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आयुक्त का कार्यालय,
केन्द्रीय उत्पाद व सीमा शुल्क, वडोदरा- I,
केन्द्रीय उत्पाद शुल्क भवा, रेस कोर्स
वडोदरा-390 007



OFFICE OF THE COMMISSIONER,
CENTRAL EXCISE & CUSTOMS,
CENTRAL EXCISE BUILDING, RACE
COURSE,
VADODARA- 390 007

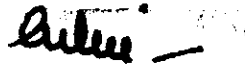
TRADE NOTICE NO. 07 /2010 (SERVICE TAX)
VADODARA , DATED 21st SEPTEMBER, 2010.

Enclosed are copies of the following Circulars of the Central Board of Excise & Customs, New Delhi :

Sr. No.	Circular Number & date	File No.
01	125/7/2010-ST dated 30.07.2010	354/35/2010-TRU
02	126/08/2010-ST dated 10.08.2010	332/13/2010-TRU
03	127/09/2010-ST dated 16.08.2010	354/119/2010-TRU
04	128/10/2010-ST dated 24.08.2010	254/141/2010-TRU

All Trade Associations and Chambers of Commerce and Members of Regional Advisory Committee are requested to publicise the contents including enclosures of this Trade Notice among their members / constituents.

Encl. as above


(DR.ASHIR TYAGI)
Additional Commissioner(Tech.),
Central Excise, Customs & Service Tax,
Vadodara - I.

F.No.IV/16-21/ST/2009

Vadodara dtd. 21st Sept., 2010.

Copy forwarded to : As per Mailing List.

CIRCULAR NO

125/7/2010 - ST, Dated: July 30, 2010

Subject: Services provided by state governments under Centrally Sponsored Schemes (CSS) - regarding.

In the recent past, instances have come to the notice of the Board, where field formations have demanded service tax from State governments or their departments/agencies, for providing certain services under the centrally sponsored schemes (CSS). To cite an illustration, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State governments or their departments/agencies during the course of setting up of such bio-gas plants were reimbursed by the central government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State government department/agency, saying that the reimbursements received by the concerned State government department/agency (as service provider) are nothing but consideration for installation and commissioning service received from the central government (service receiver).

2. Implicit in this service tax demand is an assumption that the relationship between Central government and the State government is an equivalent of a relationship between principal and the agent. This assumption is questionable as under administrative arrangement, State governments are bound to implement the centrally sponsored schemes on receipt of a grant. The fact that State governments are implementing agencies for the Central government within the framework of CSS does not make them service providers. Consequently, Central government cannot be taken as service receiver. Grant released by the Central government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

3. Levy and collection of service tax on State government agencies/departments implementing CSS under a central grant, is not legally tenable and therefore in such cases service tax should not be demanded.

4. Trade Notice/Public Notice may be issued to the field formations.

5. Please acknowledge receipt of this Circular. Hindi version follows.

F.No.354/35/2010-TRU

(J M Kennedy)
Director (TRU)

CIRCULAR NO

126/8/2010 - ST, Dated: August 10, 2010

Subject : Service tax on commission received by Primary Dealers dealing in Government Securities – regarding.

A representation has been received seeking clarification whether service tax is leviable on the underwriting commission received by the Primary Dealers for the auction of Government Securities.

2. The matter has been examined. Underwriting service is taxable by virtue of section 65 (105) (z) of the Finance Act, 1994. In the definition of taxable service, two technical terms are mentioned, namely 'underwriting' and 'underwriter'. The term 'underwriting' [section 65 (117) of the Finance Act, 1994] has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

"underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them."

3. The term "underwriter" as in section 65(116) of the Finance Act, 1994, has been borrowed from rule 2 (f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

"underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate."

It is thus clear that under the above definitions 'underwriter' or 'underwriting' is about dealing in securities of a body corporate.

4. The related issue requiring resolution is whether dealing in government securities amounts to dealing in securities of a body corporate, particularly since government securities are issued by the Reserve bank of India, which is a 'body corporate' in terms of section 3 (2) of the RBI Act, 1934.

5. Government securities are sovereign securities having zero default risk. Reserve Bank of India only manages the issue and also auction of Government Securities on behalf of the Government of India. In effect, Primary Dealers registered with the RBI (as opposed to registration with the

Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the central Government's market borrowing program. The general practice is that the RBI invites bids from the Primary Dealers, who in their bids indicate the amount to be underwritten and the underwriting fee expected by them. RBI examines these bids and decides the amount to be underwritten and underwriting fee to be paid to a Primary Dealer. Underwriting Fee is also known as Underwriting Commission in common parlance. Thus the conclusion drawn is that government securities are not securities of a body corporate.

6. As the service tax law stands today, service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

7. Trade Notice/Public Notice may be issued to the field formations accordingly.

8. Please acknowledge the receipt of this circular. Hindi version follows.

F.No.332/13/2010-TRU

(J. M. Kennedy)
Director, TRU

CIRCULAR NO

127/9/2010 - ST, Dated: August 16, 2010

Subject : Service tax on commercial training and coaching - clarification whether 'donation' is 'consideration' - regarding.

A representation has been received seeking clarification whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'.

2. The matter has been examined. The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

4. Trade Notice/Public Notice may be issued to the field formations accordingly

5. Please acknowledge the receipt of this circular. Hindi version follows.

F.No.354/119/2010-TRU

(J. M. Kennedy)
Director, TRU

CIRCULAR NO

128/10/2010 - ST, Dated: August 24, 2010

Subject: Service tax on on-going works contracts entered into prior to 01.06.2007 – regarding –

It has been brought to the notice of the Board that the following confusions/disputes prevail with respect to long term works contracts which were entered into prior to 01.06.2007 (when the taxable service, namely, Works contract came into effect) and were continued beyond that date:

(i) While prior to the said date services like Construction; Erection, commissioning or installation; Repair services were classifiable under respective taxable services even if they were in the nature of works contract, whether the classification of these activities would undergo a change?

(ii) Whether in such cases of continuing contracts, the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 under Notification No. 32/2007-ST dated 22/05/2007 would be applicable?

2. The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service 'Works Contract' service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

3. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3 (3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition

scheme.

4. The Board's previous Circular No. 98/1/2008-ST dated 04.01.2008 and the ratio of judgement of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (**2010-TIOL-403-HC-AP-ST**) are in line with the above interpretation.

5. Trade Notice/Public Notice may be issued accordingly.

F.No.354/141/2010 -TRU

(J.M. Kennedy)
Director (TRU)