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Place of Removal? – Unsettling the settled scenario

(Mr. Ashok Bhasin, Partner, *Bhasin Sethi & Associates*)

Rule 2 (I) of the CENVAT Credit Rules, 2004 (CCR) prescribes the definition of 'input service'. Since the inception of this definition, the term "Place of removal" has been used and same has assumed great significance because the CENVAT Credit of input services is available up to the place of removal. The term "Place of removal" was not defined in CCR and the definition was being borrowed from Section 4 of Central Excise Act for the purpose of looking into eligibility of availing CENVAT credit of service tax paid on inputs services.

However, on 11th July 2014, Ministry of Finance vide. Finance Bill (No. 2), 2014 introduced the definition of "Place of Removal" for the first time in CENVAT Credit Rules by inserting Rule 2(qa) of CCR, 2014. As a result, different attempts were made to interpret the term 'Place of Removal'

Definition of 'Place of Removal' under Rule 2(qa) is as under:

"Place of removal" 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;"

It can be seen that this newly introduced definition of "Place of Removal" is identically worded as given in Section 4, *ibid*. The purpose of insertion of definition in CENVAT Credit Rules is perhaps to delink it from the assessment of duty. Earlier, the eligibility was sometimes compared with the nature of assessment done under section 4 of the Act. The issue of CENVAT is now to be seen independently.



Adding more ambiguity to this, Finance Ministry, on 20th October 2014, issued a clarification (Circular No. 988/12/2014–CX) in respect of determination of “Place of removal” for CENVAT credit purposes.

Para 6 of Circular No. 988/12/2014–CX reads as follows:

“It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.”

The circular refers to Section 23 of the Sale of Goods Act, 1930 and clarifies that the transfer of property in goods from the seller to the buyer would be the relevant factor to determine the “Place of Removal”. The inclusion of transport charges in value is said to be not the relevant consideration and that is how assessment u/s 4 of the Central Excise Act, 1944 is being delinked from the eligibility of credit availment.

So, according to the Circular, the “Place of Removal’ is the “Place of Sale” and ‘Place of Sale’ is the time at which the property in the goods is to pass the buyer. In plain language, when the goods are handed over to the buyer / transporter, the property is deemed to have been passed and that is the place of removal. In other words, it means that the service tax paid on services like transportation, insurance etc. are not the input services and would not be eligible for CENVAT credit.

However, a contrary interpretation can be inferred on deep analysis of this Circular. It is important to consider all the sections of Sales of Goods Act while interpreting the term ‘Place of Removal’. Thus, on a careful perusal of Section 24 of Sales of Goods Act, it can be seen that property in goods passes to buyer, when:- i)He signifies his approval as acceptance; and (ii)He retains the goods without giving notice (when approval was to be considered), then; (a)When time fixed for return of goods has expired or (ii) or expiration of reasonable time.



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Therefore, this means, if a manufacturer has a **clause** of 'goods on approval basis' in the contract, the 'place of removal' automatically becomes the buyer's end. This would enlarge the scope of definition of 'input services' so as to make transportation / insurance services, eligible for CENVAT credit purposes.

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401, Satyam Cineplexes, Ranjit Nagar,
New Delhi - 110008
Phone No. : 011-25895998, 25894899
Email: delhi@bsalaw.in

Website : www.bsalaw.in

C-20/1 (Lower Ground Floor),
Ardee City, Near Gate-3,
Sector-52, Gurgaon - 122011
Phone No. : 0124-4275494, +91-9910044272
Email: gurgaon@bsalaw.in