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INDIRECT TAX EXPRESS

FORTNIGHTLY e-NEWS LETTER FROM M/s D A V A & ASSOCIATES
Chartered Accountants

PART-A: FROM THE e-NEWS-LETTER TEAM

SERVICE TAX ON PREFERRED LOCATION CHARGES INCLUDING HEIGHT ESCALATION: TAXABLE AT FULL RATE?

W.e.f. 01.07.2010, a new category of service called as 'Builders Special Service or Preferred Location Service' was introduced vide section 65(105)(zzzzu) of the Finance Act'1994. "Preferential location" means any location having extra advantage which attracts extra payment over and above the basic sale price. Thus extra amounts charged towards flats south facing, garden facing, *vastu* compliant etc. or extra charges collected towards some internal development/facility were covered under this category and **liable to full rate of service tax without any abatement.** The concept of positive list or selective approach of taxing services had resulted in a lot of classification and interpretational issues and litigations. Therefore, to bring clarity and transparency in service tax, concept of negative list based taxation of service was introduced w.e.f.01.07.2012 and definition of different taxable services became in-applicable. If one go through the charges covered under PLC service it becomes clear that all these charges are part and parcel of main service, i.e. construction only. How one can argue that height escalation is a service different from the construction service. Can anyone ask for PLC service only without availing construction service? How one can say that he has provided a separate service to the buyer apart from construction if he sells a flat/commercial space at a premium due to its locational advantage. Moreover, principles of 'Bundled Service' now clearly says that *if various elements of such service are **naturally bundled** in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character.* In the present case, the essential character of the service is only construction and not PLC/Height Escalation. These charges are naturally and as a matter of trade practice collected by the builder/developer.

Further, there is another view that if charges towards PLC is separately collected, then it will be liable to service tax at full rate and in case charges towards PLC is not separately collected, then it will be considered as construction service only by applying the principles of 'Bundled Service'. Accordingly, in that case, abatement can be claimed.

WHAT'S NEW

- Central Government Vide Notification No. 27/2014-Customs (ADD) dt 13.06.2014 re-imposes anti-dumping duty on imports of homopolymer of vinyl chloride monomer (suspension grade) from specified countries.
- CBEC issues Notification No. 46/2014 - Customs (N. T.) dt 13.06.2014 amending Notification No.36/2001(N.T) dt. 03.08.2001 revising tariff value of few items.
- CBEC issues Circular No. 8/2014 Customs dt 13.06.2014 clarifying requirements in relation to renewal of Customs Brokers License.

[Aforesaid Notifications /Circular can be downloaded from CBEC website cbec.gov.in]

- "Did You Know That the DGCEI registered 1,144 cases of service tax evasion during F.Y. 2013-14. The amount of service tax evasion was Rs 7,928.22 crore during the period".

However, in our view, as PLC itself is not a separate service, it does not make any difference if someone charges separately on account of PLC or not. There may be bifurcation of various component of price charged for the flat/commercial space, but essentially only construction service is being provided. From the buyer's end, he will debit all these charges to the cost of the flat/commercial space as it will form part of price of the flat/commercial space. Charges towards PLC will not be shown as a separate capital asset acquired against extra charges.

Department is still referring earlier definitions to interpret the taxability of a transaction. This is not a desirable approach and defeats the very purpose of introduction of negative list concept. With respect to abatement on PLC charges, a decision had to be taken keeping in view the possible dispute with the department as abatement will be disallowed by the department invariably in each and every case. However, logical interpretation seems to be that PLC charges are part and parcel of construction service and should be taxed in the same way as the construction service is taxed.

PART-B: CASE UPDATES

1. **Umasons Auto Compo Pvt Ltd vs. Commissioner of Central Excise & Customs [2014 (2) TMI 100 – CESTAT MUMBAI - ST/326/10]**

Issue: Department had demanded service tax under reverse charge from the assessee, a recipient of Goods Transportation Agency Service. Assessee-recipient had paid the service tax to the provider of GTA service and the provider has paid to the Revenue and the appellant has availed credit of the same. Whether Service recipient is again liable to pay service tax under reverse charge?

Decision: The bench held that there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the Revenue from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service.

2. **Union of India vs. Kasaragod District Parallel College Association [2014 (34) S.T.R. 327 (Ker.H.C.)]**

Issue: Constitutional validity of levy of service tax on Parallel colleges was in dispute in this writ petition. Department argued that in case of parallel colleges, there is no defined yardstick with regard to collection of fees, providing curriculum, period of study etc. and is left to individual colleges to charge fees. Hence, they cannot be considered eligible for exemption available to regular colleges in case of "Commercial Training & Coaching Service".

Decision: The Hon'ble High Court held that, the object is not to include pre-school coaching and training center or any institute or establishment which issues any certificate or diploma or any educational qualification recognized by law for the time being in force. Therefore, the exclusion clause takes in all such institutions or establishments whose endeavor is to prepare students for obtaining a certificate or diploma or degree or any educational qualification recognized by law. Thus students who are preparing for such types of diplomas, degrees or certificates, are not to be saddled with the payment of service tax.

"The Budget session of Parliament is expected to start from the second week of July and the Union Budget 2014-15 could be presented by July 11".

PART-C: FREQUENTLY ASKED QUESTIONS

Query 1:

A body corporate (say A Ltd.) is in construction service and has engaged a proprietorship firm (say XYZ & Co) to do the flooring work. All the material required will be supplied by A Ltd. Payment will be made on the basis of per square feet of the work done. A Ltd. is not concerned with the number of workers employed by XYZ & Co. Workers employed will do the work under the supervision and control of XYZ & Co. Whether the present arrangement will attract service tax under reverse charge as supply of man power?

Reply by E-News Letter Team: A contract is a contract for work or a contract for labor depends upon the relevant facts of the case, intention of the parties and terms and conditions between the parties. Generally supply of man power will attract service tax under partial reverse charge. However, job work where the person does the work with his own expertise, infrastructure, supervision and control will not attract service tax under reverse charge and the liability of service tax will be on the service provider.

Query 2:

An assessee applied for VCES for the period Oct-11 to Dec 12 and paid all the declared dues by 15.12.2013 but till date he has not received VCES-3 for discharge of all the liabilities. In the meantime he has received Service Tax Audit Intimation for the period 2009-10 to 2013-14.on 13.05.2014. He had been regular in filing of service tax return and payment of tax since 2004. VCES had been applied for some mistakes found later on for the aforesaid period. Can department order for Audit if the file is already under VCES?

Reply by E-News Letter Team: There is immunity from penalty and other proceedings in service tax if assessee has opted for VCES. However, there is no bar on the department to conduct the audit of the assessee. If true disclosure is made in the VCES, then audit will be a futile exercise for the department as they cannot issue any SCN for demand pertaining to VCES period. Hence, in our opinion, department can conduct the audit even if assess has opted for VCES.

"I'm a great believer in luck and I find the harder I work, the more I have of it". -Thomas Jefferson

PART-D: QUERY OF THE FORTNIGHT

- A person is a director in more than one company, and is getting remuneration from all such companies in which he is a director. Whether all the companies who are paying remuneration to the director are liable to pay service tax under reverse charge?

(Please mail your replies to the aforesaid query to ***davaidtexpress@gmail.com)***

The best answer as adjudged by our panel of experts will be published in the next issue.)

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