

**Dear Professional Colleague,**

**Rebate/refund of SB Cession exports & services used in SEZ; Cenvat credit cannot be used for SB Cess & others**

The Central Government (“CG”) has issued various Notifications under the Service tax and the Central Excise for extending the benefit of refund/rebate to the Swachh Bharat Cess (“SB Cess”) component and the input services used beyond factory for export. Further, the Cenvat Credit Rules, 2004 (“the Credit Rules”) has been amended to allow Cenvat credit on commission agent’s services and to make explicit that Cenvat credit shall not be used for payment of SB Cess.

Gist of all the Notifications is discussed hereunder for easy digest:

**Rebate of Service tax on services used beyond the factory or any other place/premises of production/manufacture of goods, for their export**

The CG vide **Notification No. 01/2016-Service Tax dated February 3, 2016** (“**Notification No. 1**”) has amended Notification No. 41/2012-Service Tax dated June 29, 2012 (Rebate of Service tax paid on the taxable services which are received by an exporter of goods and used for export of goods) [“**Notification No. 41**”] to include the taxable services that have been used beyond factory or any other place or premises of production or manufacture of the goods, for their export, in the case of excisable goods, under the definition of ‘specified services’. Further, clause (B) of Notification No. 41 prescribing definition of ‘place of removal’ as the one defined under Section 4(3)(c) of the Central Excise Act, 1944, has also been deleted.

**Increase in the rate of refund commensurate to the increased Service tax rate**

The CG vide Notification No. 1 has further amended Notification No. 41 to increase the rate of refund commensurate to the increased Service tax rate in the following manner:

“(b) in the Schedule of rates, in column (4),-

- (i) for the figures 0.04, wherever they occur, the figures 0.05 shall be substituted;*
- (ii) for the figures 0.06, wherever they occur, the figures 0.07 shall be substituted;*
- (iii) for the figures 0.08, wherever they occur, the figures 0.09 shall be substituted;*
- (iv) for the figures 0.12, wherever they occur, the figures 0.14 shall be substituted;*
- (v) for the figures 0.18, wherever they occur, the figures 0.21 shall be substituted; and*
- (vi) for the figures 0.20, wherever they occur, the figures 0.23 shall be substituted”*

To view full Notification No. 1, please click on the link below:

<http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st01-2016>

### **Refund of SB Cess paid on specified services used in Special Economic Zone (“SEZ”)**

The CG vide **Notification No. 02/2016-Service Tax dated February 2, 2016 (“Notification No. 2”)** has amended Notification No. 12/2013-Service Tax dated July 1, 2013 (Exemption on services received by units located in a SEZ or Developer of SEZ and used for the authorised operation) to enable the SEZ Unit or the Developer for refund of the SB Cess paid on the specified services on which ab-initio exemption is admissible but not claimed.

Further, the refund of amount distributed to the SEZ Unit or the Developer in the manner as prescribed in Rule 7 of the Credit Rules, will be determined as under:

$$= \frac{\text{Amount distributed to the SEZ Unit or the Developer in the manner as prescribed in Rule 7 of the Credit Rules} \times \text{effective rate of SB Cess}}{\text{Rate of Service tax specified in Section 66B of the Finance Act, 1994}}$$

To view full Notification No. 2, please click on the link below:

<http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st02-2016>

### **Rebate of SB Cess paid on all the input services used in providing services exported**

The CG vide Notification No. 03/2016-Service Tax dated February 3, 2016 (“**Notification No. 3**”) has amended Notification No. 39/2012-Service Tax dated June 20, 2012 (Rebate of the duty paid on excisable inputs or Service tax and cess paid on all input services used in providing service exported) to insert SB Cess under the definition of ‘service tax and cess’, to enable the provider of services to claim rebate of SB Cess paid on all the input services used in providing services exported in terms of Rule 6A of the Service Tax Rules, 1994.

To view full Notification No. 3 please click on the link below:

<http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2016/st03-2016>

### **Cenvat credit shall not be used for payment of SB Cess**

The CG vide Notification 02/2016-CE(NT) dated February 3, 2016 (“**Excise Notification No. 2**”), has amended Rule 3(4) of the Credit Rules, to insert a proviso providing that Cenvat credit shall not be used for payment of SB Cess.

It may also be noted here that the Central Board of Excise and Customs in their Frequently Asked Questions released on November 14, 2015 on SB Cess, had specifically provided that because SB Cess is not integrated in the Cenvat credit chain, its credit is not admissible:

*“Q.14 Whether Cenvat Credit of the SBC is available?”*

Ans. SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax”

### **Cenvat credit admissible on services of sales commission agent**

The CG vide Excise Notification No. 2 has further amended the definition of ‘input services’ under Rule 2(l) of the Credit Rules, to allow Cenvat credit of Service tax paid on sale of dutiable goods on commission basis, by inserting following explanation after sub-clause (C):

“Explanation.-For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.”

It may not be out of place here to mention that in view of the conflicting judgments, eligibility to avail Cenvat credit of the services rendered by a commission agent has been a subjective issue. The Hon’ble High Court of Gujarat in the case of **Commissioner of C. Ex., Ahmedabad-II Vs. Cadila Healthcare Ltd. [2013 (30) S.T.R. 3 (Guj.)]**, has disallowed Cenvat credit on commission agent’s services whereas, the Hon’ble Punjab & Haryana High Court in the case of **Commissioner of Central Excise, Ludhiana Vs. Ambika Overseas [2012 (25) S.T.R. 348]** had allowed the Cenvat credit. Thus, with the insertion of stated explanation, it may be contended by the assessee that because the same is clarificatory which was being disputed on the basis of divergent judgments, therefore, it would have retrospective effect.

To view full Excise Notification No. 2 please click on the link below:

<http://www.cbec.gov.in/htdocs-cbec/excise/cx-act/notifications/notfns-2016/cx-nt2016/cent 02-2016>

*Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards,

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