

## **Service Tax and SEZ**

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SEZ is always fascinating. Be it the controversy over the land acquisitions or the so called tax sops, SEZs always have its share of space in all newspapers. When the Government levied export duty on certain goods, including certain iron and steel articles, a controversy arose, as to whether the clearances to SEZ units shall be considered as an export and be liable to export duty and was engaging the attention of all concerned. By now, it is almost become a fait accompli that export duty has to be paid in case of clearances to SEZ units, albeit it may take several years, till the issue is "judicially" buried.

The recent missive is from the CBEC, vide its Circular No. 105/8/2008 ST Dated 16.09.2008, clarifying inter alia that services rendered by SEZ are also liable to service tax. True, even though services rendered to SEZ units remain exempted from payment of service tax, by virtue of Notification 4/2004 ST dated 31.03.2004, no specific exemption is available for the taxable services rendered by SEZ, unless they are exempted by any other means. For example, if one SEZ unit renders service to another SEZ unit, the benefit of Notification 4/2004 can be claimed. If the services rendered qualify as "export of service", the SEZ would not be liable to pay service tax. But, in any other case, where no other exemption is available, a SEZ is also liable to pay service tax on the taxable services rendered by it. Section 26 of the SEZ Act provides for exemption only in respect of the services provided to SEZ and not to the services provided by SEZs. So, the clarification issued by the CBEC is not to be found fault with.

But, the moot question is, who is liable to pay the service tax, in respect of the services rendered by SEZ units?

As per Section 53 of the Special Economic Zones Act, 2005, A SEZ shall be deemed to be a territory outside the customs territory of India, for the purposes of undertaking the authorized operations. In view of this provision and the definition of customs territory under the Customs Act, SEZ is always treated as a foreign territory. That is why, when goods are cleared to SEZ units, all procedures meant for export are followed and when goods are received from SEZ units, all procedures meant for import are followed. (In fact, in our firm, we have assured our employees that they will be taken on a foreign tour this year, keeping in view that we can take them to a nearby SEZ unit!). The view that export duty on specified goods is payable on the goods cleared to SEZ units is also based on the above provisions.

As per Section 66 A of the Finance Act, 1994, if a taxable service is provided from a person situated outside India and received by a person in India, then service tax thereon has to be paid by the service recipient, subject to the provisions of the Taxation of Service (Provided from outside India and received in India) Rules, 2006. Hence, in case of taxable service rendered by SEZ units, the liability to pay service tax shall only be on the service recipient and not on the SEZ unit.