OFFICE OF THE COMMISSIONER
CENTRAL EXCISE, CUSTOMS AND SERVICE TAX,
VADODARA-I COMMISSIONERATE,
VADODARA

TRADE NOTICE NO. 01 / 2010- ST
VADODARA, DATED 27 . 01. 2010

Enclosed is a copy of Circular No. 120/01/2010-ST dated 19-01-2010 issued by the Government of India, Ministry of Finance, Department of Revenue, (Tax Research Unit), New Delhi, from F.No.354/268/2009-TRU.

All Trade Associations and Chambers of Commerce and Members of Regional Advisory Committee are requested to publicise the contents including enclosure of this Trade Notice among their members / constituents.

Encl: As above

(Dr. Ashir Tyagi)
Additional Commissioner (Tech),
Central Excise & Customs,
Vadodara-I.

F.No. IV/16-21/ST/2009 **Vadodara, Dtd. 27-01-2010.**

Copy forwarded to :- As per Mailing List.

Circular No. 120/01/2010-ST

F.No.354/268/2009-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
*****

New Delhi dated the 19th January, 2010.

To

All Chief Commissioners of Central Excise,
All Chief Commissioners of Customs,
All Chief Commissioners of Customs &Central Excise,
Director General of Service Tax,
All Commissioners of Service Tax,
Commissioner (Service Tax), CBEC.

Madam/Sir,

Subject: Problems faced by exporters in availing refund of excess credit – regarding

CENVAT Credit Rules, 2004 permit taking of credit of inputs and input services which are used for providing output services or output goods. In order to zero-rate the exports, Rule 5 of CENVAT Credit Rules, 2004 provides that such accumulated credit can be refunded to the exporter subject to stipulated conditions. Notification No. 5/2006-CE (NT) dated 14.03.2006 provides the conditions, safeguards and limitations for obtaining refund of such credit.

2. It has been represented by the exporters of services (mainly the call centres or the BPOs) that they are facing difficulties in getting refund under the said notification. In order to ascertain the causes for such delay a number of meetings were held with the refund sanctioning authorities. During these meetings the officers pointed out the following legal/procedural impediments partly responsible for such delays:

(a) The major reason causing delay in granting refunds as well as rejecting the claims is that as per the wordings of the notification, refund is permitted of duties/taxes paid only on such inputs/input services which are either **used in** the manufacture of export goods or **used in** providing the output services exported. As against this, the phrases used in the CENVAT Credit Rules permit credit of services used "*whether directly or indirectly, in or in relation to the manufacture of final product*" or "*for providing output service*". The field formations tend to take the view that for eligibility of refund, the nexus between inputs or input services and the final goods/services has to be closer and more direct

than that is required for taking credit. Many refund claims are being rejected on this ground.

(b) Even if a nexus is considered acceptable, the officers processing the refund claims find it difficult to co-relate goods or services covered under a particular invoice with a specific consignment of export goods or specific instance of export of service.

(c) As per the notification, the claims are to be filed quarterly. For large exporters, the procurement of inputs/input services in a quarter is substantial resulting in each refund claim being accompanied with hundreds of invoices. Verification of these documents with corroborative documents showing exports (such as export invoices, bank certificates, shipping bills) consumes a long time;

(d) Though the notification prescribes that refund claims should be filed quarterly in a financial year, it is not clear whether the refund is eligible only of that credit which is accumulated during the said quarter or the accumulated credit of the past period can also be refunded; and

(e) In certain cases, the invoices accompanying the refund claim are incomplete in as much as either the description of service or its classification is not mentioned. In some cases, even the name of the receiver of the inputs/input services is also not mentioned.

3. The matter has been examined. At the outset it is necessary to understand that the entire purpose of Notification No. 5/2006-CX (NT) is to refund the accumulated input credit to exporters and zero-rate the exports. Accumulated credit and delayed sanction of refund causes cash flow problems for the exporters. Therefore, the sanctioning authorities are directed to dispose of the refund claims expeditiously based on the following clarifications to the issues raised in paragraph 2 above.

3.1 Use of different phrases in rules and notification [para 2(a)]:

3.1.1 The primary objection indicated by the field formations is that the language of Notification No. 5/2006-CX (NT) permits refund only for such services that are used in providing output services. In other words, the view being taken is that to be eligible for refund, input services should be directly used in the output service exported. As regards the extent of nexus between the inputs/input services and the export goods/services, it must be borne in mind that the purpose is to refund the credit that has already been taken. There cannot be different yardsticks for establishing the nexus for taking of credit and for refund of credit. Even if different phrases are used under different rules of CENVAT Credit Rules, they have to be construed in a harmonious manner. To elaborate, the definition of input services for manufacturer of goods, as given in Rule 2 (l) (ii) of CENVAT Credit Rules, 2004, includes within its ambit all services used "*in or in relation to the manufacture of final products*" and includes services used "*directly or indirectly*". Similarly Rule 2 (l) (i) of CENVAT Credit Rules also gives wide

scope to the input services for provider of output services by including in its ambit services "*used...for providing an output service*". Similar is the case for inputs.

3.1.2 Therefore, the phrase, "*used in*" mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. *prima facie* would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need.

3.2 One-to-one co-relation between inputs and outputs and scrutiny of voluminous record [para 2(b) & (c) above]:

3.2.1 Similar problem of co-relation and scrutiny of large number of documents was being faced in another scheme [Notification No. 41/2007-ST dated 06.10.2007] which grants refund of service tax paid on services used by an exporter after the goods have been removed from the factory. In Budget 2009, the scheme was simplified by making a provision of self-certification [Notification No. 17/2009-ST] whereunder an exporter or his Chartered Accountant is required to certify the invoices about the co-relation and the nexus between the inputs/input services and the exports. The exporters are also advised to provide a duly certified list of invoices. The departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund within one month. The reports from the field show that this has improved the process of grant of refund considerably. It has, therefore, been decided that similar scheme should be followed for refund of CENVAT credit under notification No. 5/2006-CE (NT). The procedure prescribed herein should be followed in all cases including the pending claims with immediate effect.

3.2.2 Procedure: The exporter should, alongwith the refund claim, file a declaration containing the following details:

(Rs. in lakh)

	Details of goods/services exported on which refund of input credit is claimed										
S. No.	Details of shipping bill/ Bill of export/export documents etc.				Details of input credit on which refund claimed						
(1)	(2)				(3)						
	No.	Date	Date of export order	Goods/ service exported	Invoice No., date and Amount	Name of service provider/ supplier of goods	Service tax/ Central Excise Regn. No. of service provider/ supplier of goods	Details of service/ goods provided with classifi-cation under FA 1994/ Central Excise Tariff	Service tax/ Central Excise duty payable	Date and details of payment made to service provider	
1.											
2.											

Documents attached to evidence the amount of service tax paid	Total export during the period for which refund is claimed	Total domestic clearances during the period for which refund is claimed	Total amount of input credit claimed as refund
(4)	(5)	(6)	(7)

The declaration should be certified by a person authorized by the Board of Directors (in the case of a limited company) or the proprietor/partner (in case of firms/partnerships) if the amount of refund claimed is less than Rs.5 lakh in a quarter. In case the refund claim is in excess of Rs.5 lakh, the declaration should also be certified by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be.

The Assistant or Deputy Commissioner may, after verification of the fact that the input credit has been correctly claimed, sanction the refund on the basis of the declaration. In case there is a doubt about the correctness of the claim of CENVAT credit on any service, the undisputed amount may be refunded and the balance claim may be decided after following the dispute settlement process.

3.3 Quarterly refund claims [para 2(d) above]:

As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an exporter may avail of Rs.1 crore as input credit in the April – June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs.50 lakh and domestic clearances of Rs.25 lakh are made. The exporter should be permitted a refund of Rs.66 lakh (as his

export turnover is 66% of the total turnover in the quarter) from the Cenvat credit of Rs.1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of CENVAT credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him.

3.4 Incomplete invoices [para 2(e) above]:

In case of incomplete invoices, the department should take a liberal view in view of various judicial pronouncements by Courts. It had earlier been prescribed in circular No.106/09/2008-ST dated 11.12.2008 that the invoices/challans/bills should be complete in all respect. This circular was issued with reference to notification No.41/2007 dated 06.10.2007 as specific services eligible for refund under the notification has been specified. Thus, a stricter requirement exists under the said notification for ascertaining the actual service which has been used in the export of goods. In the case of refund under Rule 5, (i) so far as the nature of the service which has been received by the exporter can be ascertained; (ii) tax paid therein is clearly mentioned; and (iii) other details as required under rule 4(a) are mentioned, the refund should be allowed if the input service has a nexus with the service/goods exported as discussed earlier. In any case, the suggested Chartered Accountant's certificate should clearly bring out the nature of the service and this will assist the officer in taking a decision.

4. The instructions contained in this circular should be implemented with immediate effect and the pending claims may be disposed of accordingly. It is expected that with the clarifications provided and liberalization of procedure, most of the impediments to smooth and expeditious disposal of exporters' claims for refund of accumulated credit would be removed. The Board, therefore, expects that the concerned refund sanctioning authorities should decide all claims of exporters within 30 days of their receipt as has been prescribed in notification No. 17/2009-ST. Any lapse in this regard would be viewed seriously. In case of any doubt, an immediate reference may be made to the Board.

Yours faithfully,

(Roopam Kapoor)
Officer on Special Duty (TRU)
Tel: 23095590