

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

Dear Professional Colleague,

1 year time limit to claim refund under Rule 5 of CCR reckoned from the date of receipt of export proceeds and not from date of export of services

We are sharing with you an important judgement of the Hon'ble CESTAT of Bangalore in the case of *Infosys Technologies Ltd. Vs. Commissioner of Service Tax, Bangalore [2016 (67) taxmann.com 313 - CESTAT BANGALORE]* on the following issue:

Issue:

Whether 1 year time limit to claim the refund of Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004 ("the Credit Rules") should be counted from the date of export of services or from the date of receipt of export consideration?

Facts & Background:

Infosys Technologies Ltd. ("the Appellant") was engaged in export of services and was also availing the benefit of Cenvat credit of Service tax paid on various input services. After utilising the Cenvat credit for payment of tax on certain taxable services, the Appellant was left with unutilised accumulated Cenvat credit. Accordingly, the Appellant filed refund claim on June 6, 2008 for the period April 2007 to March 2008 in terms of Rule 5 of Credit Rules.

Revenue's contention: The Revenue rejected part of refund claim as time-barred on ground that refund claim must be filed within 1 year from date of export of services.

Appellant's contention: There is no time limit for refund claim of the unutilised Cenvat credit in terms of Rule 5 of the Credit Rules. Notification No. 5/2006-CE (NT) dated March 14, 2006 ("Notification No.5") issued under Rule 5 of the Credit Rules refers to Section 11B of the Central Excise Act, 1944 ("the Excise Act"), but there is no 'relevant date' defined or prescribed for refund claim of the unutilized credit. In the absence of any relevant date defined, it should be left to the assessee to decide as to from which point of time, they were not in a position to utilize the Cenvat credit and claim refund thereafter.

Held:

The Hon'ble CESTAT, Bangalore held that although there is no specific 'relevant date' under Section 11B of the Excise Act to claim refund of unutilized credit, but, that would not rule out applicability of Section 11B. Relevant date should be the date of export. Since, as per Rule 3(2) of erstwhile Export of Services Rules, 2005, export of service is complete when consideration for same is received from foreign buyers, hence, relevant date would be 'date on which consideration for exported service is received'. Thus, matter was remanded back for allowing refund falling within 1 year from date of receipt of consideration.

Our Comments:

Mobile : +91 9810604563 ; E-mail : bimaljain@hotmail.com

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It would not be out of place here to mention that Notification No. 5 prescribing safeguards, conditions and limitations for the purpose of Rule 5 of Credit Rules was superseded vide Notification No. 27/2012 – CE (NT) dated June 18, 2012 (“**Notification No. 27**”).

Further, effective from March 1, 2016, Notification No. 27 is amended vide **Notification No. 14/2016 - CE (NT) dated March 1, 2016** so as to provide the time limit for filing application for refund of Cenvat credit under Rule 5 of the Credit Rules, in case of export as under:

- in case of manufacturer, before the expiry of the period specified in Section 11B of the Excise Act,
- in case of service provider, before the expiry of one year from the date of:
 - (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or
 - (b) Issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice

This is indeed a pleasant amendment which would help to resolve all the disputes, which had originated in course of interpretation of Section 11B of the Excise Act in the case of time limit for filing refund claim on export of services.

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[Service Tax & Cenvat Credit Rules, 2004](#)

[Central Excise & Customs](#)

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

[Author of a book on Goods and Services Tax, titled, "GOODS AND SERVICES TAX – INTRODUCTION AND WAY FORWARD" \(1st Edition\)](#)

Mobile : +91 9810604563 ; E-mail : bimaljain@hotmail.com

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

A2Z TAXCORP LLP

Tax and Law Practitioners

Delhi:

Flat No. 34B, Ground Floor,
Pocket – 1, Mayur Vihar Phase-1
Delhi – 110091 (India)
Tel: +91 11 22757595/ 42427056

Allahabad:

B2-3/4-31 Sarojani Apartments
Sarojani Naidu Marg
Allahabad - 211001

Chandigarh:

H. No. 908, Sector 12-A,
Panchkula, Haryana – 134115

Email: bimaljain@hotmail.com

Web: www.a2ztaxcorp.com

LinkedIn: <https://in.linkedin.com/pub/bimal-jain/14/601/4b4>

Face book: <https://facebook.com/bimal.jain.90>

Twitter: <https://twitter.com/JainTax>

YouTube: <https://www.youtube.com/channel/UCp0tT5ShjB4KHJRSIPc3t5w>

We can now also be contacted at below mentioned address:

Bengaluru Office:	Kolkata Office:	Dhanbad Office:
<u>Contact Person:</u> Mr. Jayesh Gupta, Adarsh Residency, Block F, 4th Floor, (F404) 47th Cross, Jayngar 8 th Block, Bengaluru, Karnataka-560070 Phone: +91 9831220678 Email: bengaluru@a2ztaxcorp.com	<u>Contact Person:</u> Mr. Niraj Harodia, 10 Bow Street, 2 nd Floor, Near Central Metro Station, Besides Calcutta Motor Dealers Association, Kolkata, West Bengal- 700012 Phone: +91 33 40050615/ 8017467202	<u>Contact Person:</u> Mr. K.K. Harodia, 2 nd Floor, Shree Laxmi Complex, Dhanbad, Jharkhand- 826001 Phone: +91 9431120134/ 3262302066 Email: dhanbad@a2ztaxcorp.com

Mobile : +91 9810604563 ; E-mail : bimaljain@hotmail.com

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

	Email: kolkata@a2ztaxcorp.com	
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