4/3/2013

SERVICE PROVIDE BY CUSTOM HOUSE AGENT

Reference Note | RAMESH

<u>The following provisions are as per Circular no. 119/13/2009-ST dated 21-12-2009</u>

1. The services are provided by Custom house agent to their customer in various ways like:
   a. Packing and unpacking of goods,
   b. terminal handling service,
   c. cargo handling service,
   d. Cleaning or fumigation of containers services etc.

2. **Valuation :**
   The valuation by custom agent for service tax, the following items are not including in calculation of assessable for service tax:
   - Statutory levy and other reimbursable charges collected from customer.

> **NOTE :**
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> It was also provided that in case there are lump sum payments towards the reimbursable as well as service charges, service tax would be charged on 15% of the gross value only.

3. **Cenvat Credit on CHA invoices :**

   a. <u>The bills are in the name of CHA</u>, generally and as per rules credit will be allowed only if your name is appears in the invoice, therefore in the given case the manufacture or trader as the case may be not eligible for cenvat credit.

   b. <u>The bills are in the name of manufacture</u>, name and address of the manufacturer should appear in the invoice as the service recipient as per conditions stated in the Rule 4A of the Service Tax Rules, 1994 and the manufacturer should directly pay the service tax to the said service providers, then credit of service tax will be available to him. But it is not practical solution.

> **NOTE :**
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> Solution is that the CHA takes the credit on these invoices and add some mark up and charge the same in his bill to the assessee. He will pay the service tax on complete amount. In this way, the CHA and the assessee both will be happy. The CHA will get the mark up and assessee will avail the credit.

4. Refund of Service tax to Exporter :

- The Government has granted refund of service tax paid on specified services utilised in relation to export of goods.
- The scheme is provided vide Notification No. 41/2007-ST, dated 06.10.07 as amended from time to time. This Notification has been superseded now by Notification No. 17/2009-ST, dated 07.07.2009. The specified services include the service provided by the CHA.
- For the CHA services, the said Notification prescribes the following conditions: – "The exporter shall produce,-
  1. invoice issued by customs house agent for providing customs house agent services in relation to export goods exported by the exporter specifying:
     - number and date of shipping bill,
     - description of export goods,
     - number and date of the invoice issued by the exporter relating to export goods,
     - details of all the charges, whether or not reimbursable, collected by the customs house agent from the exporter in relation to export goods,
  2. details of other taxable services provided by the said customs house agents

However, it is not a normal practice of the CHAs to mention these details in their invoices and if any one detail is missing then the department is denying the grant of refund of service tax to the exporter. Also, the refund is not given on the Port charges like the B/L charges, Documentation charges, THC charges etc charged by the CHA on the ground that these services do not fall under the CHA services. But these fall under the port services. Now, since the Board has clarified that if the CHA adds some mark up then he can charge the same in his bill from the customer and pay the service tax on complete amount. If he does so then it will fall under CHA service only. Thus, the ground raised by the department will be rejected by this Circular and exporter will be able to get the refund of service tax paid on these amounts if charged in the invoice of CHA.

The circular and notification enclosed herewith :

Circular :

http://akbatraassociates.com/service%20tax/circulars-pdf/119-2009.pdf

Notification :

http://www.servicetax.gov.in/notifications/notfns-2k9/st17-2k9.pdf