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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

Rent-a-Cab Service – Confusion Escalated

Service provided or to be provided "to any person, by a 'rent-a-cab scheme operator' in relation to the renting of a cab has been made taxable under Section 65(105)(o) of the Finance Act, 1994, w.e.f 1-4-2000.

Position from 01.07.2012 to 01.10.2014

After introduction of negative list regime under service tax, service of 'renting' of motor vehicle designed to carry 'passengers' provided by any person, except those covered under the negative list u/s 66D(metered cabs, radio taxis or auto rickshaws) were made taxable.

1. Abatement & Restriction for Cenvat credit - As per **Notification 26/2012-ST Dt. 20.06.2012**, service tax was payable on 40 % of the value, after 60 % abatement subject to the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, had not been taken under the provisions of the CENVAT Credit Rules, 2004.

2. Reverse Charge - As per **Notification 30/2012 ST Dt. 20.06.2012** taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business is liable under reverse charge, if the service provider is any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory and service recipient is a business entity registered as body corporate, located in the taxable territory. Two options are available:

- If the service provider is opting for abatement, 100% of service tax payable by the person receiving the service.(for e.g. if value of service is Rs. 1000, then ST payable = 12.36% of 40% of Rs. 1000=Rs. 49.44)

- If the service provider is not opting for abatement, then service tax liability is payable both by the service recipient @ 40% as well as service provider @ 60%. (for e.g. if value of service is Rs. 1000, then ST payable by service provider = 12.36% of 60% of Rs. 1000 = Rs. 74.16, and ST payable by service recipient = 12.36% of 40% of Rs. 1000=Rs. 49.44)

WHAT'S NEW

- CBEC vide **Notification No. 19/2015-Customs (N.T.), dated 09.02.2015** included Hindaun City, District Karauli of Rajasthan as Inland Container Depots for unloading of imported goods and loading of export goods.

- Central Government vide **Notification Nos. 03 & 04/2015-Customs (ADD) dated 10.02.2015 & 13.02.2015** respectively, has levied anti-dumping duty on imports of various items as specified therein.

- The Central Government vide **Circular No. 994/01/2015-CX dated 10.02.2015** has issued guidelines for assigning cases for adjudication amongst the Additional Director General (Adjudication) and the field commissioners.

- The Central Government vide **Notification Nos. 20 & 21/2015-Customs (N.T.),** both **dated 10.02.2015** made certain amendments in the All Industry Rates of Duty Drawback.

- The Central Government vide **Notification Nos. 02/2015-CE (NT) & 02/2015-ST,** both **dated 10.02.2015,** has specified the jurisdiction of Principal Director General of Central Excise Intelligence over various Commissioners of Service tax and Central Excise.

"I have failed over and over and over again in my life….and that is why I succeed"

-Michael Jordan

Position from 01.10.2014 onwards

The Negative list u/s 66D was amended by eliminating the word 'radio taxis'. Thus now, services provided by radio taxis or radio cabs, whether or not air-conditioned would be taxable in service tax.

1. Abatement & Restriction for Cenvat credit – Amendments in Notification 26/2012-ST were made vide **Notification 8/2014 ST Dated 11.07.2014**. For a person providing the service of transport of passengers by a motor cab, abatement was allowed if CENVAT credit on inputs, capital goods had not been taken and input service of only renting of motor cab was taken in the following manner:

(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or
(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;

For a person providing the service of transport of passengers by contract carriages other than motor cabs, abatement was allowed if CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, had not been taken under the provisions of the CENVAT Credit Rules, 2004.

2. Reverse Charge - Notification 30/2012 was amended vide Notification 10/2014 ST Dt. 11.07.2014. following options are now available:

- If the service provider has opted for abatement, 100% of service tax payable by the person receiving the service. (for e.g. if value of service is Rs. 1000, then ST payable = 12.36% of 40% of Rs. 1000=Rs. 49.44)

- If the service provider is not opting for abatement, then service tax liability is payable both by the service recipient as well as service provider @ 50% each. (for e.g. if value of service is Rs. 1000, then ST payable by service provider = ST payable by service recipient = 12.36% of 50% of Rs. 1000=Rs. 61.80)

The aforementioned changes in the Union Budget 2014-15 have created anomalies regarding percentage of tax payable by the service recipient under reverse charge. The recipient is now required to know whether the service provider has taken the benefit of abatement or not. Further, there is no reason as to why conditions for availment of Cenvat credit is separate for Motor cabs and other contract carriages and radio taxis.

Though after introduction of negative list regime, classification of service has lost its relevance but whether the activity of providing motor vehicles on hire basis should be categorized into 'rent-a-cab service' or 'supply of tangible goods service' is often a matter of dispute between the department and the assessee. This is because, liability lies on service receiver under reverse charge in the former case while tax is payable by service provider in the latter.

PART-B: QUIZ TIME!!

1. What is the time period within which CENVAT credit of input services is required to be availed under Cenvat Credit Rules, 2004?

2. What is the time limit for filing application for refund of Excise duty under The Central Excise Act, 1944?

3. What is the normal period for which countervailing duty made applicable on a product remains effective?

(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- **The State of Meghalaya**

Reply to Q2 – **Nepal & Bhutan.**

Reply to Q3 – **Form 16.**

Reply given by:

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SOME COMMON LEGAL MAXIMS AND THEIR USE

- ***Ibid*** - In the same place. E.g. Petitioner pleaded that once the authorities adopted the route to best judgment under Section 72 *ibid* the petitioner effectively stood deprived of the right to appeal.
- ***Mala fide***- In bad faith. E.g. The Court did not find any *mala fide* intention on the part of the appellants.

PART-C: CASE UPDATES

1. **Venkatesh Merchantiles (P.) Ltd. vs. C.C.E & S.T., Bhopal [2015(37) STR 606 (Tri. Del)]**

Issue: Whether Reimbursement expenses are includible in assessable value of service provided when bills are in the name of service recipient?

Decision: The Hon'ble CESTAT, Delhi held that in terms of agreement, principals were required to maintain godown and hence, principals were liable to pay godown rent and the Appellant acted only as their agent. Similarly, bills of labour contractors for arranging loading and unloading and bills of transporters were in name of principals and not in name of the appellant and payment against these bills were made by the Appellant on behalf of principal. Thus the appellant acted as a pure agent. Hence, these expenses would not be includible in assessable value. It further relied on the judgment in the case of ***Inter continental Consultants & Technocrats Pvt Ltd*** in which Rule 5 of the Valuation Rules has been struck down by Delhi High Court as ultra vires to provisions of Section 67 of the Finance Act. Hence, reimbursement expenses cannot be includible in assessable value of taxable services provided by the Appellant.

P.S. SLP has been filed by the Central Government before the Hon'ble Supreme Court against the High Court judgement in the case of Intercontinental and the SLP has been admitted by the Apex Court.

2. **Gammon India Ltd. vs. Commissioner of C.EX, Cus & S. T., Nagpur [2015(37) S.T.R. 225 (Tri.– Mumbai)]**

Issue: Whether the service provided under contract for supply of transmission towers as well as for erection, commissioning and installation of such towers should be classified under Works Contract service as defined in section 65(105)(zzzza) of the Finance Act, 1994 or under "erection, commissioning or installation service" as defined in section 65(105)(zzd) read with section 65(39a) of the Finance Act.

Decision: The Hon'ble Mumbai CESTAT held that in the present case there is no doubt as to the nature of the contract. It involves both supply of material as well as labour. Just because there was a separate supply contract for supply of transmission of towers, it cannot be deduced that service contract is a pure labour contract without looking at the terms of the contract. The facts clearly show that substantial portion of material is involved in the execution of the service contract. It is not merely the nomenclature and form of the contract that should be seen. What is material is the form as well as substance of the contract – both have to be examined before coming to a conclusion. After reading the contract, it is concluded that the service contract is a Works Contract.

India Inc has told finance minister Arun Jaitley that for the success of "Make in India", the forthcoming Union Budget should avoid the temptation of raising excise duty or reducing peak custom duty.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: Mr. X is an insurance agent and received commission of Rs 5 Lacs from Insurance Company on which service tax is paid by the Insurance Company under complete Reverse Charge. He has also let out an immovable property to M/s ABC Ltd for Rs 6 Lacs p.a. Whether Mr. X can avail benefit of SSI exemption under notification no. 33/2012-ST?

Reply by E-News Letter Team: As per proviso (ii) to Para 1 of Notification No 33/2012-ST dated 20.06.2012, nothing in the notification shall apply to such value of taxable service, in respect of which service tax shall be paid by service recipient under reverse charge. From this, it can be inferred that when service receiver is liable to pay service tax, the value of services of such service provided is not to be considered while calculating the exemption limit. Hence, in our view, the value of services as insurance agent is not to be considered while calculating the exemption limit and Mr. X can claim benefit of basic exemption to small scale service providers.

Query 2: XYZ Ltd. hired buses for carrying its employees to its factory from their residential colony which is far away from factory. Whether service tax paid for the hire charges paid by XYZ Ltd. are available as Cenvat Credit to XYZ Ltd.

Reply by E-News Letter Team: Clause (B) of Rule 2(1) of Cenvat Credit Rules, 2004 excludes services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital good from the definition of Input service. Further, the motor vehicle (bus) used by XYZ Ltd. which falls under tariff heading 8702, is excluded from the definition of capital goods as defined under Rule 2(a) of CCR, 2004. Hence XYZ Ltd. will not be entitled to avail Cenvat credit in respect of service tax paid for hiring of motor vehicle.

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