

No cenvat credit for refractory materials?

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Vide Notification 18/2012 CE NT Dated 17.03.2012, a new sub rule (5A) has been substituted in Rule 3 of the Cenvat Credit Rules, 2004, dealing with the quantum of credit to be reversed in case capital goods are cleared after usage. Prior to this amendment, the requirement as per the proviso under Rule 3 (5) was that a manufacturer can retain 2.5 % of the credit, for every quarter of use of the capital goods and the balance credit shall be reversed / paid back. As per the erstwhile Rule 3 (5A) when the capital goods are sold as waste and scrap, the amount payable is equal to the duty payable on the transaction value.

The above provisions are now contained in the substituted Rule 3 (5A), which reads as below:

(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 CENVAT 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.

From the above, it may be observed whether the capital goods being cleared are still capable of being used as capital goods or sold as scrap, the requirement is the same. First, the credit entitlement has to be decided based on the quantum prescribed and if such quantum is less than the duty payable on the transaction value, the amount to be paid should be equal to the duty on transaction value. The facility of paying an amount equal to duty payable on transaction value, if

the capital goods are cleared as waste and scrap is no more available. The above proviso leads to an anomalous consequence as explained below.

As per the definition of "capital goods" refractories and refractory materials are treated as capital goods. The lifespan of such materials is very short and within one or two months they would get consumed and rendered waste. Till 17.03.2012, at the time of sale of such worn out refractory materials as waste and scrap, it is sufficient if an amount equal to duty payable on transaction value (sale price) of such worn out refractory materials is paid.

But now, as per the present rule 3 (5A), first of all the amount to be reversed has to be calculated as per the formula. As these goods are normally used only for a period of less than 3 months, credit would be entitled only to an extent of 2.5 % of the duty paid and the remaining 97.5 % of the credit needs to be reversed / repaid, though the refractory materials have been fully used up in the manufacturing process. Only when the amount to be paid as per the main provision is less than the duty payable on the transaction value, recourse can be made to the proviso. In the instant case, the amount payable under the main provision will always be higher than the duty payable on transaction value as used refractory materials sold as waste and scrap would fetch only very nominal price. This leads to a situation where substantial cenvat credit is denied to the manufacturer, though the capital goods in question (refractory materials) are fully used in the manufacturing process, thereby defeating the intention of cenvat credit scheme, which could not at all been the intention of the Government.

Hence, it is requested that the above proviso under Rule 3 (5A) be deleted and the earlier provision of paying an amount equal to duty payable on transaction value be re introduced if capital goods are sold as waste and scrap.