CHAPTER 1

CONCEPTS AND GENERAL PRINCIPLES OF SERVICE TAX

Question 1

Briefly answer the following:-

(a) Is an unincorporated association liable to pay any service tax?

(b) Briefly explain the nature of service tax.

(c) Explain as to how and when the amendments made in Finance Bill, in respect service tax matters come into force?

(d) Is service tax payable in respect of services provided in the Indian territorial waters?

Answer

(a) Explanation to section 65(121) of the Finance Act, 1994 states that taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.

Thus, an unincorporated association providing service to its members can also be a "person" for purpose of service-tax, and be liable to pay service tax.

(b) Service tax is a tax on services. This is not a tax on profession, trade, calling or employment but is in respect of service rendered. If there is no service, there is no tax. Basically, service is a value addition that can be perceived but cannot be seen, as it is intangible; however, usage of some goods during the course of rendering the service would not mean that there is no 'service'. It is the predominant factor in each case, which is to be studied to arrive at a conclusion.

(c) Amendments made by the Finance Bill, in respect of service tax matters, come into force from the date of enactment of the Finance Bill i.e., the date on which the Finance Bill receives the assent of the President of India. However, wherever it is specifically provided so in the Finance Bill, certain amendments like new taxable services introduced vide the Finance Bill and alteration in the scope of existing taxable services, become effective from a date to be notified after the enactment of the Finance Bill.

(d) Yes, services provided within Indian territorial waters are liable to service tax, as the levy of service tax extends to the whole of India except Jammu and Kashmir and India includes Indian territorial waters. Indian territorial waters extend upto 12 nautical miles from the Indian land mass.

Question 2

Answer the following questions:

(a) What are the sources of service tax law?

(b) Which Act and Rule govern the levy of service tax in India?

Answer

(a) There is no independent statute on service tax as yet. However, the sources of service tax law are:-

(i) Finance Act, 1994

(ii) Rules on service tax

(iii) Notifications on service tax

(iv) Circulars or Office Letters (Instructions) on service tax

(v) Orders on service tax and

(vi) Trade notices on service tax

(b) Finance Act, 1994 and the rules made there under govern the levy of service tax in India. The significant rules relating to service tax are the Service Tax Rules, 1994, Service Tax (Determination of Value) Rules, 2006, Export of Services Rules, 2005 etc.