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MCTC Bulletin

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President's Communique

Dear Members,

I firmly believe that the Indian Long Term Growth story is intact and will not be affected by the Government move of demonetisation. The Banks have started reducing the deposit rates which will lead to the decrease in the bank lending rates. The industry will gain momentum in the coming quarters with the advantage of lower borrowing cost.

As the deposit rates are reducing we need to find other avenues to invest. Stock Market is one such option. If we want to have higher returns, we need to at least invest some portion of our money in stock market after taking the advice of the expert analyst. We can also invest in Mutual Funds. Stock Markets have always given very high returns compared to bank deposits in a longer run. Now, it is on each one to take the benefit of the volatility in the economy for maximum gains.

The Public Meeting on Union Budget 2017 held on 4th February, '2017 was a full house, being attended by tax professionals, businessmen as well as general public. We also released our 19th Publication on the Budget which is almost sold out. We have also released the e-book of the publication in 24 hours of the release of the publication. Further, we organised a "Workshop on GST, MVAT and Service Tax" jointly with AIFTP(WZ), BCAS, CTC, MCTC, STPAM and WIRC of ICAI which has received a huge response.

First time in the history of MCTC, we are organising a Cricket Tournament jointly with STPAM and CTC on 4th March, '2017. The main intention of the event is to create a social bonding among members of different associations. We urge all the members to participate in the event and show their sportsman spirit and at the same time enlarge their networking compass.

Best regards,

Adarsh S. Parekh
President

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **Taxation Laws (Second Amendment) Act, 2016 [243 Taxman (st.) 61]**

An Act further to amend the Income Tax Act, 1961 and Finance Act, 2016, is passed on 15/12/2016. This Act may be called the Taxation Laws (Second Amendment) Act, 2016. It amends section 115BBE and sub-section (1) has been substituted with effect from 01/04/2017 applicable for assessment year 2017-18. It also amends section 271AAB which deals with the penalty where search has been initiated. It also inserts new section 271AAC which deals with penalty in respect of certain income.

The section 2(9) of Finance Act, 2016 is also amended. The new Chapter – IXA is inserted to the Finance Act, 2016 namely "TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016" it contains section 199A to section 199R containing provisions regarding declaration of undisclosed income, charge of tax and surcharge, penalty, deposit of undisclosed income, manner of declaration, time for payment of penalty, surcharge, deposit, tax etc not refundable, undisclosed income declared not to be included in total income, undisclosed income declared not to affect finality of completed assessment, declaration not admissible in evidence against declarant and scheme not to apply to certain persons. One may refer to the above citation for further details.

- **Tax on income from Securitisation Trusts – Section 115TCA –Insertion of rule 12CC and form nos. 64E & 64F [243 Taxman (st.) 29]**

The CBDT vide notification no. SO 3573(E) [No. 107/2016 (F. no. 370142/28/2016 – TPL)] dated 28/11/2016, in exercise of the powers u/s 295 r.w.s 115TCA(4) of the Income Tax Act hereby gives Income Tax (Thirty Third Amendment) Rules, 2016 it came in to force from 01/06/2016. It substitutes rule 12CC relating to Statement u/s 115TCA(4) of the Income Tax Act relating to tax on income from securitisation trust. It also inserts the form no 64E relating to Statement of income paid or credited by securitisation trust to be furnished u/s 115TCA of the Income Tax Act. It also inserts form no 64F relating to Statement of income distributed by a securitisation trust to be provided to the investors u/s 115TCA of the Income Tax Act.

- **Transfer Pricing - Section 92CC of the Income Tax Act -Advance Pricing Agreement - Signing of four unilateral Advance Pricing Agreements by CBDT [243 Taxman (st.) 35]**

Press release dated 23/11/2016

The APA scheme was introduced in the Income Tax Act in 2012 and "Rollback" provisions were introduced in 2014. The scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and setting the prices of international transactions in advance. Since its inception, the APA scheme has evinced a lot of interest from the taxpayers and that has resulted in more than 700 applications (both unilateral and bilateral) being filed in just four years.

The CBDT has entered into four more unilateral Advance Pricing Agreement on 22nd and 23rd November, 2016. Some of these agreements also have a "Rollback" provision in them.

With these four signings, the total number of APAs entered into by the CBDT has reached 115. This includes 7 bilateral APAs and 108 Unilateral APAs till date. During the current financial year, a total of 51 APAs (4 bilateral APAs and 47 unilateral APAs) have been entered into so far.

The four APAs signed over the last two days pertain to various sectors of the economy like pharmaceuticals, Information Technology and construction. The international transactions covered in these agreements include software development Services, It enabled Services (BPOs), Engineerings Design Services, Contract R & D Services and Marketing Support Services.

- **Double Taxation Agreement – Section 90- Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with foreign countries-Korea-Repealing of notification no GSR111(E) dated 26/09/1986. [243 Taxman (st.) 37]**

The central government vide notification no SO 3265(E) [(No 96/2016(F no 500/121/1996-FTD-II)] dated 24/10/2016 notifies that all the provisions of the agreement between government of Republic of India and government of Republic of Korea for the avoidance of Double taxation and prevention of Fiscal Evasion with respect to taxes on income which was signed at Seoul, Korea on 18/05/2015. The date of entry into force of the said agreement is 12/11/2016. One may refer to the above citation for detailed treaty.

- **Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 [243 Taxman (st.) 75]**

The central government in consultation with Reserve Bank of India vide notification no. SO 4061(E) (F.No 3(1)-W&M/2016) Dated 16/12/2016 in exercise of power u/s 199B(c) of the Finance Act, 2016 notifies scheme called the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016. It came in to force from 17/12/2016 and shall be valid till 31/03/2017. This scheme is applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 it prescribes for eligibility for deposits, form of deposits, subscription and mode of investment in the bonds ledger account, effective date of deposit, applications, authorized banks, nominations, transferability, interest, tradability against bonds, repayment and interpretation. One may refer to above citation for further details.

- **Taxation and investment regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016 [243 Taxman (st.) 70]**

The CBDT vide notification no. SO 4059(E) [(No 116/2016 (F.No. 142/33/2016-TPL)] dated 16/12/2016 in exercise of the power u/s 199R (1) and (2) of Finance Act, 2016 notifies the rules called "Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules, 2016" it prescribes for declaration of income in the form of cash or deposit in an account. The one may refer to the above citation for further details.

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

CIT vs. Axis Pvt. Equity Ltd (Bombay High Court), ITA No. 1204 of 2014, 30 January 2017

Distinction between "setting up of business" and "commencement of business" explained. All expenditure after "setting up" is deductible business expenditure even if the business has not commenced.

Facts of the case:

The Assessee had shown business loss of Rs.1.17 crores and Miscellaneous Income of Rs.24 thousand for the subject AY. A.O. disallowed the business losson the ground that business has not been set up during the year under consideration. Miscellaneous Income of Rs.24 thousand was taxed as income from other sources.CIT (A) also upheld the order of Assessing Officer.

ITAT however upheld the contentions of the Assesee relying upon HSBC Securities India Holdings Pvt. Ltd. (ITA No.3181/M/1999) wherein it was held that the business would be held to be set up as and when Assessee had taken business premises and had taken steps to recruit employees and incurred expenses for promoting its business activity. Also interest income was held to be taxable as income from other sources on the grounds that the same were accepted by Assessee in subsequent year's assessment proceedings.

The High Court observed in the favor of the Assessee that:

According to Revenue, there is no distinction between setting up of business and commencement of business. Therefore, no expenditure incurred before commencement of business can be allowed.

However, drawing reference from ITAT Order, the High Court observed that the company was incorporated in the year 2006 and was also issued a Certificate of Commencement of Business with effect from 1st October, 2006. Further, it had engaged legal and financial advisors, incurred expenditure to decide the appropriate tax efficient structure for the funds and employed necessary personnel for purpose of running its business.

The High Court had held that business is said to have been set up when it is established and ready to be commence. However, there may be an interval between a business which is setup and a business which is commenced. All expenses incurred during the interim period between setting up of business and commencement of business would be permissible deductions.

On the above grounds the appeal by Revenue was dismissed.

CIT vs. Green Infra Limited (Bombay High Court), ITA No. 1162 of 2014, 16 January 2017

Share premium collected cannot be cannot be added as “unexplained credit” merely on the grounds that shares were issued at exceptionally high premium

Facts of the case

The assessee had issued shares at a premium of Rs. 490 per share. During assessment A.O. made additions to the income of the assessee to the tune of amount received as share premium stating that such a high premium is unjustified and be added as cash credits u/s 68 of the Income tax Act, 1961.

In the appeal filed by Assessee ITAT examined the case on three grounds; identity of the subscriber to the share capital, genuineness of the transaction and the capacity of the subscriber to the share capital. Since none of the above criteria could be defied by the AO, the argument of AO was dismissed and case was decided in the favor of the assessee. On appeal by Revenue

The High court held in favor of the assessee observing:

Identity of the subscribers was confirmed by virtue of the Assessing Officer issuing a notice under Section 133(6) of the Act to them.

Since the subscription was done through the banking channels as evidenced by bank statements and entire transaction is recorded in the Books of Accounts and reflected in the financial statements of the assessee, the genuineness of the transaction cannot be questioned.

With regard to the capacity of the subscribers High Court took note of the ITAT findings that 98%of the shares are held by IDFC Private Equity Fund II which is a Fund Manager of IDFC Ltd. Moreover, the contributions in IDFC Private Equity Fund II are all by public sector undertakings.

In view of the above, the Hon'ble High Court held that Section 68 cannot be invoked and share premium cannot be added as cash credit.

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. **Amendment in Notification No. 25/2012–ST w.e.f. 22.01.2017. [Notification No.01/2017 - Service Tax, dated 12th January, 2017]**

   Item (g) of Entry 29 in mega exemption Notification No.25/2012-ST has been substituted. Exemption which was earlier restricted to service provided by a business facilitator or a business correspondent to a banking company with respect to Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding, is now widened. By virtue of said notification no. 1/2017-ST, services provided by business facilitator or a business correspondent to a banking company with respect to accounts in rural branch area will be exempted from levy of service tax.

2. **Addition of proviso in definition of Aggregator as per Service Tax Rules, 1994 w.e.f. 22.01.2017. [Notification No.02/2017 - Service Tax, dated 12th January, 2017]**

   By virtue of aforesaid notification, proviso has been added in clause (aa) of Rule 2 of Service Tax Rules, 1994 to *exclude such person from the definition of aggregator* who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely:-

   (a) the person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and

   (b) whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative."

3. **Amendment to Notification No. 30/2012-ST w.e.f 22.01.2017. [Notification No.03/2017 - Service Tax, dated 12th January, 2017]**

   Amendment is made in Service Tax Rules, mega exemption notification 25/2012-ST and Reverse Charge notification 30/2012-ST with respect to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. The effect of amendments shall be as under:

   a. The person complying with the sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) as the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

   b. Person complying with section 29,30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) are defined as follows

      I. Person-in-charge of vessel or an aircraft entering India from any place outside India

      II. An Agent of person-in-charge of a conveyance where anything is required to be done by such agent on behalf of person-in-charge.

      III. An agent appointed by the person-in-charge of a conveyance and any person representing as agent before the officer of customs.

      c. Liability is to be discharged by the recipient of service on reverse charge basis on 30% value of such services. Accordingly in the table provided in notification 30/2012-ST entry at serial no. 12 shall be inserted as follow:-

12.	in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	Nil	100%

4. **Amendment to Notification No. 26/2012-ST w.e.f 22.01.2017. [Notification No.04/2017 - Service Tax, dated 12th January, 2017]**

   Sr. No. 11 of Notification No. 26/2012 – ST has been substituted to provide a single abatement rate of 40% in case of services provided by a tour operator subject to following conditions:-

   i) CENVAT credit on inputs and capital goods used forproviding the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

   ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

5. **Extension of time for payment of service tax by non-assessee online recipient for the month of Dec, 16 and Jan,17 [Notification No.6/2017-ST dated 30.01.2017]**

   Amendment was made in the Place of Provision of Supply Rules, 2012 by notification no. 51/2016-ST, w.e.f. 01.12.2016, wherein provision of online information and database access or retrieval services by a person located outside India to non-assessee online recipients, namely, Government, a local authority, a governmental authority, or an individual, the liability to discharge the service tax liability shall be on such service provider.

   Now by virtue of notification no.6/2017-ST, payment of service tax for the month of December, 2016 and January, 2017 for provision of online information and database access or retrieval services by such service provider to non-assessee online recipient is extended to 6.03.2017.

JUDGMENTS UNDER SERVICE TAX FOR THE MONTH OF JANUARY, 2017

Compiled by CA Bhavin S. Mehta

1) **If the person to whom the burden of service tax is ultimately passed on is entitled to challenge levy of service-tax, it would lead to disastrous consequence. Millions of consumers would come and challenge such levy of taxes. Thus, service receiver has no locus standi to challenge service-tax circular on Joint Development Agreement [N. Bala Baskar v Union of India, Ministry of Finance [2016] 70 taxmann.com 151 (Madras). Appeal petition filed before Supreme Court was dismissed with the right to petitioner to apply for refund, if permissible in law. [2016] 76 taxmann.com 222 (SC)].**

   FACTS:

   i. The assessee along with his siblings entered into a Joint development Agreement (JDA) for the purpose of developing the land owned by them with the builder to develop the land owned by them into a complex of residential houses with the builder.

   ii. The builder constructed the complex and gave 65% share in the complex to the assessee and his siblings and in return, the asseseee would give up 35% share in undivided land.

   iii. However, the builder charged service tax on flats given to landowners.

   iv. The assessee filed Special leave petition with Supreme Court against High Court's order and challenged the levy of such service tax on the stand that there was no service provided by the builder but was merely exchange/sale of immovable property (land or flats)

   APPELLANT'S ARGUMENTS:

   i. The agreement did not envisage the rendition of any services so as to attract payment of service tax and also contending that for the mere exchange of a property, there could not be a service tax, the assessee challenged the very provisions of Section 66B read with Section 66E(b). Therefore, the contention of the petitioner is that this service, which falls within the exempted category, does not attract service tax. Further, the asseseee apprehended that service tax is sought to be levied on both the components namely land and construction.

ii. The assessee further challenged the Circular No. 151/2/2012-ST dated 10.02.2012 and the Instruction No. 354/311/2015-TRU dated 20.01.2016

REVENUE'S ARGUMENTS:

i. The Revenue referred to one of the clause 23 of the JDA wherein it is mentioned that, the assessee and his siblings, who are the service recipients, agreed to take the burden to the extent they are liable. Therefore, the Circular cannot be challenged.

ii. In a case where a circular is challenged questioning the very liability, the Revenue do not think that the concept of locus standi could be widened. The assessee, after having entered into an agreement for development with the builder and after having been a party to Clause 23 of the said agreement, cannot now turn around and say that the circulars imposing an obligation upon persons, who entered into such contracts, are invalid in the eye of law.

iii. A person, who is the owner of the land, had engaged a contractor to put up a construction for themselves upto a particular limit. Since the cost of construction could not be paid by the owner in the form of cash, they agreed to exchange the undivided share of the land with the contractor. If viewed from that angle, what the developer had done is actually the service of construction. Therefore, it is not an easy proposition that it was a transfer of immovable property by way of sale or exchange.

HELD:

i. The agreement for development entered into between the petitioner and his siblings with the Developer, in whatever manner worded, is an agreement for the construction of about 15,600 sq.ft of super built up area in the land that belongs to the petitioner and his siblings. It may be true that after construction, the parties may exchange the constructed area for the undivided share of the land. But, the agreement can also be looked at from another angle.

ii. In the case on hand the agreement that the petitioner had, cannot be separated into two portions. The agreement gave rise to a bouquet of rights for the builder. One was to put up a construction of an area, a part of which could be sold by them to third parties. They could be sold not only as such, but also along with the undivided share of land. Those parties had certainly availed the services of the builder as a service provider.

iii. The petitioner did not stand on a different footing than those persons. Therefore, the challenge of the petitioner to the circular, apart from the question of locus standi, does not merit acceptance.

iv. The Hon'ble Madras High Court went on to held as under:

"The contention that the person, to whom the burden of tax is ultimately passed on, is entitled to challenge a levy, if accepted, would lead to disastrous consequences. Any increase in the incidence of sales tax affects all consumers of all products. Therefore, any person will be entitled to come and challenge the increase in the levy on the ground that the manufacturer or dealer will eventually pass on the burden only to the ultimate consumer. We can quote any number of examples of this nature. Every citizen is a consumer of any number of products. Every Finance Act imposes an additional burden upon many such products. Millions of consumers are entitled to come and challenge such levies, if such a contention is accepted. Therefore, we are of the considered view that the petitioner has no locus standi to challenge the above circulars".

The special leave petition against the above order filed before Supreme Court is rejected with a caveat that the petitioner may apply for refund, if permissible in law.

2. **In a contract for retreading of tyres, assessee is liable to pay service tax only on service component which under State Act has been quantified at 30 per cent and not on entire gross value of service rendered Safety Retreading Company (P.) Ltd. vs Commissioner of Central Excise, Salem [2017] 77 taxmann.com 280 (SC)**

FACTS:

i. The assessee has entered into a contract for retreading of tyres. A demand for levy of tax on the gross value of the service rendered including the cost of materials used and transferred was raised.

ii. The verification of invoices of the Appellant for the period from Jan-2007 to March-2007, the officers noticed that the Appellant have shown material cost, patch cost and misc. charges i.e. Labour charges separately in their invoices. The affidavit of the learned Commissioner proceeds on the basis that the appellant assessee is also liable to pay service tax on the remaining seventy per cent (70%) towards material costs in addition to the 30% of the retreading charges.

iii. Whether service tax is leviable on the total amount charged for retreading including the value of the materials/goods that have been used and sold in the execution of the contract.

REVENUE'S ARGUMENT:

i. The above service provided by the assessee falls under the category of "Maintenance and Repairs"

ii. There is no evidence of sale of materials in rendering the impugned service of "Maintenance and Repairs".

iii. "Maintenance and Repair Service" being as specific service cannot be treated as service under the category of "Works Contract" for the service tax purposes.

iv. Further, there is no proof for the expense incurred on material and service charges separately and hence service tax is leviable on gross value.

HELD:

i. The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service.

ii. The invoices of the assessee has been brought on record and verified which clearly illustrates the breakup of the gross value received reflecting the description as material cost, patch cost, misc. charges i.e. labour charges separately. There is again no contest to the same. The assessee has undisputed assessment under the local tax, where 70% of the value is considered for payment of value added tax. Further reference to the affidavit of the learned Commissioner is made where it has mentioned that the assessee has paid service tax only on the 30% of the tyre retreading charges received from the customers.

iii. Hence, the assessee is liable to pay service tax only on 30% of the gross value of tyre re-treading service.

3. **Where assessee was engaged in business of construction and implementation of various maintenance projects and one 'S' engaged in development of township issued a work order to assessee for levelling of agriculture land including filling of gorges/nallah, etc., activities undertaken by assessee were covered under section 65(97a) of Finance Act, 1994. NKG Infrastructure Ltd. vs Commissioner of Customs, Central Excise & Service Tax [(2017) 77 taxmann.com 63 (All)]. Appeal petition filed before Supreme Court was dismissed [NKG Infrastructure Ltd. vs Commissioner of Customs, Central Excise & Service Tax (2017) 77 taxmann.com 69 (SC)]**

FACTS:

i. The assessee was engaged in business of construction and implementation of various maintenance projects including widening and carpeting of roads, etc

ii. One 'S' engaged in development of residential and other buildings, colonies and township issued a work order to the assessee for levelling of agriculture land including filling of gorges/nallah, removing shrubs, grass and rubbish, etc. Further 'S' made payments to the assessee for the work order and the assessee also issued bill/receipts to 'S' for same.

iii. The assessee did not pay service tax on the said work, nor showed the same in the service tax return. However, it in response to notice issued by the Adjudicating Authority appeared before him and relying on section 65(97a) and 65(105)(zzza) claimed exemption from service tax.

iv. The Adjudicating Authority disallowed the assessee's claim for exemption and confirmed the demand of service tax upon it invoking extended period of limitation.

v. The Tribunal rejected the appeal of the assessee. It held that the assessee was guilty of suppression of facts and extended period of limitation was invokable for the show cause notice demanding service tax. It further held that the activities undertaken by the assessee were covered under section 65(97a) and 65(105)(zzza).

HELD:

i. A bare reading of section 65(97a) makes it very clear that work of site formation and clearance, excavation and earth moving and demolition has been defined by inclusive definition and certain things have been specially mentioned, namely, drilling, boring and core extraction services for construction, geophysical, geological or similar purposes or soil stabilization or horizontal drilling for the passage of cables or drain pipes or land reclamation work or contaminated top soil stripping work or demolition and wrecking of building, structure or road and they are connected with work which are not to be identified with similar work of agriculture, irrigation, watershed development and drilling, digging repairing, renovating or restoring of water sources or water bodies.

ii. The words 'drilling, digging, repairing, renovating or restoring' used in section 65(97a) are all connected with the work water sources or water bodies. Therefore, three items which are excluded are: (1) agriculture, (2) irrigation, and (3) watershed development and work related to water sources or water bodies. In the instant case, there is an agreement of assessee with 'S' engaged in development of residential and other buildings, colonies and township. Levelling work of levelling soil including filling of gorges/nallah removing of shrubs, grass and rubbish, etc. was for the purpose of development of site of 'S'.

iii. The total area of work was 24 acres approximately. Levelling of soil in the context of work done at the instance of 'S' was not for agriculture or irrigation, but it was connected with development of a township/residential scheme of 'S'. The condition of land at the time of work was carried was also not relevant.

iv. When word agriculture/irrigation has been used in contradiction to the other words, which are included in taxable service, the message is very clear that here the agriculture means simple cultivation of soil and earth of animals which is primarily connected with simple agricultural work. When an agricultural land is taken and development work like soil levelling, etc. is carried out for the purpose of development of township, etc., then it cannot be said that work of levelling of soil, etc. is connected with agriculture or can be said to be an agricultural work at all.

v. The assessee is also not engaged in the work of agriculture simpliciter. An attempt was made that agricultural work should be read as agricultural land, but there is no reason for such reading of relevant provision. Section 65(97a) is in respect of service and not to the nature of project, land or other things.

vi. Therefore, the activities undertaken by the assessee were covered under section 65(97a) and it was not exempted from service tax.

vii. Further since the assessee did not disclose the aforesaid work at all and there was a clandestine suppression of facts on its part, extended period of limitation was available to the Adjudicating Authority.

Appeal filed before Supreme Court against the High Court order was dismissed.

4. Training of employees of SEZ units amounts to 'commercial training or coaching services'; therefore, SEZ units may claim refund of service tax paid on such services. [Cummins Technologies India (P.) Ltd. vs Commissioner of Central Excise & Service Tax, Bhopal] [2016] 75 taxmann.com 100 (New Delhi-CESTAT)

FACTS:

i. The appellant is a SEZ unit in Pithampur (M.P.) and is allowed to procure goods and services without payment of any tax as per the provisions of the SEZ Act and Rules.

ii. Services which are consumed by the SEZ are not required to suffer service tax. The SEZ developers as well as SEZ units are allowed to claim refund of the service tax paid on the services provided to them for authorized operations as per various notifications issued from time to time.

iii. The present dispute is with reference to such refunds claimed by the appellant under Notification No. 40/2012-ST dated 20/6/2012, made during the period October 2011 to December 2012.

iv. The Authority rejected a part of the claims made by the appellant in respect of following services:

- CHA services
- Professional services of Chartered Accountants
- Training of employees
- Other where invoices are not submitted

v. Aggrieved by this appeal has been filed.

APPELLANT'S ARGUMENTS:

i. No service tax will be payable in respect of services used by the SEZ foreign authorized operations. Revenue should not have restricted their claim in as much as the services have been utilized by the appellant's SEZ unit.

ii. The CHA services for which the refund claim has been rejected, is approved service by the Development Commissioner. Hence, it cannot be disputed that the above is not approved service.

iii. The invoices issued by these service providers to SEZ unit, clearly reflect the fact that service is provided to the SEZ unit. The CHA only acted as a direct agent who engaged and paid for the services and in turn collected the payment from appellant.

iv. CHA services, Professional services rendered by the Chartered Accountant and Training of employees are approved services and hence the refund should not be denied.

HELD:

i. W.r.t. CHA services, invoices issued by the CHA clearly show amount against THC as well as B.L.C. and the Service Tax had been paid on these charges by CHA. Moreover the container number is also mentioned on the invoices issued by the CHA in the name of appellant. Shipping bill number is also mentioned on the invoices of CHA. Container numbers and shipping bill number are sufficient to prove that the consignment in question was exported by the present appellant.

ii. W.r.t Professional services and training of employees, services rendered by Chartered Accountants and for Training of employees, the rejection of refund claims is unjustified. On verification of invoices, the invoices clearly indicate that services are rendered to SEZ units and services are covered in the approved list of services.

iii. W.r.t services where invoices are not submitted, the refund claim is not allowed.

5. Excess tax paid due to error of over-invoicing amounts to 'tax paid without service being provided'; hence, same can be adjusted in subsequent period as per rule 6(3) of Service Tax Rules, 1994 [Chola Business Services Ltd. vs. Commissioner of Service Tax, Chennai. [2016] 75 taxmann.com 37 (Chennai-CESTAT)]

FACTS:

i. The appellant is engaged in rendering service of pay roll preparation to their group companies by deputing their employees to the offices of their sister concern situated all over India. They are registered under Manpower Recruitment and Supply Agency Service.

ii. The appellant had short paid service tax for one month September, 2007 which they have suo moto adjusted against excess tax paid without indication the year in which tax was excess paid.

iii. The department issued a show cause notice with interest and penalty that such adjustment was not in order as per Rule 6(3) of Service Tax Rules, 1994 and further since the appellant had not refunded the value of taxable services and also not provided any material evidence that have made refund of the value of the taxable service to their group concerns/clients to whom they rendered the service.

iv. It was found that the excess payment was pertaining to July 2007 and August 2007. However, such excess payment was not at all pertaining to services provided but purely because of invoicing error. The question of refunding of the same to the recipient does not arise since the recipient has not made any payment for the service as well as the service tax thereon, which is wrongly claimed by the appellant.

HELD:

i. Article 265 of the Constitution of India, states that "no tax shall be levied or collected except by authority of law". If revenue becomes very rigid on strict compliance of the procedure, there could be situations where rigidness and strictness on part of the Revenue can prove contrary to the provisions of Article 265 of the Constitution of India.

ii. Revenue is also in agreement with the fact that there had been excess payment of service tax during the relevant period. The appellant interpreting the above provisions of Service Tax Rules 1994 made the adjustment of this excess payment of service tax during the later period though Revenue pleads that the appellant had only one route of claiming this excess payment of service tax by filing a refund claim as per the provisions of Service Tax Rules.

iii. The combined and liberal view of the Rules quoted above, where under the adjustment of the excess service tax paid would be allowed during the later period to the appellant assessee.

iv. Reference was also made to Dell India (P.) Ltd. where appellant's contention is supported. This is not a case where the amount sought to be adjusted falls under the category of excess payment on account of wrong classification, valuation or claiming of an exemption. This is a plain and simple case of payment of tax where no tax is required to be paid as no service was provided on which fact, there is no dispute.

v. The finding in the impugned order that the appellant had not produced any material to substantiate that they had refunded the taxable value including the service tax to their group concerns/clients to which the services had been rendered is not even an allegation in the SCN and therefore not addressed. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any.

FORTHCOMING EVENTS

BOX CRICKET TOURNAMENT BETWEEN ASSOCIATIONS			
Venue	**DPS Sports & Leisure, Turff Cricket Ground, Behind Oxford Public School,Thakur Village, Kandivali East, Mumbai 400101**		
Date	**Time**	**Subject**	**Speaker**
Saturday, 4th March, 2017	4.30 pm to 11.00 pm	Day Night Box Cricket tournament between MCTC / CTC and STPAM. Members are requested to enroll quickly. First cum first bassis, maximum 35 players. Last date 21/02/17	CTC MCTC STPAM
Participant Fees Rs.600/- and Guest (Snacks) Rs. 200/-			
Note 1.Payment by CASH. Note 2. Subject to Terms and Conditions.			

PUBLIC MEETING ON UNION BUDGET 2017, JOINTLY WITH GSC

Left to Right : CA. Adarsh Parekh, CA. Yatin Rangwala, CA. Vipul Somaiya, CA. Manish Chokshi (Speaker), Shri Rituraj Gupta (GSC-President), CA Vimal Punmiya (Speaker), Shri Nigam Patel (GSC-Treasurer), Shri Sunil Dewali (GSC-Gen. Secretary), CA. Utpal Patel

Felicitation of the Speakers

Full House at the Public Meeting

Left to Right Standing : Shri Sachin Gandhi, CA. Yatin Rangwala, CA Brijesh Cholera, CA Ujwal Thakrar, CA Utpal Patel, CA Viresh Shah, CA. Tejas Shah, CA. Vandana Dodhia, Shri Darshan Shah, Shri Vilas Vichare, CA Vaibhav Seth, CA Haresh Keniya, CA Ketan Soneji, CA. Jayprakash Tiwari

Left to Right Sitting : CA Vipul Somaiya, Adv. Bharat Raichandani, CA Manish Chokshi, CA Adarsh Parekh, CA Vimal Punmiya, CA Swapnil Modi, CA Vishal Shah.

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