

CIRCULAR NO 141/10/2011-TRU

Dated: May 13, 2011

Subject: Applicability of the provisions of the Export of Services Rules, 2005 in certain situations.

Circular No.111/05/2009-ST was issued on 24th February 2009 on the applicability of the provisions of the Export of Services Rules, 2005 in certain situations. It had clarified on the expression "used outside India" in Rule 3(2)(a) of the Export of Service Rules 2005 as prevalent at that time. The condition specified in Rule 3(2)(a) has since been omitted vide Notification 06/2010-ST dated 27 Feb 2010. In the context of the stated Circular an issue has been raised, whether for the period prior to 28.2.2010 the requirement that the service should be "used outside India" invariably means the location of the recipient?

2. In the stated Circular it was inter-alia, clarified that the words, "used outside India" should be interpreted to mean that "the benefit of the service should accrue outside India". It is well known that services, being largely intangibles, are capable of being paid from one place and actually used at another place. Such arrangements commonly exist where the services are procured centrally eg audit, advertisement, consultancy, Business Auxiliary Services. For example, it is possible to obtain a consultancy report from a service provider in India, which may be used either at the location of the customer or in any other place outside India or even in India. In a situation where the consultancy, though paid by a client located outside India, is actually used in respect of a project or an activity in India the service cannot be said to be used outside India.

3. It may be noted that the words "accrual of benefit" are not restricted to mere impact on the bottom-line of the person who pays for the service. If that were the intention it would render the requirement of services being used outside India during the period prior to 28.2.2010 infructuous. These words should be given a harmonious interpretation keeping in view that during the period upto 27.2.2010 the explicit condition was provided in the rule that the service should be used outside India. In other words these words may be interpreted in the context where the effective use and enjoyment of the service has been obtained. The effective use and enjoyment of the service will of course depend on the nature of the service. For example effective use of advertising services shall be the place where the advertising material is disseminated to the audience though actually the benefit may finally accrue to the buyer who is located at another place.

4. This, however should not apply to services which are merely performed from India and where the accrual of benefit and their use outside India are not in conflict with each other. The relation between the parties may also be relevant in certain circumstances, for example in case of passive holding/ subsidiary companies or associated enterprises. In order to establish that the services have not been used outside India the facts available should inter-alia, clearly indicate that only the payment has been received from abroad and the

service has been used in India. It has already been clarified that in case of call centers and similar businesses which serve the customers located outside India for their clients who are also located outside India, the service is used outside India.

5. Besides above, to attain the status of export, a number of conditions need to be satisfied which are specified in Rule 3(1) and Rule 3(2) of Export of Services Rules 2005. The Circular No.111/05/2009-ST explained the expression "used outside India" only and the other conjunct conditions, as applicable from time to time, also need to be independently satisfied for availing the benefit of an export.

6. These instructions should be given wide publicity among trade and field officers. Please acknowledge receipt. Hindi version follows.

F.No. 280/26/2011-CX8A (Pt)

(Samar Nanda)
Under Secretary to Government of India