

## **Microsoft's tax win to aid others exporting services from India**

*In a decision that nullified a Rs 400-crore service tax demand on Microsoft India...*

In a decision that nullified a R400-crore service tax demand on Microsoft India and could bring similar relief to scores of Indian companies providing marketing and technical support services to overseas firms, the Delhi Customs, Excise and Service Tax Tribunal (CESTAT) has ruled that such services are not taxable.

The CESTAT ruling on September 23 has categorically said that marketing and technical support services given to overseas entities could be treated as "export of services" although these services are actually performed within India and involved market research on Indian consumers. It is an established policy that exports are not taxable.

Although the Microsoft case involves services rendered by the Indian firm to one of its overseas associates, the tribunal ruling is applicable to all Indian firms providing services to foreign entities, irrespective of whether they are related parties.

Tax experts said the development has a favourable impact on IT and IteS firms, apart from export-oriented units and certain Indian telecom group companies having a presence abroad. The tribunal ruling strikes down the revenue authorities' view that for business auxiliary service provided by an Indian entity to be an export of service, it necessarily has to be 'used' outside India.

For Microsoft India, which had a 2005 July agreement with Microsoft Operations of Singapore for product support and marketing services in India, the ruling invalidates a R400-crore tax demand slapped on it in 2008. Had the order been in the revenue department's favour, accumulated interest could have raised the demand sharply.

Experts described the ruling relating to Microsoft's appeals filed in 2008 and 2010 as "momentous".

"The ruling supports the view that marketing support services provided to a principal located outside India qualify as export of services and are not liable to service tax. It states that service though provided in India is delivered and used outside India. The ruling is truly significant as there are several ongoing disputes on whether marketing support activities qualify as export of services and this decision should have tremendous precedence value," said Saloni Roy, senior director, Deloitte in India.

The three-member tribunal order is the result of a reference to a third member due to a difference of opinion between the judicial and technical members of the bench that heard the matter earlier. It is not immediately clear if the revenue authorities would appeal against the decision at the high court.

The revenue department had contented that since the marketing and product support services for Microsoft Operations Singapore concerned the ultimate users of Microsoft products in India, re-routing the activities through an overseas entity should not give such services the benefit of

exports. It claimed that the 'use' of the service too has to be outside India for export tag eligibility.

“Just because Microsoft, Singapore, is selling its products to Indian customers based on the market information provided by Microsoft India, the services rendered by Microsoft India cannot be construed as 'domestic service'. The conditions stipulated under the Export of Services Rules, 2005, was very much fulfilled by Microsoft India and hence not taxable,” explained MS Vasani, a leading indirect tax expert.

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