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# Balance of CESS - Carry it for ever?



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Education Cess (hereinafter referred to as EC) and Secondary & Higher Education Cess (hereinafter referred to as SHEC) payable on duty of excise have been exempted with effect from 01.03.2015, vide Notifications 14/2015 C.E and 15/2015 C.E. Dt. 01.03.2015, respectively. Simultaneously, the rate of excise duty has been raised from 12 % to 12.5 %. Consequent to the exemption granted for EC and SHEC payable on excise duty, the Cenvat Credit balance of such EC and SHEC available with a manufacturer could not be utilised after 01.03.2015 as there would be no EC and SHEC on the excise duty on the manufactured goods and credit of EC and SHEC can be used only for payment of the said EC and SHEC on excise, respectively.

Vide clauses 153 and 159 of the Finance Act, 2015, Section 95 of the Finance Act, 2004 and Section 140 of the Finance Act, 2007 levying EC and SHEC on Service tax, respectively, have been omitted with effect from 01.06.2015. Simultaneously, the rate of service tax has been raised from 12 % to 14 %. Consequent to the withdrawal of EC and SHEC, payable on Service Tax, the Cenvat Credit balance of such Education Cess and Secondary & Higher Education Cess available with a service provider could not be utilised after 01.06.2015 as there will be no EC and SHEC on the service tax on output services and credit of EC and SHEC can be used only for payment of the said EC and SHEC on service tax, respectively.

Vide Notification 12/2015 CE NT Dt. 30.04.2015 certain amendments have been made, which are applicable for manufacturers. Vide Notification 22/2015 CE NT Dt. 29.10.2015, similar amendments have been made, which are applicable for service providers. These amendments are tabulated below. The effect of such amendment is also analysed.

S.No.	For Manufacturers, vide notification 12/2015 CE NT	For Service providers vide Notification 22/2015 CE NT	Analysis
1	Credit of EC and SHEC paid on inputs and capital goods received in the factory on or after 01.03.2015, could be used for payment of Excise duty.	Credit of EC and SHEC paid on inputs and capital goods received by a service provider on or after 01.06.2015, could be used for payment of Service Tax on output services.	When there is no EC and SHEC on goods (input and capital goods after 01.03.2015), this provision is not much of use. It may cater only to following situations. <ul style="list-style-type: none"> <li>- Inputs and capital goods cleared just before 01.03.2015 and received on or after 01.03.2015 by a manufacturer.</li> <li>- Clearance of inputs / capital goods "as such" on which EC and SHEC credit had been availed and hence reversed now. What about the credit of EC and SHEC paid on inputs and capital goods received by a service provider from 01.03.2015 to 31.05.2015?</li> </ul>
2	Second instalment of 50 % credit of EC and SHEC paid on capital goods received during 2014-15 can be used for payment of excise duty.	Second instalment of 50 % credit of EC and SHEC paid on capital goods received during 2014-15 can be used for payment of service tax on output services.	This is a very useful provision.
3	Credit of EC and SHEC paid on input services received after 01.03.2015 can be used for payment of excise duty.	Credit of EC and SHEC paid on input services received after 01.06.2015 can be used for payment of service tax on output services.	As EC and SHEC on service tax is applicable upto 31.05.2015, this provision would help the manufacturers to avail credit of EC and SHEC on service tax, paid on input services, received from 01.03.2015 to 31.05.2015.

			As there is no EC and SHEC on service tax from 01.06.2015, there is not much significance for this provision after 01.06.2015.
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But the amendments are totally silent about the Closing Balance of credit of EC and SHEC as on 28.02.2015 / 31.05.2015, in the hands of the manufacturers and service providers, respectively. Such balance would be of no use and shall lie as such, in the absence of any enabling provision to utilise the same for payment of excise duty or service tax on output services.

As EC and SHEC on excise duty is only exempted by a notification (unlike the case of service tax where the levy itself has been withdrawn) can a manufacturer, continue to pay EC and SHEC on excise duty on his finished goods, so that the purchasers thereof could avail cenvat credit of the same, and utilise the same for payment of excise duty (if he is a manufacturer) or service tax (if he is a service provider) in view of the enabling provision under S.No.1 of the above table?

The answer would be a "NO" in as much as the Notifications 14/2015 and 15/2015 CE NT Dt. exempting EC and SHEC on excise duty, have been issued under Section 5A (1) of the Central Excise Act, 1944 and as per sub section (1A) of Section 5 A, if any duty of excise is exempted absolutely, the manufacturer cannot pay such duty.

