

Taxation Of Export Of Services

Export of Services

It has been the intention of the Government from long that taxes should not be exported and the export industry should be preferred. With a view to achieve the same, several fiscal benefits were granted to the exporters. While all these benefits are in relation to goods, the physical movement of which can be traced to determine whether the same is exported, the export of services have not been granted any benefits at the inception of the Service Tax. Recognising the need to support the exporters of services and at the same time, the difficulties to determine what constitutes

Exchange (CFE). The same was introduced in the year 1998. A restriction was placed in the year 1999 that the exemption would be available to only those taxable services provided in India for which the consideration is received in Convertible Foreign Exchange (CFE) and the CFE is not repatriated outside India.

The conflict

The dispute regarding the export of services started when the Government had removed the said exemption notification on 1st of March 2003. Subsequently, in April 2003, the Central Board of Excise and Customs (CBEC)

only for the services rendered in India. While granting this exemption through the Circular, the principle for export of services has been given based on the nature of the tax i.e. destination based consumption tax. Besides this, until recently the Rules for Export of Services are notified, there is no other way to determine what exactly is an export of service. The concept of destination based consumption tax has given rise to various possible interpretations in different situations. With the growing amount of litigation in this area, the Government has reinstated the earlier exemption notification of CFE in November 2003, and started the process of framing guidelines in December 2003, to determine what exactly constitutes an 'export of service' in respect of all the taxable services. With the consultation of trade at large, the Government has redrafted the Guidelines in the form of Draft Rules in August 2004, which were available to trade for comments. As the same draft rules are not finalised by the time the new Rules for the inter-sectoral credit across goods and services (Cenvat Credit Rules, 2004) are in place, the Government has defined the exported services, for the purposes of allowing the credit even for those services which are exported, as those services for which consideration is received in non- repatriated

CFE. However, the Cenvat Credit Rules, 2004, have not provided the refund of Service Tax in case of export service providers, which has been in existence for the export manufacturers since long. Finally, in March 2005, the Government has come out with the Rules to determine what constitutes an 'export of service' titled 'Export of Services Rules, 2005' (ESR, 2005).

Export of Services Rules, 2005

In the ESR, 2005, the following criteria have been taken for the purpose of determining whether a particular service is exported.

- Performance of Service
- Recipient of Service
- Location of Immovable Property

Performance of Service

The following categories of service are said to be exported in cases where the performance of the service is carried out either wholly or partly outside India.

- Air Travel Agent
- Airport
- Authorised Service Station
- Beauty Treatment
- Business Exhibition
- Cargo Handling
- Chartered Accountant
- Cleaning Services (w.e.f. 16 June 2005)
- Clearing and Forwarding Agent
- Commercial Training or Coaching
- Company Secretary
- Convention Center
- Cost Accountant
- Courier
- Credit Rating Agency

- Dry Cleaning
- Erection, Commissioning or Installation Agency
- Event Management
- Fashion Designing
- Forward Contract
- Goods Transport by Road
- Goods Transport by Air
- Health Club and Fitness Center
- Internet Café
- Maintenance or Repair
- Mandap Keeper
- Market Research Agency
- Membership of Clubs and Associations (w.e.f. 16 June 2005)
- Opinion Poll
- Outdoor Caterer
- Packaging of goods (w.e.f. 16 June 2005)
- Pandal or Shamiana
- Photography Studio
- Port (major and others)
- Rent-a-cab
- Security Agency
- Sound Recording
- Steamer Agent
- Stock Broker
- Storage and Warehousing
- Survey and Exploration of Mineral
- Technical Inspection and Certification
- Technical Testing or Analysis
- Tour Operator
- Underwriters
- Video Production

Recipient of Services

The following categories of service are said to be exported in cases where the services are received by a person located outside India where the services are in relation to commerce or industry:

- Advertising Agency
- Banking and Other Financial Services
- Broadcasting

A restriction was placed in the year 1999 that the exemption would be available to only those taxable services provided in India for which the consideration is received in Convertible Foreign Exchange (CFE) and the CFE is not repatriated outside India

- Business Auxiliary Services
- Cable
- Consulting Engineer
- Facsimile
- Franchise
- General Insurance (other than in relation to immovable property)
- Insurance Auxiliary Services
- Intellectual Property
- Leased Circuit
- Life Insurance
- Mailing List Compilation and Mailing (w.e.f. 16 June 2005)
- Management Consultant
- Manpower Recruitment Agency
- Online Information and Database Access or Retrieval
- Programme Production
- Rail Travel Agent
- Scientific or Technical Consultant
- Telegraph
- Telephone and Pager
- Telex
- Travel Agents (other than air and rail)
- Transport of goods through pipeline or other conduit (w.e.f. June 16, 2005)

In cases where the recipient outside India has any commercial or industrial establishment or any office in India, the services would be regarded as 'export of services' only if the following three conditions are satisfied:

- The order for provision of service is made by the service recipient from the office/establishment outside India
- The service is delivered outside India
- Payment for the services is received in convertible foreign exchange



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The concept of Service Tax was introduced in India in the year 1994, taxing only three services. The scope of Service Tax is increasing year after year with the list of taxable services touching 80 with the enactment of the Finance Bill, 2005, wherein nine new services have been introduced into the taxable net. The Finance Act, 1994 is still administering the Service Tax with the amendments incorporated every year in the same. During the last six months, several important developments took place in the Service Tax legislation enlarging the scope of Service Tax and providing specific guidelines for the determination of what constitutes an 'Export of Service'. This article gives an insight into this aspect of the export and import of services and the procedures prescribed by the Government recently.

an export of service, the Government of India has come out with a safe exemption notification exempting the taxable services provided in India for which the consideration is received in Convertible Foreign

had come out with a Clarificatory Circular saying that the export of services remain tax free even if the exemption is removed. This seems to be logical as the jurisdiction of the Service Tax legislation is

In cases where the services are used for other than commerce or industry, the same would constitute as an export of service if the recipient of service is located outside India at the time when the services are received.

Location of immovable property

The following categories of service are said to be exported in cases where the service is in relation to an immovable property situated outside India:

- Architect
- Interior decorator
- Commercial or Industrial Construction
- Construction of Residential complexes (w.e.f. 16 June 2005)
- Dredging (w.e.f. 16 June 2005)
- General Insurance relating to immovable property
- Real Estate Agent
- Site Preparation and clearance activities (w.e.f. 16 June 2005)
- Survey and Map Making (w.e.f. 16 June 2005)

Additional conditions with effect from June 16, 2005

Where the services are deemed to be export of services under 'location of immovable property' or 'performance of service' (as indicated above), additional conditions have been imposed to avail the benefit of export of services. They are:

- Such services have to be delivered outside India;
- Services have to be used (for business or otherwise) outside India; and

- Payment is received in convertible foreign exchange.

Anomalies in the above categorisation

- While the characteristics of the service provided by a Professional (be a Chartered Accountant/Costs and Works Accountant/Company Secretary) and that provided by a Management Consultant (any person rendering consultancy services regarding the management of an organisation)/Consulting Engineer (person providing engineering consultancy services) are similar, the same are categorised in two different categories. Services of Management Consultant/Consulting Engineer are treated as exported, when the service recipient

is located outside India. But the services of other professionals are regarded as exported only when the same are performed outside India. This leads to a situation that even when a Chartered Accountant serves a foreign client in India through the modern Information Technology means, the same would not be regarded as an exported service, since the same are regarded as exported only when the same are performed outside India.

- The categorisation of Mandap Keeper's/Convention Center services as export services under performance category rather than in the category of location of immovable property also seems to be illogical. This is because of the fact that

the mandap keeper/Convention Center services can be identified only with reference to the location of immovable property. There seems to be no basis in classifying the same under the category of performance of service.

- The taxable services under the category of 'Business Auxiliary Services'/ 'Banking and Other Financial Services' cover within their ambit wide range of services and classifying the same on a single basis could lead to a situation where a genuine export transaction is also not regarded as such or a service rendered in India being treated as an export transaction due to these strict regulations. To give an example, an equipment lease transaction cannot be treated on par with the transactions of issue of Pay order/Demand Draft.

As the Cenvat Credit Rules, 2004, have not provided for any specific rebate/refund of Service Tax in case of exported services, powers have been given to the Central Government to grant rebate of Service Tax paid on the exported services, and also the excise duty/Service Tax paid on the inputs/input services used in rendering the taxable services which are exported.

Grant of rebate of Service Tax on exported services

As said above, by virtue of the powers granted under the ESR, 2005, the Central Government has notified the provisions for rebate of Service Tax and education cess paid

on exported services vide Notification 11/2005, the brief contents of which are as under:

The rebate procedure allows the export service provider to claim a rebate of the whole of the Service Tax and education cess paid on all taxable services exported in terms of the Export of Services Rules, 2005 shall be granted, subject to the following conditions:

- The service has been exported (to a country other than Nepal or Bhutan), and full payment for such export has been received in India in convertible foreign exchange;
- The Service Tax and education cess, of which the rebate has been claimed, have been paid; and
- The amount of rebate of Service Tax and education cess is not less than Rs. 500.

Strict provisions have also been incorporated in cases where the Service Tax and education cess, rebate of which have been claimed, have not been paid or if the taxable service has not been exported. In such cases, the rebate will be recovered with interest as per the provisions of the Finance Act, 1994.

The procedure for claiming the rebate is as follows:

- The assessee has to file a claim with the jurisdictional Authorities along with documentary evidence for receipt of consideration in respect of exported service, payment of Service Tax and cess and a declaration stating that the taxable service is exported along with the

proof of export of service.

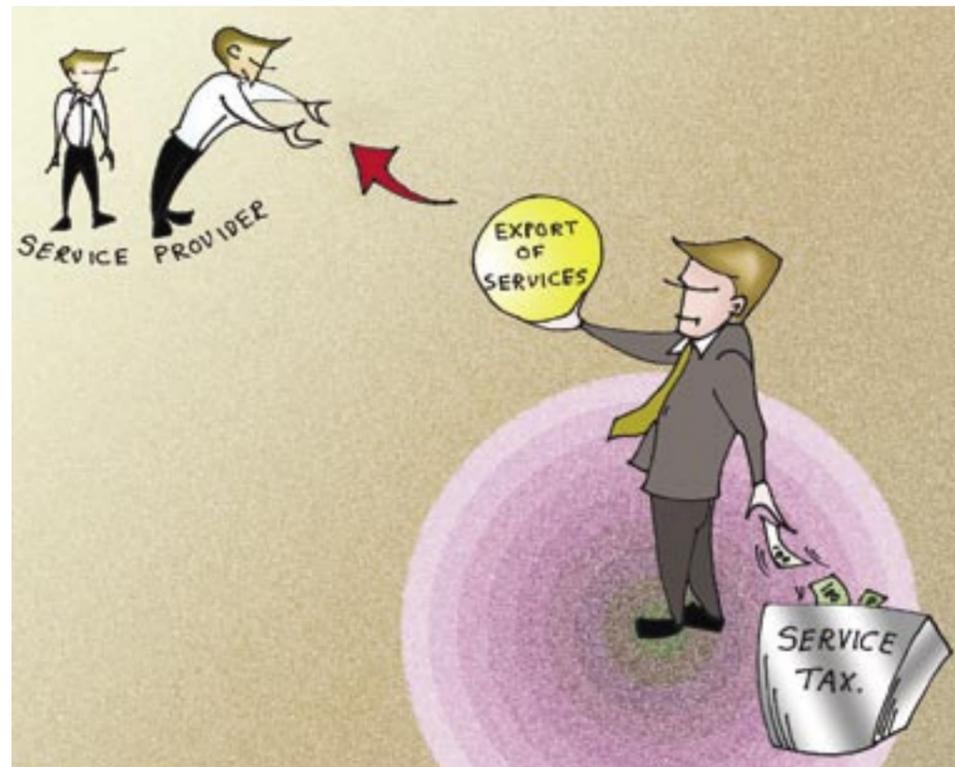
- The jurisdictional Authorities shall, if satisfied that the claim is in order, sanction the rebate either in whole or in part.

Grant of rebate of Service Tax, education cess and duty paid on input services and inputs used in providing exported services:

Besides granting a rebate of Service Tax paid on the exported services, a separate procedure for claiming rebate of the whole of the duty paid on excisable inputs or the whole of the Service Tax and education cess paid on all taxable input services actually used in providing taxable services that are exported in terms of the Export of Services Rules, 2005 is also notified vide Notification 12/2005. As per this Notification, rebate shall be granted, subject to the following conditions:

- Prior permission to work under this notification has been accorded by the jurisdictional Authorities;
- The service has been exported (to a country other than Nepal or Bhutan), and full payment for such export has been received in India in convertible foreign exchange;
- The excise duty on the inputs, of which the rebate has been claimed, has been paid;
- The Service Tax and education cess on the input services, of which the rebate has been claimed, have been paid;
- The total amount of rebate of excise duty, Service Tax and education cess is not less than Rs. 500; and

Strict provisions have also been incorporated in cases where the Service Tax and education cess rebate of which have been claimed, have not been paid or if the taxable service has not been exported



- No Cenvat Credit has been availed of on the inputs and input services on which rebate has been claimed.

Strict provisions have also been incorporated in cases where the Service Tax and education cess, rebate of which have been claimed, have not been paid or if the taxable service has not been exported or Cenvat Credit has been availed on inputs and input services. In such cases, the rebate will be recovered with interest as per the provisions of the Finance Act, 1994.

The procedure for claiming the rebate is as follows:

- The assessee has to file a Declaration stating the description, quantity, value, rate of duty and amount of duty/tax and cess payable on the inputs/input services actually required to be used in providing the services to be exported with the jurisdictional authorities.
- The jurisdictional authorities will verify the genuineness of the claim and may accept the declaration.
- The service provider must procure the inputs directly from a registered factory or dealer registered under the Central Excise Rules, 2002, accompanied by invoices issued under the said Rules and in case of the input services actually required for use in providing the exported service, the same must be accompanied by an invoice, bill or challan issued under the provisions

of the Service Tax Rules, 1994.

- A claim has to be presented to the jurisdictional authorities along with the invoices for inputs/input services, documentary evidence for receipt of payment against the exported services and a declaration stating that the taxable service has been exported.
- The jurisdictional authorities shall grant the rebate either in whole or in part based on the documents/declarations submitted.

Conclusion

With the growing importance of Service Tax in the Indian economy, it is imperative for the Government to come out with a separate Act for governing the Service Tax. This is also needed to sort out the issues like jurisdiction of the Service Tax, persons liable for payment of Service Tax etc. A simple explanation to tax all the imported services when the scope is restricted to the services rendered in India could create innumerable problems, unless clarifications are issued explaining the methodology in which the said provisions are going to be implemented.

While the Government is attempting to treat the goods and services at par, it is necessary that the legislations gov-



erning the same should also be similar so that the administrative mechanism could be simpler. It is also necessary to make the Rules for Export of Services much simpler and logical so that there would not be any difficulty in implementing the same. □

