

Circular No. 195/05/2016-Service Tax

F. No. 137/62/2015-Service Tax
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Service Tax Wing

New Delhi, dated 15th June, 2016

To

All Principal Chief Commissioners of Central Excise
All Chief Commissioners of Central Excise/Service Tax
Principal Directors General of Goods & Services Tax/Systems/Central Excise Intelligence
Director General of Audit/Tax Payer Services
All Principal Commissioners/Commissioners of Central Excise/Service Tax
All Commissioners of Central Excise/Service Tax (Audit)
Principal Commissioners/Commissioners LTU, Joint Secretary TRU-I/TRU-II/Review
Commissioner Central Excise/Legal/PAC/Taxpayer Services

Madam/Sir

Subject: Speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2004

I am directed to refer to Board's circular No. 187/6/2015-Service Tax dated 10th November, 2015 on the above subject and to inform that in the light of some representations received in this context from accounting bodies, industry associations and others, the following points are clarified.

2.0 Applicability of the scheme

2.1 At the outset it is reiterated that this scheme is not a substitute for the various notifications but is meant to complement them and is aimed at enabling ease of doing business. It has to operate within the general parameters of the notifications governing such refunds.

2.2 This scheme is applicable only to service tax registrants who are exporters of services, with respect to refund claims under rule 5 of the CENVAT Credit Rules, 2004, which have been **filed on or before 31-3-2015**, and which have not been disposed of as on the date of the issue of the circular dated 10-11-2015. As clarified therein, claims which have been remanded are out of the purview of this scheme.

3.0 Additional documents to be submitted (i.e. in addition to those required to be filed along with the claim)

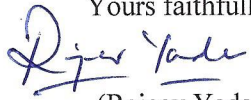
3.1 At the outset, the relevance of the certificate has to be clearly understood. It is not a substitute for verification by the refund sanctioning authority. It will ensure diligence on the part of the claimant and the statutory auditor, which will make him eligible for a provisional payment of 80% of the claimed amount. It had been clarified in the circular that the decision to grant provisional payment is an administrative order and not a quasi-judicial order and should not be subjected to review. There is thus no reason to treat either the certificate or the provisional payment with fear or suspicion.

3.2 The certificate has to be furnished by the statutory auditor in the case of companies, and from a chartered accountant in the case of assesseees who are not companies, in the prescribed format. The phrase "statutory auditor" will refer to the auditor who prepares the financial statements under the Companies Act 2013. The certificate cannot be furnished by a Cost and Management Accountant or a Company Secretary. In the case of companies, it cannot be furnished by a Chartered Accountant who is not the statutory auditor.

3.3 The certificate has to be given in the format given in **Annexure-1** to the circular dated 10-11-2015. During the conference of Service Tax Chief Commissioners and Commissioners in November 2015 itself, it had been clarified that "the averments in Annexure-1 have to be made and any general additional remarks, which do not negate the wording of paragraphs 1.1 to 1.4, may be ignored." In spite of this it has been reported that general disclaimers by the auditor are resulting in the rejection of the certificate and consequently the claim for 80% provisional payment.

3.4 It must be understood that auditors while discharging their duties are bound by the provisions of the statute governing them as well as Guidance Notes, Accounting Standards etc relating to their profession. The Institute of Chartered Accountants of India has issued Guidance Notes on reports and certificates issued by auditors. These Guidance Notes relate to situations where the auditor has freedom with respect to the wording of a certificate as well as to situations where he has to adhere to a prescribed format. In both situations the auditor has to indicate the manner in which the audit was done, assumptions, limitations in scope and reference to information and explanations obtained in the certificate. Adherence of the auditors to these requirements should not be considered to be violations of the circular. If at all, by mentioning that they have adhered to the various legal and accounting requirements, they are adding value to their certificate. It is clarified once again that as long as the four points which are contained in Annexure-1 to the circular dated 10-11-2015 are present, the certificate should not be rejected on the ground of any disclaimers which the auditor has to give, owing to the Guidance Notes.

4.0 Principal Chief Commissioners/Chief Commissioners should ensure that the contents of this circular are brought to the notice of the claimants as well as the departmental officers.

Yours faithfully,

(Rajeev Yadav)
Director (Service Tax)