

TRU clarifies on issues relating to export refunds

Exporters of services are facing a lot of practical difficulties in getting refund of duties and taxes paid on inputs and input services under Notification No 5/2006-CE (NT), dated March 14, 2006 ("Refund Notification") issued under Rule 5 of the Cenvat Credit Rules, 2004 ("Cenvat Rules").

The Tax Research Unit ("TRU") of the Central Board of Excise and Customs ("CBEC") has issued Circular No 120/01/2010-ST, dated January 19, 2010 ("Circular") to address the issues faced by exporters in sanction of refunds claims.

The Circular addresses the following legal/procedural impediments relating to sanction of refund claims:

- Establishment of direct nexus between inputs/input services and the goods/services exported
- Correlation of input/input service invoice with the specific goods/services exported
- Delay in verification of supporting documents filed along with the refund claim in case of large exporters
- Lack of clarity on eligibility to accumulated credits of past periods
- Incomplete input service invoices

The salient aspects clarified in the Circular are as below:

Establishment of direct nexus between inputs/input services and the goods/services exported

The main objection of the Revenue is that the Notification permits refund only for input services directly 'used in' providing output services. The Circular clarifies that the phrase 'used in' should be interpreted harmoniously with the words 'used in or in relation to' the manufacture of final products and 'used for' providing output service as contained in the

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definition of input/input service under the Cenvat Rules.

The test laid down to determine the eligibility to refund is whether sufficient nexus exists, ie, whether the absence of any input /input service adversely impacts the quality and efficiency of the provision of service exported.

In the case of BPOs or call centres, the Circular clarifies that following input services are eligible for refund:

- Renting premises, right to use software, maintenance or repair of equipment, telecommunication facilities etc – Circular states that these services are directly relatable to export business
- Outdoor catering, rent a cab for pick up and dropping of employees to office, provision of food to employees etc – Circular states that these services are necessary pre requisites which the employer has to provide to the employees
- Manpower recruitment service – Circular states that this is based on the large requirement of manpower by BPOs/ call centres
- Services which are recreational in nature or used for beautification of premises are not eligible unless their need is justified – This includes event management, company sponsored dinners/picnics/tours, rest houses, flower arrangements, hydrant sprinkler systems etc

Declaration along with refund claim

The Circular provides for a simple procedure for sanction of refund based on certification by the exporter or his Chartered Accountant about the correlation and nexus between the inputs/input services and the exports. This is similar to the scheme adopted for refund under Notification No17/2009-ST, dated July 7, 2009 to exporters of goods. The following procedure is prescribed:

- Exporters of goods/services should file a declaration in prescribed format along with the refund claim
- The declaration should be certified by the exporter if the refund claim is less than Rs 5 lakhs in a quarter
- If the refund claim exceeds Rs 5 lakhs in a quarter, the declaration shall be certified by the Chartered Accountant who audits the annual accounts of the exporter under the Companies Act, 1956 or the Income Tax Act, 1961
- The Assistant Commissioner/ Deputy Commissioner may sanction the refund based on the declaration, after verification of the correctness of the claim
- In case of doubts, the undisputed amount may be refunded and the balance claim may be decided after following the dispute settlement process

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Accumulated credit of past periods

Accumulated credit of past periods can also be claimed as refund in subsequent quarters

- In some quarters, exports may be 'Nil' and no refund claim may be filed for that quarter. But inputs/input services would have been received in that quarter. The credit can be carried over and claimed in the subsequent quarter based on the ratio of export turnover to total turnover of the subsequent quarter
- In case of 100 percent exporters of services, refund of Cenvat Credit should be allowed irrespective of when credit has been taken. A declaration may be obtained from such exporters that they are exporting 100 percent of their services. If subsequently it is noticed that the exporter has provided services domestically, proportional amount would be demanded

Incomplete input service invoices

The Circular states that the Revenue should take a liberal view in case of incomplete invoices and refund should be allowed if:

- The nature of the service received by the exporter can be ascertained. Chartered Accountant's certificate should clearly bring out the nature of service
- Tax paid thereon is clearly mentioned in the invoice
- Other details required as per Rule 4A of the Service Tax Rules, 1994 are mentioned

Implementation of the Circular

The Circular mandates that the instructions should be implemented with immediate effect and all pending claims should be disposed of accordingly. The Circular further stipulates that the sanctioning authorities should decide all claims within 30 days of receipt of the claim as prescribed.

BMR comments and analysis

The Circular recognizes the cash flow problems of the exporters caused due to accumulation of credits and delayed sanction of refund claims and reiterates the intention of the Government to zero rate exports.

The Circular is primarily based on representations from exporters of services (mainly call centres and BPOs). But the principles and tests laid down would also apply to exporters of other services and exporters of goods who claim refund under Rule 5 of

the Cenvat Rules.

It is worthwhile to note that the Revenue is likely to deny the refund in respect of services which do not satisfy the 'test of nexus' as laid down in the Circular. This could result in denial of refund on sales promotion, advertisement, auditing, financing and many other services which are otherwise ordinarily eligible to credit under the Cenvat Rules. To this extent, the Circular is restrictive on this aspect, considering the recent Court/ Tribunal decisions upholding the eligibility to credit on 'activities relating to business',

On an overall basis, given the current scenario, the Circular is indeed a welcome one. The clarifications on the eligible credits and the simplified procedure are expected to result in quick disposal of refund claims. However, the taxpayer would have to pursue the appellate remedy in respect of refunds not sanctioned based on the test of nexus.

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