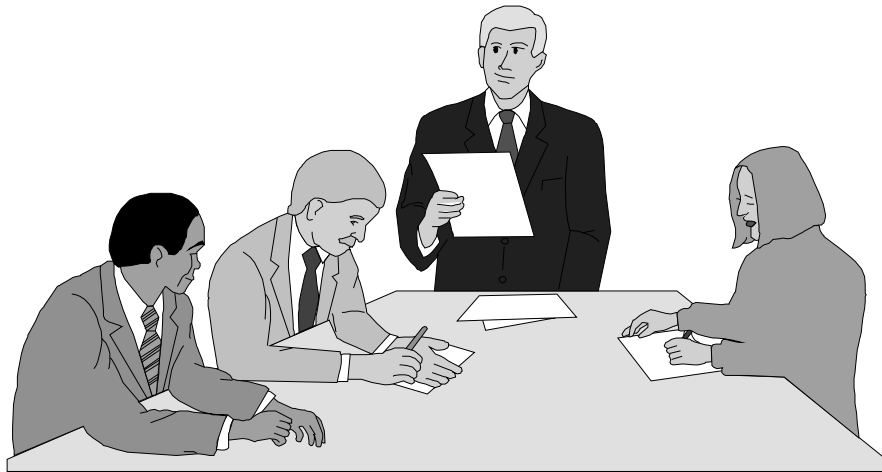


2 Day Workshop on **SERVICE TAX**



1st Technical Session

CA. P. Rajendra Kumar,
Chennai

2nd Technical Session

CA. K. Sivarajan,
Chennai



3rd Technical Session

CA. Madhukar N Hiregange
Bangalore

4th Technical Session

Sri. K. Vaitheeswaran,
Chennai



BACKGROUND MATERIAL FOR 1st TECHNICAL SESSION

BIO DATA OF CA. RAJENDRA KUMAR. P.

CA. Rajendra Kumar P, is a commerce graduate from University of Madras. He did his graduation from A.M.Jain College, Chennai.

He is a Fellow member of the Institute of Chartered Accountants of India and a Graduate member of the Institute of Cost and Works Accountants of India.

He is in active practice since 1995 and is a partner of Sanjiv Shah & Associates, Chartered Accountants, Chennai.

He was elected for the First Time to the Southern India Regional Council of The Institute of Chartered Accountants of India for the three-year term 2004-07.

In the very First year of the Regional Council, he was nominated as the Chairman of the SICASA and Chairman of the Library Committee for the year 2004-05. He was elected as the Treasurer of the SIRC of ICAI for 2005-06 He was also the Chairman of the Committee for Members in Industry during the year 2006-07.

He was elected to the SIRC of ICAI for the Second time for the three-year term 2007-10. He was appointed as the Chairman of Corporate Governance Committee for the year 2007-08.

During the Diamond Jubilee year of ICAI (2008-09) he was unanimously elected as the Chairman of the SIRC of ICAI on February 15, 2008. At the age of 38 he was the second youngest person to adorn the office of Chairmanship of the Southern Region.

He is an active member of the Hindustan Chamber of Commerce and Southern India Rajasthani Chamber of Commerce & Industry.

He is actively associated with the Bharatiya Yuwa Shakti Trust (BYST) under CII-Southern Region as a mentor and Jury member of JRD TATA Awards.

He has presented more than 100 papers on Central Excise, Service Tax and VAT across the length and breadth of the Country in programmes organized by numerous professional, financial and educational institutions.

He also presented paper on "Indirect Taxation in India" at CPE Seminars organized by Training Division of The Institute of Certified Public Accountants of Singapore and Malaysia at Singapore and Malaysia continuously for three years, 2006, 2007 & 2008.

The Bahrain Chapter of ICAI invited him to deliver a talk on the topic "**India Empowered 2008**" He is the First Chairman from SIRC of ICAI to receive an invitation from an International Chapter of the ICAI.

He has authored two books namely 'Guide to Service Tax' and 'Value Added Tax – Concept & Indian Perspective'.

He is the Regional Advisory Committee member of Chennai-I, II and III Commissionerate of Central Excise and the Public Grievance Committee member of Chennai-II Commissionerate of Central Excise. He is also a Regional Advisory Committee member of Commissionerate of Service Tax, Chennai. He was also appointed as the Member of the "Help Centre" of Central Excise and Service Tax set up by the Ministry of Finance, Government of India.

He is an active free mason, and is also associated with various professional, social and cultural organizations like Sanskriti, Bombay Chartered Accountants Society, The Chartered Accountants Study Circle, The Society of Auditors, Rajasthani Association, Tamilnadu, Karnataka State Chartered Accountants Association etc.

He is the founder Secretary of the Association of Chartered Accountants, Chennai and jointly with Shalin Jain (Founder of Ten Miles Corporation) designed the logo of the Association "Share Knowledge, Spread Light". which was adopted by them as their official slogan.

Apart from professional pursuits, RK, as he is popularly known, enjoys reading and collecting books, making friends, providing leadership, singing and travelling. RK is happily married to Sunitha and is blessed with one son Deepak.



EVOLUTION OF SERVICE TAX IN INDIA

- ☞ The Service tax was introduced on the recommendation of Dr. Raja Chelliah Committee on tax reforms. The committee pointed out that the indirect tax at the central level should be broadly neutral in relation to production and consumption and in course of time cover commodities and service.

Justification for Levy of Service Tax

- ☞ The Tax is levied on wider base and Government benefits because of higher revenue realization.
- ☞ More than 50% of the GDP is contributed by the Service Sector and non taxing the same leads to economic distortion and non taxing the service sector leaves major part of the GDP non taxed.
- ☞ Being an indirect tax the incidence of tax can be passed on to the beneficiary of service

The tax on the services was first introduced in 1994 from 1st July 1994 vide notification No. 1/94 dt. 28.6.1994.

- ☞ It extended to the whole of India except the State of Jammu & Kashmir.
- ☞ Thus all services provided in the state of Jammu & Kashmir are not covered for the purpose of Service Tax.
- ☞ This is irrespective of fact whether service provider is from the Jammu & Kashmir state or otherwise.

The Service Tax when initially introduced covered 3 services.

- a) Service rendered by the telegraph authorities to the subscribers in relation to telephone connections:
- b) Service provided by the insurer to the policy holder in relation to general insurance business: and
- c) Service provided by stockbroker.

Subsequently various service were added periodically as per the details given below :

<u>Finance Act</u>	<u>No. of Services added</u>	<u>Effective Date</u>
1994	3	01.07.1994
1996	3	01.11.1996
1997****	12	15/06/97, 01/07/97, 07/07/97, 16/07/97
1998	10	16.10.1998
2001	15	16.07.2001
2002	10	16.08.2002
2003	7	01.07.2003
2004	13	10.09.2004
2005	9	16.06.2005
2006	15	01.05.2006
2007	7	01.06.2007
2008	6	16.05.2008
Custom House Agent , Steamer Agent		15/06/97
Air Travel Agent, Mandap Keeper		01/07/97
Consulting Engineer, Manpower Recruitment or Supply Agency		07/07/97
Clearing & Forwarding Agent		16/07/97

Service Tax Revenue at Glance

Sr No.	Year	Number of service	Rate of service tax (in%)	Revenue (Rs. In crores)	Tax / GDP ratio (in %)	Revenue Growth (in %)
1	1994-95	3	5	407	0.04	-
2	1995-96	3	5	862	0.07	112
3	1996-97	15	5	1059	0.08	23
4	1997-98	26	5	1586	0.11	50
5	1998-99	26	5	1957	0.11	23
6	1999-2000	26	5	2128	0.10	9
7	2000-01	26	5	2613	0.10	23
8	2001-02	41	5	3302	0.10	26
9	2002-03	52	5	4122	0.20	25
10	2003-04	62	8	7891	0.29	91
11	2004-05	75	10(+EC)	14200	0.45	80
12	2005-06	84	10(+EC)	23055	0.68	62
13	2006-07	99	12(+EC)	37532	0.91	62
14	2007-08	100	12(EC+SHE)	50200(B)	1.1	33
15	2008-09	106	12(EC+SHE)	64460(B)	--	29

CONSTITUTIONAL VALIDITY OF LEVY OF SERVICE TAX:

Article 265 of the constitution asserts that no tax will be levied or collected except by the authority of law. Schedule VII divides this subject in to 3 category.

- Union list – Only Central Government has got power to levy the tax
- State List - only State Government has power to levy the tax
- Concurrent list - both Central and State Governments can levy tax.

Taxation of Services was not specifically covered under any of the list mentioned above. However it was held that parliament, by virtue of residuary Entry No. 97 list 1 in the Seventh Schedule was empowered to impose any fiscal levy provided

- ☞ The Special tax is not covered under the State List or
- ☞ There is no specific prohibition against such levy.

The conceptual authority of levy of Service Tax has been upheld by various courts including Supreme Court in various cases some of which is given below :

- Chartered Accountants' Association u. Union of India (2001) 115 Taxman 543 (Gujarat High Court)

- ☞ Tamilnadu Kalyana Mandapam Association u. Union of India & others (2004) 267 ITR 9 (Supreme Court)
- ☞ Bharat Sanchar Nigam Ltd u. Union of India & others (2006) 4 STJ 1045 (Supreme Court) (2006) 2 STR 161
- ☞ All India Federation of Tax Practitioners u. Union of India (2007) 10 STJ 201 (Supreme Court) (2007) 10 STT 16 (SC) (2007) 7 STR 625 (SC)

The decision of Kerala High Court in Mallappuram District Parallel College Association & others V. Union of India & others (2006) 4 STJ 9 is unique assumes and special significance.

The brief fact of the case is as follows:

- ☞ The Service tax department issued notices to Parallel Colleges in Kerala for levy of Service Tax under the category Commercial Training and Coaching.
- ☞ Parallel Collages were approved study centres for various Universities offering distance education courses.
- ☞ In this case the Kerala High Court held that levy of Service Tax for Services rendered by the Parallel Colleges but simultaneously providing exemption to regular affiliated colleges is patently discriminatory and violative of Article 14 of the constitution of India.
- ☞ However high court has clarified that judgment has been rendered on peculiar facts applicable to parallel colleges in Kerala and this is not to be treated as declaring the section as unconstitutional, in so far as any other category of educational institutions or training centre is concerned.

The above decision of High court is restricted in its application and does not render the levy of service tax unconstitutional. It has held that only taxing the Parallel Colleges and simultaneously non taxing regular affiliated colleges as discriminatory and hence violative of Article 14 of the Constitution of India.

The Constitution (95th Amendment) Act 2003: The Government made the constitutional amendment which will provide for formal levy of tax on services by Central Govt. and to enable the state to collect and appropriate proceeds of the levy. Though the constitution (95th Amendment) Bill has since been passed by both the houses of parliament but the same has not been notified so far for the enforcement.

Brief of the Constitution (95th Amendment) is given below:

- (i) In the VII Schedule in the constitution, in List-I – Union List, entry “92 C – Taxes on Services has been inserted
- (ii) A new Article 268A has been inserted. It reads as follows;

268A (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States in the manner provided in clause(2)

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be –

 - (a) Collected by Government of India and the States :
 - (b) Appropriated by the Government of India and the States

in accordance with such principles of collection and appropriation as may be formulated by the Parliament by law.

A consequential amendment of Article 270 of the constitution has been made to enable parliament to formulate by law principles for determining the modalities of levying the service tax by the Central Government and collection of the proceeds thereof by the Central Government and the State Governments.

Essential features of Service Tax in India

- ☞ Service tax is payable only on receipt of payments for service rendered.
- ☞ There is no separate enactment covering service tax . The provision of service tax is contained in Chapter V of Finance Act 1994
- ☞ Half early returns have been prescribed.
- ☞ It vastly relies in Self Compliance .
- ☞ The Service Tax is administrated more by way of notifications and circulars.
- ☞ The term service has not been defined. Only individual services has been defined.
- ☞ It is a feature of services that the location of supply or of consumption is often elusive.
- ☞ This is particularly important for international trade in services, where two problems arise.
 - ☞ First, rules must be devised to define what actually constitutes as export or import of a service; defining the location of a service supply is a prerequisite for effective treatment of traded items.
 - ☞ Second, the non-tangibility of services makes it difficult to deter purchases of services by physical checks at border points or inland.
- ☞ One general problems of taxing service is that it is very difficult to define service sector precisely and to measure its output. The definition of service given by Mr. Hill, an expert is considered to be the best definition of the term Service. According to him

“A service may be defined as a change in the conditions of a person, or of a good(s) belonging to some economic unit brought about as a result of the activity of some other economic unit.”

The Important happenings in service tax era is given below

Date	Happening
01.07.1994	Introduction of service tax in India @5 percent by Finance Act, 1994
01.01.2002	Introduction of PAN based service tax code numbers for assesses
16.08.2002	Credit of service tax on input service allowed for the first time.
01.04.2003	e-filing of service tax returns allowed
14.05.2003	Rate of service tax enhanced to 8 percent
01.07.2003	Eight digit accounting codes prescribed for taxable service
10.09.2004	Rate of service tax revised from 8 percent to 10 percent
10.09.2004	Imposition of education cess on service tax
10.09.2004	- CENVET credit Rules 2004 come into force - concept of input service distribution introduced
15.03.2005	- Export of Service Rules 2005 notified
01.04.2005	Exemption scheme for small service providers (Rs.4 lakhs w.e.f. 1.4.2007, Rs.8 lakhs, w.e.f. 1.4.2008, Rs. 10 lakhs)
01.04.2005	- Due dates for payment of service rescheduled from 25 th to 5 th day and payment of service tax for March quarter / month to be made in March - Invoices to be issue issued within 14 days of completion of service or receipt of payment whichever is earlier.
16.06.2005	Service tax levied on deemed import of services
16.06.2005	Service tax (Registration of special category persons) Rules 2005 notified.
16.06.2005	New Forms ST-1, ST-2 and ST-3 introduced
18.4.2006	Rate of service tax enhanced to 12 per cent
19.4.2006	New valuation rules, i.e Service Tax (Determination of value) Rules, 2006 notified
19.4.2006	Rules for taxability of deemed imports of services. I.e Taxation of Services (Provided from outside India and received in India) Rules, 2006 notified.
1.10.2006	Scheme for Large Taxpayer Units (LTUs) launched.
1.4.2007	Mandatory e-payment of service tax by specified assesses.
1.4.2007	Revision of Service tax returns allowed for first time.
1.6.2007	Belated filing of service tax returns allowed to be filed with fine

Future outlook

The tax reform committee headed by Dr. Vijay Kelkar has recommended the levy of Goods and Services tax (GST) which is common tax for goods and services with availability of CENVAT credit for assesses. The Finance Minister in 2006-07 budget has announced that goods and services tax shall be introduced from April 2010.

If GST is implemented it will benefit in the following ways.

- 1) It would end the prevailing distortion in good and services taxation.
- 2) It would lower the cost of compliance.
- 3) Enhance compliance level, results in higher tax collection.
- 4) It would reduce revenue leakage.
- 5) It will avoid tax cascading effect.
- 6) It will bring transparency in the transaction and leaves a good audit trail

The Service tax regime is regulated mainly by following :

- ☞ Finance Act 1994 as amended from time to time.
- ☞ Service Tax Rules 1994 as amended from time to time
- ☞ CENVAT credit rules 2004 as amended from time to time. It may please be noted that the CENVAT Credit Rule 2004 has suspended Service Tax Credit rules 2002.
- ☞ Service Tax (Advance Ruling 2003)
- ☞ Export of Service Rules 2005
- ☞ Service Tax (Determination of value) rules 2006
- ☞ Taxation of Services (provided from outside India and received in India) Rules 2006
- ☞ Works contract (composition scheme of payment of Service Tax) Rules 2007

Further it is also governed through various notifications and circulars, trade Notices issued from time to time.

The Law on Service Tax is still evolving. When a law is evolving it lacks clarity also. It throws up challenges to both the department and as well to the practitioners. Based on experience gained, every year new services are introduced, definition of services undergo changes, Rules governing centvat credit, Export &, Import of services and Valuation of services undergo more frequent changes. In the process most of us are not in a position to keep pace with the latest developments and not to speak about important Judicial pronouncements.

This programme is intended to fill this gap. This programme is devised in such a way it covers all procedural aspects. An effort has been made to cover various services which are more common in day to day Business, Industries and Profession. Importance has been given in analyzing CENVAT Credit Rules, which every one of us. either in Profession or in Industry, has to face in day to day activities

REGISTRATION OF SERVICES PROVIDED

WHO ARE TO BE REGISTERED

- ☞ Every Services provider who is liable to pay service tax is obliged to get himself registered.
- ☞ All service providers with value of taxable service exceeding Rs. 9 lakhs has to get themselves registered
- ☞ Each premise from where service is rendered should be registered. However in case of centralization registration of individual premises is not required to be registered.
- ☞ Under certain circumstances certain user / receiver of services has to get himself registered, example Good Transport Agency, importers of service
- ☞ In the case of Insurance auxiliary services rendered by the Insurance Agent it is the Insurance Company which is carrying on the insurance business who has to get himself registered. (Provisio to Rule 2(1)(d)(iii) and (iv) of the Service Tax Rules 1994
- ☞ An Input Service Distributor is required to get himself registered with effect from 16.6.2005.

TIME LIMIT FOR APPLICATION FOR REGISTRATION

- ☞ The service provider is to get himself registered within 30 days from the date on which service tax is levied. (Rule 4(1) of the Service Tax Rules)
- ☞ In case of person commencing a new business who attract service tax for the first time should make an application for registration within 30 days from the date of such commencement of rendering the taxable service.
- ☞ If he decides to avail the threshold exemption of Rs. 10 Lacs , then he shall make an application for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakhs rupees.[Rule 3(2) of Service Tax (Registration of Special Category of Persons) Rules, 2005]

PROCEDURE FOR APPLICATION OF REGISTRATION

- ☞ Application for registration shall be made in Form ST 1 (Rule 4 (1) of Service tax Rules, 1994)
- ☞ Single application is sufficient in respect of all services (Rule 4 (4) of Service tax Rules, 1994)
- ☞ If Service provider is an individual he should get registered in his individual name.
- ☞ Where the individual render the services in the name of sole proprietary concern such concern is required to get itself registered. Similarly in respect of Partnership, HUF, Company, Co-operative Society they are to get themselves registered in their respective names.
- ☞ Certificate of Registration is to be granted within 7days from the date of receipt of application

on Form ST 2 (Rule 4(5) of Service tax Rules, 1994)

- ☞ If the certificate of registration is not granted within seven days, the registration applied for shall be deemed to have been granted. However the problem is to know the service tax registration no without which service tax cannot be deposited. (Rule 4(5) of Service tax Rules, 1994)

☞ **Centralized Registration**

- ☞ When Service provider is providing service from different premises over different cities, States can obtain the centralized registration. Service provider should get himself registered centrally from the premises where he has centralized billing system or centralized accounting system.

Circumstances when centralised can be sought for (Rule 4(2) of Service tax Rules, 1994)

When a service provider

- Provides such services from more than one premises or
- Receives such services in more than one premises

and he has a centralized billing or accounting system

and such centralized billing or accounting system are located in one or more premises

he can at his option register such premises for centralized registration

If the assessee is providing a taxable service from more than one premises , but where he does not have a centralized billing or accounting system, he has got no other alternative to register such premises individually (Rule 4(3A) of Service tax Rules, 1994)

Procedure for Centralized Registration

- ☞ Registration shall be granted by the Commissioner of Central Excise / Service Tax in whose jurisdiction the premises from where centralized billing or accounting is done. (Rule 4(3) of Service tax Rules, 1994)
- ☞ A Simple Annexure giving following details has to be given alongwith the application.
 - 1) Residential address of the proprietor / partners.
 - 2) Name and address of the “Authorized Signatory”
 - 3) Address and Telephone nos. of the premises / office where centralized accounting / billing is being carried out.
 - 4) Proof of address of the premises / office sought to be centrally registered.
 - 5) PAN/TAN No. of the assessee.
 - 6) Whether the application is on the basis of Centralized Billing or Centralized Accounting System.?

- 7) List of taxable service / services to be rendered.
 - 8) List of branches, offices of premises of the assessee along with postal addresses, e-mail address and telephone nos.
 - 9) Whether recoveries are effected through credit / debit notes ? Yes / No.
 - 10) Previous year's audited balance sheet, if any
 - 11) Specify the reasons for seeking centralized registration instead of seeking registration with jurisdictional commissioner / chief commissioner.
 - 12) The copies may be self-certified by the applicant.
 - 13) In case of doubts in select cases, original documents may have to be presented for across the counter verification and return.
- ☞ It is also possible to have a zonal or regional centralized registration, for example in the case of Banks having numerous branches rendering various services, each zonal / regional offices can obtain centralized registration of branches coming under its jurisdiction.
- ☞ **Changes in Particulars Submitted Regarding Registration.** (Rule 4(5A) of Service tax Rules, 1994)
- ☞ The Service provider is required to intimate Department if there is any changes in the information provided in Form ST1 or he wants to give additional information. The details such changes must be given within 30 days of such changes.
- ☞ A certificate can be amended if there is a change in the name of the assessee or place of business or if some new services or branches are to be added.
- ☞ While intimating any change in the information, the assessee should submit original registration certificate
- ☞ Department will issue the amendment registration certificate after canceling the original registration certificate issued earlier.

Obtaining Service Tax Code Number:

- ☞ Every Service tax assessee is required to obtain STC no. based on the PAN. For this a separate application is to be made along with the ST1 Form.

Surrender of Registration Certificate

- ☞ When service provided ceases to provide taxable service he should surrender his service tax registration certificate immediately. (Rule 4(7) of Service tax Rules, 1994)
- ☞ Where the service provider transfers his business the transferee is required to obtain a fresh certificate of registration. (Rule 4 (6) of Service tax Rules, 1994)

Penalty of Failure of Registration

Failure of registration may attract a penalty upto Rs.1000/- under Section 77 of the Finance Act, 1994. However, such penalty could be waived in case the assessee proves that there was

reasonable cause for such delay (Section 80 of the Act).

Issue of Duplicate certificate

The assessee is required to make written request for 'duplicate' registration certificate. The same will be issued by the Department after suitable entry in the registers/records of the Office.

Transfer of Business:

In the event of transfer of the business, the transferee should obtain a fresh certificate of Service Tax registration. The transferee will have his own PAN.

List of documents required for New Registration

<u>S.No</u>	<u>Documents</u>	<u>Proprietorship</u>	<u>Partnership</u>	<u>Pvt.Ltd.Company</u>	<u>Centralised Registration</u>
1	Form ST-1	✓	✓	✓	✓
2	Application for STC Code No	✓	✓	✓	✓
3	PAN Card Xerox copy	✓	✓	✓	✓
4	Identity Proof (PAN Card, Voter I.D, Ration Card, Passport, Driving License)	✓	✓	✓	✓
5	Address Proof (Passport, Ration Card, Voter I.D, Driving License, Telephone Bill latest two months, Bank Account Statement latest two months, Lease Agreement)	✓	✓	✓	✓
6	Partnership Deed		✓		
7	Memorandum and Articles of Association			✓	✓
8	Board Resolution for signing Authority			✓	✓
9	Bank Statement	✓	✓	✓	✓
10	Authorisation Letter	✓	✓	✓	✓
11	Annexure A				✓
12	Audited Balance Sheet latest	✓	✓	✓	✓
13	List of Branches and their address proof (VAT Registration Certificate)				✓

The copies may be self-certified by the applicant. In case of doubts in select cases, original documents may have to be presented for across the counter verification and return

Whether a service provider can make payment of Service Tax and file returns before the grant of registration by the proper officer?

No. However, service provider should apply well in advance to obtain registration, which is normally granted within 7 days of filing of application. Since service tax is payable once in a month or quarter, an assessee gets sufficient time for registration.

INPUT SERVICE DISTRIBUTOR

- ☞ An input service distributor is an office or an establishment of a manufacturer or provider of taxable services
- ☞ It receives tax paid invoices of input services procured on which Centvat credit can be taken.
- ☞ It distributes such credits to its units providing taxable services or manufacturing excisable goods.

The distribution of such credit is subject to the various conditions:

- ☞ The credit distributed against an eligible document shall not exceed the amount of service tax paid thereon
- ☞ Credit of service tax attributable to services used in a unit exclusively manufacturing exempted goods or exclusively providing exempting services shall not be distributed
- ☞ He should issue an Invoice or bill or challan as the case may be in respect of credit distributed for each of the recipients of credit distributed.
- ☞ The same shall be signed by the Input Service Distributor or a person authorized by him
- ☞ They should be serially numbered
- ☞ **They should contain the following information**
 1. the name, address and registration number of the person providing input services, and the serial number and date of invoice, bill or as the case may be
 2. the name and address of the said input service distributor
 3. the name and address of the recipient of the credit distributed
 4. the amount of the credit distributed.

An input service distributor is required to take separate registration

Billing for Service Tax

- There is no prescribed format for billing or invoice. The assessee can use his own Billing / Invoice / Challan. But they should contain the following information.
 - a. Name and Address of the premises from where the service is rendered / provided.
 - b. Registration Number granted under the Act / Rules.
 - c. Description of the Nature of the service
 - d. Amount / value of the service.
 - e. Service tax payable.
 - f. Running serial number of the invoice.
 - g. Name and Address of the person receiving the taxable service.
- F However banking and other financial companies need not issue separate invoice or bill or challan. The document issued by them need not fulfill the following conditions.
 - a) They need not be serially numbered.

- b) They need not contain the address of the person receiving taxable service.
 - c) It is sufficient if it contains other information.
- Invoice or Bill should be signed by the service provider.
 - Where the amount charged is inclusive of service tax, the bill should make it clear that amount charged is inclusive of service tax.
 - Where the Service provider pays other taxes such as sales tax, etc these taxes shall not form part of the gross amount.
 - With effect from 1.4.2005, service provider is required to issue the invoice within 14 days from the date of completion of the service or receipt of payment there for whichever is earlier.

Where taxable service is provided continuously for successive period of time and as per the contract the value of such taxable service is determined / payable periodically then the invoice / bill / challan shall be issued within 14 days from the last date of the said each period.

CENVAT CREDIT – ISSUES AND REMEDIES

Issue No.1

Whether service tax paid on Group medi-claim policy, Workmen's accident policy, landscaping of factory garden etc. can be allowed as credit?

Expenses incurred towards outdoor catering in the canteen of the manufacturer, Medical personal accident policy, group personal accident policy, insurance, personal accident policy, personal vehicle services, landscaping of factory garden, catering bills.

CESTAT, Larger Bench, GTC Industries 2008 (12) STR 468

CESTAT, Bangalore in Millipore India Limited 2009 (236) ELT 145

CESTAT, Mumbai in Endurance Systems India Private Limited 2009 9237) ELT 204

Expenses which form part of manufacturing cost as per CAS 4 will be allowed as credit.

Issue No.2

Issue relating to Importance of Truck numbers on the Documents based on which credit has been availed.

Cenvat credit was availed on the invoice issued by registered dealers. It was alleged by the department that merely invoice was received and physically no inputs were delivered. Summons was issued to the truck owners who did not respond and it was later found that the addresses available on the record were fake. As the department did not deny genuineness of the truck numbers credit was allowed.

CESTAT, Delhi Ajay Industrial Corporation 2009 (237) ELT 175

Issue No.3

Whether Penalty under section 11AC can be imposed when Cenvat Credit reversed prior to issue of Show Cause Notice.

It was held by CESTAT, Mumbai, that provisions of section 11AC of Central Excise Act, cannot be invoked and penalty equal to duty amount is not imposable when the Cenvat Credit wrongly availed

by the assessee was reversed immediately on being notified by the department and the same was done even prior to the issue of SCN. 2009 (237) ELT 95 Balaji Amines Limited.

Issue No.4

What is the position in law when depreciation as well as Cenvat Credit is availed on the Capital Goods?

The appellant ACC Limited had taken depreciation under the Income Tax Act, as well as availed Cenvat Credit on capital goods. The appellant reversed the depreciation as soon as mistake was noticed. It was held that Cenvat Rules do not have provision to allow credit on capital goods on withdrawal of depreciation claim. 2009 (237) ELT 77, Principal Bench, New Delhi.

In Sri Vishnu Shankar Mill Limited, CESTAT, Chennai, 2007 (5) STR 30 the appellant had availed credit and also the depreciation under Income Tax Act. The Cenvat value of goods were deducted by income tax authorities and assessment finalized. Since the Cenvat value of the goods was deducted by the income tax authorities for calculation of taxable income and certified copy of assessment order was produced before the Tribunal it was held that there was no simultaneous availment of credit and depreciation.

Issue No.5

Whether goods which are received beyond the date of their expiry are eligible for Cenvat Credit?

The appellants received duty paid biscuits manufactured by them from one of their customers. They wanted to claim Cenvat Credit on the said goods which were returned. An inquiry was conducted by the Superintendent which revealed that the said biscuits were received after their expiry date printed on the packets and hence were unfit for human consumption. It was held that since the rejected goods are not fit for re-processing or remaking the appellants are not entitled to Cenvat Credit. CESTAT, Principal Bench, New Delhi, U.S.Foods Private Limited 2009 (236) ELT 719.

Issue No.6

Whether Capital Goods which are acquired on hire-purchase, lease or loan should be only through a finance company and not otherwise?

The appellants acquired certain capital goods on hire purchase from a Company which is not a Finance Company as per Reserve Bank of India Rules. On reference, the CESTAT, Ahmedabad Bench, granted full stay on the ground that prima facie such condition do not exist in Cenvat Credit Rules. Wimplast Limited 2009 (236) ELT 700.

Issue No.7

Whether assessee can maintain any procedure for recording input used in manufacture of exempted and dutiable product under Rule 6?

In Nirma Limited reported in 2009 (236) ELT 695 the CESTAT, Ahmedabad bench granted full stay when appellant followed separate procedures for more than one input used in manufacture of dutiable and exempted goods. In the case of one input the appellant recorded the quantity going in exempted products in Form IV register after debiting RG 23A part 1 and not availed credit on the quantity of inputs entered in Form IV while in case of other input the appellant debited the duty at the time of issue of the input for manufacture of exempted goods. It was the contention of the department that procedure was not sufficient as inputs not separately stored and accounted for and separate records not maintained. The Bench held that there is no specific procedure specified by the Board and what is to be insured is that the credit is not taken in inputs going into exempted

products. As the appellant has ensured that credit is reversed in advance there is a strong case of waiver of pre-deposit.

Issue No.8

Whether credit available on inputs/capital goods used in power plant set up by manufacturer?

Service tax paid on charges paid for getting cement brand price and overhauling of DG set installed in power plant. Held, Cenvat credit used on inputs/capital goods used in power plant set up by manufacturer is admissible if final product is dutiable. Hence credit is available on overhauling of DG set installed in power plant. CESTAT, Ahmedabad, Sanghi Industries Limited 2009 (236) ELT 617.

Issue No.9

Whether Cenvat Credit is allowed on Mobile Phones?

A common question in the minds of the service providers and manufacturers. It is allowed as there is no specific provision in the Rules to disallow. CESTAT, Mumbai, Indian Rayon & Industries Limited, 2006 (4) STR 79.

Issue No.10

Can credit be taken on photo copies of duty paying documents?

Credit taken on photocopy of bill of entry certified by bankers and notary public as triplicate copy of bill of entry was misplaced the information of which was given to the Police and customs authorities. Held that credit was permissible on photocopy of authenticated invoice and triplicate or attested copy of bill of entry. CESTAT, Mumbai, Vardhman Acrylics Limited, 2006 (4) STR 489.

Issue No.11

Whether amounts can be collected under Rule 6(3) from the buyers and if so should the same be deposited under Section 11D of the Central Excise Act?

8% amount was debited in the Modvat account and collected from customers. Debited amounts to payment of the stipulated amount. Department contends that amounts collected from customers should be deposited under Section 11D. The Larger Bench of CESTAT held that payment of 8% is as per rules and the appellant has not collected any amount from buyers which are not paid to Government. Since the amounts recovered from the buyers not retained by the appellant there is no question of deposit under section 11D. Section 11D is applicable only when amount collected as duty and it is only to ensure that manufacturers do not collect amounts falsely representing as excise duty and retain the same unjustly. CESTAT, Larger Bench, Unison Metals Limited, 2006 (4) STR 491.

Issue No.12

Whether input service tax credit can be taken on the date of issue of cheque or realisation of cheque?

Credit of service tax paid on input service can be availed only when payment is made. Whether credit should be taken on the date of issue of cheque or realisation of cheque was addressed by the Mumbai Bench of CESTAT in Ahmednagar Forgings Limited, 2009 (14) STR 402. It was held that as the amount of cheques for which credit was raised in PLA was not dishonoured and the said amount was credited to the Government treasury the date of issue of cheque to the service provider was the relevant date of taking credit.



BACKGROUND MATERIAL FOR 2nd TECHNICAL SESSION

CA. K Sivarajan

Role	Representative Experience
Designation: Director Serviceline name: Indirect Taxes	• Specialist area: Excise, Service Tax and VAT • Brief snapshot of work experience and responsibilities: Has more than 12 years of experience in tax practice and advises clients on a range of indirect tax laws including Central Excise, Customs, Service Tax, VAT/ Sales Tax, Foreign Trade Policy and SEZ. Represents clients before various Tax Authorities and has appeared before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and Sales Tax Appellate Tribunal (STAT) • Type of client experience undertaken: Served clients across industries including those in manufacturing and trading, real estate and infrastructure, IT and ITES and financial services • Editorial contributions, if any: ◦ Contributes articles to various professional journals and business magazines including Service Tax Review, Excise Law Times and Consolidated Commercial Digest. ◦ Co-authored a book on 'User Guide to Tamilnadu VAT' published by the Chartered Accountants Study Circle (Regd.), Chennai ◦ Made presentations at various Forums including Chambers of Commerce, Industry Associations, Professional Institutes & Chapters and National Academy of Customs, Excise and Narcotics • Professional memberships, if any: ◦ Member, Expert Committees on Indirect Taxes & VAT, Madras Chamber of Commerce and Industry ◦ Member, Policy Panel, CII, Southern Region ◦ Member, Taxation Committee, Southern India Chamber of Commerce & Industry ◦ Member – Executive Committee & Editorial Board – The Chartered Accountants Study Circle, Chennai
K.Sivarajan is a consultant in indirect taxes and also represents clients before Tax authorities including the Appellate Tribunal. He has considerable experience in advising and representing clients in a range of indirect tax laws including Central Excise, Customs, Service Tax, VAT/ Sales Tax, Foreign Trade Policy and SEZ	
Education / Qualification • Fellow member of the ICAI • Graduate member of the ICWAI • Commerce graduate from University of Madras	
Photo 	

RENTING OF IMMOVABLE PROPERTY SERVICES

Renting of immovable property

Section 65(90a) - 'renting of immovable property' includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include –

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre

Explanation 1 – For the purpose of this clause, “for use in the course of furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings

Explanation 2. – For the removal of doubts it is hereby declared that for the purpose of this clause 'renting of immovable property' includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property

Taxable Service

Section 65(105)(zzzz) - “any service provided or to be provided to any person, by any other person, in relation to renting of immovable property for use in the course of furtherance of business or commerce”

Explanation 1 – For the purposes of this sub-clause, 'immovable property' includes-

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include -

- (a) vacant land solely used for agriculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly identical to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purpose; and
- (d) building used solely for residential purposes and building used for the purposes for accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities

Explanation 2- For the purpose of this sub clause, an immovable property partly for use in the course of furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course of furtherance of business or commerce.

Issues

- 1. What is the difference between 'land' and 'vacant land' used in the definition?**
- 2. Whether building used for educational purpose is also excluded from the levy?**
- 3. Whether property tax paid by the property owner is deductible from the gross amount?**
- 4. Whether any interest or penalty paid by the property owner in case of delayed payment is also deductible?**
- 5. Whether service tax is charged on the renting as such or only on the services in relation to the renting transaction?**
- 6. Whether Construction service used to build the property can be used as 'input service' for the 'output service' of 'renting of immovable property'?**
- 7. Whether Delhi High Court's judgment in Home Solution Retail India Ltd is binding on all the tribunals and quasi judicial authorities or only within the jurisdiction of the Delhi High Court?**

REAL ESTATE AGENT SERVICES

Real Estate Agent

Section 65 (88) - "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting of real estate and includes a real estate consultant;

Real Estate Consultant

A real estate consultant is defined in section 65(89) as "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design. Development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

Taxable Service

Section 65(105)(V) - any service provided or to be provided to any person, by a real estate agent in relation to real estate.

Issues

- 1. Whether advocates preparing sale and purchase deed in connection with the acquisition of real estate will also be covered under this category?**
- 2. Whether engineers or chartered engineers evaluating the life of the building will be covered under this category?**

3. Whether civil contractors engaged in the execution of the property will be taxed under this category?

4. Whether the person procuring orders for the builders will have to pay tax under this category?

5. Whether a Chartered Accountant providing service in relation to real estate service will be taxed under this category or in the category of 'chartered accounts service'?

CLUB OR ASSOCIATION SERVICES

Club or Association

Section 65(25)(a) - means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include-

(i) any body established or constituted by or under any law for the time being in force; or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

(iv) any person or body of persons associated with press or media;

Taxable Service

Section 65(105)(zzze) - any service provided or to be provided to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;

Issues

1. Whether exemption under Income Tax Act gives an automatic exemption under Service Tax also?

2. Whether levy of service on club or association is valid, considering the principle of mutuality?

3. Whether services provided by a stock or commodity exchange and corresponding clearing and settlement organizations are liable to pay tax under 'club or association service'?

4. Whether Resident Welfare Associations can be taxed under this category?

5. Whether benefit under *Notification No. 8/2007 – St, dated 1-3-2007* which allows an exemption to resident welfare association subject to certain conditions is also available to a resident welfare association registered as a co-operative society?

COMMERCIAL TRAINING AND COACHING SERVICES

Commercial training or coaching

Section 65(26) - “**commercial training or coaching**” means any training or coaching provided by a commercial training or coaching centre.

Commercial Training and Coaching Centre

Section 65(27) - “**commercial training or coaching centre**” means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;

Taxable service

With effect from 16-6-2005 section 65(105)(zzc) defines taxable service as any service provided or to be provided to any person by a commercial training or coaching centre in relation commercial training or coaching.

Issues

1. Whether issue of certificate is a pre-requisite to be taxed under this category?
2. Whether service tax is levied on postal coaching?
3. Whether individuals going to houses to impart tuition/coaching would be chargeable to service tax?
4. Whether free summer training /in house training provided by employers to their employees are covered under service tax net?
5. Whether value of study material provided is included in the assessable value?
6. Is it valid to levy tax on parallel colleges?
7. Whether commercial intent of the coaching centre is a must to attract levy under this category of service?
8. Whether the word ‘commercial’ qualify for ‘training or coaching’ or for the word ‘coaching and training centre’?
9. Specific exemptions under this category of service.

MANAGEMENT, MAINTENANCE OR REPAIR SERVICE

Management, maintenance or repair

Section 65(64)- ‘**management, maintenance or repair**’ as “management, maintenance or repair” means any service provided by—

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to,—

- (a) management of properties, whether immovable or not;
- (b) maintenance or repair of properties, whether immovable or not; or
- (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;

'Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this clause,—

- (a) “goods” includes computer software;
- (b) “properties” includes information technology software;

Taxable service

Section 65(105)(zzg) - any service provided or to be provided to any person, by any person in relation to management, maintenance or repair

Issues

- 1. Whether maintenance or repair of software is liable to service tax? If it is so, from which date the same is taxable?**
- 2. Is there a difference between ‘computer software’ and ‘Information technology software’?**
- 3. Whether the service provided by third party during the guarantee period is liable to service tax?**
- 4. Whether restoration of old/used cylinders to workable condition come under the scope of maintenance or repair service?**
- 5. Whether repair and maintenance of road will be excluded from the service tax net under ‘commercial or industrial construction services’ or taxed under ‘Management, maintenance or repair services’?**
- 6. Whether operation and maintenance of power plant, water treatment plant inside the premises of a factory will be taxed under this category?**

MANPOWER RECRUITMENT SERVICES

Manpower recruitment or supply agency

Section 65(68) - ‘manpower recruitment or supply agency’ as ‘manpower recruitment or supply agency’ means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

Taxable Service

Section 65(105)(zzg) - any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;

'Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate

Issues

- 1. Whether the campus interviews conducted by educational institutes like IITs, IIMs are liable to pay service tax under this category?**
- 2. What is the value on which service tax is to be charged in case of temporary supply of manpower by the manpower recruitment or supply agencies?**
- 3. Whether manpower supply by one software company to another for software development is liable to tax under this category or any other category?**
- 4. Whether Chartered Accountants are also liable under this category of service?**

CENVAT CREDIT ON INPUT SERVICES

Rule 2(l) of the Cenvat Credit Rules, 2004 – ‘input service’ means any service,-

- (i) used by a provider of taxable service for providing an output service, or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

Rule 2(p) of the Cenavt Credit Rules, 2004 – ‘output service’ means any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, provided by the provider of the taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions ‘provider’ and ‘provided’ shall be construed accordingly.

Rule 3(1) of the Cenvat Credit Rules, 2004

A manufacturer or producer of the final products or provider of a taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of –

- (i) _____
- (ii) _____
- (ix) the service tax leviable under section 66 of the Finance Act;
- (x) the education cess on taxable services leviable under section 91 read with section 95 of the

Finance Act, 2004; and

(xa) the secondary or higher education cess on taxable service leviable under section 136 read with section 140 of the Finance Act, 2007; and

(xi) the additional duty of excise leviable under section 85 of the Finance Act, 2005

Paid on –

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of the output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No 214/86 – Central Excise dated the 25th March, 1986, published in the gazette of India vide number GSR 547(E), dated 25th March, 1986 and received by the manufacturer for use in, or in relation to, the manufacture of the final product, on or after the 10th day of September, 2004.

Rule 4 of the Cenvat Credit Rules, 2004 – Conditions for allowing CENVAT credit –

(7) The CENVAT Credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred in Rule 9.

Rule 6 of the Cenvat Credit Rules – Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services

(5) Notwithstanding anything contained in the subrules (1), (2) and (3), credit of the whole service tax paid on the taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services.

Issues

1. What is the scope of the expression ‘in relation to’ used in the definition?
2. Whether ‘use’ can include ‘intended for use’?
3. Whether credit of tax paid on the services used at post manufacturing stage can be availed?
4. Whether tax paid on services used beyond the factory gate can be used as input service tax credit? Analysis of the term ‘place of removal’.

5. Whether input service tax credit can be used to pay the service tax liability under 'Transport of goods by road service'?
6. Whether manufacturer can avail credit of input service tax paid on usage of mobile phone by the employees?
7. Whether credit of service tax paid on cargo handling service used to export goods can be taken by the manufacturer?
8. Whether service tax paid on input services like employee welfare activities such as health, insurance, garden, construction of residential colonies can be taken as credit for the manufacturer or the output service provider?
9. Whether input tax paid on the canteen service can be used as credit on output liability?
10. Classification of service considering the cenvat credit benefit available under Rule 6(3) of the Cenavt Credit Rules, 2004.
11. Whether Cenvat credit is eligible on Goods Transport Agency payments in relation to construction of factory?
12. Whether it is required to receive the service in the factory for the availment of credit?
13. Whether cenvat credit is eligible on erection and commissioning of windmills situated far outside the factory?
14. Whether Cenvat credit is eligible on input service used in operation and maintenance of power plant?

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BACKGROUND MATERIAL FOR 3rd TECHNICAL SESSION

BIO DATA OF CA. MADHUKAR N HIREGANGE

Madhukar N Hiregange . B.Com., FCA, DISA(ICAI). Passed CISA. Completed the Landmark Education Curriculum for Living. Regular contributor of articles to various professional and trade journals including the CA Journal, FKCCI, ELT & STR. He has jointly authored books on Modvat, Central Excise Law and Procedures, Central Excise made Simple for Chartered Accountants, Excise and Service Tax audit manual, Service tax made Simple Service Tax Concepts made Simple, K.VAT law and Procedure and Guide to VAT Audit in Karnataka.

He has been active in the field of spreading awareness for professionals on Indirect tax by conducting seminars and presenting papers for more than 10 years now. Also answering queries on pdicai.org and CA club India for the past few years. Had been a visiting faculty at various Management Institutes including ICFAI, ICSI, ICWAI ,and IIM Bangalore. He has also coached the Officers of the Central Excise and Service Tax Department. Presently Member of Regional Advisory Committee- Indirect Taxes Bangalore. Managing Trustee – Empower Education Foundation. Involved in efforts to make the Indirect Tax laws in India simple, certain and fair and also in empowering the practicing chartered accountants. Also interested in education of lesser privileged. Believes in “Value Based Practice and Life”.

Enabling Service Tax Practice

CA. Madhukar N Hiregange FCA

The background materials would cover a number of areas where the law and practice are to be understood as well of professional interest as under:

- Opportunities for Practitioners
- Aids for Practice
- Record Keeping [ST Returns]
- Demands & Appeals
- Departmental Audit
- Internal Audit of Service Tax
- Real Life History of Case

Professional Opportunities - Service Tax

The chartered accountant is a versatile professional who has unparalleled practical exposure and a tough examination. He/ she is certainly in the tops 1-2 % of the population in terms of education and knowledge. The area of service tax practice may not be much different from the practice in direct taxes which is much more familiar to this community.

Some of the areas where services are already being provided are as under:

1. **Where there are large projects in government or commercial sphere by proper tax planning indirect** tax costs which could form upto 20% of total cost can be reduced. The auditor with his knowledge could guide the client
2. **Initial Registration:** Registration is one of services that could be of help to the client..
3. **Initial Disclosures to department:** The books of account, procedures , documents copies, including important contracts.
4. **Initial Procedures on:** Maintaining the accounts, raising the bills, drafting quotation, filing of returns, payment of service tax, calculation of interest , standard operating procedures, controls to be instituted.
5. **Monthly/ Quarterly payment of Service Tax:** Especially the MNC will be interested about implications of agreements , contracts entered , tax payable , credit that can be availed.
6. **Opinions/ Clarifications:** Where the service tax consulting is given by a ca over a number of years whether industry is doing well or not the client could be able to structure optimally his availment of credits, payments towards liability of service tax thus ensuring smooth cash flow
7. **Six Monthly Return Verification/ Filing:****** where the client is keeping records , passing

entries ,what is required is to prepare returns which is a service provided by auditor.

Service Tax Review / Quarterly Audit: The service of seeing if the eligible tax/ cenvat credits have been taken is a work that most ca's have little expertise in so when they do internal audit they can also get services of a CA who is well versed in these aspects..

8. Department IAP or CAG audit Assistance: These audits are dreaded by the tax payer who normally has a very limited knowledge of the provisions and rules. Therefore a knowledgeable professional ca is needed .

9. Departmental letter reply: Almost every departmental audit has a 6- 20 objections. A reasonable reply is provided to the audits by ca with extracts of the law/ circulars or Tribunal Judgments.

10. Show Cause Notice Reply: The best learning generally come to the professional when he/ she handles the SCN reply as the result would also determine where he is perceived to be. At this point the professional should let the client know the chances in writing / mail.

11. Representation before adjudicating authority: This normally follows the SCN reply. All the important evidences and factual issues should be put forward at this point as it is possible to get all the details necessary

12. Reply / Representation at appellate forums: As in reply and representation at the Commissioner Appeals stage and Tribunal stage where large stakes are involved the assistance of an experienced pleader whether a CA or advocate maybe sought.

13. Effect of budget/ recent changes on activity: To be aware of the impact and indeed applicability of amendments in law, the client could be helped by auditor

Past errors rectification: Compliance with least difficulty considering the various exemptions, date of applicability, voluntarily done to avoid penalties.

14. Assistance to advocate at High Court/ Supreme Court: As the professionals cannot represent they can play the role of advising the advocates.

15. Other Area: These could be in training/ teaching, writing articles, assisting in drafting the notification or authoring.

However, before making his/her selection, the professional should remember that the subject of service tax is quite complex and he/she should first of all have exposure to this area plus proper training for desired results. The knowledge of central excise can be useful.

The formulae for success for the practitioner is that he should provided quality, at the price with grace and affection and there should be service in the practice.

Other Requirement for Practice

Ethical Standards

In the experience of the paper writer the adoption of high ethical values is the largest adder of

value to the professional

Practioner's Aids

Attend as many study circles/ seminars/ conferences/ workshops on subject as possible.

Buy / subscribe for the following: _

1. Central Excise Manual – R.K.Jain – Centax Publications
2. Central Excise Tariff Act – R.K.Jain – Centax Publications
3. Service Tax Reporter – Centax Publication
4. Ex Cus CD (updated quarterly) – Centax Publication
5. Law Crux – (additional laws covered but not stable)
6. Taxindiaonline.com, taxmanagementindia.com
7. Web site of ICAI pdicai (presently under re-construction)
8. CAalley.com
9. CAclubIndia.com
10. cbec.gov.in
11. exciseandservicetax.com
12. Number of Yahoo groups (Pune, Meerut,CA / CWA etc)
13. Sites of leaders in area (articles/ insights)
14. Service Tax Commentary by Taxmann Publications, Bharat etc.
15. Central Excise Made Simple/ Understanding ST- FAQs- Bharat, Centax etc.

The paper writer hopes that more and more professionals start practicing in this area of indirect taxation enabling development of the area.

RECORD KEEPING

Record keeping under service tax is one of the most critical factors from the point of view of compliance. Considering the level and scale of computerization in India, it is shocking to note that the assesseees who struggle the most with record keeping are those who have fully computerized system or even the ERP environment. Quite often assesseees end up using customized software either developed in-house or sourced from abroad, which do not fully cater to the reporting requirements under service tax. Surprisingly the entire indirect tax compliance would be outside the ERP, which means that none of the checks and balances is within the system.

Assessee also struggle due to ignorance as to the provisions of law as well as to the reporting requirements thereunder.

What are the records to be kept and whether there are any statutory records to be maintained?

There is no statutory record prescribed under service tax as far as record keeping is concerned. The assessee should follow the basic guidelines laid down here –

- ◆ A proper record should be kept of the materials received and used for the purpose of providing taxable services. The basic documents for this would be the Goods Received Notes and the Raw materials ledger in stores. Where the service provider has both taxable as well as exempted services, separate material accounts may be kept and Cenvat credits availed only on those materials used for providing taxable services. This can be done by segregating the material receipts at the GRN stage itself by having separate series for materials meant for use in taxable services. This should be followed up with proper physical control over stocks. Where stocks are transferred from one location to another, a system of having requisition slips can be followed in addition to stock transfer notes/invoices which would indicate the intended usage of the stocks so transferred.
- ◆ Next would be the task of identifying the input services to be used for providing services. To the extent possible, the services to be used for providing taxable services should be identified so that full credits can be claimed on the same. Where segregation is not possible, the same would have to be flagged off for applying the formula laid down in Rule 6 of CCR 2004
- ◆ As far as input services are concerned, they may be assigned codes while accounting the same in the financial ledgers to identify them in terms of the intended usage. Another effective way of doing this is by documenting the reasons for procuring the service at the time of raising of the work order on vendors/service providers which would facilitate proper tracking of such input services at subsequent stages.
- ◆ Proper recording of Cenvat credits in respect of inputs and input services. The assessee here can maintain a Cenvat credit register which would give in detail the amounts of credits availed. The register can furnish the following details – Entry serial number, vendor name, item description and description of input service, basic value of goods/services, basic excise duty or service tax, cess on duty/tax, GRN reference for receipts, payment reference for having paid the service charges + service tax to the input service provider, total credits available, amount debited, invoice/bill for such debit, closing balance of credits. The assessee should also record the credit figures correctly in financial ledgers which can then facilitate a system of reconciliation between the Cenvat registers and the financial ledgers.
- ◆ Care should be taken with regard to invoicing to ensure that proper breakups are given for the values so that the correct amount liable to service tax may be determined. For the purpose of filing of the ST 3 returns, detailed work sheets would have to be maintained clearly indicating the value of services billed, the amounts received towards such services billed, the amount of VAT/sales tax paid, the value of materials sold and the amounts

charged towards labour so that the correct amount of service tax payable may be ascertained.

- ◆ The assessee should also have a proper referencing system through which the various documents are linked. This linking can be brought about through quoting the bill numbers and the voucher references on the registers being maintained.
- ◆ The list of records is to be declared within the end of the month in which the first return being filed.
- ◆ Rule 5(3) makes it compulsory for an assessee to preserve records for at least a 5 years period.

Filing of service tax returns has been one aspect in service tax compliance which has been posing considerable problems for assessees. One of the main reasons is that service tax has to be paid not on billing basis but on receipt of consideration from customers.

The delays in filing entail fines and non filing an enquiry under best judgment

How to file the service tax return?

- ◆ Form ST 3 or ST 3A as the case may be has to be filed in triplicate to the Superintendent of Central Excise
- ◆ The return has to be filed once in six months and it contains the particulars of all the six months within 25 days of the end of the half year
- ◆ If the due date happens to be a public holiday, then the return can be submitted on the next working day immediately following the holiday.
- ◆ The return may either be submitted in hand or sent through Registered Post Acknowledgement Due
- ◆ The value of taxable services should be computed on the basis of gross amount received or advance received for services provided/to be provided
- ◆ The form has been made compatible for E-filing of returns.
- ◆ Details in respect of each service is to be provided separately.
- ◆ Service tax details and Cenvat credit details are combined.
- ◆ Even if assessee provides more than one service he is required to file only one return.
- ◆ A nil return is required to be filed if there are no transactions
- ◆ GAR 7 evidencing payment has to be filed along with the return
- ◆ If any amount representing interest or penalty is paid, then references of such payment along with the particulars are required to be made.

Can a revised return be filed?

Yes. Rule 7B of Service tax Rules 1994 allow an assessee to revise the return filed under Rule 7 to correct any error, omission or mistake within 90 days from the date of filing the return u/r 7.

Note: -

- ◆ *An annexure is provided to the said form (ST 3 return) providing tips for filing up the particulars of the return*
- ◆ *The form can be downloaded from the departmental website (www.cbec.gov.in)*
- ◆ *ST 3A is used when the assessee opts for provisional assessment. The assessee shall for this purpose make a request in writing to the ACCE/DCCE giving reasons for payment of service tax on provisional basis and the payment can be made on the taxable value as specified by ACCE/DCCE on provisional basis. The assessment would be finalised later and the provisions of Central Excise Rules with regard to provisional assessment would apply here. However, execution of bond would not be required here.*

DEMANDS AND APPEALS

However, it has been observed that assesses who are new to service tax, dread recovery proceedings and the thought of having to face a Show Cause Notice from the department. This fear is at times misused by few unscrupulous officers.

What happens when there is a short levy or short payment of tax or erroneous refund?

Section 73 of Chapter V of Finance Act 1994 as amended from time to time deals with such a scenario where there is case of short payment of service tax or short levy or erroneous refund of tax. In such cases, the Central Excise/proper Officer may within one year from the relevant date, serve a notice on the assessee/person chargeable with such service tax requiring him to show cause as to why he should not pay the amount specified. The period of one year for issuing such SCN (Show Cause Notice) can be extended up to five years in a case where such non-levy/short levy/erroneous refund/short payment was on account of fraud, collusion, wilful mis-statement or suppression of facts or contravention of any of the provisions . While computing the period of one year/five years the period for which the service of notice is stayed by an order of a court, shall be excluded.

The assessee would then have to furnish his replies to the said SCN within the time set out in the notice (which is normally a month).

Where there is a non-levy, short levy or erroneous refund, the assessee himself can pay the amounts due after ascertaining the dues himself and intimate the Central Excise Officer in writing who shall then not serve a SCN in respect of such amount paid. The Officer is empowered to determine the correct amount and issue SCN for the recovery of the same and in such cases, the period of one year can be from the date of intimation of payment, by the assessee.

As per section 73(1A), where the non-levy, short levy, erroneous refund was on account of fraud,

collusion etc., the assessee can pay the service tax amount in full as per the SCN issued along with the interest u/s 75 and penalty at 25% of the amount of service tax, within 30 days of the receipt of such notice and where so paid, the proceedings initiated shall conclude. Where service tax is paid in part, the Central Excise Officer can continue the proceedings to recover the balance amount due as per the SCN.

What happens when the service provider has collected service tax in excess of the amounts to be collected from the service receiver?

Section 73A (1) deals with such a scenario and the service provider would have to pay the amounts so collected to the Central Government. Where not paid, a SCN can be issued with regard to recovery of such amounts. Once the assessments have been finalised and if the amounts paid have been found to have been paid in excess, a refund claim can be filed for the same within six months from the date of notice by Central Excise Officer.

What is the interest for delay in payment or in cases where amounts have been collected in excess from customers?

The interest rate would have to be adopted in accordance with rate notified u/s 75 and 73B. The rate for both cases at present is 13% per annum.

Is provisional attachment of property possible?

Section 73C makes provisional attachment of property possible during pendency of proceedings u/s 73 or 73A. This can be done to protect the interests of revenue but with the permission of Commissioner of Central Excise. The attachment shall be by an order in writing and of property belonging to the person on whom the SCN is served. The attachment shall be only for six months from the date of the order unless extended by the Chief Commissioner of Central Excise but for a period of not more than two years.

Can mistakes apparent from record be rectified?

An order can be amended by the Central Excise Officer within two years from the date of passing the same to correct a mistake apparent from the record, u/s 74. Where any matter has been considered and decided by way of Appeal or Revision, any other matter on the order can be rectified with the exception of the matter that has been so decided. Amendment can be on one's own motion or through notice by assessee or CCE/CCE (Appeals). Where the rectification has the effect of reducing refund due to an assessee or increasing his liability, such assessee should be given a reasonable opportunity of being heard in the matter.

Can an order be revised by the Commissioner of Central Excise?

An order passed by a subordinate authority can be taken up and revised after proper enquiries u/s 84. He shall then pass an order in writing. Issues pending before CCE (Appeals) would be outside his purview. No revision can be made after two years from the date of passing of the order.

Where the assessee is aggrieved by the order of an authority subordinate to

Commissioner of Central Excise, where would the appeal be made?

As per section 85, the appeals shall be with CCE (Appeals). The Appeal shall be within three months from the date of receipt of the order of such authority. Where the assessee has reasonable cause for delay in filing the appeal, the time limit can be extended by CCE (Appeals) for further period of 3 months. Beyond the said 3 months there is no provision for condonation of delay. Supreme Court has ruled that beyond that period no condonation is possible. Orders would be passed in writing after a proper hearing.

When shall the appeal be with the Appellate Tribunal?

The appeal shall be against the order passed by the Commissioner of Central Excise or the CCE (Appeals). The appeal shall be within three months from the date of the order sought to be appealed against. The respondent shall then be required to file a memorandum of cross objections within 45 days of the receipt of notice as to appeal by the appellant. The prescribed fee would have to be paid at the time of Appeal. The scale would be as follows -

- ◆ Where the amount of tax + interest + penalty is Rs. 5 lakhs or less – Rs. 1000/-
- ◆ Where the amount of tax+ interest + penalty is more than Rs. 5 lakhs but less than Rs. 50 lakhs – Rs. 5000/-
- ◆ Where the amount of tax + interest + penalty is more than Rs. 50 lakhs – Rs. 10000/-

The application for grant of stay, rectification of mistakes, restoration of appeal or an application or any other purpose would have a fee of Rs. 500/-

The Board is also empowered to constitute a Committee of Commissioners/Chief Commissioners to refer matters to Board or to jurisdictional Chief Commissioner where it differs with the order passed by CCE or CCE (Appeals)

Where appeals are filed, the amount of tax in dispute would have to be deposited by the assessee unless it can cause undue hardship in which case, an application would have to be filed with the CCE (Appeals) or the Appellate Tribunal as the case may be for dispensing with the requirement by virtue of section 35F of CEA 1944 read with section 83.

Appeal to High Court

The appeal can be made against the order of the Appellate Tribunal when it involves a substantial question of law. Whether it involves a substantial question of law or not is something to be decided by the High Court. The appeal is to be made within 180 days from the date of receipt of the order sought to be appealed against with a fee of rupees 200 u/s 35G of CEA 1944 read with section 83 of Chapter V of Finance Act 1994 as amended from time to time. The High Court may even determine an issue which has not been determined by the Appellate Tribunal. The order of the High Court shall be appealable to the Supreme Court if the High Court certifies it to be fit for appeal.

Departmental Audit

Audit of service tax is an important mechanism and tool as far as the department is concerned as service tax constitutes a significant proportion of the Government's revenue (Today Rs. 65,000 Crores and growing year after year) and the audit of the records of the assessee paying service tax is one way of ensuring that the concerned assessee discharges the tax liability properly and honestly.

(a) What is expected of the auditor?

As far as the audit is concerned, the auditor is required to carry out his duties diligently in order to detect cases of non-compliance and procedural irregularities. Where ever the auditor comes across technical errors not having any revenue implications, he is expected to guide the assessee in undertaking corrective action. The auditor should ensure that the audit process is transparent with the assessee being given an opportunity to present his views on the audit findings before recovery measures are initiated.

The auditor is also expected to adopt a professional approach to his audit maintaining confidentiality. The auditor is expected to do a risk based audit taking into account the materiality concept. Materiality would be judged on the basis of impact of the error/weakness on the revenue.

(b) Action for audit

The auditor may follow the following stages for the purpose of conducting an effective audit. The task begins even before an actual visit can be undertaken to the assessee's premises. The stages can be as follows—

- ◆ Preparation of the master file containing the tax payer's profile
- ◆ Selection of the tax payer for audit on the basis of the profile and the risk factor involved
- ◆ Carrying out a desk review on the basis of the documents available pertaining to the assessee
- ◆ Formulating an audit plan on the basis of such desk review
- ◆ Visit the tax payer's premises and conducting the verification
- ◆ Noting down the errors/weaknesses/observations and appraising the assessee regarding the same besides obtaining his views on the same
- ◆ Suggesting improvements for the future in case of procedural weaknesses/errors
- ◆ Formulation of the draft audit report
- ◆ Issuing final audit report after due approvals from higher ups
- ◆ Follow up action for compliance

(c) Preparation of master file of the tax payer

The preparation of the master file is absolutely critical if the audit effort is to be effective. The

master file should ideally consist of –

Assessee profile giving details as to the assessee's business, marketing pattern, purchasing pattern, services, activities, categories for taxing the services, details of investment in joint ventures/subsidiaries, entities sharing common directors, income and expenditure pattern, details as to service tax paid in recent years etc

- ◆ The file should also consist of the returns and copies of documents obtained from the assessee like ST 3 returns, previous audited financial statements, incorporation certificates, partnership deeds, list of records maintained, copies of orders passed or matters pertaining to litigation, copies of previous audit reports, summaries of old working papers, information regarding billing, charging of service tax etc.

(d) Selection of tax payer for audit on the basis of the risk assessment

There are various ways of assessing the risk factor in an audit. Here the factors need not be quantitative alone and can even be qualitative. These factors may be analysed on the basis of the information in the master file on the assessee. One of the factors could be the drop in revenue from an assessee in recent years as compared to the previous years. The reviewer can calculate the associated service tax by multiplying the drop in incomes liable to tax from the assessee with the service tax rate. If the amount is found to be substantial, the case could be taken up for an audit.

Another aspect could be the track record of the assessee in the past. If the assessee has been found to be the non-compliant type, such cases could be taken up for audit. Another factor could be the activity itself and recent changes in service tax with regard to the category which is applicable to the activity in question. Here, the liability can arise as a result of new services being introduced, changes in the exemption scheme, etc. Even decisions given by the judiciary can sometimes lead to a different interpretation from the one that is currently prevailing.

One of the aspects could also be the location of the tax payer's unit. Units located in far-flung rural areas could also be audited to ensure compliance with the law as there is a possibility of such units being negligent of the developments in the field of service tax. Industrial/economic trends too may sometimes compel the assessee to overlook compliance part. This can happen if the industry/business is facing tough times in a highly competitive market. Businesses which are not competitive may face pressure from competitor's customers and this in a way could be reflected through drop in revenues.

(e) Audit scheduling

The audit scheduling must be done well in advance for all the high risk assesseees so that the man-power requirements can be met and teams assigned. Due notice would also have to be given to the assesseees as well as to the audit teams so that the necessary records would be ready for audits and the teams are well prepared. This would also give the scheduler an opportunity to reassign audits in case any of the assesseees asks for more time. While assigning teams, the record keeping system of the assessee as well as the complexities of the activities/ transactions should also be kept in mind.

(f) Carrying out a desk review on the basis of the documents available pertaining to the assessee

The desk review would involve a study of the information furnished by the master file in order to devise a proper audit plan. This study would indicate the areas which deserve attention along with the issues. This would enable the team to meet the objective. Where any information is not available in the master file, the same may be obtained from the assessee by writing to him and specifying the details required. The desk review should ideally highlight or at least indicate the core issues where there is likelihood of errors.

(g) Formulating an audit plan on the basis of such desk review

The audit plan gives overall direction to the audit and makes it effective. The plan can nevertheless indicate the focus areas and allot time for the same along with the personnel handling the area. Where the time for conducting an audit is short, and new areas are to be covered, the plan can effectively fill in the gap by identifying the new focus area to be covered along with the time allotted for the same. The audit plan should allot more time for core issues rather than for trivial ones. A good audit plan is one which assigns the right man for the right job besides the right amount of time.

(h) Visit the tax payer's premises and conducting the verification

The auditor should always make it a point to visit the site/branch where the activities relating to provision of services are carried out in order to really understand the nature of the service. Where this is not possible, the same can be done through a review of the agreements and the subsequent billing.

(i) Verification

The detailed procedures undertaken should ideally—

(i) Evaluate the internal controls of the tax payer

The auditor should examine the internal control mechanism within the organisation for ensuring the accuracy and authenticity of data. He should check the assignment of responsibilities and authorisation levels within the organisation besides the existence of a proper independent audit mechanism. Another test could be a review of the efficiency of the MIS (Management Information System). He should ensure that the various functions are linked. The techniques which the auditor could use here is the review of organizational charts, manuals and the internal audit reports, carrying out a review of the financial ledgers, vouchers and other records.

(ii) Supplement the audit plan

The areas stipulated by the audit plan should be covered. Generally all the important risk prone areas are to be covered to the fullest extent in order to avoid revenue leakage.

(iii) Ensure accuracy of conclusions

The procedures should be designed in such a way that the conclusions for the purpose of

reporting are arrived at correctly and should not be such that the assessee disputes the findings as inaccurate.

(iv) Noting down the errors/weaknesses/observations and appraising the assessee regarding the same besides obtaining his views on the same and Suggesting improvements for the future in case of procedural weaknesses/errors

The observations arrived at by the audit party should be documented carefully. Documentation would be critical not only to ensure proper reporting and follow up for collection of revenue but also as a referencer for the future. A standardized pattern may also be followed to facilitate easy reading of the observations.

Where ever possible, the auditor should also offer suggestions for the future which can also be documented so that the same could be followed up next time .

The auditor should also try to obtain the assessee's views on his audit findings and the same documented for the purpose of reporting. Where the assessee disputes his findings, the auditor should ask for additional evidence.

He should ensure that the assessee makes arrangements for paying the taxes due or pays the same.

(j) Formulation of the draft audit report

The auditor should come up with the draft audit report once he has completed the verification and obtained the assessee's views. The report should make it clear as to whether the assessee has agreed to his/her findings or disputed the same. Where the amounts have already been paid, the reference for the same is to be quoted. A copy of the draft report should be given to the assessee.

(k) Issuing final audit report after due approvals from higher ups

Once the draft has been sent to higher ups for review and approval and the same has been approved, the final report has to be prepared. The final report is to be prepared considering all the relevant findings made by the team during the audit and the points documented by them, by going through the audit plan, the working papers, documentary evidence obtained etc.

(l) Follow up action for compliance

The follow up action to recover revenue would be taken based on the final report. The recovery would be by following the procedure laid down for issue of SCN. The details as to audit follow up may be documented in the audit follow up register.

(m) Requirements for an effective audit

The audit team which has to evaluate the internal controls should be well trained. This requirement is a must where the assessee's records are computerized. Computerised records may also necessitate the use of CAAT (Computer Assisted Audit Techniques) by the audit team in order to arrive at proper conclusions The audit team should also be aware of the manner in which

the accounting software can be used.

The audit team members would also be required to have a sound knowledge of the accounting subject and the Accounting Standards mandated by the ICAI in order to carry out their audits more effectively. This is apart from knowledge of the provisions applicable under service tax.

The audit team should also be clear about the concept of audit and the ways and means through which one can collect information.

SERVICE TAX AUDITS BY PROFESSIONALS

A service provider simply cannot ignore compliance with the legal provisions as the non-compliance could hit his business hard as well as the impact of interest and penalty.

It has been the experience that very often assessees are not even aware of the fact that they are not complying with the legal provisions till such time when they are called upon by the department to furnish some clarifications or their unit is taken up for an audit.

Assessees in this regard should note that considering the uncertain nature of the law, the frequent amendments by way of notification, clarifications by the Tax Research Unit (TRU), Central Board of Excise & Customs (CBEC), Director General Service Tax (DGST) other than Regional Advisory Committee and Commissioners clarification the law would continue to be unclear. Many advocates of the Supreme Court with decades of standing in the Indirect taxes opine that there is no surety in this segment. Therefore a mechanism would have to be built in to ensure that compliance is maintained at high levels all the times.

What is required of the auditor?

An auditor who handles service tax should be thorough in his knowledge of the subject as well as the latest auditing procedures and techniques to be adopted. Use of the audit tools especially the generalized audit software for large concerns would enhance the results. As far as carrying out the audit itself is concerned, he can follow the guidelines given below:

1. Ascertaining scope of the assignment

The auditor should first of all be very clear as to the scope of the audit assignment. This is to avoid a scenario where the client perceives the audit effort in a different way from the one it actually is. At times the client may wish a pre- audit or shifting of the responsibility of compliance on the auditor. Further many a time assessees in the service sector mistake auditing for outsourcing and expect the auditor to engage in an outsourcing job rather than reporting to the management on compliance related issues. The scope can be ascertained and confirmed by preparing a letter/ scope document entailing the areas which would be covered.

2. Knowledge of the business and the activities performed

He/she should first of all understand the assessee's business, the services he provides, the customer profile etc. before he can start his review. He may interview the key management personnel in the organisation besides going through major contracts and agreements, organisation chart,

manuals and publications of the organisation. He should also make it a point to visit the premises from where the services are provided, and interview the technicians / engineers who actually perform the tasks in case of services of a technical nature.

3. Obtaining relevant information for a preliminary review and risk analysis

The auditor should make it a point to understand the financial performance of the entity in the recent past as well as the during the audit period. He/she should also make it a point to perform a quick review of the concerned records like the service tax returns, cenvat bills, invoices and agreements with major clients'/customers.

- ◆ Review of the past audited financial statements in terms of incomes, expenses, receipts and payments apart from accounting policies and nature of investments
- ◆ Review of the ledgers for the period under audit to check the income and expenditure pattern and the pattern of billing
- ◆ Review of the cenvat invoices, agreements with major customers, service bills raised on customers by the assessee, Excise invoices if any raised by the assessee, review of the fixed asset registers.

The auditor would have to document his findings. For this purpose, he/she may use an assessee profile which would consist of all relevant information needed for a desk review. The assessee profile should be drawn up in such a way that apart from financial indicators, even the non-financial indicators like existence of branches, manner of providing services etc are also reflected.

4. Desk review of the information obtained and preliminary meeting

The auditor, on the basis of his/her findings at the previous stage, should carry out a desk review of the information available with him to arrive at proper conclusions as far as the possible risk levels involved, are concerned. The desk review should ideally indicate to the auditor the level of checking required in order to arrive at proper conclusions. Once this has been done, he should identify the audit team that would take up the task and discuss the preliminary findings with the members of the team to appraise them of the likely issues that could crop up during the audit.

5. Devising the audit programme for carrying out compliance and substantive tests

The auditor should devise a proper audit program only after carrying out a desk review so that the same would be more effective than a program which is common to all audits irrespective of the differences in services and related activities and the risk levels involved.. The audit programme should indicate the areas to be covered and the individuals who are supposed to take it up.

6. Documentation and proper supervision of audit effort

The auditor should ensure that the audit findings and the explanations given from the assessee's side are documented properly by his audit team. The team can consist of three members with one of the members being a senior with sufficient experience and two juniors. The responsibility of

supervising the team on a daily basis would be with the senior and would have to be supervised at regular intervals by the qualified professional. The audit findings should be discussed at periodic intervals (if not on daily basis) with the executive from the assessee's side.

7. Formulation of the draft report and discussions with the management

Once the audit has been completed, the draft report containing the draft of the observations should be formulated and a copy sent to the management. This would then be followed up with a discussion of the points in order to ascertain the future course of action to be taken, which should also be documented. The auditor could come up with valuable suggestions

8. Finalising the draft and ensuring audit follow up

The final report is to be sent with all the relevant details like the observations, the reply from the assessee's side, the corrective action taken up by the assessee. The auditor's responsibility does not end here and he would have to ensure proper follow up.

Pointers for practice

- ◆ The auditor should be well versed in the matters pertaining to service tax and to a certain extent central excise.
- ◆ He should have the ability to get the required information from the assessee in a way that would enable him to ascertain the legal impact on the assessee's business.
- ◆ The auditor should also be careful not to treat the audit like a fault finding exercise.
- ◆ These audits could be said to be consultative exercise as differentiated from a regular internal audit. Therefore it maybe a good idea for the auditor to appraise the client on the latest amendments.

Real Life Case Study

We provide a real life case study- Mercurial Inc.- A reported judgment

Information on events prior to the issue of show cause notice.

- ◆ Assessee premises was visited
- ◆ Incriminating documents recovered
- ◆ After investigation and scrutiny of balance Sheet/ profit and loss account, invoices, contracts/agreements
- ◆ Provision of taxable services under event management is done
- ◆ Service tax is not paid and Service Tax-3 return not filed

Following the enquiry the following documents are provided separately for the participants:

1. SCN

2. Actual Reply to SCN
3. Order
4. Appeal along with stay application
5. Order of Commissioner Appeals
6. Appeal to Tribunal
7. Submissions for Stay
8. Stay Order
9. Submissions for Appeal
10. Order of Tribunal [still to be decided]

Handouts would be distributed as and when needed at the time of the session.

The paper writer hopes that more professional join the indirect taxes area as GST may also provide a number of areas for practice with inter state issues along with set off and interstate and multi state sale/ service complications. For doubts in indirect taxation, you may host queries on pdicai.org.

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BACKGROUND MATERIAL FOR 4th TECHNICAL SESSION



RESUME

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QUALIFICATIONS

- * B.L. from Madras Law College (*Enrolled as an Advocate in 1990*)
- * Grad C.W.A. from The Institute of Cost & Works Accountants of India.
- * Pass in the Final Examinations conducted by The Institute of Company Secretaries of India.

AREAS OF PRACTICE

Has over 18 years of experience in handling matters of multinationals, major Corporates all over India in advisory capacity as well as through appearance before Appellate Authorities, Tribunals and Courts in matters arising under Income Tax, Excise, Customs, Service Tax, Sales Tax and VAT.

He is also a specialist in FEMA, Aviation Law, Information Technology and Real Estate and drafting of international contracts.

He heads a firm offering full legal services including legal due diligence, Advisory in M&A transactions with offices in Chennai and Bangalore.

He is a domain Expert on VAT and Service Tax in the country handling issues arising all over the country and is the Chairman of the Expert Committee on Indirect Taxes, Madras Chamber of Commerce and Industry and a member of the Editorial Board of Consolidated Commercial Digest.

He has a passion for writing and has authored books such as 'VAT IN INDIA', CENVAT - Demystified for professionals and 'Handbook on Indirect Taxes' for CA final students. He also writes a column every week called as 'Taxonomy' in the Times of India and writes articles on current topics in various professional journals.

He is a speaker on tax laws in various seminars organized by CII, MCCI, ICAI, Hindustan Chamber and Southern India Chamber of Commerce across the country and is a faculty on Indirect Taxes for CA final.

NEW RESIDENTIAL COMPLEX – COMPLEXING DEFINITION

- More than twelve dwelling units.
- Independent bungalows or villas in a campus.
- Works Contract Service with effect from 01.06.2007.
- Developer and Service tax
- Board Circular dated 23rd August 2007
- Magus Construction
- Recent Circular dated 29th January 2009

DEVELOPER Circular Dated 29.01.2009

- Initial Agreement is only an agreement to sell and does not create rights in property
- After construction and execution of sale deed title passes.
- Service in the nature of self service till execution of sale deed.
- Personal use is excluded.
- Where services of any person like contractor, designer or a similar service provider are received then such a person would be liable to pay service tax.

WORKS CONTRACT

- Works Contract clearly a new service
- Decisions available to state that a works contract cannot be vivisected for the purpose of service tax
- Works contract executed prior to 01.06.2007
- Applicability of residential complex and commercial construction categories for the period prior to 01.06.2007 ?

WORKS CONTRACT

- Board Circular dated 22.05.2007 provides that if it involves transfer of property in goods then it falls under the category of works contract and not the specified services such as construction etc.
- Decision of the Chennai Tribunal in **Diebold**.
- Decision of Bangalore Tribunal in **Blue Star**.
- Decision of Chennai Tribunal in **Indian Hume Pipe** and **Malar Constructions**.

WORKS CONTRACT

- Service provided to any person by any other person in relation to execution of works contract.
- Excludes works contract in respect of roads airports, railways, transport terminal, bridges, tunnels and dams.
- Ports exempted.

WORKS CONTRACT

- Roads
- Airports
- Dams
- Restoration or repair of roads whether works contracts or maintenance of immovable property?

WORKS CONTRACT

- Levy requires 2 conditions:
- There must be **transfer of property in goods** involved in the execution of works contract and must be leviable to tax as sale of goods;
- the **contract** must be for the purpose of carrying out:
- Erection, commissioning or installation of plant, machinery, equipment or structure;
- Construction of a new building or a civil structure or a part thereof or pipeline **primarily** for the purpose of **commerce or industry**;
- Construction of a new residential complex or a part thereof;
- Completion and finishing services, repair, alteration, renovation or restoration services;
- Turnkey projects including engineering, procurement and construction or commissioning projects

COMMERCE OR INDUSTRY ?

- A 20 storey office complex and 200 sq.ft. medical shop are both commercial ventures.
- A number of small and medium unregistered and unorganised players are there in the market.

COMMERCE OR INDUSTRY - ISSUES

- Construction of hotels.
- Construction of hospitals, diagnostic centres.
- Construction of clubs, recreation centres.
- Construction of temples.
- Construction of Kalyana Mandapam.
- Construction of Office building for Chambers of Commerce and Industry.
- Construction of Schools, Colleges (Government, Private)
- Construction of buildings for ICAI.

WORKS CONTRACT – Computation Method

- Rule 2A of Valuation Rules.
- Value of works contract = gross amount charged for the said works contract *minus* value of transfer of property in goods involved in the said works contract.
- VAT paid is excluded.
- Enumerates list of items that fall within the value of works contract service.

WORKS CONTRACT –Computation Method

- Value of works contract shall include the following:
- Labour charges;
- Amount paid to sub-contractor for labour and services;
- Charges for planning, designing and architect's fees;
- Hire charges on machinery and tools;
- Cost of consumables viz. water, electricity, fuel etc.
- Cost of establishment of the contractor relatable to supply of labour and services;
- Other similar expenses relatable to supply of labour and services;
- Profit earned by the service provider relatable to supply of labour and services.

WORKS CONTRACT – Computation Method

- Value adopted for sales tax or VAT shall be accepted for service tax.
- There is nothing in the Valuation Rules or in the Cenvat Credit Rules, which prohibits the availment of cenvat credit on inputs or capital goods or input services.
- Board vide Circular dated 04.01.2008 has clarified that credit is not available on inputs.

WORKS CONTRACT- Composition Method

- WCT (Composition Scheme for payment of Service Tax) Rules, 2007.Optional Scheme.
- 2% of the gross amount charged for the works contract.
- Compounding rate increased from 2% to 4% w.e.f. 01.03.2008.
- Gross amount shall not include VAT or sales tax paid.
- No Cenvat credit on inputs. **Cenvat credit available on input services and capital goods.**
- Option to be exercised prior to payment of service tax in respect of the WCT.

WORKS CONTRACT- Composition Method

- Whether 2% can be continued till the completion of the contract?
- Board Circular dated 28.04.2008 stating that it is not possible has been challenged before the Madras High Court and Stayed.
- Compounding Scheme is an alternative mechanism.
- Option valid till the completion of the contract.

COMPOSITION SCHEME - AMENDMENT

- An Explanation has been added to the Works Contract Composition Rules with effect from 07.07.2009.
- gross amount charged shall include
 - (i) Value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
 - (ii) The value of all the services that are required to be provided for the execution of the works contract
- Client supply; independent supply contract;
- Explanation not applicable where project has commenced or some monies received prior to 07.07.2009.

LAND OWNER SHARE

- Joint Venture
- Is the contractor liable to pay service tax on construction done for the land owner
- No tax view
- Contract executed and consideration has passed prior to insertion of Valuation Rules view
- Tax on same rate as charged on other buyers
- Tax payable by adopting value of UDS transferred
- Decision of the Supreme Court – (**Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd.**) Consumer case.

POSITION IN INCOME TAX

- Supreme Court in the case of **Alipati Venkatramaiya Vs. CIT (1965) 57 ITR 185** has held that mere possession of immovable property cannot by itself be treated as equivalent to conveyance of the immovable property
- Where the document that is executed is in the nature of an agreement for transfer and possession is handed over as part performance as contemplated in Section 53A of the Transfer of Property Act, 1882 then there is a transfer and capital gains would arise immediately. This would be evident in a situation where the developer settles the consideration in the form of money or monies worth on an outright basis and the land owner has no relevance or say in the development work.
- Where the developer agrees to **identify prospective flat purchasers** and the land owner agrees to sell undivided share of land to such persons directly and realize the sale consideration, the **capital gains tax would arise in the hands of the landowner in the year in which the sale deeds are executed and registered.**

POSITION IN INCOME TAX

- Where possession is not handed over effectively by the land owner and the **handing over of possession is deferred till the date of handing over of earmarked built-up area by the developer to the land owner, the developer has only a license to enter into the property only for the limited purpose of development and construction.** In such a scenario, the transfer arises only when the built-up space earmarked for the landowner is constructed and handed over. However, if any undivided share is transferred, the capital gains tax cannot be deferred.

POSITION IN INCOME TAX

- Bombay High Court in **Chaturbhuj Dwarkadas Kapadia Vs. CIT (2003) 260 ITR 491**, has in the context of development agreements held that the year of taxability is the year in which the contract is executed. The Court held that in the case of development agreement **one cannot go by substantial performance of the contract** and the year of chargeability would be the year of execution.
- The decision of the Bombay High Court in the case of **Chaturbhuj Dwarkadas Kapadia** was distinguished by the Bombay Tribunal in the case of **ACIT Vs. Mrs. Geetha Devi Pasari (104 TTJ 375)**
- The Chennai Tribunal in the case of **Mount Mettur Pharmaceutical Ltd. Vs. JC (2008) TIOL 657 ITAT Madras** has held that "*The assessee has entered into an agreement with M/s DBS Properties Ltd. on 12.12.1994. The assessee handed over vacant possession of 52.5% undivided share of the land to M/s DBS Properties Ltd. on 16.4.1996 pursuant to an agreement dated 12.12.1994. In our opinion, the assessee no longer has possession rights in the property and the possession of property is transferred to the builder, who in turn has to pay the balance consideration in the form of 47.5% of total super built-up area of the constructed property and the purchaser is also ready to fulfill the conditions laid down in the agreement entered into with the assessee, and as such, the conditions of clause (5) of Section 2(47) was fully satisfied. Hence, transfer took place w.e.f. 16.4.1996.*"

Constitutional Validity

- **Tamil Nadu Kalyana Mandapam Association Vs. UOI (2004) 167 ELT 3 - Supreme Court**
 - If no entry is found in List-II and List-III of the Schedule which could cover the tax levied, the question of Parliament lacking legislative competence to do so would not arise.
 - The concept of catering admittedly includes the concept of rendering service. The fact that tax on the sale of goods involved in the said service does not mean that a service tax cannot be levied on the service aspect of catering.
- **Tamil Nadu Kalyana Mandapam Association Vs. UOI (2004) 167 ELT 3 - Supreme Court**
 - A levy of service tax on a particular kind of service could not be struck down on the ground that it does not conform to a common understanding of the word 'service' so long as it does not transgress any specific restriction contained in the Constitution.
- **Bharat Sanchar Nigam Limited Vs. Union of India and Others (2006) 145 STC 91 Para 92(E)**

"The aspect theory would not apply to enable the value of the services to be included in the sale of goods or the price of goods in value of the service."
- **Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial Taxes (2008) 9 STR 337 (Supreme Court)** - That if in a contract an element to provide service is contained, the purport and the object for which the Constitution had to be amended and Clause (29A) had to be inserted in Article 366 must be kept in mind. In Para 28, the Court has held that payments of service tax as also the VAT are mutually exclusive.

All India Federation of Tax Practitioners Vs. Union of India (2007) 7 STR 625

- "In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer **and it would, logically, be leviable only on services provided within the country.** Service tax is a value added tax."
- "On the basis of the above discussion, it is clear that service tax is VAT which in turn is both a general tax as well as a destination based consumption tax **leviable on services provided within the country.**"

CASE STUDY - 1

- M/s. Bold and Beautiful executes works contracts in the nature of completion and finishing services. Contract value is Rs.1 crore and material portion is Rs.80 lakhs. SCN proposing service tax on entire Rs.1 crore.

CASE STUDY - 2

- M/s. Blowing Hot and Cold enters into annual maintenance contract for air-conditioners. VAT is being discharged based on goods sold. SCN proposes service tax at 12.36% on the entire contract value.

CONSTITUTION - State

- Entry 54, State List provides for taxes on sale or purchase of goods other than news papers subject to provisions of Entry 92A, Union List.
- States levied sales tax and now VAT is being levied in exercise of this power.
- States have no power to tax a transaction of sale or purchase of goods, which is in the nature of inter-state trade or commerce.

CASE STUDY - 3

- M/s. Lock and Key executes a turnkey project involving supply, erection, commissioning and installation of pipelines for water project on an EPC contract basis. VAT is being discharged on the material portion. SCN proposing service tax on the entire contract value.

GOODS AND SERVICES

- The distinction is significant and of paramount importance.
- Ignorance of the difference would lead to chaos.
- Instances of Service Tax Department attempting to tax goods.
- Instances of Commercial Tax Department attempting to tax services.

CASE STUDY - 4

- M/s. Hundred Degrees manufactures boilers and discharges excise duty as well as VAT. Excise Department wants to include amounts received for commissioning and installation in transaction value for excise duty. Service Tax Department wants to levy service tax on commissioning, installation portion.

CASE STUDY - 5

- M/s. Train & Gain runs an institute offering higher levels of information technology courses and sells study material to students. These materials have been prepared by the institute and are not 'priced' text books. Books are exempt from VAT. SCN proposes to include book value for the purpose of service tax.

CASE STUDY - 6

- Nala & Gala is a hotel, which has banquet rooms which are let for seminars. The tariff rate is per delegate and food is the main component on which VAT is being discharged. The hotel bills for food, hall charges and service charges separately. Service Tax Department wants service tax on food.

CASE STUDY - 7

- M/s. IT Max is a dealer in packaged software. The packaged software is sold by charging VAT at the rate of 4%. Service Tax Department wants service tax at the rate of 12.36% under Section 65(105)(zzzzz) of the Finance Act, 1994.

CASE STUDY - 8

- M/s. Sun Ltd. allows another company a right to use its trademarks for a consideration. VAT is being discharged. Service tax is proposed under the category 'intellectual property service'.

CASE STUDY - 9

- Immovable property let out for commercial purposes. All the fit outs and office infrastructure are also given on lease and on these items VAT is being discharged. Service tax is proposed on all revenues.

Thank you

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