Export of Service - RULE 6A ofService Tax Rules - IRRELEVANT!

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EXPORTERS
of services can sigh in relief on identifying that they need not comply with Rule 6A of the Service Tax Rules stipulated by notification 36/2012 of Service Tax as it appears to be IRRELEVANT! However the benefits that accrue to them on account of exports appears to be in stake!

The Charging Section (section 66 B) of the Finance Act as amended in 2012 specifies that¶
*there shall be levied a tax (hereinafter referred to as the ST) at the rate of twelve per cent on the value of all services,other than those services specified in the negative list,**provided or agreed to be provided in the taxable territory** by one person to another and collected in such manner as may be prescribed."*

As understood from the above,the main ingredients for a service tax to be levied are -

1. It should meet the definition of ¶service" as inserted in the Finance Act in 2012.

2. Must not be listed in the ¶negative list services" defined under section 65D of the Finance Act 1994

3. The services should be provided or agreed to be provided **in the taxable territory**

4. By one person to another.

By emphasizing on the words ¶provided or agreed to be provided **in the taxable territory¶**
, by implication,if a service is not provided inthe taxable territory then the same is outside the purview of ServiceTax.

When the services are rendered within India except J & k where both the service provider and service recipient are located in India ,there is no difficulty in determining the ¶taxable territory¶ as it would be India except in certain cases specified in place of provision of service Rules 2012.¶India¶ has been defined under section 65B.

The difficulty arises only when service provider or recipient is located outside India or in J & K. Till 30 th June 2012,the question of taxability of a service in such cases (determination *taxable territory in a way*
) addressed by Export of Service Rules 2005 and Services (provided from outside India and received in India) Rules 2006.

Now the above two set of Rules have been replaced with a set of Rules called place of provision of service Rules 2012 by Notification No.28/2012 dated 20 th June 2012. These Rules now determine" taxable territory" and consequently taxability of a service rendered when either service provider or a receive recipient is located outside India or in J & K.

Once a taxable service is determined,in terms of Place of Provision of Service Rules,as rendered outside the Taxable Territory,the question of granting exemption under Rule 6A of Service Tax Rules as Export of Service does not arise at all. This is because,once a service is determined to be rendered outside the taxable territory,the charging section 66B will not apply and consequently there is no need to go to service tax Rules to get exemption as Export of Service. This is evidently clear if one were to relook at the charging section 66B which has been reproduced in the beginning of this article.

Now let us look at Rule 6A of Service Tax Rules which determines when a service will be treated as Export of Service

RULE 6A (1) - The provision of any service provided or agreed to be provided shall be treated as export of service when

a. the provider of service is located in the taxable territory

b. the recipient of service is located outside India

c. the service is not a service specified in the section 66D of the Act

d. the place of provision of the service is outside India

e. the payment for such service has been received by the provider of service in convertible foreign exchange; and

f. the provider of service and recipient of service are not merely establishment of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

Rule 3 of Place of Provision of Service Rules 2012 which is reproduced herein under,defines that the place of provision is recipient of service and only in cases where the location of service receiver is not available in the ordinary course of business; the place of provision of service shall be the location of the provider of service

The Place of provision of service Rules provides exception to above general Rule in certain cases and for the sake of brevity of this articles,I am not discussing suchexceptions.

Once the place of provision is outside India in terms of the above Rule then automatically there will be no service tax as the charging section 66B will not authorise any levy.

When that being the case where is the necessity to apply Rule 6A exemption as Exported Service?

This can be illustrated by way an example

A - Service provider located in India

B - Service receiver located outside India

Scenario 1

- A is a Chartered Accountant rendering auditing services to B in London. As per the Place of Provision rules (rule 3),the place of provision shall be the location of service recipient.

In this case since the place of provision of service is in London,the charging section is not satisfied and hence no service tax can be levied

Scenario 2

- A conducts an IPL match in Australia. As per the place of provision rules (rule 6 of POP) the place of provision of service shall be the place where the event is actually held i.e. Australia. Since the service is provided outside India,it does not satisfy the charging section and therefore no service tax is applicable.

Prior to introduction of place of provision of service Rules 2012,when a service provider is located in India and renders service to other person located outside India,the exemption to service tax is only subject to meeting conditions specified in Export of Service Rules or any other exemption notification applicable to that category of service. Now no such requirement in view of discussion made above.

Impact on CENVAT Credit

Rule 5 of the Cenvat Credit Rules will not apply due to the non - applicability of Rule 6A of Service Tax rules as by implication,there is no concept called Export of Service and therefore there is no question of credit of input tax paid on any services used for providing a service which is outside the purview of charging section and hence not chargeable to service tax.

Once it appears that credit is not available,there is no question of Refund under Rule 5 of CENVAT credit Rules.

Law makers should immediately correct this ambiguity and ensure clarity and continuity of Exemption in terms of Export of Service.