# Sanctioning Refund claims on provisional basis – an escape route?
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THE Government has come out with a Circular No.187/6/2015-Service Tax dated November 10, 2015 to provide for the payment of 80% of the quarterly refund claimed by services exporters, on a provisional basis. In this article, I have attempted to bring out some of the lacunae in the otherwise well intentioned process initiated by the Government.

The Circular talks of a certificate to be provided, in the prescribed format (Annexure-1) by the claimant's statutory auditors if the claimant is a company, and in cases where the claimant is a non-company, by a chartered accountant. A reading of the Annexure-1 makes it clear that, most statutory auditors and CAs would find it very difficult to give a certificate on the lines of the format prescribed, as they are required to certify, *interalia*, that the exporter are eligible to claim the refund in terms of Rule 5 of the Cenvat Credit Rules, 2004 and that the exporter has also filed the refund claim within the prescribed time limit. The reference it seems, is to the one year time limit prescribed by Section 11B of the Central Excise Act, 1944. While services exporters have been taking the view that the limitation should commence from the end of the relevant quarter, the Department is sticking to its stand that the limitation is to be calculated vis-à-vis the beginning of the quarter. Thus, as per the Department, the due date for filing refund in respect of the quarter ended, let's say, September 30, 2013 is 1 st September 2014. This interpretation could create issues in the issuance of the certificate. Moreover, the Department is also not agreeing to the law laid down in several CESTAT decisions to the effect that, in the case of services exporters, the relevant date for the purpose of Section 11B would be the date of realization of the export proceeds and this could create issues vis-à-vis the format of the certificate prescribed in Annexure-1.

Moreover, the onus of certifying the correctness of the refund claim cannot be passed on the claimant's auditors. Chartered Accountants, can only certify based on the records and documents produced to them. The format of the certificate as prescribed does not provide for any disclaimer by the CAs, which may make the whole exercise unworkable. Moreover, the statutory auditors cannot be expected to take a call on several contentious issues that govern the cenvat credit process, which as everybody knows, has seen unprecedented litigation. The CA profession's professional ethics would perhaps, not allow, for such a blanket certificate to be provided and it would seem that, the

Department would reject any claim which might contain a CA certificate that is not exactly on the lines of the format prescribed.

Nonetheless the circular states, in Para 3, that the CA certificate and the self-certificate, etc. are additional documents to be filed, i.e. in addition to the documents that are to be filed. A lot of issues could arise here inasmuch as there is no standard list of documents that need to be filed by the exporters that has been prescribed by the CBEC. It is left entirely to the whims and fancies of the respected Asst/Deputy Commissioners to prescribe their own set of documents, while processing refund claims. In some cases, I have come across cases where the Departmental officers have asked for copies of all bank statements of the exporter and in the case of one of my clients, I might have to hire a truck to deliver copies of these statements to the Department. In many cases, the Department also insists on original invoices to be filed. Hence, a lot of disputes could arise here. It would have been better if the Circular only stipulated the requirement of the certificates from the auditors and the claimants as the Department could reject claims under this circular on the basis that some of the documents originally required have not been filed.

In terms of Para 2.2, the circular is applicable in respect of claims filed on or before 31-3-2015, which have not been 'disposed of', in whole or in part, by way of an adjudication order. It would then seem obvious that the benefit of this circular is applicable even in respect of cases where show cause notices have been issued and personal hearings concluded but, in respect of which, adjudication orders have not yet been passed. I don't know how this could work from a practical perspective, given the fact that adjudication proceedings are underway in respect of tens of thousands of refund claims filed by exporters.

In terms of Para 4 of the circular, the Department will have to issue a show cause notice, if it finds that either the whole or the part of the refund granted to the claimant on a provisional basis is improper, on the basis that the exporter is ineligible for the refund. This is fine as the exporter will have the opportunity to contest the issues raised by the Department in the adjudication and appellate proceedings. There seems to be a dichotomy vis-à-vis this view inasmuch as in Annexure-2, the exporter is required to undertake to pay back the differential amount upon intimation about its inadmissibility, along with the applicable interest thereon.

**Before concluding…**

One cannot complain about the noble intention of the Government to reduce the woes of the service exporters, whose refund claims are pending disposal for several years now. Hailing from Bangalore, which perhaps has one of the largest chunk of refund claimants, I can understand the difference that this circular could make to services exporters. But, my fear is that, this circular, in its current form, may not make a big difference, as the Departmental officers would still find enough reasons to deny the benefit of the provisional refund to services exporters.

Realising the difficulty of exporters, the CBEC had allowed for any auditor to certify the Form-A forming part of the refund claim, in terms of the Notification No. 27/2012-CE(NT) dated 18-6-2012. Given this, one does not understand the insistence on the statutory auditors to sign the required certificate prescribed under this circular.

It would seem that the Babus sitting in Delhi are apparently disconnected from the realities insofar as the processing of the refund claims by the Department is concerned. This Circular seems theoretical, to say the least, as it does not address the fundamental issues concerning the refund process.

In addition to initiating this process involving provisional refunds Board should also insist that refund claims are processed within a time frame of 6 months from the date of filing of the claims. Expeditious disposal of the refund claims is the only panacea to the problems faced by services exporters.