

F. No. 356/1/2016-TRU
Government of India
Department of Revenue
Central Board of Excise & Customs
New Delhi

New Delhi, the 18th May, 2016

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)

Madam/Sir,

Sub: Clarification regarding leviability of **service tax in respect of services provided by arbitral tribunal and members of such tribunal -reg.**

It has come to the notice of the Board that there is some confusion regarding the legal position with respect to continuance of reverse charge mechanism for services provided by arbitral tribunals and individual arbitrators on the arbitral tribunal, with effect from 1.4.2016.

2.1 Services provided by an arbitral tribunal to (i) any person other than a business entity; or (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year, are exempt from services tax [Entry 6(a) of Notification No. 25/2012 – ST refers]. “Arbitral tribunal” has been assigned the same meaning in the exemption notification No. 25/2012 – ST [paragraph 2(c)] as in clause (d) of Section 2 of the Arbitration and Conciliation Act 1996, which is as follows:-

“arbitral tribunal means a sole arbitrator or a panel of arbitrators”

2.2 In the Budget 2016-17, the entry at (c) of Sl. No. 6 of notification No.25/2012-ST, has been omitted with effect from 1.4.2016. It read as:

“Services provided by a person represented on an arbitral tribunal to an arbitral tribunal.”

3. The matter has been examined. It may be noted that the services provided or agreed to be provided by an arbitral tribunal to a business entity (turnover exceeding Rs 10 lakh) located in the taxable territory, is taxable under reverse charge mechanism and recipient of service is liable to discharge service tax liability [Rule 2(d)(D)(I) of Service

Tax Rules, 1994 and Notification No. 30/3012 – ST (Sl. No. 4) refer]. There is no change in the Budget 2016-17 with respect to the said provisions.

4. It could be argued that service provided by an arbitrator on the panel of arbitrators, to the arbitral tribunal is taxable under forward charge. However, this does not appear to be a correct interpretation of law. Any reference in Service Tax law to an “arbitral tribunal” necessarily includes the natural persons on the arbitral tribunal, by virtue of clause (d) of Section 2 of the Arbitration and Conciliation Act, 1996. Services are provided or agreed to be provided by the panel of arbitrators, as comprising the several natural persons on the said panel, to the business entity or to the arbitration institution approached by the business entity for purposes of arbitration. The liability to discharge service tax is on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

5. In view of the above, it is clarified that Service Tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

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,

(Abhishek Verma)
Technical Officer (TRU)