

## **REFUNDS W.R.T SERVICE EXPORTS UNDER GST**

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**Prelude:** Export refunds are often a subject matter of dispute and bone of contention between the exporter and the tax department in the context of indirect taxes in India. While the policy of the Government is to free exports from the burden of taxes, the tax administration often finds ways and means to somehow avoid granting refunds/rebates. This results in dilution of the avowed policy and objective of the Government. As we expect the GST law to be unveiled shortly, the exporters hope to see a significant change in the stance taken by the tax administration in the matter of refund w.r.t. export of services. The <sup>1</sup>Joint Committee on Business Processes for GST has submitted its report on refund processes in the month of August 2015, which has been placed in the public domain recently.

While the report deals with a plethora of issues relating to refund processes, this article contains a brief analysis of the processes recommended for refund of service tax for service exporters<sup>2</sup>. The objective is to understand the measures that would be taken to hasten this process (as per the report) and also to recommend/suggest further measures as the process of granting refund expeditiously to the service exporters cannot be derailed or delayed in future, when GST is introduced.

### **Positive initiatives (as per report):**

1. Invoice and bank realization certificates would be the crucial documents for filing the refund application.
2. The refund application would be examined for deficiency to see whether it is complete (mistakes / omissions, errors to be avoided).
3. 90% of the refund amount would automatically be credited by the system.
4. The balance amount of 10% would be sanctioned after verification of documents.

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<sup>1</sup>Constituted by the Empowered Committee of State Finance Ministers.

<sup>2</sup> Service Exporters at present have trying times inasmuch as their claims are pending since more than 10 years!! Lately some instructions for payment of 80% of "eligible" credit is being followed by some Commissionerates but delayed in some places in India.

5. The interpretation as to whether the tax cost has been factored in the price charged/realised for export at times has led to claims being rejected due to the concept of unjust enrichment. Considering that international trade is very competitive, this concept has been finally discarded except for deemed exports.
6. In case of rejection of the refund application the system of automatic (suomotu) credit has been continued.
7. A long standing demand of the service exporters of fixation of time limit for sanction of refund would be met, which is a welcome step.
8. The system under central excise for drawback, which is automatic and involves system generated claim processing by avoiding human intervention, is being introduced.
9. In case of disputes which are sure to be there, the refund claims are not to be kept in abeyance. This is unless the stay order is obtained from the higher appellate authority.

**<sup>3</sup>Author's suggestions/recommendations:**

- a. Restrictions and conditions should be minimized if it cannot be completely eliminated.
- b. The policy framed by the Ministry of Commerce should be implemented in toto without any hassles and both the Ministries (Finance and Commerce) should work in tandem and harmony.
- c. A separate wing should be created in the Department to process and expedite refund claims and in case of dispute it should be adjudicated by the same officers, who are empowered to decide demand cases (as per monetary limits).
- d. It is a common apprehension that sanction of high refund amounts to service providers could lead to questions by the Audit including CAG. Specific measures to safeguard honest and efficient officers who sanction refund on merits should be put in place.

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<sup>3</sup> For further information the readers may refer to the book titled 'Goods and Service Tax – A Primer by Madhukar Hiregange & K.S. Naveen Kumar, published by Wolters Kluwer CCH.

- e. Training of departmental officers is necessary, which would enable them to understand the spirit of the law. Only then should such an officer take charge of refund adjudication cases. Like all professional courses annually 50 hours of training should be mandated to be attended by the departmental officers, as a part of annual performance appraisal.
- f. Sensitization and training of departmental officer such that they call for relevant documents and that too once. They should avoid calling for unspecified and unnecessary documents and shun different practices in different Commissionerates/States.
- g. The success of any system would depend on adherence to its form and spirit.
- h. The time lines should be adhered strictly in granting refund and monitored by a process of escalation. Age-wise analysis of the pendency should be noted and responsibility should be fixed on the Officers for inordinate delay without valid reasons.
- i. In case of delay in sanction of refund, interest rate as applicable to demand cases, should be automatically paid.
- j. Adjudication officers should be made accountable for passing orders without application of mind or non-speaking orders.
- k. Proper maintenance of records and documents at revenue side would avoid delay and derailing of the refund claim process.

### **Conclusion:**

The fast tracking of refund mechanism for exporters is an essential element to gauge the success of GST in India to make the product or service really competitive in Global trade. The report has rightly identified a few areas which are very important. The improvements suggested above are based on the actual issues faced by service exporters at the ground level, which we hope would be considered by the policy/rule makers.

(The authors acknowledge with thanks the valuable inputs received from CA Akbar Basha, while preparing this article)