KPMG
cutting through complexity

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Provisions prescribed for utilisation of cenvat credit of education cess and secondary and higher education cess against output service tax liability

Background

As a step towards introduction of the proposed Goods and Services Tax (GST), the central government vide Union Budget, 2015 proposed to do away with the levy of education cess and secondary and higher education cess (collectively referred to as cess). While the levy of cess on excise duty was withdrawn from 1 March 2015, the cess on service tax was subsumed from 1 June 2015 into a consolidated rate of 14 per cent.

In absence of any corresponding amendment in Rule 3(7)(b) of the Cenvat Credit Rules, 2004 (the Credit Rules) allowing manufacturers/service providers to utilise this credit against the output excise duty/ service tax liability, the industry expressed its concern on the fate of such unutilised credit balance. The said Rule restricts the use of cenvat credit of cess against excise duty or service tax liability.

The central government addressed this concern, though partially, by allowing manufacturers to utilise cenvat credit of cess for payment of output excise duty liability availed on or after 1 March 2015. However, no such provision was made for a service provider.

To correct this anomaly and extend the similar benefit to service providers as well, the central government has now issued a Notification No. 22/2015–CE(N.T.) dated 29 October 2015 ('the Notification') to enable service providers to utilise cenvat credit of cess for payment of output service tax liability.

Coverage

The Notification has introduced three new provisos under Rule 3(7)(b) of the Credit Rules to ensure the utilisation of cenvat credit of cess against output service tax liability in the following situations:

- Cenvat credit of cess paid on inputs or capital goods received in the premises of service provider on or after 1 June 2015
- Cenvat credit of balance fifty per cent of cess paid on capital goods received in the premises of service provider in the financial year 2014-15
- Cenvat credit of cess paid on input service in respect of which the invoice or other eligible document as prescribed under Rule 9 of the Credit Rules is received by the service provider on or after 1 June 2015.

Our comments

Issuance of this Notification would address (to certain extent) the concerns faced by service providers as regards utilisation of cess availed on or after 1 June 2015. However, the Notification fails to elucidate certain other concerns which have still not been addressed for the manufacturers:

- The amendments enable a manufacturer and service provider only to utilise cenvat credit of cess availed on or after 1 March 2015 and 1 June 2015 respectively. However, the destiny of cenvat credit balances of cess lying unutilised as on 28 February 2015 (for a manufacturer) and as on 31 May 2015 (for a service provider) has not been explained. The huge balance of such accumulated cenvat credit of cess seems to have led to cash flow issues for various trades and industries.
- Though the balance fifty per cent of cenvat credit of cess paid on capital goods received in the factory of a manufacturer or premises of a service provider in the financial year 2014-15 has been allowed for utilisation, the amendment does not address the situation where capital goods were received prior to the financial year 2014-15 but balance fifty per cent of cenvat credit could not be utilised before 1 March 2015 (by a manufacturer) or 1 June 2015 (by a service provider).

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With the implementation of the proposed GST around the corner and the promise of improving the ease of doing business, the government should soon take steps to address the above concerns of trade and industry organisations.

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