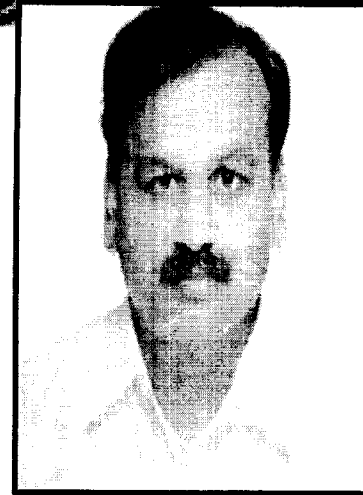




**CREDIT OF RENTING OF  
MOTOR VEHICLE  
-MYSTERIOUS PUZZLE!!**



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**Introduction:-**

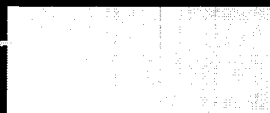
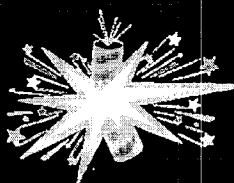
This article is an attempt to analyse the definition of 'input service' as given under Rule 2(I) of the Cenvat Credit Rules, 2004 excluding the services provided by way of renting of motor vehicle, in so far as they relate to a motor vehicle which is not capital goods from the ambit of input service eligible for cenvat credit. It is often heard that there is a thumb rule in the minds of the assessee that the cenvat credit of rent a cab services is not admissible unless and until the services of rent a cab are being used by another rent a cab service provider. This is for the reason that it is believed that as the services of renting of motor vehicle related to motor vehicles which is not capital goods is being specifically excluded from the ambit of the definition of input service; hence, the cenvat credit of the services of renting of motor vehicle related to motor vehicles which is capital goods is only admissible. Hence, many opine that the cenvat credit of services related to renting of motor vehicle is admissible only to those who avail the cenvat credit of motor vehicles as capital goods. But, is it correct to say that only service recipients who avail the capital goods credit of motor vehicles are eligible to avail service tax credit of rent a cab? Well, we try to answer a number of questions that may haunt the minds of persons analysing the exclusion clause of the definition of input service pertaining to service of renting of motor vehicle.

**Definition of input service:-**

The definition of input service given in Rule 2(I) of the Cenvat Credit Rules, 2004 reads as follows:

**Input service means any service,-**

- (i) Used by a provider of taxable service for providing an output service; or



(ii) 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, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) Service portion in the execution of a works contract and construction services including services listed under clause (b) of section 66E of the Finance Act, (hereinafter referred as specified services), in so far as they are used for-

(a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods, Except for the provision of one or more of the specified services; or

(B) Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

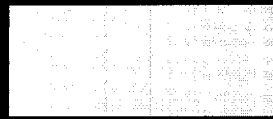
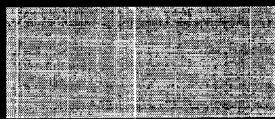
(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by-

(a) A manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or

(b) An insurance company, in respect of a motor vehicle insured or reinsured by him; or

(C) Such as those provided in relation to 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, when such services are used primarily for personal use or consumption of any employee.

On perusal of the above defination it is submitted that the service provided by way of renting of motor vehicle is excluded from the defination of input service only if it relates to motor vehicle which is not a capital goods. As such, there is no complete restriction as to availment of input service credit pertaining to rent-a cab.



**Defination of capital goods:-** The defination of capital goods under Rule 2(a) of the Cenvat Credit Rules, 2004 reads as follows:-

**Capital goods means:-**

(A) The following goods, namely:-

(i) All goods falling under chapter 82, chapter 84, chapter 85, chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) Pollution control equipment;

(iii) Components, spares and accessories of the goods specified at (i) and (ii);

(iv) Moulds and dies, jigs and fixtures;

(v) Refractories and refractory materials;

(vi) Tubes and pipes and fittings thereof;

(vii) Storage tank and

(viii) Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers, used-

(1) In the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

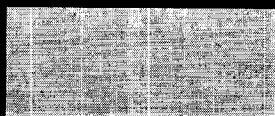
(1A) outside the factory of the manufacturer of final products for generation of electricity for captive use within the factory; or

(1) For providing output service;

(B) Motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

(i) Providing an output service of renting of such motor vehicle; or

(ii) Transportation of inputs and capital goods used for providing an output service; or





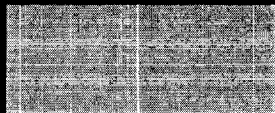
definition of capital goods. Moreover, IT IS PERTINENT TO NOTE THAT LAW DOES NOT PRESCRIBE THAT THE MOTOR VEHICLE SHOULD BE 'CAPITAL GOODS' FOR SERVICE PROVIDER OR SERVICE RECIEVER. IT SIMPLY SAYS "IN SO FAR AS THEY RELATE TO MOTOR VEHICLE WHICH IS NOT CAPITAL GOODS". In our opinion, although it is not specifically specified that the motor vehicle should be capital goods for service provider or service receiver, it is clear that the intention is that the motor vehicle should be **capital goods for the service provider itself. This is for the following two reasons:-**

1. If the intention is that the motor vehicle should be capital good for the service receiver, then the situation would be absurd and practically impossible because if the motor vehicle is capital good for service receiver, why will the service receiver take that motor vehicle on rent/hire. It is not possible to avail the services of renting of motor vehicle with respect to a motor vehicle which belongs to service receiver. If this interpretation is taken, it will lead to absurdity.
2. The view is also strengthened by the clause (C) of the defination of capital goods which also states that the motor vehicles designed to carry passengers should be registered in the name of the service provider providing the services of transportation of passengers, renting of motor vehicle or imparting motor driving skills.

Therefore, one may conclude that if it is possible to prove by the service receiver that the motor vehicle used in the services of renting of motor vehicle are capital goods for the service provider and they are registered in the name of service provider, then the said service of renting of motor vehicle is not covered by the exclusion clause to the defination of input service and there is no embargo in availing cenvat credit of the same.

The other side of the coin, i.e., alternative interpretation prevalent:- Many consultants interpret that the services of renting of motor vehicle will be eligible as 'input services' if used in provision of taxable services for which cenvat credit of motor vehicle is available as capital goods. In such a scenario, the only situation in which the cenvat credit of the service of renting of motor vehicle will be admissible is the case when the service provider of renting of motor vehicle avails the service of another service provider of renting of motor vehicle. It is only in this situation that the credit of motor vehicle will be available as capital goods. However, we respectfully submit that this interpretation is not conforming to the language of the exclusion clause which reads as follows:-

Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or It is pertinent to note that 'motor vehicle' referred in above clause is the same motor vehicle that is used in provision of the service of renting of motor vehicle. Hence, the exclusion clause simply states that the motor vehicle which is not capital goods and is being used for the provision of services of renting of motor vehicle will make the service as ineligible input service for the purpose of credit availment. The alternative interpretation that the credit will be available only



when the motor vehicle is used for provision of taxable service for which motor vehicle is capital goods is far stretched interpretation because in that case, two different motor vehicles will come into picture. For example, A owns motor vehicle X and is service provider rendering the services of renting of motor vehicle. Similarly, B owns motor vehicle Y and is service provider rendering the services of renting of motor vehicle. According to the alternative interpretation prevalent, if A avails the services of B, only in such a case, B may take the cenvat credit of service tax paid on renting of motor vehicle because it is used for provision of taxable services wherein cenvat credit of motor vehicle is available as capital goods to B. However, this interpretation is also silent about the reference being made to the motor vehicle for the purpose of considering it as capital goods. In the present example, both the motor vehicles, X & Y are capital goods for A and B respectively. However, if the services of A are availed by B, then obviously, motor vehicle X would have been used which is capital goods for A and not for B. Further, if the exclusion clause is being minutely studied, it refers to "a motor vehicle" and definitely it would be the motor vehicle used for provision of service of renting of motor vehicle. The interpretation that cenvat credit is admissible only when the services are used in provision of services where the credit of motor vehicle is admissible as capital goods would refer to motor vehicle Y whereas the exclusion clause does not say so. The exclusion clause only refers to one motor vehicle which is being used in provision of the taxable service of renting of motor vehicle and only that motor vehicle, which in the present case is X should be capital goods. We submit that there is no doubt as regards the fact that the motor vehicle X is capital goods for A and this fact is enough for treating the service as input service. Moreover, this rule should apply in all cases including the case when the service of renting of motor vehicle is being availed by an assessee not providing similar services. This is for the reason that ultimately, the motor vehicle that should be capital good is the motor vehicle that is used in provision of service of renting of motor vehicle and the same is capital goods as per the clause (C) of the definition of capital goods as given under Rule 2(a) of the Cenvat Credit Rules, 2004. In our opinion, the alternative interpretation leads to a situation wherein unwarranted discrimination is being made between similarly placed assessees wherein one assessee is being extended the benefit of cenvat credit on the ground that the said service is being used in provision of taxable service of renting of motor vehicle wherein the credit of motor vehicle is available as capital goods whereas the other assessee is being denied the cenvat credit for no valid reason. It has been held in various decisions that discrimination between two assessees is unfair and is violative of the Article 14 to the Constitution of India. The citations of few such decisions are as follows:-

- **DAMODAR J. MALPANI V. CCE [2002 (146) ELT 483 (SC)]**
- **MALLUR SIDDESWARE SPINNING MILLS (P) LTD. VS. CCE [2004 (166) ELT 154 (SC)]**
- **QUINN INDIA LTD. VS. CCE [2006 (198) ELT 326 (SC)]**

It is further submitted that the ultimate aim of the government is to remove the cascading effect and denial of cenvat credit by drafting such ambiguous clauses will serve as a great hurdle in achieving the said objective. In our opinion, the alternative interpretation as prevalent amounts to addition in the

legislation when the language of the clause is clear and precise.

Before Parting:- According to literal interpretation of the exclusion clause (B) to the definition of input service, there is ambiguity as regards denial of cenvat credit on the services of renting of motor vehicle. However, it is observed that the assessee does not avail the cenvat credit to avoid unnecessary litigation and have conception that the cenvat credit of renting of motor vehicle is not admissible at all but this is not the case. The exclusion clause may be interpreted in different ways thereby leading to different conclusions. Moreover, one may also contend that if the literal interpretation of exclusion clause is adhered to, it will lead to allowing cenvat credit to all the assesseees because what is excluded is the service of renting of motor vehicle, in so far as it is related to a motor vehicle which is not capital good. This is for the reason that from the clause (C) of the definition of capital goods, all the motor vehicles registered in the name of the service provider for providing services of transportation of passengers/renting of motor vehicle are covered under capital goods. Accordingly, it may be argued that literal interpretation may lead to exclusion clause as redundant because cenvat credit may be admissible in all cases. On the contrary, if the literal interpretation as discussed above is alleged to be wrong, then the phrase "in so far as they relate to a motor vehicle which is not a capital goods" will be rendered otiose. Well, all that can be said is that the admissibility of cenvat credit of services of renting of motor vehicle is a whirlpool of ambiguities and can be set at rest either by a clear cut amendment or clarification from the Central Board of Excise & Customs.

