



केंद्रीय उत्पाद एवं सीमाशुल्क तथा सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
पी.बी.नं.13,आई.सी.ई.भवन, प्रेस क्लब रोड, तिरुवनंतपुरम 695001
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दिनांक Date : 07/01/2016.

द्व्यापार सूचना संख्या : 1/ते.क /2016
TRADE NOTICE NO: 1/ST/2016

विषय : बीज परीक्षण के संबंध में दिनांक 01.07.2012 से सेवा कर की आरोप्यता तथा वस्त्रों के निर्माण के संबंध में परिधान निर्यातकों द्वारा प्राप्त सेवाओं पर सेवा कर का लागू होना - संबंधित
Subject:- Leviability of service tax in respect of Seed Testing with effect from 01.07.2012 and Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments – Regarding

भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, केंद्रीय उत्पाद एवं सीमाशुल्क बोर्ड, कर अनुसंधान एकक द्वारा जारी किए गए निम्न परिपत्रों की प्रतिलिपि जानकारी, मार्गदर्शन और आवश्यक कार्रवाई हेतु इसके साथ संसूचित की जाती है।

The copy of the following Circulars issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Tax Research Unit, New Delhi is communicated herewith for information, guidance and necessary action.

क्रम सं. Sl. No.	परिपत्र संख्या एवं दिनांक Circular No. and Date	जारी करने वाले प्राधिकारी का संदर्भ संख्या / Ref. No. of Issuing Authority	विषय / Subject
1	189/8/2015-ST Dated 26/11/2015	F.No.354/279/2015-TRU	बीज परीक्षण के संबंध में सेवा कर की आरोप्यता / Leviability of service tax in respect of Seed Testing.
2	190/9/2015-ST Dated 15/12/2015	F.No.354/153/2014-TRU	वस्त्रों के निर्माण के संबंध में परिधान निर्यातकों द्वारा प्राप्त सेवाओं पर सेवा कर का लागू होना / Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments.

(फाइल सी.सं. IV/16/1/2016 से.क.(मु) तक. से जारी/Issued from file C.No: IV/16/1/2016 ST (H) Tech)

संलग्नक :- उपरोक्त

Encl :- As above

(वि.चिं.खोले V.C.KHOLE)

अपर आयुक्त ADDITIONAL COMMISSIONER

ST (10)

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Circular No.189/8/2015-Service Tax

F. No. 354/279/2015-TRU
Government of India
Department of Revenue
Central Board of Excise & Customs
New Delhi

New Delhi, the 26th November, 2015

To

Principal Chief Commissioners of Customs and Central Excise(All)
Principal Chief Commissioners of Central Excise & Service Tax (All)
Principal Director Generals of Goods and Service Tax/System/CEI
Director General of Audit/Tax Payer Services,
Principal Commissioners/ Commissioners of Customs and Central Excise (All)
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)
Principal Commissioners/Commissioners of Service Tax (All)
Principal Commissioners/Commissioners LTU/Central excise/Service Tax
(Audit)

Madam/Sir,

Sub: Clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012-reg.

It has come to the notice of the Board that certain field formations have taken a view that all activities incidental to seed testing are leviabile to service tax and only the activity in so far it relates to actual testing has been exempted in the Negative List.

2. The matter has been examined. In this regard, Negative list entry under Clause (d) of section 66D of the Finance Act, 1994 is reproduced as under :

“(d) services relating to agriculture or agricultural produce by way of –

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;”

2.1 Term ‘agriculture’ has been defined under section 65B clause (3) as under:-

(3) “agriculture” means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

2.2 Term 'agriculture produce' has been defined under section 65B clause (5) as under:-

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

2.3 There is no doubt that seed is not covered under the definition of agriculture produce. All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing is covered. Testing and certification can be done as per the Act and rules made there under in this regard. Testing cannot stand in isolation of certification and other ancillary activities. Testing cannot be random, somebody has to register for testing. If certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing.

2.4 "Agricultural operations" have not been defined in the Chapter V of the Finance Act, 1994 and an inclusive and indicative list of such operations has been given. Thus it has been defined as "Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing". The exemption is thus not limited to the specified operations. The word 'seed' from testing in agricultural operations was deleted so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

3.0 It may be recalled that prior to introduction of Negative List, the services [*technical testing and analysis and technical inspection and certification of seeds*], rendered by notified Central/ State Seed Testing Laboratories /Agency were exempt from Service Tax [*notification No.10/2010-Service Tax*]. This notification was rescinded by another notification [*No.34/3012-Service Tax, dated 20-06-2012*], w.e.f. 01-07-2012, when the Negative List entry came into force. The intent of rescinding the said notification was not to withdraw the above stated exemption but the said exemption was being subsumed elsewhere. The relevant entry in the Negative list as on 01.07.2012 read as under:-

(d) services relating to agriculture or agricultural produce by way of -

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

3.1 Further, in the subsequent Budget 2013-14, the word "seed" prefixed to "seed testing" was omitted w.e.f. 10.05.2013. The intent was clarified by the Joint Secretary (Tax Research Unit) vide Budget D.O.F. No. 334/3/2013-TRU, New Delhi, dated February 28, 2012, in para 1 (iii) of the letter that the negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word "seed". This will allow the benefit to all other testing in relation to "agriculture" or "agricultural produce".

4. In view of the above, it is clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

5. All concerned are requested to acknowledge the receipt of this circular.

6. Trade Notice/ Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,


(Ravindra Kumar)

Technical Officer (TRU)



F.No.354/153/2014-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated- 15th December, 2015

To,

Principal Chief Commissioners of Customs and Central Excise(All)
Principal Chief Commissioners of Central Excise & Service Tax (All)
Principal Director Generals of Goods and Service Tax/System/CEI
Director General of Audit/Tax Payer Services,
Principal Commissioners/ Commissioners of Customs and Central Excise (All)
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)
Principal Commissioners/Commissioners of Service Tax (All)
Principal Commissioners/Commissioners LTU/Central excise/Service Tax (Audit)

Sub:- Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments - reg.

Madam/Sir,

It has come to the notice of the Board that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work. Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax.

2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

2.1 On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of

quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. A typical agreement that has been forwarded by the Apparel Export Promotion Council in respect of outsourced services contains following terms and condition,-

- a) The contractor (service provider) is engaged for undertaking specific jobs.
- b) The contractor is at liberty to decide the number of workers which are required for undertaking the jobs.
- c) The job worker may undertake job in his premises or in the premises of service receiver;
- d) Value of service is payable on per piece basis, depending upon item and style;
- e) Service provider is liable to compensate the service recipient if the work is not as per the standard norm;
- f) In case the work is executed by service provider at the site of service recipient, the service provider would indemnify the service receiver of any loss to inputs and infrastructure.
- g) The employee deployed for the assigned job would be under the control/supervision of the service provider.
- h) Payment would be at agreed piece rate basis.

Plain reading of this agreement makes it an agreement of job work applying the criterion outline in para 2 above.


4. However, every job work is not covered under the negative list. If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B (40) of the Finance Act, 1994.

5. The issue of applicability of service tax may accordingly be decided taking into account the nature of agreement/contract and the service being provided.

6. All concerned are requested to acknowledge the receipt of this circular.

7. Trade Notice/ Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,


15/12/2015
(Dr. Abhishek Chandra Gupta)
Technical Officer (TRU)