

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 40 / 2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007(22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2011-Service Tax, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.174(E), dated the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax *ab initio* instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression “wholly consumed” refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012(hereinafter referred as the POP Rules) is as under:-

- (i) in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ ; or
- (ii) in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or
- (iii) in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ;

(b) where the specified services received by the unit of a SEZ or developer are not wholly consumed within SEZ, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates, i.e.,

$$\text{Refund amount} = \frac{(\text{Export turnover of goods + Services of SEZ Unit/Developer}) \times (\text{Service tax paid on services other than wholly consumed Services (both for SEZ and DTA)})}{\text{Total turnover for the period}}$$

Explanation.- For the purposes of condition (b),-

- (A)“refund amount” means the maximum refund that is admissible for the period;
- (B) “export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported;
- (C) “export turnover of services” means the value of the export service calculated in the following manner, namely:-
 Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;
- (D) “total turnover” means sum total of the value of-
 - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 - (b) export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period; and

(c) for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved

by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(d) for the purpose of claiming *ab initio* exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;

(e) the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;

(f) the unit of a SEZ or developer claiming the exemption by way of refund, should have paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the said Act;

(g) no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;

(h) no refund shall be available on services wholly consumed for operations in the Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) and (ii) of the explanation to condition (a);

(i) exemption or refund of service tax paid on the specified services other than wholly consumed services used for the authorised operations in a SEZ shall not be claimed except under this notification;

(j) the unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

(a) the unit of a SEZ or developer, who has paid the service tax leviable under section 66B of the said Act shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;

(b) the unit of a SEZ or developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or

registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-2;

(c) the unit of a SEZ or developer who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-3;

(d) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the unit of a SEZ or developer, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;

(e) claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit, to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1;

(ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of the said Act or rules made thereunder, in the name of the unit of a SEZ or developer, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;

(iii) a declaration by the unit of a SEZ or developer, claiming such exemption, to the effect that—

(A) the specified services on which refund of service tax claimed, has been used for the authorized operations in the SEZ ;

(B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

(C) accounts or documents furnished by the unit of a SEZ or developer as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

(i) the refund claim is complete in all respects;

(ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services;

(h) a service provider shall provide the specified services falling under wholly consumed category, under *ab initio* exemption granted by this notification, to a unit of a SEZ or developer, for authorised operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1;

(i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

4. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

Explanation.- For the purposes of this notification, “statutory auditor” refers to a Chartered Accountant who audits the annual accounts of the unit of a SEZ or developer for the purposes of the Companies Act, 1956 (1 of 1956) or the Income tax Act, 1961(43 of 1961).

5. This notification shall come into force on the 1st day of July, 2012.

[F. No. 334/1/2012-TRU]

(Rajkumar Digvijay)
Under Secretary to the Government of India

FORM A-1

DECLARATION BY THE UNIT OF A SEZ OR DEVELOPER FOR AVAILING *AB INITIO*
EXEMPTION UNDER NOTIFICATION No. _____ DATED _____
[Refer condition (d) under paragraph 2]

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Permanent Account Number(PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax Registration Number/Service Tax Code:
7. Declaration: I/We hereby declare that-
 - (i) The information given in this application form is true, correct and complete in every respect and I am authorised to sign on behalf of the SEZ Unit/Developer;
 - (ii) I/We maintain proper account of specified services, as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; I/we shall make available such accounts and related records, at all reasonable times, to the jurisdictional Central Excise Officers for inspection or scrutiny.
 - (iii) I/We shall use/have used specified services for authorised operations in the SEZ.
 - (iv) I/We declare that we do not own or carry on any business other than the operations in SEZ [*where this item is not applicable, declaration may be submitted after striking out the inapplicable portion*];
 - (v) I/We are aware that the Declaration is valid only for the purpose specified in Notification _____ dated _____ and is subject to fulfillment of conditions.
 - (vi) I/We intend to claim *ab initio* exemption from the following service provider(s) in the Domestic Tariff Area(DTA):

Sl.No.	specified service(s) to be received from the DTA service provider(s)	DTA Service provider(s) who provide(s) the specified service(s), for SEZ authorised operations	
		Name and address	Service Tax Registration No.
(1)	(2)	(3)	(4)

Signature and Name of Authorised Person with stamp

Date:

Place:

I have verified the above Declaration; it is correct

Signature, date and stamp of the Specified Officer of the SEZ (Specified Officer shall retain a copy of the verified Declaration, for the purpose of record)

FORM A-2

**APPLICATION FOR CLAIMING REFUND OF SERVICE TAX PAID ON SPECIFIED SERVICES
USED FOR AUTHORISED OPERATIONS IN SEZ**

To
The Assistant/Deputy Commissioner of Central Excise/Service Tax
_____ Division, _____ Commissionerate

Sir,
I/We claim refund of Rs..... (Rupees in words)

- (a) in respect of service tax paid on 'wholly consumed' specified services used for the authorized operations in SEZ, as approved by the Approval Committee of the _____ SEZ [Rupees _____]
- (b) in respect of service tax paid on specified services, other than those that are wholly consumed, used for the authorized operations of SEZ Unit/Developer, as approved by the Approval Committee of the _____ SEZ [Rupees _____].

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office with Telephone and Email:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service Tax Code:
8. Information regarding Bank Account (Bank, Address of Branch, Account Number) in which refund amount should be credited/to be deposited:
9. Details regarding Service Tax refund claimed:
- 9.1 Refund arising out of 'wholly consumed' specified services:

Table-A

Sl. No.	Details regarding specified services used in the authorized operations of SEZ, as approved by the Approval Committee						Amount of service tax claimed as Refund (including education cess) (Rupees)	Document enclosed as proof of payment of service tax by the SEZ Unit/Developer, (sl.no and date of invoice/ bill / challan)	
	Description of taxable service (as per the invoice) used in the authorized operations of SEZ	Name and address of Service Provider	Service Tax Registration Number of Service Provider	Invoice/Bill/Challan (original enclosed)					
(1)	(2)	(3)	(4)	Number	Date	Value of taxable service (Rupees)	(8)	(9)	(10)
1.									
2.									
TOTAL									--

9.2. Refunds arising out of specified services, other than those are 'wholly consumed':

I/We request refund of service tax paid on specified services, other than those that are 'wholly consumed',-

- (a) used in the manufacture of final products exported from SEZ
- (b) used in providing output services exported from SEZ

I/We furnish following true and correct particulars, in Tables 'B' and 'C', for the purpose of above refund:

Table – B

No.	Specified services other than those that are 'wholly consumed', used for authorised operations by SEZ Unit/Developer, during the period for which refund is claimed						Document enclosed as proof of payment of service tax (sl.no and date of invoice/ bill / challan)	
	Description of taxable service(as per the invoice) used in the authorized operations of SEZ	Name and address of Service Provider	Service Tax Registration Number of Service Provider	Invoice/Bill/Challan (original enclosed)				Amount of Service tax paid (including education cess) (Rupees)
				Num ber	Date	Value of taxabl e servic e (Rupe es)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.								
2.								
TOTAL								--

Table - C

Details		Details for the period to which the invoices pertain and refund is claimed		
		Export turnover of SEZ Unit(s)/Developer	Service tax paid on input services other than wholly consumed services	Total turnover
		(1)	(2)	(3)
-Goods	(a)		---	
Output services	(b)		----	
Others(Bought out goods sold)	(c)	----	----	
Total (a)+(b)+(c)=(d)				

Instructions for compilation of the above statistical table:

- (i) To calculate the export turnover of SEZ, in the case of export of goods, FOB value provided in Shipping Bills or Bills of Export, should be taken into account, which have been duly certified by the officer of customs to the effect that the goods have been exported;
- (ii) To calculate the export turnover of SEZ, in the case of export of services, value of output services exported shall be on the basis of certificates issued by the bank certifying the realization of export proceeds.
- (iii) Amount of service tax claimed as refund, under Table B read with Table C: Rupees _____
- (iv) Particulars filled in the Table C should be verified and certified as true by the statutory auditor of the SEZ Unit/Developer

10. I/We Declare that-

- (i) information given in this application for refund is true, correct and complete in every respect and that I am authorised to sign this application for refund of service tax;
- (ii) the specified services, as approved by the Approval Committee of SEZ, on which exemption/refund is claimed are actually used for the authorised operations in a SEZ;
- (iii) refund is being claimed only on the service tax actually paid on the specified services used for the authorised operations in a SEZ; refund of service tax has not been claimed or received earlier, on the basis of above documents/information;
- (iv) We have not taken any CENVAT credit of service tax paid on the specified services under the CENVAT Credit Rules, 2004;
- (v) accounts or documents furnished as proof of payment of service tax being claimed as refund, as per the invoice, bill or challan of the service provider indicating the service tax paid on such specified services, are true and correct in all respects;
- (vi) proper account of receipt and use of the specified services on which exemption/refund is claimed, for the authorised operations in the SEZ, is maintained and the same shall be produced to the Officer sanctioning refund, on demand.

Signature and name
(of proprietor/managing partner/
person authorised by managing director of SEZ Unit/Developer)
with complete address, telephone and e-mail

Date:

Place:

FORM A-3

DECLARATION FOR OBTAINING SERVICE TAX CODE

[Refer clause (c) under paragraph 3]

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service tax Code:
8. Details of Bank Account (Bank, Address of Branch, Account Number)
9. (a) Constitution of SEZ Unit/Developer [proprietorship/partnership/Registered Private Limited Company/Registered Public Limited Company/Others(specify)]
(b) Name, Address, Telephone number of Proprietor/partner/director(s)
10. Name, designation and address of the authorised signatory/signatories
11. I/We hereby declare that-
 - (i) The information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the SEZ Unit/Developer;
 - (ii) I/We shall maintain proper account of specified services as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; and shall make available such accounts and related records, at all reasonable times, to the Department for inspection or scrutiny.
 - (iii) I/We shall use/have used specified services for authorised operations in the SEZ.

Signature and Name of Authorised Person with stamp

Date:

Place: