January, 2015 VOL # 8, ISSUE # 1

INDIRECT TAX EXPRESS

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

PART-A: FROM THE EDITOR

An Insight into Service Tax on Resident Welfare Association

Resident Welfare Associations (RWA) are associations where membership is restricted to owners in the residential complex only. RWAs provide various services to their members such as maintenance of common area, repairs, beautification, facilitating payments to security guards, sweepers etc. For this purpose, each member is required to make monthly contribution of specified amount. Service tax on 'club or association service' which covers Resident Welfare Association (RWA) was introduced with effect from 16.06.2005, vide section 65(105)(zzze) read with section 65(25a)[(25a) and later renumbered as (25aa)].

Exemptions

Under the negative list approach, with effect from 1st July, 2012, Sl. No. 28(c) of notification No.25/2012-ST provides for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

Para 7.11.8 of Service Tax Education Guide dated 20.06.2012 issued by CBEC provides that where RWA is working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) Of Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.

Issues

1. The contribution is collected on basis of floor area of each flat by RWA and therefore contribution from a few members may exceed Rs. 5000 per month but that of the other members is below Rs. 5000. Will all the members be ineligible to claim exemption? To what extent exemption will be available?

WHAT'S NEW

- The Central Government vide **Notification No. 01/2015-Cus**, dated 05.01.2015, has revised the effective rate of duty for specified imports from Singapore.

- CBEC. vide **Circular No. 01/2015-Cus** dated 12.01.2015, clarified that for customs purposes, a commercial invoice cum packing list would suffice and no separate packing list is required if all the details are incorporated in the commercial invoice cum packing list.

- The government has collected Rs. 3.77 Lakh Crores or 60.6% of the budget target for indirect tax by December 2014. In December, while Excise duty and customs duty collections witnessed a jump of 17.2% and 5.4% respectively, service tax collections shrunk by 5.2% over the corresponding month in F.Y. 2013-14.

"A dreamer is one who can only find his way by moonlight, and his punishment is that he sees the dawn before the rest of the world"

-Oscar Wilde

Our views: CBEC, vide circular no 175/01/2014-ST dated 10.01.2014, has clarified that *"If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members"*

Therefore, contribution of only such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. However, the circular clarifies that in case contribution of member per month exceeds Rs 5,000 then such entire contribution would be taxable whereas Sl. No 28 (c) of the mega exemption notification reads as "…. ***up to an amount of five thousand rupees per month per member*** *for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.*"

The views of CBEC appears to be correct and if contribution exceeds Rs. 5000/- from a member in a particular month, then entire contribution shall be taxable.

2. A person is holding more than one flat, and although his per flat per month contribution is below Rs. 5000, but his total contribution for all flats exceeds Rs. 5000 per month. Whether the term 'per member' should refer to per person or per flat held?

Our views: This issue is arguable. However, the spirit behind the exemption seems to exempt contribution upto Rs. 5000/- towards each flat and not each member. But to remain on safer side, payment of service tax in this case is advisable.

3. Some other charges may be received from any member on account of other services and facilities such as renting of community hall. Whether these should be clubbed to examine eligibility of exemption of Rs. 5000/- available to RWA?

Our views: As per Mega Exemption notification No.25/2012-ST, exemption of Rs. 5000/- per month per member is available for *"sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex"* Thus, various considerations received from any member on account of other services and facilities provided are to be clubbed to examine eligibility of exemption of Rs. 5000/- available to RWA, if the service is sourced from third party and for the common use of its members. Beside this, if any other charges are collected by the RWA from its members to provide any service which are not sourced from third party (like renting of community hall of the complex, Parking charges etc), then such service shall be taxable under service tax after availing exemption as small service provider under Notification No. 33/2012-ST dated 20.06.2012.

PART-B: QUIZ TIME!!

1. Which is the prescribed form for stock transfer under Central Sales Tax Act, 1956?

2. Name any three services which fall under the category of Continuous Supply of Service.

3. Fill in the blanks: An Indian lady passenger residing abroad for over 1 year is allowed to bring jewelry into India, free of duty upto an aggregate value of Rs. ___________ as per Baggage Rules, 1998 as amended.

(Please mail your replies with your name, location and e-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- **01.06.2007**

Reply to Q2– **35%**

Reply to Q3– **Form H.**

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SOME COMMON LEGAL MAXIMS AND THEIR USE

- ***Per Contra-*** by that against. E.g. *Per contra*, it is urged on behalf of the Revenue by the ld. Departmental Representatives that there is no conflict between three Larger Benches.
- ***Ex Facie-*** On the face. E.g. The ld. Counsel appearing for the appellants submitted that the order passed by the Commissioner is *ex facie* untenable and unsustainable in law.

PART-C: CASE UPDATES

1. B K Sales Corporation Vs. Commissioner Of Central Excise, [2014 (36) STR 1281 (Tri. - Del.)]

Issue: Whether a consignment agent who is free to sell goods to customers can be made taxable under Clearing and Forwarding services?

Decision: The Hon'ble principal bench of CESTAT, Delhi relying upon judgment of *CCE, Panchkula Vs. Kulcip Medicines (P) Ltd. [2009 (14) STR 608 (P &H)]* and held that the main activity of C&F agent is that he receives the dispatch orders from the principal and arranges clearance of the goods in terms of the directions of the principal. He is not free to sell or purchase the goods by his own choice. In the instant case, the Appellant is free to sell the goods to his customers in small lots. Such permission given to the Appellant is indicative of the fact that he is not working as C&F agent of the principal. As such, no service tax liability would arise against him.

2. Praj Industries Ltd. vs. Commissioner Of Central Excise, PUNE-III [2014(36) S.T.R. 1273 (Tri.-Mumbai)]

Issue: Whether the appellant's Head Office, an Input Service Distributor, is entitled to distribute the service tax credit availed in respect of input service received by the appellant's EOU unit to its DTA unit?

Decision: In the case, the department's contention was that the Cenvat credit taken on the input service does not qualify as input service for the appellant being a manufacturer of excisable goods. Therefore, the appellant is not entitled to take input service credit. The Hon'ble Mumbai CESTAT, found that in this case, service tax has been paid by the Head Office of the appellant unit, being Input Service Distributor, and the input service distributor is required to pay service tax on all the services availed by the several units of the Input Service Distributor. The provision that Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit, was inserted only on 17.03.2012. Prior to that, there was no bar on input service distributor to distribute the credit which pertains to one unit to another unit. Therefore the appellant is entitled to take cenvat credit during the impugned period as distributed by their head office.

India's manufacturing sector witnessed a gradual but significant expansion during the year 2014 and ended on a higher note reaching two year high in December, according to an HSBC survey. India's manufacturing PMI rose to 54.5 in December, 2014, while in the corresponding period a year ago it stood at 50.7, just above the crucial 50 mark which separates growth from contraction.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: M/s ABC Pvt. Ltd. issued a Debit Note on the client and also charged Service Tax. The Debit Note has all the contents that should be present in the invoice for claiming Cenvat Credit. Whether Debit Note issued by party can be treated as Invoice, Bill or Challan for claiming Cenvat Credit?

Reply by E-News Letter Team: As per Rule 9, Cenvat credit can be availed only on the basis of documents which are specifically prescribed in sub-rule (1) of Rule 9. Moreover, such documents should contain certain information in order to make such document as "valid" document for availing CENVAT credit. However, in the case of **Shree Cement Ltd. vs. CCE, Jaipur-II [2013 (29) STR 77 (Tri. Del.)],** the Hon'ble Tribunal held that substance is more important than a format and mainly based on this ground, CENVAT credit was allowed on the basis of Debit Note. Though the Hon'ble Tribunal has allowed the benefit of CENVAT credit on the basis of Debit Note, it is always advisable to avail CENVAT credit on the basis of "valid documents" as mentioned in Rule 9.

Query 2: M/s XYZ is a tour operator. His gross receipt in a year is Rs. 11 lakhs. As per Notification No. 26/2012-ST, abatement available to tour operator is 75%. It means Rs 2.75 lakhs is taxable part. As per Notification No. 33/2012-ST the service tax is exempt to the extent of aggregate value not exceeding Rs. 10 lakhs. So now whether Benefit of 33/2012-ST will be available after taking benefit of 26/2012?

Reply by E-News Letter Team: As per Notification No. 33/2012-S.T, dated 20.6.2012 "Aggregate Value" does not include value charged in the invoices issued towards such services which are exempt from whole of service tax leviable thereon under Section 66Bof the Finance Act 1994. The phrase used in Notification No. 26/2012-S.T. is *"hereby exempts the taxable service"*. Hence, in our opinion, value of service should be calculated after abatement as abatement is nothing bur partial exemption. However there can be different views possible in this matter.

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