
Export of Services - Case Study

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Export of Services – Chronology of Events



Export of services- Chronology of events...

1994-1999

Export of services was not specifically exempt

1999-2003

- Services exempted if payments received in convertible foreign exchange
- Further, the foreign exchange should not be repatriated out of India

March 2003-
November 2003

- Exemption based on receipt of convertible foreign exchange was withdrawn
- However, clarification was issued that service tax is a destination based consumption tax

...Export of services- Chronology of events

November 2003-
February 2005



- Exemption based on receipt of convertible foreign exchange was restored

March 2005 – June
2012



- Concept of “Export of Services” was introduced
- Export status of services determined based on three criteria

July 2012 onwards



- Rule 6A of Service Tax Rules, 1994 read with Place of Provision of Services Rules is relevant

Conditions for exports

Eligibility criterion (pre-negative list regime)

Immovable property related services

1. **Immovable property** should be situated outside India

Performance based services

1. Services should be partly or fully **performed** outside India

Recipient based services

1. **The service recipient** should be located outside India

2. Payment must be received in convertible foreign exchange
3. Services must be delivered outside India and used outside India (*the phrase “delivered outside India” was replaced by “provided from India” with effect from 1 March 2007*)

[The 3rd condition was removed with effect from 27 February 2010]

Conditions for exports

Eligibility Criterion (negative list regime)

- a) Location of service provider**
- b) Location of service recipient**
- c) Services are not covered by negative list**
- d) Place of provision of service**
- e) Received in convertible foreign exchange**
- f) Service provider and service recipient are not establishments of a distinct person as per explanation 3(b) to Section 65 B (44) of the Finance Act, 1994**

Case Studies



Case Study 1- HSBC Electronic Data Processing (India) Private Ltd vs. CCE, Hyderabad [2013- TIOL- 918-CESTAT-BANG]

- HEDPI, a BPO unit located in India, provides services on behalf of its group company located outside India to the customers (of the group company) all around the world
- Department challenged taxability on inconsistent basis and denied export benefits
- The Tribunal held that the taxman should be consistent in classifying the services based on nature of activities deciphered from the relevant terms of the agreement

Case Study 2- Paul Merchants Ltd vs CCE, Chandigarh [2012-TIOL-1877- CESTAT-DEL]

- PML entered into an agreement with M/s Western Union Network Ltd, Ireland ('WU') to remit money from persons located abroad to persons located in India
- Person located abroad is charged commission by WU
- PML transfers the money to the intended recipient in India and receives commission from WU
- Who is the service recipient – WU or the beneficiary in India?
- The Tribunal held that WU has to be treated as recipient and hence the commission earned by PML will not be taxable

Case Study 3- KPIT Cummins Infosystems Ltd vs CCE, Pune-I [2013- TIOL-931-CESTAT-MUM]

- Whether benefit of CENVAT Credit Rules, 2004 is available to an exporter of exempted service?
- It was observed that if tax is levied on exports then it would defeat the purpose enshrined under the EXIM Policy of Government of India. The EXIM policy sought to encourage export of goods and services and not export of taxes
- Hence, the Tribunal allowed the refund benefit on account of export of exempted services

Case Study 4- National Engineering Industries Ltd [2011-TIOL-1701-CESTAT-DEL]

- Can conservation of foreign exchange be regarded as receipt of foreign currency to qualify to be 'export services'?
- NE books business in India for the foreign supplier M/s General Motor Corporation ('GM') for export of goods to Indian Railways
- Indian Railways paid the foreign exchange to GM and deducted the commission payable by GM to NE and paid it directly to NE
- The department contended that since NE received the commission in Indian currency, it does not satisfy the condition to qualify as 'export services'
- The Tribunal held that instead of NE earning foreign exchange, the foreign exchange which otherwise would have flown out of India, due to import by Indian Railways, has been conserved
- Hence, NE appears to have fulfilled the object of export of service

Case Study 5- Research services conducted for entities located outside India

- What would be the place of provision for research services conducted for entities located outside India and whether it can qualify to be export services?
- Such services would not be covered under Rule 4 of the place of provision of Service Rules, 2012 i.e. location of performance of services since there is no goods/material given by the recipient of service which is researched upon
- Such services would be covered under Rule 3 of the Place of Provision of Services Rules, 2012 i.e. location of service recipient
- In the present case, since the service recipients are located outside India, the services would qualify to be 'export services'

Case Study 6- M/s Thai Airways International Public Company Ltd vs CCE, Delhi [2013-TIOL-1117-CESTAT- DEL]

- The issue was with respect to computerised reservation system (CRS) charges recovered by foreign company from the head office of the foreign airline
- The issue as to who is the service recipient again came up before the Delhi Tribunal
- The case has been referred to the Hon'ble President, Tribunal

Thank you