SERVICE TAX REFUND / REBATE To EXPORTERS

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INTRODUCTION

SERVICE TAX REFUND TO EXPORTERS

- Service tax paid on Input services utilized for providing Output Services which are exported in terms of Rule 6A of Service Tax Rules, 1994 –
  - ✓ Notification 27/2012 – CE (N.T.) dated 18th June, 2012
  - ✓ Notification 39/2012 – ST dated 20th June, 2012

Exporters Bonanza

Notification 27/2012 – CE (N.T.) dated 18th June, 2012	Notification 39/2012 – ST dated 20th June, 2012
• Governing Provision – Rule 5 of Cenvat Credit Rules, 2005.	• Governing Provision – Rule 6A of Service Tax Rules, 1994.
• No Prior Declaration required to be filed	• Prior Declaration regarding value, description and quantity is required to be filed before the date of export of services. (Procedural Requirement)
• Refund of Cenvat Credit availed on Input Services used for providing Output Services exported . (Refund allowed only if it is shown as Cenvat Credit in Service Tax Return)	• No Cenvat Credit has been availed on Input and Input services on which rebate claim has been claimed (Means No refund allowed if it is shown as Cenvat Credit in Service Tax Return)
• Refund claim to filed in Form A within the time limits defined in Section 11B of Central Excise Act,1944	• Rebate claim is to be filed in Form ASTR -2 within the time limits defined in Section 11B of Central Excise Act,1944.

Notification 27/2012 – CE (N.T.) dated 18th June, 2012	Notification 39/2012 – ST dated 20th June, 2012
• Auditor's Certificate is required in the Annexure – 1A. • Refund of both Service Tax paid on Input Services and Duty paid on Inputs is allowed . • Periodicity – Quarterly (April – June, July – Sept, Oct- Dec, Jan – March) • Only one claim is to be filed in each quarter. However two refund claims can be filed - one in respect of goods exported and other in respect of the export of services every quarter. • 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 is allowed if services are exported in Nepal & Bhutan.	• Auditor's Certificate is not required • Refund of either Service Tax paid on Input Services or Duty paid on Inputs is allowed. • Periodicity – Not defined in the Notification. • Frequency of rebate claim is nowhere mentioned in the notification. It means more than one rebate claim can be filed for a period. • Refund claim must exceeds Rs. 1,000. • No Refund is allowed if services are exported in Nepal & Bhutan.

Which is Best ?

Best Option

- The Confusion is which Notification to be adopted – 27/2012 or 39/2012.
- Following Pros & Cons must be kept in mind before adopting a particular notification.

Notification 27/2012 - CE (N.T.) dated 18th June, 2012

- Cenvat Credit must be shown in the Service Tax Return – Record Maintenance
- Auditor's Certificate is required (Any Auditor) – Extra Cost
- Simpler Formula to Calculate – Easy Exercise
- No prior declaration required – Less Procedural Requirement
- Refund of both Service Tax paid on Input Services and Excise duty on Inputs allowed – Win Win Situation
- Quarterly Claim require to be filed – No Choice
- One claim per quarter to be filed – No scope of correcting mistakes by filing more claim for same period

Notification 39/2012 – ST dated 20th June, 2012

- Declaration to be filed before the export of services – Mandatory Procedural Requirement
- No cenvat credit is to be availed in respect of the amount of refund claimed – Alertness Required
- No formula to calculate the refund amount – More detailed checking & more chances of rejection
- No specified period is mentioned in the Notification – Assessees Convenience
- More than one claim is filed for the period as it is nowhere mentioned in the notification that only one claim is to be filed. (However it is not advisable).

Issues

- Whether Point of Taxation Rules applies to Notification 39/2012. Notification 39/2012 is a replacement of Notification 12/2005? Sorry to say that it misses the coordination with recent amendments.
- Filing Prior declaration in 39/2012 is a procedural requirement. Nowhere its format is prescribed. It should be on the estimate basis of actually services to be provided and used along with description and quantity. It is not practicable to decide in advance all actually services to be used or provided. Department start rejecting claims by taking shelter of non mentioning of services actually used or to be provided in the declaration.
- Whether Foreign Inward Remittance Certificate (FIRC) suffice Bank Realization Certificate (BRC).
- Whether the refund of Cenvat Credit on Inputs is available to Service Provider or vice versa.

Ground Realities

- Poor track record of Service Tax Department in refunding the Service Tax
- Ambiguities and Technicalities in the Provisions of Service Tax.
- Shortage of manpower in the department leads to inordinate delay.
- Somehow Internal Revenue targets of the taxation departments harass the assessees by not granting refund on time.
- Strict Audit of Service Tax department by CAG is one of the reasons of delay. Nobody wants to burn his/her hands in fire.
- Department is still rejecting claims by taking stand that the Input Services are not utilised in providing Output Services. However in new law there is no requirement to prove nexus.

Ambiguity in Service Tax on Exports

- W.e.f. F.Y. 2005 service tax on export of services is nil. But as per the recent amendments in Cenvat Credit Rules, 2004 [Rule 6(8) of the CCR,2004] , if the payment in respect of export of services is not received within six months or time prescribed by the Reserve Bank of India than the export of services is not treated as exempted services and liability of service tax will be calculated in accordance with point of taxation rules.

- However the ambiguity is that charging Section 66B says that tax is need to pay on those services which are provided in the taxable territory. But receipts in lieu of exports received after the time-limit stipulated by Rule 6(8) is chargeable to tax. In that respect Section 66B and Rule 6(8) of Cenvat Credit Rules are in Contradiction of each other as Rule 6(8) make exports taxable and services are always exported outside taxable territory.

XXX-----------------------------THANKS-------------------------XXX