Confusion for Cenvat Credit on Swachha Bharat Cess

After implementation Swachha Bharat Cess ( hereinafter referred as SBC for the sake of brevity), there is confusion in the trade, industry, service provider and also in the consultants whether Cenvat credit is available on the same or otherwise? Before discussing the issue, relevant important authorities are required to be referred.

**The Finance Bill, 2015(BILL No. 26 OF 2015):** CHAPTER VI of the Finance Bill,2015 relates to SBC and as per Section 117(2) SBC shall be levied and collected, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services. As per Section 117(2), the provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, be allowed in relation to the levy and collection of the SBC on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made (NO. 20 OF 2015) and the Section 117 of The Finance Bill, 2015(BILL No. 26 OF 2015) was renumbered as Section 119 and published in the gazette of India on 14.11.2015

**D.O. Letter F. No. 334/5/2015-TRU, dated 28.02.2015:** In first para of the said D.O. letter, it was informed that Chapter VI of the Bill (clause 117) contains the enabling provisions relating to levy SBC, which empowers the government to impose Cess on all or any of the taxable services at the rate of 2% of the value of taxable services and changes are also proposed in,

• the Service Tax Rules, 1994 (STR);

• the CENVAT Credit Rules, 2004 (Cenvat Rules)

**Relevant Notifications**: CBEC vide Notification No. 21/2015-ST dated 06.11.2015 appointed

15.11.2015 as the date to enforce the said provisions of SBC and vide Notification No. 21/2015-ST dated 06.11.2015, exempted all taxable services from payment of such amount of the SBC in excess of SBC calculated at the rate of 0.5 percent. of the value of taxable services.

**Accounting Code:** CBEC Vide Circular No. 188/7/2015-ST dated 16.11.2015 declared Accounting code for payment of SBC- Minor head- 004400506, Tax Collection- 00441493, other receipt(interest)- 00441494, penalties- 00441496, deduct refund- 00441495 etc.

**FREQUENTLY ASKED QUESTIONS (FAQ):** in the said FAQ, Question No. 14 and answer are

reproduced as under.( http://cbec.gov.in/resources//htdocs-cbec/press-release/faq-sbc.pdf

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**Q.14 Whether Cenvat Credit of the SBC is available?**

Ans. SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.

**Confusion:** Now, confusion is there when, in Section 119(2) of the Finance Act, 2015 it is mentioned that SBC shall be levied and collected, as service tax and there are provisions of availing service tax in the CCR’2004, why Cenvat Credit for SBC can not be availed?

In this regard, it is opined that though SBC is identified as Service Tax, Cenvat credit can not be taken until the relevant provision is not incorporated in CCR’2004. Cenvat Credit Rules has been introduced to avoid cascading effect of double taxation i.e. tax on tax. In case, Cenvat credit of SBC is not allowed, it would be tax on tax as on any value addition the same will be charged again and resulting like wise turnover tax. Now, while discussing relevant provisions of CCR’2004, it is important that Rule 3 of the CCR’2004 describe each tax/duty specifically with relevant authority and cenvat credit can be availed accordingly. for SBC also, cenvat credit can be availed when required necessary amendments are being made in the same.

For instance, as and when levy of Secondary and Higher Education Cess on excisable goods under section 136 read with section 138 of the Finance Act, 2007 and on taxable service under section 136 read with section 140, was introduced in the Union Budget-2007, CCR’2004 was amended to enable Cenvat Credit of the said Cess vide Notification No. 27/2007-CE (N.T.) dated 12.05.2007 substituting clause (via) and inserting clause (xa) of Rule 3(1) of CCR’2004 and relevant transitional provisions therein. Therefore, as till this time CCR’2004 has not been amended accordingly, Cenvat Credit of SBC can not be availed, until the relevant provision i.e. Rule 3 of CCR’2004 get amended.

Though, don’t lose hope as mentioned in forgoing para, there is indication in the budget D.O. Letter F. No. 334/5/2015-TRU, dated 28.02.2015 that changes are also proposed in the CCR’2004 (which has not been made, till date). So at any time, relevant amendment may be done in CCR’2004 and the assessee may avail Cenvat credit of SBC thereafter only. So, and keep relevant records ready for the same.

The above are my personal views, based on available information and shared with a view to avoid ambiguity amongst deptt/trade/consultants and it is possible that the same can not be final views. Learned Dept. Officers/Experts/trade is requested to understand the same accordingly and also to offer their Valuable guidance/views/ comment in the matter.

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