

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE: TRICHY.
NO.1, WILLIAMS ROAD, CONTONMENT, TRICHY-620 001.

General Circular No.2/2007 S. Tax

Dated: 3-5-2007.

Sub: Issuance of show-cause notices for non-filing of returns- regarding.

A copy of Ministry's Service Tax letter issued vide F.No.137/58/2007-CX.4 dt. 29-3-2007 on the above subject and the same is reproduced below for information, guidance and necessary action.

(Issued under C.No.IV/16/943/2006-STC)

Sd./-
(M.G.THAMIZHVALAVAN)
JOINT COMMISSONER (T).

To
The Mailing List –III.

Copy of Ministry's Service Tax letter F.No.137/58/2007-CX.4 dt. 29-3-2007 is reproduced below:

Subject:- Issuance of show-cause notices for non-filing of returns- reg.

A question has arisen regarding the applicability of service tax levy on roaming service provided to an international in-bound roamer, i.e., subscriber of a foreign telecom network, when in India, by an Indian telecom service provider. The telecom operators are of the view that in-bound roamer is not a subscriber as no telephone connection is provided to him and such roamer does not undergo the processes of registering as subscriber like entering into contract with the visiting network, furnishing of identity, etc.

2. "Roaming" is a widely used term in wireless telecommunications that refers to extension of connectivity service in a location that is different from the location/network area of home network, and it occurs when a subscriber of one wireless service provider physically moves to the network area of another wireless service provider. "International roaming" refers to the ability of a subscriber to move to a foreign service provider's network and use its network for making and/or receiving a telephone call.

3. To enable an in-bound roamer to hook on to the visited network and avail of telephone service, a temporary internal number is assigned by such network. Any call made to/from a roaming mobile is routed through the visited network like any other call. The details of usage of service by such a subscriber are captured and billing account is transferred to the home network for receiving the payments. The home operator then bills these calls to his subscribers. Roaming fees are traditionally charged on a per minute basis, and they are typically determined by the service provider's pricing plan.

4. In terms of the provisions of the Finance Act, 1994, telephone connection service means 'any service provided to a subscriber by the telegraph authority in relation to a telephone connection'. Subscriber means 'a person to whom any service of a telephone connection has been provided by the telegraph authority'. During international roaming, the visiting network provides service to a person treating him as a subscriber on a temporary basis for the period during which service is availed of by such person from the visited network. The only difference is that the payment is not directly received from the subscriber, but the same is routed through the home network. However, this does not alter the essential characteristics of the service, which is of a telephone connection. As regards the argument that no telephone connection is provided to an in-bound roamer, a telephone connection does not necessarily mean providing a telephone instrument or providing a SIM card. Telephone connection is provided so long as the telecom operator provides the facility to a person to make a connection for making or receiving a call (using a telephone) by assigning a unique identification number to line/instrument or card used for making a call. An identification number is essential, *interalia*, for routing the call to such line/instrument or card and to bill for the call charges based upon the duration of a call. Even if this number is allocated temporarily and internally, it remains a service of telephone connection. Further, the issues of entering into a contract or verification of the subscriber are not relevant to the levy of service tax.

5. Therefore, during the period of roaming, the Indian telecom service provider provides telephone service to an international in-bound roamer. This service to in-bound roamers is delivered and consumed in India and, therefore, it is not an export of service. International practice treats the telephone service provided to an in-bound roamer by the visited network, for purposes of taxation, in the same manner as a telephone service provided to any home subscriber.

6. Accordingly, the domestic telecom operators providing roaming service to international in-bound roamers are liable to pay service tax on the amount received through the home network on account of service provided to such international roaming subscriber.

7. The field formations may take action, for collection of service tax on the basis of this circular only in respect of such services which would be provided to an international in-bound roamer from 15.1.2007 onwards. For the period prior to this date, the matter is under examination of the Board.
