# Grey areas Cenvat credit on Krishi Kalyan Cess (KKC)

In budget 2016-17, the Government has introduced a cess called as Krishi Kalyan Cess (KKC) which will be used for financing and promoting agricultural sector. KKC will apply at the rate of 0.5% on value of taxable services rendered on or after 1.6.2016. Unlike Swachh Bharat Cess (SBC) the Government has made this levy Cenvatable and accordingly, CENVAT credit of KKC is available. Availability of CENVAT credit on KKC however is subjective to certain conditions.

Following are the certain grey areas in the subject field.

Availability of CENVAT credit on KKC is introduced in the CENVAT credit chain by the insertion of sub clause (1a) to Rule 3 of the CENVAT credit Rules, 2004 (Credit rules) vide Notification No.28/2016C.E.(NT), dated 26.05.2016. The insertion states as under

"A provider of output services shall be allowed to take CENVAT credit of Krishi Kalyan Cess on taxable services leviable under section 161 of Finance Act, 2016 (28 of 2016)".

Further, Rule 2(p) of the Credit rules, define “output service” as

(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

A harmonious reading of the two provisions above brings out that CENVAT credit can be availed by a service provider providing Output services only. The provisions do not bar a manufacturer providing Output services from availing Credit of KKC.

An inference can therefore be made that the above provisions bar the following class of persons from availing Credit of KKC

* Manufacturers not providing any output service
* Manufacturers paying service tax as service recipient alone
* Any other person paying service tax as service recipient.

The above position will clearly go against the interest of manufacturing sector, more so on the ground that they have received input services bearing the incidence of KKC and such input services are used in the manufacture of their final products. Denying CENVAT benefit of KKC goes against the essence of the Credit rules when such services received are clearly input services to such manufacturers.

Further manufacturers paying service tax as service recipients are required to pay KKC but are denied benefit of CENVAT for the reason that they are not Output service providers This clearly goes against the principals of the Credit rules.

The said notification also amended sub rule (7) of Rule 3 of CENVAT Rules, by way of insertion of clause (d) in the sub rule which states as under

"CENVAT credit in respect of Krishi Kalyan Cess on taxable services leviable under section 16 of the Finance Act, 2016 (28 of 2016) shall be utilized only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of Finance Act, 2016 (28 of 2016).

The trade is therefore required to strictly follow a one is to one correlation for the purpose of availment and utilisation of KKC credit. Another procedural compliance is being thrust upon the trade, when matter can be clearly sorted by doing away with this requirement.

KKC is clearly an input service to both service providers as well as manufacturers. Strictly restricting its utilisation for payment of KKC alone therefore does not serve any purpose.

Further denying credit of KKC to manufacturers will only make them loose refund of such tax suffered for goods exported by them.

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