

Circular No.206/4/2017-Service Tax

F.No.354/42/2016-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated- 13th April, 2017

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:- Issues related to levy of service tax on the services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India - reg.

Madam/Sir,

Your kind attention is invited to notification No. 1/2017-ST dated 12th January, 2017, whereby service tax exemption was withdrawn for services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Further, in relation to such services, the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods, was notified as the person liable to pay service tax vide notification No. 2/2017 and 3/2017-ST both dated 12th January, 2017.

2. Several representations have been received seeking clarification on levy of service tax on the services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India. Consequently, it has been decided to make certain amendments in the service tax provisions in this regard. In this context, kind attention is invited to notification No. 14/2017-ST, 15/2017-ST, 16/2017-ST and 10/2017-CE (N.T.) all dated 13th April, 2017, which are explained as given below.

2.1 Vide notification Nos. 15/2017-ST and 16/2017-ST both dated 13th April, 2017, the importer of goods as defined in the Customs Act, 1962 has been made liable for paying service tax in cases of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. This change shall come into effect from 23rd April, 2017.

2.2 Vide notification No. 16/2017-ST dated 13th April, 2017, the person liable to pay service tax has been provided an alternate mechanism for calculating and paying service tax. Swachh Bharat Cess and Krishi kalyan Cess will be paid accordingly. This option has been made available with effect from 22nd January, 2017.

2.3 Vide notification No. 14/2017-ST dated 13th April, 2017, the point of taxation of services provided by a foreign shipping line to foreign charterer with respect to goods destined for India, has been specified as the date of bill of lading of goods in the vessel at the port of export. This option will be available with effect from 22nd January, 2017. Thus, no service tax is leviable if the bill of lading is of date prior to 22nd January, 2017.

2.4 Vide notification No. 10/2017-C.E (N.T) dated 13th April, 2017, the importer of the goods has been allowed to avail Cenvat credit on the basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. This change shall come into effect from 23rd April, 2017.

3. Clarification has also been sought with regard to calculation of service tax regarding services of transportation of goods by sea provided by a foreign shipping line. In case of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer w.r.t. goods destined for India, an option has been provided in the Service Tax Rules to pay service tax @ 1.4% of value of imported goods as determined under Section 14 of the Customs Act, 1962 and the rules made thereunder.

3.1 In addition, Swachh Bharat Cess and Krishi kalyan Cess will be paid accordingly [ST @1.4% of Customs value of goods, Swachh Bharat Cess and Krishi Kalyan Cess each @ 0.05% of Customs value of goods].

3.2 This option has been made available with effect from 22nd January, 2017.

4. It is pertinent to point out here that under notification No. 26/2012-ST dated 20.06.2012 (Sl. No. 10), there is an exemption on 70% of value of services of transportation of goods in a vessel subject to the fulfillment of the condition that Cenvat credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. This conditional exemption has been

extended for the reason that out of the full value of such services, the exempted value of service has already suffered taxes (Central Excise) which would have been available as Cenvat credit to set off service tax on full value of service. In effect, service tax is levied on the value added only. However, in case of foreign shipping lines, their services being exports from their home country, are zero-rated in their home country and thus have suffered no taxes. Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules.

4.1 Thus, the condition for availing exemption under notification No. 26/2012-ST dated 20.06.2012 (Sl. No. 10) is not fulfilled by the foreign shipping lines. Hence, benefit of conditional exemption will not be available to them and service tax will be paid on full value of services. Further, the amount of service tax payable under the option available under Service Tax Rules, 1994 has been prescribed accordingly.

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,

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