केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, CUSTOMS & SERVICE TAX
केन्द्रीय राजस्व भवन, आई.एस.प्रेस रोड, कोचिन -682018
C.R.BUILDING, I.S.PRESS ROAD, COCHIN-682018

प.सं.C. No. IV/16/11/2016-ST-Tech दिनांक/Date:16.06.2016

व्यापार सूचना सं./ TRADE NOTICE NO.: 08/2016

Subject: Clarification regarding leviability of service tax in respect of services provided by arbitral tribunal· regarding.

It has come to the notice of the Board that there is some confusion regarding the legal position with respect to continuance of reverse charge mechanism for services provided by arbitral tribunals and individual arbitrators on the arbitral tribunal, with effect from 01.04.2016.

2.1 Services provided by an arbitral tribunal to (i) any person other than a business entity; or (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year, are exempt from services tax [Entry 6(a) of Notification No. 25/2012-ST refers]. "Arbitral tribunal" has been assigned the same meaning in the exemption notification No. 25/2012-ST [paragraph 2(c)] as in clause (d) of Section 2 of the Arbitration and Conciliation Act 1996, which is as follows:-

"arbitral tribunal means a sole arbitrator or a panel of arbitrators"

2.2 In the Budget 2016-17, the entry at (c) of Sl. No. 6 of notification No.25/2012-ST, has been omitted with effect from 01.04.2016. It read as:

"Services provided by a person represented on an arbitral tribunal to an arbitral tribunal."

3. The matter has been examined. It may be noted that the services provided or agreed to be provided by an arbitral tribunal to a business entity (turnover exceeding Rs.10 lakh) located in the taxable territory, is taxable under reverse charge mechanism and recipient of service is liable to discharge service tax liability [Rule 29(d)(D)(I) of Service Tax Rules, 1994

and Notification No. 30/2012-ST (Sl. No. 4) refer]. There is no change in the Budget 2016-17 with respect to the said provisions.

4. It could be argued that service provided by an arbitrator on the panel of arbitrators, to the arbitral tribunal is taxable under forward charge. However, this does not appear to be a correct interpretation of law. Any reference in Service Tax law to an "arbitral tribunal" necessarily includes the natural persons on the arbitral tribunal, by virtue of clause (d) of Section 2 of the Arbitration and Conciliation Act, 1996. Services are provided or agreed to be provided by the panel of arbitrators, as comprising the several natural persons on the said panel, to the business entity or to the arbitration institution approached by the business entity for purposes of arbitration. The liability to discharge service tax is on the service recipient, if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

5. In view of the above, it is clarified that Service Tax liability for services provided by an arbitral tribunal(including the individual arbitrators of the tribunal) shall be on the service recipient if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

6. All the trade associations are requested to bring the contents of this Trade Notice to the attention of their members in particular and the trade in general.

Reshma Lakhani

रेश्मा लखानी /RESHMA LAKHANI 16/6/16

आयुक्त / COMMISSIONER

सेवा में/ To

1. प्रेषण सूची -1 व 2 के अनुसार / As per DL-I & II of Cochin Commissionerate

प्रति प्रस्तुत है / Copy submitted to :-

मुख्य आयुक्त कार्यालय / The Chief Commissioner's office