

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
NO.1, WILLIAMS ROAD, CONTONMENT, TIRUCHIRAPPALLI-620 001.

Trade Notice No.18/2008 S. Tax

Dated: 23-12-2008.

Subject: Service Tax –Filing of claim for refund of service tax under
Notification No.41/2007-ST dated 6-10-2007 –
Communication - regarding.

Ministry's Service Tax Circular No. 106/9/2008-ST dated 11-12-08 issued in
F.No.137/84/2008-CX.4 on the above, is enclosed herewith for information, guidance
and necessary action.

The contents of this Trade Notice may be brought to the notice of all constituent
members of the Trade Associations and Chambers of Commerce.

(Issued from C.No.IV/16/805/2008 S .Tax)

Encl.: As above.

Sd./-
(VASA SESHAGIRI RAO)
ADDITIONAL COMMISSIONER

To
The Mailing list I / II / III.

Copy of Circular No.106/9/2008-ST dated 11-12-2008 is reproduced below.

Notification No. 41/2007-ST, dated 6/10/2007 allows refund of service tax paid on specified services used for export of goods. The Board has from time to time examined the procedural difficulties arising in implementation of this refund scheme. In this context, a circular (No. 101/4/2008-ST, dated 12.5.2008) was issued earlier whereby the procedural difficulties that were being faced by the merchant exporters and the exporters having multi location offices were resolved. Subsequently, notification No. 32/2008-ST, dated 18.11.2008 has also been issued to (i) extend the period of filing of refund claim by the exporter from 60 days to six month and from the end of the quarter to which such refund claim pertains; and (ii) allow refund on testing service, without any copy of agreement with the buyer of goods, if such testing and analysis is statutorily stipulated by domestic rules and regulations.

2. The Board has received further references from field formations and trade seeking clarification on other procedural issues. Trade has also reported delays in sanction of refund claims. These issues and the clarification for streamlining of procedures are discussed below.

3. ISSUE No. I: The procedure for availing refund, under the aforesaid notification, by a manufacturer exporter not registered with central excise is as under:

- (i) He shall file the claim with the central excise authority having jurisdiction over the factory of manufacture [para 2 (b)(i) of the notification];
- (ii) He shall file a declaration in the format given in the annexure to the notification. The CX authority would issue a STC No. (Service Tax Code) to him [para 2 (c) and 2(d) of the notification].

The issue raised by some of the exclusive Central Excise Commissionerates is that they do not have access to the System for Allotment of Service Tax Payer Code (SAPS). Hence, exclusive Central Excise Commissionerates in places like Delhi and Bangalore have not been able to process the refund claims filed by the manufacturer exporter not registered with central excise.

CLARIFICATION: The Directorate of Systems has reported that there is no restriction for exclusive Central Excise Commissionerates in having access to SAPS. Therefore, exclusive Central Excise Commissionerates, not having access to SAPS at the moment, may approach the Directorate of Systems to get the access to the centralized software.

4. ISSUE NO. II: One of the conditions of the notification is that the exporter claiming exemption has actually paid the service tax on the specified services [para 1(c) of the notification]. The other condition is that the refund claim shall be accompanied by document evidencing payment of service tax [para 2(f) (ii) of the notification]. In this regard the following issues have been raised.

- (i) Whether the invoices/bills/challan issued by the service provider, showing service tax amount could be treated as evidence that the exporter has paid the service tax.
- (ii) The invoices produced by the exporters are at times not complete (i.e. does not have STC code of service provider)
- (iii) One to one correlation between payment of ST and invoice is difficult in many cases.

CLARIFICATION: The invoices/challans/bills issued by supplier of taxable service, in conformity with rule 4A of the Service Tax Rules, 1994, are reasonable evidence that the services on which refund is being sought are taxable service. The compliance of condition that exporter has actually paid the service tax rests with the exporter claiming refund. Therefore, in so far as this condition is concerned, the refund claim should be processed based on furnishing of appropriate invoices/ bills/ challan by the person claiming refund and undertaking to the effect of payment of service tax by him. For the purposes of compliance verification, random checks should be carried out independently and where the refund amount is significant, post refund audit may also be carried out.

As regards incomplete invoices/bills etc., rule 4A of the Service Tax Rules, 1994 prescribes the statutory requirement. Compliance of this rule requires that the invoices/challan/bills should be complete in all respect. Therefore, the exporter claiming refund of service tax under notification No. 41/2007-ST should ensure in their own interest that invoices/bills/challan should contain requisite details (name, address and registration No. of service provider, S. No. and date of invoice, name and address of service receiver, description, classification and value of taxable service and the service tax payable thereon). Refund claim cannot be allowed on the basis of invoices not having complete details as required verification cannot be carried out by the department on the basis of incomplete invoices.

5. ISSUE NO. III: Vide instruction F. No. 341/15/2007-TRU, dated 17.4.2008, direction has been issued that refund claim be disposed of within thirty days. Commissioners have stated that it is not practically feasible in all cases to dispose of the refund claim within this time frame in view of procedural and other issues involved in processing of claim.

CLARIFICATION: The difficulties arising in processing of claims may be brought to the notice of the Board. The procedural difficulties brought so far to the notice of the Board have been clarified earlier vide circular No. 101/4/2008-ST, dated 12.5.2008 and vide this circular. This should enable the field formations to dispose of the pending refund claims expeditiously. Therefore, every effort should be made by field formations to adhere to the prescribed timelines.

The Board has further decided that 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. Under this simplified procedure, 80% of the due refund amount is sanctioned as adhoc interim refund to specified category of exporters having good track record, within 15 days of filing of a refund claim, subject to the condition that refund claim is complete and contains the requisite documents. For this purpose, the specified category of exporters would be (i) all exporters having export turnover of more than Rs 5 crore in the current or preceding financial year; (ii) PSUs including PSUs of State Governments; (iii) Star Export Houses as specified under Chapter 3.5 of the Foreign Trade Policy, 2004-2009; (iv) 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. (v) exporters registered with service tax or central excise who have paid central excise duty and/or service tax amounting to Rs. 1 crore or more during the preceding financial year; (vi) All Export Oriented Units.

Yours faithfully,

(Gautam Bhattacharya)
Commissioner (ST)