

Scheme for speedy sanction of refund of accumulated credit to exporters

The CBEC has issued circular prescribing a scheme for speedy disbursement of pending refund claims of exporter of services under Rule 5 of the CENVAT Credit Rules, 2004 (CCR, 2004). The summary of the said scheme is as under:

Applicability of the scheme

The scheme is applicable to registered service providers who are exporter of services and have filed a refund claim under Rule 5 of CCR, 2004 before 31st March 2015 and such refund claim is not disposed of as on the date of issue of the circular.

Further, refunds for which adjudication order has been passed but have been remanded back to the original sanctioning authority will not be covered under this scheme.

Additional documents to be submitted

In addition to the documents required to be filed along with the refund claim, the following additional documents need to be submitted:

- A certificate from the statutory auditor in case of companies, and from a chartered accountant in the case of assessee's, who are not companies, in the format given in Annexure-1 to the circular.
- An undertaking from the assessee in the format given in Annexure-2 to the circular.

Operation of the scheme

- On receipt of the additional documents referred above, the jurisdictional Deputy/Assistant Commissioner will give a dated acknowledgement to the assessee. Thereafter, he will make a provisional payment of 80% (eighty per cent) of the amount claimed as refund, within five working days from the receipt of the documents.
- The letter intimating the provisional payment should be in the format given in Annexure-3 to the circular.

- After making the provisional payment, the jurisdictional Deputy/Assistant Commissioner shall check the correctness of the refund claim in terms of the relevant notification.
- If during the course of verification, it appears that a part of the amount claimed as refund is inadmissible, then, a show cause notice (SCN) would be issued to deny the inadmissible amount and for recovery of the amount. However, prior to the issuance of such a SCN, the assessee may be intimated about the inadmissible amount so that he has an opportunity to avail of the provisions of section 73(3) of the Finance Act, 1994. A speaking, appealable order will have to be passed with respect to the SCN. This order will be reviewed by the jurisdictional Commissioner.
- If during review of the refund order, any further amount is found to be inadmissible, then, apart from filing an appeal against the order, a SCN would be issued for the amount not covered by the original SCN. However, prior to the issue of such a SCN, the assessee may be intimated to avail of the provisions of section 73(3) of the Finance Act, 1994.

Monitoring and reporting

An MIS report in the format specified in Annexure – 4 to the circular is required to be submitted before the 10th of every month by e-mail to commr.st-cbec@nic.in.

Further, Principal Commissioners/Commissioners should ensure that the provisional payment of refunds should be done strictly in terms of the time lines specified and that there should be no complaints regarding delays of refund.

Our Comments

The aforesaid circular will bring major relief to the exporter of services considering that huge amounts of refunds had remained unpaid and despite various representations and issuance of circulars, the same were being denied on some or the other pretext. This had created cash flow issues for many service providers.

While the aforesaid would resolve the cash flow issues for an exporter of services, it does not obviate the scrutiny that he would have to undergo before the refund claim gets finally approved by the authorities.

In the event the refund finally sanctioned is less than 80%, the balance would be recoverable by issuance of a SCN. The Assessee does have an option to voluntarily pay the service tax under the provisions of Section 73(3) and consequently, no SCN would be issued.

It may be noted that the Department while issuing SCN for recovery of excess refund may not be able to allege fraud, suppression etc. and thereby, invoke extended period of limitation. Hence, the finalization of the refunds may have to be done within the normal time limit of 18 months prescribed from the relevant date in terms of Section 73(6)(iii) of the Finance Act, 1994 i.e. 18 months from the date of grant of refund. This therefore offers some certainty on the outer-limit by which the final refund application might get disposed off.

The circular is silent on whether interest would apply if the refund is found to be sanctioned wrongly. However, in terms of Explanation 1 to Section 73(3), interest would be payable in terms of Section 75 on the erroneous refund amount. In terms of Notification No. 12/2014-S.T. dated 11.07.2014, such interest can go upto 30% depending upon the period of delay in paying back the amounts refunded. Consequently, assessee's

may evaluate paying back the disputed amounts under protest as soon as an SCN is issued.

[Circular No. 187/6/2015- Service tax dated 10th November 2015]

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