

# CENVAT CREDIT – Rules with respect to procedural aspects

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# Basic Scheme of the Provisions of CENVAT CREDIT

# BASIC SCHEME COVERING CENVAT CREDIT

- FINANCE ACT, 1994
- CENTRAL EXCISE ACT, 1944
- CENVAT CREDIT RULES, 2004

# WHAT IS CENVAT CREDIT?



## Duty/tax paid/payable

- Transaction on which following taxes are paid:
  - Excise Duty
  - Service Tax

## Availment

- The said transaction should qualify either of the following:
  - Inputs {Rule 2(k)}
  - Capital Goods {Rule 2(a)}
  - Input Services {Rule 2(l)}

## Reversals

- If the provider/ manufacturer is providing/ manufacturing any exempted service/goods then cenvat credit has to be reversed accordingly in terms of Rule 6 as explained in guide to statutory provisions published by ICAI.

## Distribution

- If the provider/manufacture holds ISD registration then cenvat credit has to distributed in terms of Rule 7 read with circular 178/04/2014-ST dated 11.07.2014

## Documents

- The documents has to be maintained in terms of Rule 9 of the Cenvat Credit Rules, 2004 which certifies valid availment. Further details is explained in guide to statutory provisions published by ICAI

## Utilization

- After ensuring all the above mentioned check-up, credit has to be utilised in the following manner {Rule 3(4)} -
  - any duty of excise on any final product; or
  - CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
  - CENVAT credit taken on capital goods if such capital goods are removed as such; or
  - an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or
  - service tax on any output service

# AVAILMENT OF CENVAT CREDIT

RULE 2(a)

- CAPITAL GOODS

RULE 2(k)

- INPUTS

RULE 2(l)

- INPUT SERVICES



# CAPITAL GOODS – RULE 2(a)

➤ Goods falling in Excise Tariffs:

S.N	C.H	Description
1	83	Tools, implements, cutlery, spoons and forks of base metal; parts thereof of base metal
2	84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
3	85	Electrical machinery and equipment and parts thereof; sound recorders and re-producers, television image and sound recorders and reproducers, and parts and accessories of such articles
4	90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof
5	68.04 & 68.05	Relating to sound recording equipments, instruments etc.



# Capital Goods

- Spares, Components & Accessories
- Generation of Captive Electricity
- Pollution Control Equipments, Refractories & Refractory Materials
- Mould & Dies, Jigs & Fixtures
- Tubes & Pipes, Storage Tanks
- Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers]
- Credit available subject to non claim of depreciation

# INPUTS - RULE 2(k)

- The term “Inputs” has been defined under Cenvat Credit Rules, 2004.
- The same can be simplified as under:
  - ✓ Meaning clause
  - ✓ Exclusion clause

# INPUTS - RULE 2(k)

- Meaning clause:
- All the goods used in the factory by the manufacturer.
- All goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products.
- All goods use for generation of electricity or steam for captive use.
- All goods used for providing output service.

# INPUTS - RULE 2(k)

- Exclusion clause:
- Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol.
  
- Any goods used for –
  - ✓ Construction or Works contract of a building /civil structure or its part.
  - ✓ Laying of foundation or making of structures for support of capital goods.

## Exception to the exclusion:

The above mentioned exclusion clause is not applicable to a person providing service as listed in 66E(b) of the Finance Act, 1994

# INPUTS - RULE 2(k)

- Capital goods except when used as parts or components in the manufacture of a final product
- Motor vehicles
- Any goods used in a guest house, residential colony, club or recreation facility and clinical establishment which are meant primarily for personal use or consumption of any employee.
- Any goods which have no relationship whatsoever with the manufacture of final product.

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# INPUT SERVICE - RULE 2(I)

- The term “Input service” has been defined under Cenvat Credit Rules, 2004.
- The same can be simplified as under:
  - Meaning clause
  - Inclusion clause
  - Exclusion clause

# INPUT SERVICE - RULE 2(I)

- Meaning clause:
- Any service used for providing output service.
- Any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

# INPUT SERVICE - RULE 2(I)

➤ Inclusion clause:

Sr.No	Services specifically used in relation to –
1	Modernisation of premises/factory/office
2	Repairs of premises/factory/office
3	Renovation of Premises/factory/office
4	Advertisement
5	Sales Promotion
6	Market Research
7	Storage
8	Procurement of Inputs
9	Accounting/Auditing/Financing
10	Recruitment and Quality Control



# INPUT SERVICE - RULE 2(I)

Sr.No	Services specifically used in relation to –
11	Coaching and Training
12	Computer Networking
13	Credit Rating
14	Business Exhibition
15	Share Registry
16	Security
17	Legal Services
18	Inward transportation of inputs or capital goods
19	Outward transportation upto the place of removal

# INPUT SERVICE - RULE 2(I)

## ➤ Exclusion Clause:

### ➤ Any goods used for –

- ✓ Construction or Works contract of a building /civil structure or its part.
- ✓ Laying of foundation or making of structures for support of capital goods.

## Exception:

The above mentioned exclusion clause is not applicable to a person providing service as listed in 66E(b) of the Finance Act, 1994

# INPUT SERVICE - RULE 2(I)

- Services relating to motor vehicles –
  - ✓ Rent-a-cab service
  - ✓ General Insurance Service
  - ✓ Authorized service station service
  - ✓ Repairs and Maintenance service
  - ✓ Supply of tangible goods service

Exception: Capital goods as per Rule 2(a) of the Cenvat Credit Rules, 2004

*Note: The term “Motor vehicles” has same meaning as assigned to it under section 2(28) of Motor Vehicles Act.*

# INPUT SERVICE - RULE 2(I)

- Certain services like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession have been specifically excluded.
- However, this exclusion is *only when* such services are used *primarily* for personal use or consumption of any employee. This exclusion will not apply in other cases.

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# EXEMPTED SERVICE – RULE 2(E)

POSITION PRIOR TO 01.07.2012	POSITION AFTER 01.07.2012
<p>“Exempted Services” means a-</p> <ol style="list-style-type: none"> <li>1. taxable services which are exempt from the whole of service tax; or</li> <li>2. service, on which no service tax is leviable under section 66 of the Finance Act; or</li> <li>3. taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;</li> </ol> <p>Explanation- For removal of doubts, it is hereby clarified that “exempted services” includes trading</p>	<p>“exempted service” means a-</p> <ol style="list-style-type: none"> <li>1. taxable service which is exempt from the whole of the service tax; or</li> <li>2. service, on which no service tax is leviable under section 66B of the Finance Act; or</li> <li>3. taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;</li> </ol> <p>Exclusion – It shall not include service which is exported in terms of Rule 4A of the Service Tax Rules, 1994</p>

# Output service – RULE 2(p)

- *“Output service” means any service provided by a provider of service located in the taxable territory but shall not include a service –*
  1. *Specified in section 66D of the Finance Act; or*
  2. *where the whole of service tax is liable to be paid by the recipient of service.*

# Availment of Cenvat Credit

- Cenvat Credit is available under Rule 3
- Cenvat Credit of following items are available either as inputs , capital goods or input services:
  - Tax paid on goods
  - Tax paid on services
  - Additional duty under Section 3(5) of the Customs Tariff Act
  - Additional duty under Section 3 equivalent to duty of excise etc.
  - Education cess & SHE Cess on the same. Etc.
- Cenvat Credit is available on receipt of goods in the factory or the premises of Job Worker.

# Reversal of Credit

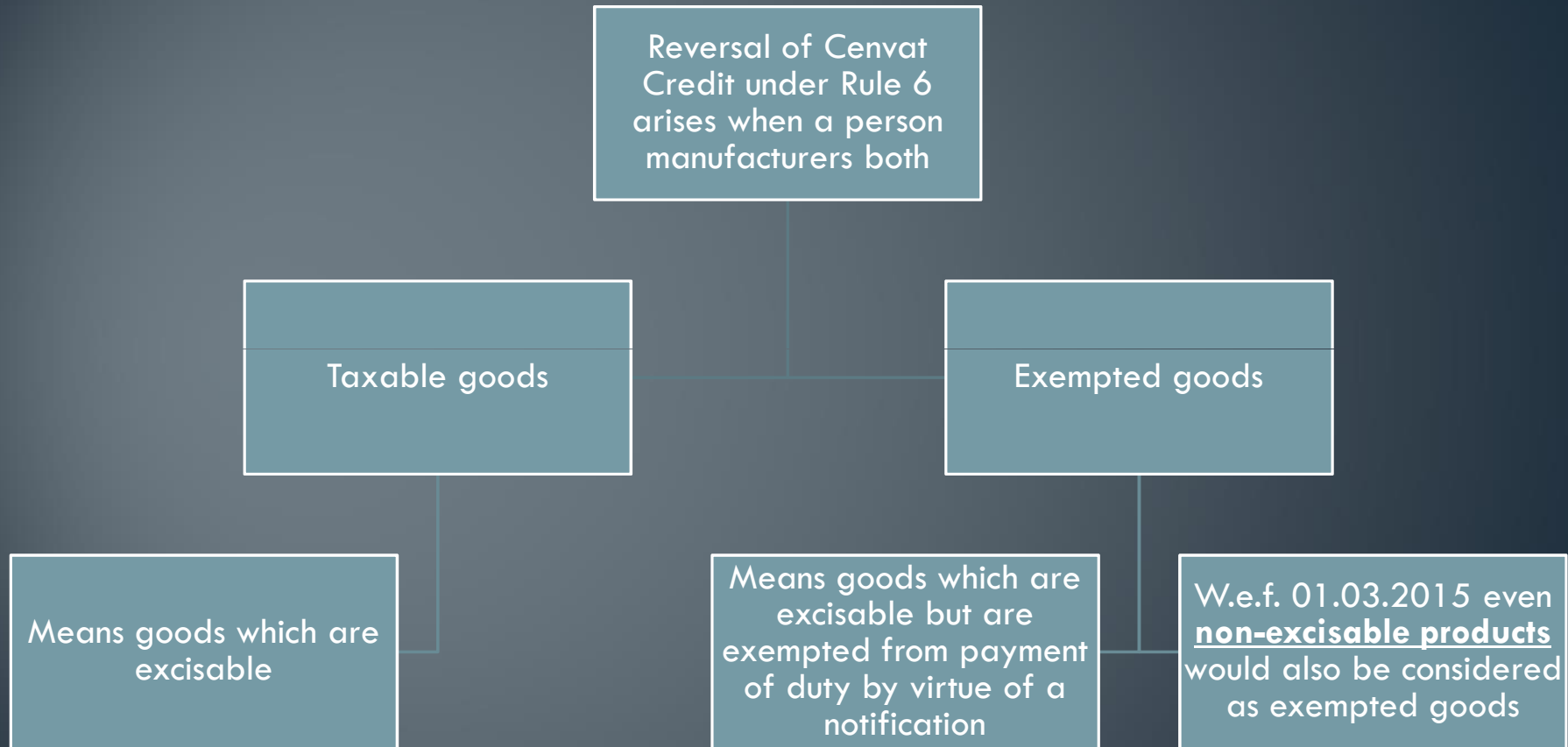
Situation	Rule	Amount of Reversal
Inputs or Capital Goods removed as such	3(5)	CENVAT Credit claimed
Capital Goods removed after being used as capital goods, scrap or waste	3(5A)	Proportionate CENVAT Credit on depreciated value or duty on transaction value, whichever is higher
Value of input is written off fully/partially or provided	3(5B)(i)	CENVAT Credit claimed
Value of capital goods before being put to use is written off fully/partially or provided	3(5B)(ii)	CENVAT Credit claimed
Duty on Finished Goods Remitted	3(5C)	CENVAT Credit taken on inputs



# Reversal of Credit {Contd}

Situation	Rule	Amount of Reversal
Jobworker: ✓ Inputs sent to jobworker not returned within 180 days ✓ Capital goods sent to jobworker not returned within 2 years	4(5a)	Amount = CENVAT credit attributable/availed of the said inputs or capital goods.
Value of Input Service not paid within 3 months	4(7)	CENVAT Credit taken
When taxable as well as exempted output is provided	6	Explained below
Manufacturer moving from taxability to exemption	11(3)	Credit attributable to inputs lying in stock or Closing Balance whichever is higher
Service Provider moving from taxability to exemption	11(4)	==Same as above==

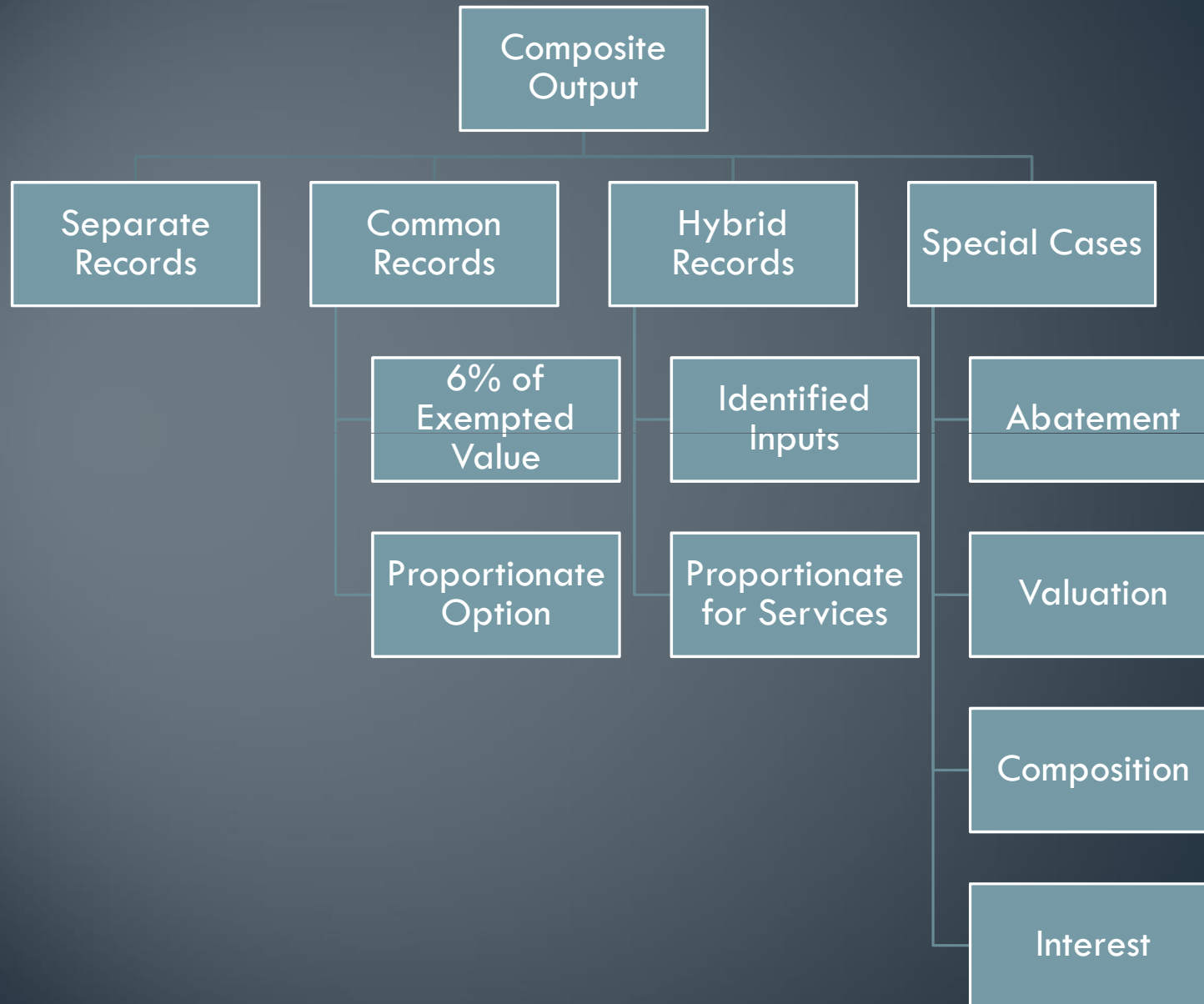
# REVERSAL UNDER RULE 6



# CENVAT : When is output composite

Nature of Transaction	Taxable	Exempted
Manufacture of Excisable Goods	Yes	No
Manufacture of Exempted Goods	No	Yes
Manufacture of Goods cleared at 1% or 2% Rate	No	Yes
Clearances to SEZ Units/Developers	Yes	No
Export of Goods and Services	Yes	No
Provision of Services in Non Taxable Territories	No	Yes
Provision of Taxable Services	Yes	No
Provision of Exempted Services	No	Yes
<b>Services on which Abatement is claimed under Notification 26/2012-ST subject to the condition that no credit is available on inputs and input services</b>	<b>No</b>	<b>Yes</b>
<b>Services on which Abatement is claimed under Notification 26/2012-ST other than above</b>	<b>Yes</b>	<b>No</b>
<b>Services on which Composition Scheme /Special Rates Aailed</b>	<b>Yes</b>	<b>No</b>
<b>Trading in Goods and Securities</b>	<b>No</b>	<b>Yes</b>
<b>Services to SEZ Units/Developers</b>	<b>Yes</b>	<b>No</b>

# Options for Composite Output



# Time Limit For Availment Of Cenvat Credit

- Cenvat Credit cannot be taken after one year of the date of issue of any of the documents specified in sub-rule (1) of rule 9.
- Analysis

Sr. No	Situations	Concerns	Ans
1	If the bill is unpaid for a period more than 3 months than credit has to reversed subsequently credit can be taken as and when paid	According to Rule 4(1); credit has to taken within 6 months from the date of invoice. However, if the credit is taken and subsequently reversed in lieu of Rule 4(7) then can a person take credit post the time limit	Yes
2	Same situation in lieu of Rule 3(5B)	Can re-credit be taken without applying the instant time limit	Yes
3	Same situation in lieu of Rule 4(5)	Can re-credit be taken without applying the instant time limit	Yes

## PAYMENT OF SERVICE TAX LIABILITY

- Does it mean that if a person paying his proportionate share under reverse charge, can make payment through Cenvat credit?

Answer : NO

An explanation is added to Rule 3(4) which states:

*CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay is the service recipient*

## Documents for availing cenvat Credit

NATURE	Documents	Remarks
Input Services	Invoice / ISD invoice under Rule 4A	Immediately subject to payment within 90 days as per proviso to Rule 4(7)
Inputs	Excise Invoice / Bill of Entry	Immediately on receipt in premises as per proviso to Rule 4(1)
Capital Goods	Excise Invoice / Bill of Entry	50% in first year and balance there after, as per rule 4(2)
Input Service – Recharge	GAR – 7 Challan	Immediately as per rule 9(1)(e)

## Rule 14 – Interest on wrong availment and utilization of cenvat credit

- Question raised: What refers to availment?
- Supreme Court in case of Ind Swift Laboratories held that interest is liable to be paid on wrongful availment of credit and not utilization.
- Karnataka High Court in case of Bill Forge held that interest is not liable on wrongful availment as there is no revenue loss.
- Thus a retrospective amendment was made to the effect that interest is not payable on wrongful availment



## Rule 14 – Interest on wrong availment and utilization of cenvat credit

- There was no clarity as to how it can be ascertained whether the ineligible credit has been utilised or not. The same has been clarified by the present amendment. The following is the manner to compute the amount of credit utilised:
  - The opening balance of the month will be deemed to have been utilised first,
  - Then eligible credit taken during the month will be deemed to have been utilised next,
  - Then ineligible credit taken during the month will be deemed to have been utilised.

### Illustration:

#### ❑ Cenvat register for the month of March 2015

- Opening balance of March 2015 – Rs. 1000
- Eligible credit taken in March 2015 – Rs. 500
- Ineligible credit taken in March 2015 – Rs. 400
- Credit utilised in March 2015 – Rs. 1200 (i.e.  $1000+500+400-1200$ )
- Closing balance : 300 (eligible credit) + 400 (ineligible credit)

No interest liability as opening + eligible credit was utilised.

#### ❑ Cenvat register for the month of April 2015

- Opening balance of April 2015 – Rs. 700 (which contains eligible credit of Rs.300+ineligible credit of Rs.400)
- Eligible credit taken in April 2015 – Rs. 400
- Ineligible credit taken in April 2015 – Rs. 300
- Credit utilised in April 2015 – Rs. 1000 (i.e.  $700+400+300-1000$ )
- Closing balance : 100 (eligible credit) + 300 (ineligible credit)

Interest liability on Rs.400/- (as opening balance deemed to be utilised first).



**Filing Tax Returns**

# CENVAT RETURNS

- Cenvat returns should be filed regularly in order to state substantiate availment of cenvat credit
- Cenvat availment not shown in returns and accordingly as per the statutory records the cenvat availment is not done for a period more than one year, then what is the remedy?
- Filing of cenvat returns compulsory for claiming cenvat refund (export, RCM) ?

Thank You

