

TAX ALERT

Eligibility of the Refund Notifications subsequent to the Date of Exports

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If any input or input service is used in the manufacture of final product which is exported, the manufacturer shall claim the refund of the CENVAT credit in respect of the inputs or input services so used for the export of goods or services as the case may be.

In order to encourage exports the notification in relation to refund of domestic tax paid in respect of exports has been issued with the sole objective of removing the burden of the tax from the exported goods. It is the well accepted policy of the government not to export domestic tax along with export goods and to make such goods competitive in the foreign market.

Backdrop:

The manufacturer or service provider shall be allowed refund of CENVAT credit if any lying in the books subject to the conditions prescribed in terms of Notification as and when issued. One of the essential conditions prescribed is the applicability of time limit as per Section 11B of the Central Excise Act, 1944 for filing of such refund claims. The relevant date for the purpose of reckoning the time limit of one year is defined in terms of clause B to Explanation under section 11B of the Act.

The term **relevant date** could be the date of rendering the service or the date of invoice or the date of realization of export proceeds or the date of receipt of advances as the case may be.

Time and again various notification has been issued by the CBEC in order to strengthen favorable position to exporters for the purpose of such refund. Such as notification no. 11/2005, 05/2006, 41/2007, 27/2012 etc.

For example the eligibility of refund claim notification in relation to exports can be illustrated with the help of **Notification No. 27/2012** issued in relation to Rule 5 of Cenvat Credit Rules, 2004 wherein, any manufacturer/service provider who exports goods/services without payment of excise duty/service tax can claim refund of the cenvat credit on inputs and input services used in relation to such exports. The said refund application needs to be filed to the Assistant/Deputy Commissioner within the time period as prescribed under section 11B of the Central Excise Act, i.e. within one year from the receipt of the export consideration.

Recent Judgements:

➤ The assessee **Sopariwala Exports Private Limited¹** is engaged in the business of exports of manufactured goods. Various input services are availed in relation to business on which service tax was paid by the assessee.

The assessee had claimed the refund of the input service tax incurred by him in the relation to the exported goods on the basis of the notification issued after the date of exports, making them eligible to avail the refund of the service tax paid on the input service. The assessee had filed refund application as all the conditions of the said notifications are complied with, on the ground that on the date of filling the refund claim they were eligible for the refund. The Hon'ble Tribunal observed that the assessee was eligible to claim the refund notification as it was filled within the relevant date i.e. the date of realization of exports proceeds. Moreover, the Hon'ble Tribunal relied on the decision of the assessee earlier in its **own case²** wherein it was held that the refund claim of service tax should be allowed, since on the date of filling claims the requirement of notification is satisfied, that is, the date of export is not relevant.

➤ The assessee **East India Minerals Limited³** were engaged in the business of iron ore mining operation both in the domestic and international market. The assessee utilizes GTA services in respect of transport of the goods directly from the place of removal to the port from where the same were exported. The assessee had filed the refund claim under the particular notification. These claims related to exports made prior to the amendment of the notification. However, the claims were filed after the date of the amendment which allowed refund of the service tax on GTA services for transport of exported goods from the place of removal to the port. The Hon'ble Tribunal held that where refund claims are filed after the amendment, and the claims satisfy the requirements under the amended notification, the refund claims should not be rejected.

➤ The assessee **WNS Global Services (P) Ltd⁴** is engaged in the business of providing business auxiliary services and the export of the said services. The service providers

were unable to utilize the Cenvat Credit in respect of the input services availed by them so they filed refund claim in respect of the unutilized credit for the period prior to the date of the notification. The Tribunal held that where the refund claims are filed within the stipulated period after the notification, and the claims satisfy the conditions mentioned under the notification then the same cannot be denied.

Concept of refund notification in relation to exports under GST:

In case of exports of goods and/or services out of India on which export duty is not payable then the tax paid on

inputs/ input services shall be claimed as refund at the time of exports. The section 38(1) of the GST Model Law, 2016 provides that the exporter claiming refund has to file application for claiming refund within **two years** from the **“relevant date”**. The refund order shall be sanctioned within ninety days from the date of receipt of complete application. If any refund amount is not refunded within the stipulated time period then interest at such rate as may be specified in the notification issued by the State or Central Government on the recommendation of the council shall be payable in respect of such refund from the date immediately after the expiry of due date till the date of refund of such tax.

CONCLUSIONS

Thus on the basis of the above mentioned judgments, it can be concluded that even though exports are made prior to relevant notification, however at the time of filing claim all the conditions of notifications are complied with, the claim of refund cannot be rejected.

¹2016-TIOL-2827-CESTAT-AHM

²2013-TIOL-747-CESTAT-AHM

³2012(27) STR 18 (Tri Kolkata)

⁴2008-TIOL-228-CESTAT-MUM

