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 Commission From Overseas Clients- Issue Settled So Far, Unsettled Now W.E.F.01.10.2014

Intermediaries for goods, better known as commission agent or simply broker or agent, work as middlemen between vendors and buyers. In the pre-negative list era, the service was taxable under 'Business Auxiliary Service'. However, in case of commission from overseas clients, taxability was subject matter of dispute.

Position before 01.07.2012 – Service of commission agents was considered as export of service under the 'Export of Service Rules, 2005' if the following conditions were satisfied:-

(a) The recipient of service is located outside India
(b) Such service is provided from India and used in business outside India; and
(c) Payment for such service provided is received by the service provider in convertible foreign exchange.

There was an issue when a service can be said to have been provided from India and used in business outside India. The test of provision of service from India can be said to be satisfied when service is provided from India and received by the recipient outside India as it is the only practical interpretation of the words. This test has been liberally applied by the Service Tax Tribunal in the case of **Blue Star Ltd. Vs. CCE [2008-TIOL-716-CESTAT]**. The Tribunal held that the appellants have rendered services from India. The CESTAT then gone on to hold that such services are also therefore used outside India. The views of the Tribunal have been affirmed by the Hon'ble CESTAT, Banglore on similar facts in the case of **ABS India Ltd. Vs. Commissioner of Service Tax, Banglore [2009 (13) S.T.R. 65]** where the Hon'ble CESTAT held that *"when the recipient of the service is Singapore Company, it cannot be said that service is delivered in India and the*

WHAT'S NEW

- Central Government, vide Notification No. 18/2014-ST dated 25.08.2014 has notified 01.10.2014 as the date on which the provisions of clauses (A), (B) and (C) of the section 114 of the Finance (No.2) Act, 2014 will come into effect.

- Central Government, vide Notification No. 19/2014-ST dated 25.08.2014 has amended Service Tax Rules, 1994 to prescribe that the rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

- Central Government, vide Notification No. 25/2014-CE(NT) dated 25.08.2014 has amended Rule 12AAA of Cenvat Credit Rules, 2004 to allow authorized officer of CBEC to impose certain restrictions or withdraw facilities given to a service provider to prevent misuse of Cenvat Credit.

- Central Government, vide Notification No. 26/2014-CE(NT) dated 27.08.2014 has amended Rule 9 of Cenvat Credit Rules, 2004 to allow Service Tax Certificate for Transportation of goods by Rail issued by the Indian Railways as document eligible for availing Cenvat Credit.

- West Bengal Commercial Tax Department vide Trade Circular No. 13/2014, dated 13.08.2014 has introduced online facility for filing application for cancellation of certificate of registration by a dealer, registered under the WBVAT.

"Your profession is not what brings home your paycheck. Your profession is what you were put on earth to do. With such passion and such intensity that it becomes spiritual in calling."

- Vincent van Gogh

benefit of the service is derived only by the recipient company. Because of the booking of the orders, the Singapore Company gets business". [Para 4]

Hence, it was more or less settled position of law that service provided by Indian commission agents to foreign principals is not taxable under service tax.

Position from 01.07.2012 to 01.10.2014 - A service is taxable only if place of provision of service is in the taxable territory (India) as per Place of Provision of Services (POPS) Rules, 2012 introduced w.e.f.01.07.2012. If a service does not fall under any of rules 4 to 12, Place of Provision of Service is the location of service receiver [Default Rule 3].As per rule 9(c) of Place of Provision of Service Rules, in case of 'intermediary services', location of service provider will be place of provision of service. However, Rule 9(c) covered intermediary for services only and not the intermediary for goods. Accordingly, intermediary for goods got covered by default rule 3 which says that service will be considered as provided at the location of service recipient. Hence, service of commission agent for goods receiving commission from overseas principal/clients was not taxable due to application of rule 3 of POPS, as the location of service receiver (i.e. foreign principal out of India) was the place of provision of service.

Position from 01.10.2014 - The definition of 'intermediary' has been revised w.e.f. 1-10-2014 to include Intermediary for goods also. Therefore, now, the situation has got reversed. Indian commission agent of goods of foreign principal will be liable to pay service tax, as place of provision of service is location of service provider as per rule 9(c) of POPS Rules.

The new provision has created an ironical situation. if Indian commission agent renders service to Principal outside India, he is required to pay service tax, though he is receiving payment in foreign exchange. On the other hand, if a foreign commission agent provides service to Indian Principal, the Indian Principal has to pay him in foreign exchange but no service tax is payable. Import is now exempt whereas export has been made taxable. Thus, a so far settled position of law has now become unsettled. Further, it is also an issue that since the service recipient is located outside, the commission received by the commission agent can be treated as inclusive of Service Tax?

Conclusion: This amendment is going to create a lot of hardship to commission agents and totally uncalled for. There was no need to unsettle an issue which is already settled. Further, it may also be argued that rule 9(c) of Place of Provision of Service Rules is contrary to charging section 66B of Finance Act, 1994 and hence void. This amendment needs to be withdrawn as early as possible to maintain the *status quo*.

PART-B: QUIZ TIME !!

1. On which committee's recommendation was service tax introduced in India?

2. Who is the present chairman of the Empowered Committee of State Finance Ministers on GST?

3. What is the turnover limit for SSI Exemption in Central Excise?

(Please mail your replies with your name and mail id to ***davaidtexpress@gmail.com)***

(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ:

Reply to Q1 - **(a) Telephone service**
(b) Non-life insurance
(c) Stock Brokers.

Reply to **Q2 - Rs. 7700 crores [Source: STR journal, vol. 33 part 3, 1st February 2014]**

Reply to Q3 - **Haryana, with effect from 1st April 2003.**

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SOME COMMON LEGAL MAXIMS AND THEIR USE

- ***Ab inito*** – from the beginning. E.g A contract with the minor is void *ab initio.*
- ***Status quo*** – the state in which. E.g. There is no desire to change the current *status quo.*
- ***Per se*** – **by itself. E.g.** As I argue incessantly, inequality *per se* is morally neutral.

PART-C: CASE UPDATES

1. **Kuttukaran Trading Ventures vs. CCE, Cus & Service Tax, Cochin [2014(35) STR 481 (Ker)(HC)]**

Issue: Whether repair and maintenance of individual parts of Motor Vehicles can be treated as repair and maintenance of motor vehicle itself for the purpose of exclusion under Section 65(64) of Finance Act, 1994?

Decision: the Hon'ble High Court held that a Motor Vehicle apparently includes all its parts as well. Without its individuals parts it doesn't become a motor vehicle. Such parts cannot be used for any other purpose as well and it is normally fitted to the same vehicle from which it is dismounted. Therefore, if any service centre or maintenance centre or work-shop does maintenance or repair to any part of motor vehicle, it is also entitled to get benefit of exclusion, as provided under section 65(64) of Finance Act, 1994. When the statute clearly intended to exclude motor vehicle, it is apparent that it excludes parts of motor vehicle also. If such an interpretation is not given, the very purpose of such exclusion will be rendered in-effective.

2. **Commissioner of Service Tax vs. Arvind Mills Ltd. [2014 (35) STR 496 (Guj.)(HC)]**

Issue: Whether deputation of staff to subsidiaries/group companies for stipulated work or for limited period can be termed as manpower recruitment or supply agency service when the direction/control/supervision remained continuously with the assessee?

Decision: the Hon'ble High Court held that the definition of manpower supply recruitment agency is wide and would cover within its sweep, range of activities provided therein. In the present case, the company is not in the business of providing recruitment or supply of manpower. Actual cost incurred by the company in terms of salary. Remuneration and perquisites is only reimbursed by the group companies. There is no element of profit or finance benefit. The subsidiary company cannot be said to be their clients. Deputation of employees was only for and in the interest of the company. There was no relation of agency and client. The employees deputed did not exclusively work under the direction or supervision or control of subsidiary company. All throughout he would be under the continuous control of the company. Fundamentally recruitment of the agency being a commercial engaged in providing any such service to client would have to be satisfied. In the present case, facts are to the contrary.

Indian economy expanded 5.7 percent in the first quarter of FY 2014-15, the highest in nine quarters, against a growth of 4.6 percent in Q4 of 2013-14. The economy grew 4.7 percent in the year-ago period. The economy grew at its highest pace since the fourth quarter of FY12.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: An Agency is providing housekeeping services to a Government hospital. Supervisors are deputed in the hospital to look over the operations. The personnel deputed are within the control of the agency and not the hospital. The invoice issued for the above service includes Salary paid to the personnel and supervisor in addition to some management charges. In this respect, whether service tax will be charged under "Manpower recruitment or Supply agency's Services?

Reply by E-News Letter Team: The aforementioned service will not be treated as 'Supply of Manpower' as the supervisor is working under the control of the agency and the principal employer i.e. the hospital has no control over the functioning of the supervisors. The privity of contract is between the agency and supervisors and not between principal employer i.e. hospital and supervisors. Hence the above service contract will not be taxable under the head 'Manpower Supply Service'.

Query 2: A person is providing paying guest accommodation to students on monthly rent per seat basis. The rent includes cost of food which is cooked in the house by a permanent caretaker. Whether service tax is applicable on the rent received for providing guest house to students on monthly basis?

Reply by E-News Letter Team: The property is used for only residential purposes, which is covered under the exclusion part of the definition under section 65(105)(zzzz) of the Finance Act, 1994. Thus service tax is not applicable on providing the guest house on rent for residential use under the category of 'Renting of Immovable Property Services'. However, 'Short Term Accommodation Service' has been introduced by the Finance Act, 2011 w.e.f. 01.05.2011. Accordingly, any service provided or to be provided to any person, by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months, is a taxable service. Moreover, As per Notification No. 31/2011-S.T., dated 25-4-2011 service will not be taxable under Short Term Accommodation service if declared tariff is less than Rs 1000/- per day. Accordingly, if stay is for more than 3 months or rent is below Rs. 1000/- per day, service is not taxable.

In case of any queries/feedback/suggestions, mail to us on davaidtexpress@gmail.com

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