

**F.No.275/7/2010-CX.8A**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**(Central Board of Excise & Customs)**

**Dated : June 30, 2010**

**Sub :** The case of M/s. Indian National Shipowners Association Vs. Union of India & others – reg.

The Hon'ble Mumbai High Court, vide order dated 11.12.2008, in the case of M/s. Indian National Shipowners Association (INSA) Vs. Union of India, W.P. No.1449/2006, has held that before enactment of section 66A, there was no authority vested by law to levy service tax on a person who is resident in India, **but who receives service outside India** [2009 (13) STR 235 (Bom.)] = [2008-TIOL-633-HC-MUM-ST](#). Section 66A was enacted on 18.4.2006. Accordingly, the Hon'ble High Court quashed the levy of service tax, for the period prior to 18.4.2006, on services received outside India by the vessels and ships for the member of INSA, from persons who are non resident. The SLP No.18932/2009 filed by UOI against the said judgment has been dismissed by the Hon'ble Supreme Court vide order dated 14.12.2009 = [2009-TIOL-129-SC-ST](#). The order of Hon'ble Supreme Court has been accepted by the Department. The implication would thus be that service tax levy on taxable services received outside India, i.e. beyond the designated areas in the Continental Shelf and Exclusive Economic Zone of India, from a non resident, arises w.e.f 18.04.2006 only.

2. However, it may be noted that the aforementioned judgment in the case of M/s. INSA Vs. Union of India **does not apply** to the cases **where taxable service, provided by a non-resident, not having any office/establishment in India, is received in India**. The levy of service tax on such services has been examined in the cases of (i) M/s. Hindustan Zinc Ltd Vs. Commissioner of Central Excise, Jaipur, by the larger Bench of CESTAT [2008 (11) STR 338 (T-LB)] = [2008-TIOL-1149-CESTAT-DEL-LB](#), and (ii) UOI Vs. M/s. Aditya Cement, by the Hon'ble High Court of Rajasthan, [2008 (10) STR 228 (Raj.)]= [2008-TIOL-483-HC-RAJ-ST](#), wherein it has been held that service tax liability on services received in India from a non resident arises w.e.f. from 1.1.2005, consequent upon issuance of notification No.36/2004-ST, dated 31.12.2004, under section 68(2) of the Finance Act, 1994 read with rule 2(1) (d)(iv) of the Service Tax Rules, 1994. The dispute involved in these cases was as to whether liability to pay service tax on reverse charge basis by the recipient of service in India, provided by a non-resident, arises with effect from 16.08.2002, when rule 2(1)(d)(iv) of the Service Tax Rules, 1994 came into effect, **or** w.e.f . 01.01.2005 when notification No.36/2004-ST, issued under section 68(2) of the Finance Act, 1994 came into effect. The Civil Appeal and SLP respectively, filed by the department in these cases, have been dismissed by the Hon'ble Supreme Court and these orders have been accepted by department. Therefore, in view of these judgments, levy of service tax on taxable services received in India which are provided by a non-resident, not having office/establishment in India arises on reverse charge basis w.e.f.1.1.2005.

3. In view of the above the accepted position is that,

(i) in case of taxable service provided by a non-resident, not having office/establishment in India, and **received in India** , the service tax liability arises w.e.f.1.1.2005, on reverse charge basis on the recipient of service in India. Therefore, the overall facts and circumstances of each case needs to be taken into

account to determine whether service is received in India or otherwise.

(ii) in case of taxable service received **outside India** by a person, who is resident in India or has place of business/business establishment in India, the service tax liability arises w.e.f.18.4.2006, as is in the case of INSA, where services were received outside India for use in the ships and vessels located outside India.

3.1 However, the *ratio decidendi* of aforementioned judgment in the case of M/s. INSA appears to have applied wrongly in a few subsequent cases by the Courts to arrive at the conclusion that service tax would not be leviable before 18.04.2006, **even on services received in India**, when provided by a non resident. One such case is M/s. Unitech vs. Commissioner of Service Tax, Delhi [2009 (15) STR 385 (Del.)] = [2009-TIOL-293-HC-DEL-ST](#), wherein Hon'ble High Court of Delhi, applying the ratio of M/s. INSA case has held that service tax liability on the architectural service provided by a non resident to M/s. Unitech in India would arise w.e.f.18.04.2006. This order has not been accepted, as Department is of the view that service tax liability in such cases arises w.e.f 1.1.2005, on reverse charge basis, in view of the ratio laid down in the aforementioned cases of M/s. Hindustan Zinc Ltd and M/s. Aditya Cement. Accordingly, an SLP has been filed before the Hon'ble Supreme Court in this case.

4. In view of the above, the field formations are directed to defend the view that the levy of service tax on taxable services received in India from a non-resident, not having any office in India, arises on reverse charge basis, w.e.f.1.1.2005 as has been upheld by the Apex Court in the cases M/s. Hindustan Zinc Ltd and M/s. Aditya Cement Ltd., distinguishing such cases on facts from the INSA case. However, levy of service tax in respect of cases where service is received outside India would follow the ratio in the aforementioned case of M/s. INSA vs UOI.

5. Accordingly, it may be critically examined in pending disputes as to whether the service was received in India or outside India and appropriate action may please be taken for resolution of such disputes.

**(M. D. Singh)**  
**Commissioner (Legal)**