

New Refund Scheme for Exporters

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INTRODUCTION:-

The government has revamped the Refund scheme for exporters for ensuring speedier grant of refunds to them. The salient features of the new scheme have been notified under the two notifications, No. 17/2009-ST and No. 18/2009-ST, both being dated 07.07.2009. The scheme, though aspires to grant speedier refunds to the exporters but actually it incorporates increased formalities and compliance procedure that further increases the complexity in the process. This new scheme is very much similar to the marketing technique of introducing the same old product in new package to lure customers even when nothing seems to be new. A critical analysis of the key points mentioned in the said notifications is presented as follows:

Notification No. 17/2009-Service Tax:

1. This notification provides exemption to taxable services specified in column (3) of the table provided that **the exporter** claiming such exemption has **actually paid** the service tax on the specified service to its provider. This condition as such restricts the benefit of exemption being provided.
2. Further, according to clause (b), this exemption is provided to the manufacturer-exporter who is **registered** as an assessee under **the Central Excise Act, 1994** or the rules made there under. By imposition of this condition, the manufacturer-exporter registered under the Service Tax Rules cannot avail this exemption as contrary to the earlier scheme of refund.
3. Moreover, to claim this exemption, the exporter who is **not registered** under the provisions referred to in clause (b), shall before filling a claim for refund of service tax, file a **declaration in Form A-2** with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having the jurisdiction over the registered office or the head office, as the case may be, of such exporter. This clause **does not clarify** whether **the assessee has any option** to file the declaration to the commissioner having jurisdiction over the registered office or head office or file it as per the specified order.
4. The clause (d) states that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, **allot a service tax code (STC) number** to the exporter, referred to in clause (c), within seven days from the date of receipt of the said form A-2. It is to be noted here that to claim this exemption under this notification, the assessee is required to hold registration in Central Excise Act and so a STC no. will be allotted to him but what if the assessee is already registered under the Service Tax Rules and already has a STC no. Moreover, **allotment of STC no.** was being **proposed in earlier scheme** also **but no allotment** regarding the same has been made till date. The inclusion of the same clause is not feasible if no action could be taken on it in an earlier scheme.
5. Further, according to clause (e), the exporter, referred to in clause (b) or (c), shall file the claim for refund of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture, registered office or the head office, as the case may be, of such exporter in Form A-1; **There remains ambiguity** as to filing of such refund claim to whom. If the merchant exporter has to file the refund claim with the jurisdictional Assistant Commissioner of manufacturer then it will be very difficult situation as the STC code has been given by his jurisdictional Assistant Commissioner.

6. The clause (f) further prescribes that the refund claim shall be filed **within one year from the date of export** of the said goods. **Earlier** it was to be filed for a quarter and that too **within 180 days**. But now it can be filed within a year and no period is prescribed. The exporter can file as many refund claim as they wish. The big exporters will like to file monthly claims so that their money is not blocked.

7. The clause (h) **prohibits refund claim** for an amount **less than Rs.500**.

8. Moreover, clause (i) reads as follows:

(A) the total amount of refund sought under a claim is **upto 0.25%** of the total declared **free on board value** of export;

(B) the exporter is **registered with Export Promotion Council** sponsored by the Ministry of Commerce or the Ministry of Textiles; Every exporter has to register himself with the export promotion council. Normally exporters availing the benefits from DGFT register themselves with EPC and those availing drawback does not go for the same. But now they have to register for claiming the refund claim.

(C) Subject to the provisions of (A) and (B) above, each document specified in clause (b) and in column (4) of the said Table shall be enclosed with the claim;

(D) Invoice, bill or challan, or any other document issued in the name of the exporter, showing payment for such service availed and the service tax payable shall be **submitted in original** after being certified in the manner specified in sub clauses (E) and (F); If the original are submitted, the exporter will not have the same. It is **needed in various other laws**. As such this condition is not practical.

(E) the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

(F) the documents enclosed with the claim shall contain a certificate from the exporter or the authorised person to the effect that specified service, to which the document pertains, has been received, the service tax payable thereon has been paid and the specified service has been used for export of goods under the shipping bill number;

By examining the points specified above, it can be very well concluded that the procedure to claim refund has been made even **more complicated** than before as the exporter is not only required to get STC under the Central Excise Act but also get registered with Export Promotion Council and comply with its formalities. Further, the documents to be submitted are to be original. In such a case, there will not be any proof of submission of such documents with the exporter and also, it has not been specified **whether these documents will be returned back to the exporter or not**.

9. Further, the clause (j) states that where the amount of refund sought under a refund claim is **more than 0.25%** of the declared free on board value for export, such **certification**, shall be done **by** the **Chartered Accountant** who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(143 of 1961), as the case may be;

10. Further, it has been mentioned that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

(i) That the claim filed is **complete** in every respect

- (ii) That all the **documents** requiring certification have been **filed** after due certification; and
- (iii) About the **arithmetical accuracy** of the claim,

shall refund the service tax paid on the specified service within a period of one month from the receipt of said claim. This truly reflects the **stringent requirements** and the increased procedural compliance. Further, the Assistant Commissioner or the Deputy Commissioner of Central Excise, may deny such refund claim on any reason or take action if there is any deficiency in complying with the provisions in this regard. This discretionary power being given also presents the strict procedure for granting refund. If after getting all the certificates, each claim has to be verified by the department then it will lead to old position wherein all the claims will be rejected on small or procedural requirements.

11. Further, there has been included the provision for **recovery** of the service tax refunded where any refund of service tax paid on specified service utilized for export of said goods has been paid to exporter but the sale proceeds in respect of the said goods have not been realized within the period allowed under FEMA or if the refund has been sanctioned **erroneously**.
12. Further, the **waiver of formalities** like submission of written agreement with the buyer in case of service provided by a **technical testing** and analysis agency, in relation to technical testing and analysis of said goods and service provided by technical inspection and certification agency in relation to inspection and certification of export goods is being **welcomed**.
13. Similarly, the waiver of the formalities like submission of written agreement and the certificates in case of specialized cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter is also welcomed.
14. The grievance of many formalities being incorporated in case of courier services is communicated as these services involve meager amount and hence these compliances should be removed at the earliest.
15. Further, the refund **can also be claimed** in respect of service tax paid on services commonly known as **terminal handling charges** by this notification which is also being appreciated.
16. Further, in the table given in Form-A1, it is specified to give the details as regards total amount of service tax claimed as refund in column 6. In that also, the bifurcation as to service tax in figures and the service tax as a percentage of f.o.b. value in shipping bill is to be provided. In this respect, it has not been specified as to whether service wise percentage of f.o.b. is to be shown or as a percentage of total service provided.

Notification No. 18/2009-Service Tax:

1. **Exemption to Goods Transport Agency:** This notification exempts the service provided to an exporter for transport of the said goods by road from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported. This covers the road transportation service availed by an exporter from the place of removal to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported. The conditions prescribed to avail such exemption by the exporter in this regard are that the exporter is required to **produce the consignment note issued in his name**. Hence, the consignment note holds importance to claim exemption in this regard.
2. **Exemption to Commission Agent:** Further, exemption has also been granted in case of service provided by a commission agent located outside India and engaged under a contract

or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him. This exemption is too dependent on the fulfillment of a **number of conditions** being laid in this regard. The first one being the **declaration of the amount** of commission paid or payable to the commission agent **in the shipping bill** or bill of export as the case may be. Further, the exemption shall be limited to **one per cent of the free on board value of export goods** for which the said service has been used. Moreover, this exemption **shall not be available on** the export of canalized item, project export, or export financed under lines of credit extended by Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary. Further, the stringent requirements of submission of the half yearly return after certification of the same, submission of the original documents showing actual payment of commission to the commission agent, submission of a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to export of goods continues to exist to make the procedure typical.

3. **Filing of Declaration:** Moreover, there has also been included the requirement of informing the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in **Form EXP1**, before availing the said exemption
4. **Filing of Return:** The exporter shall also file return in **Form EXP2 every six months** of the financial year, within fifteen days of the completion of the said six months. Further, the exporter is also required to **submit the documents** specified **in original** after certification of the same. The exporter hence exists in a great pressure as to see to it that his excise returns and the above mentioned formalities are complied timely so as to avail the benefit of exemption under this notification. Moreover, the same documents like the Shipping Bill, Bill of Lading etc. would be **submitted thrice** i.e. once while submitting proof of export, for filling refund claim and for claiming benefit under notification 18/2009 as it specifies to submit these documents while filling return in Form EXP2 which would lead to unnecessary compliance formalities.