

Service Tax Updates for March 2009

I. Notification

1. **Refund to SEZ:** Notification has been issued to exempt the service received by the developer of SEZ or a unit in SEZ. The salient features of this notification are as under.
 - a. This notification supersedes the earlier notification 4/2004-ST dated 31.03.2004.
 - b. Exemption under this notification is provided by way of a refund.
 - c. The provider of the service to SEZ shall register, collect and pay service tax to the department.
 - d. In case developer of SEZ/Unit in SEZ is the person liable to pay service tax, then refund for the same can be claimed. (Reverse charge u/s 68(2) r/w Rule (1)(d)).
 - e. Procedure & form has been prescribed in the notification.

(Refer Notification No. 9/2009 dated 03.03.2009)

2. **Amendment to ST-3:** Notification has been issued to amend the form ST-3, the self assessment returns to include the details of the Service Tax Return Preparer. Sl. No. 8 has been introduced to give the details of the Identification number, name & signature of SRTP (Service Tax Return Preparer)

(Refer Notification 10/2009-ST dated 17.03.2009)

II. Circular

3. **Clarification pertaining to refund u/n 41/2007:** Notification 41/2007-ST as amended provided refund of certain specified service for the exporter. There were few issues with respect to this notification. Few of such issues have been clarified by board by way of a circular. The issues and the clarification is provided below

- a. **Notification No. 41/07-ST has been amended by notification Nos.32/2008-ST, dated 18.11.2008 and 33/2008-ST, dated 7.12.2008 to (i) extend the limitation period from 60 days from the end of quarter to six-month; (ii) to omit the condition of non availment of drawback. Whether, in view of amended conditions, refund for the quarter Mar-Jun 08 would be allowed to be filed till Dec 08?**

Refund claims of service tax on specified taxable services used for exports of goods made in the quarter Mar-Jun 08 could be filed till 31st Dec 08.

- b. **The bank deducts certain commissions from the export remittance in lieu of service provided by them. Refund is not allowed on such deduction. Refund should be allowed on gross remittances?**

Refund is admissible on the basis of gross amount received for the exports and deductions made by the banks from export remittances, in lieu of services provided by bank, should not be deducted while granting refund.

- c. **For exporters exporting to a customer regularly, the foreign exchange remittance certificates (FIRC) are made on running account basis by the banks. Therefore, it is often not possible to show the linkage between the export invoice and the remittance. This has resulted in denial of refund. Further in case where payments are received by cheque, banks do not issue FIRC and refunds are denied?**

In such cases where FIRC's are issued on consolidated basis, the exporters should submit self-certified statement along with FIRC. Refunds should be allowed on such certified statements.

In case of cheque receipts refund may be allowed on the basis of duly certified bank statement.

d. ***Whether the limitation period of six month would be counted from the date of exports or from the date of receipt of remittances?***

It is clearly prescribed in the notification that limitation period of six months is to be computed from the date of exports.

e. ***Whether refund is admissible prior to date of notification?***

Being prospective in nature refund is not admissible prior to date of notification No. 41/2007.

f. ***Authorities granting the refund are insisting on original documents & Refunds are denied on this ground?***

Normally certified copy of documents should be accepted. Only in case of in-depth enquiry original documents can be verified.

g. ***Service provider provides various services, but registered under only one service. If taxable services are not covered under registration whether they are eligible for such refunds?***

Granting refund to exporters, do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt separately.

h. ***Whether refunds under notification No. 41/2007-ST, dated 6.10.2007 would be admissible for the quarter July-Sep 2007?***

Refund could only be sanctioned on taxable services provided on or after 6.10.2007.

(Refer Circular No. 112/06/2009-ST dated 12.03.2009)

III. Important Case Laws:

(1) **CCE, JAIPUR-II Vs M/s J K CEMENT WORKS (2009-TIOL-411-CESTAT-DEL)**

Facts: The respondents are manufacturers of cement & avail Cenvat credit facility.

Issue: Whether Cenvat credit can be taken on rent a cab service, cellular telephone service, repair of car or motor vehicle service & photography services. According to Revenue these services *can not be treated as input services* used in relation to manufacture of cement.

Decision: Tribunal held that Rent-a-cab service, Cellular Telephone service, Repair of car/motor vehicle service and Photography service are input services & are consumed in or in relation to manufacturing process. Credit available on service tax paid on such services.

(2) **SHRI CHANDRAPRASAD DESAI MEMORIAL FOUNDATION Vs COMMISSIONER SERVICE TAX, AHMEDABAD (2009-TIOL-430-CESTAT-AHM)**

Facts: Appellant is a trust and pleads that its activities cannot be held to be commercial activities.

Issue: Whether commercial coaching conducted by Appellant is liable to service tax?

Decision: Stay granted by Tribunal in view of the Tribunal's decision in the case of Ahmedabad Management Association (2009-TIOL-214-CESTAT-AHD).

(3) **CCE & CUSTOMS VADODARA-I Vs M/s AMBALAL SARABHAI ENTERPRISES LTD (2009-TIOL-396-CESTAT-AHM)**

Facts: Respondent entered into two agreements with Sarabhai Pirmal pharmaceuticals for *transfer of know* how for a consideration. Revenue disputed second agreement as amounting to Consulting Engineer's Service.

Issues:

- a) Whether agreement involves technical advice & consultancy?
- b) Whether it attracts service tax under consulting Engineer's services?

Decision: By entering into agreement economies in manufacture & marketing has been achieved, which cannot be classified under consulting engineer's service. Appeal by Revenue was dismissed.