

BASIC CONCEPTS APPLICABLE TO ALL SERVICES

Question 1

Briefly explain the provisions relating to export of services under the Export of Service Rules, 2005. (3 Marks) (May 2011)

Answer

Rule 3 of the Export of Service Rules, 2005 classifies the taxable services in three categories:-

- (a) When the immovable property in respect of which the service is rendered is situated abroad.
- (b) When the service is performed outside India.
- (c) When the service is provided to a recipient located outside India.

In the first category, exemption is available in respect of the specified services only when the immovable property is situated outside India. If any of the specified services covered in the second category is partly performed outside India, it would be considered to have been performed outside India. The services listed in third category when provided in relation to business or commerce would be eligible for exemption as 'export of services' when the recipient of such services are located outside India.

Any service which is taxable may be exported without payment of service tax provided the export receipts are in convertible foreign exchange. Central Government has issued some rebate notifications for input services or inputs used for export of taxable services.

Question 2

State with reference to the provisions of the Finance Act, 1994 whether service tax is leviable on Taxable services wholly consumed in a Special Economic Zone(SEZ).(2 Marks) (Nov 2010)

Answer

Notification No. 17/2011-ST dated 01-03-2011 exempts the taxable services received by a unit located in a SEZ or developer of SEZ for the authorized operations. Where the taxable

services are wholly consumed within the SEZ, service provider/service receiver(reverse charge basis) has the option not to pay the service tax. Hence, under this option, instead of the unit or developer claiming exemption by way of refund, service tax may not be paid ab-initio.

Question 3

State briefly with reference to section 66A of the Finance Act, 1994 who is liable to pay service tax for services provided from outside India.
(4 Marks)(Nov 2010)

Answer

Section 66A of the Finance Act, 1994 provides a reverse charge mechanism for levy of service tax on services received from outside India viz., in case of service provided from outside India and received in India, the service receiver becomes liable to pay service tax. It has to be read with the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

Section 66A provides that where any services specified under section 65(105) are rendered by a person who has established a business or has a fixed establishment from which the service is provided or has a permanent address or usual place of residence in a country other than India and such services are received by a person (recipient) who has his place of business, fixed establishment, permanent address or usual place of residence in India, then such service shall be a taxable service.

Such service shall be treated as if the recipient had himself provided the service in India. However, the provisions of this section would not apply to a service received by an individual for a purpose other than for use in business or commerce. A person carrying on a business through a branch or agency in a country shall be treated as having a business establishment in that country.

Question 4

What is the general exemption available to small service providers? Who are the persons excluded from this exemption?
(4 Marks)(May 2010)

Answer

A small service provider is eligible to avail exemption from service tax on aggregate value of taxable services not exceeding **₹ 10 lakh in any financial year** subject to the condition that during the **preceding financial year**, the aggregate value of all taxable services provided by him did not exceed ₹ 10 lakh.

Such general exemption is not applicable in following cases-

- (i) If the taxable services are provided by the service provider under a brand name or trade name, **whether registered or not**, of another person.
- (ii) Where the service receiver is liable to pay service tax as per provisions of section 68(2) read with rule 2(1)(d) of the Service Tax Rules, 1994.