

FOR THE KIND ATTENTION OF MEMBERS

1. DELAYED PAYMENT OF CUSTOMS DUTY REFUNDS

The Union Ministry of Finance has **revised the guidelines relating to delayed payments of customs duty refunds** vide Cir. No. 24/2007 dated 02.07.2007. A gist of the same is given below for the benefit of our members:

Various representations from importers, exporters, trade and industry associations have been received regarding delay in payment of Customs duty refunds and the hardships faced in obtaining refunds from

Customs field formations. It has also been observed that in some cases, the Courts and higher judicial authorities have taken adverse note of the delay in refund of duty.

In order to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement, the following procedure should be followed:

- **System for receipt and acknowledgment of all Customs duty refund applications:** All refund applications made by any person under Section 27 of the Customs Act, whether made by post or courier or personal delivery, shall be received by the department and a simple receipt be issued immediately.

At this stage, the receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within ten working days of their receipt. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within ten working days of the initial receipt.

- **Processing of refund applications and their disposal:** Application of refund found to be complete in all respects by Customs, after scrutiny as above, shall be processed on 'first-come-first-served' basis so as to decide whether the whole or any part of the duty and interest paid by the applicant is refundable. If refund is due in such case, an order for refund is required to be passed in terms of sub-section (2) to section 27 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order.

- **Issue of Cheque:** Where the refund application has been admitted, whether in part or in full, and claimant is eligible for refund, the Deputy / Asst. Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any.

- **Audit system:** Existing instructions on audit scrutiny of refunds shall continue. Accordingly, all applications involving a refund of duty and/ or interest of Rs 5 lakhs or more shall be subjected to pre-audit as per the existing practice. The applications of refund of amount below Rs 50,000 / - may be post-audited on: the basis of the random selection by Deputy / Asst. Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between Rs 50,000/ - and Rs 5 lakhs should be compulsorily post audited.

- **CVC's instructions:** The status of individual applications/matters should be made available on the organization's website and should be updated from time to time so that the applicants remain duly informed about the status of the applications.

- **System of maintaining online database on Customs duty refunds:** In pursuance of the instructions of CVC, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgment, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. This online database would enable any person who had applied for refund with Customs, to check the status of his refund application by reference to the date of his refund application having been received by Customs.

2. NO ESI LIABILITY ON OUTSIDE JOBS

The principal employer is not liable to pay ESI on outside jobs executed through contract labour. This clarification has come from the highest court of the land, the Hon'ble Supreme Court.

In the case of ESIC Bangalore versus JMD Fashions (No. MFA 1089/2001), the Karnataka High Court held that outside establishments are not immediate employers under Section 2(13) of the ESI Act. The ESIC decided to go on appeal against this verdict, before the Supreme Court. The SC in its judgment dated 12.03.2007 dismissed the petition of the ESIC and upheld the decision of the HC.

Recently the MP High Court had also given a similar judgment, stating that in case of job works done by contract labour, there is no element of supervision by the principal employer, and therefore the principal employer will not be responsible for payment of ESI contributions in respect of such contract labour.

Earlier, the ESI authorities had been demanding and in many cases, even recovered the ESI contributions from the employers for outside jobs done by contracted vendors.

ESI contribution on outside job works

- Recent judgments in this regard provide relief to employers who outsource work to outside establishments.
- As per guidelines prescribed in circulars dated 26.08.2005 and 17.08.2006 by ESI Corporation, New Delhi, the Corporation's inspectors made huge demands of ESI contributions on the employers at the time of periodical inspection, causing undue hardship to the employers.
- As mentioned above, the Supreme Court has upheld a verdict of the Karnataka High Court in the ESIC v/s JMD Fashions - MFA 1089/2001 case, that outside establishments are not immediate employers under Section 2(13) of the ESI Act, and so, if jobs are done outside by contract labour, and where there is no element of supervision by the principal employers on such contract labour, the principal labour will not be liable for ESI contribution on job work charges paid to such contract labour.
- In a similar case, the Madhya Pradesh High Court has also upheld this view, and has further held that checking of works executed by such outside contractors is a normal activity, for the purpose of finally accepting or rejecting the work done, on the touchstone of job specifications, which cannot be termed as supervision or control.
- These decisions have finally set to rest the controversy caused by the decision of a Bench of the Madras High Court in the case of Khaleel Corporation v/s ESIC.
- In the light of this, all Associations and Industry Chambers should urge the ESIC, New Delhi to withdraw its circulars dated 26.08.2005 and 17.08.2006.

ESI Contribution on Casual Contractors

- The Bombay High Court, relying on Supreme Court judgments, has held that casual contractors like plumbers, electricians, air conditioner repairers, computer repairers, TV repairers, etc who are engaged for temporary repair work will not be coverable under the ESI Act (ESIC vs RK Furniture & Another - 2007 LLR 14).
- This should come as a great relief to employers who have for a number of years faced the ordeal of meeting demands for contributions on casual contract works, after every ESI inspection. Apart from the monetary aspect, it was a time consuming and expensive task to cull out from accounting records, payments made for such sporadic engagement of technicians and contractors, and pay ESI contributions.
- All Associations and Industry Chambers should urge the ESIC, New Delhi to issue appropriate instructions to its ROs and Inspection staff and reverse the practice of demanding contributions on such casual, stray contracts. Otherwise, the employers will be left with no remedy other than to approach the appellate forum for redressal, every time.

- KASSIA News; August 2007

ATTENTION MEMBERS

Hurry!!! Get your Unit registered on www.gsia.in NOW.

Sub-Contract Exchange System (SCX) (A Unit of Goa State Industries Association)

Setup with the assistance of Govt. of India, Ministry of Micro, Small and Medium Enterprises, New Delhi - to cater to the needs of Medium & Large Scale manufacturing units in the State and possibly outside the state as well. Register capacities/ capabilities as far as possible of all MSMEs in Goa. This information will be provided to purchasers i.e. Large & Medium Industries/ purchasing organizations on regular basis.

Extend to: Entrepreneurs - Exporters, Importers, Vendors; Corporates; Consultants; Trade bodies; Suppliers; etc.

Name it & You have it! : Products and Services categorized and registered with Department of Industries

Access: 24 x 7 Online accessibility services.

Showcase: Your manufacturing / production / service capacity.

You can update your profile online:

About your Company, Products Manufactured / Services rendered and contact details for market promotion.

Basic Usage:

1. Members can email their contributions / profiles to gsia@bsnl.in
2. Members can view a list of upcoming events on the Events page.
3. Your company profile will be visible on Search Engines, helping you get business enquiries.

Advanced Usage:

1. Directly add content to the website:
 - Members can email their contributions to the website directly to gsiagooa.web0907@blogger.com
 - The subject line of the email will automatically become the title of the page, and the body of the email will become the page content.
 - The content has to be approved by the the website Admin (GSIA office).
 - I sent an email, and the Admin approved it. See email sample below.
Since the post has to be approved, there will be no misuse.
This potentially makes each one of us an editor over email, and if used well, can increase the content on GSIA website exponentially.
2. Use the GSIA Events Calendar better:
 - You can add the GSIA calendar to your own Google Calendar (you will need a free gmail account for this)
 - You can set up your calendar to send you email alerts, say one day before the program. This will save time and you will know of all programs that are happening

All this Absolutely Free of Cost under one roof
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SC: No equal pay for daily wager, regular employee.

- Gomantak Times, Panaji
Wednesday October 31, 2007

NEW DELHI: A daily wager cannot claim salary equal to that of a regular worker even if the two are discharging the "same functions," the Supreme Court has ruled in a landmark judgement which supercedes its earlier, almost opposite, stand on the issue.

The principle of equal pay for equal work will arise "only if there is complete and total identity between 'the two persons similarly situated so as to grant equal pay for equal work,'" a bench of Justices A K. Mathur and Markandeya Katju observed. .

Holding that its earlier view that if two persons were discharging same functions they were entitled to same wages was no longer applicable, the court said. "Even if a daily wage employee is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person."

The court said the case of a regular employee and that of a daily wage worker was on a different footing as the former" is always appointed through a selection process and his services are permanent.

The apex court gave the observation while quashing an order of the Punjab and Haryana High Court which had affirmed a trial court order directing equal pay for some daily-wage tractor drivers on par with the regular drivers working for the Punjab government. The state government had challenged the lower court's direction by filing a petition in the apex court. PTI.

THE TELECOM REVOLUTION



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Gone are the days when basic telephones were used only to make and receive calls. These days with the aid of state-of-art digital exchanges, Telecom providers offer us a gamut of services converting our old basic telephone to a highly sophisticated tool. These Telecom Services can be broadly classified into 3 categories.

I. PHONE PLUS FACILITIES FOR LAND LINE TELEPHONE CONNECTIONS:

1. Call Waiting: This facility lets you receive incoming calls even when your telephone is busy. You get a short duration pip-pip tone when you are busy talking, indicating that another call is waiting for you, provided you have activated this facility. You can talk to any one of the callers keeping the other waiting. Complete secrecy of communication between the two callers is maintained.

2. Hot Line: This service helps you to be connected directly to a pre-determined number as soon as you lift the hand set even without dialing.

3. Call Forward: Calls can be forwarded to another telephone no. designated by you.

4. Calling Line Identification Presentation (CLIP): The subscriber has to buy separately the CLIP display device from market. Using this facility you can see the number of the calling party before lifting your telephone.

5. Conference: With this service telephonic conference can be set up within 3 or more parties. This service is available subject to technical feasibility.

6. Centrex (Integrating telephone line): Centrex or Centralized Exchange, is a standard based business telephone service offered by the local telephone company from a local central switching office. It integrates all the multi located Telephone lines into a single highly functional communication group with more distinctive features without any additional equipment such as EPABX at your premises. Centrex is suited to any type of business, large or small. With Centrex everyone has their own Direct Dial number, so calls can go straight through instead of going via reception or customer service.

II. MOBILE SERVICES:

Any dissertation on the Telecom revolution is totally incomplete without a word on the Mobile Services. These are broadly classified into 2 types

1. Global Service for Mobile Communications (GSM): During the 80s, when the cellular system was introduced, each nation had its own system. As a result, a couple of problems arose. Firstly, the equipment was limited to operate only within the boundaries of a country and secondly, the market for mobile equipment was also limited. In order to overcome these problems, the Conference of European Post and Telecommunications (CEPT) formed the Group Special Mobile (GSM) to create a common European mobile telephone standard.

The GSM later came to be known as Global Service for Mobile communications (GSM). At the end of 1997, GSM was made available in more than 100 countries. Today it has become the global standard in Europe and Asia. If one has to connect to the specific service provider in different countries, GSM-users simply need to switch Subscriber Identification Module (SIM) cards. As per GSM technology, a mobile unit logs on to the network after being switched on.

2. Code Division Multiple Access (CDMA) WLL Technology: This is a communication system that connects customers to the Public Switched Telephone Network (PSTN) using radio frequency signals as a substitute for conventional wires for all or part of the connection between the subscribers and the telephone exchange. WLL is being offered in areas that are non-feasible for the normal network. It helps relieve congestion of connections in the normal cable/wire based network in urban areas and facilitates connecting the remote and scattered rural areas.

Developed by Qualcomm for the US Military, Code Division Multiple Access (CDMA) is a system that enables many users to share the same frequency band at the same time. The respective receiver demodulates and interprets the signal using the relevant code that is embedded in the signal. This is the reason CDMA instruments are useless for receiving the signal from any other service provider.

III. VALUE ADDED SERVICES:

1. Internet: Internet is the global network of Networks and has clearly become the most significant aspect of this telecom revolution. This includes Internet dial up/ Leased line access, CLI based access and DIAS service for Web browsing and Email applications.

2. ISDN: Integrated Service Digital Network utilizes a unique digital network providing high speed and high quality voice, data and image transfer over the same line. It can also facilitate both desktop video and high quality video conferencing.

3. Leased Lines & Datacom: Leased lines are for voice and data communication for various applications on point to point basis. Choice is available between high, medium and low speed leased data circuits as well as dial-up lines.

4. Broadband: Broadband is a fast, permanent internet connection and is defined as any connectivity delivered to the end user at a bandwidth greater than 256 kbps.. Not only is it 10 to 100 times faster than a dial-up account, it doesn't tie up the phone line so you can make and receive calls normally while you use the internet. You pay a flat monthly fee for an 'always on' connection, so there's no need to dial in to get online. Just turn on the computer and you're connected. Because of the speed web pages and e-mails arrive almost instantly, broad band opens up a whole new world of content.

Broadband connection is of various types DSL (Digital Subscriber Line), Cable Broadband and Satellite Broadband . Services available through Broadband are

- High Speed Internet Access: A basic level service for entry- level customers. This is the always-on, Internet access service with speed ranging from 256 kbps to 8 Mbps.
- Multicasting: This is to provide video multicast services for application in distance education, telemedicine etc.
- VPN Services: VPN is an acronym for 'Virtual Private Network' which is a emulation of private & secured network over a shared infrastructure like internet or a separate, internet backbone. An IP VPN service offers exclusive & private inter connectivity using internet protocol to computers or local area networks (LANs). Business companies can extend their LAN and computers at various locations across the country, thereby enabling online communication in the most cost effective way.
- Content based Services: Like Video on Demand, Interactive Gaming, Live and time shifted TV.
- Video Conferencing: This service allows multiple participants to converse with one another regardless of their location through video end points or personal PCs.

In Goa most of the above mentioned services are being offered by Bharat Sanchar Nigam Limited (BSNL). However till date they have not succeeded in providing the benefits of Broadband Connectivity across the length and breadth of our small state. The current team of BSNL headed by their GM, Mr. A. K .Desarkar has shown keen interest in achieving this objective. In this regard the **Goa State Industries Association** had organized an interaction between the **BSNL Team** and the **Presidents of** the various Industrial Estates in the GSIA premises. The meeting was co-ordinated by the President of GSIA, Shri Atul Kane and the undersigned. Subsequently another meeting was conducted in the BSNL premises, which was attended by the undersigned on behalf GSIA.

Mr. Desarkar has assured GSIA that industries will be given top priority for issuing Broadband connections. On GSIA's request he has agreed to assign responsibilities industrial estate wise to BSNL officers, who are based near these industrial estate and handover a list of these "liaisoning officers" to GSIA. GSIA can then facilitate an interaction of the presidents of each industrial estate with their respective 'liaison' in BSNL for implementation of the connections and grievance redressal if any. Occasionally (once in a quarter) a meeting may be organizing of GSIA Executive committee and BSNL Management to review the progress. The present status of connectivity in each Industrial Estate with regards to BSNL GSM, WLL and Broadband connectivity has been informed by BSNL personnel to GSIA and the same information is available in GSIA office.

Once Broadband access becomes available to industrial users it will completely change the way people do business. The vision of broadband industry is that through broadband multimedia-video, audio, voice and data will be delivered to the end users quickly, securely and reliably.