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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 EDITOR

Service Tax on Air Travel Agents - Travel Continues, Yet Destination Too Far

Over the years, service tax on air travel agents has become a complex issue. There are varying practices with respect to payment of service tax. The airlines sell the tickets through their agents. Some agents are IATA agents who directly purchase tickets from airlines and sell those to customers. Further, there are sub-agents also who purchase tickets through IATA agents/other sub-agents.

Implication of Service Tax on IATA Agents

In case of IATA agents, service tax is actually payable only on the commission. IATA agents, maintain running account with Airlines, which is settled on fortnightly/monthly basis. Their commission is not disclosed to customer. An IATA agent thus has to pay service tax at the full rate on his commission and service charge if any charged to the customer.

However, for such agents, a simple optional composition scheme is available under rule 6 (7) of Service Tax Rules, 1994. "The person liable for paying the service tax in relation to the services of booking of tickets for travel by air provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of [0.6%] of the basic fare in the case of domestic bookings, and at the rate of [1.2%] of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax [at the rate of specified in section 66B of Chapter V of the Act] and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances. In addition, education cess @ 2% and SAH education cess @ 1% will be payable. There is no restriction on availment of Cenvat credit.

For the purposes of this sub-rule, the expression "basic fare" means that part of

WHAT'S NEW

- "The finance ministry has approved 3 more zonal units and 9 more regional units of the DGCEI to check leakage of excise duty and service tax evasion," a Finance Ministry official said. At present, DGCEI has six zonal units and 18 regional units.
- The Finance Bill was passed in Lok Sabha on 25th July, 2014 after some changes. Changes pertaining to excise duty and service tax included a clarification that where both tax and penalty are in dispute, the predeposit for filing appeal will be only 7.5%/10% of tax amount and not the tax plus penalty [Section 35F of CEA, 1944]. Further, interest on refund of amount deposited under section 35F in case the assessee wins the appeal, will be calculated from the date of payment of amount till, the date of refund of such amount.[Section 35FF of CEA, 1944]
- Last Date of filing of return for Quarter Ended 30.06.2014 with or without Digital Signature Certificate under West Bengal VAT, WBST, CST, ET and PT Acts has been extended to 15th August, 2014.

"Coins make a sound when dropped, but paper bills won't. In the same way when your value increases, keep yourself silent and be humble."— Unknown

the air fare on which commission is normally paid to the air travel agent by the airline."

Implication of Service Tax on Other Agents

Sub-agents purchase tickets through IATA Agents and sell tickets to customers. They get discount from the IATA Agent. In addition, they recover service charges from the customer. Logically, their consideration is the discount/commission received from main IATA Agent plus the service charges they get from customers.

The composition scheme of paying service tax @ 0.60%/1.20% was really designed for IATA Agents who directly purchase tickets from the airlines and gets commission from the airlines. However, the rule does not say so. Hence, it appears to be permissible for other agents to pay service tax on composition rate of 0.60%/ 1.20% plus applicable cess. However, the issue is debatable. Hence, in our opinion they should charge service tax at full rate (12.36%) to customers on their service charges and to IATA or other agents in respect of discount/commission they receive from them.

As already stated, different air travel agents are following different practices in relation to payment of service tax. The main confusion is with respect to value liable to service tax. Many sub-agents are on one hand paying service tax under composition scheme of 0.6%/1.2% and on other hand collecting hefty service charges from the customers. The CBEC should issue a circular clarifying that the scheme under Rule 6(7) is an alternative mode of paying service tax on commission from airlines. If apart from commission, any other charge is collected by the agents from the customer, same is liable to service tax at the rate of 12.36%. This will ensure uniformity in the practice to be followed by all agents.

ANSWER TO LAST FORTNIGHT'S QUERY:

Query: If a Sub contractor (Proprietary Concern) is appointed to render Security Service with "rates inclusive all taxes", due to operation of Reverse Charge mechanism, whether Service Tax Liability to the extent of: -

a) 25 % only is to be considered to be inclusive of service tax? or
b) 100 % is to be considered inclusive of service tax?

Best Reply: Whenever a contract provides for rate including all taxes, the intention of the parties is that cost to the contractee will not exceed the price as mentioned in the contract. Any tax, if not specifically provided in the contract, will have to be borne by the contractor. Reverse charge is –only a method of collection. It does not create any additional liability of service tax over and above the applicable rate. Hence, in the present case, contract price should be considered as inclusive of 100% service tax. For example, if the contract price is Rs. 5000, the taxable value would be Rs. 4450 (5000/112.36%), on which the service provider will pay tax on 25% value and the service recipient will pay tax on 75% value. [Reply given by: Our E-News Letter Team]

PART-B: QUERY OF THE FORTNIGHT

An assessee is engaged in the manufacture and sale of goods and is registered under West Bengal VAT. The goods are sold ex-factory, i.e. sale is completed on the factory-gate. The risk and responsibility of the assessee ceases to exist as soon as the goods are loaded on the buyer's truck or his transport agent's truck. Sometimes, for the sake of convenience of the buyer, the assessee arranges transportation and Insurance. All these costs are extra and payable by the buyer and are shown in the invoice separately. Whether West Bengal VAT is payable on freight charges against transportation arranged on buyer's behalf by the assessee?

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

The best answer as adjudged by our E-news Letter Team will be published in the next issue.)

India's indirect tax revenues rose just 4.5% in the quarter ended June. Indirect tax collections comprising excise, customs and service tax added to Rs. 1.13 lakh crore in the first quarter of the fiscal compared with Rs. 1.08 lakh crore in the corresponding period a year ago. Out of that Service Tax collections during April-June 2014 were Rs. 38,862 crore. The budget estimate of service tax for the F.Y. 2014-15 is Rs. 215973 crore.

PART-C: CASE UPDATES

1. <u>Barnala Builders & Property Consultants V/s Commissioner of Central Excise (Appeals), Chandigarh-II, [2014(35) S.T.R. 152 (Commr. Appl.)]</u>

Issue: The assessee had filed a declaration under VCES on 17.07.2013, which was rejected by the designated authority vide a notice dated 18.09.2013, on the grounds that the jurisdictional range officer vide letters dated 12.02.2013 and 27.02.2013 had asked the declarant to file the pending ST-3 returns along with the penalties applicable and asked them to supply details of amount booked towards construction linked payment along with documentary evidence. The issue before the Commissioner (Appeals) is whether there is any limitation of time for issue of notice of intention to reject the declaration under VCES and whether declaration can be rejected on the basis of enquiries of roving nature in a routine manner?

Decision: The Hon'ble Commissioner (Appeals) held that the notice for rejection of declaration being time barred, is not maintainable and any order passed on the basis of this notice would also not be maintainable and hence needs to be set aside. He cited the C.B.E.C Circulars No 170/5/2013-S.T., dated 8.8.2013 and No. 174/9/2013-S.T.,dated 25.11.2013 where it is categorically mentioned that the notice shall be issued within 30 days from the filing of declaration, but if declaration has already been filed before issue of CBEC circular dated 8.8.2013, then within 30 days from the issue of the circular. The Hon'ble Commissioner also held that the clarification contained in board's circular dated 13.05.2013, makes it amply clear that both the letters issued by the Jurisdictional Range officer to the declarant do not attract the provisions of Section 106(2)(a)(iii) of the Act. Rejection of declaration merely on the basis of roving enquiries as in the instant case would defeat the purpose of the VCES.

2. <u>Commr. of Cus., C. Excise & S.Tax v/s Monsanto Manufacturer Pvt. Ltd. [2014(35) S.T.R. 177 (All. HC)]</u>

Issue: The issue before the Hon'ble High Court was whether the tribunal, having held that proceedings were barred by limitation and proceedings were liable to be quashed on the ground of limitation, the tribunal committed an illegality in deciding the question on merits. Hence, the finding of tribunal on merits liable to be set aside?

Decision: The Hon'ble High Court held that judgment of the Tribunal in relation to invocation of extended period of limitation is confirmed; however the Tribunal has acted outside its jurisdiction in entering upon the merits of the dispute on whether the demand for duty should be confirmed. There was no occasion for the tribunal to enter upon the merits of the dispute.

Finance minister Shri Arun Jaitley, speaking on the matter of GST in the Lok Sabha, said that Government will try to resolve issues hampering the roll out of the goods and services tax (GST) within this year. "The government targets to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST (Goods and Services Tax)," he said during Question Hour.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: A person is engaged in providing Construction services. One of the construction assignments is undertaken for the Government, which is exempt from service tax. He has paid service tax under reverse charge mechanism, on the GTA service for providing construction service. Whether the assessee is eligible to claim cenvat credit of the same to set-off its output service tax liability?

Reply by E-News Letter Team: -As per Rule 6 (1) of Cenvat Credit rules, Cenvat Credit of Input services used for providing exempt services is not allowed. However as per rule 6(3), if an assessee is engaged in providing taxable as well as exempt services and is not maintaining separate books of accounts with respect to taxable and exempt services, he has the following options: -

i.Avail the Cenvat credit on all of the input services and pay 6 per cent of the value of exempt services; or
ii.Avail Cenvat Credit on proportionate basis in the ratio of turnover of exempt and taxable services.

Hence, in this case the assessee can opt for any of the aforesaid two options.

Query 2: An assessee books cargo space in various airlines in his own name and sells it to various clients for transport of goods through these airlines. Bills are raised on the clients for providing the above service. Service tax is being paid on commission received from the airlines for booking Cargo space. Apart from service tax liability on commission is there any other liability of service tax for buying and selling of cargo space by the assessee?

Reply by E-News Letter Team: - The purchase and sale of cargo space is merely a trading activity where space in airlines is purchased at a lower rate and the same is sold at a higher rate to clients. As there is no taxable service involved service tax is not applicable on such activities. (As clarified at Para 5.9.6 of the Education Guide by CBEC). In this case too, the activity being sale and purchase of cargo space, is not taxable under service tax.

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