SPECIAL COMMUNIQUÉ

JANUARY 2010

SERVICE TAX

REFUND OF SERVICE TAX TO SERVICE EXPORTERS

In terms of the relevant service tax provisions, (CENVAT Credit Rules, 2004 read with Notifn No. 5/2006 dated 14.03.2006) exporters are eligible to claim refund of service tax credits on input services used by them in providing export services. While the Central Government introduced this facility with a view to provide a timely relief to the exporters, the departmental officers have been rejecting the refund claims on various procedural lapses and non-technical matters. This has resulted in delayed refunds and increased litigation for the service providers.

In this context, the CBE&C issued circular no. 120/10/2010 dated 19.10.2010 to clarify on certain impediments highlighted by the departmental officers. These clarifications would be applicable to all refund applications to be made henceforth and also such applications already made but pending. This communiqué provides a gist of the circular issued by the CBE&C.

SERVICES HAVING AN INDIRECT NEXUS ALSO QUALIFY AS INPUT SERVICES

Hitherto, the departmental officers have been of the view that in order to be eligible for a refund claim, a direct nexus is required between the input services and export services. However to claim credit in the normal course, it would suffice even if such services are indirectly linked to export services. In this regard, the CBE&C has now clarified that:

- It would suffice if the input services have a nexus, even indirect, to the export service. It is not necessary that an input service should have a direct correlation with the export services.
- Further, the measure for identifying whether an input service qualifies for CENVAT credit or refund claim should be the same and that the departmental officers should not use different yardsticks in order to analyse this.
- Further, input service shall be deemed to have a nexus with the output service if the absence of such service adversely impacts the quality or efficiency of export service.

  The Circular provides the following example: Eg: In respect of BPOs / Call Centers working 24 x 7, while renting of premises, right to use software, maintenance or repair of equipment and telecommunication services have a direct nexus to the export activities, services like rent-a-cab and outdoor catering services impact the efficiency of export services. Hence, the same would qualify for refund. However, event management and guest house services are not perceived to have any impact on the efficiency of export services. Hence, such services would not qualify for refund.

Taking cognizance of the above, the departmental officers should now be liberal in understanding the nexus of the input services with the export services and thereby processing refunds with greater speed.

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REFUNDS TO BE SANCTIONED BASED ON CERTIFICATION BY STATUTORY / TAX AUDITORS

Hitherto, the departmental officers have been rejecting refund claims for lack of evidence to substantiate the correlation of input services with output services.

In this regard, the CBE&C has now directed the departmental officers to process refund claims of service exporters based on certification by auditors / self certification, subject to conditions. It may be noted that the Central Government had earlier in respect of manufacturer exporters relaxed on the one to one correlation of input services with export goods and detailed verification of the documentation in respect of refunds of CENVAT credits and introduced refunds on self certification / certification by auditors. A similar process is now made applicable to service providers. Broadly, the procedure would involve:

- Application for refund to contain a declaration in the prescribed format
- Such declaration to be certified
  - Self certified by a person authorized by the Board of Directors / Partner / Proprietor, as the case may be, if the refund claim is less than INR 5 lacs in a quarter
  - Certified by the statutory / tax auditors if the refund claim is in excess of INR 5 lacs in a quarter
- Based on the verification of correctness of such declarations, the refund claim should be sanctioned expeditiously
- However, if there is a doubt on the correctness, the undisputed amount to be granted expeditiously and the balance after due verification

The adoption of the refund procedure based on declarations is a very welcome step taken by the CBE&C. Through this procedure, it is envisaged that the correlation of input services with export services and verification of voluminous records by the departmental officers would be eased. Nevertheless, while the CBE&C has directed the departmental officers to adopt a process similar to that prescribed for manufacturer exporters, the timelines prescribed therein (of 30 days) have not been made applicable to service exporters. We have to wait and watch as to how the departmental officers would implement this clarification.

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BROUGHT FORWARD SERVICE TAX CREDITS CAN BE CLAIMED AS REFUND DURING THE QUARTER

Insofar as it relates to the period for which the refund is to be claimed, the provisions of the refund mechanism are silent, viz., whether the service tax credits of the relevant quarter are alone to be processed or the credits relating to earlier period/s can also be claimed. Though various applications have been made by exporters under both the cases, the departmental officers have hitherto been unclear on the path to be taken.

It is now clarified that accumulated or unutilized brought forward service tax credits may be claimed as refund in the subsequent period/s. The CBE&C has observed that the provisions do not restrict such claims. Hence, the departmental officers are directed not to object to the claiming of accumulated balances in the subsequent quarters.

Further, even in circumstances where the refund is not claimed due to the absence of any exports during such quarter, it is clarified that such credits may be carried forward and claimed in the subsequent quarters.

While the CBE&C has clarified that the accumulated balances of credits may be claimed in the subsequent quarters without a separate application being made, it is relevant to note that the overall time limit of 1 year would continue to apply for the refund entitlement *(refund to be claimed within a period of one year from the date of export of services)*. The facility of claiming refund of accumulated balances should in our view be restricted to credits relating to a period not exceeding one year. However, service tax on services prior to one year may continue to be carried forward as CENVAT credit for adjustment against other output liabilities, viz., service tax or central excise.

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LIBERAL VIEW TO BE TAKEN WHILE SCRUTINIZING THE CONTENTS OF INPUT SERVICE INVOICES

In various cases, the departmental officers have expressed that the invoices issued by the input service providers are incomplete. Further, that the details with respect to the description of input service and classification of such service are not mentioned and in some cases, the name of the receiver is also not mentioned. In the absence of such details on the invoices, the departmental officers have alleged that the invoices are incorrect and do not satisfy the legal requirements and hence, the refund is not liable to be granted.

The departmental officers have been directed to take a liberal view while scrutinizing the input services invoices with respect to its contents. It is clarified that as far as the nature of services, tax paid thereon and other details as prescribed under Rule 4(a) the Service Tax Rules, 1994 are furnished on the invoice, the same should be accepted for processing of refunds. *(It is our view that Rule 4(a) as indicated in the circular should be read as Rule 4A).*

Further, it is clarified that, by virtue of the new procedure to be followed based on certification, the certificate so issued by the statutory auditors / tax auditors would be sufficient evidence for the departmental officers to ascertain the nature of services and to process the refund claims.

While this clarification requires the departmental officer to take a liberal view while scrutinizing the input services invoices with respect to its contents, by referring to Rule 4A it appears to have only increased the ambiguity. *For reference, Rule 4A gives the exhaustive list of details to be furnished on the invoice.*

Prior to this circular, exporters were relying on the Proviso to Rule 9(2) of the CENVAT Credit Rules for claiming credits and thereby refund. Accordingly, it would suffice, if the invoice contained the registration number of the service provider, description of services, value of service and service tax amount though other details prescribed under Rule 4A of Service Tax Rules were not contained. In addition to these details, Rule 4A requires the following – consecutive serial number of the invoice, name and address of the service provider, name and address of the recipient of services and the classification of service provided. The reference to the contents of Rule 4A in the clarification is suggestive that all details therein are required to be contained in the input service invoice for being considered for refund claim, Thus, it is not clear if the exporters would really stand to benefit from this clarification. It would be good if the department can re-clarify this matter.

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