

Other Provisions

Question 1

Examine with the help of a decided case law, if any, can an appeal be filed in a High Court for deciding the question relating to the taxability of a service.

Answer

Section 83 of the Finance Act, 1994 makes the provisions of section 35G and section 35L of the Central Excise Act, 1944 applicable to the service tax. The issue as to whether an appeal be filed in a High Court for deciding the question relating to the taxability of a service is decided in the case of *CCEx. & ST v. Volvo India Ltd. 2011 (24) S.T.R. 25 (Kar.)*.

The High Court held that the question as to whether the assessee is liable to pay service tax falls squarely within the exception carved out in section 35G of the Central Excise Act, 1944, viz. 'an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment', and the High Court has no jurisdiction to adjudicate the said issue. The appeal lies to the Apex Court under section 35L of the Central Excise Act, 1944, which alone has exclusive jurisdiction to decide the said question.

Question 2

Rishabh Internationals Ltd. (RIL) was engaged in providing certain services on which it did not pay any service tax. As per RIL, said services were not liable to service tax. However, Department issued a show cause notice to RIL demanding service tax alongwith interest worth ₹ 5,45,000 on the same. An appeal was filed to the Commissioner of Central Excise (Appeals) which passed an order confirming the demand on RIL. RIL, being aggrieved by the order of the Commissioner of Central Excise (Appeals), decided to file an appeal to the CESTAT against such order.

You are required to determine the amount of the filing fees to be paid by RIL for filing the appeal to CESTAT.

Answer

As per section 86(6) of the Finance Act, 1994, an appeal to the Appellate Tribunal shall be accompanied by a fee of ₹ 5,000 where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than ₹ 5,00,000, but not exceeding ₹ 50,00,000.

8.2 Service tax

Question 3

Raman Ltd. is engaged in providing the taxable services and has been filing its service tax returns regularly. However, its jurisdictional Commissioner has the reasons to believe that Raman Ltd. has understated the value of its taxable services for the previous year. Can the jurisdictional Commissioner of Central Excise direct such person to get his accounts audited by a Chartered Accountant to the extent and for the period as may be specified by him? Discuss briefly.

Will your answer be different if Raman Ltd. contends that its accounts for the previous year have been audited under the Income-tax Act, 1961?

Answer

Section 72A(1) of Finance Act, 1994, *inter alia*, provides that if the Commissioner of Central Excise has reasons to believe that any person liable to pay service tax has failed to declare or determine the value of a taxable service correctly, he may direct such person to get his accounts audited by a Chartered Accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

Therefore, in the present case, jurisdictional Commissioner of Central Excise can direct Raman Ltd. to get its accounts audited by a Chartered Accountant nominated by him, to the extent and for the period as may be specified by him.

Further, section 72A(3) provides that the Commissioner of Central Excise is empowered to direct a special audit even if the accounts of such person have been audited under any other law for the time being in force.

Therefore, the contention of Raman Ltd. that its accounts for the previous year have been audited under the Income-tax Act, 1961 cannot be accepted and it will have to comply with the order, if any, of the jurisdictional Commissioner to get its accounts audited.

Exercise

1. What are the powers of the Central Government to grant exemption from service tax?
2. What do you understand by advance ruling? On whom the advance ruling is binding?
3. Examine the validity of the following statements:-
 - (a) An application filed for advance ruling cannot be withdrawn.
 - (b) The advance ruling cannot be sought in respect of the valuation of taxable services for charging the service tax.

4. *Enumerate the circumstances under which the premises of an assessee may be searched and by whom.*
5. *When does an advance ruling on service tax become void ab initio?*
6. *What are the prevailing audit norms for service tax assesseees?*
7. *"The Commissioner of Central Excise may order special audit under service tax on random basis." Discuss briefly.*
8. *Briefly explain the following with reference to the service tax provisions:-*
 - (i) *Appeal to Commissioner of Central Excise [Appeals]*
 - (ii) *Appeal to Appellate Tribunal*