

Why has ST refund mechanism failed so miserably? : 28-04-2015



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THIS is indeed a billion dollar question, literally. One had hopes that the new Government would take some effective steps to ensure the flow of refunds to exporters. Sadly, in the last two Budgets, the woes of the exporters in terms of refunds have been totally ignored with the result that the refund mechanism has gone from bad to worse.

I have been handling issues related to refund claims of my clients over the last few years. Sadly enough, I have seen no improvement in the manner the Department handles refund claims of exporters. In fact, things would seem to have gone really bad in the recent months following the re-structuring of the service tax department and in many cases, the refund related files have been misplaced with the refund claimants being asked to re-submit claims. Following the restructuring, the Assistant and Deputy Commissioners who are vested with powers to handle refund claims also feign ignorance as to their jurisdiction to handle cases as the entire Department seems to be in a mess.

In many cases, show cause notices have not been issued on the quarterly refund claims filed for years now. Even in cases where show cause notices have been issued, the Assistant and Deputy Commissioners who are required to call for personal hearings are happily sitting on these files (I mean this in a literal sense as it is understood that, these officers would find it more comfortable to use these files as chairs, in the absence of furniture being made available to them) for months and years together. In very few cases where personal hearings have been conducted, the officers are not willing to pass adjudication orders. In many instances, tens of box files containing important documents related to refund claims are claimed to be untraceable.

At the level of the First Appellate Authorities, there would seem to be a general reluctance on the part of the Appellate Commissioners to handle appeals involving refund claims as there is a marked preference for handling appeals related to adjudication of tax. In many cases, where the appeal cases have been reverted (the Appellate Commissioners are smart enough not to use the prohibited word 'remand'), it is seen that the Assistant and the Deputy Commissioners sit on these cases for months and years together. Even in exceptional cases where a Departmental Officer would have granted a refund, it is often seen that the Department goes on appeals against these orders, to the CESTAT.

The very adjudication process followed by the offices of the Service Tax Department vary from one Commissionerate to another. There is an absolute lack of uniformity in the manner refund claims are handled by the Service tax Commissionerates. Recently a services exporter with delivery offices in multiple cities was seen complaining that the Service Tax Commissionerates located at different cities are treating his claim on service tax refunds, differently. I was informed that the Service Tax Commissionerate of the IT capital was refusing even to consider that the rent paid for the premises from where the software services was exported was an 'input service' while he had no such issues in the Commissionerate of the country's commercial capital.

Handling the very process of applying for a refund could be one of the most depressing and demoralizing experiences for an exporter and especially, a services exporter. At least, the goods exporter would already have acclimatized himself to the ways of the Central Excise Department. The services exporter, on the other hand, finds it too scary to receive a 'show cause notice' asking him to explain the nexus between the input service involving payment of rent for his premises from which exports of output service are undertaken and threatening him that any further action can be taken under the law. Most small time services exporters find it prudent not to needle the Central Government for being daring enough to find a refund claim.

The requirements of the Service Tax Department for processing a refund claim could be endless, as we know. Apart from getting certificates from the service providers that they have remitted the service tax collected from the exporter, the hapless exporter would be required to produce multiple reconciliation statements involving the export invoices, softex forms, inward remittance certificates, bank realization certificates, etc. In some cases, the Department also wants the exporter to confirm that his client has indeed received the services. I recently came across a requirement asking the exporter to justify as to why his refund claim for a particular quarter was above a certain percentage of his export turnover.

When asked to justify the 'nexus' between the input service being rent paid for the premises and the output services, I was informed by my Departmental friend, of the audacity of the refund claimant who had replied to the SCN that, without the premises, his staff would be forced to sit on the road outside the Service Department's office in Bangalore and try and undertake software programming so that, the very efficient direct IRS recruit of the Department who wanted the exporter to prove the nexus could convince himself that it is not possible for the exporter to render output services without the safety and security of a building.

Be that as it may.....it is sad to note that even the brilliant direct recruits of the Department are not inclined to take a risk, insofar as the granting of refunds to exporters are concerned. It is a sad reflection that our brilliant civil servants are forced to use their intellectual prowess to be used in a highly negative rather than, in a positive manner, in the matter of handling refund claims. No amount of prodding by the Finance Ministry is going to work, vis-à-vis our great Babus, unless the various systemic issues are solved. One of my friends at the level of the Commissioner told me that though he was convinced that a particular services exporter who was claiming a huge amount as refund of service tax was entitled to the refund, he did not want to take a risk of having the CBI to knock at his doors given the quantum of the refund.

I would presume that the Government would be sitting on tens of thousands of crores of service tax refunds, for sure. While I am one of the few who would still want to believe that the current political dispensation would ultimately prove to be better than its predecessor, it does seem that the current Government has no interest whatsoever in ensuring that the refund mechanism works, if the complete lack of action on its part, on this front, is any proof.

Before parting...

One could easily have given up hope of a positive change in our indirect tax bureaucracy, with particular reference to the processing of refund claims involving service tax. This state of affairs is in complete contrast to the very efficient system involving processing of refunds by the Income tax Department, where, the refunds claims based on income tax returns are handled by a computer system.

Perhaps, it is time for a complete rethink on the current system.... we need to introduce a system which can grant refunds, as a percentage of the export realizations. Though the new Foreign Trade Policy has introduced a similar system for services exporters, sadly enough, this is not applicable to services exporters operating as 100% EOUs and SEZ units who constitute the bulk of the services exports from India. And, like under the income tax law, there should be a system of interest to be paid for the delay, to be calculated from the date of filing of the refund claims.

If the exporters have got some relief in terms of refunds, it is undoubtedly because of the judicial bodies like the Courts and the CESTAT Benches.

In the longer run the fact that the service tax refund system is so non-operational to be of any practical use to the exporter it is bound to negatively affect new investments in the country under the Make-In-India/Made-In-India initiative.

The PM had very recently talked of a political intervention in bureaucracy to make it more accountable, responsible and transparent. This intervention is very urgently required in our indirect tax bureaucracy.

On the flip side.....the largest beneficiaries of the current system involving the filing of refund claims on a quarterly basis are, of course, the CAs and Advocates (like me). We have a good time in handling litigation arising out of each and every quarterly refund claim filed by our clients, the hapless exporters.