INDIRECT TAX EXPRESS

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FROM THE EDITORIAL TEAM

Service Tax on Service of 'Sale of Space or Time for Advertisement'- An Insight

Service Tax on sale of space or time for advertisement service has been a matter of confusion due to the frequent amendments in the related provisions. Presently, only advertisement in print media is excluded from the levy of service tax and sale of space or time slots for advertisement in any other way shall be subject to service tax.

Provisions before 01.07.2012

Earlier, prior to 01.07.2012, services in relation to the advertisement were taxable under the following two categories:

(a) Advertisement agency service
(b) Sale of space or time for advertisement service.

Services provided by advertisement agency in relation to advertisement were a taxable service w.e.f 1.11.1996. Later, services by any person in relation to sale of space or time for advertisement, in any manner excluding sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization was also made taxable w.e.f 1.05.2006

Provisions during the period from 01.07.2012 to 30.09.2014

After introduction of Negative List regime under service tax by Finance Act 2012, service of 'selling of space or time slots for advertisements' were covered under the negative list u/s 66D; except those advertisements broadcast by radio or television which were still taxable. The relevant entry is enumerated as under:

> *"(g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television."*

Therefore, services in relation to sale of space or time slots for advertisements became non-taxable except in case of advertisements broadcast by radio or television. Thus, services of space selling such as in newspapers, magazines, sign board, hoardings, websites etc, were covered by the Negative List and hence became non-taxable.

Provisions w.e.f. 01.10.2014

The Negative list u/s 66D was amended again by the Union Budget 2014-15. The existing clause contained in entry no. (g) of the Negative List of services [Section 66D] was substituted by:

"selling of space for advertisements in print media".

For this purpose, Print media is defined as:

(i) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

Inside this issue:

GST NEWS

The Times of India reported that-

The Union government will convene a special session of Parliament to pass the Goods and Services Tax (GST) bill - a Constitutional amendment - only after a consensus is achieved among all political parties, including the Congress and the Left that are vociferously opposing the measure.

Union parliamentary affairs minister Venkaiah Naidu also confirmed on 28.08.15 that the extended session of Parliament would be convened in September for the passage of GST Bill to facilitate enforcement of the new uniform tax regime in the country from next year.

IDT NEWS

The Hon'ble Finance Minister Shri Arun Jaitely while inaugurating the Annual Conference of Chief Commissioners and Director Generals of the CBEC said that there has been buoyancy in the indirect tax collections, which have grown by 37% in the first four months of this financial year. Further he mentioned that the tax collection targets for 2015-16 are realistic and should be achieved.

(ii) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867.

Thus, in effect, online and mobile advertising, advertisements in internet websites, out- of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, Automated Teller Machines, tickets, commercial publications, aerial advertising, etc. became taxable.

The frequent changes with respect to implication of service tax on advertisement business have resulted in lot of confusion. Further, there are many issues where clarity is still not there. Most of the time there are agencies involved in space selling rather than direct selling by the space owner. There are different interpretations with respect to taxability of such space selling as the agency is not the owner of the space.

Para 4.7.2 of CBEC Education Guide clarifies "*Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.*"

However, it is common practice in the industry that advertisement agencies provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement. If a advertisement agencies provides services like designing of contents, market research which are taxable as well as provides space for publishing such advertisement in print media which is exempt, its taxability has to be determined as per principals of 'bundled service' in accordance with section 66F of the Finance Act, 1994.

NOTIFICATIONS & CIRCULARS

- Central Government, vide **Notification No. 41/2015-Customs (ADD)** dated **17.08.2015**, has imposed anti-dumping duty on imports of Diketopyrrolo Pyrrole Pigment Red 254 (DPP Red 254), originating in, or exported from, the People's Republic of China and Switzerland, at rates as specified for a period of five years.

- Central Government, vide **Notification No. 42/2015-Customs (ADD)** dated **18.08.2015**, has re-imposed anti-dumping duty on imports of Caustic Soda, originating in or exported from the People's Republic of China, at rates as specified for a period of five years.

- Central Government, vide **Notification No. 43/2015-Customs (ADD)** dated **18.08.2015**, has extended the anti-dumping duty on PVC Flex Films, originating in or exported from the People's Republic of China, upto and inclusive of the 29th day of July, 2016, unless revoked earlier.

- Central Government, vide **Notification No. 44/2015-Customs (ADD)** dated **18.08.2015**, has rescinded Notification No. 89/2009-Customs dated 31.08.2009 to remove the anti-dumping duty on Flexible slabstock, originating in, or exported from China, Korea and Chinese Taipei.

- Central Government, vide **Notification No. 45/2015-Customs (ADD)** dated **24.08.2015**, has re-imposed anti-dumping duty on imports of Phosphoric Acid of all grades and all concentration (excluding Agriculture or Fertilizer grade), originating in, or exported from, Korea RP, at rates as specified for a period of five years.

QUIZ!!!

1. Which bond is used for obtaining goods at Nil or concessional rates of duty under Central Excise Rules, 2002?

2. In case of service tax payable under reverse charge mechanism, what is the maximum time limit for making payment to the service provider in order to determine the point of taxation under Point of Taxation Rules, 2011?

3. What is the maximum amount of pre-deposit that can be demanded for filling an appeal before the CESTAT or the Commissioner (Appeals), as the case may be, under Central Excise Act, 1944?

(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- **Destination of goods**
Reply to Q2– **ER-3**
Reply to Q3– **True**

Reply given by:
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CASE UPDATES

1. **Chemplast Sanmar Ltd. Vs Commissioner Of Central Excise, Salem [2015 (317) E.L.T. 495 (Tri. - Chennai)]**

Issue: - Whether Waste Weak Hydrochloric acid (Hcl) emerging as residual waste in manufacture of Hydrochloric acid which was sold in market can be termed as an excisable good?

Decision- The Hon'ble CESTAT relying on the case of *CCE* v. *Dhakad Metals Pvt. Ltd.* – [2010 (257) E.L.T. 535 (Guj.)] held that the marketability of the waste is required to be considered in background of the facts whether it is a different commodity which has taken shape after the process having a separate commercial identity as a product and the answer has to be in negative. Mere fact that even the waste could be sold in the market or it could be dealt with in the market itself is not sufficient to come to the conclusion that it is different product having marketability. The marketability of the product as a result of the process is one aspect and the disposal of waste is another aspect. Since, there is no material available to show that waste weak HCL acid is marketable and therefore it cannot be treated as an excisable commodity. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief.

2. **Cararo Technologies India Pvt. Ltd. vs. Commr. of C.Ex., Pune-III [2015 (39) S.T.R. 673 (Tri. – Mumbai)]**

Issue: - Whether refund claim of unutilized, accumulated Cenvat credit is admissible when refund amount exceeds the amount of cenvat credit availed in ST-3 returns for the period?

Decision- The Hon'ble Mumbai CESTAT held that the refund of Cenvat credit cannot be restricted to the amount of credit availed during the period, as per the service tax return because, it is a case of continuous business activity under 'business entity concept'. The appellant is entitled to avail refund under the spirit of Rule 5 of Cenvat Credit Rules, 2004 read with Notification No. 5/2006 (as amended) read with clarification Circular dated 26.02.2010. Thus the appellant will be entitled to the amount of refund that was being rejected on account of non-inclusion in service tax return for the period.

3. **Commissioner of C.Ex., Bangalore vs. PNB Metlife India Insurance Co. Ltd. [2015 (39) S.T.R. 561 (Kar.)]**

Issue: - Whether the service tax paid for imported "Reinsurance Services" can be claimed as an 'input service' within the meaning of Rule 2(I)(i) of the Cenvat Credit Rules, 2004, for the output insurance services provided?

Decision- Rule 2(I) of the Cenvat Credit Rules 2004 provides that 'Input service' means service used by a provider of taxable service for providing an output service. The process of issuance of an insurance policy by the insurer and subsequent procurement of reinsurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the insurance policy by the insurer. In fact, it continues till the existence of the term of the policy. Thus, the Hon'ble Karnataka High Court held that since reinsurance is a statutory obligation and the same is coterminous with the insurance policy issued by the respondent, it cannot be said that the same would not be an 'input service' eligible for Cenvat credit within the meaning of Rule 2(I) of the Cenvat Credit Rules, 2004.

4. **Commr. of C. Ex. & Cus., Bangalore-II Vs Aschem Agrotech (P) Ltd [2015 (315) E.L.T 618 (Tri-Bang.)]**

Issue: - Whether clearances of a subsidiary company and holding company shall be clubbed for the purpose of determining SSI benefit?

Decision- The Hon'ble Bangalore CESTAT held that the fact of flow of funds from the holding company to the subsidiary company alone cannot make a difference for determination of SSI exemption. For all purposes the holding company would be having more than 50% of the shares of the subsidiary company and in this case admittedly 100% of the shares are held by the holding company. However, since there were no commercial transactions between the two companies and the profit or loss were assessed separately and there was no interference between two companies in administrative control exercised by either company; the benefit of SSI exemption to individual units cannot be denied.

FREQUENTLY ASKED QUESTIONS

"Success is not final, Failure is not fatal: it is the courage to continue that counts."

- Winston Churchill

Query 1: M/s. ABC Charitable Trust is an NGO registered under section 12AA of the Income Tax Act, 1961. It is planning to conduct a public awareness program for HIV as a part of its charitable activity. It has availed consultancy from a medical institute of UK for efficient execution of its plans. Whether service tax is payable under reverse charge basis on import of such services from UK?

Reply by e-newsletter team: As per entry no. 34(b) of the Mega Exemption Notification No. 25/2015-S.T. dated 20.02.2012, *"services received from a provider of service located in a non-taxable territory by an entity registered under section 12AA of the Income Tax Act 1961 for the purposes of providing charitable activities"* are exempted from service tax. Thus, if M/s. ABC Charitable Trust imports services for the purposes of providing charitable activities as defined under Mega Exemption Notification , the same shall not be liable to service tax.

Query 2: M/s. XYZ Ltd. is a manufacturing concern. It has some non-moving stock of inputs due to change in model of goods manufactured by it. Accordingly, it writes off the value of such stock in the books of accounts. Whether cenvat credit taken on such inputs is required to be reversed?

Reply by e-newsletter team: As per Rule 3(5B) of the Cenvat Credit Rules, if inputs or capital goods before being put to use, are written of fully or provision is made in the books of account to write off fully, the manufacturer is required to pay an amount equal to cenvat credit taken in respect of such inputs or capital goods. Therefore, cenvat credit taken on such inputs is required to be reversed. However, if these inputs are subsequently used in manufacture of final product, the manufacturer can take Cenvat Credit of amount which was paid earlier

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