2 (a) of the CENVAT Credit Rules, 2004, "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 of the First Schedule to the Excise Tariff Act;

(iii) 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, but does not include any equipment or appliance used in an office; or

(1A) Outside the factory of the manufacturer of the final products for generation of electricity 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.

In Chapter 86 of Central Excise Tariff Act, 1985 (CETA), the following items are included - Railway or tramway locomotives, rolling - stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical), traffic signalling equipment of all kinds. Since Chapter 86 of CETA is not included in the

definition, locomotives, rolling stock etc. may not be treated as 'Capital goods' for the purpose of Cenvat credit.

78. Whether Cenvat credit of duty paid on motor vehicles can be availed as Capital Goods?

Cenvat Credit can be availed only for those motor vehicles which do not fall under tariff headings 8702, 8703, 8704, 8711 of the Central Excise Tariff.

79. Whether equipments or appliances used in an office would qualify as 'capital goods' for availing Cenvat Credit?

No, Cenvat credit cannot be availed on office equipments or appliances used in the office.

80. Whether Cenvat credit on capital goods used outside the factory of the manufacturer of the final products would be available?

Yes, capital goods if used outside the factory of the manufacturer of the final products for generation of electricity which is meant for captive use within the factory shall be eligible for Cenvat credit.

81. Whether motor vehicle used for transportation of goods would be eligible as Capital Goods?

Yes, if such motor vehicle is used by service provider for transportation of inputs and capital goods used for providing an output service. Secondly, the motor vehicle should not fall under tariff headings 8702, 8703, 8704 and 8711.

82. Whether inputs used for laying of foundation or making of structures for support of capital goods be eligible for Cenvat credit?

No. Inputs used for laying of foundation or making of structures for support of capital goods shall not be eligible for Cenvat credit as any

goods used for the purpose of laying of foundation or structure to support installation of capital goods are specifically excluded from the definition of 'Input' under rule 2 (k) of CENVAT Credit Rules, 2004.

83. Whether Custom Duty paid on import of Railway material and machinery and plant are cenvatable against Service Tax payable on Railway services?

Yes, CVD or additional duty paid on import of capital goods such as Railway material, plant & machinery and other equipments etc. are eligible for Cenvat credit provided it has been paid under Rule 3(1) of the Cenvat Credit Rules, 2004 against a valid Bill of Entry/duty paying document.

Further, Cenvat Credit on capital goods items shall be available to the extent of 50% in the same financial year in which goods are received in the factory and the balance in the next subsequent Financial Year in terms of provisions to Rule 4(2) of the Cenvat Credit Rules, 2004 .

84. Whether computers, machineries, plant & equipments are Capital goods for Indian Railways ?

Yes, computers used for providing taxable output services by the Indian Railway are capital goods as the same falls under Chapter 84 of CETA and therefore eligible as capital goods. However, whether machinery and plant & equipments are capital goods or not will depend on their coverage in the definition of "capital goods" defined in rule 2(a) Cenvat Credit Rules, 2004.

85. Whether goods which are exempted from Central Excise duty be treated as "Exempted Goods"?

Yes, any excisable goods which are exempt from whole of the duty of excise under any notification shall be treated as exempted goods as defined in rule 2(d) of Cenvat Credit Rules, 2004.

86. Whether the goods having "NIL" rate of Central Excise duty be treated as "Exempted Goods"?

Yes, any excisable goods which are chargeable to "NIL" rate of excise duty shall be treated as exempted goods.

87. Whether goods on which the benefit of Notification No. 1/2011-CE, dated 1.3.2011 are available would be treated as "Exempted Goods"?

Yes, such goods for which Central Excise duty @ 2% is prescribed in Notification No. 1/2011-CE, dated 1.3.2011 are treated as exempted goods for the purpose of CENVAT Credit Rules.

88. Whether goods in respect of which the benefit of Notification No. 12/2012-CE, dated 17.3.2012 is availed, shall be treated as "Exempted Goods"?

Only the goods which are listed at S. Nos. 67 & 128 of Notification No. 12/2012-CE, dated 17.3.2012 (fertilizers) shall qualify under the scope of exempted goods.

89. What is meant by Place of Removal and what is its relevance in Cenvat Credit ?

The 'Place of Removal' as defined in Rule 2(qa) of the Cenvat Credit Rules, 2004, 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).

In case of Railways, factory or workshop or production unit would be generally considered as the place of removal.

In Central Excise, duty is payable on the value prevailing at the place of removal. Also, outward transportation charges only upto the place of removal are allowed as input services.

90. For claiming CENVAT credit, whether one to one correlation between input or input services and output or output services is required?

No. For claiming CENVAT credit, one to one correlation between(i) input and output or (ii) input services and output services is not required and duties / Service Tax are generally cenvatable if they qualify to be input or input services.

91. Whether CENVAT credit can be availed in respect of Service Tax paid on services in relation to catering in Rajdhani and Shatabdi trains?

Yes, Cenvat credit can be availed in respect of Service Tax paid on services in relation to catering done in Rajdhani and Shatabdi trains. The output services of transportation of passengers provided by Rajdhani and Shatabdi are taxable as they are not covered under Clause (o) of Section 66D (Negative List) of Finance Act 1994 which *inter alia* states that service of transportation of passengers, with or without accompanied belongings, by—

(i) Railways in a class other than—

(A) first class; or

(B) an air-conditioned coach

are outside the scope of levy of Service Tax being in negative list and as such, catering in these train can be treated as input services used in providing output/taxable services of transportation of passengers in Rajdhani and Shatabdi trains..

92. **Whether Personal Ledger Account (PLA) should be maintained in case where the productions unit provides services also?**

Personal ledger account (PLA) is an account with the Central Government, which is utilized for payment of duty of excise. The account is credited when the sum is deposited into the treasury and debited on payment of excise duty. Each debit and credit entry should be made on separate lines and assigned a running serial number for the financial year. Since PLA is required for excise duty, there is no requirement to maintain such register for the purpose of Service Tax.

93. **Whether RG-1 Register that mandates accountal of manufactured goods in a factory/production unit needs to be maintained by Railway?**

A daily stock of goods manufactured or produced has to be maintained by every assessee as per Rule 10(1) of Central Excise Rules. Upto 30.06.2000, the record was required to be maintained in prescribed form termed as RG but this requirement of RG-1 has since been dispensed with w.e.f. 01.07.2000.

In light of these provisions, it may be desirable to maintain such records as prescribed or as close to such requirements as may be possible. Railways may have to prescribe internal procedures / systems for this.

Non-accounting of excisable goods manufactured, produced or stored by assessee is an offence under Rule 25 (1) (b) of Central Excise Rules and penalty up to duty payable on goods can be imposed and even offending goods can be confiscated..

94. Railway locomotives and rolling stock are classifiable under Chapter 86 of CETA and excisable (i) @2% without availing Cenvat credit, or (ii) @6% with Cenvat credit. Whether Cenvat Credit is available to Indian Railways providing taxable service in respect of excise duty charged by production units (i) @ 2% (ii) @6% ?

As per Rule 2(d) of Cenvat Credit Rules, 2004 "exempted goods" means excisable goods which are exempt 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-CE, dated the 1st March, 2011 is availed. The goods on which 2% excise duty is discharged fall under the list of 'exempted goods' and as such, Cenvat Credit shall not be available to Indian Railways, i.e., to the units providing taxable service. However, Cenvat Credit shall be available in case where 6% excise duty is paid by the production units.

95. Whether Cenvat credit will be available to a manufacturer of the duty paid on accessories?

Cenvat credit is available to a manufacturer on any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product.

96. Whether the credit of 2% Excise duty paid on inputs by the manufacturer or producer will be available to the receiver of such inputs?

No, where concessional 2% duty is paid under Notification No. 1/2011-CE, dated 1.3.2011 on certain specified goods, Cenvat credit is not available.

97. Whether service tax paid on inputs relating to stationary catering (Refreshment Room) at the Railway stations are cenvattable?

Yes as these refreshment rooms are meant for passengers proceeding on / completing railway journey, service tax paid on such catering service will be eligible for Cenvat credit against service tax payable by the Indian Railway.

98. Whether excise duty paid on medicines and equipments used in Railway hospitals be available for Cenvat Credit ?

No, Excise duty paid on medicines and equipments used in Railway hospitals are not cenvattable. One should refer to the definition of inputs and capital goods as defined under Rule 2(k) and 2(a) of CCR, 2004 respectively. Since medicines are not covered under the scope of inputs and the equipments are not covered under the scope of capital goods, Cenvat credit of excise duty paid on such items shall not be available.

99. Whether Cenvat credit would be available to Indian Railways on inputs and input services used in construction (i.e., provided by CORE)?.

99.1 There could be two possible scenarios (i) CORE is providing construction services to Indian Railways (ii) CORE is providing repair and maintenance service.

In case the construction services are provided by CORE, then Cenvat Credit shall not be available to the Railways due to specific exclusion of constructed material and services from the definitions of ‘input’ and ‘input services’ respectively.

99.2 If CORE is providing repairs and maintenance services to Indian Railways, then Cenvat Credit shall be available to the Indian Railways.

100. How will be Service Tax liability computed in relation to ‘transportation and catering charges’ collected by Railways ?

In relation to Railways, the following two scenarios may arise –

(i) Catering charges is included in the fare collected from the passengers

(ii) Catering is done separately, either by Railways itself or through third party.

Catering charges included in the fare collected from passengers (Rajdhani & Shatabhi) - As per section 66F of Finance Act, 1994, if various elements of a service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character and that service is treated as Bundled Service. Since transportation is the main and catering is complementary, therefore, as per section 66 F of the Finance Act, 1994 service tax shall be levied on whole transportation charges including catering.

Catering is done separately either by Railways itself or through third party - Since both catering & transportation charges are collected separately, both fare and catering charges shall be taxed separately.

101. Whether Primary Education Cess paid on excisable goods and Input services be admissible for Cenvat credit?

Yes, 2% Education Cess levied under Section 91 read with Section 93 of the Finance Act, 2004 is available as Cenvat credit under Cenvat Credit provisions. However, education cess can be used only against payment of primary education cess on final product or output services, as the case may be.

102. Whether amount paid towards Secondary & Higher Education Cess is available as Cenvat credit?

Yes, Secondary & Higher Education Cess (in short SHE Cess) paid on excisable goods and input services levied under Section 136 read with Section 138 of the Finance Act, 2007 is available as Cenvat credit. However, SHE Cess can be used only against payment of corresponding SHE Cess on final product or output service, as the case may be.

103. Whether Cenvat credit of Additional Duty of Customs under Section 3(i) of the Customs Tariff Act is available ?

Yes, this duty is levied on imported goods which is equivalent to the Central Excise duties levied on such goods if manufactured in India, and as such, is available as Cenvat credit. This duty is commonly known as Countervailing Duty (CVD).

104. Whether Special Additional Duty of Customs levied under section 3(5) is available for Cenvat credit to the manufacturer or producer of goods?

Yes. Cenvat credit of Special Additional Duty (SAD) paid under Section 3(5) of the Customs Tariff Act is available to the manufacturer or producer of goods for Cenvat Credit. This duty is levied @ 4% on

certain specified imported goods to countervail State Taxes/VAT. However, a provider of output service is not eligible to credit of SAD.

105. Whether service provider is eligible for taking Cenvat credit of Excise duty paid on input goods lying in stock in case of new levy of taxes?

As per Rule 3(3) of the Cenvat Credit Rules, 2004, a service provider is allowed to take Cenvat credit of the duty paid on the inputs received and lying in stock on the date on which any service ceases to be an exempted service and used subsequently for providing such taxable service.

106. Whether the manufacturer can avail Cenvat credit on Inputs/Capital Goods sent to job worker?

Yes, Rule 4(5)(a) of the Cenvat Credit Rules, 2004 allows Cenvat credit even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods. This facility is available subject to the condition that it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the Cenvat credit that the goods are received back within 180 days of their being sent to a job worker.

107. What is the procedure to be followed if the inputs/capital goods are not received back from the job worker within 180 days?

If inputs or capital goods are not received back within 180 days, the manufacturer or provider of output service shall pay an amount equivalent to the Cenvat credit involved on such inputs or capital

goods by debiting the Cenvat Credit Account or otherwise pay in cash. However, the manufacturer or provider of output service can re-take the Cenvat credit when the inputs or capital goods are actually received back from the job worker in the premises of the manufacturer or output service provider, as the case may be.

108. Whether Cenvat credit can be availed on items such as jigs, fixtures, moulds and dies sent outside the factory for manufacture of goods?

Yes, Cenvat credit is allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to another manufacturer for the production of goods or a job worker for the production of goods on his behalf, according to his specifications.

109. Whether Cenvat credit on input services will be available to the provider of output services where the payment is not made within three months from the date of invoice ?

In case the payment of the value of input service and the service tax paid or payable is not made to the vendor within three months of the date of the invoice, bill or 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 by debiting/reversing the CENVAT Credit. In case said payment is made thereafter, the manufacturer or output service provider shall be entitled to take credit of the amount equivalent to Cenvat credit paid/ reversed earlier. Alternatively, a system can be developed to take credit only after making payment of bill amount to the vendors and that system will simplify the things.

110. Whether 100% Cenvat credit of Excise duty paid on Capital goods be allowed in the year of receipt itself?

Rule 4(2)(a) of Cenvat Credit Rules, 2004 provides that the credit in respect of capital goods received in the factory premises or the premises of the provider of output service, at any point of time in a given financial year shall be taken only for an amount equivalent 50% of the duty paid on such capital goods in the same financial year. Hence it is not possible to avail 100% credit of excise duty paid on capital goods in the first year of receipt of goods itself.

111. When can Cenvat credit of the balance 50% of the duty paid on Capital Goods be availed?

As per Rule 4(2)(b) of Cenvat Credit Rules, 2004 the balance/ deferred portion of Cenvat credit of 50% can be taken in any financial year(s) subsequent to the financial year in which the capital goods were received in the premises of the manufacturer or provider of output service. This availment is subject to the condition that the capital goods are remaining in the possession of the manufacturer or provider of output service during such subsequent year.

112. Whether Cenvat credit is available on Capital Goods received by a manufacturer or provider of output service and cleared in the same year?

Yes, Cenvat credit in respect of capital goods will be allowed for whole amount of the duty paid on such capital goods in the same financial year if capital goods are cleared as such in same financial year.

113. When service provider can avail Cenvat credit of duty paid on Capital Goods?

Cenvat Credit in respect of capital goods can be taken by the provider of output service when the capital goods are delivered to such

provider, subject to documentary evidence of delivery and location of the capital goods.

114. How much Cenvat credit can be utilized for payment of duty/tax for a particular month ?

The Cenvat credit accumulated only till the end of month can be utilized for payment of duty/tax for that month. The provisions of Central Excise as well as Service Tax requires payment of duty/tax on monthly basis. The provisions of Central Excise as well as Service Tax requires payment of duty/tax liability of a particular month to the account of Central Government by 5th or 6th of the following month. For paying Central Excise duty or Service Tax, Cenvat credit can be utilized only to the extent such credit is available on the last day of the month for payment of duty/tax relating to that month.

115. Whether Cenvat credit can be utilised for payment of service tax under reverse charge mechanism?

No, Cenvat credit cannot be utilized available for payment of tax in respect of services where the person liable to pay tax is the service recipient of service under full reverse charge mechanism (RCM) or Partial Reverse Charge mechanism (PRC)

116. What are the valid documents for availing CENVAT Credit of duty paid on inputs/capital goods and service tax on input services ?

The documents for availing CENVAT Credit are prescribed in rule 9 of CENVAT Credit Rules, 2004. As a general rule, the invoice issued by the manufacturer/vendor under rule 11 of Central Excise Rules is the proper duty paying document for taking credit by the recipient manufacturer/service provider. In addition, the invoice raised by

registered importer, first stage dealer and second stage dealer is also valid. In the case of import Bill of Entry as assessed by Customs is considered as the duty paying document. In the case of service provider, invoice raised by him under rule 4A of service tax rule 1994 is a proper document. In case the assessee is liable to pay service tax under reverse charge, the challan evidencing payment of service tax is a good piece of document for taking CENVAT Credit.

117 Whether photocopy or extra copy of invoice is valid for taking CENVAT Credit ?

No, the photocopy or extra copy of invoice is not admissible for taking credit. The invoice should be original copy. In case the vendor is a manufacturer of excisable goods, either the original copy or duplicate/transport copy of the invoice can serve the purpose of valid document. In the case of service provider, the original invoice raised under rule 4A of Service Tax Rules should be insisted for taking credit.

118. Whether there is any time limit for taking CENVAT Credit ?

Vide Union Budget, 2014-15, a time limit of 6 months from the date of issue of the invoice, challan or other duty paying documents has been prescribed for taking credit entry. Beyond 6 months, credit can not be taken. The new provision has come into effect from 01.09.2014. Further, there is no provision for relaxation or condonation of delay in taking credit by any reason.

119. Whether the time limit of 6 months is applicable for all types of inputs, input services and capital goods ?

The time limit of 6 months for taking credit applies to input goods and input services. There is no time limit for taking credit of duty paid on capital goods.

120. Whether there is any time limit for utilization of credit ?

There is no such time limit for utilization/adjustment of credit against payment of output service tax or terminal excise duty payable on the finished goods. The credit lying unutilized at the end of the month/year can be carried forward to the next month/year without any lapse.

121. There is a Central Organization for Railway Electrification (CORE) located in Allahabad which is entrusted with the work of planning and executing electrification projects (installing Over Head Equipment (OHE) to enable running of electric locomotive for various Zonal Railways. Whether OHE will fall under the scope of civil structure? If not, can CENVAT be claimed on input taxes paid on various material used by CORE?

OHE shall not fall within the definition of civil structure. As such, Cenvat credit will be available on inputs used for installation services in relation to OHE.

122. How will CENVAT credit be claimed in respect of Excise Duty / custom duty paid on stock items purchased by the Store Organization in a Zonal Railway and distributed to various Zonal Railways?

(i) In case the indent is received from Zonal Railway and based on the indent, Zonal Railway office places order upon the vendor for supply of excisable goods, instructions can be given to the vendor to issue invoice on "Bill to, Ship to" basis. The vendor will raise bill in favour of Zonal Railway office but the shipping address of the

concerned Zonal Railway will appear on the body of the excise invoice. The invoice alongwith goods will move from the vendor to the Zonal Railway directly for their consumption. The Zonal Railway upon arrival of material can take CENVAT Credit of duty charged in the invoice where the consignee address is that of Zonal Railway. For taking CENVAT Credit, it is not necessary that the invoice is billed in the name of the assessee /Zonal Railway. Ownership of material is not the criteria for taking CENVAT Credit. Hence in bill to, ship to arrangement, it is possible for Zonal Railway to avail CENVAT Credit on receipt of duty paid material in their factory from the vendor provided the consignee address of Zonal Railway is mentioned as destination place.

(ii) In case Zonal Railway office purchases the stores items in their own name and address and thereafter shift the items to the Zonal Railway (ultimate user), the Zonal Railways needs to get themselves registered under Central Excise as First Stage Dealer. Once registration is taken, then the Zonal Railways purchasing the stores items can pass on the CENVAT credit levied on the purchases to the Zonal / units who are consuming the stores items.

(iii) Similarly, the Zonal Railways who is importing the materials need to register themselves with the Central Excise Department as importer. After obtaining the registration, the importing Zonal Railways can pass on the CENVAT duty paid at the time of import to the respective Zonal Railways who are the ultimate consumers of such imported material.

123. Who is 'first stage dealer' for Cenvat credit?

First stage dealer means —

(i) a dealer, who purchases the goods directly from 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 who sells goods imported by him under the cover of an invoice on which Cenvat Credit may be taken and such invoice shall include an invoice issued from his depot or the premises of his consignment agent.

124 There is a Central Organization for modernization of Workshops (COFMOW) which is entrusted with the work of purchasing machineries and equipments for various Zonal Railways and its production units. COFMOW purchases machineries and equipments both from the domestic market and overseas market. Whether the duties and taxes paid on purchase of machineries and equipments are cenvatable and can be passed on to concerned Zonal Railway and its production units for claiming CENVAT credit?

Yes, the duties and taxes paid on purchase of machineries are Cenvatable and these can be passed on to concerned Zonal Railway and its production unit. However, for claiming Cenvat Credit on domestic purchases, COFMOW is required to take registration under Central Excise Act, 1944 as importer or First Stage Dealer, as the case may be. In case the identity of the Zonal Railway for whom the machinery is purchased by COFMOW, is determined, the vendor can be instructed to prepare invoice in the name of COFMOW (billing address) and the address of concerned Zonal Railway can appear as consignee. The machinery will move direct from the vendor to the concerned Zonal Railway under the cover of transport/duplicate copy of excise invoice. On arrival of the machinery with excise invoice, the Zonal Railway can be take credit of excise duty charged by the vendor. In such cases, COFMOW need not be registered with Central Excise Department as first stage dealer/importer.

125. What is "input service distributor" (ISD) under CENVAT Credit Rules, 2004 ?

The "expression input service distributor" is defined in rule 2(m) of CENVAT Credit Rules as under :

(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, as the case may be;

The Input Service Distributor (ISD) may be the Corporate office, Marketing office, Zonal office or any other office of the manufacturer/service provider who receives input service into the office, avails CENVAT Credit and then distribute the credit to the manufacturing units or units providing output service. The position of ISD is like that of registered dealer.

126. What is the manner of distribution of credit by ISD ?

The ISD can distribute the CENVAT Credit of input service tax to its manufacturing units or service units subject to fulfilment of following conditions :

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

(b) 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;

(c) credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and

(d) 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.

The 'relevant period' is determined as under :-

(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.

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