

Negative Blues – VII

No more rebate of Service tax paid on export of service

(G. Natarajan, Advocate, Swamy Associates)

As per Rule 4 of the soon to die, Export of Service Rules, 2005, no service tax is payable on services exported. But as per Rule 5 of the Rules, one can even opt to pay service tax (obviously out of cenvat credit) on services exported and claim it as rebate. The same rule 5 also allowed rebate of duties / taxes suffered on inputs and input services used for exporting the output service (input stage rebate). Notifications 11/2005 ST and 12/2005 ST governed the above rebates, respectively. The option paying service tax on export of service and claiming it as rebate is more beneficial as the quantum of rebate here is normally higher as it is equal to the service tax paid on export value and further, correlation of inputs / input services with the export is not required.

With the advent of negative list regime, no service tax is payable if a service is considered as export of service, in terms of the provisions of the Place of Provision of Supply Rules and Rule 6 A of the Service Tax Rules, 1994. But, there is no option to pay service tax and claim it as rebate. This may be due to the fact that once the place of provision of service is outside the taxable territory, no service tax can be levied on the same and hence there is no question of paying any service tax in such cases. Once there is no levy at all, if the service is provided outside taxable territory, one cannot opt to pay it and claim rebate.

It may be noted while Notification 39/2012 ST has been issued providing for rebate of duties suffered on inputs and service tax suffered on input services, used for exporting the services, rebate of service tax paid on exports is nowhere provided for.

Before parting...

Notifications 11/2005 and 12/2005 have not been rescinded, though they may not serve any purpose, after Export of Service Rules, cease to exist.

Postscript : Board clarifies in 29.06.2012 circular that they are not rescinded to deal with old claims and they will not have any effect after 01.07.2012.