



Seminar on Import and Export of Services under the Service Tax Enactment

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Export of Services

Basic Principle

- Export local products and Services with no local taxes
- If service is exported, no service tax is payable
- Export of services are not exempted, while ZERO Rated



Export of Services

Basic Meaning

- Input – All goods used in manufacturing of final products or providing for any output services.
- Input Services – Services used in manufacturing of final products or providing for any output services.
- Output Services – Any taxable service provided by service provider



Export of Services

Position from 9-4-99-to 28-2-2003

Notification 6/99 ±ST dated 9-4-1999 ±

- Payments received in India in convertible Foreign exchange is exempt.

From 1-3-2003 to 20-11-2003

- Service tax is destination based Consumption tax
- Services consumed abroad is exempt



Export of Services

Position from 20-11-2003 to 14-3-2005

- Service charges received in convertible Foreign exchange is exempt
- Export of Services Rules, 2005 w.e.f 15-3-2005



Export of Services

Categorisation of Services:

- Immovable property criteria
- Performance based criteria
- Recipient based criteria



Export of Services

Immovable property criteria:

- Rule- 3(1)(i) - Immovable property should be located outside India
- Rule – 3(2)(a) - Services provided from India and used outside India
- Rule -3(2)(b) - Payment in convertible foreign exchange
- Classified Services u/r 3(1)(i) – refer ann. “A”



Export of Services

Whether Export of Service?

- Indian Architect prepares a design sitting in India for a property located in U.K and hands it over to the owner of such property having his business and residence in India. [Rule- 3(1)(i)]



Export of Services

Performance Based Criteria:

- Rule - 3(1)(ii) - Services have been performed outside India, either wholly or partly.
- Rule - 3(2)(a) - Services provided from India and used outside India
- Rule - 3(2)(b) - Payment in convertible foreign exchange
- Classified Services u/r 3(1)(ii) – refer ann. “B”



Export of Services

Whether Export of Service?

- An Indian event manager arranges a seminar for an Indian company in U. K; the service has to be treated to have been used outside India on the basis of performance in U.K even though the benefit of such seminar may flow back to the employees serving the company in India. [Rule- 3(1)(ii)]



Export of Services

Recipient Based Criteria:

- Rule - 3(1)(iii) - When services are provided in relation to business and commerce, the recipient of service should be located outside India and when services are not provided in relation to business and commerce, the recipient of service should be located outside India at the time of provision of such service.
- Rule - 3(2)(a) - Services provided from India and used outside India
- Rule -3(2)(b) - Payment in convertible foreign exchange
- Classified Services u/r 3(1)(iii) – refer ann.“C”



Export of Services

Whether Export of Service?

- B S L (India) taking orders in India from domestic buyers for its principal in UK & US to be exported goods in India on the terms of commission covered under BAS
 - Gets commission in convertible foreign exchange from its principal – [Rule – 3(1)(iii)]# M/s. Blue Star Ltd. vs. CCE 2008 TIOL 716
 - Gets commission in Rupees from the buyers on behalf of its principal – [Rule – 3(1)(iii)]# [CCE Rajkot Versus M/s Shelpan Exports](#) - 2010 TMI - 76131 - CESTAT, AHMEDABAD



Export of Services

Whether Export of Service?

- NEIL is agent of GMC, USA procured orders/contracts from Indian Railways for GMC –USA. Commission received by NEIL in Rupees from Indian Railways after deduction of amount payable to GMC, USA in USD. [Rule – 3(1)(iii)]# 2009 TMI - 33500 - CESTAT NEW DELHI NATIONAL ENGG. IND. LTD. Versus CCE, JAIPUR
- NSL exports services through local agent and gets paid by the agent in INR after conversion of foreign exchange received by the agent [Rule – 3(1)(iii)] # 2009 TMI - 33480 - CESTAT BANGLORE NIPUNA SERVICES LTD. Versus CCE, C & ST (APPEALS-II), HYDERABAD



Export of Services

Whether Export of Service?

- R&D of contents' activity undertaken in India – Result posted on server located outside India – access by service receiver located outside India. Ans. - Yes [Rule – 3(1)(iii)]
- Market Research activity undertaken in India – Report posted on server located outside India – access by service receiver located outside India. Ans. No [Rule – 3(1)(ii)]
- Indian Add Agency displays add of foreign company in the media located in India. Ans. Yes [Rule - 3(1)(iii)]



Export of Services

Services not classified:

- Air Transport of Passengers embarking in India for International Journey
- Transport of persons by a Cruise Ship embarking in any port in India



Export of Services

- Situs of service Provided- In the cases of Following services, the service shall be treated as provided in the country in which the tangible goods are located at the time of provision of service (without visit):
 - Management, maintenance or repair service
 - Technical testing and analysis service.
 - Technical inspection and certificate service



Export of Services

- Benefits available
 - Rule 4 - Export of Services without payment of Service Tax
 - Rule 5 - Rebate of Service Tax paid on Export of Services
 - Rebate of Service tax and Excise Duty paid on Input Services and Inputs; or
 - Refund of unutilised CENVAT Credit



Export of Services

- Rebate of Service Tax paid [Notification No.11/2005 ±ST dated 19th April, 2005]
 - If service tax is paid at the time of export of Service, service tax is refundable
 - Exported to countries other than Nepal and Bhutan
 - Amount of rebate is not less than Rs.500/-
 - Claim application has to be filed with Assistant Commissioner through Form ASTR-1



Export of Services

- Rebate of Service Tax paid on inputs [Notification No. 12/2005 ST dated 19th April, 2005]
 - Rebate is not less than Rs.500
 - No CENVAT Credit availed on inputs and input services
 - Declaration before export of service with Description, quantity, value, rate of duty and Duty payable on inputs and input services



Export of Services

- Rebate of Service Tax paid on inputs
 - Application to the Assistant Commissioner
 - Form ASTR - 2
 - Application with documentary evidence



Export of Services

- Refund of unutilised CENVAT Credit
 - Taxable service exported as per procedure
 - Claim once in a calendar quarter ± If more than 50% exported , once in a month
 - CENVAT Credit not utilised due to export
 - Quantum of Refund = (Total CENVAT Credit taken during the period X Export turnover) /Total turnover



Export of Services

- Refund of unutilised CENVAT Credit
 - Application in Form A
 - Within one year
 - Application with the following documents ± Shipping bill, Copy of invoices, BRC, Relevant extracts of records under CENVAT Rules and Service Tax Rules



Import of Services

- Basic Principle

- Import Services from outside India - pay local taxes on a par of additional custom duty as destination based consumption tax on reverse charge mechanism.
- Effective from 01.01.2005 [Notification No. 36/2004 ST]
- Dispute over effective date – 01-01.2005 or 19.04.2006.
- Effective from 19.04.2006 [Section 66A]
- STO 2010 CESTAT 347 Commissioner of Central Excise, Tirunelveli Vs. Rajapalayam Mills Ltd., Rajapalayam Spintex, Rajapalayam Textiles
- STO 2010 CESTAT 80 Commissioner of Central Excise, Chennai Vs. N. M. Hasim & Co., STO 2010 CESTAT 76 I. P Rings Limited Vs. Commissioner of Central Excise, Chennai.II, STO 2010 CESTAT 17 Commissioner of Service Tax Ahmedabad Vs. Unimark Remedies , Limited etc



Import of Services

- Section 66A –
 - Taxable Service provided by foreign establishment
 - Such service is received by Indian Establishment
 - Services should be in relation to business or commerce
 - Individuals are not covered
 - Direct concerned establishment to be treated as service provider, where the same company has two different business establishments.



Import of Services

Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

- Categorisation of Services:
 - Immovable property criteria
 - Performance based criteria
 - Recipient based criteria



Import of Services

Immovable property criteria:

- Rule- 3(i) - Immovable property should be located in India.
- Classified Services u/r 3(i) – refer ann. “A”



Import of Services

Performance Based Criteria:

- Rule - 3(ii) - Services have been performed in India either wholly or partly
- Classified Services u/r 3(ii) – refer ann. “B”



Import of Services

Recipient Based Criteria:

- Rule - 3(iii) – The recipient of service should be located in India
- The service should be in relation to business or commerce.
- Classified Services u/r 3(iii) – refer ann. “C”



Import of Services

- Compliance for registration and filing return is similar to service provider
- The taxable service is input service instead of being output service. [Rule-5]
- Service Tax paid on Import of Service is entitled for cenvat credit against service tax payable on output service or otherwise



Import of Services

Whether Import of Service?

- Foreign establishment of Indian Company receives service from foreign consultant out side India - payment made by Indian Company.

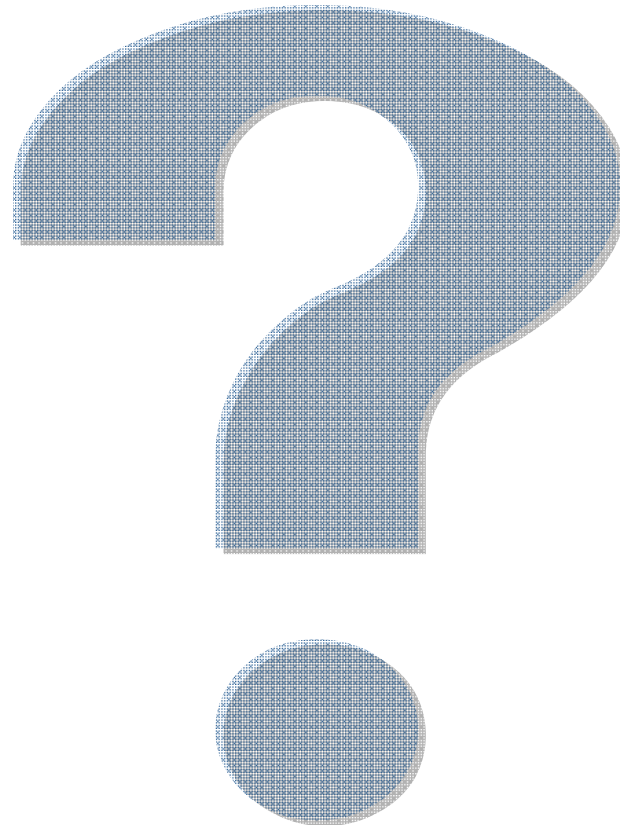


Import of Services

Whether Import or Export of Service?

- Foreign consultant coming to India for processing of data – data processing facility located in India - consulting service is in relation to oil block situated outside India - payment made by Indian company in convertible foreign exchange.
- Is it export of Service?
- Is it import of Service?

Question





Thank you !

For any issue/ clarification,
please mail to
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Import and Export of Services

Annexure A : Immovable property criteria

- o Auctioneer's Service
- o Architect Services
- o Commercial or Industrial Construction Services
- o Construction of Complex Services
- o Dredging Services
- o General Insurance Services
- o Interior Decorator's Services
- o Legal Consultancy Services
- o Mandap keeper Service
- o Mining of mineral, oil or gas service
- o Provision of preferential location or external or internal development of complexes
- o Real Estate Agent's Services
- o Renting of immovable property service
- o Site formation and clearance, excavation and earth moving and demolition Service
- o Survey and map making Services
- o Works Contract Service



Import and Export of Services

Annexure B : Performance based criteria

- Airport Services
- Air Travel Agent's service
- Authorised Service Station's services
- Beauty Treatment service
- Business Exhibition services
- Cargo Handling service
- Cleaning activity service
- Clearing & Forwarding Agent's services
- Club or Association service
- Commercial Training or Coaching service
- Commodity Exchange Service
- Convention services
- Cosmetic and plastic surgery services
- Courier services
- Credit Rating Agency's service
- Custom House Agent's services
- Dry Cleaning service
- Electricity exchanges' services
- Erection, Commissioning & Installation service
- Event Management service
- Fashion Designing service
- Forward Contract service
- Health & Fitness service
- Health check-up and treatment services
- Internet Cafe service
- management, Maintenance & Repair service
- Market Research Agency's service
- Opinion Poll service
- Other Port services
- Outdoor Caterer's service
- Packaging activity service
- Photography service
- Pandal or Shamiana Contractor's service
- Port services
- Processing or clearing house services
- Rent-a-Cab Scheme Operator's service
- Security Agency's service
- Sound Recording service
- Steamer Agent's service
- Stockbroker's service
- Stock Exchange services
- Storage & Warehousing service
- Survey and Exploration of Mineral, Oil and Gas service
- Technical Inspection and Certification service
- Technical Testing and Analysis service
- Tour Operator's service
- Transportation of coastal goods and goods transported through National waterways a Inland water services
- Transport of Goods by Air service
- Transport of Goods by Road service
- Transport of goods by rail services
- Travel Agent's service
- Underwriter's service
- Video Production Agency's service



Import and Export of Services

Annexure C : Recipient based criteria

- Asset Management Service
- Auctioneer's Services (other than immovable property related services)
- Advertising Agency's service
- Automated Teller Machines operations, Maintenance or Management Services
- Banking and Other Financial services
- Broadcasting services
- Business Auxiliary services
- Business Support services
- Cable service
- Chartered Accountant's service
- Commercial use or exploitation of any event
- Company Secretaries services
- Computer Network services
- Consulting Engineer's service
- Copyright services'
- Cost & works Accountant's services
- Credit card, debit card, charge card or other payment card related services
- Design Services
- Development and supply of contents services in telecom services, etc.
- Franchise service
- General Insurance service (other than immovable property-related services)
- Information technology Software services
- Insurance Auxiliary services
- Intellectual Property services
- Internet Telecommunication services
- Legal Consultancy service (other than immovable property related services)
- Life Insurance service
- Mailing list compilation and mailing service
- Management Consultant's service
- Management of investment in ULIP services
- Manpower Recruitment or Supply Agency's service
- Medical records maintenance services
- Programme Producer's service
- Promotion of 'brand' of goods, services, events, business entity etc.
- Promotion, marketing or organizing of games of chance, including lottery
- Public Relations Management service
- Rail Travel Agent's service
- Recovery Agent's service
- Registrar to an Issue's service -
- Sale of space or time for advertisement service
- Scientific and Technical Consultancy service
- Share transfer agent's service
- Ship Management services
- Sponsorship services
- Supply of Tangible goods services Survey and map making services (other than immovable property related services)
- Telecommunication services
- Transport of goods other than water through pipeline or other conduit.