SERVICE TAX

Meaning:

Service tax is a tax on services. This is not a tax on profession, trade, calling or employment but is in respect of service rendered. If there is no service, there is no tax. As per Webster's Concise Dictionary, 'service' means a useful result or product of labour, which is not a tangible commodity. Thus, basically, service is a value addition that can be perceived but cannot be seen, as it is intangible. However, usage of some goods during the course of rendering the service would not mean that there is no 'service'. It is the predominant factor in each case, which is to be studied to arrive at a conclusion.

Service Tax Law:

Service tax was introduced in 1994 but there is no independent statute on service tax as yet. However, following sources provide statutory provisions relating to service tax and can be broadly grouped under the following categories:

Finance Act, 1994: The statutory provisions relating to service tax were first promulgated through Chapter V of the Finance Act, 1994. Since then, Chapter V of the Finance Act, 1994 is working as the Act for the service tax provisions. Later, in the year 2003, the Finance Act 2003 inserted Chapter VA relating to advance rulings on service tax in the Finance Act, 1994. In the year 2004, the provisions relating to charging of 'education cess' on the amount of service tax were made applicable through Chapter VI of the Finance (No.2) Act, 2004.

Rules on service tax: Section 94 of Chapter V and section 96 -I of Chapter VA of the Finance Act, 1994 grants power to the Central Government to make rules for carrying out the provisions of these Chapters. Using these powers, the Central Government has issued Services Tax Rules 1994, Service Tax (Advance Rulings) Rules, 2003, CENVAT Credit Rules, 2004, Export of Service Rules, 2005, Service Tax (Registration of Special Category of Persons) Rules, 2005, Service Tax (Determination of Value) Rules, 2006 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 which are amended from time to time. Rules should be read with the statutory provisions contained in the Act. Rules are made for carrying out the provisions of the Act. The rules can never override the Act and cannot be in conflict with the same.

Notifications on service tax: Sections 93 and 94 of Chapter V, and section 96-I of Chapter VA of the Finance Act, 1994 empower the Central Government to issue notifications to exempt any service from service tax and to make rules to implement service tax provisions. Accordingly, notifications on service tax have been issued by the Central Government from time to time. These notifications usually declare date of enforceability of service tax provisions provide rules relating to service tax, make amendments therein, provide or withdraw exemptions from service tax or deal with any other matter which the Central Government may think would facilitate the governance of service tax matters.

Circulars or Office Letters (Instructions) on service tax: The Central Board of Excise and Customs (CBEC) issues departmental circulars or instruction letters from time to time to explain the scope of taxable services and the scheme of service tax administration etc. These circulars/instructions have to be read with the statutory provisions and notifications on service tax.

The circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the departmental circulars.

Orders on service tax: Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax.

Trade Notices on service tax: Trade Notices are issued by the Central Excise/Service Tax Commissionerates. These Commissionerates receive various instructions from the Ministry of Finance or Central Board of Excise & Customs for effective implementation and administration of the various provisions of service tax law. The same are circulated among the field officers and the instructions which pertain to trade are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices. Individual assesses may also apply for copies of trade notices. The trade notice disseminate the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which service tax can be deposited; give clarifications regarding service tax matters, etc.