

Preliminary Legal Provisions

Question 1

State briefly whether the following services under the Finance Act, 1994, relating to service tax, are taxable services.

- (i) *Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.*
- (ii) *Services provided from India for use outside India.*
- (iii) *Service provided to an Export oriented unit.*

Answer

- (i) As per section 64(1) of the Finance Act, 1994, service tax provisions do not extend to the State of Jammu and Kashmir. However, since service tax is a destination based consumption tax, hence service provided in Rajasthan from Jammu and Kashmir would be liable to service tax.
- (ii) Since, service tax is a destination based-consumption tax; it is not leviable on export of services. Export of Services Rules, 2005 provides scientific three-fold criteria for determining 'export of service' in accordance with these rules. These rules make it clear that exemption from service tax/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules.

Thus, assuming that the given service is exported in terms of Export of Services Rules, 2005, the export thereof would not be liable to service tax.

- (iii) Service provided to export oriented undertaking located in India is liable to service tax.

Question 2

The service provider is abroad. He renders service to a subsidiary of an Indian Company located abroad. Payment to him is done by holding Indian Company. Does this attract service tax?

Answer

Section 64(1) of the Finance Act, 1994 provides that provisions of service tax law extend to whole of India except the State of Jammu & Kashmir. Service tax is paid by the person or firm or a company who provides the services. In this case, service tax will not be attracted as service provider is abroad and renders service to a subsidiary of an Indian company located outside India.

Question 3

Examine briefly whether any service tax liability would arise in the following case:

Services provided to or from installations, structures and vessels in the entire continental shelf and exclusive economic zone of India.

Answer

Levy of service tax extends to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes in the manner depicted in the table below:-

S.No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

Question 4

Explain in brief the manner of determination of value as per rule 3 of the Service Tax (Determination of Value) Rules, 2006.

Answer

Subject to provisions of Section 67 of Finance Act, 1994, the value of taxable service, the consideration for which is not wholly or partly consisting of money, shall be determined by the service provider in the following manner as per Rule 3 of the Service Tax (Determination of Value) Rules, 2006:

- (a) The value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. However, the aforementioned gross amount charged must be the sole consideration.
- (b) Where the value cannot be determined in accordance with above clause, the service provider is required to determine the equivalent money value of such consideration.

2.3 Indirect Tax Laws

However, such value shall in no case be less than the cost of provision of such taxable service.

Question 5

Hotel Marudhar Palace charges 10% of the bill amount as service charges and Department has asked them to pay service tax on it. The assessee has submitted that the amount @ 10% collected from customers is subsequently disbursed among the staff, therefore it is not part of their income and cannot be included in the gross amount charged by them. Examine the case and advise suitably.

Answer

The facts of the case are similar to the case of *Hotel Mela Plaza v. CCE Ghaziabad – 2005 (183) ELT 190 (Tri-Del.)*. The Hotel rendered mandap keeping services and charged 10% of the bill amount as service charges from its customers. It was contended by the assessee (the Hotel) that the amount @ 10% collected from its customers did not form part of its income as that amount was subsequently disbursed among the staff and hence, was not liable to service tax. In this case, the Tribunal observed that section 67 of the Finance Act, 1994 provides that the value of taxable service in relation to the services provided by a mandap keeper shall be the gross amount charged by such keeper from the client for the use of mandap, including facilities provided to the clients in relation to such use and also the charges of catering, if any. The Tribunal held that as the assessee was charging this amount from its customers for providing the service, which was taxable as above, therefore, the 10% service charges would be liable to service tax.

Therefore, applying the ratio of the abovementioned judgement to the facts of the present case, it can be concluded that Hotel Marudhar Palace is liable to pay service tax on 10% service charges collected by it from its customers.

Question 6

Define the term 'gross amount charged' as per explanation (c) to section 67 of Finance Act, 1994, as amended, with reference to associated enterprises.

Answer

According to Explanation (c) to Section 67 "Gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

However, where the transaction of taxable service is with any associated enterprise the term "Gross Amount charged" will include any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of account of a person liable to pay service tax. Here, it is also worthwhile to add that the term "associated enterprise" has the meaning assigned to it in section 92A of the Income tax Act, 1961.

Question 7

Write a brief note explaining the circumstances under which expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable services under the Service Tax (Determination of Value) Rules, 2006.

Answer

Expenditure or costs incurred by the service provider as a pure agent of the recipient of the service shall be excluded from the value of the taxable service if all the following conditions are satisfied cumulatively as per Rule 5(2) of Service Tax (Determination of Value) Rules 2006:-

- (a) The service provider acts as a pure agent of the recipient of the service while making payment to the third party.
- (b) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.
- (c) The recipient of service is liable to make payment to the third party.
- (d) The recipient of service authorizes the service provider to make payment on his behalf.
- (e) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party.
- (f) The payment made by the service provider on behalf of the recipient of service is separately indicated in the invoice issued by the service provider to the recipient of service.
- (g) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party.
- (h) The goods or services procured by the service provider from the third party as a pure agent are in addition to the service he provides on his own account.

In order to truly appreciate the application of above-mentioned conditions in practical situations, following simple example is given:

Delhi based Mr. Raj is a commission agent of Mumbai based XYZ Ltd. Thus, Mr. Raj provides Business Auxiliary Services to XYZ Ltd. He is directed by XYZ Ltd. to purchase certain goods on its behalf to the extent of ₹ 10,00,000/- and to make the payment to the concerned seller TF. Further, Mr. Raj also takes the purchase invoice of said goods in the name of XYZ Ltd. Mr. Raj raises the invoice of ₹ 50,000/- [together with service tax @ 10.30%] as commission charges on XYZ Ltd. in respect of his Business Auxiliary Services. Besides, he will include above-mentioned ₹ 10,00,000/- in the invoice but will not charge any service tax on it because in respect of this amount he is acting as pure agent of XYZ Ltd. The above-mentioned conditions of pure-agent are being tested below:

2.5 Indirect Tax Laws

- (a) The service provider [Mr. Raj in the present case] acts as a pure agent of the recipient of the service [i.e. XYZ Ltd. in the present case] while making payment to the third party [i.e. concerned seller of said goods]
- (b) The recipient of service [i.e. XYZ Ltd.] receives and uses the goods so procured by the service provider in his capacity as pure agent of the recipient of service.
- (c) The recipient of service [i.e. XYZ Ltd.] is liable to make payment to the third party.
- (d) The recipient of service [i.e. XYZ Ltd.] authorizes the service provider [i.e. Mr. Raj] to make payment on his behalf.
- (e) The recipient of service [XYZ Ltd.] knows that the goods for which payment has been made by the service provider [Mr. Raj] shall be provided by the third party [concerned seller of said goods]
- (f) The payment made by the service provider [Mr. Raj] on behalf of the recipient of service [XYZ Ltd.] is separately indicated in the invoice issued by the service provider to the recipient of service.
- (g) The service provider [Mr. Raj] recovers from the recipient of service only such amount as has been paid by him [₹ 10,00,000/-] to the third party [concerned seller of said goods]
- (h) The goods procured by the service provider [Mr. Raj] from the third party [concerned seller of goods] as a pure agent are in addition to the service he provides on his own account.

Since all the prescribed conditions are fully satisfied in the present case, it may be safely inferred that Mr. Raj acts as pure agent on behalf of XYZ Ltd. in the present case.

Selected Self-Examination Questions

- 1. Discuss whether the Central Excise Officer has power to reject the value of taxable service.
- 2. Write a detailed note on concept of pure agent.
- 3. Discuss the principles which govern classification of taxable services.
- 4. How will a taxable service be valued when the consideration thereof is not in wholly or partly in terms of money ?
- 5. Whether a person, having a business in any of the Indian States other than the State of Jammu & Kashmir, who provides the services to the client in the State of Jammu & Kashmir be liable to pay service tax?
- 6. What is the extent and application of the provisions of the Finance Act, 1994 relating to service tax?
- 7. Briefly explain the concept of charge of service tax.
- 8. Aqua Associates Ltd. is a custom house agent (CHA). It gets the import/export consignments cleared through customs. However, at times it also provides services for

packing, unpacking, loading, unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for its customers (i.e. importers or exporters). Aqua Associates Ltd. initially pays the service charges to these agencies and later recovers these charges from the customer along with its charges. Similar arrangement is there for payment of statutory levies like custom duties, port charges, cesses etc. leviable on the said goods.

Aqua Associates Ltd. excludes the aforesaid reimbursable charges while computing the value of taxable service. The Department contends that the charges which are said to be paid by Aqua Associates Ltd. and later recovered from the customers (i.e. reimbursable charges) should be added to the value of taxable service.

Examine the veracity of the Department's contention in law.

9. How will the value of taxable service be determined in case of works contract service?
10. Whether reimbursement of expenses is includable in the value of taxable service?
11. Whether Sales Tax/VAT will be included in amount charged for the works contract?
12. How will a taxable service be valued when the gross amount charged for it includes service tax payable?