SERVICE TAX ON SELECTED HEALTHCARE SERVICE

In India service sector is equally contributing to the gross domestic products like that of manufacturing sector. Hence the Government of India introduced tax on selected service in order to augment the revenue source as well as to treat goods and services equally before the tax law. Though services are taxed, the Government did not introduce any exclusive statute like Income Tax or Wealth Tax rather it was taxed by virtue of the Finance Act, 1994. Since then every year some of the services are covered under the service tax net by introducing new provisions through the Finance Act. Hitherto legal and medical services were enjoying tax holiday or total exemption from service tax. Now selective legal and medical services are brought under the service tax net by the passing of the Finance (No 2) Act, 2009. As per the above said Act cosmetic surgery or plastic surgery is brought under the service tax net. Though the Act was passed in the parliament the effective date of applicability of service tax on this service is yet to be notified.

As per section 65 (105) (zzzzk)

'taxable service ' means any service provided or to be provided to any person, by any person in relation to cosmetic surgery or plastic surgery, but does not include any surgery undertaken to restore of reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma.

If we go through the above definition taxable service should have following criteria:

(a) Provided to any person
(b) Provided by any person
(c) In relation to cosmetic of plastic surgery performed
(d) But surgery performed does not include any surgery performed for the restoration or reconstruction of anatomy or functions of body affected due to congenital defect, abnormalities, degenerative diseases, injury or trauma.

Here we should understand that the word person will have the same meaning as defined in the Income Tax. Though the services are required to be provided to natural person, it can be provided by natural person as well as artificial judicial person like corporate hospitals. Therefore any doctor or hospital performs plastic or cosmetic surgery is liable to pay service tax subject to the other provisions.

Some of the cosmetic surgeries generally performed are as given below:-

a) Rhinoplasty (nose surgery)
b) Otoplasty (Ear surgery)
c) Liposuction (Removal of fat from the body)
d) Cosmetic Dental Surgery
e) Mmmoplasty

f) Lip augmentation
g) Laser skin surfacing
h) Forehead lift
i) Buttock Augmentation and lift
j) Cheek Augmentation

Careful reading of the definition pulls out the following issues which can be better understood by linking the same with a practical situation.

A plastic surgeon renders his professional service in a corporate hospital. He gives consultation to persons and advises to undergo for a cosmetic surgery depending upon the condition of the person. On successful completion of surgery they hospital raises invoice and collects the money from the person. The bill will include several components like the following:-

a. Room Rent for the stay in the hospital.
b. Professional fees charged by the doctor and his team.
c. Operation theater charges.
d. ICU charges.
e. Medicine and consumables utilized in the process of surgery.
f. Laboratory charges.
g. Dietary charges.

Form the above example following queries can arise:

a. What are the services that are rendered by the doctor are chargeable?
b. What is the value of taxable service for levy purpose?
c. Who should charge the service tax?
d. Whether this service can be considered as works contract service?

Taxable service

Generally in hospitals consultants or doctors renders two kinds of service viz. outpatient consultancy service and inpatient consultancy service. The doctor first meets the patient as outpatient and gives consultation. After this if the patient is willing to go for surgery then he performs the same and after surgery until the discharge from the hospital as well as after the discharge, for follow-up he renders consultation service. Where the patient is admitted and takes consultation it is called inpatient consultancy service and the other service is called outpatient consultancy service.

Here the question is whether service tax should be levied on outpatient consultancy service or on inpatient consultancy service or on both?

In big hospitals generally invoicing part will be carried out by different set of people who may not know the full information about the purpose of consultation. Also they will not know whether the surgery is carried out for restoration of reconstruction of anatomical defect of for beautification purpose. In this case the doctor needs to communicate to the hospital cohesively about the surgery, which will be helpful to levy service tax on correct surgeries and avoid confusion as well as to save the time. Also with respect to the services that needs to be charged it is to be noted that the definition spells out any service rendered in relation to cosmetic or plastic surgery, which means all services rendered from the time of admission and upto the time of discharge are chargeable to service tax. Hence all outpatient services are not taxable since it is impracticable as well as it is very difficult to determine the applicability of service tax at the time of first consultation. For the better understanding and implementation of the this provision it is always better to construe that "in relation to the cosmetic or plastic surgery" means services rendered after the admission into the hospital and until the discharge from the hospital.

Value of service

As per section 67(1) of the Finance Act 1994 'gross amount charged by the service provider shall be considered as value of service for tax purpose'. Also Rule 5(1) of the Service Tax (Determination of value) Rule, 2006, states that all cost incurred by the service provider in the course of providing service shall be treated as consideration for the service provided. Hence it should be understood that the gross bill amount would constitute the value of service on which tax needs to be levied.

Who should levy

In case of doctor who renders taxable service and makes invoice is same, then there is no doubt that the doctor will levy tax and collect the same from the patient. Where the service is rendered by a corporate hospital, the doctor will be rendering the service on behalf of the hospital and hospital will be raising the invoice. Here the question is whether the doctor should collect the tax on the service rendered to the hospital which is taxable and tax collected by the hospital from the patient. Hospitals may appoint doctors on the basis of fixed monthly salary or on the basis of professional fees charged by the consultants depending on case to case basis. First case being employment contract will not come under the purview of service tax. Whereas in the second case there is a professional service rendered by the doctor and he collects service charge for the same from the hospital.

The definition says that "service rendered to any person by any other person in relation to cosmetic or plastic surgery". Plain reading of the definition says that the service rendered to a patient by the hospital is the one which is chargeable to tax and not the service of the doctor to the hospital. So it is clear that the doctor who collects service charges or professional fees from the hospital for this service need not levy service tax on the same.

Works contract Service?

While performing cosmetic or plastic surgery lots of implants and materials are used, so it is inevitable to analyse whether this service will fall under works contract service. During the performance of cosmetic or plastic surgery implants and materials are consumed and not sold. There is no passing or transfer of property in the goods. Though the materials and consumables are purchased by the hospital after paying sales tax the same is not sold to the patient by charging tax on the same. In principle it is a contract for service and not a contract of sale, hence not a works contract. A quick reference to the explanation to section 65(105)(zzzza) which provides clarification on works contract as contracts where in

1. transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
2. such contract is for the purpose of carrying out
    a. erection, commissioning or installation of plant, machinery, equipment or structure, and similar services.
    b. construction of a new building or a civil structure or a part thereof
    c. construction of a new residential complex or part there of
    d. completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c)
    e. turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

In view of the above explanation it is very clear that the service in relation to cosmetic or plastic surgery will not come under works contract services.

Charge of service tax

As per section 66 of the Finance Act, 1994 service tax is charged **at the rate of ten percent** on the taxable service. Value for this purpose shall be calculated as per the valuation rules. As per the notification No 6/2005-ST dated 01/03/2005 where the value of taxable service rendered is **less than rupees ten lakhs in a financial year** the same is exempt from service tax. So any person who generates less that rupees ten lakhs in cosmetic or plastic surgery need not be registered and collect service tax.

General procedure

When it is clear that the hospital/doctor is rendering taxable service and is sure that the same will cross the exemption limit then the hospital or the doctor who renders such taxable service should get registered under service tax law. Also such person should issue tax invoice as mentioned in the Service Tax Rules. Also tax payment dates of 5th of succeeding month for corporate and 5th of every succeeding month of a quarter for others should be followed. Half-yearly return in Form ST 3 as per rule 7 needs to be filed by the person.

Service Tax Credit

Like any other service cosmetic or plastic surgery service is also eligible to avail CENVAT credit as per the CENVAT Credit Rules. Credit can be taken from input services or from capital goods. Input service is the one which is used by the service provider for providing output service. Input service includes services used in relation to setting up, modernisation, renovation or repair of premises of provider of output services. In addition to this, credit can also be availed on advertisements, sales promotions, marketing research, activities relating to the business such as accounting, auditing, financing, recruitment, quality control, coaching and training, computers networking, credit rating, share registry, security and transportation expenses.

Also the provider of service can take credit on capital goods used in providing output service. CENVAT credit can be availed on machinery acquired on lease, hire purchase or loan agreement. While taking CENVAT credit it is to be noted that some of the services are exempted from service tax and when the service provider renders taxable as well as exempted service from the same premises then, he needs to maintain separate books of accounts for both in respect of input services or capital goods purchased. Where the service provider could not do so, he has to pay service tax at the rate of 6% on the value of exempted service or pays the credit amount used in providing exempted service.

This article tries to give a understanding about taxability of Cosmetic and Plastic Surgery Service and host of interpretations will be available from eminent professionals. Some attempt is made in the article to throw the light on the complexity of taxing a part of the health care service. It needs to be understood that all persons who are rendering cosmetic or plastic surgery service needs to be meticulous while levying tax. This will save a lot for time in view of avoiding litigations as well as they can do effective plan in respect of taking cenvat credit, etc.