

## **“ACCHE DIN” for service exporter: Speedy disbursement of refund claim?**

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There were indications during last few months that the government could come up with scheme to facilitate exporters for speedy disbursement of refund claim blocked since many years. The Government has chosen auspicious day of Diwali to shower ‘*Dhan*’ on the service providers in the form of announcing simplified scheme for liquidating accumulated credit . It is a welcome step by government complementing its initiative of ease of doing business in India, but the success of the same would depend to a large extent on the no risk + attitude of the officers of the department.

This article examines the features of the scheme and suggestion as to how it could have been made more result oriented.

The scheme has been announced vide circular no. 187/6/2015-ST dated 10th November, 2015. There was earlier circular no. 828/5-CX issued in 2006 to provide for quick disposal of refund. But it has been felt that the instructions in earlier circular had become outdated due to development in the law. Consequently present circular has been issued to rationalise the provisions according to the need of time. Though it is merely a circular, yet the board has nomenclated it as “scheme”.

**Applicability of the scheme:** The applicability of the scheme has been very limited. It is applicable only to the service exporters in respect of claims which have been filed on or before 31.3.2015 and which have not been ‘*disposed of*’ as on the date of circular. ‘*Disposed of*’ means the claims which have either been sanctioned or denied of refund, either in full or in part, by way of an ADJUDICATION ORDER.

Illustrative cases which are not covered under the scheme:

1. Claim filed by manufacturer exporter
2. Claim filed after 31.3.2015
3. Claim where refund has been sanctioned either in full or in part by way of *adjudication order*.
4. Claim where refund has been rejected either in full or in part by way of *adjudication order*. (*Mere issuance of SCN is not adjudication order*)

5. Where refund has been disbursed but claim has been remanded to adjudicating authority by Tribunal or Court

**Features of the scheme:** Brief feature of the scheme are as follows:

1. Applicable to service exporter for claims filed under Rule 5 of CCR upto 31.3.2015 which have not been "*disposed of*" till 10.11.2015.
2. Certificate signed by statutory auditor (in case of company) or by some chartered accountant (in other assessee) as per format in Annexure 1 to be submitted.
3. Undertaking that in case refund provisionally granted but subsequently found inadmissible to be paid back to the extent inadmissible along with interest. Undertaking to be signed by claimant as per format provided in Annexure 2.
4. Based on certificate and undertaking, 80% of the refund claimed would be disbursed provisionally within 5 days from the date of making application.
5. The refund application would be reviewed by jurisdictional AC/DC for checking correctness of claim in terms of the relevant notification.
6. If refund found inadmissible (either in part or in full), intimation would be given so that claimant could pay inadmissible amount along with interest under section 73 (3). If not paid, SCN would be issued and speaking order would be passed based on claimant's reply.
7. Order passed by adjudicating authority would be subject to review by jurisdictional commissioner.

**Positives of the scheme:** The scheme issued by government has many positives which could be as under:

1. The scheme implemented in true sense by department officers could ease the working capital/cash flow pressure of service exporter. Reduce cost of export.
  2. This scheme will lead to fast track disposal of claims, as lots of claims are kept untouched for various reasons since claims have been filed.
  3. This would show case "ease of doing business" to some extent.
- 4 Sufficient time to exporter to submit the certificate for pending claims filed on or before 31.03.2015 along with entire refund claim.

**Challenges arising under the scheme:** There existed earlier circular providing for disbursement of refund on provisional basis yet the same has not been very effective. Following would be major challenges in successful implementation of the new scheme:

1. Extent to which refund sanctioning authority would follow this circular.
2. Extent of cash flow available with the revenue to comply with this circular especially during year end where government has to achieve revenue collection targets.
3. Compliance with this circular would lead to lot of additional work at the departmental level. Whether officer at lower rank would be willing to take the burden of additional work pressure?
4. Risk of certifying claim wrongly by the statutory auditor/chartered accountant, could lead proceedings against them.
5. Most of the service exporters are normally companies, wherein certificate from the statutory auditor would be heavily relied upon by the revenue, while sanctioning the claim on provisional basis.
6. There could be difference of opinion between company seeking refund and statutory auditor on various issues such as Place of Provision of Service Rules, eligibility of credits on certain services, export of service etc. This difference of opinion could result in statutory auditor denying issuance of certificate or issue of certificate after making cut of claim to the extent of disagreement.
7. From a statutory auditor's point of view, who is certifying the entire claim, there would be additional burden of ensuring eligibility, compliance with Cenvat credit rules, Place of Provision of Service Rules, Service Tax Rules – Export of Service, unlike certificate issued in terms of notification 27/2012-CE(Nt), which is issued by Chartered Accountant, merely certifying Export Turnover alone in terms of Rule 5(1)(D), of Cenvat Credit Rules.
8. This scheme could lead to difference in claim amount already filed by the company seeking refund and the certificate issued by the statutory auditor.
9. Since the department would rely upon the statutory auditors certificate, in case the statutory auditor does not issue a clear report or issues a report with caveats, then the paper writer doubts the extent to which department would rely on such application made under this scheme.
10. This scheme could open up lots of litigation, as experienced from the amnesty schemes issued in past (latest being VCES), unless the departmental attitude is changed.

**Suggestions:**

1. The scheme has been confined only to service exporters. The benefit should have been extended to manufacturer exporters as well.
2. This scheme should have been extended even the refund/ rebate claims filed under notification 39/2012-ST- Rebate on inputs and input services, 41/2012-ST rebate procedure for exporter of goods, 12/2013-ST- ,Services provided to SEZ.
3. Adjudicating officers should be made accountable for issuing SCN/ passing of orders without application of mind or non-speaking orders.
4. There could be many assessee who may be exporting both goods and services. It could be possible that the benefit is not extended to them by department on the pretext that they are not service exporter only.
5. The coverage under the scheme would be very limited as the "*disposed of*"cases, whether full or in part, have been kept out of the scheme. The benefit should have been extended unequivocally to all the refund claims.
6. The scheme would not help in reducing the large number of disputed cases pending before judiciaries at various levels. The scheme could have provided to grant refund in all pending cases before judiciaries with some cut in original claimed amount. This could be in the form of amnesty scheme.
7. No timeframe has been prescribed for release of balance refund of 20%. It is likely that the same would be get piled up as no accountability has been fixed for releasing the same.
8. The scheme envisages filing undertaking by the claimant that in case refund provisionally granted is found inadmissible, the same would be recovered on intimation by department. It could be possible that the refund ultimately rejected by adjudicating authority on some frivolous grounds (*as have been done in the past*)and may approach the claimant to pay the same based on intimation letter. If not paid, they could establish it as evidence against the claimant in legal proceedings.
9. The scheme would cover the cases upto 31.3.2015. It could have been made a ongoing process so that all refund claim filed could invariably be processed as per the scheme only.

## **Conclusion**

It has been welcome initiative by Govt. of India. The success of it would depend to a large extent on the attitude of department officers. The experience of tax payers based on earlier

circular has not been very encouraging. If the same practice is adopted by department officers under current scheme also, the very purpose of issuing the same would be defeated.