

Circular No. 159/10/2012-ST

F.No.354/89/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)

Room No. 153, North Block,
New Delhi, 19th June, 2012.

To

Chief Commissioners of Customs and Central Excise (All)
Chief Commissioners of Central Excise & Service Tax (All)
Directors General of Service Tax/Central Excise Intelligence/Audit
Commissioners of Central Excise & Service Tax (All)
Commissioners of Service Tax (All)
Commissioners of Customs and Central Excise (All)

Madam/Sir,

**Subject: Audit fees collected by the Comptroller and Auditor General (CAG) –
regarding.**

A doubt has been raised whether service tax is leviable on the audit fees collected by the CAG for conducting directly, audit of corporations. Reportedly some field formations are inclined to take a view that such 'audit fee' collected by the CAG is leviable to service tax under the authority of the inclusive portion of the definition of "practicing chartered accountant" read with the relevant definition of the taxable service [Section 65(83) read with section 65(105)(s) of Finance Act, 1994].

2. The issue has been examined. The definition of the practicing chartered accountant in section 65(83) of Finance Act, 1994 reads as follows:

"practicing chartered accountant" means person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 (38 of 1949) and **includes any concern engaged in rendering services in the field of chartered accountancy** [emphasis added].

3. According to the Law Lexicon [by Shri P. Ramanatha Aiyar] the expression "concern" means: "an organization or establishment for business". It further elaborates that the word "concern" is a mercantile term. CAG being a constitutional authority cannot be considered as a concern in the same manner as a firm of chartered accountants. CAG is a constitutional authority and by no stretch of imagination be covered by the meaning of expression "concern" appearing in the definition of "practicing chartered accountant".

4. It is further added that the words "in the field of chartered accountancy" would mean such services as are ordinarily rendered by a chartered accountant. The services of CAG are not services as are rendered by a chartered accountant even though both may be engaged in the sphere of the auditing. The scope of work of the CAG goes far beyond that of a statutory company auditor and is often carried out by persons who may not even be professional chartered accountants. These audits are done in terms of section 18 of the CAG (Duties, Powers and Conditions of Service) Act, 1971, which is entirely different from the powers vested in a chartered accountant under the Chartered Accountant Act, 1949.

5. The services of CAG are also not covered by the heading Business Support Services specified in clause (zzzzq) of section 65. When the business support services were taxed for the first time in the year 2006, the TRU circular stated as follows:

"Business entities outsource a number of services for use in business or commerce. These

services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services."

It is evident that this circular has clarified that the new service was meant to capture such services as are ordinarily outsourced by business entities. The audit activity is not an outsourced function but is carried out in statutory fulfillment of duties. Thus the services by CAG would also not be covered by the service head "Business Support Service".

6. This circular may be communicated to the field formations and service tax assesseees through Public Notice/Trade Notice. Hindi version would follow.

Yours faithfully,

(S. Jayaprahasam)
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