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TRADE NOTICE NO. 01/2016

Subject:- Clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012 - reg.

1 Attention of the trade and all concerned is invited to Circular No.189/8/2015-Service Tax dated 26th November 2015 issued by Department of Revenue, Central Board of Excise & Customs New Delhi vide F.No.354/279/2015-TRU.

2. It has come to the notice of Board (CBEC) that certain field formations have taken a view that all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the Negative List.

3 The matter has been examined. In this regard, Negative list entry under Clause (d) of section 66D of the Finance Act, 1994 is reproduced as under :

"(d) services relating to agriculture or agricultural produce by way of —

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing,"

3.1 Term 'agriculture' has been defined under section 65B clause (3) as under:-

(3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

3.2 Term 'agriculture produce' has been defined under section 65B clause (5) as under:-

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

3.3 There is no doubt that seed is not covered under the definition of agriculture produce.

All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing is covered. Testing and certification can be done as per the Act and rules made there under in this regard. Testing cannot stand in isolation of certification and other ancillary activities. Testing cannot be random, somebody has to register for testing. If certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing.

3.4 "Agricultural operations" have not been defined in the Chapter V of the Finance Act, 1994 and an inclusive and indicative list of such operations has been given. Thus it has been defined as "Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing". The exemption is thus not limited to the specified operations. The word 'seed' from testing in agricultural operations was deleted so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

4 It may be recalled that prior to introduction of Negative List, the services [technical testing and analysis and technical inspection and certification of seeds], rendered by notified Central/ State Seed Testing Laboratories /Agency were exempt from Service Tax [notification No.10/2010-Service Tax]. This notification was rescinded by another notification [No .34/2012-Service Tax, dated 20-06-2012], w.e.f. 01-07-2012, when the Negative List entry came into force. The intent of rescinding the said notification was not to withdraw the above stated exemption but the said exemption was being subsumed elsewhere. The relevant entry in the Negative list as on 01.07.2012 read as under:-

d) services relating to agriculture or agricultural produce by way of -

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or **seed testing**;

4.1 Further, in the subsequent Budget 2013-14, the word "seed" prefixed to "seed testing" was omitted w.e.f. 10.05.2013. The intent was clarified by the Joint Secretary (Tax Research Unit) vide Budget D.O.F. No. 334/3/2013-TRU, New Delhi, dated February 28, 2012, in para 1 (iii) of the letter that the negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word "seed". This will allow the benefit to all other testing in relation to "agriculture" or "agricultural produce".

5 In view of the above, it is clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

6 All the Trade Associations are requested to bring the contents of the Trade notice to the notice of the trade in general and their member manufacturers/ Service Tax Payers in particular.


(SEEMA JERE BISHT)
COMMISSIONER 7/1/16