

CBEC Letter in F. No.187-107-2010-CX.4
F. No.187/107/2010-CX.4
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs) New Delhi
Dated: September17, 2010

Subject: Service tax – Show Cause Notices issued to various NSE Members of Association for recovery of Service Tax on Transaction charges of NSE, SEBI fees, DEMAT charges, Stamp Duty – reg.

Kindly refer to your letter F. No.V/30-32/CCO/S. Tax/2009 dated 13.04.2010 on the subject mentioned above.

2. The matter has been examined and the views of DGST and Commissioners of Service Tax has also taken into consideration. Turnover charges, NSE/BSE/NSDL/CSDL transaction charges, DEMAT charges and SEBI fees that are recovered by the brokers from their clients are found to be includible in the taxable value for payment of service tax. The Security Transaction Tax (STT) and Stamp duty are not includible in the taxable value for charging service tax.

3. In the clarification issued from F. No.B1/4/2006-TRU dated 19.04.2006, it is mentioned at para 4.1.7 that “Value for the purpose of charging service tax is the gross amount received as consideration for provision of service. All expenditures or costs incurred by the service provider in the course of providing a taxable service forms integral part of the taxable value and are includible in the value. It is not relevant that various expenditure or costs are separately indicated in the invoice or bill issued by the service provider to his client”. Para 4.1.8 states that “the service provider in the course of providing any taxable service may incur certain expenditure or cost as a pure agent of the client. The service provider seeks to exclude such expenditure or cost incurred by him as a pure agent of his client (generally known as reimbursable expenditure) from the value of the taxable services. It is also mentioned therein at para 4.1.10 that “Indication of different elements of the transaction in the invoice or bill could often be misleading. One has to carefully examine the exact legal nature of the transactions and other material facts before taking a view as to whether or not the expenditure sought to be excluded from the value is reimbursable expenditure. Not only the form, but also the substance of the transaction should be duly taken into account. Para 4.1.12 of the said letter mentions that the service provider who seeks to claim exclusion of certain value from the taxable value should also fulfill all the conditions specified in rule 5(2).

4. Since the Stamp duty and Security Transaction Tax, are the liability of the buyer/seller of securities and the broker pays the same acting as a Pure Agent the same are not includible in the taxable amount in terms of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. All other charges by whatever name called recovered by the broker from the buyer/seller of securities are includible in the taxable value in terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006.

5. From the above it is clear that in case the expense is the liability of the service provider it has to be included in the taxable value. In case it is the liability of the service receiver and the service provider pays the same acting as a pure agent then such amount is not includible in the taxable value.

(Himanshu Gupta)
Commissioner (Service Tax)
CBEC, New Delhi

Ahmedabad CC's letter to Board

**Office of the Chief Commissioner of Central Excise
Ahmedabad Zone.**

7 th Floor, Central Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad – 380 015.

Tele Fax-079-26303418 e-mail-ccahmddb@excise.nic.in

F. No.V/30-32/CCO/S. Tax/2009

Dated: 13.04.2010

Sub: Service Tax – Show Cause Notices issued to various NSE Members of Association for recovery of Service Tax on Transaction charges of NSE, SEBI Fees, Demat Charges, Stamp Duty – Reg.

The office has received a letter from the Directorate General of Service Tax, Mumbai, forwarding a representation of the Gujarat NSE Members Association, stating that show cause notices were issued to their members for recovery of service tax on NSE Transaction Charges, Fees paid to SEBI, Demat charges payable to NSDL/CSDL and Stamp duty, which was not correct as per their interpretation.

2. In another representation to this officer, the Gujarat NSE members Association have again contended that the NSE transaction charges, SEBI fees, Demat charges payable to NSDL or CSDL are in the nature of statutory/ regulatory levies/ or costs/ charges payable to Stock Exchanges/ depositories without which no Stock broker can undertake broking business, as these charges can not form part of the services of a stock broker.

3. Citing the following judgments the association has maintained that

1) In the case of First Securities Pvt Ltd. V. Commissioner reported at 2007 (7) STR (Tri-Bang), they have contended that handling charges collected from investors and amounts collected towards transaction charges can not be equated to brokerage or commission for purchase of securities.

2) In the case of Indira Securities Pvt Ltd. V. Commissioner reported at 2007 (8) STR 57 the charges spent for paying compulsory levies and such expenses are not includible in the taxable value.

3) In the case of JSEL Securities Pvt Ltd. V. Commissioner reported at 2007 (6) STR 330 (Tri-Del) it has been held that turnover tax is not part of the brokerage.

4. Sub clause 105 of Section 65 of the Finance Act, 1994 states that

105 “taxable service” means any service provided or to be provided-

(a) to any person by a stock broker in connection with the sale or purchase of securities listed on a recognized stock exchange;

(zzzzg) to any person, by a recognized stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transaction in securities;

5. The contention of the association is that their members are showing brokerage separately in the invoices. The tax on the stock broker is on the services and logically the tax should be only on the brokerage amount charged by them. The other charges like NSE, SEBI or BSE charges are collected in the shape of turnover charges are the actual expenses incurred by them. These amounts are paid by them to NSE/ BSE/ SEBI and therefore are recovery of actual expenditure incurred.

6. The association has claimed that the value of the taxable service provided by the stockbroker is the aggregate of the commission or brokerage charged by the stockbroker on the sale or purchase of securities from the investors and includes the commission or brokerage paid by the broker to any sub broker. (Section 67 of the Finance Act, 1994 as amended) in light of this definition, as far as issue of inclusion of NSE charges, Annual Turnover charges, Stamp Duty charges and clearing charges in the taxable value is concerned, it has been claimed by them that such charges not being direct expenses of the stock broker for doing business of sale and purchase of securities through the stock exchange, are neither related to sale or purchase of securities nor in the nature of brokerage and are thus outside the scope of levy of service tax. As the NSE charges are annual fees that are to compulsorily paid, it may not form part of the value for the purpose of levy of service tax.

7. The above arguments of the association hold some ground, especially when they differentiate the brokerage charges and other charges of NSE, SEBI or BSE, as has been held in the case of **K R Choksey & Cov. Commissioner of Central Excise, Mumbai - I**. In the case of **M/s Saurin Investments Pvt Ltd v. Commissioner of Service Tax Ahmedabad reported at 2009 (16) STR (Tri- Ahmd)**, the Tribunal held that as per the Board circular dated 09/07/01, Service tax was not leviable on NSDL or CSDL fees paid to the depositories and recovered from the customers on actual basis.

8. However Commissioner Service Tax Ahmedabad in his reply to DGST, Mumbai, (copy enclosed) has held a contrary view, supporting the notices Issued to the members of the association. He has held that the amounts collected as NSE/ BSE/ NSDL/ CSDL charges being liability of the Broker / Sub Broker need to be included in the value of service. The Security Transaction Tax and Duty being the liability of the buyer / seller of the security are not includible in the taxable value.

9. In the recent letter dated 8 th , March 2010, addressed to the commissioner (Service Tax), CBEC, New Delhi, the Additional Director General, DGST, Mumbai, from F No V/DGST/30-Misc-52/2009 has opined that the charges collected as NSE, BSE, NSDL, CSDL charges being the liability of the broker/ sub broker seem to be liable to be included in the assessable value as the value of services given by the broker, including reimbursements of other charges" and "delayed payment charges".

10. This office is of the opinion that though the said charges are a liability of the broker/ sub-brokers payments of such charges made by the broker / sub- broker to the depositories /

exchanges are not for or on behalf of the buyer or seller of securities but on his own behalf, mere collection of fees paid to NSE / BSE / NSDL / CSDL, by the broker cannot be considered as a service, as the same is a statutory requirement. These charges have no nexus between buying and selling of securities.

11. Valuation rules do not determine whether a particular activity is service or not as also whether a service is taxable or otherwise. Valuation rules come into play only when it is determined that an activity being undertaken by the party is service and that the service is taxable. Relying on valuation rules to determine the nature of service is unwarranted.

12. Even if the activity of collecting fees payable to NSDL / NSE / BSE / CSDL is treated as service, the service is rendered by NSDL / NSE etc. and not by the brokers. Therefore, demand, if any, has to be raised on NSDL / NSE/ BSE /CSDL etc and not on the brokers:

13. Banking and other Financial Services were covered under the ambit of Service Tax during Budget 2001. In view of Board's letter dated 09/07/01 from F No B.11/1/2001-TRU, para 2.4.3 to Annexure VII to the referred letter, it was clarified that Service Tax would not be leviable on NSDL or CSDL fees paid to the depositories and recovered from the customers on actual basis. The subject letter of the Board was referred in the case of **M/s Saurin Investments Pvt Ltd v. Commissioner of Service Tax Ahmedabad reported at 2009 (16) STR (Tri .-Ahmd)** , and pre-deposit was waived. Since the said letter is binding on the Department till any clarification is issued by the Board, the said letter dated 09/07/01 would prevail. Therefore the SCNs issued to such brokers / sub brokers would be hit by the limitation factor.

14. It is therefore requested that the Board may examine the issue in light of the above, and issue suitable clarifications, as quite a number of high value notices have been issued, which are pending adjudication.

Ajit Kumar
Chief Commissioner