Circular No.142/11/2011 - ST

F. No.354 /30 /2011-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
Tax Research Unit

North Block, New Delhi
18th May 2011

Subject: **SEZ – Service Tax Refund** -- regarding.

Subsequent to the issuance of Notification 17/2011-ST dated 01. 03. 2011, representations have been received seeking clarification on certain doubts. These doubts and clarifications are as follows:

	QUESTIONS	CLARIFICATIONS
1.	To claim the refund arising out of service tax paid under section 66A, no proforma is prescribed in the notification; how to claim it?	In the notification, there is no difference in treatment of service tax paid under section 66 and section 66A of Finance Act, 1994. Where refund arises, Table – A, in Form A-2 can be used for making a refund claim.
2.	(i) In the notification, what is the treatment for service tax paid on taxable services which do not fall in the category of "wholly consumed services", and also are not 'shared services' ? Is refund available? (ii) Whether in the case of category (iii) services referred in paragraph 2(a) of the notification, 'proportionate refund' applies to only 'shared services' i.e. services that are used both for SEZ (Special Economic Zone) authorised operations as well as DTA (Domestic Tariff Area) operations?	All taxable services (under section 66 or section 66A) received by a SEZ Unit/Developer for the authorised operations, have been exempted in the first paragraph of notification 17/2011-ST, subject to conditions. In Paragraph 2, conditions attached to this exemption are prescribed. In terms of paragraph 2(a), refund route is the default option for all who intend to claim the exemption granted by the notification in its first paragraph. However, an exception is provided in the form of ab initio (upfront) exemption, to the 'wholly consumed' services. Services which fall outside the definition of 'wholly consumed' services can be categorized as those which are used exclusively by the SEZ Unit/Developer, for the authorised operations in SEZ or shared with DTA operations. Para 2(d) of the notification is applicable to

		refund arising from 'shared services' only. Thus exemption to services exclusively used for the authorised operations of SEZ Unit/Developer, will continue to be available by way of refund, as specified in paragraph 2(a) itself, subject to other conditions. To claim this refund, Table-A, provided in Form A-2 may be used. It is clarified that only such services shall be considered as exclusively used by SEZ Unit/Developer, for the authorised operations, as they satisfy the following criteria: (i) Invoice is raised in the name of the SEZ Unit/Developer or in the invoice, it is mentioned that the taxable services are supplied to the SEZ Unit/Developer for the authorised operations; (ii) Such services are approved by the 'Unit Approval Committee(UAC)', as required for the authorised operations; (iii) Receipt and use of such services in the authorised operations are accounted for in the books of accounts of the SEZ Unit/Developer.
3.	Meaning of the expression 'who does not own or carry on any business other than the operations in the SEZ' appearing in paragraph 2(a)(iii) of the notification, which creates a difference between 'standalone' and 'non-standalone' SEZ Unit/Developer, may be clarified.	The expression refers to an entity which is carrying out business operations in SEZ and also DTA. Merely having an office in the DTA for purpose of liaison/business promotion, does not restrict a SEZ Unit from availing benefit extended to a standalone unit.
4.	Whether Approval by UAC is necessary, to claim benefit under the notification?	Yes. Unit Approval Committee (UAC) of the SEZ determines goods and services required for the authorised operations of a Unit/Developer, under the SEZ law. Hence approval of the UAC is necessary for availing the notification benefit, on the taxable services.
5.	(i) Does condition (c) prescribed in paragraph 2 of the notification, restrict the non-standalone Units/Developers, from availing upfront exemption for wholly consumed services, which fall under	In respect of category (i) and (ii) services listed in paragraph 2(a), upfront exemption is made available to all SEZ Units/Developers, who fulfill the conditions of notification; only in the case of category (iii), difference is created between

	category (i) and (ii) of para 2(a) of the notification? (ii) For whom and for what purpose, Declaration in A-1 is required?	standalone and non-standalone SEZ Units/Developers. Declaration in Form A-1 is required to be produced, to a service provider, to claim upfront exemption (after striking out the inapplicable portion). This is a one-time Declaration. Original Declaration can be retained with the SEZ Unit/Developer for business record or for production to the jurisdictional Central Excise/Service Tax authorities, if need be, for any verification; a copy has to be retained by SEZ Specified Officer; self-attested photocopies of the Declaration can be submitted to service provider to avail upfront exemption, subject to fulfillment of other conditions mentioned in the notification.
6.	Meaning of the expression "total turnover" found in paragraph 2(d) of the notification is not clear: whether it refers to turnover of SEZ Unit or the entity (including DTA and SEZ Unit). This may be clarified.	Total turnover includes turnover of DTA Unit and also export turnover of SEZ Unit. This is the way to calculate proportionate refund. Table-C in Form A-2, illustrates this aspect.
7.	A Developer may not have export turnover; therefore, he cannot get refund of service tax based on the formula provided for shared services in paragraph 2(d) of the notification: therefore, it may be explained how a Developer can claim exemption under the notification?	Generally, SEZ Developers will be using category (i) services listed in paragraph 2(a), relating to immovable property located within SEZ; upfront exemption is available for these services, and category (ii) services, irrespective of whether the Developer is standalone or not. As another option, refund route is also available. In the case of category (iii) services if Developer is standalone, upfront exemption is available. If Developer is not standalone, on service tax paid on category (iii) services, which are exclusively used for the authorised operations in SEZ, he can avail exemption through refund route. 'Exclusive use' explained in clarification for question No.2. may also be referred in this connection.
8.	Whether proportionate amount of service tax paid on shared services that have not been refunded after applying the formula in paragraph 2(d), shall be available to the DTA Units of	Yes. Available.

	the entity as cenvat credit?	
9.	Whether consolidated refund claim under 17/2011-ST can be filed by an entity having more than one SEZ unit and a centralized service tax registration.	If an entity is having multiple SEZ Units with a centralized service tax registration, consolidated refund claim can be filed, provided separate accounts are maintained for receipt and use of services for the authorised operations in SEZ Unit.
10.	Whether certified copies of invoices can be used for claiming refund, if originals are needed for other statutory purpose; Whether on the basis of single invoice, one can claim proportionate refund for SEZ Unit and balance as cenvat credit	In terms of the notification, original invoices are needed for claiming refund; after receiving the refund, originals can be taken back on submission of copies certified by Chartered Accountant. On a single invoice, if proportionate refund (by SEZ Unit) and cenvat credit (by DTA Unit) needs to be obtained, then also similar system shall be followed.

2. Trade Notice/Public Notice may be issued.

3. Field formations may be informed accordingly. Hindi version to follow.

(J. M. Kennedy)
Director, TRU