

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

General Circular No.4/2008 S. Tax

Dated: 16-10-2008.

Subject: Service Tax- GTA- Certain further clarification in respect to clarification issued vide Circular No.5/1/2007-ST dated 12-3-07 regarding exemption under notification no. 32/2004-ST dated 3-12-2004--Reg.

Copy of Board's Service Tax letter F. No.137/154/2008-CX.4 dtd 21-8-08 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 letter F. No. 137/154/2008-CX.4 dtd 21-8-08
is reproduced below.

1. It may be recalled that a dispute had arisen whether or not the persons other than Goods Transport Agents (herein after called the GTA) i.e. consignor or consignee, whosoever pays tax under 'reverse charge method' under the provision of the Service Tax Rules is also eligible for abatement of 75% under the notification No.32/2004-ST dated 3-12-2004 (now replaced by notification No.1/2006-ST). The Board, vide circular No.5/1/2007-ST dated 27-7-2005 had clarified that such persons are also eligible for availing the benefit of the notification, subject to fulfillment of the conditions prescribed therein. There are two conditions for availing the said abatement. One is non-availment of CENVAT credit and second is the non-availment of benefit of notification no.12/2003-ST.

2. After the issuance of the circular, a large number of demand notices were dropped. However, now it has been brought to the notice of the Board that certain notices still remains undecided on the ground that the person liable to pay tax has not been able to produce evidences of non-availment of benefits of CENVAT Credit or benefit of notification No.12/2003-ST. In this regard, vide Para 31 of the circular No.B1/6/2005-TRU dated 27-7-05, it was clarified by the Board that such '*a declaration from the GTA on the consignment note issued, to the effect that neither credit on input or capital goods used for the provision of service has been taken nor the benefit of notification No.12/2003-ST has been taken by them may suffice for the purpose of availment of abatement by person liable to pay service tax*'.

3. Since, this clarification was issued in July 2005, such endorsements were not available on consignment notes issued prior to that period i.e. between Jan 2005 when the service tax was imposed on GTA service and July / August 2005, when the Board Circular reached the field formations. This has been the reason for certain notices still remaining pending.

4. The matter has been examined. Considering the facts and circumstances of the case and in partial modification of the instructions contained in Circular No.B1/6/2005-TRU dated 27-7-2005, it is clarified that the benefit of availment of abatement may also be extended in past cases if the taxpayers produce a general declaration from the GTA to the service has been taken nor the benefit of notification No.12/2003-ST has been taken by them.

5. The past cases may be decided accordingly.

6. This issues with the approval of the Member (Service Tax).

Sd/ 21-8-08
(Gautam Bhattacharya)
Commissioner (Service Tax)
CBEC.