

MOST URGENT

CORPORATE OFFICE
TAXATION SECTION
1ST FLOOR,
BHARAT SANCHAR BHAWAN
JANPATH, NEW DELHI-1



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No: 1002-15/2011-12/Taxation/ BSNL/ 175

Dated: 20-04-2012

To,

CGMs of Telecom circles/ Metro Districts/ Maintenance Regions/ Project Circles/ Task Force/Data Network / NCES/ ALTTC/ BRBRAITT/ NATFM/ Q&A/ T&D / Telecom Factories/ Telecom stores/CPAO (ITI Bills)/ IT Circle Pune/ AGM (R&P) Corporate Office.

Sub: - Amendment in CENVAT Credit Rules, 2004 -reg.

Kindly find enclosed herewith Notification No. 18/2012-Central Excise(N.T.) Dated 17th March, 2012 issued by CBEC, MOF, Govt. of India whereby Cenvat Credit Rules, 2004 has been amended vide Cenvat Credit (Third Amendment) Rules, 2012. The brief of the some of the amended provisions pertaining to BSNL is as follows.

1. Rule 2(a) & 2(l):- The definition of Capital Goods and Input service has been amended. Hence special attention is to be given while availing Cenvat credit.
2. Rule 4(1) & 4(2)(a) :- Rule 4(1) & 4(2)(a) provides the condition for allowing/availing/taken Cenvat credit on Input and capital goods respectively. New provisos have been inserted under Rule 4(1) and also under rule 4(2)(a) which allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to maintenance of documentary evidence of delivery and location of such goods.
3. Rule 6(3) :- Under clause (i) of Rule 6(3), payment of service tax on exempted services has been increased from 5% to 6%. Similarly the service tax rate from 5% to 6% has also been increased under the second proviso of rule 6(3).
4. Rule 7:- Rule 7 provides the manner of distribution of credit by Input Service Distributor (ISD). Old rule 7 has been substituted by new one wherein two more conditions have been added. Hence BSNL circles/units distributing the Cenvat credit as ISD needs to comply the substituted provisions.

This should be treated as most urgent and brought to the notice of all concerned and also go through the other amendments made in the notification for complying the same. Most of the provisions of Notification No. 18/2012-Central Excise(N.T.) Dated 17th March, 2012 is applicable from **01.04.2012** except the provisions wherein specific date of effect have been given.

This issues with the approval of competent authority.

Encl:-As above.

(K. Jothi)

DGM (Taxation)

Copy for information & necessary action to :-

1. IFAs of All BSNL circle stated above.
2. All PGM/ Sr. GM /GM of Finance wing, Corporate office, New Delhi-1.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB SECTION (i)]

Government of India
Ministry of Finance
Department of Revenue

Notification No. 18/2012 – Central Excise (N.T.)

New Delhi, the 17th March, 2012

G.S.R. (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely : -

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2012.
(2) Save as otherwise provided in these rules, they shall come into force on the 1st day of April, 2012.
2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, —
 - (a) in clause (a), -
 - (i) in sub-clause (A), -
 - (A) in item (vi), the word “and” occurring at the end, shall be omitted;
 - (B) in item (vii), for the words “storage tank,” the words “storage tank; and” shall be substituted;
 - (C) after item (vii), as so amended, the following item shall be inserted, namely:—

“(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis,”;
 - (ii) in sub-clause (B), after the words “motor vehicle”, the words and figures “falling under tariff headings 8702, 8703, 8704, 8711 and their chassis,” shall be inserted;
 - (iii) for sub-clause (D), the following sub-clause shall be substituted, namely:—

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

(b) in clause (l), for sub-clause (B), the following sub-clauses shall be substituted, namely:—

“(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) specified in sub-clauses (d) and (zo) of clause (105) of section 65 of the Finance Act, except when used by —

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

(b) a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, in respect of a motor vehicle insured or reinsured by him; or”.

3. In rule 3 of the said rules,-

(a) in sub-rule (5), the third proviso shall be omitted with effect from the 17th day of March, 2012.

(b) for sub-rule (5A), the following sub-rule shall be substituted with effect from the 17th day of March, 2012, namely :-

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

(a) for computers and computer peripherals :

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

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

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

4. In rule 4 of the said rules,-

(a) in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.”;

(b) in sub-rule 2, in clause (a), after the third proviso, the following proviso shall be inserted, namely:—

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

5. For rule 5 of the said rules, the following rule shall be substituted, namely:-

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

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT credit}}{\text{Total turnover}}$$

Where,-

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

(B) “Net CENVAT credit” means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider

reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;

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

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

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

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

- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.

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

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

Provided further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax.

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

(1) “export service” means a service which is provided as per the provisions of Export of Services Rules, 2005, whether the payment is received or not;

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

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

6. In rule 6 of the said rules,-

(a) in sub-rule (3),-

(i) in clause (i), for the words “five per cent.”, the words “six per cent.” shall be substituted;

(ii) in the second proviso, for the words “five per cent.”, the words “six per cent.” shall be substituted;

(b) sub-rule (3C) shall be omitted;

(c) after sub-rule (3D), -

(i) in *Explanation I*, in clause (b), for the brackets figures and letter “(7), (7B)”, the brackets, figures and letters “(7),(7A),(7B)” shall be substituted;

(ii) in *Explanations II and III*, for the brackets, figures, letters and word “, (3B) and (3C)” wherever they occur, the word, brackets, figure and letter “and (3B)” shall be substituted.

7. For rule 7 of the said rules, the following rule shall be substituted, namely:—

‘7. Manner of distribution of credit by input service distributor. - The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

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

(b) credit of service tax attributable to service used in a unit 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 in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Explanation 1.- For the purposes of this rule, “unit” includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

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

8. In rule 9 of the said rules, in sub-rule (1), for clause (e), the following clause shall be substituted, namely:-

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

9. After rule 10 of the said rules, the following rule shall be inserted, namely:-

“10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act.— (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

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

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

and such recipient premises may take CENVAT credit on the basis of the transfer challan:

Provided that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the

following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999];
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999];
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];
- (v) No. 57/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003];
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003];
- (viii) No.20/2007-Central Excise, dated the 25th April, 2007 [G.S.R. 307 (E), dated the 25th April, 2007]; and
- (ix) No. 1/2010-Central Excise dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010].

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.”;

10. In rule 12A of the said rules, -

- (a) in sub-rule (1), in the third proviso, -
 - (i) in item (vii), the word “and” occurring at the end, shall be omitted;
 - (ii) in item (viii), for the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]”, the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]; and” shall be substituted;

(iii) after item (viii), as so amended, the following item shall be inserted, namely:-

“(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]”;

(b) in sub-rule (4), in the second proviso,-

(i) in item (vii), the word “and” occurring at the end, shall be omitted;

(ii) in item (viii), for the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]”, the brackets, letters, figures and words “[G.S.R. 307 (E), dated the 25th April, 2007]; and” shall be substituted;

(iii) after item (viii), as so amended, the following item shall be inserted, namely:-

“(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62 (E), dated the 6th February, 2010]”;

11. In rule 14 of the said rules, with effect from the 17th day of March, 2012,-

(a) for the words “taken or utilised wrongly”, the words “taken and utilised wrongly” shall be substituted;

(b) for the word, figures and letters “and 11AB”, the word, figures and letters “and 11AA” shall be substituted.

[F. No. 334/1/2012-TRU]



(Samar Nanda)

Under Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, *vide* notification number 23/2004-Central Excise (N.T.), dated the 10th September, 2004, *vide* number G.S.R. 600(E), dated the 10th September, 2004] and was last amended *vide* notification number 3/2012- Central Excise (N.T.), dated the 12th March, 2012, *vide* number G.S.R. 138(E), dated the 12th March, 2012.