Case Study 1: Construction Company Limited
Case Study 1

- SPV set up for a single project and to be dissolved thereafter

- Impact of Point of Taxation Rules, 2011 and CENVAT Credit Rules, 2004

- Tax paid earlier in Cash and credit availment at a later date

- What about CENVAT Credit lying on the date of closure?

- No express provision in CENVAT Credit Rules, 2004 to allow such refund
Judicial Precedents

Gauri Plasticulture (P) Ltd Vs Commissioner of Central Excise, Indore [2006 (202) E.L.T. 199 (Tri-LB), Mumbai:

“if the assessee is maintaining Modvat credit and is in a position to use the same for future clearances, it should be normally be credited back in the same account from where it was debited i.e. RG-23A Part II account. However, if an assessee is not able to use the credit on account of any reasons, whatsoever (which may be closure of his factory or final products being exempted, etc.) the refund becomes admissible in cash or by way of credit entry in PLA to the extent duty paid in cash or out of PLA during the relevant period.
On the same basic principles of equity, justice and good conscience, if such refund in cash makes the assessee enrich because during the period when the dispute was pending, they had not paid any duty in cash and as such, the debit entry in Modvat account would have made no difference, as the credit would have been lying unutilized only in the account, such credit, cannot be refunded in cash.
Judicial Precedents

Steel Strips Vs Commissioner of Central Excise, Ludhiana
[2011 (269) E.L.T. 257 (Tri-LB), New Delhi:

“Modvat law has codified procedure for adjustment of duty liability against Modvat Account. That is required to be carried out in accordance with law and unadjusted amount is not expressly permitted to be refunded. In absence of express provision to grant refund, that is difficult to entertain except in the case of export. There cannot be presumption that in the absence of debarment to make refund in other cases that is permissible. Refund results in outflow from treasury, which needs sanction of law and an order of refund for such purpose is sine qua non”

Admitted to Punjab & Haryana High Court
Judicial Precedents

Union of India Vs Slovak India Trading Co Pvt Ltd [2008 (10) S.T.R. 101 (Kar)],:

"There is no express prohibition in terms of Rule 5. Even otherwise, it refers to a manufacturer as we see from Rule 5 itself. Admittedly, in the case on hand, there is no manufacture in the light of closure of the Company. Therefore, Rule 5 is not available for the purpose of rejection as rightly ruled by the Tribunal. The Tribunal has noticed that various case laws in which similar claims were allowed. The Tribunal, in our view, is fully justified in ordering refund particularly in the light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme"
Judicial Precedents

Sandoz (India) Ltd. v. CCE - 1990 (50) E.L.T. 403 (Tri.),

The Tribunal observed that refund arising as a consequence of allowing of appeal but not practicable to avail on account of rescinding of set off notification in the meanwhile, the credit is required to be paid in cash or by cheque.

MRF Ltd. v. CCE [1990 (50) E.L.T. 482 (Tri.)],

It was observed that if the availment of relevant demand towards payment of duty and the finished excisable goods cannot be given in personal ledger account or appropriate account of the appellants, the amount of relief is payable in cash or by cheque.

Affirmed by Supreme Court
Judicial Precedents

- Commissioner of C, Ex & Cus (Appeals) Vs Kores (India) Limited – 2011 (22) S.T.R. 361 (Tri – Bang)

- CCE, Hyderabad Vs Apex Drugs & Intermediates Limited – 2014 (314) E.L.T. 729 (Tri – Bang)

- CCE, Jallandhar Vs S.K. Sacks Pvt Ltd - 2010 (261) E.L.T. 560 (Tri.- Del)

- Doaba Alco Chemicals Vs CCE, Jallandhar - 2010 (250) E.L.T. 81 (Tri.- Del.)
Alternative Solution

Rule 10: Transfer of Credit

“If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business

Whether Credit can be transferred?
Case Study 2: Moon SEZ Limited
Case Study 2

- Services provided to SEZ and received Form A-2 in return
- Rule 6(7) of CENVAT Credit Rules, 2004 provides that no reversal is required in case of services provided to SEZ
- Accumulation of CENVAT Credit and no possibility of utilization of CENVAT Credit
- No express provision in CENVAT Credit Rules, 2004 to allow such refund
- On going business Vs Closure of Business
Reference to SEZ Act

› Services provided to SEZ unit considered as deemed export (Section 2(m) of Special Economic Zone Act, 2005)

› Section 26 of the SEZ Act, 2005 provides for supplies to the SEZ units to be undertaken without payment of any taxes or duties

› Section 51 of the SEZ Act gives overriding effect to the provisions of the Act vis-a-vis any other law for the time being in force
Judicial Precedents

NBM Industries v CCE, Rajkot 2012 (276) E.L.T. 9 (Guj.):

CCE, Surat v. Shilpa Copper Wire Industries 2011 (269) E.L.T. 17 (Guj.)

Manoj Handlooms v CCE, Chennai 2009 (240) E.L.T. 158 (Tri. - Chennai)

Refund was available in case of inputs used for manufacturing goods which are sold to 100% EOU Unit
"On a perusal of the provisions of the SEZ Act, we find that it is a special statute enacted by Parliament to benefit manufacturing units in Special Economic Zones. It is a special legislation which is intended to benefit such units only. The various provisions of the SEZ Act are to be considered as vehicles which convey such benefits to SEZ units. The definition of the term ‘export’ given under Section 2(m) of the SEZ Act and the various related provisions of the Act have to be considered in this perspective"
“At no time was the term ‘export’ defined under the Central Excise Act or any Rules framed thereunder. The definition of ‘export’ given under the Customs Act has been traditionally adopted for purposes of the Central Excise Act and the Rules thereunder. Therefore, in the absence of a definition of ‘export’ under the Central Excise Act, the Central Excise Rules or the CENVAT Credit Rules, 2004, we hold that, for purposes of the CENVAT Credit Rules, 2004, one should look for its definition given under the Customs Act. The fictionalized definition of “export” under Section 2 (m) (ii) of the SEZ Act cannot be looked for as it purports only to make the SEZ unit an exporter”
Judicial Precedents

Commissioner of Central Excise, Thane – I Vs Tiger Steel Engineering (I) Pvt Ltd [2010 (259) E.L.T. 375 (Tri-Mumbai), :

“The SEZ Scheme, undisputedly, is an entirely different self-contained scheme which is intended to benefit the SEZ units. The policy provisions relating to 100% EOU cannot be applied to SEZ units, for which there is separate statute and a body of rules framed thereunder”

Stayed By Bombay High Court
Judicial Precedents


“The movement of goods from the Domestic Tariff Area to the Special Economic Zone has been treated as export by a legal fiction created under the SEZ Act, 2005. A legal fiction is to be restricted to the statute which creates it.”
Explanation added to Rule 5 of CENVAT Credit Rules, 2005

(1A) "export goods" means any goods which are to be taken out of India to a place outside India

Circular No.1001/8/2015-CX.8

The definition of export, already given in Rule 18 of Central Excise Rules, 2002 has only been made more explicit by incorporating the definition of export as given in the Customs Act, 1962. Since SEZ is deemed to be outside the Customs territory of India, any clearances of goods to an SEZ from the DTA will continue to be export and therefore be entitled to the benefit of rebate under Rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5 of CCR, 2004, as the case may be
Rule 6A conditions

- the provider of service is located in the taxable territory,
- the recipient of service is located outside India,
- the service is not a service specified in the section 66D of the Act,
- the place of provision of the service is outside India,
- the payment for such service has been received by the provider of service in convertible foreign exchange, and
- the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.
Case Study 3: Agency Limited
Case Study 3

- Not Taxable services, but service tax paid thereof
- Provisions of section 67(2) applied for discharging service tax
- Rejection of refund mainly on two aspects:
  - Time Barring
  - Unjust Enrichment
Judicial Precedents

Mafatlal Industries Limited Vs Union of India 1997 (89) E.L.T. 247 (S.C.):

**Class I**: “Unconstitutional levy” — where claims for refund are founded on the ground that the provision of the Excise Act under which the tax was levied is unconstitutional.

Cases falling within this class are clearly outside the ambit of the Excise Act. In such cases assessees can either file a suit under Section 72 of the Contract Act, 1872 (hereinafter called “Contract Act”) or invoke the writ jurisdiction of the High Court under Article 226 of the Constitution.
Class II: “Illegal levy” — where claims for refund are founded on the ground that there is mis-interpretation/mis-application/erroneous interpretation of the Excise Act and the Rules framed thereunder.

Oridinarily, all such claims must be preferred under the provisions of the Excise Act and the Rules framed thereunder by strictly adhering to the stipulated procedure. However, in cases where the authorities under the Excise Act arrogate to themselves jurisdiction even in cases where there is clear want of jurisdiction, the situation poses some difficulty. Reddy, J. has held that in all cases, except where unconstitutionality is alleged, the remedy is to be pursued within the framework of the Excise Act......
Mafatlal Industries Limited...

.....This is a dangerous proposition for it will not cater to situations where the authorities under the Excise Act assume authority in cases where there is an inherent lack of jurisdiction. This is because, if one were to follow Reddy, J.’s reasoning, the authorities under the Act will have the final say over situations in which they totally lack inherent jurisdiction. In such a situation, there is nothing to prevent the authorities from exercising jurisdiction in cases which are ultra vires the Excise Act but intra vires the Constitution
Mafatlal Industries Limited...

Class III: “Mistake of Law” — where claims for refund are initiated on the basis of a decision rendered in favour of another assessee holding the levy to be: (1) unconstitutional; or (2) without inherent jurisdiction.

Ordinarily, no assessee can be allowed to reopen proceedings that have been finally concluded against him on the basis of a favourable decision in the case of another assessee. This is because an order which has become final in the case of an assessee will continue to stand until it is specifically recalled or set aside in his own case.

In cases where the levy of a tax has been held to be (1) unconstitutional; or (2) void for want of inherent jurisdiction (as explained in Class II), it is open for the assessees to take advantage of the declaration of the law so made and claim refunds on the ground that they paid the tax under a mistake of law.
When the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to.
Tax/Duty Vs Deposit

- Commissioner of C,Ex (Appeal), Bang Vs KVR Construction 2012 (26) S.T.R. 195 (Kar)

- Vasudha Agencies Vs Commissioner of Service Tax, Mumbai – I [2015-TIOL-1470-CESTAT-MUM]

- C.K.P Mandal Vs Commissioner of Service Tax, Mumbai – II 2015 (38) S.T.R. 73 (Tri. - Mumbai)
Unjust Enrichment

› Tax paid considering inclusive of taxes is merely a mechanism to calculate tax

› Unjust Enrichment principle should not apply in case of export transactions
  › Kirloskar Ebara Pumps Limited Vs Commissioner of C. Ex 2015 (38) S.T.R. 488 (Tri. - Mumbai)
  › Vodafone Cellular Limited Vs Commissioner of C.Ex Pune 2014 (34) S.T.R. 890 (Tri. - Mumbai)
  › Convergys India Services Pvt Ltd Vs Commissioner of Service Tax, New Delhi 2012 (25) S.T.R. 251 (Tri. - Del.)
Case Study 4: Eatwell Limited
Case Study 4

› New levy introduced on restaurant service

› Tax not charged separately but decided to pay taxes considering the same as inclusive of taxes

› Levy struck down by Kerala High Court in terms of constitutional challenges

› Refund sought by the Eatwell Limited

› Principles of unjust enrichment applicable?
Before concluding, we may state that uniformity in price before and after the assessment does not lead to the inevitable conclusion that incidence of duty has not been passed on to the buyer as such uniformity may be due to various factors.

SPBL Ltd Vs Commissioner of C. Ex, Jaipur II 2014 (314) E.L.T. 698 (Tri. - Del.):

Uniformity of price before and after assessment is by itself not a ground for holding that the duty burden has not been passed on by the claimant to any other person.
Factors relevant to determine

› Whether cost of taxes is factored while arriving at the profit margin?

› How the same is accounted in Books of Accounts?

› Is the tax paid under protest?

› Is the levy communicated to the customers by considering the amounts as inclusive of taxes?
Case Study 5 : Exporter Limited
Case Study 5

- Refund of CENVAT Credit availed

- Rule 5 of CENVAT Credit Rules, 2004 read with Notification 27/2012 – CE dated 20.06.2012
  - Claim with 1 year from start or end of quarter
  - Accumulated CENVAT Credit
  - Subsequent reversal of credit
  - Realization in INR instead of foreign exchange
  - Relevant date for export
  - Deficient invoices
  - Calculation
Relevant Date

M/s PRODAIR AIR PRODUCTS INDIA PVT LTD Vs DEPUTY COMMISSIONER (REFUND) SERVICE TAX CELL PUNE-III COMMISSIONERATE ORDER-IN-APPEAL NO.PUN-SVTAX-000-APP-0025-14-15 DATED 11.2.2015:

I find that unless the entire quarter is completed, the exporter cannot file his refund claim, as the crucial documents like Bank Realization Certificates issued during the said quarter are required to be submitted together along with the refund claim. Also, the formula prescribed in the new Rule 5 of the CCR requires the use of ‘Net CENVAT Credit’ which can be arrived at only at the end of the relevant quarter. Accordingly, I find that it is not legally correct to consider any date in between the quarter as the ‘relevant date’
Accumulated CENVAT

- Notification provides for claim to be filed on quarterly basis

- If accumulated credit is allowed, the purpose of Notification shall be defeated
  - If claim is missed for any quarter
  - Lesser Export realization in a particular quarter could lead to non filing of refund claim
  - Form A also prescribes CENVAT Credit taken during the quarter
Subsequent reversal

Rule 4(7) of CENVAT Credit Rules, 2004

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.....

............... 
Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service.
Realization in INR

Sun-Area Real Estate Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-I [2015-TIOL-956-CESTAT-MUM]:

As per Clause 3A. 6(i) of the Exchange Control Manual, it is clear that FIRC is issued only in respect of foreign exchange;

In the present case, FIRC were issued and there is a specific certification that the payment has not been received in non-convertible rupees, which establishes that the payment received and mentioned in the FIRC are payment in convertible foreign exchange;

In terms of FEMA Notifications, it is very clear that, when a person receives payment in Indian Rupees from the account of a bank situated in any country outside India maintained with an authorised dealer, the payment in rupees shall be deemed to have repatriated the realized foreign exchange to India.
### Relevant date for EOS

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Holding a view that the relevant date for determining the period of limitation will be the date of export of services from the date when the invoices are raised</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bechtel India Pvt. Ltd.</th>
<th>2014 (34) S.T.R. 437 (Tri.-Del.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant date for refund is the date of receipt of foreign exchange</td>
<td></td>
</tr>
</tbody>
</table>

Reference made to Larger Bench – **Commissioner of Service Tax, Goa Vs Ratio Pharma India Pvt Ltd 2015 (39) S.T.R. 31 (Tri. - LB)**
Deficient Invoices

- Multiple decisions stating that substantial rights cannot be denied on procedural lapses
- Bangalore CESTAT vide Interim Order No. 79 to 152 / 2014 dated 18 September 2014

Issue 11: Whether CENVAT Credit can be rejected on account of certain defects in the input services invoices?

CESTAT: If the defects are curable and if assessee files an application for rectifying the defects in order to be compliant with Rule 9(2) of CCR, then original adjudicating authority is required to consider the application instead of rejecting the same outright.
### Calculation

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description</th>
<th>Amount in Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total value of the goods cleared for export and exported during the quarter.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Export turnover of the services determined in terms of Clause D of sub-rule (1) of rule 5.</td>
<td>75,00,000</td>
</tr>
<tr>
<td>3</td>
<td>Total CENVAT Credit taken on inputs and input services during the quarter.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Amount reversed in terms of sub-rule (5C) of rule 3</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Net CENVAT Credit = (3) - (4)</td>
<td>40,00,000</td>
</tr>
<tr>
<td>6</td>
<td>Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Export turnover of services and value of all other services, provided during the said quarter.</td>
<td>160,00,000</td>
</tr>
<tr>
<td>8</td>
<td>All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total Turnover = (6) + (7) + (8)</td>
<td>160,00,000</td>
</tr>
<tr>
<td>10</td>
<td>Refund amount as per the formula = (1) * (5)/(9), in respect of goods exported.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Refund amount as per the formula = (2) * (5)/(9), in respect of services exported.</td>
<td>18,75,000</td>
</tr>
<tr>
<td>12</td>
<td>Balance of CENVAT Credit available on the last day of quarter.</td>
<td>35,00,000</td>
</tr>
<tr>
<td>13</td>
<td>Balance of CENVAT Credit available on the day of filing the refund claim.</td>
<td>35,00,000</td>
</tr>
<tr>
<td>14</td>
<td>Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services]</td>
<td>18,75,000</td>
</tr>
<tr>
<td>15</td>
<td>Amount debited from the CENVAT account [shall be equal to the Amount claimed as refund (14)]</td>
<td>18,75,000</td>
</tr>
</tbody>
</table>
Case Study 6: A Limited
Case Study 6

- Refund of CENVAT Credit filed
- Reversal of CENVAT Credit made in Books of Accounts
- No corresponding reversal in ST-3 for the same period
- Reversal made in ST-3 in subsequent period
Curable defect

- Multiple decisions stating that substantial rights cannot be denied on procedural lapses

- GUJARAT TEA PROCESSORS & PACKERS LTD Vs C.C.E., AHMEDABAD-II 2012 (27) S.T.R. 158 (Tri. - Ahmd.)

*It is a curable defect and the appellant could have been asked to cure the defect rather than using it as a tool to reject the claim*
Case Study 7: Manpower & Co
Case Study 7

- Manpower Supply services provided to a Body Corporate
- Liable for Reverse Charge Mechanism
- Amendment from 01.04.2015 from 75% tax liability to 100% tax liability to service receiver
- Rule 5B of CENVAT Credit Rules, 2004 allows refund for specified services
- Whether refund of CENVAT Credit available?
Notification No 12/2014

The refund shall be claimed of unutilised CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services namely :-

i. renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;

ii. supply of manpower for any purpose or security services; or

iii. service portion in the execution of a works contract;

(hereinafter the above mentioned services will be termed as partial reverse charge services).
Rule 2 (p) of CENVAT Credit Rules, 2004

“output service” means any service provided by a provider of service located in the taxable territory but shall not include a service, -

1) specified in section 66D of the Finance Act; or

2) where the whole of service tax is liable to be paid by the recipient of service.
Since on 7-7-2009 new Notification No. 17/2009-S.T. had been issued, in supersession of the earlier Notification No. 41/2007-S.T. and in the new notification, the limitation period was one year from the date of let export order and since in terms of the Board’s Circular No. 354/256/2009-TRU, dated 1-1-2010, the new notification dated 7-7-2009 is applicable to the exports which had taken place prior to its issuance, the limitation period application in respect of this refund claim would be one year from the date of let export order and since in this case, refund claim had been filed on 31-8-2009 while the same could be filed upto December, 2009
Case Study 8 : Sugar Export Limited
Case Study 8

› Merchant Exporter of Sugar

› Drawback is claimed under Customs Central Excise Duties and Service Tax Drawback Rules, 1995

› Refund claimed under Notification No 41/2012 dated 29.06.2012

› Rejected on the grounds as under:
  › Drawback is already claimed
  › Do not qualify as “specified services”
Drawback claimed

- **Notification 41/2007:**
  The said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

- **Notification 33/2008** amends **Notification 41/2007** to delete the above condition

- **Notification 41/2012** – No such condition prescribed

- Need to ascertain whether drawback of Service Tax claimed?
Drawback claimed

- Sugar falls under Chapter 17 of the Central Excise Tariff Act, 1985 and Customs Tariff Act, 1975

- Drawback of 1.3% of FOB for both, i.e. if CENVAT facility availed and if CENVAT facility not availed

- Notification 84/2010-Cus. (NT) dated 17.09.2010
  The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component
Specified services

Types of Exporter

- Manufacturer
  - Services up to place of removal: Rule 5 of CCR
  - Services beyond place of removal: Not 41/2012

- Merchant Exporter
  - All services used for export: Not 41/2012

All services used for export: Not 41/2012
Specified Services

Jotindra Steel and Tubes Limited V/s. CCE., Delhi-IV 2014 (36) S.T.R. 672 (Tri. – Delhi)

As regards the second objection that the appellant should have claimed refund of service tax instead of availing the Cenvat credit, I fully agree with the appellant that two options having been extended to the assessee, it is his choice to avail any one such option. It is not the Revenue’s case that the notification in question, which permits refund, debars availment of credit, in case refund is not claimed. As such it is absolutely the assessee option to claim the Cenvat credit or to claim the refund.
Case Study 9 : Appellant
Case Study 9

- Demand confirmed on the Appellant
- Stay Application filed before the CESTAT
- Pre-Deposit Ordered
- Final Order passed in favour of Appellant
- Refund of Pre-deposit
  - Interest on such refund
  - If Pre-deposit through CENVAT, whether Cash refund allowed
SECTION 35FF. Interest on delayed refund of amount deposited under the proviso to Section 35F – Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to Section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.
Interest on Refund

- **AFCONS Infrastructure Ltd. v. Commissioner - 2015 (318) E.L.T. A158 (Del.)**
  
  *Interest on refund of pre-deposit payable only from date of expiry of 3 months of appellate order and not from date of pre-deposit*

- **Circular No. 802/35/2004-CX., dated 8-12-2004**
  
  *It is again reiterated that in terms of Hon’ble Supreme Court’s order such pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal*

  *All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT*
Interest on Refund.. Post Amendment

SECTION 35FF. Interest on delayed refund of amount deposited under section 35F. —
Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount


5.1 Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962
Refund of Pre-deposit

> Commissioner of C. Ex, Ranchi Vs Ashok Arc 2006 (193) E.L.T. 399 (Jhar.)

The stand of the learned Counsel for the Revenue that the amount should have been adjusted in RG-23A Part-II account can not be accepted, there being no such RG-23 Part-II account available respect of the finished goods. Similar issue was decided by Andhra Pradesh High Court in the case of Deccan Sales Corporation, reported in 1982 (10) E.L.T. 885, as noticed by the CEGA Tribunal and, in fact, no credit account is being maintained by the respondent on account of raising of exemption limit. As the respondent will not be in a position to utilise the credit, the CEGA Tribunal has rightly held that the Revenue should refund the amount to the respondent in cash.
Case Study 10 : Sun SEZ Limited
Case Study 10

- SEZ Unit issued Form A-2 to various service providers
- Audit conducted at the service providers premises and exemption was considered as incorrect
- Service Tax reimbursed to service providers
- Whether refund can be claimed?
Relevant provisions

Notification 12/2013

The claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit

Rule 9(bb) of CENVAT Credit Rules, 2004

A supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or
Case Study 11: SEZ Unit
Case Study 11

- Refund pertains to period June 2015 and should be disclosed in June 2015

- One year limit does not apply in the present case as the same applies to CENVAT Credit

- The refund under SEZ Notification No 12/2013 is subject to claim of CENVAT Credit

- Refund can be claimed within one year from the date of payment