
National Conference on “Issues in Service Tax”

- REVERSE CHARGE
MECHANISM

- ABATEMENTS

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WIRC Of ICAI

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At

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Chartered Bank, BKC, Bandra (E),
Mumbai – 400 051.

REVERSE CHARGE MECHANISM:

- ⇒ Service tax was introduced for the first time in India w.e.f 1st July, 1994. India had adopted “selective approach” (positive list) for levy of service tax thereby only selected services were made liable to Service Tax.
- ⇒ W.e.f. 1st July,2012, Comprehensive approach of levy of service tax is introduced, whereby all services are made taxable except those mentioned in the negative list and specifically exempted (negative list approach).
- ⇒ Before the introduction of comprehensive approach of taxation w.e.f 1st July,2012,service tax was payable by the recipient of service only in respect of certain notified services which were specified by the Central Government in Rule 2(1)(d) of the Service Tax Rules, 1994 , in view of powers given u/s 68(2) of the Finance Act,1994.
- ⇒ In the negative list regime, there are sea changes in the Service Tax laws. In the context of reverse charge mechanism, for the first time, the concept of partial reverse charge is introduced in respect of certain services whereby the obligation to deposit tax is casted upon both the service provider and service receiver
- ⇒ As per **Section 68 (1) of the Finance Act, 1994**, generally, the service provider is liable to pay tax in respect of taxable services rendered. However, in respect of notified taxable services, service tax shall be paid in the prescribed manner in terms of Section 68 (2) of the Finance Act, 1994
- ⇒ For the period post 1st July, 2012; Central Government vide notification No 30/2012-ST dated 20th June, 2012 as amended by Notification No 45/2012- ST dated 7th August, 2012 has prescribed following services under Section 68 (2) for the purposes of reverse charge mechanism :
 - 1) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
 - 2) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is
 - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
 - (c) any co-operative society established by or under any law;
 - (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;
 - (e) any body corporate established, by or under any law; or
 - (f) any partnership firm whether registered or not under any law including association of persons;

ISSUE:

Kangaroo Transport Pvt Ltd (GTA) of Mumbai has provided services of GTA that of dispatching and delivering cupboards from "Godrej & Boyce Ltd" (Consignor) of Vikroli to "Mr. Suresh (Individual) of Pune on 19th August,2012. The freight Rs. 12,000/- is paid by Consignee Mr. Suresh to GTA Kangaroo Transport Pvt Ltd.

Who is liable to pay service tax under the category of "Goods Transport Agency Services"?

3) provided or agreed to be provided by way of sponsorship, to any body corporate or partnership firm located in the taxable territory

4) provided or agreed to be provided by-

(A) An arbitral tribunal; or

(B) An individual advocate or firm of advocates by way of **legal** services, or

(C) Government or local authority by way of support services **excluding**,-

i. Renting of immovable property, and

ii. Services specified in sub-clause (i) Services by department of post by way of speed post, express parcel post, life insurance & agency service provided to a person other than Government, (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; and (iii) Transport of goods or passengers service specified in clause (a) of section 66D of the Finance Act, 1994

to any business entity located in the taxable territory

• *Services provided by an arbitral tribunal, an individual advocate or firm of advocates by way of legal services **to any person other than a business entity or a business entity with a turnover upto Rs.10 Lacs in the preceding financial year** is exempt vide Entry No 6 of the Exemption Notification No 25/2012-St dated 20th June, 2012*

• *Section 65B(49)-"**support service**" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind, comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing & analysis.*

ISSUE:

1) Mulla & Associates (Advocates & Solicitors) have rendered consultancy on legal matters to M/s Aadinath Foundation (a company registered u/s 25 of the Companies Act,1956) on 20th September,2013 and charged Rs. 50,000/- towards fees & service tax thereon @12.36% ?

Whether the bill raised by M/s Mulla & Associates is correct? Who is liable to pay service tax?

2) Mulla & Associates (Advocates & Solicitors) have rendered consultancy on legal matters to M/s Nocil Ltd incorporated on 7th September,2012. They have charged Rs. 5 Lacs as consultancy fees and issued bill on 12th November,2012. Whether Nocil Ltd is required to pay service tax on the said legal charges?

5) provided or agreed to be provided by way of renting of any motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower or **security services (inserted w.e.f 7th August, 2012)** for any purpose or service portion in execution of works contract by any **individual, HUF or partnership firm, whether registered or not, including association of persons;** located in the taxable territory to a **business entity registered as body corporate, located in the taxable territory**

ISSUE:

Top Polishers LLP was awarded the contract of housekeeping / cleaning services for F.Y. 2013-14 by M/s Telco Ltd for which service charges are to be billed at the rate Rs. 1,500/- per worker per day for the shift of 8 hrs

Top Polishers LLP was also awarded the contract for supply of manpower for housekeeping and cleaning by Saraswat Co-op. Bank Ltd for F.Y.2013-14 for which service charges are to be billed at the rate of Rs. 1,200 per worker per day.

Who is liable to pay service tax and under what category under both the contracts?

6) provided or agreed to be provided by a director of a company to the said company **(inserted w.e.f. 7th August, 2012)**

ISSUE:

1) M/s ABC Pvt Ltd has paid Mr. X, the managing director the fees towards the following:

- a) Rs. 3,00,000 per month as remuneration
- b) Rs. 20,000/- as sitting fees per meeting for attending 4 board meetings.
- c) Rs. 1,00,000/- per month as rent for the office

Discuss the tax liability?

2) Mr. Rahul is appointed as nominee director on the board of M/s ABC Ltd by M/s UTI Ltd. M.s ABC Ltd pays Rs. 1,00,000/- per month as remuneration. Discuss the tax liability.

- 7) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.

Section 66C grants powers to the Central Government to make rules to determine the place where such services are provided or deemed to have been provided.

Vide Notification No.28/2012-ST dated 20th June,2012, Place of Provision of Service Rules, 2012 are notified w.e.f. 1st July,2012. The said Rules have superseded the Export of Service Rules, 2005 & Taxation of Services (Provided from Outside India & Received In India) Rules, 2006

The extent of service tax payable in respect of above services by the person liable to pay service tax is as follows:

Description of Service	% of tax payable by service provider	% of tax payable by service recipient
Insurance Agent's Services	NIL	100%
Goods Transport Agency's Services	NIL	100%
Sponsorship Services	NIL	100%
Arbitral Tribunal Services	NIL	100%
Services provided by Individual Advocate or a firm of advocates by way of legal services	NIL	100%
Director of a company to the said company	NIL	100%
Support services by Government of Local Authority excluding renting of immovable property & services specified in Section 66D(i), (ii) or (iii)	NIL	100%
Renting or hiring of any motor vehicle designed to carry passenger where tax is paid on abated value	NIL	100%
Renting or hiring of any motor vehicle designed to carry passenger where tax is paid on non abated value	60%	40%
Supply of manpower or security services	25%	75%
Service portion in execution of works contract	50%	50%
Services provided by any person located in a non taxable territory & received by any person located in the taxable territory	NIL	100%

- In case of works contract services where both service provider & service recipient is the person liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the service provider.
- "Business entity" is interpreted in Section 65B (17) to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

- “Security Services” as defined in Rule 2(1)(d)(ii)(fa) of Service Tax Rules,1994 means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity.
 - “Supply of Manpower” as defined in Rule 2(1)(d)(ii)(g) of Service Tax Rules,1994 means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.
- ⇒ Accordingly, the definition of “Person Liable to pay Service tax” as provided in Rule 2 (1)(d) of the Service Tax Rules, 1994 is amended w.e.f. 1st July, 2012 to include in it, the service recipients of the abovementioned taxable services along with the service provider
- ⇒ The benefit of threshold exemption is not available in respect of value of taxable services on which service tax is payable in a prescribed manner as notified for the purposes of Section 68(2)

POINT OF TAXATION UNDER REVERSE CHARGE MECHANISM

- ⇒ Point of Taxation shall be the date on which payment is made, in respect of persons required to pay tax as recipients of service in respect of services notified under Section 68 (2) for reverse charge mechanism (Rule 7) w.e.f. 1st April, 2012
- In respect of services notified U/s.68(2) **where payment is not made within a period of 6 months of the date of invoice**, the point of taxation shall be the
- ⌚ Time when invoice for service provided or agreed to be provided is issued.
 - ⌚ In case the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, Point of Taxation shall be the date of the completion of such service.
- In case of associated enterprises where the person providing the service is located outside India, the Point of Taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.
- ⇒ **CBEC vide Circular No 162/13/2012-ST dated 6th July, 2012** has clarified that The provisions of partial reverse charge would be applicable in respect of Works Contract Services where Point of Taxation is on or after 1st July, 2012 under applicable Rule in respect of service provider

AVAILMENT OF CENVAT CREDIT OF PAYMENT MADE UNDER REVERSE CHARGE

- ⇒ Proviso to Rule 4(7) of the Cenvat Credit Rules,2004 the credit of the service tax payable by the recipient of service tax can be taken only when the value of taxable service has been paid to the service provider and service tax has been paid to the department.

PAYMENT UNDER REVERSE CHARGE CANNOT BE MADE THROUGH ACCUMULATED CENVAT CREDIT

⇒ Explanation to Rule 3(4) of the Cenvat Credit Rules provides that the Cenvat credit cannot be utilized for payment of service tax in respect of services where the person liable to pay tax is service recipient.

ABATEMENTS IN RESPECT OF TAXABLE SERVICES [NOTIFICATION NO.26/2012-ST DT. 20/06/2012]

The service provider has the option of discharging the service tax liability on the abated value in respect of notified services provided the conditions mentioned in the notification are fulfilled:

Description of Taxable Services	Abatement	Tax payable on	Condition
Financial leasing services including hire purchase	90%	10%	1) The amount charged shall be an amount, forming or representing as interest, i.e. the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment paid 2) Abatement not available to an amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administrative fee.
Transport of goods by rail	70%	30%	NIL
Transport of passengers, with or without accompanied belongings by rail	70%	30%	NIL
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place specially arranged for organizing a function) together renting with such premise	30%	70%	1) No CENVAT Credit on any goods classifiable under Chapter 1 to 22 of CETA, 1985 to be availed 2) The amount charged is the sum total of the gross amount and the fair market value of all goods or services supplied in or in relation to the supply of food or any other article of human consumption or any

			<p>drink, under the same contract or any other contract after deducting amount charged for such goods or services supplied to the service provider, if any & the VAT/Sales Tax levied, if any.</p> <p>3) Where the fair value of goods or services so supplied is not ascertainable, the same shall be determined in accordance with the generally accepted accounting principles.</p>
Transport of passengers by air, with or without accompanied belongings	60%	40%	No CENVAT Credit on inputs & capital goods to be availed
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40%	60%	No CENVAT Credit on inputs & capital goods to be availed
Transport of goods by road by Goods Transport Agency	75%	25%	No CENVAT Credit on inputs, capital goods or input services to be availed
Services provided in relation to chit	30%	70%	No CENVAT Credit on inputs, capital goods or input services to be availed
Renting of any motor vehicle designed to carry passengers	60%	40%	No CENVAT Credit on inputs, capital goods or input services to be availed
Transport of goods in a vessel	50%	50%	No CENVAT Credit on inputs, capital goods or input services to be availed
Services provided or to be provided to any person, by a tour operator in relation to a package tour	75%	25%	<p>1) No CENVAT Credit on inputs, capital goods or input services to be availed</p> <p>2) The bill issued for this purpose indicates that it is inclusive of charges for such a tour</p>
Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	90%	10%	<p>1) No CENVAT Credit on inputs, capital goods or input services to be availed</p> <p>2) The bill issued for this purpose indicates that it is inclusive of charges for such accommodation</p>

			3) Abatement shall not be available in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
Services, other than services specified above, provided or to be provided to any person, by a tour operator in relation to a tour	60%	40%	1) No CENVAT Credit on inputs, capital goods or input services to be availed 2) The bill issued for this purpose indicates that it is inclusive of charges for such a tour
UPTO 28TH FEBRUARY,2013 Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	75%	25%	1) No CENVAT Credit on inputs to be availed 2) The value of land is included in the gross value 3) The amount charged is the sum total of the amount charged for the service including the fair market value of all goods or services supplied by the recipient in or in relation the service, whether or not supplied under the same contract or any other contract, after deducting amount charged for such goods or services supplied to the service provider, if any & the VAT/Sales Tax levied, if any. 4) Where the fair value of goods or services so supplied is not ascertainable, the same shall be determined in accordance with the generally accepted accounting principles.
FOR THE PERIOD FROM 1ST MARCH,2013 TO 7TH MAY,2013 (a) for residential unit having	75%	25%	Same as above

carpet area upto 2000 square feet or where the amount charged is less than rupees one crore;			
(ii) Others	70%	30%	
FROM 8TH MAY,2013 & ONWARDS			Same As above
(a) for a residential unit satisfying both the following conditions, namely:- (a) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than Rs.1 Crore;	75%	25%	
(b) Others	70%	30%	