

VS ASSOCIATES

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Export & Import of services

Export of Services

If service is exported, there is no service tax liability. If the service is exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of service tax on other services. However, if this is not possible, he can get refund.

Service tax is required to be exempted only if there is actual export of service. 'Export of Services Rules, 2005' have been notified w.e.f. 15-3-2005. The rules make it clear that exemption from services/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules. Mere receipt of payment in free foreign exchange will not be sufficient to treat the service as 'export service'.

Exemption or Rebate of Service tax - Exporter of service has three options -

- (a) Export without payment of service tax and utilise Cenvat Credit for payment of service tax on other services.
- (b) Export without payment of service tax and claim rebate of service tax paid on input services and excise duty paid on inputs (or forget about rebate as procedure is too complicated and impractical)
- (c) Pay service tax on exported services and claim rebate (by this, he can utilise his input credit)

Meaning of Export of taxable service - Following conditions are common in respect of *all* taxable services - (a) The service should be provided from India and used outside India [rule 3(2)(a) of Export of Service Rules] and (b) Payment for such service is received by the service provider in convertible foreign exchange [rule 3(2)(b) of Export of Service Rules].

In addition, further conditions apply to different categories of services. Rule 3 of Export of Service Rules classifies the taxable services in four categories –

- (i) Immovable property should be situated abroad [rule 3(i)]
- (ii) Service should be at least partly performed outside India [rule 3(ii)]

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- (iii) Service can be provided firm Indian but recipient should be located outside India and order should be received from outside India [rule 3(iii)]
- (iv) Services which not be treated as 'export of services' under any situation.

Services falling under each category are given in next chapter.

Rebate of service tax paid on exported services or tax paid on inputs/input services - Subsequent to issue of Export of Service Rules, 2005; two notifications have been issued making provisions for rebate.

(a) Notification No. 11/2005-ST dated 19-4-2005, providing for rebate of service tax and education cess paid on taxable services exported i.e. tax paid on output services

(b) Notification No. 12/2005-ST dated 19-4-2005, providing for rebate of excise duty paid on inputs and service tax paid on input services, which are used in providing exported taxable services.

Refund of input service tax and duty under Cenvat Credit Rules - Rule 5 of Cenvat Credit Rules has been amended w.e.f. 14-3-2006 to provide for refund of Cenvat credit when output service is exported. Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006. Application should be submitted in Form 'A' to Assistant/Deputy Commissioner.

Application can be submitted every quarter. However, in following cases, refund can be claimed on monthly basis - (a) persons whose average export clearances are more than 50% of total clearances (b) EOU units. Refund of input service credit will be restricted to the extent of ratio of export turnover to the total turnover for the given period e.g. if total credit of input services is Rs. 100, total turnover is Rs. 500 and export turnover is Rs. 250, refund of input service tax credit will be only Rs. 50 (i.e. 50%, since export turnover is 50% of total turnover). The procedure seems to be simple. EOU is eligible to avail this procedure.

Import of Services

The statutory provisions use the words 'Services provided from outside India and received in India'. However, generally, the tax is known as tax on 'Import of Services'.

Section 66A(1) (effective from 18-4-2006) provides that where any service specified in section 65(105) of Finance Act, is,— (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section,

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be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply.

Exemption to individual receiving the service - First proviso to section 66A(1) states that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply.

When service provider has establishment at more than one places - Second proviso to section 66A(1) states that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided. Thus, even if a service provider has office in India as well as in foreign country, the service will be treated as provided from foreign country, if service is provided from that country.

Two permanent establishments to be treated as two separate persons - As per section 66A(2), where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Intention seems only to tax services received in India - Though section 66A is broadly worded and covers even services provided and consumed abroad, it appears that intention is to tax only services received in India. *If so, then only possible objection can be violation of DTA.*

Service provided from outside India and received in India - Though scope of section 66A is wide, it can be argued that service tax is payable only if the service falls within the definition of 'Service provided from Outside India and Received in India'.

Classification of services - The rules classify all taxable services in four categories, namely (i) Services in relation to immovable property – the property should be situated in India – rule 3(i) (ii) Services should be at least partly performed in India [rule 3(ii)] (iii) Services received by recipient located in India [rule 3(iii)] (iv) Services which will never be treated as import of service. The classification is same as per export of Service Rules.

Service receiver liable to pay service tax - As per rule 2(1)(d)(iv) of Service tax Rules, person liable for paying the service tax means - in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A of the Act, the recipient of such service.

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Thus, person receiving service in India will be liable to pay service tax. He will have to register under Service tax provisions and submit returns. Service receiver was made liable to pay service tax on services provided by non-resident by amending rules on 16-8-2002. In cases prior to that, it was held that service receiver cannot be made liable to pay service tax in case of services provided by non-resident.

Tax to be paid in cash without Cenvat credit - Rule 5 of Taxation of Services (Provided from outside India and Received in India) Rules, 2006 clarifies that the taxable service will not be treated as output service of the recipient for purpose of availing of Cenvat credit of duty of excise paid on inputs or service tax paid on any input services. Thus, the recipient of service has to pay the service tax in cash by TR-6/GAR-7 challan. He cannot utilise his Cenvat credit for payment of this amount, as it is not his 'output service', though he is liable to pay service tax.

Service receiver avail Cenvat credit of service tax paid by him - Though the person receiving the service is liable to pay service tax, the service is his 'input service'. Para 4.2-13 of MF(DR) circular No. B1/4/2006-TRU, dated 19-4-2006 confirms as follows 'Where such service is used as an input for providing any taxable output, the service tax paid on such service can be taken as input credit' (The TRU letters have not been withdrawn even when all other circulars have been withdrawn on 23-8-2007. Hence, TRU letters are still valid) [There is some controversy on this issue]

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