



PHARMACEUTICALS EXPORT PROMOTION COUNCIL

(Set up by Ministry of Commerce, Govt. of India)

COPY

Date : 25-01-2010

News / Story reproduced with thanks:- **Financial Express**

Service tax refunds to exporters

S Madhavan / January 25, 2010, 0:54 IST

Direct link to the News/Story:-

<http://www.business-standard.com/india/news/service-tax-refunds-to-exporters/383528/>



In order to make exports of services from India internationally competitive, the Government of India has zero rated such exports. Consequently, the services exporting community is entitled to obtain refunds of input tax credits or utilise such credits to offset domestic output service taxes. The IT and the ITES industry is a key part of the service exporting community and was expected to be a major beneficiary of such refunds in terms of being competitive in the global marketplace.

However, exporters of services had been facing serious problems by way of considerable delays in obtaining refunds of input taxes due to procedural bottlenecks. This was beginning to significantly impact their competitive position. To address these problems and to ensure the grant of expeditious refunds to service exporters, the CBEC has issued Circular No.120/01/2010-ST dated 19th January, 2010 to clarify several very important points in regard to the matter of refunds of input taxes.

The circular discusses the legal position on refunds and the procedural impediments responsible for the delays in grant of refunds and the responses that the departmental officers should take to address such impediments. It lays down procedures and guidelines for processing of refund claims.

On the issue of the nexus between input and output services, as to whether the input services are eligible for credits, it has been clarified that there cannot be two yardsticks, one for availing credits and another for granting refunds. The phrase 'used in' mentioned in Notification No. 5/06-CE has to be harmoniously interpreted with the definition of 'input service' mentioned in the CENVAT Credit Rules, 2004. Thus a broad interpretation of the definition of input services is relevant for both purposes.

The Circular suggests that one way to interpret broadly is to apply the test of whether the absence of such inputs/ input services would adversely impact the quality and efficiency of the exported services. If the answer is in the affirmative, the inputs and input services should be considered as eligible for credits. This is a salutary development and likely to be of considerable help in obtaining clear and consistent interpretations on the ground on eligibility to credits on specified input services.

As regards the input services in case of call centres and BPOs, the Circular illustrates the list of input services which would qualify as being eligible for credits. The list includes renting of premises, right to use software, maintenance and repair of equipment, telecommunication facilities, outdoor catering, rent a cab, and manpower recruitment agency services. Certain services which may not be regarded as eligible input services if adequate justification is not provided have also been identified. These services relate to event management, flower arrangements, mandap keepers, hydrant sprinkler systems and rest houses.

The Circular lays down that the simplified procedure for refund, in case of export of goods, as per Notification No. 17/2009- ST will be applicable even for the grant of refunds to the service exporters who file claims under Rule 5 of the Cenvat Credit Rules, 2004. The simplified procedure has been provided for verification of refund claims and for grant of expeditious refunds within a period of thirty days. An appropriate declaration, as per prescribed format, has to be prepared and certified by an authorised person in the case of a limited company and by the proprietor / partner in case of firms where the refund claim is below Rs 5 lakh in a quarter.

In case of refund claims exceeding Rs 5 lakh, the declaration must be certified by the statutory auditor who certifies the

accounts of the entity under either the Companies Act 1956 or the Income Tax Act 1961, The Circular also clarifies that the accumulated credits relating to the past periods will be eligible for refunds in the subsequent quarters as well. Thus, there is no basis to argue possible disallowances of refunds for the above reason of spillovers from one quarter to another.

On the invoices front, it is clarified that a liberal view should be taken with regard to incomplete input service invoices. The essential data elements, the mention of which would suffice for the requirements, are as follows:

the nature of input services received

Details of service tax paid

Details specified in Rule 4A of the Service Tax Rules.

The CBEC has issued strict instructions to the tax authorities to process all claims (including pending refund claims) within 30 days of the Circular for past claims and within 30 days of filing of new claims. It has also stated that delays in sanctioning refunds beyond this period will be viewed seriously.

To conclude, this clarificatory Circular is certainly very welcome and should hopefully put to rest the unending disputes regarding eligibility of input services for refunds and the significant delays in grant of refunds to the service exporting community. The introduction of the self-certification process for input invoices in support of the refund claims should make the validation methodology much simpler and easy to administer. If the Circular is followed in its true spirit, it will lead to quick and efficient disbursement of refund claims, as was always the intent in granting this benefit to service exporters.

The author is leader, Indirect Tax Practice, PricewaterhouseCoopers supported by Anita Rastogi

E-mail: pwctls.nd@in.pwc.com