

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE  
NO.1 WILLIAMS ROAD, CANTONMENT, TRICHIRAPPALLI-620 001.

Trade Notice No.27/2003 S Tax

Dated : 31-12-2003.

Sub: Clarification on the taxability of maintenance of **Computer Software** -regarding.

Board 's Service Tax Circular No.70/19/2003-ST dtd 17-12-03 issued under F.No.256/9/2003 –CX.4 is communicated herewith for information, guidance and necessary action.

The contents of this Trade Notice may be brought to the knowledge of all constituent members of the Trade Associations and Chamber of Commerce.

(Issued from the File C.No.IV/16/901/2003 S.Tax)

Attested

Sd/--  
SUPERINTENDENT,  
SERVICE TAX CELL (HQ).

Sd/-  
(D.P. NAIDU)  
JOINT COMMISSIONER (T).

To  
The mailing list –I / II /III.

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Copy of the Board's Circular No.70/19/2003-ST dt.17-12-2003 issued under F.No.256/9/03–CX.4.

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An issue has been raised whether the organizations who are engaged in design, development and maintenance of Software and enter into Annual Maintenance contracts for maintenance of their software, are exempt from Service Tax or not.

2. 'Maintenance or repair' means any service provided by (i) any person under a maintenance contract or agreement or (ii) a manufacturer or any person authorised by him in relation to maintenance or repair or servicing of any goods or equipment. In the instant case repair is not of tangible goods but that of intangible program/software which is in installed condition and thus the maintenance and repair of software is not maintenance and repair of 'goods'. Further an exemption has been granted to maintenance or repair services in relation to computer, computer systems and computer peripherals vide Notification No. 20/2003-ST dated 21.8.2003. As such computer software would form a part of computer system and thus maintenance of software being a sub-set of maintenance of computer systems would be covered under this notification. Under the category of 'consulting engineer' vide Notification No. 4/99-ST dated 28.2.99 taxable service provided to any person by a consulting engineer in 'relation to computer software is exempted. The definition of 'Business Auxiliary Service' also specifically provides that; inter alia, maintaining of computer software is covered in the IT service, which is excluded from the scope of business auxiliary service.

3. Taking the above into consideration, it is to clarify that maintenance of Software is not chargeable to Service Tax.

Manish Mohan  
Under Secretary to the Government of India