

## **Time Limits for Filing Refund Claims Under Cenvat Credit Rules- Service Exporter**

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Finally CBEC by notification 14/2016-CE(NT) has brought out the required clarification as to from which date the period of one year was required to be counted for the purpose of limitation in filing the refund application by the manufacturers exporters and service exporters under Rule 5 of Cenvat Credit Rules.

This issue was more of a concern for the service provider, as notification 27/2012-CE(NT) had referred filing of refund claim before the expiry of the period specified in section 11B of Central Excise Act (CEA), however section 11B of CEA did not refer to a service provider, therefore the field formation had their own interpretation to count the period of one year for filing the refund application for service exporter. Some of the interpretation of Assessing officers to count period of one year was as under.

- i. Time limit of one year should be counted from date of export of service invoice.
- ii. Time limit of one year should be counted from 9 months from the end of quarter for which period the claim was filed, as the claims are filed on quarterly basis.
- iii. Time limit of one year should be counted from the date of input service invoice
- iv. Time limit of one year should be counted from date of receipt of advance.
- v. Time limit of one year should be counted from one year from the end of quarter in which refund claim was filed.

All the above said interpretations did cause harm to the service exports who had not filed the refund claims within the specified time lines mentioned above, even thou there claims were filed within one year from the date of receipt of foreign exchange, resulting in their claims being wedged in litigation before Appellate Authorities, resulting in blocking of working capital.

Bangalore CESTAT in batch of refund cases vide 2014- TIOL-1836-CESTAT-Bang, in an interim order had set out principles to calculate the period of one year

- a. From the date of receipt of consideration in foreign exchange for service exporters,
- b. In case the consideration in foreign exchange was received in advance the date of raising export invoice by service exporter.

The above said principles also took into account Rule 6A of Service Tax Rule, however the assessing officers failed to take note of the said principles, citing reasons that the principles laid down come only from an interim order and not from final order.

Now CBEC vide notification 14/2016-CE(NT) has put rest to various interpretation by amending 27/2012- CE(NT) , wherein para 3 for clause b is substituted as under

The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed as under:

- (i) In case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944);
- (ii) 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.

Earlier para 3 for clause b in notification 27/2012-CE(NT), read as under ~~“The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).”~~

Now the next question which needs to be seen is whether this notification is applied retrospectively from 1.7.2012, so that it acts as a welcome step for service exports, which could put to an end various refund cases of service exporter wedged under litigation on ground of limitations.

Also there is a school of thought, which states, since the time limit for service exporter is prescribed only from Finance bill 2016, in respect of Rule 5 of CCR,

which means there was no time limit for filing refund claims for the earlier period???