ॐ

Amendments

Final Ca
IDT November 2014

EXCISE – BASIC CONCEPT

Case Law	The activity of labelling / relabeling on the imported goods by the assessee **with a view to comply Indian Law** and not for the purpose of marketing in India, then such activity will NOT be considered as Deemed Manufacture ***CCE vs Indian Additives Ltd (Mad) 2014***

Case Law	By product which emerges in manufacture of other product can not be treated as Waste. It can be considered as waste only if had negligible value. ***A P Solvex vs CCE (SC) 2014***

EXCISE – VALUATION

Tariff Value	Beauty or make up preparations & preparations for the care of skin ➔ 65% of RSP to be taken

Compounded Levy Scheme	In case of Stainless Steel Pattis/Pattas ➔ Rs 40,000/- per machine per month (3% Extra)

Rule 8 Captive Consumption	As of now even if PARTLY goods are self consumed then also Rule 8 is attracted (Previously All Goods were coming under Rule 8)

Rule 9 Related Person Clearance	As of now even if PARTLY goods are cleared to Related Person then also Rule 9 is attracted (Previously All Goods were coming under Rule 9)

Case Law	Any sort of Tax (Sales Tax, Vat) which is Payable is to be deducted while computing Assessable value. But in a case where Tax is Not to be Paid to the Government by virtue of some incentive given by the State Govt to the assessee, then Such Tax Will Be Considered in Assessable Value. ***CCE vs Super Sinotex (India) Ltd (SC) 2014***

Valuation of Gods Below Cost	From 29.8.2012, if there is Sale price below the cost price, then it will be considered as wilful misstatement of Assessable Value thereby department can issue SCN of extended period (5 yrs) to assessee. ***Circular 979/03/2014 dtd 15.1.14***

EXCISE – GENERAL PROCEDURES

Person Exempt from Registration	Unregistered premises solely affixing sticker, reprinter, relabeling, repacking of PHARMA Products (falling under Ch 30 of 1st Sch of CETA 1985 with lower ceiling price to comply notification of Drugs Price Control Order 2013)

Person Required to Get Registration	Importer who issues Invoice on which Cenvat Credit can be taken

Fine in case of Non Registration	Duty Leviable on Excisable Goods exceeds Rs 50 Lacs (prior to 10/5/13 it was Rs 30.00 lacs) – Imprisonment for max 7 yrs.

E Payment of Duty	Mandatory E Payment of Duty, if Last Yr Duty Paid (Cash + Credit) is Rs 1 Lac or more.

Case Law	Offence against Directors of Company that they were not diligent in seeing that chq issued for payment of excise duty, then directors are liable to pay penalty under Rule 27 (General Penalty) for their negligence ***CCE vs Vijay Steels Pvt Ltd (Kar) 2014***

Rule 12CCC Power to impose restrictions in certain types of cases.	Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of evasion of duty, nature and type of offences or such other factors as may be relevant, is of the opinion that in order to prevent evasion of, or default in payment of duty of excise, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter may, by notification in the Official Gazette, specify the nature of restrictions including suspension of registration in case of a dealer, types of facilities to be withdrawn **and procedure for issue of such order by the Chief Commissioner of Central Excise (So CC will decide its procedure as from 21.3.2014)**

Case Law	Rebate is allowed on actual export of goods and not on clearance of goods from the factory premises. So, petitioner was not entitled for rebate claim even if it fulfilled all the conditions and also followed the procedure of notification as actual exports were not made by it. Right to rebate will accrue only when actual export is made. ***Welspun Corporation Ltd vs UOI (Guj) 2014***

EXCISE – WAREHOUSING, SSI

Period of Warehousing	Under Excise, period of warehousing shall initially be for max 6 months, it can be extended by AC/DC for further 6 months subject to verification that goods are not deteriorated in quality. The maximum period of warehousing overall in that warehouse or other warehouse shall be 3 years. Goods shall be deemed to be cleared from warehouse on expiry of warehousing period and thereafter Interest @ 24% pa shall be charged If registration of warehouse is suspended/revoked, then such goods are to be either cleared (by paying duty with Interest @ 24% pa) OR may be transferred to other warehouse without paying duty. ***Circular 976/10/2013 dtd 12/12/2013***

Case Law	Benefit of SSI notification will be available to the assessee where initially assessee was constituted as partnership firm and after few months business was taken over as sole proprietorship. Both assessee are distinct entities & benefit of SSI will be available to both partnership firm (old) & sole proprietor concern(new). ***CCE vs Special Board Mfg Co (Guj) 2014***

EXCISE – EXEMPTIONS, DEMAND, REFUND & RECOVERY

Service of SCN u/s 11A	CEO may : Within the time limit (1 yr or 5 yr), Serve (Subsequent to any notice served earlier) Statement containing the details of Duty Not Levied, Short Levied, Not Paid, Short Paid, Erroneously Refunded for SUBSEQUENT PERIOD on that person. And Such Statement will be DEEMED to be SERVICE of Notice u/s 11A to that person. ***So due to this no need to fill up Ramayan again in SCN to the assessee, just issue one paper to assessee and that paper will be deemed SCN.*** ***From 10/5/13***

Case Law	If goods are liable to duty from retrospective date, then interest liability u/s 11AA on them will arise from date when amendment is made & not from the date when such goods were liable for duty. ***Ennar Refineries Pvt Ltd vs CCE (Tri Bang) 2014***

Case Law	It cannot be said that mens rea on the part of assessee in case if he choses to follow his course of action on the basis of judicial decision. Hence no penalty u/s 11AC on assessee. ***CCE vs Delphi Automotive Systems Ltd (All) 2013***

Case Law	Assessee is required to be given an option by department where he is asked to pay duty with interest and with 25% penalty within 30 days of adjudication order. When such option is not given earlier & matter is remanded, then 30 days are considered from date of giving AVAILING such option. Department cannot say that leniency in law is contrary to law. ***CCE vs Ratnamani Metals & Tubes Ltd (Guj) 2014***

Case Law	Doctrine of unjust enrichment is not applicable & Refund is given to assessee where – a) Due efforts were made to find out whether amount of duty was passed to purchasers **&** b) Even purchasers had admitted fact that amount of duty had not been recovered from them & this was NOT CHALLENGED ***International Conveyors Ltd vs CCE (SC) 2014***

Case Law	Refund will be granted to assessee in case assessee proves that burden of duty is NOT passed to buyers & for such assertion he submits aafidavits, CA Certificate, along with Copy of Balance Sheet and where NO NEGATIVE FACTOR OR ANY CONTRARY THINGS COMES TO THE KNOWLEDGE TO DEPARTMENT. ***Hero Motocorp Ltd (Del) 2014***

Case Law	Refund will be granted to assessee in case assessee proves that burden of duty is NOT passed to buyers & for such assertion he submits aafidavits, CA Certificate, along with Copy of Balance Sheet and where NO NEGATIVE FACTOR OR ANY CONTRARY THINGS COMES TO THE KNOWLEDGE TO DEPARTMENT. ***Hero Motocorp Ltd (Del) 2014***

SERVICE TAX – INTERPRETATION & VALUATION

Case Law	If a receipt for reimbursing expenditure incurred for purpose of providing services, then such Reimbursement cannot be regarded as having character of "Remuneration, Commission" received by C&F Agent & So Reimbursement is NOT Included in Taxable Value of Service Provided. ***CST vs Sangamitra Services Agency (Mad) 2014***

SERVICE TAX – DECLARED SERVICES

Renting of Immovable Property	Taxable Service provided to any person by way of Renting of Room in HOTEL, INN, GUEST HOUSE, CLUB, CAMPSITE or Other Commercial Place for Residential/Lodging purpose in Uttrakhand is EXEMPTED for the period from 17/9/13 to 31/3/2014.

Food Related Service	1. Restaurants without Central Air Conditioning or Central Heating is EXEMPT. 2. Mid Day Meals are EXEMPT. 3. Service in Air Condition or Central Heating in FACTORY is EXEMPT 4. Taxable Service provided to any person by way of Renting of Serving Food, Beverages by Restaurants, Eating Joints, Mess in Uttrakhand is EXEMPTED for the period from 17/9/13 to 31/3/2014.

SERVICE TAX – NEGATIVE LIST

Government or Local Authority	Service provided to Govt, Local Authority, Government Authority by way of Repair or Maintenance of VESSEL is EXEMPT.

Agriculture or Agricultural Produce	Service by way of Loading, Unloading, Packing, Storage, Warehousing of **RICE** is EXEMPT.

Goods Transport Agency	Service by Goods Transport Agency are EXEMPTED as under : 1. Agricultural Produce 2. Gross Amount Does Not Exceed Rs 1500 in Single Carriage 3. Gross Amount Does Not Exceed Rs 750 of Single Consignee 4. Foodstuff including Flour, Tea, Coffee, Jaggery, Sugar, Milk, Milk Products, , Edible Oil (EXCLUDING ALCHOLIC BEVERAGES) 5. Chemical Fertilizers & Oil Cakes 6. Newspapers, Magazines (Registered with Registrar of Newspaper) 7. Relief Material for Victims of Natural, Man Made Disasters, Calamities, Accidents, Mishaps 8. Defence or Military Equipments.

SERVICE TAX – MEGA EXEMPTION NOTIFICATION

Sports Related Services	Service by way of Sponsorship of Sporting Events organised by a National Sports Federation or its affiliates, where participating Team or Individual Represents any **DISTRICT, STATE, ZONE, COUNTRY**.

Charitable Institutions Services	The Clause "ADVANCEMENT OF ANY OTHER OBJECT OF GENERAL PUBLIC UTILITY" is TOTALLY Removed from Mega Exemption Notification. Hence as of now, Such Service by Charitable Organisation is FULLY TAXABLE. But it should be noted that in this case, Charitable Organisation can take benefit of Small Service Provider upto Rs 10.00 Lacs

Vehicle Parking Services	Vehicle Parking Service given to General Public is TOTALLY Removed from Mega Exemption Notification. Hence as of now, Such Service is FULLY TAXABLE. But it should be noted that in this case, assessee can take benefit of Small Service Provider upto Rs 10.00 Lacs

Service By An Unincorporated Body or Non Profit Entity to	New Concept vide Circular 175/1/2014 dtd 10/1/14 of Resident Welfare Association (RWA) is Added here, Brief Summary on RWA is : 1. RWA Services are FULLY EXEMPTED 2. RWA Collecting Amount from Members and paying it will not be

Members	considered in valuation. (Example: Common Light Meter in Offices Concept) 3. RWA holding Health Check Up Camps is EXEMPT. 4. RWA Receiving Contribution Exceeding Rs 5000, then FULLY TAXABLE. But in this case, RWA can take benefit of Small Service Provider of Rs 10.00 Lacs & also Cenvat Credit can be taken by it.

SERVICE TAX – PROCEDURAL COMPLIANCE

E Payment of Service Tax	Mandatory E Payment of Duty, if Last Yr Duty Paid (Cash + Credit) is Rs 1 Lac or more.

Failure to take Registration	Any person who is liable to pay service tax or required to take registration, fails to take it, then he shall be Liable to a Penalty which may **Extend to Rs 10000/-.**

Penalty for Offences by Directors, Manager, Secretary of Company	Where a company has committed any of the following contraventions, namely:- (a) evasion of service tax; or (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due. Then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to Rs 1.00 Lac. ***So, it makes Directors, Officers PERSONALLY LIABLE.***

SERVICE TAX – EXEMPTIONS, DEMANDS & RECOVERIES

Case Law	Where Deptt directed Service Receiver to Pay Service Tax (with Interest & Penalty) to the Service Provider without giving notice to Service Receiver, Then Such Direction is Liable to be SET ASIDE being violating principals of Natural Justice. ***Damodar Valley Corporation vs CCE (Jhar) 2014***

Case Law	1. SCN must make prima facie allegations and facts have to be pointed out and confronted for answer. 2. Where appellate remedy is available, then writs should not be entertained. ***R R Financial Consultants Ltd vs UOI (Del) 2014***

Case Law	The order Freezing the Bank Account of Assessee is not sustainable in the eyes of law having been passed WITHOUT ANY JURISDICTION. Such claim can be made only when final adjudication is done after quantifying the amount due from the assessee. ***RV Manpower Solution vs CCE (Uttrakhand) 2014***

ॐ

CUSTOMS – BASIC CONCEPT

Case Law	1. In case of Provisional Assessment, Final Assessment is to be made by passing Speaking Order u/s 17 2. Unless order is passed u/s 17, assessee do not get right to appeal u/s 128 3. For Assessee aggrieved by assessment order, recourse is to file appeal, instead of asking for refund directly. ***Visa Steel Ltd vs CCE (Orrisa) 2014***

Case Law	U/s 18(3) of Customs, Interest Liability on Difference between Final & Provisional Duty was introduced for first time from 13.7.2006, so in absence of any retrospective amendment, the said interest is applicable prospectively from 13.7.2006. ***CC vs Goyal Traders (Guj)2014***

CUSTOMS – IMPORTATION & EXPORTATION

Import Manifest, Export Manifest	In case of VESSEL/AIRCRAFT, **Electronically** to be delivered before its arrival at custom station If Electronic filing is not feasible to deliver then Commissioner may allow any other manner of delivery (wef 10/5/13)

Interest	Interest @ 15% pa will be charged if Normal Duty is not paid within 2 days (excluding holidays) from the date on which Bill of Entry for Home Consumption is passed and given to importer. (wef 10/5/13)

Warehousing without warehousing	Commissioner may extend the period of storage for further period upto max 30 days at a time. (wef 10/5/13)

CUSTOMS – IMPORTATION & EXPORTATION

Baggage	Flat Panels (LCD, LED, Plasma) Televisions are now(from 19/8/13) inserted in Annexure 1, so on this GFA under Rule 3 or Rule 4 will not be available from 19/8/13. So on this Baggage Duty @ 36.05% will be levied on full amount.

CUSTOMS – SEARCH, SEIZURE, CONFISCATIONS & MISC TOPICS

Power to arrest	Certain offences to be non-bailable: Notwithstanding anything contained in Code of Criminal Procedure 1973, the following offences punishable u/s 153 will under this section be non-bailable: 1. Evasion or attempt to evade Duty EXCEEDING Rs 50.00 Lacs 2. Prohibited goods u/s 11 which are also notified u/s 135(1)(i)(c) 3. Import, Export of Goods which have NOT been Declared under this Act & its MKT PRICE Exceeds Rs 1.00 Crore 4. Fraudently availing or attempt to avail Drawback/Exemption from Duty, where the duty amount EXCEEDS Rs 50.00 Lacs All except above offences will be bailable.

Case Law	When goods confiscated by Deptt are found not be confiscated as per the order of appeal, then no application is to be filed by assessee to the Deptt to release the goods, BUT It is OBLIGATORY for DEPARTMENT to release such goods immediately. ***Shree Grotex Trade Links Pvt Ltd vs CC(Cal)2014***

Case Law	Even if the assessee had filed Redemption Fine in order to release the goods, so as to save goods from demmurage, interest, other expenses, Then ALSO HE can File Appeal to Challenge NOT ONLY Confiscation BUT ALSO Imposition of Redemption Fine on Such Goods ***Be Office Automation Products Ltd vs CCE (P&H)2014***

No Duty on Samples Destroyed	No Duty shall be charged on the Samples taken u/s 144, which is consumed or destroyed during the course of any test or examination thereof, ~~IF SUCH DUTY AMOUNTS TO RS 5 OR MORE~~ *(NOW DELETEED FROM 1/5/13)*

Licence to Custom House Brokers Sec 146	**(1)** No person shall carry on business as an **CUSTOM BROKER** relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations. **(2)** The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for - (a) the authority by which a licence may be granted under this section and the period of validity of any such licence; (b) the form of the licence and the fees payable therefor; (c) the qualifications of persons who may apply for a licence and the qualifications of persons to be employed by a licensee to assist him in his work as **CUSTOM BROKER**; (d) the restrictions and conditions (including the furnishing of security by the licensee) subject to which a licence may be granted; (e) the circumstances in which a licence may be suspended or revoked; and (f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed. ***For this purpose Customs Broker Licensing Regulation 2013 have been framed vide Notification No 65/2013 dtd 21/6/2013***

Case Law	There is no provision in the Custom Act enabling the Revenue Authorities to proceed against the Directors by attaching their property for the Recovery of Dues From the Company. Moreover Director & Company are different personalities & attachment of property of former director to recover company's dues is illegal and in violation to Article 265 of Constitution of India. ***Anita Grover vs vs CCE (Del) 2013*** ***Suman N Agarwal vs UOI (Bom) 2013***

COMMON TOPICS – APPEALS & REVISIONS

Service Tax	Sec 86(5) of Finance Act 1994 from 10/5/13 enables Appellate Tribunal to admit appeal filed by the assessee after the expiry of 4 months (statutory period), if it is satisfied that there was sufficient cause for not presenting it. So as of now Condonation power is available in Service Tax 2nd Appeal Level.

2ndAppeal Form	From 1/6/13, **Department** have to file appeal in quadruplicate in following forms: a) Excise – EA 5 b) Customs – CA 5 c) Service tax – ST 7

Stay by Tribunal (Excise & Custom only)	Tribunal can grant stay of max 185 days (if case is not disposed in 180 days) :- a) On an application made by assessee **&** b) On being satisfied that delay in disposing the case is NOT ATTRIBUTABLE to ASSESSEE But it should be noted that after 365 days (180 original + 185 stay), if Appeal is NOT DISPOSED off, then STAY shall Stand VACATED.

Case Law	1. When Law/Rules require an act is to be done in a particular manner, then such manner is to be followed strictly. 2. Tribunal has power to recall or modify its order, if it finds necessary to secure ends of the justice. 3. Writ application CANNOT be REJECTED merely because the alternate remedy of APPEAL is available in the law. If Substantial Question of Law exists , then Rejection of Writ is NOT JUSTIFIED. ***Polar Industries Ltd vs CESTAT (P&H) 2014***

Case Law	If no waiver application for Pre Deposit is filed by the assessee, then appeal is maintainable only when Duty Demanded is First Deposited. ***CCE vs Gangadharam Appliances Pvt Ltd (Mad) 2014***

Case Law	If authority choses to waiver of pre deposit then it is necessary to impose certain conditions to safeguard the interest of the revenue. If Pre Deposit Waiver is allowed without imposing such conditions, then it is illegal. ***CCE vs Federal Mogul TPR India Ltd (Kar) 2014***

Case Law	Where the order under challenge involves issues relating to : a) Rate of Service Tax b) Classification of Services c) Valuation of Services d) Chargeability of Activity under Charging Service Tax Then appeal would lie ONLY before Supreme Court & No Appeal in these matters Lie to High Court. ***CST vs Ernst & Young Pvt Ltd (Del) 2014***

Case Law	If any particular Substantial Question of Law was NOT FRAMED at the time of Filing Appeal to High Court, then Such Question CANNOT be Raised in the Appeal Later. *In this case it was : whether a particular service would fall under "Business Auxiliary Service" OR under "Information Technology Service"* ***CCE vs Deloitte Tax Service India Pvt Ltd (AP) 2014***

Case Law	It is NOT permissible for appellant to raise certain question DIRECTLY before SUPREME COURT and which were not taken in Writ Petition before High Court. Appellant cannot seek re-appreciation of evidence without any appropriate pleading in Writ Petition at High Court. ***Biswanath Bhattacharya vs UOI (SC) 2014***

Case Law	If the application is rejected for NON Deposit of Excise Duty & Interest, then the applicant can make Second Application AFTER Depositing the Duty & Interest. ***Vadilal Gates Ltd vs UOI (Guj) 2014***

COMMON TOPICS – OFFENCES & PROSECUTION

Excise Punishment	U/s 9 of Central Excise, in case of any offence relating to Excisable Goods where DUTY Leviable EXCEEDS Rs 50.00 Lacs, then imprisonment for max 7 years (Before 10/5/13, it was Rs 30.00 Lacs)

Excise	**<u>Cognizable & Non Bailable Offences:</u>** a) Evasion of Duty, where Duty Leviable EXCEEDS Rs 50.00 Lacs b) Contravention of Act or Rules, thereby Availing or Utlising Cenvat Credit for the Payment of Duty which EXCEEDS Rs 50.00 Lacs

Excise	**<u>Non Cognizable & Bailable Offences:</u>** a) Contravention of Transit of Goods within India (Rule 37/2/3) **OR** Dealing with Registration of Persons (Rule 37/2/27) b) Improper Removal of Excisable Goods or any way concerns himself in such removal. c) Acquires, Transports, Stores, Deposit, Keeps, Sell, Purchase, any other manner deals, with excisable goods which HE KNOWS OR HAS REASON TO BELIEVE that such goods are liable for confiscation. d) Fails to supply information OR supplies wrong information under this act/rules. e) Evasion of payment of duty

Excise	Officer in Charge of Police Station **CAN GRANT BAIL** **IF OFFENCE IS NON - COGNIZABLE**

Service Tax – Arrest (Sec 91): *The Provisions are as under:*	
Authorities Empowered to Arrest	Commissioner by General or Special Order Authorize any Officer of Central Excise NOT BELOW SUPERINTENDENT.
Persons who can be arrested	A Person who had committed Any of the Offences u/s 89(1) **&** The Amount Involved EXCEEDS Rs 50.00 Lacs
When Arrested	Commissioner can order Arrest IF HE HAS REASON TO BELIEVE that person had committed offence.
Manner of Arrest	As per Code of Criminal Procedure 1973 relating to arrests.
Procedure of Arrest	a) **<u>COGNIZABLE OFFENCE:</u>** Officer had to inform the arrested person of the Grounds of the arrest & produce him before Magistrate within 24 hours. b) **<u>NON COGNIZABLE OFFENCE:</u>** AC/DC has power to release the person arrested on Bail. For this purpose, AC/DC will have same power as vested to Officer in Charge of Police Station under Code of Criminal Procedure 1973

CENVAT CREDIT

Case Law	Credit of Transportation is Available for : a) Inward Transportation – Full b) Inward Transportation – Upto Place of Removal ***CCE vs Vesuvious India Ltd (Cal) 2014***

Case Law	Service used for providing Repair & Maintainence under free warranty at customers site after sale of Final Product is ELIGIBLE as Input Service and Credit of same is available ***Zinser Textile Systems Pvt Ltd vs CCE (Tri) 2014***

Case Law	Assessee being manufacturer of telecom equipments had invested in another telecom company & later sold shares by availing services of Stock Broker. Service Tax paid on Such Services COULD NOT be Allowed as Input Services as dealing in shares did not relate to or from main part of business of assessee. ***United Telecoms Ltd vs CCE (Kar) 2014***

Payment of Cenvat Credit & Recovery as per Rule 14	The Credit Reversible under following Rules will have to be paid MONTHLY (5th or 6th of Next Month, & 31st For March): a) Rule 3(5) – Inputs / Capital Goods Removed as Such b) Rule 3(5A) – Capital Goods Removed After Use **OR** As Waste Scrap c) Rule 3(5B) – Inputs Written Off (Fully, Partly) Before Being Used d) Rule 3(5B) – Inputs Written Off (Fully, Partly) Before Being Used e) Rule 3(5C) – Remission available on Final Products If the Assessee fails to pay as per above dates, then its Recovery will be made as per Rule 14 of Cenvat Credit Rules 2004

Rule 7 : Distribution of INPUT SERVICES CREDIT by Input Service Distributor (ISD)		
Type of Unit	**Credit Related**	**Credit Distributable**
EXEMPT	-	*Nil*
TAXABLE	Directly Related	*Same Amount*
	Indirectly Related	*Indirect Credit **x** That Taxable **Operational** Unit Turnover* *Exempt Unit Turnover* **+** *All Taxable* **Operational** *Unit Turnover*
Note:	ISD is required to file Service Tax Return on Last Day of Next Month which comes after Half Year (ie 30th October & 30th April) Also, ISD can REVISE Service Tax Return WITHIN 60 DAYS from Date of ORIGINAL Return	

Rule 5B: Refund to Specified Service Providers (of Cenvat Credit Rules 2004)

Eligible Service Provider	**a)** Renting of Motor Vehicle for Passengers on NON Abated Value to the Person who is NOT in Same Line **b)** Supply of Manpower, Security Services **c)** Service Portion in Works Contract
Eligible Refund Amount	**a)** Unutilized Credit on IP & IPS **OR** **b)** Cenvat Credit Debit Balance in Books (Calculated Normally ie OP – IP) **Whichever is LESS**
Periodicity	Refund Claim is to be filed Half Yearly AFTER Filing Service Tax Return
Maximum Refund Limit	It Cannot Exceed Service Tax Paid By Service Recipient under Partial RCM, so Balance if any, can be claimed as Cenvat Credit by the Service Provider.

PRACTICAL APPROACH TO DO THE SUM OF RULE 5B

A	**UNUTILISED CENVAT CREDIT**		
	Total Cenvat Credit on Input & Input Services X <u>Partial RCM Income Bills Made</u> Total Income Bills Made **Less:** Service Tax Paid by US on Partial RCM Income Bills		XX (XX)
		Unutilized Cenvat Credit (A)	**XX**
	OR		
B	**ACTUAL CENVAT CREDIT (AS PER BOOKS OF ACCOUNTS)**		
	Output Service Tax Payable (on ALL Income Bills) Less: Input Service Tax Receivable (IP & IPS)		XX (XX)
		Actual Cenvat Credit (B)	**XX**
	So, Eligible Refund Amount ***("A OR B" Whichever Is Less)***		**XX**
	SUBJECT TO :		
	Actual Service Tax Paid by **SERVICE RECEIPIENT** under Partial RCM		**XX**
	Hence, Assessee Will Get Eligible Refund Amount Subject To Above, If Above Eligible Amount Is Restricted, Then For Balance He Can Claim Cenvat Credit		

Here: Partial RCM = Partial Reverse Charge Mechanism
IP = Input Credit, IPS = Input Services Credit