Export Rebate/Refund under Service Tax

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Export of Service

1. **Background**

Service tax was introduced w.e.f. 1st July 1994 vide Finance Act, 1994 (The Act). Sec 64 of the Act provided for Applicability of service tax to whole of India except the state of Jammu and Kashmir. In effect it covered all the specified services which are provided in India.

1.1. **1st July 1994 to 27th February 1999**

It can be said that during this period there was no concept of Export of service.

1.2. **28th February 1999 to 8th April 1999**

Vide Notification no. 2/1999-ST dated 28.02.1999 government exempted specified services for which payment was received in convertible foreign exchange. There was no condition for repatriation of convertible foreign exchange received.

1.3. **9th April 1999 to 28th February 2003.**

Notification no. 2/1999-ST was rescinded by Notification No. 6/1999-ST dated 09.04.1999. Vide this notification government now exempted those specified services for which payment is been received in convertible foreign exchange in India and that the same has not been repatriated or sent outside India.

1.4. **1st March 2003 to 19th November 2003**

Notification No. 6/1999 was rescinded by Finance Act, 2003 vide Notification No. 2/2003, dated 01.03.2003. However with Circular No. 56/2003-ST dated 25.04.2003, department clarified that service tax is a destination based tax and Export of services would continue to remain tax free even after withdrawal of Notification No. 6/99, if the payment of specified services is been received in convertible foreign exchange in India and that the same has not been repatriated or sent outside India. This was a new concept floated by the department. Thus services not actually consumed or received in India is to be treated as Export Services.

Circular 56/2003-ST dated 25.04.2003 further clarifies that secondary services which are used by the primary service provider for the export of services, Since the secondary services ultimately gets consumed/merged with the services that are being exported no service tax would be leviable on such secondary services.

1.5. 20th November 2003 to 14th March 2005

Notification no. 21/2003-ST dated 20.11.2003 was issued whereby exemption was provided to those specified services for which payment is been received in convertible foreign exchange in India and that the same has not been repatriated or sent outside India. In other words condition given in Notification No. 6/1999-ST dated 09.04.1999 was restored again.

1.6. 15th March 2005 onwards

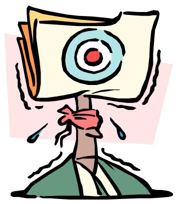
Export of Service Rules, 2005 was introduced w.e.f. 15th March, 2005 vide notification No. 9/2005-ST, dated 03.03.2005.

2. Rules to identify Export of Service

2.1. Provisions for identifying Export of Services

Export of Service Rules, 2005 introduced w.e.f. 15th March 2005, provides for a particular service to be treated as Export of service

These Rules had broadly categorized all taxable service into following three categories, are explained as under,



Export of Services

Location of Immovable Property
[Rule 3(1)(i)]
Specified services provided in relation to an Immovable property situated outside India

Performance base
[Rule 3(1)(ii)]
Services Wholly / Partly performed outside India

Location of recipient of service[1]
[Rule 3(1)(iii)]

Provided In relation to business or commerce
Recipient of service is located outside India

Provided otherwise
Recipient of service is located outside outside India at the time of provision of service

List of classification for each service is given in Annexure 1

[1] Such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.

2.2. Taxability of services covered under Rule 3(1)(ii) are decided on the location where services are performed. From 1st March, 2008 in respect of following three services location of goods or immovable property in respect of which service has been provided is situated outside India at the time of provision of service provided through Internet or telephony, then even if services are performed wholly in India then also this will be treated as export of service.

(a) Management, maintenance or repair [Sec 65(105)(zzg)]
(b) Technical testing and analysis [Sec 65(105)(zzh)] , and
(c) Technical inspection and certification [Sec 65(105)(zzi)].

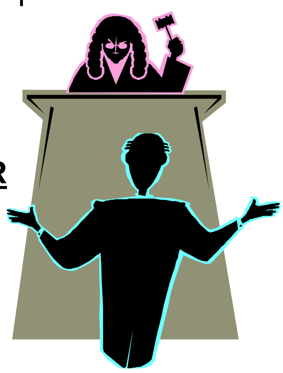
2.3. Supply of Tangible goods for use service became taxable from 16th May, 2008 and it has been classified under rule 3(1)(iii) of the Export of Service Rules, 2005 i.e. recipient of Service shall be located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

2.4. Apart from satisfying above conditions given in Rule 3(1) of the Export of Service Rules, 2005, depending upon service provided service provider shall satisfy following conditions given in Rule 3(2) also to claim service as export of service.

1. Such service is provided[2] from India and used outside India. And

2. Payment for such service [*]3 is received by the service provider in convertible foreign exchange.

2.5. Rule 4 of the ESR provide that any taxable service may be exported with out payment of service tax.



3. **<u>Judicial Rulings</u>**

3.1. **<u>TNT INDIA PRIVATE LIMITED versus COMMISSIONER OF SERVICE TAX, BANGALORE [2007 (7) S.T.R. 142 (Tri. - Bang.)]</u>**

Tribunal in this case held as under

> It is clear that if taxable services specified in Sub Rule 2 of Rule 3 are partly performed outside India, such service shall be deemed to have been performed outside India. Courier Agency is one of the services specified in Rule 3(2) as the

[2] before been substituted by Export of Service (Amendment) Rules, 2007, w.e.f. 01.03.2007, the word "delivered" was used.

[3] Words "Provided outside India" omitted by the Export of Services (Second Amendment) Rules, 2007, w.e.f. 01.06.2007

said service falls under Section 65 (105) (f). In the case of international courier service, the consignment obviously has to be delivered abroad. In the light of Rule 3(2) it is to be considered as performed outside India. When the service is performed outside India, there cannot be any Service Tax liability in terms of Rule 4 as such a Service is deemed to be exported. The performance of the service is completed only when the courier is delivered outside India to the consignee. It is not correct to say that the transportation is merely incidental in providing courier service as held by the Adjudicating Authority. In fact transportation is very crucial to the courier service and courier agency rendering taxable service is entitled to Cenvat credit on the duty paid on motor vehicles. The Adjudicating Authority cannot go simply by the clarification of the Ministry, which is contrary to law. Ministry's clarification ignores Rule 3(2), according to which when a service is partially performed outside India, it will be deemed to be performed outside India. The fact that the service provider and service receipt are in India is not relevant while considering whether there is export of service in the light of the deeming provision in rule 3(2). All the other points, such as contractual relationship between service provider and service recipient, the status of the person receiving the courier, the fact that transportation is merely incidental in providing courier service are not at all relevant in the light of Rule 3 (2). In our view, the clarification dated 3.10.2005 issued by the Ministry with regard to international courier agency is contrary to Rule 3(2) of Export Services Rules, 2005.

Thus it is clear that during the period 15th March, 2005 to 15th June, 2005, if courier is delivered outside India and the service provider and service recipient is India and amount is received in Indian currency than also same transaction should be treated as export of taxable service under Rule 3(2) of Export of service Rules, 2005 and service tax should not be payable on the same.
This case is also followed in following cases,

- U.B.Xpress (South) (P.) Ltd. Vs. Commissioner of Central Excise, Coimbatore. [2008 (15) STT 242] (AHD-CESTAT).
- PROFESSIONAL COURIERS Versus COMMR. OF SERVICE TAX, CHENNAI [2008 (10) S.T.R. 125 (Tri. - Chennai)].

3.2. **BLUE STAR LTD. versus COMMISSIONER OF CENTRAL EXCISE, BANGALORE [2008 (11) S.T.R. 23 (Tri. - Bang.)]**

In this case Tribunal held true the contention of the appellant that service of commission agent provided to foreign agent is an Export of Service under export of service Rules, 2005. Relevant extract of the said case law is produced herein under,

"4. ....The learned Advocate stated that the appellants actually book orders for their Principal in USA/UK/other countries. The orders are booked in India and after the orders are booked, the parties concerned directly get in touch with the foreign suppliers. Once the foreign suppliers export the goods to India and receive their payments, a commission is paid to the appellant. It was urged that the service which is rendered by the appellant amounts to Business Auxiliary Service. However, the service is provided from India and used outside India. Further, the payment for such service has been received in convertible foreign exchange.

6, ... I am convinced that the services rendered have been exported in terms of Rule 3(2) of the Export of Services Rules, 2005"

3.3. **ABS INDIA LTD. Versus COMMISSIONER OF SERVICE TAX, BANGALORE [2009 (13) S.T.R. 65 (Tri. - Bang.)]**

In this case the court held that companies in two different countries are to be treated as separate legal entities even though one company is a subsidiary of another company. The transactions between these two companies are to be analysed as between two different person. Relevant extract of the said case law is produced below,

In para 4 of its decision tribunal held that

> "it should not be considered that the appellant and the company in Singapore are related, even though one is a subsidiary of the other, they are separate legal entities"

The court further held as,

> "The appellant, who is the Indian Company, booked certain orders for the Singapore Company. It cannot be said that these booking of the orders indicate service being rendered in India. . It is not correct. And also because the appellant books the orders for the Singapore Company, we have to consider that the service is delivered only to the Singapore Company. The recipient of the service is a Singapore Company. When

the recipient of the service is Singapore Company, it cannot be said that service is delivered in India and the benefit of the service is derived only by the recipient company. Because of the booking of the orders, the Singapore Company gets business. Therefore, the service is also utilized abroad. In terms of Rule 3(2) of the Export of Services Rules, 2005 the service rendered is indeed a service, which has been exported".

3.4. **NATIONAL ENGG. INDUSTRIES LTD. versus COMMR. OF C. EX., JAIPUR [2008 (11) S.T.R. 156 (Tri. - Del.)]**

In this case, Tribunal held as under

2. The relevant facts of the case in brief are that the appellant is the agent of General Motors Corpn. USA (in short "GMC") and had provided services of sourcing them the contract from Indian Railways. Under Rule 3 of Export of Services Rule, 2005, export of service is exempted from Service tax. The appellant wrongly paid Service tax on the commission got from M/s. General Motors Corpn. through Indian Railways and claimed the refund of tax. The adjudicating authority rejected the refund claim because it is hit by Rule 3(1)(b) of the said Rules. The Commissioner (Appeals) upheld the adjudication order.

3. Ld. Advocate on behalf of the appellant placed the copy of the contract between the parties. He submits that it is revealed from the Purchase Order of Indian Railways that the appellant would get the commission in foreign-exchange. But the Indian Railways deducted the appellant's commission in their bills raised to GMC for the purpose of releasing less foreign exchange from Reserve Bank of India for payment. Therefore, the appellant received the commission from M/s. GMC through Indian Railways in Indian rupees in lieu of foreign exchange. He submits that it is clearly evident that the payment received by the appellant in Indian rupees in lieu of foreign-exchange and therefore, there is no violation of Rule 3(1)(b) of the Rules.

Export Rebates and Refunds

4. **Background**

4.1. **Rule 5 of the Export of services Rule, 2005**

Under Rule 5 of the Export of services Rule, 2005 the Central government is empowered to grant rebate of service tax paid on such taxable services or service tax or duty paid on input services / inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any and fulfillment of such procedure, as may be notified.

At the option of the assessee, he can either export services without payment of service tax or can get refund of service tax paid on export of such services.

4.2. **Notification no. 11/2005 and 12/2005 – ST, both dt. 19.04.2005**

Pursuant to above power, the Central government has w.e.f. 19th April 2005 notified the conditions and procedures for rebate of service tax and cess vide notification no. 11/2005 and 12/2205 both dated 19.04.2005. Although the word used in notification is Rebate, it is synonymous to the term Refund. The benefit of this notification's can be taken only by taxable service provider.

4.3. **Notification no. 41/2007 – ST, dt. 06.10.2007**

The Central government has also issued notification No. 41/2007, dated 6th October 2007, for refund of service tax issue of the taxable services specified received by an exporter and used for export of goods from the whole of the service tax leviable thereon under section 66 and section 66A of the said Finance Act. The benefit of this notification's can be taken by Manufacturer Exporter or Merchant Exporter.

4.4. **Rule 5 of Cenvat Credit Rules, 2005**

The Central Government has prescribed for Refund of Service tax vide Rule 5 of Cenvat Credit Rules, 2004.

Rule 5 provides for refund of Input or Input services used in manufacture of final product which is cleared for export under bond or letter of undertaking or used in intermediate product cleared for export or exporting taxable output service which a manufacturer or provider of output service for any reason is not able to adjusts such CENVAT balance. The conditions and procedures for granting refund under this rule is prescribed by notification no. 05/2006-Central Excise (N.T.), dated 14.03.2006 The benefit of this Rule can be taken both by Manufacturer and Service provider.

5. **Notification No. 11/2005, dated 19th April 2005 – (Rebate of service tax paid on Exported services)**

This notification provides that subject to the conditions, limitations and procedures, rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan.

5.1. **Conditions and Limitations**

5.1.1. the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
5.1.2. the service tax and cess, rebate of which has been claimed, have been paid on the taxable service exported;
5.1.3. the amount of rebate of service tax and cess admissible is not less than five hundred rupees; and
5.1.4. that in case,-
5.1.4.1. the service tax and cess, rebate of which has been claimed, have not been paid; or
5.1.4.2. the taxable service, rebate on which has been claimed, has not been exported,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

5.2. **Procedures**

5.2.1. claim of rebate of service tax and cess paid on all taxable services exported shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be,
5.2.2. such application shall be accompanied by,–
5.2.2.1. documentary evidence of receipt of payment against taxable service exported and for which rebate is claimed, payment of service tax and cess on such taxable service exported;
5.2.2.2. a declaration that such taxable service, rebate of service tax and cess paid on such service is claimed, has been exported, in terms of rule 3 of the said rules, along with the documents evidencing the export of such taxable service;

5.3. **Other documents which are required**

5.3.1. Form ASTR 1 given in the said notification.
5.3.2. Authority letter is refund claim is processed by a person other than the assessee himself.

6. **Notification No. 12/2005, dated 19th April 2005 - (Rebate of service tax paid on taxable Input services used in providing taxable Exported services)**

This notification provides that subject to the conditions, limitations and procedures, rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services (herein after referred to as 'input services'), used in providing taxable service exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan

6.1. **Conditions and Limitations**

6.1.1. the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
6.1.2. the duty, rebate of which has been claimed, has been paid on the inputs;
6.1.3. the service tax and cess, rebate of which has been claimed, have been paid on the input services;
6.1.4. the total amount of rebate of duty, service tax and cess admissible is not less than five hundred rupees;
6.1.5. no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and
6.1.6. that in case,-
6.1.6.1. the duty or, as the case may be, service tax and cess, rebate of which has been claimed, have not been paid; or
6.1.6.2. the taxable service, rebate for which has been claimed, has not been exported; or
6.1.6.3. CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

6.2. **Procedures**

6.2.1. The provider of taxable service to be exported shall, prior to date of export of taxable service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, describing the taxable service intended to be exported with,-
6.2.1.1. description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing taxable service to be exported;
6.2.1.2. description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported.

6.2.2. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of taxable service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration

6.2.3. The provider of taxable service shall,-

6.2.3.1. obtain the inputs required for use in providing taxable service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;

6.2.3.2. receive the input services required for use in providing taxable service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

6.2.4. claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the taxable service has been exported;

6.2.5. such application shall be accompanied by, –

6.2.5.1. invoices for inputs issued under Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under Service Tax Rules, 1994 in respect of which rebate is claimed;

6.2.5.2. documentary evidence of receipt of payment against taxable service exported, payment of duty on inputs and service tax and cess on input services used for providing taxable service exported, rebate of which is claimed;

6.2.5.3. a declaration that such taxable service, has been exported in terms of rule 3 of the said rules, along with documents evidencing such export.

6.3. <u>Other documents which are required</u>

6.3.1. Form ASTR 2 given in the said notification.

6.3.2. Authority letter is refund claim is processed by a person other than the assessee himself.

7. <u>Refund under Notification No. 41/2007 dt. 06.10.2007</u>

It is the basic understanding that Tax cannot be exported. Exporter of goods use various services on which service tax is payable. Thus indirectly service

tax was been exported. To overcome this situation, government tried to resolve this situation by introducing notification no. 41/2007 and providing refund to exporter of goods for service tax paid by them on certain specified taxable services.
This notification has been amended from time to time.

Author is giving some of the frequently asked question in context of the refund of service tax by exporter of goods

Q.1. what are the specified services?

A.1. specified services are given in table below.

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
1	Sec65(105) (d) General Insurance	Services provided by an insurer, including a re-insurer in relation to insurance of said goods.	Document issued by the insurer, including re-insurer, for payment of insurance premium shall be specific to export goods and shall be in the name of the exporter.	06.10.07
2	Sec 65(105)(zn) Port services	Service Provided for Export of said goods		17.09.07
3	Sec 65(105)(zzh) Technical Testing and Analysis	Service provided in relation to technical testing and analysis where such technical testing and analysis is taken as per the written agreement between the exporter and the buyer of the said goods.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; and [4](ia) where the buyer of the said goods does not require testing and analysis of the said goods, but testing is statutorily stipulated by domestic rules and regulations, the exporter shall furnish copy of such rules or regulations stipulating testing and analysis of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the	06.10.07

[4] This Condition has been inserted vide Notification No. 32/2008 ST Dated: 18th November, 2008 w.e.f. 18th November, 2008

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
			exporter.	
4	Sec 65(105)(zzi) Technical Inspection and Certification	Service in relation to Inspection and certification where such activity is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring inspection and certification of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.	06.10.07
5	Sec 65(105)(zzl) Other Port services	Service Provided for Export of said goods		17.09.07
6	Sec 65(105)(zzp) goods transport agency (GTA)	Services Provided for Transport of said goods from the Inland Container Depot (ICD) to the port of export [5]		17.09.07

[5] It is to be noted that only transport services from ICD to Port are specified under this notification. Transport services from exporter's factory or godown to Port or ICD does not qualify under the specified services in this notification

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
7	Sec 65(105)(zzzp) Transportation of goods by rail in container	Services Provided for Transport of said goods from the Inland Container Depot to the port of export[6]		17.09.07
8	Sec 65(105)(zzzd) Cleaning Activity	Specialised Cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring such specialized cleaning of containers used for export of said goods; and (ii)the service provider is accredited by the competent statutory authority to provide such specialized cleaning services.	29.11.07
9	Sec 65(105)(zza) Storage & Warehousing	Services provided for storage and warehousing of said goods.	(i) the said goods are stored in a storage or warehouse which is approved by the competent authority; and (ii) the storage or warehouse is exclusively used for the purpose of storage or warehousing of export goods.	29.11.07
10	Sec 65(105)(f) courier agency	Services provided by a courier agency to an exporter in relation to transportation of time-sensitive documents, goods or articles relating to export, to a destination outside India.	(i)the receipt issued by the courier agency specifies: (a) the importer-exporter (IEC) code number of the exporter, (b) export invoice number, (c) nature of courier, (d) destination of the courier including name and address of the recipient of the courier, and (ii) the exporter produces evidence to link the use of courier service to export goods.	19.02.08
11	Sec 65(105)(zzp)	Services provided to an exporter in	(i) export goods are transported directly from the place of	19.02.08

[6] It is to be noted that only transport services from ICD to Port are specified under this notification. Transport services from exporter's factory or godown to Port or ICD does not qualify under the specified services in this notification

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
	goods transport agency (GTA)	relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.	removal to inland container depot or port or airport, as the case may be, from where the goods are exported, (ii) invoice issued by the exporter in relation to export goods shall indicate the name of the inland container depot or port or airport from where the goods are exported, (iii) details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill, (iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export.	
12	Sec 65(105)(zzzp) Transportation of goods by rail in container	Services provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.	(i) export goods are transported directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported, (ii) invoice issued by the exporter in relation to export goods shall indicate the name of the inland container depot or port or airport from where the goods are exported, (iii) details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill, (iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export.	19.02.08

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
13	section 65(105)(h) Custom House Agent	services provided by a custom house agent in relation export goods exported by the exporter.	exporter shall produce,- (i) invoice issued by custom house agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the custom house agent from the exporter in relation to export goods, (ii) details of other taxable services provided by the said custom house agent and received by the exporter, whether or not relatable to export goods.	01.04.08
14	section 65(105)(zm) Banking and Other Financial Services	(i) services provided in relation to collection of export bills, (ii) services provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges.	exporter shall produce evidence to link the use of services specified in column (3) for goods exported.	01.04.08
15	section 65(105)(zzb) Business Auxiliary Service	Services 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	(i)exporter shall provide agreement or contract or any other document, requiring the commission agent located outside India to provide services to the exporter in relation to sale of export goods, outside India, (ii) exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill,	01.04.08

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
		sale of goods exported by him.	(iii) commission sought to be remitted is not on export of a canalized item, project exports, or exports financed under lines of credit extended by Government of India or EXIM Bank, or exports made by Indian partners towards equity participation in an overseas joint venture or wholly owned subsidiary, (iv) documents evidencing actual export of goods, (v) documents evidencing actual payment of commission to the commission agent, (vi) refund of service tax shall be restricted to actual amount of service tax paid or service tax calculated on ten[7] percents of FOB value of export goods, whichever is less."	
16	section 65(105)(zm)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.	16.05.08
17	section 65(105)(zzk)	Services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	Exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.	16.05.08

[7] Ten percent has been amended w.e.f. 7th December, 2008 wide notification No. 33/2008 ST Dated: 7th December, 2008 earlier it was two percents.

Sr No	Classification under Finance Act, 1994	Description	Conditions	Available from
18	section 65(105) (zzzzj)	Services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	Exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods."	16.05.08
19	section 65(105)(j)	services provided by a clearing and forwarding agent in relation to export goods exported by the exporter.	exporter shall produce,- (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the clearing and forwarding agent from the exporter in relation to export goods, (ii) details of other taxable services provided by the said clearing and forwarding agent and received by the exporter, whether or not relatable to export goods.	07.12.08

Q.2. is there any other condition to be satisfied other then listed in above table?

A.2. Following further condition also to be satisfied:

(a) the specified services for which refund is claimed by the exporter of the goods should be received and used by the exporter for export of the said goods;
(b) the exporter claiming the refund has actually paid the service tax on the specified services to input service provider;
(c) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;

[8](d) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
(e) Refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

Q.3. Who can claim the exemption under this notification?

A.3. Only exporter (Manufacturing exporter or Merchant exporter) of goods who has actually paid the service tax on specified services can claim exemption under this notification.

The person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the Finance Act 1994 (as amended) shall pay the service tax as applicable but shall not be eligible to claim exemption under this notification.

Provided that where the exporter of the said goods and the person liable to pay service tax under sub-section (2) of sec 68 for the specified services are the same person then in such cases exemption for the specified services shall be claimed by that person. In other words exporter has to pay service tax and then file a refund application.

The exemption under notification 41/2007-ST Dt. 6th October, 2007 shall be claimed by exporter of goods by filing a refund application.

Q.4. Is registration compulsory to claim exemption under this notification

A.4. The exporter or merchant exporter who is not registered under Central Excise or Service tax will be required to file a declaration in the Form as prescribed in Notification 41/2007-ST dtd. 6th October, 2007 to Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise who shall after due verification allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form.

Q.5. To whom refund of service tax under this notification is to be filed?

A.5. The Exporter shall claim the exemption by filing a refund of service tax paid on specified services to

Sr No.	**Type of Exporter**	**Authority to whom the application is to be made**
1	Manufacturer Exporter	A.C./ D.C. of Central Excise having jurisdiction over the factory of the manufacturer or warehouse.
2	Other than Manufacturer Exporter	A.C./D.C. of Central Excise having jurisdiction over the registered office of such exporter.

[8] This condition has been omitted vide Notification No. 33/2008 ST Dated 7th December, 2008

Q.6. Is there any time limit for claiming exemption under this notification?

A.6. Yes, the claim for refund is to be filed on a quarterly basis, within Six Months[9] from the end of the relevant quarter during which the said goods have been exported. Refund claim for the period April, 2008 to June, 2008 has to be filed within 60 days. Six months period not applicable to said period or any prior period (Circular No. 112/6/2009-ST dtd. 12th March, 2009).

The date on which the goods will be deemed to be exported is the date on which the proper officer of customs makes an order permitting clearance and loading of the said goods for exportation under sec 51 of the customs Act, 1962.

Q.7. Is there any time limit for granting refund of service tax on specified services under this notification by the department?

A.7. No time limit has been prescribed for the said refund of service tax under this notification. However, vide F. No. 341/15/2007-TRU dtd. 17th April, 2008 CBEC instructed that, the refund claims should be finalized within a maximum period of 30 days from the date of filing of refund claim. If, refund is not granted within 30 days, then it should be reported to Commissioner. If refund is not granted within 45 days, then the same with the reason should be send to CBEC Member (Service Tax) with CC to Chief Commissioner.

Q.8. Is there any document that is to be filed along with the refund application towards exemption under this notification?

A.8. Yes, Refund application i.e. Form R is to be accompanied by following documents,

a) Document evidencing export of the said goods like bill of lading, Shipping Bill, etc.
b) Proof of realisation of Export proceeds like FIRC. In cases where banks do not issue FIRC for the reason that payments are received by cheque, then duly certified bank statement.
c) Document evidencing payment of service tax on the specified services for which claim for refund of service tax paid is filed like TR 6 challans, or invoices of input service provider issued under Rule 4A of Service Tax Rules, 1994 along with proof of payment of the same.
d) Further apart from above, notification also prescribes agreement entered with buyer of goods in respect of certain services, in that case copy of agreement with buyer. Details of certain services require agreement are given in the table of A.1.

Q.9. Exporters exporting to a customer regularly, the FIRC are made on running account basis by the banks. Therefore, it is often not possible to show the

[9] Six months has been amended w.e.f. 18th November, 2008 wide notification No. 32/2008 ST Dated: 18th November, 2008 earlier it was Sixty days.

linkage between the export invoice and the remittance. What is the remedy available?

A.9 Where FIRCs are issued on consolidated basis, the exporters should submit self-certified statement along with FIRC showing the details of export in respect of which the FIRC pertains. Exporters should also maintain a register showing running account which should be reconciled between the export and the remittance periodically.

Q.10. Is there any other condition or point to take care of after getting refund of service tax under the said notification?

A.10. a) Yes, One thing in particular is to be taken care of by the exporter is that the sale proceeds in respect of the sale of said goods should be realised by or on behalf of exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period. In case the exporter fails to satisfy the said condition than such service tax refunded shall be recoverable under the provisions of the Finance Act 1994 (As amended) and the rules made there under, as if it is a recovery of service tax erroneously refunded.

b) One more point to be considered is that the said specified services should be linked to exports. Exporter will be eligible to claim exemption of the said services under this notification even if the said services does not fall under the definition of Input services as defined in Cenvat Credit Rules 2004.

Q.11. Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under notification No. 41/2007-ST?

A.11. NO

Q.12. Whether original documents such as invoice, BL, SB, BRC etc. are to be attached with the refund claim?

A.12. No only certified copy to be attached with refund claim. However, department may asked original documents for verification.

Q.13. The input service provider providing services to the exporter provides various services. But he has registration of only one service. Can refund be denied on the grounds that the taxable services that are not covered under the registration are not eligible for such refunds?

A.13. Refund can not be denied on the above ground.

Q.14. Is there any procedural issues involved in filing the refund claim?

A.14. Yes clarification on certain procedural issues has been provided by department vide circular no 101 /4 /2008-ST (dt. 12th May 2008) & 106 /9 /2008-ST (dt. 11th Dec 2008) relevant clarifications are briefed under,

a) *In the case of Merchant Exporter who is not registered with the department* – If head office/registered office is located within the jurisdiction of exclusive Service Tax Commissionerates at Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, and Mumbai, the claim should be filed before the jurisdictional Assistant Commissioner / Deputy Commissioner of Service Tax. In any other case, Assistant Commissioner/Deputy Commissioner of Central Excise and Service Tax, having jurisdiction over Head office or Registered Office for the purposes of service tax.

b) *In the case of Merchant Exporter who is registered under service tax law -* refund claims can be filed from any premises / office of a merchant exporter.

c) simplified procedure for refund, as prescribed by the Board vide circular No. 828/5/2006-CX dated 20.4.2006 for sanction of refund/rebate of unutilized CENVAT credit under rule 5 of the CENVAT Credit Rules, 2004/rebate would mutatis mutandis apply to refund claims under notification No. 41/2007-ST. (refer para 14.8)

8. Refund under Rule 5 of Cenvat Credit Rules, 2004.

Conditions and procedures for claiming refund under this rule was prescribed vide notification no. 5/2006-Central Excise (N.T.) dt. 14th March 2006. This notification provided for refund of CENVAT credit in respect of

(a) input or input service used in the manufacture of final product which is cleared for export under bond or letter of undertaking;

(b) input or input service used in providing output service which has been exported without payment of service tax,

This notification further provides as under,

8.1. The final product or the output service is exported in accordance with the procedure laid down in the Central Excise Rules, 2002, or the Export of Services Rules, 2005

8.2. The claims for such refund are submitted not more than once for any quarter in a calendar year.

Provided that where,-

(a) the average export clearances of final products or the output services in value terms is fifty percent or more of the total clearances of final products or output services, as the case may be, in the preceding quarter; or

(b) the claim is filed by Export Oriented Unit, the claim for such refund may be submitted for each calendar month

8.3. The manufacturer or provider of output service, as the case may be, submits an application in Form A given in said notification to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be in whose jurisdiction

- the factory from which the final products are exported is situated along with the Shipping Bill or Bill of Export, duly certified by the officer of customs to the effect that goods have in fact been exported; or
- the registered premises of the service provider from which output services are exported is situated along with a copy of the invoice and a certificate from the bank certifying realization of export proceeds

8.4. The refund is allowed only in those circumstances where a manufacturer or provider of output service is not in a position to utilize the input credit or input service credit allowed

8.5. The refund of unutilised input service credit will be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates i.e. .Maximum refund £ Total CENVAT credit taken on input services during the given period × export turnover ÷ Total turnover. (example provided in the said notification)

8.6. The application in Form A, along with the prescribed enclosures and the relevant extracts of the records maintained under the Central Excise Rules, 2002, CENVAT Credit Rules, 2004, or the Service Tax Rules, 1994, in original, are filed with the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, before the expiry of the period specified in section 11B of the Central Excise Act, 1944(1 of 1944).

8.7. **Other documents which are required**

8.7.1. Form A given in the said notification.

8.7.2. Authority letter if refund claim is processed by a person other than the assessee himself.

8.8. **Circular no. 828/5/2006-CX, dated 20th April 200 – (Simplified procedures for sanction of refund of unutilised credit/rebate claims in cases of export)**

Department has specified simplified procedures to grant refund to certain exporters claiming refund under the said rule. This simplified procedures is hereby given in the form of extract from the said circular herein below,

> "3. .... The refund/rebate sanctioning authority shall immediately scrutinize the refund/rebate claim and check whether the refund/rebate application is complete and is covered by all the requisite documents. Once the preliminary

scrutiny is completed, 80% of the rebate claimed will be sanctioned within 15 days of (a) filing of the rebate claim; or (b) filing of document evidencing payment of duty including the periodical return, which ever is later, provided all the documents filed along with the claim are, prima-facie, found to be in order. In case of refund of unutilised credit under rule 5 of the CENVAT Credit Rules, 2004, 80% of the refund amount will be sanctioned within 15 days of filing of the claim, provided the requirements of Notification no. 5/2006 C.E.(NT) dated 14.3.2006 are complied with. The balance amount shall be paid after completion of the verification and other formalities in the prescribed manner within 45 days from the date of filing of the claim. Pre/Post Audit will be completed as per the norms laid down in this regard vide Circular no. 809/6/2005 CX dated 1.03.2005. Subsequently, if any discrepancy is noticed at the time of scrutiny of the periodical returns, necessary action for recovery of erroneous refund would be initiated in accordance with Rules.

4. This simplified procedure for sanction of refund/rebate is applicable only to the following categories of exporters having good track record i.e. exporters against whom no offence case has been booked by the Department during the preceeding three years or/and where no recovery of short levy is pending on date.

(a) All exporters who have an export turnover of Rs. 5 crores in the current year or the preceding financial year.
(b) Public Sector Undertakings including PSUs of the State Government.
(c) Star Export Houses as specified under Chapter 3.5 of the Foreign Trade Policy, 2004-2009.
(d) Manufacturer-exporters registered with Central Excise who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year.
(e) Manufacturer-exporters registered with Central Excise who has paid duty of Rs. 1 crore or more during the preceding financial year.
(f) All Export Oriented Units.

9. **Case Studies.**

9.1. Travel Agent is engaged in travel and tourism. It is registered as an air travel agent and a tour operator. It sells outbound tour packages to Indian customers say to US, Europe for a lumpsum of say Rs. 1,00,000/- (a part of which is received in convertible foreign exchange in India from the travellers' foreign currency say to the extent of Rs. 50000/-). Would Travel agent be entitled to any export exemption in respect of the above transaction?

9.2. M/s. H & Co. is a call centre providing services to their client located outside India and the services are export of services within the meaning of Rule 3(3) of the Export of Service Rules, 2005. They have availed various input services for rendering their output services. Vide Notification No.8/2003-ST dated 20th June,2003, exemption was granted to call centres from payment of service tax under “business auxiliary services”. The said exemption was withdrawn w.e.f. 1st March,2006. Whether H & Co. is entitled to claim refund of input services used prior to 1st March,2006?

9.3. M/s. B & Co. exported the goods on 4th December,2007. They have availed services of cleaning services, storage & warehousing services and GTA services for export goods from ICD to port on 1st December,2007, payment for which was made to the service providers on 8th March,2008. M/s. B & Co. seeks your advice as to when to lodge the claim for refund?

9.4. M/s. Clean & Co. availed the services of cleaning & disinfecting of container used in relation export goods. The service provider has classified these services under the category of “repairs & maintenance services”. Since the services are appropriately classifiable under “cleaning services” and the exporter is not entitled to claim refund of tax paid on “repairs & maintenance services”, can M/s. Clean & Co. reclassify the services at their own for the purposes of claim refund of service tax?

9.5. M/s Mailing ltd. is into the business of mailing list compilation and mailing for the client located in USA and does not have office in India. It is using Services of DHL (Courier agency) for mailing to USA and pay service tax to DHL. For the period April 2007 to September 2007 refund claim under Notification has been filed by Mailing Ltd. on 6th November, 2008. Jurisdictional AC had passed an order rejecting refund claim. He sated in the order that refund claim is filed after one year. The time limit for filing refund claim is one year as per Section 11B of The Central Excise Act, 1944, which is also applicable to Service tax. What is the remedy available to M/s Mailing Ltd?

9.6. MPS Ltd. is an Indian manpower supply company engaged in the business of Manpower supply. One of its Indian client M/s Contractor Ltd. is engaged in the business of construction. M/s Contractor Ltd. got a construction contract from Dubai base company to construct the Mall at Dubai. For construction at Dubai Manpower has been supplied by MPS Ltd. MPS Ltd. has got fees in Convertible foreign exchange from M/s Contractor Ltd. for supply of manpower in Dubai for the construction at Dubai. Whether Services of supply of Manpower at Dubai by MPS Ltd. to Contractor Ltd. Will be export of service as per ESR?

<u>Annexure 1</u>

List of classification of taxable service under Rule 3 of Export / Import Rules

A. <u>Classification based on location of Immovable property</u>

1. Auctioneer Service.
2. Architect Service.
3. Commercial or Industrial Construction Service.
4. Construction of Complex Service.
5. Dredging Service.
6. General Insurance Service.
7. Interior Decorator Service.

8. Mining of Minerals, Oil or Gas Service.
9. Real Estate Agent Service.
10. Renting of Immovable Property Service.
11. Site Formation and Clearance, Excavation and Earth moving and demolishing service.
12. Survey and Map making Service.
13. Work Contracts Service.

B. <u>Classification based on performance of service</u>

1. Airport Services
2. Air Travel Agent Service.
3. Authorised Service Station Service.
4. Beauty Treatment Service.
5. Business Exhibition Service.
6. Cargo Handling Service.
7. Chartered Accountant Service.
8. Cleaning Activity Service.
9. Clearing and forwarding Service.
10. Club or Association Service.
11. Commercial Training or Coaching Service.
12. Commodity Exchange Service.
13. Company Secretary Service.
14. Convention Service.
15. Cost Accountant Service.
16. Courier Service
17. Credit Rating Agency Service.
18. Custom House Agent Service.
19. Dry Cleaning Service.
20. Erection Commissioning and Installation Service.
21. Event Management Service.
22. Fashion Designing Service.
23. Forward Contract Service.
24. Health and Fitness Service.
25. Internet Café Service.
26. Management, maintenance and repair service.
27. Mandap Keepers Service.
28. Market research Agency Service.
29. Opinion Poll Service.
30. Other Port Service
31. Outdoor Caterer Service.
32. Packaging Activity Service.
33. Photography Service.
34. Pandal or Shamiana Contractor Service.
35. Port Service.
36. Processing or Clearing House Service.
37. Rent-a-Cab Operator Service.
38. Security Agency Service.
39. Sound Recording Service.
40. Steamer Agent Service.