Krishi Kalyan Cess-Hidden Misery

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PRADEEP JAIN

Chartered Accountant

NEETU SUKHWANI

Chartered Accountant

Krishi Kalyan Cess (KKC) at the rate of 0.5% is being imposed on all taxable services with effect from 01.06.2016 on all taxable services provided or agreed to be provided by the service provider. The revenue collected from this Cess will be utilised by the government for improving agricultural sector and for taking initiatives to promote agricultural activities. However, the complicated provisions enshrined for this Cess tend to defeat the 'Kalyankari intention' of the government.

It is provided that only a provider of output service shall be allowed to take cenvat credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016. This has the consequence of raising doubt as regards availment of cenvat credit of KKC levied on input services received by a manufacturer cum service provider. Not only this, it is being provided that the cenvat credit of any duty shall not be utilised for payment of KKC leviable under section 161 of the Finance Act, 2016. In the opinion of authors, literal interpretation of the provision leads to conclusion that only a service provider can avail the cenvat credit of KKC imposed on input services availed by it and the credit so availed can be utilised for payment of KKC and no other duty. This means that a manufacturer, who is a service provider as well, cannot avail the cenvat credit of KKC at all on the input services received by it in the capacity of manufacturer of goods and consequently, cannot utilise the same for payment of service tax on output services provided by it. This interpretation depart from the principle laid by number of judicial pronouncements which have concluded that legitimately earned cenvat credit is available as a 'common pool' and there is no one to one co-relation required for utilisation of cenvat credit earned in the capacity of manufacturer towards payment of service tax in the capacity of service provider. This ratio has been laid down in the following decisions rendered by various Tribunals:-

- ***COMMISSIONER OF C. EX., SALEM VERSUS V. THANGAVEL & SONS (P) LTD. [2015 (37) S.T.R. 144 (TRI. – CHENNAI)]***
- ***C.C.E., COIMBATORE VERSUS LAKSHMI TECHNOLOGY & ENGINEERING INDUS. LTD. [2011 (23) S.T.R. 265 (TRI. – CHENNAI)]***
- ***S.S. ENGINEERS VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I [2015 (38) S.T.R. 614***

(TRI. – MUMBAI)]

- ***FORBES MARSHALL PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [2010 (258) E.L.T. 571 (TRI. – MUMBAI)]***
- ***JYOTI STRUCTURES LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, NASIK [2012 (285) E.L.T. 356 (TRI. – MUMBAI)]***

However, it is also worth noting that in the above cases, the availment of cenvat credit was not conditional that only service provider can avail the cenvat credit of a particular duty as is being done in the case of KKC. It is pertinent to mention that a new sub-rule (1a) has been inserted in Rule 3 after sub-rule (1) which specifically mentions that 'A provider of output service shall be allowed to take cenvat credit of KKC on taxable services leviable under section 161 of the Finance Act, 2016'. On the contrary, Rule 3(1) states that 'A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the Cenvat Credit)...' which indicates that the cenvat credit availed of the duties mentioned in Rule 3(1) whether availed in the capacity of manufacturer or in the capacity of service provider is available as 'Cenvat Credit'. In the opinion of authors, the above cited judicial pronouncements will not have relevance in case of availment of cenvat credit of KKC on input services availed by a manufacturer cum service provider for use in or in relation to manufacture of final goods. Furthermore, when the manufacturer cum service provider cannot avail the cenvat credit of KKC on the input services used in manufacture of final goods, the question of utilisation of KKC does not arise at all.

The above interpretation poses a great difficulty on the assessees who are engaged in manufacture and provision of services both. Say for example, a manufacturer of machinery who is also engaged in providing services of installation, commissioning and repair services. In such situation, the said assessee will be receiving input services both for manufacture of machinery and also for providing the services of installation, commissioning and repair services. In such a case, it would be extremely difficult for the said assessee to maintain separate records for input services used in manufacture of machinery so that no cenvat credit of KKC is being availed on the same while maintain separate records for input services used in provision of services such as installation, commissioning and repair services and avail the cenvat credit of KKC. Moreover, what about common input services availed by the said manufacturer-cum-service provider. The assessee avails a number of common input services in the manufacture/provision of service such as telephone

services, Chartered Accountant services, legal services, security services etc. The author wish to highlight that in case of assessee who is engaged in manufacturing dutiable goods and provision of taxable services, wherein it is not possible to ascertain the cenvat credit of KKC pertaining to provision of taxable services, whether the assessee will require to comply with the provisions of Rule 6 of the Cenvat Credit Rules, 2004 even when no exempted services have been provided or no exempted goods have been removed. It is pertinent to note that there has been no amendment in Rule 6 to provide that the provisions shall apply in case of manufacturer-cum-service provider with respect to credit of KKY availed on common input services used in manufacture of dutiable goods and provision of taxable services. The prudent assessees in such a situation will definitely find it convenient to forgoe the cenvat credit of KKC instead of adopting a complicated and tedious procedure of maintaining separate records.

Similar difficulty will be faced by job-workers who are engaged in processing of goods and also engaged in manufacture intermediate products for different principal manufacturers. The situation may also result in compliance of the provisions of Rule 6 because in case of job-worker, clearance of job-worked goods is treated as exempted service by virtue of clause (f) of section 66D which reads as follows:-

"services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption".

Hence, for a job worker, it would be extremely difficult to ascertain as to the quantum of KKC credit available as KKC credit can be availed only by a service provider. Moreover, whether the provisions of Rule 6 would be applicable on availment of cenvat credit of KKC by a job worker will also be a matter of concern as no prudent assessee would opt for tedious provisions of Rule 6 for a portion of credit being 0.5% of the value of taxable services.

Before Parting:-

The intention behind granting restrictive cenvat credit availment facility for KKC to only service providers is not understandable and rather it will lead to complications and litigations. The cenvat credit mechanism was introduced to remove cascading effect and if restrictive credit availment policy is followed, it will lead to expensing of taxes which is against the principle of minimizing cascading effect.

The grant of exemption towards levy of Education Cess and SHE

Cess was perceived as a step of progression towards unified tax rate and reduction of compliances as regards maintenance of separate accounting codes for taxes. However, the exemption from Education Cess and SHE Cess has gave birth to other new cesses namely Swachh Bharat Cess (SBC), Infrastructure Cess and Krishi Kalyan Cess. It is pertinent to mention that the Education cess and SHE cess were computed on taxes and so were not cumbersome but the new cesses such as Swachh Bharat Cess and Krishi Kalyan Cess are being levied on value of taxable services which is often a matter of dispute. Moreover, the complete prohibition as regards credit availment of Swachh Bharat Cess and the conditional credit availment of KKC by service providers has further added to complexities. At the same time, denial of cenvat credit of SBC is not understandable when the exporters have been made eligible to claim rebate of SBC under notification no. 19/2004-C.E. (N.T.) dated 06.09.2004 and 21/2004-C.E. (N.T.) dated 06.09.2004 vide amendment made by Notification no. 26/2016- C.E. (N.T.) dated 05.05.2016. It is really absurd that the cenvat credit of SBC is not available but the exporters are allowed to claim the rebate of SBC under Rule 18 of the Central Excise Rules, 2002. Similarly, the service providers are allowed to claim cenvat credit of KKC but the exporters are not allowed to claim rebate of KKC under Rule 18 of the Central Excise Rules, 2002 as the cenvat credit of KKC is not available to the manufacturers. However, it is pertinent to note that the rebate of SBC is allowed to exporters even if no cenvat credit of SBC is admissible. Nonetheless, the hapless assessees are again being compelled to maintain separate accounting for different nature of cesses with restrictive credit availment. Well, it appears that the government has forgotten its publicized motto of 'EASE OF DOING BUSINESS'.

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