CIRCULAR NO.119/13/2009-ST, DT: 21-12-2009

Sub : ***Service tax valuation issues pertaining to Customs House Agents Service-Reg.***

Customs House Agent's (CHA) Services are taxable since 15th June 1997. As per the definition (section 65 (105) (h) of the Finance Act, 1994) the 'taxable service' means any service provided or to be provided to any person, by a custom house agent in relation to the entry or departure of conveyance or the import or the export of goods and the term 'service provider' shall be construed accordingly. Further, as per definition appearing under section 65(35) of the aforesaid Act, a 'custom house agent' means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962. The Custom House Agents Licensing Regulations, 2004, made under the said section, prescribe the procedure for grant of license by the customs department. They (regulation no. 13) also place obligations on such license holders during their interface with customs department pertaining to customs formalities for conveyance or imported or export goods. In sum, the above provisions read in harmony, show that the activities of a CHA i.e. pertaining to customs formalities in relation to the entry or departure of conveyance or the import or the export of goods, is subjected to service tax under CHA services.

02. While the principal job of a CHA is to get the import or export consignments cleared through customs, they, being the 'persons on the spot', also at times arrange services for packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). These services are provided by different agencies such as Port Trust, Steamer Agents, Cargo Handlers, Warehouse-keepers, Packers, Goods Transport Agents. Normally the CHAs initially pay the service charges to these agencies and later recover these charges from the customer along with their own charges CHAs. Similar arrangement can occur for payment of statutory levies like Custom Duties, Port charges, Cesses etc. leviable on the said goods.

03. Issue was raised at the initial stage itself as to whether the charges, which are said to be paid by the CHAs and later recovered from the customers (i.e. reimbursable charges) should be added to the value for charging service tax from CHAs. Through the circular F.No.B-43/1/97-TRU, dated 06.06.1997 the Board had clarified that the service tax would be charged on the 'service charges only' and statutory levy and other reimbursable charges would not be included in the taxable value. It was also provided that in case there are lump sum payments towards the reimbursable as well as service charges, service tax would be charged on 15% of the gross value only.

04. In 2006 (w.e.f. 19.04.2006) the Service Tax (Determination of Value) Rules were prescribed. Consequently all previous circulars relating to valuation were withdrawn. The said rules brought in the concept of 'pure agent' and provided that expenditure or costs incurred by the service provider as pure agent alone will be eligible for exclusion from taxable value.

05. It is reported that disputes have arisen on the issue of inclusion of such reimbursable charges, which are currently pending at various stages of dispute settlement mechanism. Certain field formations have also issued communications, directing that charges on certain activities incurred by CHAs are not covered under exclusions available to 'pure agent'. It is also reported that divergent practices as regards the records & documentations, are being followed by the CHAs in

relation to the charges for receiving services from other service providers as well as to their billings to their customers. This has added to the conflict and litigation.

06. With a view to resolve the disputes and to bring it clarity, the issue has been examined. The divergent practices followed at different places and lack of consistency in the manner of maintaining records and issuance of documents by the CHAs, make it impossible to lay down any specific guidelines or issue any specific directions. In the circumstances, it is clarified that essentially, the exclusion should be allowed to such charges from the taxable value of CHA services, where all the following conditions are satisfied,-

a) The activity/service for which a charge is made, should be in addition to provision of CHA service (as mentioned in paragraph 1);

b) There should be arrangement between the customer & the CHA which authorizes or allows the CHA to (i) arrange for such activities/ services for the customer; and (ii) make payments to other service providers on his behalf;

c) The CHA does not use the activities /services for his own benefit or for the benefit of his other customers;

d) The CHA recovers the reimbursements on 'actual' basis i.e. without any mark-up or margin. In case of CHA includes any mark-up or profit margin on any service, then the entire charge (and not the mark-up alone) for that particular activity/ service shall be included in the taxable value;

e) CHA should provide evidence to prove nexus between the other (than CHA) services provided and the reimbursable amounts. It is not necessary such evidence should bear the name or address of the customer. Any other evidence like BE No./Container No./ BL No./ packing lists is acceptable for the establishment of such nexus. Similar would be the case for statutory levies, charges by carriers and custodians, insurance agencies and the like;

f) Each charge for separate activities/services is to be covered either by a separate invoice or by a separate entry in a common invoice (showing the charges against each entry separately) issued by the CHA to his customer. In the latter case, if certain entries do not satisfy the conditions mentioned herein, the charges against those entries alone should be added back to the taxable value;

g) Any other miscellaneous or out of pocket expenses charged by the CHA would be includable in the taxable value for the purposes of charging tax on CHA services.

07. The conditions mentioned at paragraph (06) would be applicable for services provided with effect from 19th April 2006, i.e. after the introduction of the valuation rules. For the prior period, the taxable value should be determined in accordance with the prevailing instructions issued Board as referred to foregoing paragraph 03 of this circular. Any communication issued by any of the subordinate offices which are contrary to the conditions referred to in paragraph 06 of this circular, or as the case may be, the prevailing Boards circulars stands superceded to the extent of the contradiction.

08. The pending disputes may be settled in terms of this circular.

09. Hindi version follows.