



## Avail at your own peril

# Claiming of DEPB/freely transferable scrips under chapter 3 of FTP is full of formalities

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1

The DGFT vide its notification dated 26-2-2009 has enabled the exporters to file applications for DEPB and freely transferable duty free scrips under chapter 3 of FTP without Bank Realisation Certificates (BRCs) but subject to monitoring of realisation of export proceeds.

Now DGFT has issued a public notice dated 30.3.2009 containing formats of BG/LUT to be submitted alongwith the applications for DEPB/duty free credit scrips without BRCs. The public notice also contains in detail the manner in which the realisation of export proceeds shall be monitored by the licensing authorities.

DGFT has also issued simultaneously a policy circular dated 30.3.2009 containing 'Guidelines for execution of BG/LUT with regional authorities for filing applications under DEPB Scheme and Incentive Scheme of chapter 3 of FTP without the requirement of BRC.' It will be in the interest of exporters to act according to the guidelines given in the above policy circular.

2

Service Tax refund further facilitated

**Deptt. of Revenue issues service tax circular containing eight clarifications to simplify and expedite the refund of service tax to exporters.**

Inspite the best of efforts of the exporters, their export promotion councils and the Ministry of Commerce & Industry, the Ministry of Finance has agreed not to charge service tax on the taxable services (more than 100 at present out of which apparel exporters use more than 30) in the first instance. As things stand at present, the exporters have to pay the service tax first and then claim the refund according to the procedure on the subject.

On representations from the exporters that the procedure laid down for getting the refund was very difficult to follow and involves a lot of documentation, the Deptt. of Revenue has already issued two service tax circulars to resolve the procedural difficulties.

Now the Deptt. of Revenue has issued a service tax circular containing eight clarifications on procedural issues. Since these are quite important clarifications, may be useful to a large number of exporters in one way or the other, the clarifications are reproduced in full below:

3. The pending refund claims may be decided accordingly. It is once again reiterated that refund claims be sanctioned expeditiously within the time prescribed by the Board. Any difficulty faced in processing of refund claims under the above notification may be immediately brought to the notice of the undersigned.

**3**

Clarification issued on claiming deemed exports benefits by EOUs and DTA units

**DGFT issues policy circular to clarify that deemed export benefits by EOUs and DTA units under para 8.2(b) of FTP should**

**be claimed by EOUs from Development Commissioners while DTA units may claim the same from regional licensing authorities.**

To clear the doubts whether EOUs can file applications for deemed export benefits to the regional licensing authorities and whether DTA units can file the applications for the same to the Development Commissioners, DGFT has issued a policy circular dated 27.3.2009. The clarification part of the above circular is reproduced below:

“Development Commissioners are vested with the responsibility of administering EOUs. For administrative convenience, it is appropriate that the authorities having functional jurisdiction over the applicant units should process the applications. It is therefore, clarified that DTA units should submit claims only with the concerned RA as per para 8.3.1(iii) of HBP. EOUs can submit deemed export benefit applications only with the Development Commissioner, on production of suitable disclaimer from DTA supplier, along with other documents as provided under para 8.3.1(i) of HBP.”

No.	Issue raised	Clarification
I	Notification no. 41/07-ST has been amended by notification nos. 32/2008-ST and 33/2008-ST, to (i) extend the limitation period from 60 days from the end of the quarter to six months; (ii) to omit the condition of non-availment of drawback. Whether, in view of the amended conditions, refund for the quarter Mar-Jun 08 would be allowed to be filed till Dec 08?	It is clarified that consequent upon revision of limitation period, any refund claim that is filed within such revised limitation period would be admissible if it is otherwise in order. Therefore, refund claims of service tax on specified taxable services used for exports of goods made in the quarter Mar-Jun 08 could be filed till 31st Dec 08.
II	The bank deducts certain commissions from the export remittance in lieu of service provided by them. Refund is not allowed on such deduction. Refund should be allowed on gross remittances.	Refund is admissible on the basis of gross amount received for exports and deductions made by the banks from export remittances, in lieu of services provided by bank, should not be deducted while granting refund.
III	For exporters exporting to a customer regularly, the foreign exchange remittance certificates (FERC) are made on running account basis by the banks. Therefore, it is often not possible to show the linkage between the export invoice and the remittance. This has resulted in denial of the refund. Further in case where payments are received by cheque, banks do not issue FIRC and refunds are denied.	In such cases where FERCs are issued on consolidated basis, the exporters should submit self-certified statement alongwith FERC showing the details of export in respect of which the FERC pertains. Refunds should be allowed on such certified statements. However, exporters should maintain a register showing running account which should be reconciled between the export and the remittance periodically. In cases where banks do not issue FERC for the reason that payments are received by cheque, refund may be allowed on the basis of duly certified bank statement.
IV	Whether the limitation period of six months would be counted from the date of exports or from the date of receipt of remittances?	It is clearly prescribed in the notification that limitation period of six months is to be computed from the date of exports.
V	Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified.	Being prospective in nature, refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified.
VI	Authorities granting refund are insisting on original documents such as invoice, BL, SB, BRC etc. Such documents are required under the law to be kept in the head office for audit. Refunds are denied on this ground.	Normally a certified copy of the documents should be accepted. Only in case of in-depth inquiry can original documents be verified.
VII	The service provider providing services to the exporter provides various services. But he has registration of only one service. The refund is being denied on the ground that the taxable services that are not covered under the registration are not eligible for such refunds.	Notification No. 41/2007 ST provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters, on taxable services that he receives and uses for export do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt separately, independent of the process of refund.
VIII	Whether refunds under notification no. 41/2007-ST, would be admissible for the quarter July-Sep 2007.	The above notification exempts service tax on specified taxable services used for export of goods. This exemption is operated through the route of refund. Being prospective in nature, refund could only be sanctioned on taxable services provided on or after the date they are notified in the said notification, i.e., 6.10.2007.