

Ref No.106/R-43/8949

Dated:-12January, 2011

To,

Shri S. Dutt Majumder
Chairman & Special Secretary,
Central Board of Excise and Customs,
Ministry of finance, GOI,
North Block, New Delhi-110001

Subject: - Issues faced by SEZ Developers/Units in claiming refund of Service Tax

Ref: Notification No. 9/2009-ST dated 3rd Mar, 2009 as amendment by Notification No. 15/2009-ST dated 20th May, 2009.

Dear Sir,

With reference to above notifications, an upfront/unconditional service tax exemption has been provided to SEZ developers/units for the input services, wholly consumed within the SEZ, provided in relation to their authorized operations.

However due to lack of clarity of various operational issues related to these notifications, the service providers decide to charge service tax even on the approved list of input services, related to the authorized operations, in apprehension of that:

1. The conditions of input services “wholly consumed within SEZ” are not suitably defined; and
2. Non-charging of service tax might trigger the reversal of the Cenvat credit availed by them.

Issue(s)	Effects of the issue(s)	Recommendation(s)
Availability of Exemptions from service tax.	Service providers charge service tax without relying on documents/declarations provided by the SEZ developers/units. Service providers charges service tax in apprehension that it might trigger the reversal of the Cenvat credit availed by them.	The satisfaction of the condition of “wholly consumed within SEZ” need suitable clarification. The mechanisms should be introduced to assure service providers that it will not trigger reversal of the Cenvat credit on the exemptions granted to SEZ developers/units on the approved list of services.
Meaning of phrase “wholly consumed within SEZ”	The approvals of input services from the Approval Committee does not mean that the services shall be deemed as “wholly consumed within SEZ,” hence, service providers charge service tax even on input services certified by the Approval Committee. Service tax authorities (“STA”) treat most services as “wholly consumed within SEZ” and deny the refund claims to SEZ developers/units.	The meaning of the phrase “wholly consumed within SEZ” should be clearly defined. Further we seek department’s stand on the refund claims of service taxes already charged by service providers and duly paid by SEZ units, which are rejected by the STA.

Approval for the list of input services used in relation to authorized operations	There is no clarity on effective date of approval for the list of input services.	The approvals, for the list of input services, of the Approval Committee should specifically refer the effective date of the approvals. Clarification should be issued to determine the effective date of approvals with respect to approvals that have already granted.
Jurisdiction for submission of refund claims	As per the notification, the SEZ developers/ units will file the claims for refund to the jurisdictional Assistant Commissioner (AC) or Deputy Commissioner (DC) of Central Excise. SEZ developers/ units are facing difficulties in filing the refund claims as STA are not ready to accept the refund claims in the absence of clarity about relevant jurisdiction.	Suitable clarifications can be issued about jurisdiction in case of SEZ developers/units with a centralized service tax registration.
Time limit for filing the claims.	The refund claims to be filed within a period of six months or such an extended period from the date of payment of service tax to service providers However, AC or DC does not consider any ground for delay for filing the refund claims.	Suitable clarifications can be issued to condone any reasonable delay in justified cases and/or where the delay is caused by Government machinery (ies). The time limit for filing the claims may be extended to one year.

In addition, the SEZ developers/units face various issues in claiming refund of service tax paid while availing taxable services, some of the major issues are stated herein for your kind consideration and taking remedial measures to alleviate the problems faced by SEZ developers/units.

Thanking you in anticipation of a favorable action.

For Indian Industries Association

(D S Verma)

Executive Director