

**F.No. 334/8/2016-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)**

Dated- April 13, 2016

To,

Principal Chief Commissioners of Customs and Central Excise (All)
Principal Chief Commissioners of Central Excise & Service Tax (All)
Principal Director Generals of Goods and Service Tax/System/CEI
Director General of Audit/Tax Payer Services
Principal Commissioners/ Commissioners of Customs and Central Excise (All)
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)
Principal Commissioners/Commissioners of Service Tax (All)
Principal Commissioners/Commissioners LTU/Central Excise/Service Tax (Audit)

Subject: - Clarification on issues regarding levy of Service Tax on the services provided by Government or a local authority to business entities - reg.

Madam/Sir,

Any service provided by Government or a local authority to a business entity has been made taxable w.e.f 1st April 2016. Post Budget 2016, representations have been received from several quarters including business and industry associations in respect of various aspects pertaining to the taxation of such services. Accordingly, the following clarifications are issued:-

Sl. No.	Issue	Clarification
1.	Services provided by Government or a local authority to another Government or a local authority.	Such services have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 54 refers]. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.

2.	Services provided by Government or a local authority to an individual who may be carrying out a profession or business.	<p>1. Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 55 refers].</p> <p>2. Further, for services provided upto a taxable value of Rs 5000/-, Sl. No. 5 below may please be seen.</p>
3.	Service Tax on taxes, cesses or duties.	Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.
4.	Service Tax on fines and penalties.	<p>1. It is clarified that fines and penalty chargeable by Government or a local authority imposed for <u>violation of a statute, bye-laws, rules or regulations</u> are not leviable to Service Tax.</p> <p>2. Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 57 refers].</p>
5.	Services provided in lieu of fee charged by Government or a local authority.	It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and

	<p>the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a <i>quid pro quo</i> for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.</p> <p>2. However, services provided by the Government or a local authority by way of:</p> <ul style="list-style-type: none">(i) registration required under the law;(ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, <p>have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 58 refers].</p> <p>3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed Rs 5000/- have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 56 refers]. However, the said exemption does not cover services</p>
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		<p>specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year.</p> <p>4. It is also clarified that Circular No. 89/7/2006-Service Tax dated 18-12-2006 & and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23.8.2007 issued in the pre-negative list regime are no longer applicable.</p>
6.	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers.	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 59 refers]. Such allocations/auctions to categories of persons other than individual farmers would be leviable to Service Tax.
7.	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority.	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 – ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempted from Service Tax vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 39 refers].
8.	Services provided by Government, a local authority or a governmental	Such services have been exempted vide Notification No. 25/2012 – ST dated

	authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.	20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 60 refers].
9.	Whether Service Tax is payable on yearly installments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016.	Service Tax is payable on such installments in view of rule 7 of Point of Taxation Rules, 2011 as amended by vide Notification No. 24/2016 – ST dated 13.4.2016. <u>However, the same have been specifically exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 61 refers].</u> The exemption shall apply only to Service Tax payable on one time charge, payable in full upfront or in installments, for assignment of right to use any natural resource and not to any periodic payment required to be made by the assignee, such as Spectrum User Charges, license fee in respect of spectrum, or monthly payments with respect to the coal extracted from the coal mine or royalty payable on extracted coal which shall be taxable.
10.	When does the liability to pay Service Tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) instalments under deferred payment option for rights assigned after 1.4.2016.	Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 – ST dated 13.4.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the <u>earlier</u> of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made.

		<p>Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the <u>date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier</u>. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier.</p>
11.	<p>How to determine the date on which payment in respect of any service provided by Government or a local authority becomes due for determination of point of taxation (Sl. No. 10 refers)?</p>	<p>The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment [Point of Taxation Rules, 2011 as amended by Notification No. 24/2016 – ST dated 13.4.2016 refers]. For instance, Notice Inviting Applications (NIA) dated January 9, 2015 issued vide File No. 1000/16/2014-W.F./Auction for auction of right to use spectrum and letter dated March 29, 2015 issued vide File No. 1000 /23 / 2014 -W.F. /Auction by Department of Telecommunications to successful bidders of spectrum indicate the dates on which the payments in respect thereof become due. These may be accessed at http://www.dot.gov.in/sites/default/files/u8/NIA_January_2015.pdf and http://www.dot.gov.in/sites/default/files/u8/PaymentMethodologyAndPaymentDetails.pdf respectively.</p>

12.	Whether Service Tax is leviable on spectrum user charges and license fee payable after 1.4.2016 for the year 2015-16.	Service Tax is payable on such payments in view of rule 7 of Point of Taxation Rules, 2011 as amended by Notification No. 24/2016 – ST dated 13.4.2016. However, the same have been specifically exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 62 refers].
13.	Whether Service Tax is payable on the interest charged by Government or a local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option.	Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 has been amended vide Notification No. 23/2016 – ST dated 13.4.2016 so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service.
14.	When and how will the allottee of the right to use natural resource be entitled to take CENVAT Credit of Service Tax paid for such assignment of right.	<p>The CENVAT Credit Rules, 2004 have been amended vide Notification No. 24/2016 C.E. (N.T.) dated 13.4.2016. Consequently, the CENVAT Credit of the Service Tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 (three) years. [Rule 4(7) of CENVAT Credit Rules, 2004 as amended refers]. Detailed illustrations explaining how the CENVAT Credit is to be availed, are given in para 2 below.</p> <p>However, the Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year</p>

		<p>in which the same is paid. Likewise, Service Tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid. The existing eighth proviso in sub-rule (7) of rule 4 of CENVAT Credit Rules, 2004 is being omitted because the same is superfluous.</p> <p>Amendments have also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource [Fifth Proviso to sub-rule (7) of Rule 4 of CENVAT Credit Rules, 2004].</p>
15.	On basis of which documents can CENVAT Credit be availed in respect of services provided by Government or a local authority.	CENVAT Credit may be availed on the basis of challan evidencing payment of Service Tax by the Service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004, refers].

2. Illustration explaining how the CENVAT Credit is to be availed on Service Tax paid for assignment of right to use natural resources:

Government of India assigns right to use spectrum for a period of 20 years in an auction held in May 2016. The Notice Inviting Application (NIA) for auction of spectrum specifies that the successful bidders would have two payment options –

(a) Full upfront payment:

to make full upfront payment of full auction price (bid amount) by, let's say, 25.6.2016;
or

(b) Deferred payment:

- (i) An upfront payment of 33% of the final bid amount shall be made by 25.6.2016;
- (ii) There shall be a moratorium of 2 years for payment of balance amount of one time charges for the spectrum, which shall be recovered in 10 equal annual instalments of Rs. 131.94 including interest for deferred payment.
- (iii) The 1st instalment of the balance due shall become due on the third anniversary of the scheduled date of the first payment. Subsequent instalment shall become due on the same date of each following year.
- (iv) The applicable rate of interest under deferred payment option shall be 10%.

CASE 1:

Company ABC becomes the successful bidder. The spectrum is assigned to ABC for a total consideration of Rs. 1000/-. ABC chooses to make full upfront payment on the due date. The Service Tax liability and eligibility of the CENVAT Credit in this case would be as follows:

- (i) The amount of Rs. 1000/- will become due on 25.6.2016. Thus, according to rule 7 of the Point of Taxation Rules, 2011 the point of taxation shall be 25.6.2016.
- (ii) According to rule 6(1) of the Service Tax Rules, 1994, the liability to pay Service Tax liability of Rs. 150/- on the consideration of Rs. 1000/- paid or payable would be required to be discharged by 6.7.2016.
- (iii) According to the sixth proviso to rule 4(7) of the CENVAT Credit Rules, the CENVAT Credit in respect of the Service Tax paid would be spread over 3 years as follows:

Financial Year	Amount of CENVAT Credit eligible to be taken (1/3 of total Service Tax paid)
2016-17	Rs. 50/-
2017-18	Rs. 50/-
2018-19	Rs. 50/-

CASE 2:

In the above example, ABC assigns the right to use the spectrum to Company XYZ on 1.8.2019 (and issues invoice dated 1.8.2019) for a consideration of Rs. 930/-. The Service Tax liability and eligibility of CENVAT Credit would be as follows:

F.Y.	Due date for payment	Amount payable by ABC for assignment of spectrum (Rs.)	Amount charged by ABC for further assignment of spectrum to XYZ (Rs.)	Service Tax liability on ABC @ 15% (Rs.)	Date of Point of Taxation	Date of payment of Service Tax	CENVAT Credit available to ABC in the relevant F.Y. (Rs.)	CENVAT Credit available to XYZ in the relevant F.Y. (Rs.)
2016-17	25.6.2016	1000	-	150	25.6.2016	6.7.2016	50	-
2017-18	-	-	-	-	-	-	50	-
2018-19	-	-	-	-	-	-	50	-
2019-20			930	139.50	1.8.2019	6.9.2019	-	46.5
2020-21	-	-	-	-	-	-	-	46.5
2021-22	-	-	-	-	-	-	-	46.5
TOTAL				289.5			150	139.5

CASE 3:

Company ABC becomes the successful bidder. The spectrum is assigned to ABC for a total consideration of Rs. 1000/-. ABC chooses the deferred payment option. The payment schedule, Service Tax liability and eligibility of CENVAT Credit would be as follows:

F.Y.	Instalment	Due date for payment	Amount payable (Rs.)	Service Tax liability @ 15% (Rs.)	Date of Point of Taxation	Date of payment of Service Tax	Eligible CENVAT Credit in the relevant F.Y. (Rs.)
2016-17	Upfront payment (33%)	25.6.2016	330	49.50	25.6.2016	6.7.2016	16.5
2017-18	-	-	-	-	-	-	16.5
2018-19	-	-	-	-	-	-	16.5

F.Y.	Instalment	Due date for payment	Amount payable (Rs.)	Service Tax liability @ 15% (Rs.)	Date of Point of Taxation	Date of payment of Service Tax	Eligible CENVAT Credit in the relevant F.Y. (Rs.)
2019-20	1 st	25.6.2019	131.94	19.80	25.6.2019	6.7.2019	6.60*
2020-21	2 nd	25.6.2020	131.94	19.80	25.6.2020	6.7.2020	6.60 + 6.60*
2021-22	3 rd	25.6.2021	131.94	19.80	25.6.2021	6.7.2021	6.60 + 6.60 + 6.60*
2022-23	4 th	25.6.2022	131.94	19.80	25.6.2022	6.7.2022	6.60 + 6.60 + 6.60*
2023-24	5 th	25.6.2023	131.94	19.80	25.6.2023	6.7.2023	6.60 + 6.60 + 6.60*
2024-25	6 th	25.6.2024	131.94	19.80	25.6.2024	6.7.2024	6.60 + 6.60 + 6.60*
2025-26	7 th	25.6.2025	131.94	19.80	25.6.2025	6.7.2025	6.60 + 6.60 + 6.60*
2026-27	8 th	25.6.2026	131.94	19.80	25.6.2026	6.7.2026	6.60 + 6.60 + 6.60*
2027-28	9 th	25.6.2027	131.94	19.80	25.6.2027	6.7.2027	6.60 + 6.60 + 6.60*
2028-29	10 th	25.6.2028	131.94	19.80	25.6.2028	6.7.2028	6.60 + 6.60 + 6.60*
2029-30	-	-	-	-	-	-	6.60 + 6.60
2030-31	-	-	-	-	-	-	6.60
TOTAL				247.5			247.5

Note: Figures with * indicate the amount of CENVAT credit available against Service Tax paid during that year.

CASE 4:

In the above example, if ABC further assigns the right to use the spectrum to Company XYZ on 1.8.2020 for a consideration of Rs. 200/-. The Service Tax liability and eligibility of CENVAT Credit would be as follows:

F.Y.	Instalment	Due date for payment	Amount payable to Govt for assignment of spectrum (Rs.) ABC	Amount charged by ABC for further assignment of spectrum to XYZ (Rs.)	Amount payable to Govt for assignment of spectrum (Rs.) XYZ	Service Tax liability @ 15% (Rs.) ABC	Service Tax liability @ 15% (Rs.) XYZ	Date of Point of Taxation	Date of payment of Service Tax	Eligible CENVAT Credit in the relevant F.Y. (Rs.) ABC	Eligible CENVAT Credit in the relevant F.Y. (Rs.) XYZ
2016-17	Upfront payment (33%)	25.6.2016	330	-	-	49.50	-	25.6.2016	6.7.2016	16.5	-
2017-18	-	-	-	-	-	-	-	-	-	16.5	-
2018-19	-	-	-	-	-	-	-	-	-	16.5	-
2019-20	1 st	25.6.2019	131.94	-	-	19.80	-	25.6.2019	6.7.2019	6.60*	-
2020-21	2 nd	25.6.2020	131.94	200	-	19.80 (on 2 nd Instalment) + 30 (for further assignment to XYZ)	-	25.6.2020 (in respect of the 2 nd installment) and 1.8.2020 (in respect of further assignment to XYZ)	6.7.2020 (in respect of the 2 nd installment) and 6.9.2020 (in respect of further assignment to XYZ)	6.60 + 6.60* + 19.80 (being balance CENVAT Credit)	30/3 = 10*
2021-22	3 rd	25.6.2021	-	-	131.94	-	19.80	25.6.2021	6.7.2021	-	10 + 6.60*
2022-23	4 th	25.6.2022	-	-	131.94	-	19.80	25.6.2022	6.7.2022	-	10 + 6.60 + 6.60*
2023-24	5 th	25.6.2023	-	-	131.94	-	19.80	25.6.2023	6.7.2023	-	6.60 + 6.60 + 6.60*
2024-25	6 th	25.6.2024	-	-	131.94	-	19.80	25.6.2024	6.7.2024	-	6.60 + 6.60 + 6.60*
2025-26	7 th	25.6.2025	-	-	131.94	-	19.80	25.6.2025	6.7.2025	-	6.60 + 6.60 + 6.60*
2026-27	8 th	25.6.2026	-	-	131.94	-	19.80	25.6.2026	6.7.2026	-	6.60 + 6.60 + 6.60*

F.Y.	Instalment	Due date for payment	Amount payable to Govt for assignment of spectrum (Rs.) ABC	Amount charged by ABC for further assignment of spectrum to XYZ (Rs.)	Amount payable to Govt for assignment of spectrum (Rs.) XYZ	Service Tax liability @ 15% (Rs.) ABC	Service Tax liability @ 15% (Rs.) XYZ	Date of Point of Taxation	Date of payment of Service Tax	Eligible CENVAT Credit in the relevant F.Y. (Rs.) ABC	Eligible CENVAT Credit in the relevant F.Y. (Rs.) XYZ
2027-28	9 th	25.6.2027	-	-	131.94		19.80	25.6.2027	6.7.2027	-	6.60 + 6.60 + 6.60*
2028-29	10 th	25.6.2028	-	-	131.94		19.80	25.6.2028	6.7.2028	-	6.60 + 6.60 + 6.60*
2029-30	-	-	-	-	-	-		-	-	-	6.60 + 6.60
2030-31	-	-	-	-	-	-		-	-	-	6.60
TOTAL						119.10	158.40			89.10	188.40

Note: Figures with * indicate the amount of CENVAT credit available against Service Tax paid during that year.

3. All concerned are requested to acknowledge the receipt of this Circular.

4. Wide publicity may be given so that the assesseees and public are aware of the above. All the major Industry and Trade Associations may be informed accordingly. Difficulty if any, in the implementation of the Circular should be brought to the notice of the Tax Research Unit.

5. Hindi version would follow.

Yours faithfully,

(Abhishek Verma)
Technical Officer (TRU)