

## CBEC may like to speed up issuing Notification under Rule 5B of CCRs – Feb 22, 2013



FEBRUARY 22, 2013

By S Sivakumar, Advocate

THE 'Reverse Charge Mechanism' covered under Section 68(2) of the Finance Act, 1994 is one of the most obnoxious development in the service tax law as applicable from July 1, 2012, requiring the service recipient to discharge the service tax liability, either fully or partially, in respect of several services like works contract services, manpower supply services, security agency services, services rendered by non-Executive Directors, rent-a-cab services, etc.

There could be several cases, where the service recipient is not in a position to utilize the CENVAT credit of the service tax paid on input services covered under the Reverse Charge Mechanism, due to a variety of reasons, including but not limited to the service recipient being a small scale service provider, a trader, etc.

The Central Government has, in its infinite wisdom, recognized this problem and has inserted Rule 5B, in the CENVAT Credit Rules, 2004, by notification 28/2012-CX(NT) dated 20.06.2012 with effect from 1-7-2012, which reads as follows:

*Refund of CENVAT credit to service providers providing services taxed on reverse charge basis. -*

*5B. A provider of service providing services notified under sub-section (2) of Section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette. Despite the fact that Rule 5B of CCR, 2004 envisages mitigating the hardship created on assesseees, who are constrained to accumulate CENVAT credit due to payment of service tax under the Reverse Charge Mechanism, by laying down a refund mechanism, **such assesseees cannot get any relief unless and until the Board issues a Notification** under this Rule.*

It is pertinent to note that although Rule 5B came into the statute book on 1-7-2012 and **even though more than five months have elapsed the Board has not found it apt to issue the notification in this regard.**

Although **DDT 1970** had covered this issue as early as on **26-10-2012**, the Board chooses to turn a blind eye to a "trade beneficial measure" but appears hyper-active only on the "recovery" front.

**Or is the Board having some other ideas?**