The Malad Chamber of Tax Consultants

MNW/175/2015-17 Total Pages 12 Price ₹ 5/-

38 Years

MCTC Bulletin

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Vol. 1, No. 9 ***For members & private circulation only*** **March, 2017**

President's Communiqué

Dear Members,

"All work and no play doesn't just make Jill and Jack dull, it kills the potential of discovery, mastery, and openness to change and flexibility, and it hinders innovation and invention"

— *Joline Godfrey.*

With this motive in mind, we organised our Chamber's first ever Triangular Cricket Tournament jointly with Sales Tax Practitioner's Association of Maharashtra (STPAM) and Chamber of Tax Consultants (CTC) on 4th March, 2017. The Tournament saw a display of team spirit and feelings of camaraderie amongst the members, enabling them to co-operate and work well together. The Tournament was a huge success and Team MCTC member won the Best Batsman and Best Bowler Award.

The Half Day Seminar under the auspices of Shri Rajubhai J. Chokshi held on 18th February, 2017 received a very good response with our beloved speaker, CA. Tarun Ghia, throwing good light on the topic of Search, Survey and penalty provisions.

We are thankful to our Past President Shri Manishbhai Chokshi for sponsoring the 5th Study Circle meeting of MCTC.

I am delighted to share that on 10th March, 2017, Team MCTC met with the Honourable Finance Minister of Maharashtra, Shri Sudhir Mungantiwar and Commissioner of Sales Tax of Maharashtra, Shri Rajiv Jalota for submitting our representation for State Budget. We would Like to thank CA. Shailesh Ghedia and CA. Janak Vaghani for being instrumental in co-ordinating the meeting. Our team has taken good efforts to list out matters of representation on behalf of the dealers as well as professionals. We hope to have them clarified/incorporated in the State Budget.

It is great to witness immense support from all the members of the Chamber in all the activities and events organised by the Committee. There has been full participation in all the events of the Chamber. This works as a driving force for us in the Committee to plan more and better events.

Happy Gudi Padwa !!

Best Regards,

Adarsh S. Parekh
President

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **SECTION 44AD OF THE INCOME-TAX ACT, 1961 - CIVIL CONSTRUCTION BUSINESS - MEASURES FOR PROMOTING DIGITAL PAYMENTS & CREATION OF LESS CASH ECONOMY**

PRESS RELEASE DATED 19-12-2016

Under the existing provisions of section 44AD of the Income-tax Act, 1961 (the Act), in case of certain assessees (i.e. an individual, HUF or a partnership firm other than LLP) carrying on any business (other than transportation, agency, brokerage and commission) and having a turnover of Rupees Two Crore or less, the profit is deemed to be 8% of the total turnover.

In order to achieve the Government's mission of moving towards a less cash economy and to incentivise small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8% under section 44AD of the Act to 6% in respect of the amount of total turnover or gross receipts received through banking channel/digital means for the financial year 2016-17. However, the existing rate of deemed profit of 8% referred to in section 44AD of the Act, shall continue to apply in respect of total turnover or gross receipts received in cash.

Legislative amendment in this regard shall be carried out through the Finance Bill, 2017.

- **SECTION 44AB OF THE INCOME-TAX ACT, 1961, READ WITH RULE 114E OF THE INCOME-TAX RULES, 1962 – AUDIT COMPULSORY – REPORTING CASH TRANSACTIONS**

PRESS RELEASE DATED 22-12-2016

Rule 114E of Income-tax Rules, 1962, for furnishing statement of financial transactions (SFT) came into force with effect from 1st April, 2016. Any person who is liable for audit under section 44AB of the Income-tax Act, 1961 is required to furnish a statement in respect of transaction at serial no. 11 of Rule 114E(2) relating to receipt of cash payment exceeding Rupees Two Lakh for sale of goods or service. Doubts were raised if such transactions are required to be aggregated for reporting.

The norms of aggregation contained in sub-rule 3 of Rule 114E have been amended *vide* CBDT's Notification No. 91/2016 dated 6th October, 2016 clearly indicating that the said transactions did not require aggregation and the reporting requirement under SFT for this purpose is on receipt of cash payment exceeding Rupees Two Lakh for sale of goods or services per transaction.

- **SECTION 6 OF THE INCOME-TAX ACT, 1961 – RESIDENTIAL STATUS – GUIDING PRINCIPLES FOR DETERMINATION OF PLACE OF EFFECTIVE MANAGEMENT (POEM) OF A COMPANY**

CIRCULAR NO. 6 OF 2017 [F.NO.142/11/2015-TPL] DATED 24-1-2017

The concept of POEM for deciding the residential status of a company was introduced by the Finance Act, 2015. It is effective from 01.04.2016 and accordingly shall apply from Assessment Year 2017-18 onwards. The guidelines for determining the POEM has been uploaded on website of the Income-tax Department (www.incometaxindia.gov.in). These guidelines of POEM have been finalised, after placing draft guidelines in public domain for seeking comments from stakeholders and general public, and with extensive consultations thereafter.

The final guidelines on POEM contain some unique features. Active Business Outside India (ABOI) test has been provided, so as not to cover companies outside India which are engaged in active business. The intent is not to target Indian multi-nationals which are engaged in business activity outside India. The intent is to target shell companies and companies which are created for retaining income outside India although real control and management of affairs is located in India. It is emphasised that these guidelines are not intended to cover foreign companies or to tax their global income, merely on the ground of presence of Permanent Establishment or Business connection in India.

Adequate administrative safeguards have been incorporated in the guidelines by mandating that the Assessing Officer (AO), before initiating inquiry for POEM in a case of a taxpayer, will seek approval from Principal Commissioner of Income Tax/ Commissioner of Income-tax. The AO shall also obtain approval from Collegium of Principal Commissioners of Income-tax before holding that POEM of a non-resident company is in India.

It has been further decided that the POEM guidelines shall not apply to companies having turnover or gross receipts of ₹ Fifty crore or less in a financial year.

The guidelines also contain illustrations to clarify the situations whether POEM shall or shall not apply.

- **SECTION 95 OF THE INCOME-TAX ACT, 1961 – GENERAL ANTI AVOIDANCE RULE (GAAR) – APPLICABILITY OF – CLARIFICATIONS ON IMPLEMENTATION OF GAAR PROVISIONS**

CIRCULAR NO. 7 OF 2017 [F.NO.500/43/2016-FT&TR-IV], DATED 27-1-2017

The General Anti Avoidance Rule (GAAR) provisions shall be effective from the Assessment Year 2018-19 onwards, *i.e.* Financial Year 2017-18 onwards. The necessary procedures for application of GAAR and conditions under which it shall not apply, have been enumerated in Rules 10U to 10UC of the Income-tax Rules, 1962.The provisions of General Anti Avoidance Rule (GAAR) are contained in Chapter X-A of the Income-tax Act, 1961.

CBDT has issued the clarifications on implementation of GAAR provisions. Amongst others, it has been clarified that if the jurisdiction of FPI is finalised based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply. GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction. Further, grandfathering as per IT Rules will be available to compulsorily convertible instruments, bonus issuances or split/consolidation of holdings in respect of investments made prior to 1st April 2017 in the hands of same investor. It has also been clarified that adoption of anti-abuse rules in tax treaties may not be

sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. However, if a case of avoidance is sufficiently addressed by Limitation of Benefits (LoB) provisions in the tax treaty, there shall not be an occasion to invoke GAAR.

It has been clarified that if at the time of sanctioning an arrangement, the Court has explicitly and adequately considered the tax implications, GAAR will not apply to such an arrangement. It has also been clarified that GAAR will not apply if an arrangement is held as permissible by the Authority for Advance Rulings. Further, it has been clarified that if an arrangement has been held to be permissible in one year by the PCIT/CIT/Approving Panel and the facts and circumstances remain the same, GAAR will not be invoked for that arrangement in a subsequent year.

The proposal to apply GAAR will be vetted first by the Principal Commissioner of Income Tax/Commissioner of Income Tax and at the second stage by an Approving Panel headed by a judge of High Court. The stakeholders have been assured that adequate procedural safeguards are in place to ensure that GAAR is invoked in a uniform, fair and rational manner.

Government is committed to provide certainty and clarity in tax rules. Further clarifications, if any, on doubts of stakeholders regarding GAAR implementation, will also be provided.

❑ **UNION BUDGET – FINANCE BILL, 2017**

On 1st February, 2017 Hon'ble Finance Minister presented the Union Budget.

The salient features of Direct Tax proposals are summarised below:

I. Affordable Housing

1. Three concessions in the scheme of Income-tax exemption for affordable housing:
   (a) Area of 30 and 60 sq.mtr. to be counted as carpet area and not built-up area;
   (b) 30 sq.mtr. only in 4 metropolitan city limits and 60 sq.mtr. for the rest of the country;
   (c) Completion period extended from 3 years to 5 years.
2. Tax on notional rental income for builders to be calculated only after 1 year from the end of the year in which completion certificate is received.
3. Changes in Capital Gains taxation for immovable properties:
   (a) Holding period reduced for computation of long term capital gain from three years to two years
   (b) Base year for counting the cost of property shifted from 1-4-1981 to 1-4-2001 for all classes of assets including immovable property.
4. Basket of financial instrument in which capital gains can be invested without payment of tax to be expanded.
5. For joint development agreement, the liability to pay capital gains tax will arise in the year in which project is completed.
6. For Andhra Pradesh capital, land belonging to owners as on 2.6.2014 to be exempted from capital gains if the same is offered under land-pooling mechanism.

II. Measures for stimulating growth

1. Concessional withholding rate of 5 per cent for interest received by foreign entities on loans given in India to be continued for another 3 years beyond 30.6.2017.
2. Start-ups to get two relaxations under the scheme of Income-tax holiday given last year.
   (a) The condition of continuous holding of 51 per cent voting rights to be relaxed as long as the original investment of promoter is not diluted.
   (b) Exemption available for three years out of any 7 years from the date of establishment instead of 3 out of 5 years
3. The period of carry forward of MAT/AMT credit increased from 10 years to 15 years.
4. The corporate income tax to be reduced from 30% to 25% for companies with turnover up to ₹ 50 crore in 2015-16. This will benefit 96% of existing 6.67 lakh companies. This will result into tax saving of 16.67% for these companies.
5. Deduction for provision for NPA of Banks to be increased to 8.5% instead of 7.5% of profit.
6. In case of NPA of non-scheduled co-operative banks, interest to be recognised as income only when received.

III. Promoting Digital Economy

1. In the presumptive income tax for small traders, income to be taken as 6% of turnover which is received by digital or banking means.
2. Cash expenditure allowable to be reduced to ₹ 10,000 from the existing ₹ 20,000.
3. Cash transaction of above ₹ 3 lakh not to be permitted. The penalty of equal amount to be levied in case of breach.

IV. Transparency in Electoral Funding

1. The cash donation to political parties from one person limited to ₹ 2,000/-.

2. Electoral Bond to be introduced for facilitating donation to political parties from explained sources.
3. Political parties to file their return in time limit prescribed in the Income-tax Act.

V. Ease of Doing Business

1. Domestic transfer pricing to be applied only if one of the two companies enjoys specified profit-linked deduction.
2. The audit limit for business entities opting for presumptive scheme to be increased from ₹ 1 crore to ₹ 2 crore.
3. Individuals and HUFs not required to keep books of account if their turnover is up to ₹ 25 lakhs or income is up to ₹ 2.5 lakhs.
4. Investment in Categories 1 and 2 foreign portfolio investors registered with SEBI to be exempted from provisions of indirect transfer.
5. TDS of 5% not to be deducted for individual insurance agents if they certify their income to be below taxable limit.
6. Professionals in presumptive scheme to pay advance tax only in one instalment in March instead of four.
7. The time limit for revising a tax return reduced to 12 months. Also time limit for completion of scrutiny will be brought down to 12 months from Assessment Year 2019-20 onwards.

VI. Personal Income Tax

1. Personal income tax for people with income in the slab of ₹ 2.5 lakh to ₹ 5 lakh to be reduced to 5% instead of 10%. This will reduce their tax liability to half while all other tax payers above this slab will also be benefited in terms of lesser tax of ₹ 12,500 per individual (revenue loss of ₹ 15,500 crores).
2. Surcharge of 10% to be levied on individuals with income between ₹ 50 lakhs to ₹ 1 crore(revenue gain of ₹ 2,700 crore).

VII. Miscellaneous

1. TCS exemption for state transport corporation in respect of purchase of vehicles.
2. Income of Chief Minister's relief fund exempt from tax.
3. Penalty on accountant, registered valuer and merchant banker for furnishing incorrect information.
4. In order to ensure timely filing of return and expeditious issue of refund, a fee shall be levied for delay in filing of return.

❑❑❑

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

Emem Freight Forwarders vs. DCIT(Mumbai), ITA No. 5036/MUM/2013, 15th February, 2017

Advance tax not payable on income declared after financial year in Survey. Interest u/s. 234B and 234C deleted

Facts of the case

During the assessment year under queastion there was a survey at the premises of the assessee and the assessee offered a sum of ₹ 90 Lakhs on account of non-deduction of TDS and cash payment above ₹ 20,000.

The AO completed the assessment and levied interest u/s. 234B and 234C of the Income-tax Act, 1961 from 1st April, 2006 to the date of assessment. The assessee filed an appeal before First Appellate Authority. However, CIT(A) dismissed the contentions of the ssessee.

The Tribunal observed in favour of the assessee that

The assessee contended that interest should be levied from date of survey to the date of assessment and not from the start of the assessment year till the date of completion of assessment. The assessee made reference to the decision in case of T. P. Indrakumar vs. ITO, 322 ITR 454 (Karnataka High Court) where the Hon'ble High Court concluded that the additional income declared by the assessee could not be subject to advance tax and hence interest u/s. 234B and 234C will also not apply.

The ITAT observed that the relevant assessment year was 2006-07 and survey was conducted in March 2008. Hence, in the previous year while estimating income for the purpose of advance tax, the assessee could not have known that income is going to be added in 2008 due to survey.

ITAT concluded that the assessee was not liable to pay advance tax on income which was declared in 2008 and since the assessee was not liable to pay advance tax, interest u/s. 234B and 234C could not be levied.

On the above grounds the interest levied was deleted.

Apollo Tyres Ltd. vs. DCIT (ITAT Delhi), [2017] 78 taxmann.com 195, 10th January, 2017

Assessee not liable to deduct tax at source on provision for expenditure at year end, if identity of payee cannot be ascertained while making the provision.

Facts of the case

A TDS survey was conducted by ACIT and an order was passed that it failed to deduct TDS on provision for expenditure made at the year-end in the financials. On appeal CIT(A) also upheld the order of the AO.

The Tribunal held in favour of the assessee observing that:

As per the scheme of Chapter XVIIB of the Income-tax Act, 1961, there is a provision for deduction of tax at source. Ordinarily, the deduction is to be made at the time of payment or the credit of the amount to the account of payee. However, as per provision of section 194C(2), the tax is to be deducted even if the amount is not credited to the account of the payee but to a suspense account.

Tax deducted at source is considered to be tax paid on behalf of the person from whose income the deduction was made and, therefore, the credit for the same is to be given to such a person. Thus identification of the person is imperative.

Also, the Tribunal made reference to Section 203(1) where the tax deductor has to furnish a certificate to the person to whose account such credit was to be given. Therefore, when the tax deductor cannot ascertain the payee the provisions of Chapter XVIIB cannot be followed.

Thus taking reference to dishnet Wireless Ltd. vs. Dy. CIT, ITAT Chennai [2015] 154 ITD 827/60 taxmann.com 329 the tribunal concluded that tax has to be deducted on provision for expenditure where the payee can be ascertained and provisions of Chapter XVIIB cannot be effected if the payee is not identifiable.

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UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. Notification No. 09/2017–ST dated 28th February, 2017

It was understood that during the period from 01/07/2012 to 31/03/2015, services by way of admission to a museum was not liable to levy of service tax (though liable). Now by virtue of this notification, those persons who have not paid service tax on provision of said service for the period from 01/07/2012 to 31/03/2015 would not be required to pay the service tax. It implies those persons who have not paid ST would be exempted but the one who has paid the ST would not be entitled for refund of ST.

2. Notification No. 08/2017–ST dated 20th February, 2017

Similarly, during the period from 01/07/2012 to 31/03/2015, it was understood that services by the operator of Common Effluent Treatment Plant by way of treatment of effluent was not liable to levy of service tax (though liable). Now by virtue of this notification, those person who have not paid the service tax on provision of said services would not be required to pay the service tax for the period from 01/07/2012 to 31/03/2015.

3. Clarification w.r.t taxability of services by way of transportation of goods by vessel from place outside where such goods are intended for transshipment to any country outside India. [Circular No.204/2/2017 - Service Tax, dated 16th February, 2017]

Goods landing at Indian ports which are destined for any other country are allowed to be transshipped through Indian territory without payment of Customs duty in India. This is subject to the condition that such goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India (Section 54(2) of the Customs Act, 1962). Further, Goods Imported (Conditions of Transshipment) Regulations, 1995 have been prescribed for the procedure to be followed for transshipment of such goods.

According to Rule 10 of the Place of Provision of Service Rules, 2012, the place of provision of service of transportation of goods by air/sea, other than by way of mail or courier, is destination of goods.

Hence the place of provision of service in case of goods imported into a customs station in India intended for transshipment to any country outside India, shall be the destination of goods which would be non-taxable territory. Accordingly service tax is not chargeable on services by way of transportation of goods by vessel from place outside India to the custom station in India and such goods are intended for transshipment to any country outside India.

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JUDGMENTS UNDER SERVICE TAX FOR THE MONTH OF JANUARY, 2017

Compiled by CA Bhavin S. Mehta

1. Where assessee paid service tax under protest and later on claimed for refund of same and Adjudicating Authority rejected claim for refund on plea that it was barred by limitation under section 11B(1) of Central Excise Act, limitation would not apply where service tax had been paid under protest [Commissioner of Central Excise Commissionerate, Chandigarh-I vs. Ind. Swift Lands Ltd, [2017] 78 taxmann.com 209 (Punjab & Haryana)]

FACTS:

i. Between June, 2006 and July, 2008, the assessee had paid service tax and filed the letter stating that they were depositing the service tax "under the pressure of the department".

ii. Later on 5-9-2008, it claimed for refund of Service Tax.

iii. The Adjudicating Authority issued a notice to the assessee stating that the claim for refund was liable to be rejected, as it was filed beyond the period of one year from the date on which the amounts were paid i.e. the claim for refund was barred by limitation under section 11B(1).

iv. The Tribunal allowed the appeal of the assessee.

HELD:

i. The second proviso to section 11B(1) states that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty, has been paid under protest.

ii. In the instant case, the application would not be barred by limitation as the service tax was paid under protest.

iii. The period of limitation, if any, therefore, would clearly be inapplicable to the assessee.

iv. An act including a payment can be made under protest in several ways. For the act to be under protest, it is not necessary that it be accompanied by the very words 'under protest'.

v. Whether an act is performed under protest or not must be determined on the basis on which it is performed.

vi. If the conduct indicates that it is not voluntary and is done out of compulsion, it is under protest even within the meaning of these words in the second proviso to section 118(1).

vii. In view of the aforesaid, the application of the assessee for refund of service tax was not barred by limitation under section 11B(1).

2. Annual Fee paid by Delhi International Airport (P.) Ltd. to Airport Authority of India, held as not liable under Franchise Services [Delhi International Airport (P.) Ltd. vs. Union of India [2017] taxmann.com 243 (Delhi)]

FACTS:

i. Under the Airports Authority of India Act, 1994 it is the responsibility of the AAI to develop, operate, manage and maintain airports in India in addition to maintaining related facilitation of air traffic control, and, other allied issues.

ii. Airport Authority of India entered into Operations, Management and Development Agreement (OMDA) to develop, operate and manage the Airports with petitioners 'DIAL' (Delhi International Airport (P.) Ltd.) and 'MIAL'(Mumbai International Airport Private Limited).

iii. As per the policy decision of the Government of India and in terms of the respective OMDAs executed between the AAI and the petitioners, the petitioners have been granted the exclusive right and authority to undertake some of the functions of the AAI being the functions of operation, maintenance, development, design, construction, up gradation, modernization, finance and management of the respective Airports.

iv. It is contended by the petitioners that the OMDA was executed for the grant of various rights to the petitioner for better operation and management of the Airport and the Lease Deed was executed separately for the grant of lease.

Submissions on behalf of the Petitioners

i. Learned counsel for the petitioners contended that the Upfront Fee and Annual Fees is in nature of "Revenue Share" and is not consideration for any 'service' and therefore, there cannot be any Service Tax leviable on the said fee. It is contended that OMDA is not a Franchise Agreement but a statutory divestation of rights to build, operate and maintain the airport in favour of the Petitioner Companies, which are joint venture companies in which the AAI itself holds 26% shares.

ii. Performance of Aeronautical and Non-Aeronautical Services were divested exclusively by the AAI in favour of the petitioners. Where there is a complete divestation of rights, it can never be a 'Franchise'. Further, petitioners have already paid Service Tax under the taxing entry 'Airport Services'.

iii. In order to get attracted, the franchisee should be granted a "representational right" to sell or manufacture goods or to provide services. It is contended that the Petitioners perform services in their own name and have not been granted any representational right by AAI to render services. The Petitioners do not carry on any activity 'on behalf of AAI'.

Submissions on behalf of the Department of Service Tax

i. Annual fee paid by DIAL to AAI is chargeable to service tax under the Taxing Entry of "Franchise Services" as defined under section 65(105)(zze) of Finance Act, 1994. The phrases "representational right" and "process identified with franchisor" are of utmost importance to understand the scope and import of the statutory provision.

ii. "Representational right" has not been given any specific meaning under the Service Tax Provisions of the Finance Act. The right to represent essentially means a conferment of rights by the Franchisor to the Franchisee to do the acts, which are solely identified with it

iii. Franchise agreement may contain terms and conditions, which regulate the conduct of the franchisee in the field, which is otherwise occupied by the Franchisor. Perusal of the various clauses of the OMDA would reflect that the relationship between the parties squarely falls within the definition of the term "franchise" as used in the service tax law under the Finance Act.

iv. With reference to OMDA, it is submitted that the OMDA has various elements of a franchise agreement, wherein, even though the responsibility of operating, maintaining and developing the airport has been given to the petitioners, strict standards have been prescribed for performance and an element of control has been retained by the Franchisor.

Held

i. Section 65(47) of the Finance Act, 1994 reads as under:

"Franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved.

ii. The question that arises for consideration is: whether the OMDA constitutes a franchise and if so, whether any service is being provided by AAI to the petitioners?

iii. For OMDA to constitute a franchise, it requires that the franchisees (petitioners) should have been granted representational right by franchisor (AAI). What is also required is to establish that the right conferred is a "representational right".

iv. A representational right would mean that a right is available with the franchisee to represent the franchisor. The individual identity of the franchisee is subsumed in the identity of the franchisor. In the case of a franchise, anyone dealing with the franchisee would get an impression as if he were dealing with the franchisor.

v. It is clear that the petitioners do not undertake any process identified with AAI. The petitioners run their own operations using their own processes, policies, methods, design, techniques etc. The sole responsibility and liability for performances of the services is that of the petitioners. AAI has completely divested its rights (other than reserved activities) to build operate and maintain the airport.

vi. Clearly, as there is no representational right conferred by AAI on the petitioners, the OMDA cannot constitute a franchise in terms of Section 65(47) of the Finance Act. Further as no service is being provided by AAI to the petitioners, there cannot be said to be any taxable service in terms of Section 65(105)(zze).

vii. In view of the above, the Writ Petitions are disposed of by holding that the OMDA does not constitute a "Franchise" in terms of Section 65(47) of the Finance Act and the transaction between the Petitioners and AAI does not constitute a taxable service in terms of Section 65(105) (zze) of the Finance Act.

3. Where services are rendered in relation to issue of different kinds of licences, permissions and registrations such services are rendered to the Government who are engaged in rendering public service and not in business, therefore service tax is not attracted [Sukhmani Society for Citizen Services vs. CCE&ST (2017) 47 STR 172 (Tri.-Chan.)]

FACTS

i. M/s. Sukhmani Society for Citizen Services, is a society registered under Society Registration Act XXI of 1860.

ii. The appellant is running SUWIDHA (Single User friendly Window Disposal and Helpline for Applicants) Centres at various towns of the district.

iii. The appellant through these SUWIDHA Centres, is engaged in facilitation of issue of different kinds of licences, permissions and registrations by the Govt. of Punjab such as Registration of Births and Deaths, Marriages, Vehicles, Driving Licences, Ration Cards, Arms Licences etc. by way of receiving documents/applications on behalf of various related agencies/departments of the Govt along with statutory charges for such work and additional amounts towards their service charges.

iv. The appellant has been registered as a Society under Society Registration Act XXI of 1860 and acts as per guidelines of the Punjab State e-governance Society with a view to provide various Govt Services under one roof and is charging facilitation charges over and above the Govt statutory fees prescribed under various legislations.

v. The Commissioner took the view that the services provided by the appellant to various Govt departments of State of Punjab is covered under the category of Business Auxiliary Service and is chargeable to service tax

BRIEF

For rendering Business Auxiliary Service, there will be three persons e.g. A, B and C. If B provides the service to C on behalf of A, then B is said to render business auxiliary service. The consideration for the services would be paid by A to B. The view taken by the Revenue is that A is the Government, B is the appellant and C is the public. The consideration is taken as the amount collected as facilitation charges. The appellant has taken the argument that to levy service tax under the Business Auxiliary Service, the service provided by a service provider has to be in relation to the business of the service recipient.

This view was challenged by the appellant mainly on the following points:

i. The primary objective of the appellant is to provide integrated citizen services pertaining to all departments to the public. These are in the nature of facilitisation services to the general public and do not fall within any category of taxable service.

ii. The services rendered by them cannot be charged to service tax under Business Auxiliary Service, since the service recipient is the Government. Unless the services are in relation to business, no service tax is chargeable.

iii. The services which are facilitated by the appellant are falling in the category of sovereign functions of the Government and hence, no service tax is chargeable.

HELD

i. The appellant is authorised to collect the statutory fees and remit the same to the concerned Government Departments. In addition, they are also allowed to charge facilitation charges over this statutory fee, which is used to sustain the Seva Kendras.

ii. Revenue has taken the view that these facilitation charges which the Government has allowed them to collect is the consideration paid by the Government to the appellant for provision of services to the public on behalf of the Government.

iii. The appellant has provided facilitization services to various departments. Hence, taxability under the category would arisen only if the Govt department is engaged in business or commerce and services provided by the appellant are auxiliary to their business.

iv. The CBCE *vide* Circular No. 96/07/2007□ST dated 23-08-2007 has clarified that services which are in the nature of statutory duties of the Government are not to be treated as services provided for consideration and hence, no service tax will be chargeable on the same.

v. The activities facilitated by the appellant, such as issue of birth and death certificate, marriage certificate, vehicle registration etc. are undoubtedly in the nature of the statutory functions of the Govt.

vi. Activities assigned to any or performed by the sovereign/public authorities under the provisions of any law are statutory duties.

vii. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities do not constitute taxable services.

viii. However, if a sovereign/public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.

ix. The business auxiliary service would become chargeable to service tax only if the service is rendered in relation to the business of the recipient.

x. In the present case, the service of facilitisation has been rendered to the Govt. departments, which are engaged not in business but in rendering public services. Hence the Hon'ble Tribunal held that the present case of appellant fails the basic test prescribed by CBEC in the Circular dated 23-8-2007 that for charging service tax, the service should not be in the nature of statutory duties of the Government.

xi. Therefore service tax liability is not attracted.

4. Service tax on repairs & maintenance services by builders/developers [Kumar Beheray Rathi vs. Commissioner of Central Excise, Pune – III [2014 (34) S.T.R. 139 (Tri.-Mumbai)]

FACTS

i. The appellants are builders/developers of residential flats and commercial complexes. They are recovering a one time maintenance deposit from each of the customers to whom they have sold the flats.

ii. The said amount is kept in a separate bank account as fixed deposit. From the interest earned on the said deposit, the appellants are expected to pay for various charges such as common electricity bill, water charges, security charges, etc.

iii. After the flat owners co-operative housing society is formed, whatever balance is left in the said bank account the same is handed over to the Flat Owners Co-operative Housing Society.

iv. Service Tax has been demanded on the deposits made by various purchasers of the flats on the ground that the appellants are providing "Maintenance or Repair" service falling under Section 65(64) and Section 65(105)(zzg) of the Finance Act, 1994.

HELD

i. As per the relevant provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, Payment on behalf of various buyers to various authorities and service providers and payment made on cost basis and debited from deposit account is not to be considered as provision of service.

ii. In this case assessee acts only as trustee or pure agent & upon formation of co-operative society, deposit account is shifted to Flat Owner's Co-operative Society as per the Act. Therefore, assessee is not a provider of Maintenance and Repair Service to flat buyers.

iii. The appellants are not in the business of maintenance or repair service or management of immovable property.

iv. The appellants cannot be held as provider of maintenance or repair service as they are only paying on behalf of various buyers of flats to various authorities and they are not charging anything on their own. They act only as trustee or as pure agent.

v. It is a statutory obligation on the appellants in terms of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. Therefore, the appellants are not providing service of repairs & maintenance to the buyers of the flats and thereby not liable to levy of service tax.

5. If the assessee pays all the service tax along with interest without any contest the department is not supposed to issue any SCN and in absence of any SCN there cannot be any adjudication proceedings for confirmation of demand or imposition of penalties [CCE vs. Wings Travels (2017) 47 STR 225 (Tri.-Mumbai)]

FACTS

i. The appellant is providing services under Rent-a-Cab services and they are registered under the Service Tax Department. The Department investigated the case and found that the Service Tax for the period from 01.04.2007 to 31.03.2008 was not paid. During the investigation the appellant have been paying the Service Tax in different installments, the entire Service Tax dues were paid till 23.04.2008.

ii. In the adjudication the learned Commissioner held that there is no issue of payment of Service Tax or interest in this case as these have already been paid. The only issue decided by the learned Commissioner was to impose the penalty of ₹ 31,52,030 under Section 78 of the Finance Act, 1994 with option for reduced penalty to 25%, the penalty under Sections 76 & 77 was not imposed.

iii. Being aggrieved by the Order in Original the appellant filed an appeal only for waiver of penalty under Section 78 of the Finance Act, 1994. Revenue also filed an appeal for non-levy of penalty under Section 76.

HELD

i. There is no dispute that the Service Tax along with interest was paid by the appellant before issuance of show cause notice, there is no contest on the said payment.

ii. In this case the appellant paid the Service Tax along with interest thereafter the Department should not have issued any show cause notice. Therefore, the case of the appellant is squarely covered by the provision of Section 73(3), therefore the penalty imposed under Section 78 is set aside. The payment of Service Tax along with interest stand maintained.

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FORTHCOMING EVENTS

JOINT LECTURE SERIES ON BASIC OF INTERNATIONAL TAXATION AND FEMA WITH THE CHAMBER OF TAX CONSULTANTS

Venue	**Malad West, Mumbai**		
Date	**Time**	**Subject**	**Speaker**
The Event will start in the Last Week of April, 2017 Four Days	Morning 9.30 a.m. to 1.30 p.m. Evening 3.30 p.m. to 8.30 p.m.	— Overview of DTAA and some of the important Articles of Treaty. — Overview of Transfer Pricing — TDS on Foreign Remittance u/s. 195 of Income-tax — Practical Procedures of uploading of 15CB and 15CA — Overview of FEMA	Eminent Faculties
Detailed Programme with the cost will be rolled out soon.			

PHOTOS OF HALF DAY SEMINAR under the auspices of Shri Rajubhai J. Chokshi Oration Fund

Inauguration by the Speaker CA. Tarun Ghia

Felicitation of the Speaker CA Tarun Ghia by CA. Manish Chokshi

Left to Right : CA. Vaibhav Seth, CA. Tarun Ghia (Speaker), CA. Adarsh Parekh & CA. Manish Chokshi

TRIANGULAR BOX CRICKET TOURNAMENT 2017

• TEAM MCTC •

Shri Sachin Gandhi receiving the Best Bowler Award.

CA. Nikhil Agarwal received the Best Batsman Award

PHOTOS of representation made to the Hon'ble Finance Minister of Maharashtra Shri Sudhir Mungantiwar and Commissioner of Sales Tax, Shri Rajiv Jalota by Team MCTC with the help of CA. Shailesh Ghedia

STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

Form IV (See Rule 8)

MCTC Bulletin

1.	Place of Publication	:	MUMBAI-MAHARASHTRA
2.	Periodicity of its publication	:	Monthly
3.	Printer's Name & Nationality	:	Finesse Graphics & Printers Pvt. Ltd. INDIAN
	Address	:	309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013.
4.	Publisher's Name & Nationality	:	Kishor Vanjara — INDIAN
	Address	:	B/6, Star Manor Apartment, 1st Floor, Anand Road Extn, Malad (W), Mumbai-400 064.
5.	Editor's Name & Nationality	:	Kishor Vanjara — INDIAN
	Address	:	B/6, Star Manor Apartment, 1st Floor, Anand Road Extn, Malad (W), Mumbai-400 064.
6.	Names & Addresses of Individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital	:	N.A.

I, Kishor Vanjara hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 18th March, 2017
Place : Mumbai

Kishor Vanjara
Signature of the Publisher

Printed by Kishor Dwarkadas Vanjara published by Kishor Dwarkadas Vanjara, on behalf of The Malad Chamber of Tax Consultants, and Printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai-400 013. Tel. Nos.: 2496 1685/2496 1605 Fax No.: 24962297 and published at The Malad Chamber of Tax Consultants B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (W), Mumbai-400 064. Adm. Off. Tel. 022-2889 5161
• **Editor : Shri Kishor Vanjara**

Posted at Malad ND (W) Post Office, Mumbai-400 064

Date of Publishing 3rd Week of Every Month
Date of Posting : 20th & 21st March, 2017

To

If undelivered, please return to :

The Malad Chamber of Tax Consultants,
B/6, Star Manor Apartment, 1st Floor,
Anand Road Extn., Malad (W),
Mumbai-400 064.