

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

General Circular No.3/2008 S. Tax

Dated: 19-9-2008.

Subject: Service Tax Issues relating to Units in SEZ-Reg.

Copy of Board's Service Tax Circular No. 105/08/2008 dated 16-9-2008, issued in F.No.137/168/2008-CX.4 on above subject is enclosed herewith for information, guidance and necessary action.

(Issued from C.No.IV/16/943/2006 S.Tax)

Sd./-
(A. RAJENDRAN)
ASSISTANT COMMISSIONER (T).

To
The Mailing list - III.

Copy of Board's Service Tax Circular No. 105/08/2008 dated 16-9-2008, issued in F.No.137/168/2008-CX.4 is reproduced below.

It has been observed that there has been lack of clarity in the field formations administering service tax as regards the applicability of service tax levy on units located in Special Economic Zones. This lack of clarity has resulted in certain problems especially with respect to service tax administration. The issues and the proposed actions are mentioned below.

2. Non-payment of service tax by SEZ units providing taxable service outside SEZ

2.1 There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 (Service Tax law). Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST. The C &AG, in its recent report has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce (MOC) has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax (or CX & ST) authorities under the Central Board of Excise and Customs. Therefore, field formations should ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994. In this regard a time bound survey may be undertaken by the jurisdictional Commissionerates to identify SEZ units which are providing any taxable service to a recipient for consumption outside SEZ, and if so whether or not, they are discharging ST liability correctly. This survey may be completed by 20. 10.2008, and a report in this regard may be sent to DGST by 31.10.2008, positively.

3. Refund of Service Tax on taxable services used for the purposes of exports of goods by SEZ units

3.1 Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification prescribes that the refund would be allowed by the jurisdictional Deputy Commissioner / Assistant Commissioner of Central Excise. Doubts have arisen as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. As stated above, the Ministry of Commerce has already opined that administering the service tax law is responsibility of CBEC. Refund of service tax is to be processed by the respective jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities (i.e. service tax commissionerates in Delhi, Mumbai, Bangalore, Ahmedabad, Kolkata and Chennai and the jurisdictional central excise commissionerates elsewhere) and file their claims there.

4. The information contained in this circular may be brought to the notice of SEZ Units and the Development Commissioners.

Yours faithfully,
(Gautam Bhattacharya)
Commissioner(ST)