

Circular No.190/9/2015-Service Tax

F.No.354/153/2014-TRU

Government of India

Ministry of Finance

Department of Revenue

(Tax Research Unit)

Dated- 15th December, 2015

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:- Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments - reg.

Madam/Sir,

It has come to the notice of the Board that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work. Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax.

2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The **essential characteristics of manpower supply service** are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

2.1 On the other hand, the **essential characteristics of job work** service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. A typical agreement that has been forwarded by the Apparel Export Promotion Council in respect of outsourced services contains following terms and condition,-

- a. The contractor (service provider) is engaged for undertaking specific jobs.
- b. The contractor is at liberty to decide the number of workers which are required for undertaking the jobs.
- c. The job worker may undertake job in his premises or in the premises of service receiver;
- d. Value of service is payable on per piece basis, depending upon item and style;
- e. Service provider is liable to compensate the service recipient if the work is not as per the standard norm;
- f. In case the work is executed by service provider at the site of service recipient, the service provider would indemnify the service receiver of any loss to inputs and infrastructure.
- g. The employee deployed for the assigned job would be under the control/supervision of the service provider.
- h. Payment would be at agreed piece rate basis.

Plain reading of this agreement makes it an agreement of job work applying the criterion outline in para 2 above.

4. However, every job work is not covered under the negative list. If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B (40) of the Finance Act, 1994.

5. The issue of applicability of service tax may accordingly be decided taking into account the nature of agreement/contract and the service being provided.

6. All concerned are requested to acknowledge the receipt of this circular.

7. 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,

(Dr. Abhishek Chandra Gupta)
Technical Officer (TRU)