



Service Tax on Cross Border Transactions

Topics covered: –

Refund including Rebate on export of services

By C.A. VINOD AWTANI

Erstwhile provisions for Refund on export of services (till 30-06-2012)

- Rebate of service tax paid on taxable service which are considered as 'Export of Service'. [Notification No. 11/2005]
- Rebate of service tax paid on input services or excise duty paid on inputs, used for providing output services which are exported. [Notification No. 12/2005].
- Rule 5 of Cenvat Credit Rules, 2004 read with notification no 5/2006 CE (NT)
- Time Limit for claiming rebate: One year

Refund:

From July 1st, 2012, refund is eligible under the following options:

- ✓ Rule 5 of Cenvat Credit Rules, 2004 as amended eligible only to exporters.
- ✓ Rebate also available under notification no. 39/2012–S.T.

Rebate under noti. No. 11/2005–S.T. and 12/2005–S.T. is only available for services exported upto June 30th, 2012.



Refund:

Continued...

Refund under Rule 5 of Cenvat Credit Rules, 2004:

May be applied by a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax.

Allowed as per the amount determined by the prescribed formula:

Refund amount:
$$\frac{(\text{Export turnover of goods} + \text{Export turnover of services})}{\text{Total Turnover}} \times \text{Net Cenvat Credit}$$

Subject to procedure, safeguards, conditions and limitations as prescribed by notification no. 27/2012 –C.E. (N.T.).



Refund:

Continued...

- “Net CENVAT credit” means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;
- “Export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

Refund:

Continued...

*Export turnover of services =
payments received during the relevant period for export services*

+

*export services whose provision has been completed for which
payment had been received in advance in any period prior to the
relevant period*

-

*advances received for export services for which the provision of
service has not been completed during the relevant period;*

Refund:

Continued...

- “Total turnover” means sum total of the value of -
 - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 - (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
 - (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.



Refund:

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Explanation provided under Rule 5 of Cenvat Credit Rules, 2004:

“export service” means a service which is provided as per Rule 6A of Service Tax Rules, 1994.

“relevant period” means the period for which the claim is filed.

The value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 Cenvat Credit Rules, 2004 is determined.



Refund:

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No refund of credit under Rule 5 of Cenvat Credit Rules, 2004 will be allowed if the manufacturer or provider of output service avails of:

1. Drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or
2. Claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or
3. Claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.



Refund:

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Notification under Rule 5 for specifying the procedure, safeguards, conditions and limitations are follows: –

For the period upto June 30, 2012:

Notification no. 5/2006–C.E. (N.T.) as amended.

For the period from July 1, 2012:

Notification no. 27/2012–C.E. (N.T.) dated June 18, 2012.



Refund:

Continued...

Safeguards, conditions and limitations as specified under Notification no. 27/2012–C.E. (N.T.) dated June 18, 2012:

1. One claim for every quarter. Claim to be filed in Form A.
2. Two claims may be filed by a person if goods and services are exported simultaneously.
3. Quarter means, 'period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.'



Refund:

Continued...

4. The value of goods cleared for export and for other than export shall be as per the monthly or quarterly return filed by the claimant.
5. Value of export of services shall be determined as per clause (D) of sub-rule (1) of rule 5 of the Cenvat Credit Rules, 2004 and the value of services other than export shall be determined as per the provisions of the Point of Taxation Rules, 2011.
6. Amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

Refund:

Continued...

7. Amount claimed as refund has to be debited by the claimant from his CENVAT credit account at the time of making the refund claim.
8. In case the amount of refund sanctioned is less than the amount of refund claimed, the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.



Quantum of refund

- The claim will be eligible only to the lowest of the following:
 - Eligible refund claim based on turnover formula.
 - Balance of Cenvat Credit lying at the end of the relevant quarter.-
 - Balance of cenvat credit as on the date of filling the refund claim.

Tabular calculation for refund eligibility.

Sr.	Description	Amount
1	Total value of the goods cleared for export and exported during the quarter	100
2	Export turnover of the services determined in terms of Clause D of the sub-rule (1) of rule 5	100
3	Total CENVAT Credit taken on inputs and input services during the quarter	500
4	Amount reversed in terms of sub-rule (5C) of rule 3	50
5	Net CENVAT Credit = (3) - (4)	450
6	Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export.	150
7	Export turnover of the services and value of all other services, provided during the said quarter.	150
8	All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter.	5

Tabular calculation for refund eligibility.

Sr.	Description	Amount
9	Total Turnover = (6) + (7) + (8)	305
10	Refund amount as per the formula = (1) * (5)/(9), in respect of goods exported.	148
11	Refund amount as per the formula = (2) * (5)/(9), in respect of services exported.	148
12	Balance of CENVAT Credit available on the last day of quarter.	450
13	Balance of CENVAT Credit available on the day of filing the refund claim. (The Excise duty / Service tax (as the case may be) of Rs. 6 is paid on the on domestic services / clearances of value of Rs. 50. Thus Rs. 6 is reduced from the balance of Rs. 450 to determine the balance of Rs. 444/-)	444

Tabular calculation for refund eligibility.

Sr.	Description	Amount
14	Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services]	148
15	Amount debited from the CENVAT account [shall be equal to the amount claimed as refund (14)]	148



Refund:

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Procedure of filing the refund claim, as specified under Notification no. 27/2012–C.E. (N.T.) dated June 18, 2012:

1. The claim has to be submitted in Form A.
2. The claim has to be submitted to the Jurisdictional Assistant / Deputy Commissioner of Central Excise.
3. The claim has to be submitted before the expiry of period specified under section 11B of Central Excise Act, 1944.
4. The refund claim has to be signed by the authorised person.

Refund: Procedure

Continued...

Sr. No.	Constitution	Person by whom refund application is to be signed
1.	Individual or proprietor concern/HUF	Individual / proprietor Karta (as the case may be)
2.	Partnership firm	Partner
3.	Limited Company	Person authorized by Board of Directors

Since the notification specifically provides the person required to sign the refund claim, care should be taken at the time of the signing of the refund claim to avoid unnecessary delay in processing of the refund claim.



Refund:

Continued...

5. Authorization letter to sign the refund claim from the Board of Directors if the refund claim is signed by the authorized signatory.
6. Claim shall be accompanied by the bank realization certificate in respect of the services exported.
7. Claim shall be accompanied with the certificate in Form A-1, signed by the auditor (Statutory or any other) and certifying the correctness of the claim in respect of the services exported.



Annexure A-1

It is certified that :

(a) I am qualified auditor to audit the books of account of M/s.

(b) **I have audited the books of account of** M/s. _____ for
the quarter ending _____

(c) The value of the export turnover of services and total turnover
of services mentioned at S. No. 2 and 7 in the table in Form A

(i) Is correct as per the books of account and relevant
records of M/s _____

(ii) Is in accordance with the provisions of rule 5 of the CENVAT
Credit Rules, 2004.

Date:

Auditor



Refund:

Continued...

7. The Jurisdictional Assistant / Deputy Commissioner of Central Excise with whom the claim has been submitted may call for additional documents in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

Rejection of refund & Remedy

- Principles of natural justice to be followed and rejection to be made with issue of SCN.
- Rejection on account of non-eligibility of cenvat.
- FIRC does not contain invoice number.
- Rejection of refund is an appealable order.

Rebate (Refund) under Notification No. 39/2012-S.T

Continued...

Rebate against export of services under Rule 6A of Service Tax Rules, 1994:

- Rebate of duty paid on inputs and service tax paid on input services used for the provision of export of services in terms of Rule 6A of Service Tax Rules, 1994.
- Rebate can be claimed only when service tax paid to supplier or tax is paid when paid under reverse charge.
- No cenvat shall be claimed of service tax paid on input services of rebate is claimed under this notification.

Rebate (Refund) under Notification No. 39/2012-S.T

- Declaration prior to date of export of services to the Jurisdictional Asst. / Deputy Comm. of Central Excise.
- The declaration to be filed specifying the service intended to be exported with along with:-
 - (a) **description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;**
 - (b) **description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.**
- **Verification of declaration to certify the** correctness of the declaration filed prior to such export of service, to be done by calling for any relevant information or samples of inputs. If satisfied with such verification then the declaration to be accepted.

Rebate (Refund) under Notification No. 39/2012-S.T

Continued...

Rebate against export of services under Rule 6A of Service Tax Rules, 1994:

- The provider of service to be exported shall,-
 - (i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;
 - (ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

Rebate (Refund) under Notification No. 39/2012-S.T

Continued...

- Claim shall be accompanied with the
 - documentary evidence of receipt of payment against services exported.
 - invoices for inputs and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed.
 - payment of duty and cess on inputs and service tax and cess on input services used for providing services exported.
 - declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.

- The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.



Thank You for a patient hearing.

Balanced View

Presented By:

CA. Vinod Awtani
Chartered Accountant