

Instruction No.5

Office of the Development Commissioner
Special Economic Zones
Karnataka and Kerala
Administrative Office, CSEZ, Kakkanad,
Kochi, Kerala – 682 037

Date: 4th August 2009

To

All SEZ Developers
All SEZ Units

**Subject: Procedure for applying for utilization of services for authorized operations –
Regarding.**

1. Doubts have been raised in certain quarters about the manner in which service tax exemption can be claimed by SEZ developers and units. Chapter VI of the Special Economic Zones Act 2005 is the authority for exemptions that can be availed of in a Special Economic Zone as well the levy of duties on goods cleared into the Domestic Tariff Area. Exemption from service tax under Chapter V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorized operations in the Special Economic Zone is provided for by section 26 (e) of the Special Economic Zones Act 2005.

2. The Special Economic Zones Act, 2005 and Special Economic Zones Act, 2006 allows the utilization of goods and services for the development of the Zone by the “developer (and co-developers)” as well as the manufacture of goods and/or rendering of services by the entrepreneur who sets up a unit in the Zone. The Board of Approval, constituted under section 8 of the Special Economic Zones Act 2005 is the competent authority to approve authorized operations of the developer (including co-developer) whose requirement of goods and services for carrying out such operations are to considered and approved by the Approval Committee of the Special Economic Zone, constituted under section 13 of the Special Economic Zones Act 2005, in accordance with Rule 9 and Rule 10 of the Special Economic Zone Rules, 2006. Insofar as units are concerned, the authorized operations are the manufacturing activity or rendering of the service for export or clearance into the Domestic Tariff Area as mentioned in the Letter of Approval issued under Rule 19 of the Special Economic Zone Rules, 2006 on the basis of consideration of application of the entrepreneur by the Approval Committee as provided for in Rule 18 of the Special Economic Zone Rules, 2006. Under Rule 27 (2) of the Special Economic Zone Rules, 2006, the final authority for deciding, in cases of doubt, whether any goods or service are required for any of the authorized operations of the Developer or Unit shall be the Development Commissioner.

3. Service tax is recovered from the service user by the service provider in the billing invoice and remitted to the tax levying authority except in a few services wherein it is the responsibility of the service user to remit the appropriate tax with the authority. In view of this and notwithstanding the exemption provided for use of taxable services for carrying out authorized operations in a Special Economic Zone, there would be a tendency among service providers to avoid responsibility and to collect the taxes, which are not to be collected. While the Special Economic Zone Rules, 2006 has

provided for a mechanism for availing the exemption and conferred assessing powers on the authorized officers in a Special Economic Zone, such arrangements are not provided for in the matter of service tax even if they are exempt; grant of such exemptions and assessment of taxes wherever due has been retained with the service tax authorities in the Central Excise department.

4. In recognition of the exemption of service tax as provided for in the Special Economic Zones Act, 2005 as well as the retention of the existing mechanism for assessment and the consequential allowing/disallowing of the exemption from service tax, Government of India in the Department of Revenue has prescribed the procedure in Notification No 9/2009-Service Tax dated 3rd March 2009 and Notification No 15/2009-Service Tax dated 20th May 2009 and as explained in Circular No 354/163/2006-TRU. Accordingly, the services required for authorized operations of a developer or unit in the Special Economic Zone shall be subject to two distinct treatments depending on the place of consumption of service. Such services as are consumed within the Special Economic Zone in connection with authorized operations of the developer or unit shall be exempt upfront without following the requirement of sub-paragraph (c) and (d) of paragraph 1 of and the whole of paragraph 2 of the Notification No 9/2009-Service Tax dated 3rd March 2009. Taxes on all other services rendered to the developer or the unit for authorized operations approved by the competent authority shall be claimed as a refund after payment of the duty to the service provider and upon a claim being submitted to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise in the manner provided for in Notification No 9/2009-Service Tax dated 3rd March 2009.

5. In view of the duality of treatment, there is need to lay down a procedure by which the developer or unit shall establish its claim to exemption, whether upfront or through the refund rate, with the service provider so that developer or unit are allowed to avail of the special fiscal provisions relating to service tax in the spirit in which these are envisaged. Unlike goods, wherein the exemption is claimed from the officials appointed under the Special Economic Zone Acts, 2005 and Special Economic Zones Rules, 2006 for assessment or admission of the goods into the Zone, tax is assessed on services solely by the authority appointed by the taxing legislation. However, by the above referred notifications of the Department of Revenue, the exemption provisions of the Special Economic Zones Act, 2005 has been operationalised to enable service provider to claim exemption from tax on services consumed within the zone and to enable service receiver to claim refund of service tax remitted to the service provider. The sine qua non for both claims is the procedure laid down in the Special Economic Zone Rules, 2006 encompassing the approval of authorized operations requiring the said services by the Approval Committee and communicated appropriately as enunciated in the Special Economic Zone Rules, 2006 including Rule 27(2) of the Rules. Hence there is need to make an application listing out the services required for carrying out the authorized operations by the developer or unit for consideration by the competent authority.

6. Further, as tax is not liable to be levied on the services consumed within the Zone and, in accordance with Notification No 9/2009-Service Tax dated 3rd March 2009 read with Notification No 15/2009-Service Tax dated 20th May 2009, are not required to be subjected to the procedure or conditions laid down therein, it has been found necessary to assure service providers that such services are required to be consumed within the Zone for authorized operations so that the developer or unit are not inconvenienced in any way. Accordingly, a certificate to that effect will be issued to the unit upon receipt of a request to that effect to satisfy the service provider that the statutory authority concerned with administration of the Zone has verified that consumption of these services are restricted to the notified area of the Zone. Developers and units are, therefore, required to identify such services when making the request for approval of the services required for authorized operations.

7. It is also possible that there are taxable services wherein the service provider may render services that are consumed within and outside the Zone. That the rendering of such services should not lead to confusion in the minds of the service provider in arriving at a conclusion that the tax should be or not

be collected is necessary in the seamless transactions implicit in the Special Economic Zone and segregation of these services is also a requirement. It would also serve to assist the jurisdictional service tax authority while examining the claims for non-levy or for refund in the assessment of the concerned assessee.

8. All developers and units in the jurisdiction of this office are, therefore, required to apply for approval of the taxable services in three different categories as provided in the Appendix. In applications made by the developer, each of the annexures shall be certified by a Chartered Engineer as provided for in Rule 12 (2) of Special Economic Zone Rules, 2006. The approval shall be issued by this office after consideration by the competent authority and the service user shall remit to the service provider tax on such services as are covered by the Annexure II and Annexure III of the approval.

9. It is clarified that this procedure is only intended to complete the approval process as laid down under the relevant statutes and to provide necessary assurances to the service provider about the place of consumption of service so that the developer/unit are not put to unnecessary burden of paying tax that is exempt. It is not intended to guide the assessment procedure as exercised by the jurisdictional service tax authorities in a claim by the service provider or the claimant for refund for services consumed outside the Zone. The assessment or evaluation of claims shall be in the exclusive domain of the said jurisdictional authority.

10. Any difficulty in implementation of this instruction may be brought to the notice of the undersigned for remedial action.

Sd/-
(C J Mathew)
Development Commissioner

Encl: Appendix

Appendix to Instruction No. 5 /2009

Date:

The Development Commissioner
_____Special Economic Zone
Administrative Office CSEZ
Kakkanad
Kochi – 682 037
Kerala

Sir

As developer/unit in _____ Special Economic Zone, Karnataka/Kerala issued with Letter of Approval No _____ under Rule 6/Rule 19 of the Special Economic Zones Rules, 2006 for the following authorized operations in the Special Economic Zone

- 1.
- 2.
- 3.

the services taxable under Chapter V of the Finance Act, 1994, as notified from time to time, are required to be utilized by us in carrying out the authorized operations. In order to avail the benefit of the exemption the services have been listed in the Annexures as below for the approval of the competent authority.

2. We undertake to maintain records of all services availed of from any service provider for the

permitted services separately for those consumed within the Special Economic Zone and those availed outside and to produce the same for inspection upon demand by the office of Development Commissioner or concerned service tax authority.

Yours faithfully,

(Authorised signatory)

Annexure I: List of services to be consumed exclusively within the Zone

Annexure II: List of services to be availed of outside the Zone.

Annexure III: List of services that could be consumed within or outside the Zone.