

Filing of quarterly refund claims by exporters – Computation of limitation period : 06-07-2015



By S Sivakumar, Advocate

AT the very outset, I would like to submit that this piece is not on the applicability of Section 11B of the CEA, 1944 to claims filed by exporters seeking refund of unutilized cenvat credit under Rule 5 of the CCR, 2004 read with *Notification No. 27/2012-CE(NT) dated 18-6-2012*. As TIOL readers are aware, the question as to whether Section 11B is applicable to claims filed by exporters seeking refund of unutilized cenvat credit is, in itself, a highly controversial subject, with seemingly contradictory decisions from the High Courts of Madras and Karnataka. The issue that is covered in this piece, however, is the manner in which the one year period is sought to be interpreted by the Service Tax Department for purposes of the limitation prescribed by Section 11B, vis-à-vis the refund claims filed by exporters.

Many Commissionerates are of the strong view that while handling refund claims filed by exporters, the one year period is to be applied on a proportionate basis. Thus, if the refund claim for the quarter April 1, 2014 to June 30, 2014 has been filed, let's say, on June 1, 2015, the Department would typically reject the refund claim to the quantum pertaining to the period April 1, 2014 to May 31, 2014 on the basis that the refund claim having been filed on June 1, 2015, is hit by Section 11B to the extent of the claim pertaining to the period April 1, 2014 to May 31, 2014. In a practical scenario, if the cenvat credit availed during this quarter is, let's say, Rs 30 lakhs, the Department would typically reject the claim of Rs 20 lakhs as being barred by Section 11B and proceed to adjudicate the claim on the basis that the credit eligible for refund is Rs 10 lakhs, on the proportionate basis. It is another matter that the Department would still seek to refuse the refund even in respect of this quantum of Rs 10 lakhs, on the basis of several factors including the absence of the 'nexus'.

Be that as it may...the question that arises is, whether, this view of the Department is correct in law. In terms of *Notification No. 27/2012-CE (NT) dated June 18, 2012*, refund claims have to be filed by the exporters not more than once, for every quarter. Thus, refund claims can be filed only for the quarter as a whole and not for any individual months comprised in the quarter. Once it is agreed that the exporter is entitled to file the refund claims only a quarterly basis, the correct legal view would be that the one year limitation would commence only from the end of the relevant quarter and consequently, in the example that we have considered above, the refund claim for the quarter ended June 30, 2014 can be filed on or before June 30, 2015 without violating the one year limitation prescribed by Section 11B of the Central Excise Act, 1944.

This view finds support, in terms of the *Board Circular No. 112/6/2009-S.T dated 12-3-2009* issued in the context of Notification No. 41/2007-S.T. dated October 6, 2007. The relevant portion of this Circular is extracted below:

| S. | No. Issue Raised | Clarification |
|-----------|---|--|
| I | Notification No. 41/07-ST has been amended by notification Nos. 32/2008-ST, dated 18.11.2008 and 33/2008-ST, dated 7.12.2008 to (i) extend the limitation period from 60 days from the end of quarter to six months; (ii) to omit the condition of non-availment of drawback. Whether, in view of amended conditions, refund for the quarter Mar-Jun 08 would be allowed to be filed till Dec 08? | It is clarified that consequent upon revision of limitation period, any refund claim that is filed within such revised limitation period would be admissible if it is otherwise in order. Therefore, refund claims of service tax on specified taxable services used for exports of goods made in the quarter Mar-Jun 08 could be filed till 31 st Dec 08. |

The view expressed by the Board that the limitation would commence from the end of the quarter, in the context of the limitation period being 6 months, should also be relevant in the current scenario where the limitation period is one year.

I understand that there are differing views on this subject among the various Commissionerates. The Board would be doing a great service to the exporters by issuing a clarification. All these "Make in India" mantra

will turn into reality only and only if the exporters are not denied their rightful claims and the jurisdictional authorities better understand it.