

REFUND UNDER SERVICE TAX

(with special reference to Recent Developments)

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10 May 2014

Summary of Refund under Service Tax Law

Provisions	Refund for
Section 11B of The CE Act, 1944	Refund of excess payment of Service Tax
Rule 5 of CCR, 2004 read with Not. No. 27/2012-CX (NT) dt.18/06/12	Refund of CENVAT Credit to Exporters
Rule 6A of STR, 1994 read with Not. No.39/2012-ST dt.20/06/12	Rebate of tax/duty paid on input or input services by exporter of services
Rule 5B of CCR, 2004 read with Not. No. 12/2014-ST dt.03/03/14	Refund of unutilized CENVAT Credit to service providers providing services liable under partial reverse charge basis
Not. No. 41/2012-ST dt.29/06/12	Rebate of Service Tax paid on specified services by the exporters of goods
Not. No.12/2013-ST dt.01/07/13	Refund of Service Tax to developers/Unit of SEZ

REFUND OF EXCESS PAYMENT OF SERVICE TAX U/s.11B OF CE ACT, 1944

- Refund to be filed in case of excess/incorrect payment of Service Tax
- Refund is based on theory of Unjust Enrichment
- Refund application has to be made within one year from the “relevant date”
- The period of limitation will not apply if duty is paid under protest.
- Hon’ble Apex Court in the case of **Mafatlal Industries Ltd Vs. UOI 1997 (89) ELT 247** All refund claims to be adjudicated under Sec. 11B except where the levy is held to be unconstitutional.

RELEVANT JUDICIAL PRONOUNCEMENTS

- **Hon'ble Mumbai CESTAT in the case of Jubilant Enterprises Pvt. Ltd 2014-TIOL-702** Appellant paid ST to the treasury of CG... Client did not pay ST to the appellant and sought clarification from CBEC CBEC clarified that ST not payable Refund was filed beyond 1 year from the date of payment of ST..... Held that 11B is not applicable & hence refund application is not time barred.... Relied on decision in the case of **CCE Vs. Shankar Ramchandra Auctioneers 2010 (19) STR 222**
- **Hon'ble Mumbai CESTAT in the case of Spanco Telesystems and Solutions Ltd 2014-TIOL-629** As per Section 35EE, appeal against the order of CCE or CCE(Appeals) in the matter of rebate claim does not lie before CESTAT but before the Jt. Secretary to the GOI, Revisional Authority, New Delhi.

RELEVANT JUDICIAL PRONOUNCEMENTS

- **Hon'ble Madras CESTAT in the case of CST Vs. Enmas Andritz Pvt. Ltd 2014-TIOL-684** Hon'ble Mumbai HC ruling in the case of INSA (2008-TIOL-633-HC) held that ST is not applicable on Import of Services prior to 18/04/06CBEC vide Circular No. 276/8/2009-CX dt.26/09/11 also clarified that ST under import of services was not liable prior to 18/04/06 Tax paid during the period Aug,05 to July,07 Refund application made in May, 10 Refund rejected as time barred
- **Hon'ble Ahmedabad CESTAT in the case of PSL Ltd Vs. CCE 2014-TIOL-675** Refund cannot be rejected merely because appellants has accepted the liability during the course of departmental audit.

Refund of CENVAT credit U/r. 5 of CCR, 2004 read with Not. No. 27/2012-CX (NT) dt.18/06/12

- Manufacturer Exporter/Service Provider exporting services is allowed to claim refund of CENVAT credit
- This rule applies to exports made on or after 1 April, 2012
- Refund amount =
$$\frac{\text{Export turnover of goods} + \text{Export turnover of services}}{\text{Total turnover}} \times \text{Net CENVAT Credit}$$
- Refund amount to be restricted to CENVAT credit as on last day of refund claim period or the day of filing of refund claim
- Refund is not available if drawback or rebate of ED or ST is claimed by the exporter
- Refund to be filed on quarterly basis within the time limit outlined U/s.11B of the CE Act, 1944
- CA certificate (statutory or other) certifying the correctness of refund application to be accompanied with refund claim

RELEVANT JUDICIAL PRONOUNCEMENTS

- **Hon'ble Ahmedabad CESTAT in the case of M/s. Quintiles Technologies (India) Pvt. Ltd Vs. CST 2014-TIOL-444** Refund U/r 5 can be applied for even in case of export of exempted services.
- **Hon'ble Madras CESTAT in the case of CST Vs. M/s. Client Network Services India Pvt. Ltd 2014-TIOL-673** Refund U/r. 5 can be applied for period prior to the date of obtaining Service Tax registration.
- **Hon'ble Ahmedabad CESTAT in the case of M/s. Quality BPO Service Pvt. Ltd Vs. CST 2014-TIOL-367** Refund claim for the period April,07 & May,07 No time limit prescribed in Not. issued U/r 5 at the time of filing of refund claim Held that since no time limit prescribed in the notification, claims cannot be time barred, Section 11B cannot be made applicable if not linked.

RELEVANT JUDICIAL PRONOUNCEMENTS

- **Hon'ble Mumbai CESTAT in the case of M/s. Vodafone Cellular Ltd Vs. CCE 2014-TIOL-319** although no time limit is set out in the Not. 11/2005-ST, it is settled legal position that a reasonable time-limit has to be read into law... Sec. 11B has to be made applicable which implies for 1 year time limit.

Similar view in the case of **CST Vs. M/s. Prothious Engineering Service Ltd 2014-TIOL-292-CESTAT-MUM**

- **Hon'ble Mumbai HC in the case of Uttam Steel Ltd Vs. UOI 2003 (158) ELT 274** Once it is established that the goods are actually exported, then even if some or all of requirements not fulfilled, the exporter will be entitle to rebate..... The limitation U/s. 11B only deals with procedural law and not the substantive law

Similar view in the case of **CCE Vs. Swagat Synthetics Ltd 2008 (232) ELT 413 (Guj HC)**

REBATE OF TAX/DUTY PAID ON INPUT /INPUT SERVICES U/R 6A OF STR, 1994 READ WITH NOT. NO. 39/2012-ST DT.20/06/12

- Service Provider exporting services in terms of Rule 6A of STR, 1994 can apply for refund claim.
- Services to be exported to any country other than Nepal & Bhutan
- Rebate to be claimed only if duty, Service Tax and cess on inputs and input services have been paid.
- Claim of rebate of duty, Service Tax and cess is not less than Rs.1000/-
- No CENVAT Credit has been availed on inputs and input services on which rebate has been claimed.
- Declaration specifying the service intended to be exported along with details of Inputs and Input Services to be used for providing export is required to be filed prior to export of services.

RELEVANT JUDICIAL PRONOUNCEMENTS

- **Hon'ble Delhi HC in the case of Wipro Ltd Vs. UOI 2013-TIOL-119** Condition of submission of declaration before export of services is impossible to comply..... declaration was submitted within a reasonable time along with necessary documentary evidence as that their accuracy and genuineness may be examined before granting refund claim.... Refund cannot be rejected merely on this ground

REFUND U/r. 5B OF CCR, 2004

- Following service providers are notified to apply for refund claim:

Works Contract Service	Rent a Cab Service
Security Service	Manpower supply Agency Service

- Refund of unutilized CENVAT Credit availed on Inputs and Input Services. Refund claim to be made on half yearly basis.
- Refund claim to be filed only after filing periodical Service Tax returns U/r 7 of STR, 1994. Further refund claim to be filed within one year from the due date of filing of Service Tax return for the respective half year.
- For the period July,12 to Sept,12 last date for filing refund claim is 30 June 2014. (No refund for CENVAT credit availed prior to 1 July 2012)

REFUND U/r. 5B OF CCR, 2004

➤ Refund calculation is as follows:

$$\text{Refund amount} = (A) - (B)$$

Where,

A =

CENVAT credit availed x
during half year

Turnover of output service under
partial reverse charge during half
year

Turnover of goods and services
during half year

B = Service Tax paid by the service provider for such partial reverse charge service
during the half year

REFUND OF SERVICE TAX UNDER NOTIFICATION NO.41/2012-ST dt.29/06/12

- Rebate is granted by way of refund of ST paid on specified services
- Specified services means –
 - In case of excisable goods, taxable services that have been used beyond the place of removal for export of said goods
 - In case of other goods, taxable services used for the export of said goods
- Refund is not available of services which are specifically excluded from the definition of Input Services.
- Refund not available if CENVAT credit availed
- SEZ unit/developer cannot file refund under this notification
- Time limit – within 1 year from the date of export of goods

REFUND OF SERVICE TAX UNDER NOTIFICATION NO.41/2012-ST dt.29/06/12

- The exporter of goods has following option
 - (a) on the basis of rates specified
 - (b) on the basis of submissions of documents
- Option (b) is available only if its more than 20% from the amount calculated in option (a)
- In case of rebate claim is more than 0.50% of the total FOB value, the claim shall be certified by the CA who audits the annual accounts of the exporter under the Companies Act, 1956 or IT Act, 1961, as the case may be.
- The sale proceeds to be received within the time allowed by the RBI.

REFUND OF ST TO DEVELOPERS/UNIT OF SEZ U/Not. No. 12/2013-ST dt.01/07/13

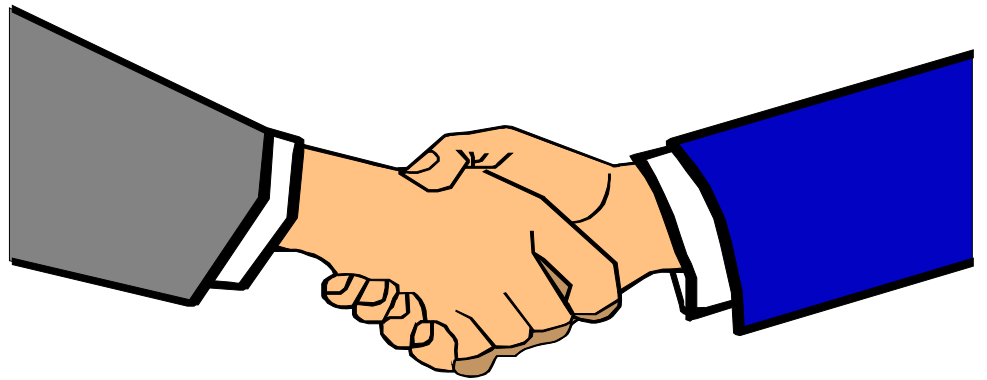
- Refund will be available of ST paid on services received and used for the authorized operation (AO) by SEZ unit/Developer
- SEZ unit/Developer is required to obtain approval from the Approval Committee on list of services required for AO in Form A-2
- Application for refund is required to be filed in Form A-4 on quarterly basis
- Time limit for filing refund is 1 year from the end of the month in which actual payment of ST made
- SEZ unit/developer not registered under the ST is required to obtain ST registration
- Option for claiming CENVAT credit is available instead of refund

REFUND OF ST TO DEVELOPERS/UNIT OF SEZ U/Not. No. 12/2013-ST dt.01/07/13

Particulars	Till 30 June 2013	w.e.f. 1 July 2013
Ab initio exemption	For services wholly consumed within SEZ. Term “Wholly Consumed” defined... in line with PPSR	For services used exclusively for authorised operations. Term “used exclusively” not defined.... Business Parlance to be applied
Refund application	To be certified by Statutory Auditor.	Self certified
Return for <i>ab initio</i> exemption	Not required	Required to be filed quarterly

ST on common input services used for both DTA and SEZ units, the SEZ unit/developer required to distribute the ST amount between the DTA and SEZ unit as per the criteria prescribed in the Rule 7 of the CCR, 2004 as applicable to ISD.

Thanks



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