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INDIRECT TAX REVIEW
NOVEMBER 2014

EXCISE

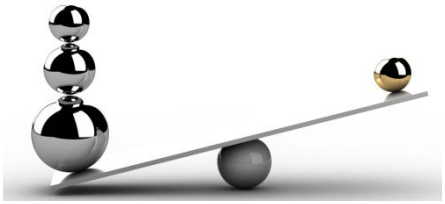
CUSTOMS

SERVICE TAX

VALUE ADDED TAX

Inside this edition

RENT A CAB SERVICE: ABATEMENT v/s REVERSE CHARGE



W.e.f from 1.10.2014 as per partial revese charge provisions, rent a cab service, both, service provider and receiver are liable to pay service tax in the ratio of 50% each. The above charge is applicable only if abatement is claimed. Now, what shall be the position if service provider actually does not mention anything in his invoice, as to whether he is claiming any abatement or not. What shall be the manner of charge of service tax i.e. wheher service tax would be payable at 50% under reverse charge or at 100% udner reverse charge?

At this juncture, the case can be examined as follows:

Details	Upto 10.7.2014	11.07.2014 to 30.09.2014	1.10.2014 onwards
Abatement	Abated value = 40%	Abated value = 40%	Abated value = 40%
CENVAT if abatement claimed	NA	NA	Credit available only of input services by way of renting of motor cabs but credit restricted upto 40% and that too only when service provider is not availing abatement. No other credit
Reverse charge if service provider pays tax on abated value	100% tax reverse charge	100% tax reverse charge	100% tax reverse charge
Reverse charge if service provider pays tax on non abated i.e. full value	60% tax payable by service receiver and 40% by the provider	60% tax payable by service receiver and 40% by the provider	50% tax payable by both.

The above table shows that tax payable by service recepeint under reverse charge depends upon whether service provider avails abatement or not. The said fact can be verified from the invoice. The rate of tax charged by the service provider shall be the determinant in such case

- If the rate of service tax charged by the vendor is 12.36% i.e. the full rate then 50% tax is payable under reverse charge by both.
- If the rate of service tax charged by the vendor is 4.944% then the entire tax is payable by the service recepeint.

CBEC CLARIFIES POSITION OF RE-CREDIT OF CENVAT AFTER INTRODUCTION OF TIME LIMIT OF SIX MONTHS ON CENVAT AVAILMENT.

An Overview

In Union Budget 2014-15, Government introduced time limit of six months for availment of CENVAT credit. Ministry of Finance had issued Notification no. 21/2014-CE (NT) dated 11 July 2014 in this regard amending Rule 4(1) and Rule 4(7) of CENVAT Credit Rules, 2004 (CCR).

The amendment to the rules stated that the manufacturer or provider of output service shall not be allowed to take CENVAT credit after six months of the date of issue of any of the documents specified in Rule 9(1) of CCR. The specified documents in Rule 9(1) include an invoice, bill or challan issued by manufacturer, first or second stage dealer, service provider, input service distributor, bill of entry, etc.

However, this amendment created certain doubts on whether the time limit prescribed will also be applicable where a taxpayer wants to take re-credit of CENVAT, this was earlier availed but subsequently reversed based on statutory requirement.

Clarification

The CBEC has now issued a circular no. **990/14/2014-CX-8 dated 19 November 2014** clarifying the various doubts raised by trade and industry at large. The circular deals specifically with three rules wherein provisions of availment, reversal and subsequent re-credit are contained. The rules are as follows –

- Third proviso to Rule 4(7) of CCR states that if payment of value of input service and service tax thereon is not made within three months of date of invoice, bill or challan, then CENVAT credit availed on such input service needs to be paid by manufacturer or output service provider. In future, when such payment of value of input service and service tax is made, the amount paid back earlier can be re-credited by taxpayer.
- As per Rule 3(5B) of CCR, if the value of inputs or capital goods (on which taxpayer has taken input credit) has been written off in the books of accounts before being put to use, then amount equal to such CENVAT credit taken need to be paid. Subsequently if such inputs or capital goods are used, taxpayer can take re-credit of such amount paid.
- Rule 4(5) (a) of CCR deals with the case wherein inputs are sent to job worker. The rule prescribes that if such inputs are not received back within one hundred and eighty days, then the manufacturer or service provider is required to pay an amount equal to CENVAT credit taken on such inputs. Further, when such inputs are received back, the manufacturer / service provider can take re-credit of amount paid earlier.

The circular clarifies that in all the three scenarios mentioned above, amendment made in respect of time limit for the availment of CENVAT credit will apply to availment for the first time on the basis of eligible documents prescribed in Rule 9(1). If time limit is followed for the availment made for the first time, then subsequently at the time of re-credit, such time limit has no further application.

UNCONFIRMED DEMANDS CANNOT BE ADJUSTED AGAINST REFUNDS PAYABLE.

An Overview

This news flash is an update on the recent case ***Bharat Sanchar Nigam Ltd. Vs.*** **Commissioner** ***of Central Excise, Jaipur [(2014) 51 taxmann.com 10 (New Delhi – CESTAT)]***

Bharat Sanchar Nigam Ltd. (**the Appellant**) filed refund claim of Rs. 11, 79, 720/- for the excess amount paid. The Appellant was issued a Show Cause Notice dated January 17, 2007 (**SCN**) to show cause as to why their refund claim of Rs. 11,79,720/- should not be rejected. The Appellant submitted their reply dated May 25, 2007 and was sanctioned entire refund claim by the Assistant Commissioner vide his Order-in-Original.

However, the Assistant Commissioner later issued a corrigendum dated July 17, 2007 to the SCN stating that as the Appellant had taken CENVAT credit to the tune of Rs. 11, 18, 182/- on the strength of the invoices for Capital goods issued by their Head Office, the same was not admissible as their Head Office was not registered as a registered dealer and therefore asking why their refund claim should not be rejected to the extent of Rs. 11, 18, 182/-.

Later, the Commissioner (Appeals) also upheld the adjustment of Rs. 11,18,182/- out of the total refund of Rs. 11,79,720/-and the Appellant was refunded only the net (remaining) amount of Rs. 61,538/- in form of CENVAT credit.

Courts' View

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Delhi.

The Hon'ble CESTAT, Delhi observed that there has been no Show Cause Notice given to the Appellant for showing cause as to why CENVAT credit amount of Rs.11, 18, 182/- (adjusted from the amount of refund sanctioned) was inadmissible to them and even if the corrigendum issued on July 17, 2007 is an attempt to be treated as a Show Cause Notice, the said corrigendum falls fatally short of the requirement of a notice under Section 73 of the Finance Act, 1994.

SERVICES PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA PRIOR TO 18.04.2006 ARE NOT TAXABLE

The Supreme Court of India in the case of ***Comm. Service tax (Bang) vs Metro Cash and Carry survey (2014) GST 106/50 Taxmann 75(SC), appeal (Civil) Nos 34254-34255 of 2011*** stated as follows:

Section 66A read with section 65(47) of the Finance Act 1994-charge/levy of Service Tax on services received from outside India during the period prior to 18.04.2006 under a license agreement with a foreign company where the assessee got rights to use trademarks and know how in managing cash and carry business in India.

Against the receipt of such service, assessee paid royalty to that foreign company. The department demanded duty on such payments under reverse charge mechanism under franchise service. The Hon'ble High Court held that the liability to pay service tax would arise only from 18.4.2006 viz after the introduction of section 66A and set aside the demand.

The department filed SLP and moved the apex court which held that in view of the circular/Instruction F No 275/7/2010 CX 8A dated 30.06.2011, nothing remained for consideration and hence the SLP were dismissed accordingly in favour of the assessee.

SERVICE TAX NOT LEVIABLE ON DISCOUNTS/ INCENTIVES AS THESE ARE NOT CONSIDERATION FOR ANY SERVICE RENDERED

Group M Media India Pvt. Ltd and Others Vs. Commissioner of Central Excise/ Service Tax Thane-I/ Mumbai-II and Others [2014 (11) TMI 545-CESTAT MUMBAI]

In the instant case, there are eight appea
ls and three cross-objections filed on the following common issues:

- Whether Service tax levy is sustainable in respect of discounts/incentives received by the Advertising agency from the print/broadcast media in respect of advertisements placed by the said agencies on behalf of customers;
- Whether Service tax is leviable on amounts, which are outstanding and the Advertising agencies write back these amounts after a lapse of time as per the accounting procedure.

The Hon'ble CESTAT, Mumbai, relying upon the decision in the case of Gray World Wide India Pvt. Ltd. vides final order No. A/1337-1338/14/CSTB/CI dated July 30, 2014, held that Service tax is not leviable on these amounts inasmuch as these are either incentives or accounting adjustments and not consideration for any services rendered.

Accordingly, the Appeals filed by the Revenue were rejected while the appeals filed by the Assesses were allowed.

MERE RECTIFICATION OF DEFECTS IN VEHICLES NOT TAXABLE UNDER TECHNICAL INSPECTION AND CERTIFICATION SERVICE.

Antony Garages Pvt. Ltd. Vs. Commissioner of Central Excise, Raigad and Commissioner of Central Excise, Raigad Vs. Antony Garages Pvt. Ltd.[2014 (11) TMI 210 – CESTAT MUMBAI]

Antony Garages Pvt. Ltd. (the Assessee) was engaged in manufacturing of body building of buses, trucks etc. and also undertook repair, maintenance and servicing of commercial vehicles. Tata Motors Ltd. (TML) sent vehicles, after manufacturing, to the Assessee under a works order for performing activities such as pre-delivery inspection and preventive treatment (P.T.) before exporting them (inspection activities).

The Assessee after conducting inspection and taking rectification action as recorded in the vehicle data sheets send the vehicles back to TML for export. The Revenue contended that the impugned activities are covered under 'Technical inspection and certification service' ("Technical inspection services") and hence, liable to Service tax.

Further, the Assessee had given open land to enable TML to park the vehicles received from various locations for general checking and inspection for which the Assessee charged appropriate rental from TML. The Assessee further arranged for security service by security agency. Charges incurred for security and telephone expenses were reimbursed by TML to the Assessee. However, the insurance of vehicles was arranged directly by TML. The diesel filled in the vehicle tanks was also reimbursed by TML ("storage activities"). The Revenue alleged that storage activities tantamount to 'Storage and Warehousing service' ("Warehousing services") and hence, exigible to Service tax. However, the Commissioner of Central Excise, Raigad dropped the demand raised in respect of storage activities holding that the Assessee had not provided any management and safe keeping for the vehicles to warrant classification under Warehousing services. But, the demand raised on inspection activities was confirmed along with interest and penalties under Technical Inspection services.

Being aggrieved with confirmation of demand under Technical Inspection services, the Assessee filed an appeal before the Hon'ble CESTAT, Mumbai whereas on the other hand, the Revenue also filed an appeal against dropping of demand under Warehousing services. The Hon'ble CESTAT, Mumbai after observing that only standard checks of the vehicles were conducted by the Assessee which includes checking for mechanical parts, electrical parts, leakages, body fitments paints etc., and that the Assessee did not issue any certificate similar to one issued by a Certification Agency, held that the rectification job of these defects certainly seems to be activities conducted by any vehicle repair shop which by no stretch of imagination can be covered under Technical inspection services.

It was further held by the Hon'ble CESTAT, Mumbai that if the argument of the Revenue is accepted, every motor garage will become a Technical Inspection and Certification agency. This would lead to a ridiculous situation. The Revenue appears to have misread the

meaning of Technical Inspection and Certification. Further, on the issue of parking/storage of vehicles, the Hon'ble Tribunal held that the Assessee has only rented out space to TML, who has reimbursed security and telephone charges. The Assessee did not perform inventory management and insurance activity so as to get covered under Warehousing services. Accordingly, the appeal filed by the Revenue was rejected and the appeal filed by the Assessee was allowed.

SERVICE TAX IN RESPECT OF SAME TRANSACTION CANNOT BE DEMANDED AGAIN FOR PAYMENT UNDER DIFFERENT CATEGORY

Coca Cola India Pvt. Ltd. Vs. Commissioner Of Service Tax, Delhi III [2014-TIOL-2198-CESTAT-DEL]

Coca Cola India Pvt. Ltd. (the Appellant) entered into an Agreement with KPH Dream Cricket Pvt. Ltd. (KPH) for sponsoring the cricket team Kings XI Punjab. On the said contractual consideration, a Service tax of Rs. 37, 08, 000/- was collected by KPH from the Appellant, which was deposited with the Central Government under the category of Business Auxiliary Service (BAS).

Later on, the Revenue entertained a view that the Agreement between the Appellant and KPH was falling under the category of 'Sponsorship Service' and, as such, the tax liability falls on the Appellant under reverse charge mechanism.

Notwithstanding that Service tax already stood paid by KPH, proceedings were initiated against the Appellant for recovery of the said tax amount of Rs.37, 08, 000/- which was further affirmed by the Adjudicating Authority, confirming the demand with interest and penalty.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble Commissioner (Appeals). The Hon'ble Commissioner (Appeals) also found the decision of the Adjudicating Authority proper &legal and accordingly dismissed the appeal filed by the Appellant. It was held by the Commissioner (Appeals) that such liability would fall upon the Appellant and sponsoring of a cricket team is not outside the scope of sponsorship service.

Thereafter, the Appellant filed an appeal before the Hon'ble CESTAT, Delhi. The Hon'ble CESTAT, Delhi relying upon the decision in the case of **Hero Moto corp Limited Vs. CST, Delhi [2013-TIOL-873-CESTAT-DEL]** held that the demand of Service tax in respect of the same transaction on which Service tax had already been deposited, on the ground that the deposit of Service tax was under a different category whereas a different category of service has been provide d cannot be held to be justifiable.

NO DEMAND CAN BE MADE AGAINST ASSESSEE MERELY BECAUSE ASSESSEE HAD ADMITTED THE SAME

Commissioner, Customs and Central Excise, Meerut-I Vs.RS. Travels [2014 (10) TMI 817 – UTTARAKHAND HIGH COURT]

In the instant case, the Revenue has filed an appeal before the Hon'ble High Court of Uttarakhand raising the question of principle of estoppel in law relating to the taxability of RS. Travels ("the Assessee") on the basis that services were being rendered under the rent-a-cab scheme ("impugned activity") and the Assessee had admitted its Service tax liability. Whereas the Hon'ble High Court of Uttarakhand on August 6, 2014 has decided that impugned activity is not taxable in the case of **Commissioner, Customs & Central Excise Vs. Sachin Malhotra, Raj Kumar Taneja, M/s. Shiva Travels [2014 (10) TMI 816 – UTTARAKHAND HIGH COURT]**("Shiva Travels case").

The Revenue de-linked Shiva Travels case from the present case on the basis of the fact that the assessee had effected payments and also filed affidavits to the effect that he will be paying the balance of the amount. However, the Assessee relied upon the judgment of the Hon'ble Apex Court in the case of **Dunlop India Ltd. Vs. Union of India and others[(1976) 2 SCC 241]** and **Mafatlal Industries Ltd. and others Vs. Union of India and others [(1997) 5 SCC 536]** and submitted that the amounts were paid under compulsion. At the outset, the Hon'ble High Court observed that when there is only a contract of hire and there is no renting of the cab, there is no question of the Assessee being assessed in respect of services rendered in connection with rent–a-cab service as there is no renting at all.

It was further held by the Hon'ble High Court that Article 265 of the Constitution of India mandates that no tax can be levied or collected except as provided by law. Accordingly, mere fact that the Assessee had made some payments and also made promise to make further payments cannot be used against our refusing to interfere with the impugned order.

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

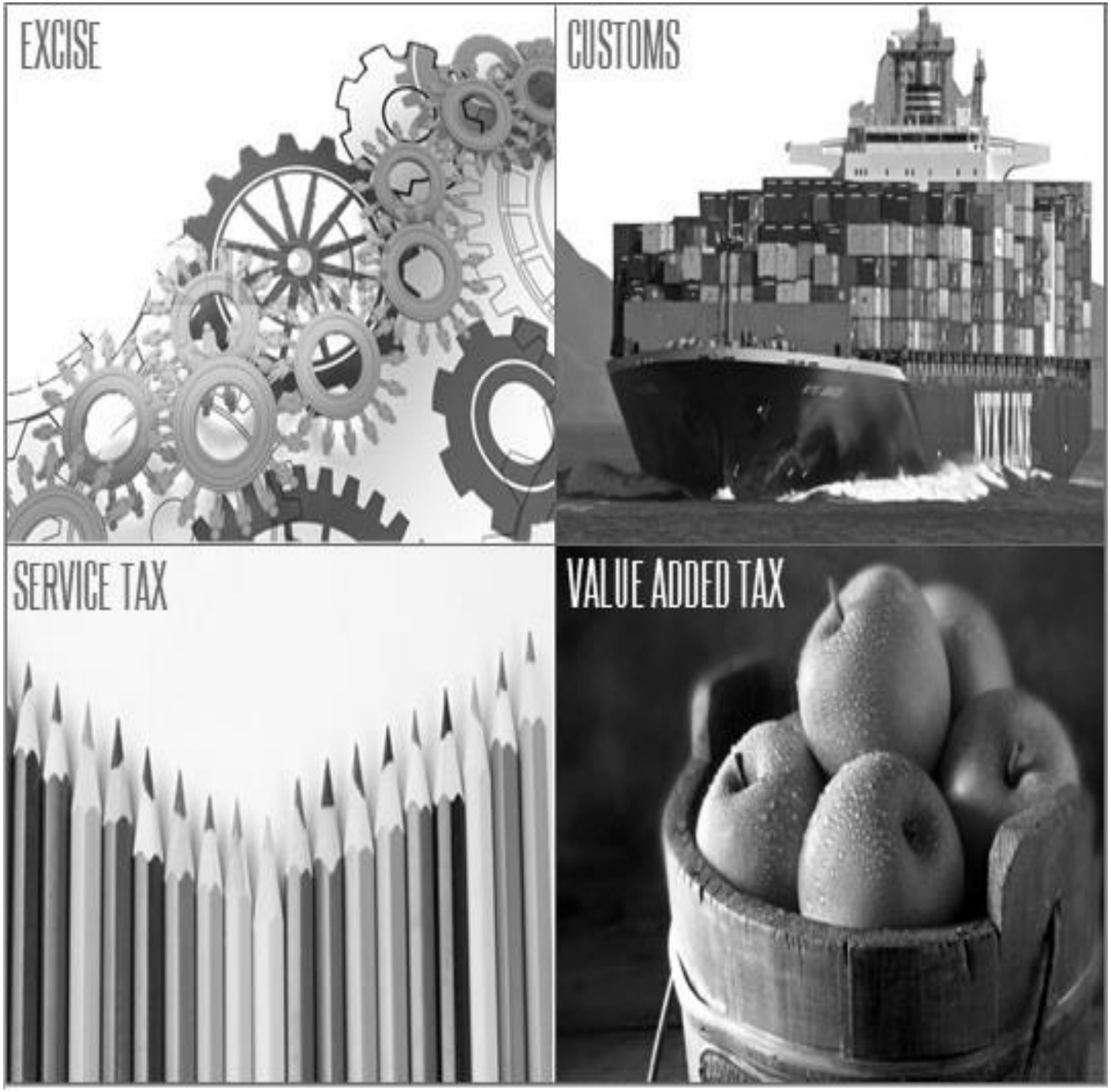
Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com

For any further assistance contact our team at kmt@vkalra.com



VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office
75/7 Rajpur Road, Dehradun
T +91.135.2743283, 2747084, 2742026
F +91.135.2740186
E info@vkalra.com
W www.vkalra.com

Branch Office
80/28 Malviya Nagar, New Delhi
E info@vkalra.com
W www.vkalra.com

For any further assistance contact our team at kmt@vkalra.com