

Relief to the Exporters: Refund of service tax on expenses incurred beyond factory gate

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World economy over last few years has been very sluggish and more so Indian economy. The impact on Indian economy could be witnessed in the form of declining exports from India. This requires stimulus from government in one way or another.

One way of reducing burden of tax on export has been to grant refund of service tax under Notification No. 41/2012-ST on services used in relation to export of goods outside India. The refund was allowed in relation to taxable services used beyond the **place of removal** for export of goods. The intention was to grant refund of tax paid on services used in the course of export of goods from the factory or any premises to port/airport.

The exporters were enjoying refund of on various services used in the course of export such as terminal handling charges, transportation charges (road/rail), storage, warehousing, bank charges on realization of export proceeds, CHA charges, survey charges, insurance, documents charges etc.

In February 2015, circular no.999/6/2015-CX was issued by department clarifying that in the case of exports, the place of removal is the **port or the airport** from where the goods are finally exported. This clarification virtually put an end to the refund benefit as once the port is treated as place of removal, no major expenses are incurred beyond this point on which service tax is payable. Majority of expenses incurred between factories to port were held ineligible for refund. Refund claims have been disallowed and show cause notices were issued.

This has directly resulted in increasing the cost of export for merchant exporter as well as manufacturer exporters (who were not claiming refund under Rule 5 of CCR) as the taxes which could not be claimed as refund were factored in the cost of production of goods and thus was resulting in violation of stated policy of government that only goods and services should be exported outside country not the taxes associated with them.

Realizing the problem being faced by exporters, the Board has issued Notification No. 1/2016 amending the notification no. 41/2012-ST by substituting "*place of removal*" with "*factory or any other place or premises of production or manufacture of the said goods*" effective from 3rd February, 2016. **The impact of said amendment would be allowing refund of service tax**

paid on expenses incurred post factory gate which hitherto were considered ineligible for refund.

There could be certain questions which could be relevant due to said amendment as discussed below:

FAQs

1. Whether notification has retrospective applicability?

Notification becomes effective when it publish in the official gazette. This notification is dated w.e.f. 03/02/2016 and there is nothing mention about its retrospective applicability. hence would be applicable prospective.

2. Whether refund would be allowed in cases where SCN have already been issued and which are pending for finalization at adjudication/appellate levels?

As this notification is not effective retrospectively and hence present disputes may not be benefited by this notification. However, it would put to rest litigation in future.

3. In past cases where refund has already been granted, whether it would be claimed back from exporter?

There could be possibility of department initiating proceeding for recovery of refund sanctioned in earlier years by claiming that refund was not admissible on expenses incurred between factory gate to port under earlier notification.

4. Refund claims which have been filed but pending disposal, whether would be allowed?

The benefit under amended notification would be provided where date of export i.e. "let export order" date is on or after 3.2.2016. In respect of case pending disposal, benefit may not be allowed under amended notification.

5. Where refund claim may be filed under amended notification in respect of consignment which have already been exported but no claim filed yet?

As answered in earlier question, the amended notification would become effective where date of let export order is on or after 3.2.2016. Hence, refund claim may not be admissible in respect of cases where goods have already been exported but refund claim not filed.

6. An exporter has received certain service prior to 3.2.2016 but goods have actually been exported after 3.2.2016, whether such services would be eligible for refund?

There is nothing in the notification like expenses should be incurred post 3.2.2016 and hence tax paid on services prior to 3.2.2016 and export made on or after 3.2.2016 would be eligible for refund.

7. Which all expenses would be eligible for refund under amended notification?

Service tax paid on following expenses would broadly be eligible under amended notification: (incurred beyond factory/warehouse etc.)

- Transportation of goods by road/rail/vessel/air
- Customs House Agency charges
- Container Freight Station charges (cargo handling, storage, warehousing and similar other expenses)
- Freight and Forwarding expenses
- Customs documentation charges
- Transit insurance
- Bank charges on realization of consideration from foreign importer
- Similar other expenses incurred pertaining to export of goods from India to outside India

8. I am a manufacturer and availing credit of service tax paid on these expenses. Can I claim refund of also?

No, you cannot claim both the benefit simultaneously.

9. Notification No. 41/2012-ST also grants option for claiming refund based on fixed percentage of FOB value of export. Whether there is any amendment in that also?

Yes, the rate of refund as specified in the Notification was fixed when the rate of service tax was 12.36% and has not been revised at the time of enhancing the rate of service tax to 14%. Notification No. 1/2016 has amended the rate schedule also as following:

Earlier rate (as % of FOB)	Revised rate (as % of FOB)
0.04	0.05
0.06	0.07
0.08	0.09
0.12	0.14
0.18	0.21
0.20	0.23

Conclusion: In the end of year 2015, government had announced scheme to facilitate speedy disbursement of refund to exporters under Rule 5 of the Cenvat Credit Rules, 2004. In the same direction, it is welcome step taken by government to avoid disputes and extending the legitimate benefit to exporters so that there cost may come down. This could be said certainly in the direction of “ease of doing business” policy propounded by Government of India. The government could have made it better by giving benefit of refund retrospective so that all pending dispute could have been settled. For any query, contact us at ashish@hiregange.com or madhukar@hiregange.com.