

LETTER [DY. NO. 2305/COMMR(ST)/2011]

DATED 15-7-2011

Please refer to your letter C. No. V(12)22/SIV/STGr.B/Kol./07, dated 24-6-2011 on the subject mentioned above.

2. The issue raised in your said letter is regarding leviability of service tax under Business Auxiliary Service (BAS) on computer embroidery work carried out on job work work.

3. The matter has been examined. The definition of BAS as provided under section 65(105)(zzb) read with section 65(19) of the Finance Act, 1994, does not include any activity that amounts to manufacture of excisable goods. It also mentions that excisable goods has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 and manufacture has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944. The Supreme Court in the case UOI v.Nandi Printers (P.) Ltd. 2001 (127)ELT 645 held that "the mere fact that the rate of duty on printed cartons was NIL by reason of exemption would not make printed cartons non-excisable goods". The Supreme Court again in the case of CCE Hyderabad v. Vazir Sultan Tobacco Co. Ltd. 1996 AIR 3025 at page 10 has observed that if by virtue of exemption the rate of duty was reduced to NIL the goods specified in the Tariff would still be regarded as excisable. Further the Supreme Court in the case of All India Federation of Tax Practitioners v. UOI [2007] 10 STT 166 laid down a test that where goods are specified in the schedule they are excisable.

4. In your said letter at para 5 it is mentioned that embroidery work is a manufacturing activity falling under Chapter heading 5810 of the Central Excise Tariff Act. Once the activity is a manufacturing activity of goods specified under Central Excise Tariff Act, the said activity is not covered in the purview of BAS. When the activity is not a taxable service, the provisions of Notification No. 8/2005 - ST, dated 1-3-2005 cannot be applied. The said notification can be applicable only in cases where the activity of the service provider does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

5. All pending issues including the show-cause notices issued in this regard may be decided accordingly.