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2003 - 2004

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The road to simplification may "as such" lead to graveyard.

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Removal of credit availed inputs and capital goods, to the sister units of an assessee is a regular commercial practice. Occasionally, such credit availed inputs and capital goods might also be sold by the assesses.

Such cases are governed by Rule 3 (4) of the Cenvat Credit Rules, 2002. The said rule stood as below, prior to its amendment with effect from 01.03.2003.

> When inputs or capital goods, on which Cenvat Credit has been taken are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods a the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in Rule 7.

As per the above provision, an amount equivalent to the duty of excise leviable on such goods was required to be paid. The Board has further clarified the issue in its circular No.643/34/2002 CX dated 01.07.2002. The crux of the clarification may be stated as under.

a) Where the removal is on sale, duty has to be paid on the basis of the sales price.
b) Where the removal is not by way of sale, but by way of transfer to sister unit, if sale price of such goods (similar inputs/capital goods) to non related persons are available in the past, duty has to be paid on the basis of such sale price.
c) In cases where no such selling price is available (the said inputs/capital goods have never been sold by the assessee in the past), the price at which the purchase was made should be treated as the value. In other words, it would mean reversal of the credit originally availed.
d) But in case of capital goods removed, after using it for quite some time, it is not necessary to reverse the entire credit originally availed. The purchase value of the capital goods may be reduced by allowing depreciation at the prescribed rates.

So far so good. All the contingencies have been taken care of and provided for.

But suddenly, the above said Rule 3 (4) of the Cenvat Credit Rules, 2002 has been substituted by the following provision, with effect from 01.03.2003.

> When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 7.

The above substitution has brought in an anomalous situation, which is explained in the subsequent paragraphs.

There could be no objection for payment of an amount equal to the credit availed, if the inputs are removed as such. Even if the removal is on sale, it is sufficient if the credit originally availed is reversed, irrespective of the fact whether the sale price is lesser or more than the purchase price. If the inputs are removed, after being subjected to some process, the above provision will not be applicable, and duty has to be paid in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (Cost + 115 %). Hats off for making things so simple!

But when we come to capital goods, a heap of confusion will haunt us.

Earlier version of Rule 3 (4), its new version and the Board's circular referred to above – all speaks about "removal as such". Understanding the above phrase with reference to inputs is not at all a problem. It means removal of inputs without subjecting them to any process.

But, what is removal of capital goods "as such"? Is it removal of the capital goods in the same form in which they are received? Does it only mean removal of capital goods, without putting them into use? Or does it also include, removal of capital goods in the same form, even after putting them into use for some time?

From the reading of the said rule, it is clear that in case of removal of capital goods as such (we will come to the meaning of as such, later), the credit availed thereon has to be reversed. Suppose an assessee had purchased a capital good in the year 1994 and availed Cenvat credit. After using it to its fullest capacity, he is now disposing it off. By virtue of the above provision, will he be required to pay an amount equal to the credit originally availed on the said capital good? Is it not against the basic objective of Cenvat scheme, which talks high about removal of cascading effect? The capital good has served its purpose and is being sold as an obsolete item. Does the assessee be forfeited of the entire credit availed by him in 1994?

Can we take shelter under the clarifications issued by the Board on 01.07.2002 and claim benefit of depreciation while paying duty on removal of capital goods. No. That circular was issued in the context when the requirement was as to payment of an amount equal to duty of excise leviable on such goods. Now, the requirement is as to payment of an amount equal to credit availed.

Can we say that the phrase "removed as such" shall mean only removal of capital goods without being put into use and the requirement of reversal of the credit will arise only in those cases where the capital goods are removed, without being put into use? Then, which provision will govern the cases of removal of capital goods, after being put into use? No requirement as to reversal, in such cases? Then all can claim that they have "put into use" the capital goods and the removal is no longer "removal as such" and thus there is no requirement under the Cenvat Credit Rules, 2002 to make any payment.

Had it been the intention to mean only those removals without being put into use as "removal as such" there would not have been any necessity to allow depreciation in the above said Board's circular. Would the Board might have been so magnanimous to allow depreciation even for "not used" capital goods? Would not be.

Is the road to simplification leads to graveyard? We crave for suitable clarifications from the department.