Applicability of service tax liability on Canteen Service

The issues relating to the applicability of service tax liability in connection the canteen run by the employers for the benefit of the employees are analyzed in this article.

There are two services involved here

(i) Service provided by the contractor appointed by the employer to run the canteen, where the contractor charges the employer.

(ii) The employer collecting nominal amount from the employees, for the food, etc. consumed by the employees;

First of all clear in your mind that

- ***only the services provided by the employees to the employers is kept outside the definition of service and***
- ***This is a case of employer providing a service to the employees.***

As per section 65 (105) (zzzzv) of the Act, the following is a taxable service.

"Any service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises".

Analysis:

It can be easily understood that as none of such canteens would be having the Licence to service alcoholic beverages, so as to get attracted under the levy. Hence, the amounts collected by the employers from the employees for sale of food and beverages in the canteen are not at all liable to service tax upto 30.06.2012.

After 01.07.2012.

The term "service" has been defined under section 65 B (44) of the Act, with a list of activities declared as a service under section 66 E. As per clause (i) of the said section 66 E, the following is declared as a service.

"service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity".

This would cover the transactions of sale and serving of food and beverages in any place, including a factory canteen. As per Rule 2 C of the Service Tax

(Determination of Value) Rules, 2006, the value of such taxable service has been prescribed as 40 % of the total amount charged.

But, exemption has been provided under **Notification 25/2012 ST Dated 20.06.2012.**

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having

(i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and

(ii) a Licence to serve alcoholic beverages.

As the canteens run by the employers would not be having a license to serve alcoholic beverages, the amount charged by the employers from the employees for such service in the canteen would not be liable to service tax.

But, **with effect from 01.04.2013**, the above exemption has been amended as below:

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

Now only those canteens run by the employers, which are not having the facility of air-conditioning or central air-heating can claim exemption from 01.04.2013

In other words, the canteens which are having the facility of AC or Central air – heating would be liable to taxed.

Vide Notification 14/2013 ST Dated 22.10.2013, the following exemption has now been provided for, from 22.10.2013.

19A. Services provided in relation to serving of food or beverages by a canteen Maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.

Now the department provides the relaxation to the factories, even a canteen having air-conditioning or central air-heating facility and maintained in a factory covered under the Factories Act, 1948 would be exempted from payment of service tax from 22.10.2013.

It may be noted that to claim this exemption, only the factory must be covered under the Factories Act, 1948 and it is not necessary that the canteen is run as per the obligation cast under the said Act (having more than 250 employees).

This exemption would be available even though a factory is not required to maintain a canteen (having less than 250 employees), still, if the factory is otherwise governed by the Factories Act, 1948,

Service Tax liability in case of Contractor's:
Rule 2 C of the Service Tax (Determination of Value) Rules, 2006, provide the value of taxable service in respect of the service portion involved in outdoor catering service is prescribed at 60 %.
It Show that intention of law to recognize the services provided by an outdoor caterer, as a distinct service and fixed the value of such taxable service.

It may be noted that the above exemptions under S.No. 19 or 19 A of Notification 25/2012, covers only the services provided in relation to serving of food or beverages **by a restaurant / by a canteen** to the customers.

The services provided by the contractors to the employers cannot be covered under these entries.

In case of the canteens run by the employers, these are canteens in the hands of the employers and they provide service to the employees. So the benefit of exemptions under S.No. 19 & 19A can be claimed by such canteens i.e the employers.

When the contractors provide service to the employers, they provide service **to** these canteens / eating joint / mess / restaurant, run by the employers.

Hence, the contractors would continue to be liable to pay service tax.

Summarization

<u>Amount charged by the employers from employee for sale of food and beverages in the canteen.</u>

Upto 30.06.2012- Not taxable

From 1.7.12 to 31.03.2013- Two conditions must- AC and Licence to serve alcoholic liquor. ***(Sr. No. 19 of Notification 25/2012)***

From 1.4.13 to 21.10.13- Taxable if AC or air heating facility available otherwise not taxable. ***(Sr. No. 19 of Notification 25/2012- amended)***

From 22.10.13- Taxable if AC or air heating facility available otherwise not taxable. ***(Sr. No. 19 of Notification 25/2012- amended)***

But if canteens maintained in a factory, covered by factories act, are exempted even if they are having AC or air heating facility. ***(Sr. No. 19 A of Notification 25/2012)***

Service provided by the contractors to the employers in connection with cooking, serving etc.

Upto 30.06.12-
Liable to service tax under outdoor catering service.
(Abatement available-50% under notification 1/2006 ST dtd 01.03.06)

<u>From 1.7.12 to till date-</u>
Liable to service tax. Value of service 60 % of total amount as per Rule 2 C of Service Tax (Determination of value Rules, 2006)

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