

SERVICE TAX EXEMPTION FOR SEZ UNITS

Service tax is applicable on SEZ but for the time being it is exempted by Notification no-12/2013 as amended by Notification no 07/2014. Central government has provided the **exemption by way of refund** of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations

where the specified services received by the SEZ Unit or the developer are used exclusively for the authorised operations, the person liable to pay service tax has the option **not to pay the service tax ab initio**, subject to the conditions and procedure as stated in the notification.

Some of the important compliances are stated as below-

- The SEZ Unit or the Developer shall get an **approval by the Approval Committee** of the **list of the services** as are required for the authorised operations.
- SEZ Unit or the Developer shall furnish a **declaration in Form A-1, verified by the Specified Officer of the SEZ**, along with the list of specified services on the basis of such declaration an authorisation shall be issued by the **jurisdictional DC/AC** of Central Excise.
- The **authorisation shall be valid** from the **date of verification** of **Form A-1** by the Specified Officer of the SEZ.
- **If Form A-1 is not submitted** by the SEZ Unit or the Developer to the AC/DC having jurisdiction, as the case may be, **within fifteen days** of its verification by the Specified Officer of the SEZ, the **authorisation shall be valid from the date on which it is submitted**.
- The SEZ Unit or the Developer shall provide a **copy of the said authorisation to the provider of specified services**.
- **Pending issuance of said authorisation**, the **provider** of specified services **may**, on the **basis of Form A-1**, **provide** such specified services, **without payment of service tax**, and the **SEZ Unit or the Developer shall provide a copy of authorisation to the service provider immediately on receipt** of such authorisation.
- **If the SEZ Unit or the Developer does not provide a copy of the said authorisation** to the provider of specified services **within a period of three months** from the date when such specified services were deemed to have been provided in terms of the Point of Taxation Rules, 2011, the **service provider shall pay service tax** on specified services so provided.
- The **SEZ Unit or the Developer** shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, **in Form A-3**, furnishing the details of specified services received by it **without payment of service tax**.
- The **SEZ Unit or Developer**, who intends to avail exemption or refund under this notification, **shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed**, for authorised operations in the SEZ.
- **SEZ Unit or the Developer** shall have the **option not to avail of this exemption** and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

Detailed notification as amended is analysed as below for reference

NOTIFICATION NO-12/2013 (As amended by 07/2014)

Central Government, on being satisfied that it is necessary **in the public interest** so to do, hereby **exempts the services** on which service tax is leviable under section 66B of the said Act,

- ✓ **received by a unit located in a Special Economic Zone** (hereinafter referred to as SEZ Unit) or
- ✓ **developer of SEZ** (hereinafter referred to as the Developer) and
- ✓ **used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.**

The **exemption** shall be provided **by way of refund** of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

- ✓ **provided that** where the specified services received by the SEZ Unit or the developer are **used exclusively** for the authorised operations,
- ✓ the person liable to pay service tax has the **option not to pay the service tax ab initio**, subject to the conditions and procedure as stated below.

This **exemption** shall be given effect to in the **following manner**:

- (I) The **SEZ Unit or the Developer** shall get an **approval by the Approval Committee of the list of the services** as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) **on which the SEZ Unit or Developer wish to claim exemption** from service tax.
- (II) The **ab-initio exemption** on the specified services received by the SEZ Unit or the Developer and **used exclusively** for the authorised operation shall be **allowed** subject to the following procedure and conditions, namely:-
 - ✓ the **SEZ Unit or the Developer** shall furnish a **declaration in Form A-1, verified by the Specified Officer of the SEZ**, along with the list of specified services in terms of condition (I);
 - ✓ on the basis of declaration made in Form A-1, an **authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise** or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2 **within fifteen working days from the date of submission of Form A-1;**

- ✓ the **authorisation** referred to in clause (b) shall be **valid from the date of verification of Form A-1 by the Specified Officer** of the SEZ:

Provided that if the Form A-1 is not submitted by the SEZ Unit or the Developer to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction, as the case may be, within fifteen days of its verification by the Specified Officer of the SEZ, the authorisation shall be valid from the date on which it is submitted;”

- ✓ the SEZ Unit or the Developer shall provide a **copy of the said authorisation to the provider of specified services**, where such provider is the person liable to pay service tax and **on the basis of the said authorisation, the service provider may provide specified services to the SEZ Unit or the Developer without payment of service tax:**

Provided that pending issuance of said authorisation, the provider of specified services may, on the basis of Form A-1, provide such specified services, without payment of service tax, and the SEZ Unit or the Developer shall provide a copy of authorisation to the service provider immediately on receipt of such authorisation:

Provided further that if the SEZ Unit or the Developer does not provide a copy of the said authorisation to the provider of specified services within a period of three months from the date when such specified services were deemed to have been provided in terms of the Point of Taxation Rules, 2011, the service provider shall pay service tax on specified services so provided in terms of the first proviso.”;

- ✓ the **SEZ Unit or the Developer** shall furnish to the jurisdictional Superintendent of Central Excise a **quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;**
- ✓ the **SEZ Unit or the Developer** shall furnish an **undertaking**, in Form A-1, that in **case the specified services** on which **exemption has been claimed** are not exclusively used for authorised operation or were found **not to have been used exclusively for authorised operation**, it shall **pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable**

on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

“Explanation.– For the purposes of this notification, a service shall be treated as used exclusively for the authorised operations if the service is received by the SEZ Unit or the Developer under an invoice in the name of such Unit or the Developer and the service is used only for furtherance of authorised operations in the SEZ.”;

(III) The **refund of service tax** on

- i. the specified services that are ***not exclusively*** used for authorised operation, or
- ii. the specified services on which ***ab-initio exemption*** is admissible but not claimed, shall be allowed ***subject to the following procedure and conditions***, namely:-
 - ✓ The service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.
 - ✓ The SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).
 - ✓ The SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;
 - ✓ The amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

- ✓ The claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;
- ✓ The SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter:

Explanation. - For the purposes of this notification “quarter” means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

- ✓ The SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.
- ✓ If there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.

- (IV) The **SEZ Unit or Developer**, who **intends to avail exemption** or refund under this notification, **shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.**

Where any sum of service tax paid on specified services **is erroneously refunded** for any reason whatsoever, such **service tax refunded shall be recoverable** under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

Notwithstanding anything contained in this notification, **SEZ Unit or the Developer shall have the option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.**

Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, or the said Act, or the rules made there under **shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.**