

Basic Concepts of Service Tax

Question 1

Comment on the applicability of service tax in case of vocational educational courses (VEC) run by the following institutes during the month of October, 2013:

- 'Udaan' an industrial training institute (ITI) affiliated to the National Council for Vocational Training (NCVT).
- 'A-Star' a vocational education provider affiliated to Sector Skill Council formed under National Skill Development Corporation (NSDC).
- 'Best Skill Centre' an industrial training centre (ITC) affiliated to the State Council for Vocational Training, Delhi.
- 'Horizon', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESC) approved by the National Council of Vocational Training.

The courses offered in point (a), (b) and (c) are in designated trades notified under the Apprentices Act, 1961.

Answer

Sl. No.	Institute/Centre	Taxability
(a)	'Udaan' – ITIs affiliated to NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list [Clause (I) of section 66D].	Non-taxable
(b)	'A-Star' – Institutes affiliated to NSDC are not covered under the definition of approved VEC. Thus, the same are outside the purview of negative list.	Taxable
(c)	'Best Skill Centre' –ITCs affiliated to SCVTs are included in the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable
(d)	'Horizon' – Institutes registered with DGET running MESC approved by NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable

Question 2

State whether following activities undertaken by M & M Manufacturers of Chandigarh would be liable to service tax during September, 2013:

- Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944.

1.2 Service Tax

- (ii) *Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914.*
- (iii) *Processing of raw materials to make them fit for further production. The process is not liable to any excise duty.*
- (iv) *Manufacture of medicines liable to excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.*

Answer

Sl. No.	Activity	Taxability
(i)	Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944 – covered in the definition of process amounting to manufacture. Thus, included in the negative list [Clause (f) of section 66D].	Non-taxable
(ii)	Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914 – covered in the definition of process amounting to manufacture. Thus, included in the negative list.	Non-taxable
(iii)	Processing of raw materials to make them fit for further production. The process is not liable to any excise duty. This will be a service liable to service tax.	Taxable
(iv)	Manufacture of medicines liable to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 is covered in the definition of process amounting to manufacture. Thus, such a manufacture is included in the negative list.	Non-taxable

Question 3

'Big Agro Handlers' furnishes the following details with respect to the activities undertaken by them in the month of June, 2013:

Sl. No.	Particulars	Amount (₹)
(i)	Supply of farm labour	58,000
(ii)	Warehousing of biscuits	1,65,000
(iii)	Sale of rice on commission basis	68,000
(iv)	Training of farmers on use of new pesticides and fertilizers developed through scientific research	10,000
(v)	Renting of vacant land to a stud farm	1,31,500
(vi)	Testing undertaken for soil of a farm land	1,21,500
(vii)	Leasing of vacant land to a poultry farm	83,500

Compute the service tax liability of 'Big Agro Handlers' for the month of June, 2013. Assume that the point of taxation in respect of all the activities mentioned above falls in the month of June, 2013 itself.

'Big Agro Handlers' has paid service tax of ₹6,18,000 during the Financial Year 2012-13.

Answer

Computation of service tax payable by Big Agro Handlers for June, 2013

Sl. No.	Particulars	Amount (₹)
(i)	Supply of farm labour [Note 1]	-
(ii)	Warehousing of biscuits [Note 3]	1,65,000
(iii)	Sale of rice on commission basis [Note 1]	-
(iv)	Training of farmers on use of new pesticides and fertilizers developed through scientific research [Note 1]	-
(v)	Renting of vacant land to a stud farm [Note 2]	1,31,500
(vi)	Testing undertaken for soil of a farm land [Note 1]	-
(vii)	Leasing of vacant land to a poultry farm [Note 2]	-
	Total	2,96,500
	Service tax @ 12.36% (rounded off)	36,647

Notes:

- (1) Clause (d) of negative list of services [section 66D] covers 'services relating to agriculture or agricultural produce by way of *inter alia* –
 - (i) supply of farm labour
 - (ii) services provided by a commission agent for sale or purchase of agricultural produce
 - (iii) agricultural extension services. Agriculture extension means application of scientific research and knowledge to agricultural practices through farmer education or training.
 - (iv) agricultural operations directly related to production of any agricultural produce including testing.
- (2) Services relating to agriculture or agricultural produce by way of renting or leasing of vacant land are covered under clause (d) of section 66D. Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. Thus, leasing of vacant land

1.4 Service Tax

to a poultry farm will be included in the negative list but renting of vacant land to a stud farm will be outside the purview of negative list.

- (3) Loading, unloading, packing, storage or warehousing of agricultural produce is covered under clause (d) of Section 66D. However, agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. Thus, warehousing of biscuit will be taxable as biscuit is not an agricultural produce.
- (4) As Big Agro Handler has paid service tax of ₹ 6,18,000 during the FY 2012-13, it is not eligible to small service providers exemption provided under *Notification No. 33/2012 ST dated 20.06.2012* in the FY 2013-14.

Question 4

State briefly whether service tax will be levied in each of the following independent cases:

- (i) *Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.*
- (ii) *Nitin Ltd. provided services to Jagat Oil Corporation from vessels located in the continental shelf of India for the purposes of prospecting natural gas.*

Answer

- (i) As per charging section-section 66B, service tax is levied on the services provided in the taxable territory by one person to another. Taxable territory means whole of India except the State of Jammu and Kashmir. Thus, Jammu and Kashmir is excluded from the definition of taxable territory. Hence, service tax is not leviable on the services provided in the State of Jammu and Kashmir

However, since service tax is a destination based consumption tax, services provided in Rajasthan from Jammu and Kashmir would be liable to service tax.

- (ii) Charging section-section 66B, *inter alia*, provides that service tax shall be levied on the services provided in the taxable territory by one person to another. Taxable territory means the territory to which the provisions of this Chapter apply i.e. whole of territory of India other than the State of Jammu and Kashmir.

The vessels located in the continental shelf of India for the purpose of prospecting natural gas fall within the ambit of definition of 'India' [Section 65B(27)].

Since in the present case, Nitin Ltd. provided services to Jagat Oil Corporation from vessels located in the continental shelf of India for the purposes of prospecting natural gas, it implies that services have been provided in taxable territory by one person to another for consideration. Thus, service tax is leviable on such services.

Question 5

The assessee received some taxable services from Ram. A formal contract was entered into between them. As per the terms of the contract, Ram had to bear all the taxes, duties and other liabilities in connection with discharge of his obligations.

Subsequently, liability to pay service tax in case of such taxable services was shifted from service provider to service receiver, owing to an amendment in law. Therefore, the assessee deducted service tax in the bills raised on Ram. Ram refused to accept the said deduction saying that the contractual clause could not alter the liability placed on the service recipient (i.e. the assessee) by law.

Discuss whether the contention of Ram stands to reason, with the help of a decided case law, if any.

Answer

No, the contention of Ram is not valid in law.

The facts of the given case are similar to the case of *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* 2012 (26) S.T.R. 289 (S.C.). The Supreme Court, in this case, observed that on reading the agreement between the parties, it could be inferred that service provider had accepted the liability to pay service tax, since it arose out of discharge of its obligations under the contract.

With regard to the submission of shifting of tax liability, the Supreme Court held that service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability.

The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.

Hence, the assessee was right in deducting service tax on the bills raised on Ram.

Question 6

The assessee, Dwarakanath Devasthanams, Dwaraka, was running guest houses for the pilgrims. The Department issued show cause notice stating that the assessee was liable to get service tax registration under "short term accommodation service" and liable to pay service tax. The assessee, on the other hand, submitted that it was a religious and charitable institution and was running guest houses without any profit motive.

You are required to examine whether the show cause notice issued by the Department is valid or not, referring to a decided case law, if any.

1.6 Service Tax

Answer

Yes, the show cause notice issued by the Department is valid in law.

The facts of the given case are similar to the case of *Tirumala Tirupati Devasthanams, Tirupati v. Superintendent of Customs, Central Excise, Service Tax 2013 (30) S.T.R. 27 (A.P.)* wherein the High Court stated that there is no absolute exemption granted to the petitioner.

The contention, in the present case, by Dwarkanath Devasthanams that, it is a religious and charitable institution and is running guest houses without any profit motive, is irrelevant.

Running guest houses by whatever name they are called - whether as a shelter for pilgrims or any other name with or without profit is no answer and the Devasthanams is thus, liable to get itself registered under 'short term accommodation service' and pay service tax on the services provided by it.

Exercise

1. Describe the various sources that provide statutory provisions relating to service tax.
[Hint: Finance Act 1994, Rules, Notifications, Circulars or Office Letters (Instructions), Orders, Trade Notices]
2. Which committee recommended the introduction of service tax?
[Hint: Dr. Raja Chelliah Committee on Tax Reforms]
3. Who has the power to levy service tax – Union or States? Discuss.
4. Which Entry of the Union List of the Constitution, grants the authority to levy service tax?
5. Under which Act is the service tax levied?
6. Write a note on administration of service tax.
7. What do you mean by selective and comprehensive coverage of services for the purpose of service tax? Which system is being adopted in India?
8. Name any three officials/officers connected with administration of service tax.