# Refund of accumulated cenvat credit to exporters – amending notification without amending rule 5 would not deliver results – Mar 4, 2010

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**By S Sivakumar, CA**

**THE** Finance Ministry, it would seem, has made a valiant attempt to simplify the law and procedures related to the refund of the unutilized cenvat credit for exporters. For achieving this highly creditable purpose, the Government has proposed to amend Notification No. 5/2006-CE dated 14-3-2006, by adding, retrospectively with effect from 14-3-2006, the words " in relation to " in the main condition (a) of the Notification. There is also a proposal to replace the word "in" contained in main condition (b) of the said Notification, with the word "for".

As per the Board Circular No**. D.O.F. No.334/1/2010-TRU dated 26-2-2010,** the above two changes would ensure that the provisions of the refund notification and the CENVAT Credit Rules are aligned and that refund is granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services. Further, the illustration given in condition 5 of the Appendix to the Notification No. 5/2006-CE dated 14-3-2006 has also been deleted. This, as per the Board Circular, would ensure that refund of CENVAT credit which has been availed in the period prior to the quarter/ period for which the refund has been claimed is also eligible for refund.

While congratulating the Finance Ministry on its noble intention of trying to ensure that the refund claims filed by exporters acted upon by the Department, I must use this opportunity to bring one major lacuna in the whole approach that the Ministry has adopted towards achieving this objective. Let's keep in mind that no change is being proposed to Rule 5 of the Cenvat Credit Rules, 2004, which continues to read, as under:

" Rule 5**.** Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or

(ii) service tax on output service,

and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification".

I don't see any major gains accruing to the exporters by this proposed amendment to the Notification No. 5/2006-CE dated 14-3-2006, without a corresponding amendment to Rule 5 of the Cenvat Credit Rules, 2004. As we have seen, the said Rule continues to use the words "used". In other words, as per Rule 5, refund is available only if the input or input service is 'used' in the manufacture of the final product or in providing the output service which is exported.

Thus, as of now, we have a conflict between the proposed to be amended Notification No. 5/2006-CE which states that refund is available in respect of accumulated cenvat credit on inputs and input services used in relation to goods exported or services exported, while, the concerned Rule 5, which would prevail over the Notification, still insists that the input or the input service should be 'used' for the export of goods or services.

In the absence of a corresponding amendment to Rule 5 of the Cenvat Credit Rules, 2004, on the lines of the amendment carried out in Notification No. 5/2006-CE, exporters might still not get the benefit of their refund claims being expeditiously settled by the Service Tax Department. The numerous Notifications and Circulars issued under Rule 5 have completely failed to achieve anything concrete, including the latest Circular No. 120/01/2010-STdated January 19, 2010 and the latest amended Circular No. 5/2006-CE should not meet the same fate.

Exporters have been suffering right since 10th September 2004, when the new Cenvat Credit Rules, 2004 came into operation, due to the manner in which Rule 5 has been worded, despite innumerable notifications and circulars from the Finance Ministry, as aforesaid.

One hopes that, at least now, Rule 5 would be amended retrospectively from September 10, 2004 to ensure that the Service Tax Department is legally bound to effect refund of the service tax to exporters.