

F. No. 276/8/2009-CX8A

**Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)**

New Delhi, dated the 26th September, 2011

Sub: Applicability of service tax on taxable services provided by a non-resident or a person located outside India to a recipient in India-reg.

Kind attention is invited to instruction F No. 275/7/2010-CX8A, dated 30.6.2010, wherein the Board had communicated its view that services tax on a taxable service received in India, when provided by a non-resident/person located outside India, would be applicable on reverse charge basis with effect from 1.1.2005, and that the ratio of judgement in M/s Indian National Shipowners Association (INSA) case [2009 (13) STR 235 (Bom)] would not apply to such cases. Further, direction was issued to field formations to defend the levy of service tax on such services for the period on or after 1.1.2005, as post INSA judgment, it has been held by the High Courts/Tribunal in a large number of cases, applying ratio thereof, that service tax on such services is leviable only w.e.f. 18.4.2006. However, the appeals filed by the department before the Hon'ble Supreme Court, for defending the levy of service tax on such services w.e.f. 1.1.2005, have been dismissed recently (subsequent to the issuance of said instruction dated 30.6.2010) in the following cases.

- (i) SLP (C) No. 29539 of 2010 in CCE Vs Bhandari Hosiery Exports Ltd
- (ii) SLP (C) No. 18160 of 2010 in CST Vs Unitech Ltd
- (iii) SLP (C) No. 34208/09 of 2010 in UOI Vs S R Batliboi & Co.
- (iv) SLP (C) No. 328/332 of 2011 in UOI Vs Ernst & Young
- (v) SLP (C) No. 25687-25688/2011 in CCE Vs Needle Industries
- (vi) SLP (C) No. 25689-25690/2011 in UOI Vs SKM Engg Products

Further, Review Petition No. 1686 of 2011 filed in the case of Bhandari Hosiery has also been dismissed by the Hon'ble Supreme Court vide order dated 18/8/2011.

2. In view of the aforementioned judgments of the Hon'ble Supreme Court, the service tax liability on any taxable service provided by a non resident or a person located outside India, to a recipient in India, would arise w.e.f. 18.4.2006, i.e., the date of enactment of section 66A of the Finance Act, 1994. The Board has accepted this position. Accordingly, the instruction F No. 275/7/2010-CX8A, dated 30.6.2010 stands rescinded.

3. Appropriate action may please be taken accordingly in the pending disputes.

**(G. D. Lohani)
Director (Legal)**