The Malad Chamber of Tax Consultants

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MCTC Bulletin

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President's Communiqué

Dear Members,

सचिव बैद गुर तीनि जौं प्रिय बोलहिं भय आस
राज धर्म तन तीनि कर होड़ बेगिहों नास ।।३७।।

Sunderkand Chopai 37

Sachiv (Advisors / Managers looking after Commercial affairs), Doctor & Teacher Shall give their INDEPENDENT opinion on matters concerning their subject , Without any Fear or Without any expectation of Reward ; otherwise it will lead to destruction. Very important advise for all advisors given by Tulsidasji.

All members are requested to give their suggestions on Budget proposals / new ideas for Direct & Indirect taxes. Suggestions may be related to law or administration of the law.

With so many online procedures, human intervention is minimized. We must congratulate all revenue departments for the transformation.

The new Unified Payment Interface (UPI) introduced by RBI is a unique method of transfer of money. It will allow user to create a virtual UPI-ID through a mobile APP linked with Aadhar & PAN. Funds can be transferred through simple Text messages through UPI. The transformation will be a ***Game Changer.***

All of us will have to rethink our role in nation building rather than just remaining a compliance manager.

As discussed earlier, we are planning workshop of 12 lectures on Indirect Tax jointly with STPAM. It will start from 3rd week of May 2016.

Vacation is about to start. We wish all to have nice holidays and fun with friends & family.

Regards,
Jayprakash M. Tiwari
President

With Regards

≈ TEAM MCTC ≈

For Query & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **REFUNDS – ISSUE OF REFUNDS UP TO ₹ 5,000/- [237 TAXMANN (st.) 6]**

The CBDT *vide* office memorandum No. 312/109/2015 dated 14/01/2016, has directed the decision that in order to provide relief to the small taxpayers, refunds up to ₹ 5,000/- and refunds in cases where arrear demand is up to ₹ 5,000/- may be issued without any adjustment of outstanding arrears u/s 245 of Income Tax Act during F.Y. 2015-16. The non–CASS cases for the A.Y. 2013-14 and 2014-15, where the refund amount is more than ₹ 5,000/- but outstanding arrear is ₹ 5,000/- or less, may also be processed for issue of refund without any adjustment u/s. 245

- **APPEALS TO HIGH COURT U/S. 260A – INITIATIVES TAKEN FOR REDUCING LITIGATION**

PRESS RELEASE [237 TAXMANN (st.) 7]

Several initiatives have been taken by the Central Board of Direct Taxes in the last three months up to December 2015 to significantly reduce disputes and provide relief to taxpayers facing long standing litigation.

The significant steps taken by CBDT include issue of a Circular revising the monetary limits for filing of appeals by the Department with the objective of reducing litigation as a part of its initiatives to reduce grievances of the taxpayers. CBDT has also directed Principal Chief Commissioners to constitute a collegium of Chief Commissioners of Income-tax to consider withdrawal of appeals filed by the Department in cases involving tax effect above the revised monetary limit from the High Courts in cases where, no question of law is involved, the issue is considered settled by the Department, or the appeal is no longer relevant in view of subsequent amendment.

Besides this, the CBDT has issued a number of Circulars for withdrawing or not pressing of appeals on settled issues relating to the subjects listed below:

- Non-applicability of Rule 9A of the income tax Rules, 1962 in case of abandoned feature films.
- Measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-tax Act for the period prior to assessment year 2014-15.
- Interest from non-statutory liquidity ratio (non-SLR) securities.
- Allowability of employer's contribution to funds for welfare of employees in terms of section 43(b) of the Income-tax Act.
- TDS under section 194A of the Act on interest on fixed deposit made on the directions of the Courts.
- Recording of satisfaction note under section 158BD/153C of the Income-tax Act.
- Non-levy of penalty u/s. 271(1)(c) wherein additions/disallowances were made under normal provisions of Income-tax Act, 1961 but tax was levied under MAT provisions under section 115JB/115JC, for cases prior to A.Y. 2016-17.

- **SECTION 197, READ WITH SECTIONS 195, 206C OF THE INCOME-TAX ACT, 1961 – TDS CERTIFICATE FOR DEDUCTION AT LOWER RATE. [237 TAXMANN (st.) 14]**

PRESS RELEASE, DATED 1-1-2016

1. Instances of huge default of 'Short Deduction' have been observed due to wrong quoting of 197 certificate number. The scenario of wrong 197 certificate generally arises when the deductor accepts from deductee a manually issued lower deduction certificate by assessing officer & quotes the same in TDS statements.
2. CPC(TDS) has provided the facility of validating the 197 certificate to the deductors on www.tdscpc.gov.in (TRACES). This enables a deductor to first validate the 197 certificates given to him by their deductees and then furnish the same in the TDS/TCS statement.
3. If the 197 certificate is not valid as per TRACES validation, the deductor should always insist upon an ITD system generated certificate having a unique 10 digit alpha numeric number. This would minimise the generation of default of "Short Deduction due to 197 certificate".
4. This also applies to certificates issued under sections 195(2) & 195(3) by LTU & international taxation officers.

- **REFUNDS- PROCEDURE TO BE FOLLOWED WHERE NOTICE U/S. 245 HAS BEEN ISSUED FOR ITRs PROCEESED IN FINANCIAL YEAR 2015-16 [237 TAXMAN (st.) 17]**

The CBDT *vide* office memorandum No. 312/109/2015-OT, dated 29/01/2016, further directed to convey the decision of the Board intimating the following procedure is to be adopted other than the case covered under office memorandum dated 14/01/2016 and where the notice u/s 245 has been issued to taxpayer:

A. In cases where the taxpayer has contested the demand, CPC would issue a reminder to the jurisdictional Assessing Officers about the contention of the taxpayer, asking them to either confirm, or make appropriate changes, to the demand, within thirty days. In case no response is received from the jurisdictional Assessing Officer, within the stipulated period of thirty days, CPC would issue the refund without any adjustment. The responsibility of non-adjustment of refund against outstanding arrears, if any, would lie with the Assessing Officer.

B. In cases where there is no response from the taxpayer, CPC would issue a reminder to the taxpayer, asking to either agree or disagree with the demand, and submit response on the e-filing portal, within thirty days. In case no response is received from the taxpayer, within the stipulated period of thirty days, CPC would adjust the demand, along with applicable interest u/s. 220(2), against the refund due and issue the balance refund, if any, to the taxpayer.

- **TRANSFER PRICING – SECTION 92CC OF THE INCOME TAX ACT–ADVANCE PRICING AGREEMENT (APA). [237 TAXMANN (st.) 28]**

The Central Board of Direct Taxes (CBDT) has entered into two bilateral Advance Pricing Agreements (APAs) with United Kingdom on 29th January, 2016. With this signing, CBDT has concluded three bilateral APAs the first one being a bilateral APA signed with Japan in December, 2014.

The two bilateral APAs were signed with two Indian group entities of a UK based Multi-National Company (MNC). The APAs have been entered into soon after the Competent Authorities of India and United Kingdom finalised the terms of the bilateral arrangement under the Mutual Agreement Procedure (MAP) process contained in the India-UK DTAA.

The APAs cover the period 2013-14 to 2017-18 and also have a "Rollback" provision for 2 years (2011-12 and 2012-13). Transfer pricing disputes on the same transaction were recently resolved under MAP for each of these two companies for the years 2006-07 to 2010-11. With the signing of the bilateral APAs, the two Indian companies have been provided with tax certainty for 12 years each (5 years under MAP and 7 years under APA). This is a significant step towards providing a stable and predictable tax regime.

The two APAs are also significant because they address the issues of payment of management & service charges and payment of royalty. These transactions generally face prolonged and multi-layered transfer pricing disputes.

With this signing, CBDT has so far signed 41 APAs out of which 38 are unilateral and 3 are bilateral.

- **DEUCTION OF TAX AT SOURCE U/S. 195 – PAYMENT TO NON-RESIDENT-ISSUANCE OF ONLINE CERTIFICATE U/S 195(2) AND 195(3). [237 TAXMANN (st.) 47]**

TDS Instruction No. 51[F.NO.SW/TDS/02/02/2013/DIT(S)-II], dated 04/02/2016

There was a request from field formations and taxpayers to provide functionality for issue of online certificate u/s. 195(2) and u/s. 195(3) for lower/no deduction as manual certificates were not being considered during processing of TDS statement by CPC TDS.

The existing functionality to issue online certificate u/ss. 197 in ITD application has been enhanced to issue online certificate u/ss. 195(2) and 195(3) as under:

i. Assessing Officers of International taxation charges who are authorised to issue certificate u/ss. 195(2) and 195(3) may be assigned the role AR INT TAXATION in ITD application by respective Computer Centre through HRMS module, if not already assigned. The certificate type i.e., 197/195(2)/195(3) also needs to be specified.

ii. For issue of certificate u/ss. 195(2) and 195(3), jurisdiction restriction of PAN has been relaxed. For issue of certificate u/s 195(3), TAN and Amount has been made optional.

iii. As per existing procedure for issue of certificate u/s 197, certificates u/s 195(2) and 195(3) is required to be approved by Range officer through ITD application.

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

M/s. Koratalaiyar Bridge Pvt. Ltd. vs. JCIT, ITA No. 644/M/2013, 31st March 2016

Amortisation of Construction cost of infrastructure facility under BOT project is allowable expenditure.

Facts of the Case

The assessee had built a bridge on Build Operate, Transfer (BOT) basis for the Government. After the Concessionaire period elapsed in A.Y. 2009-10 the bridge was handed over to NHAI. Accordingly, during A.Y. 2009-10, the assessee relying on CBDT Circular No. 9/2014 had written off the opening Written Down Value (WDV) of the river bridge as depreciation allowable.

However, the AO rejected the explanation of the assessee observing that depreciation was given on block of assets and if the entire block ceased to exist, then no depreciation can be allowed. Also under provisions of Section 50 the AO disallowed the depreciation and treated the loss as short term capital loss.

ITAT held in favour of the assessee observing that:

With reference to the CBDT Circular No. 9 of 2014 dated 23rd March 2014 on clarification regarding treatment of expenditure incurred for development of roads/highways in BOT agreements under the Income-tax Act, 1961, the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortised and claimed as allowable business expenditure under the Act.

In view of the above circular, the assessee is entitled to the amortisation of the remaining cost of the infrastructure facility at the end of the term as business expenditure.

DCIT vs. Fritz D. Silva (ITAT Mumbai), ITA No. 236/Mum/2010, 8th May 2015

Interest on borrowed money utilised for acquiring shares can be capitalised as cost of acquisition

Facts of the case

While claiming Long Term Capital Loss on sale of shares, the interest cost incurred by the assessee for acquisition of shares in the past was treated as part of the cost of such shares u/s. 48 of the Income-tax Act, 1961.

The Assessing Officer disallowed the claim of interest cost as cost of acquisition contending that such interest costs can be claimed only if the income from sale of such shares was categorised as Business Income. On appeal before CIT(A), the CIT(A) upheld the assessees view and allowed such interest to be added to cost of acquisition of shares. The Department in turn filed Appeal against ITAT.

ITAT held in favour of the assessee observing that:

The interest costs in question were incurred on the funds utilised for acquisition of shares in the past.

Also, the interest cost so incurred in the past was not claimed as a deduction against any other income. Hence, it can be concluded that monies borrowed have been utilised for acquisition of shares in question.

On the basis of the above facts and drawing reference from the decision of Hon'ble Madras High Court in the case of Trishul Investments Ltd. 305 ITR 434(Madras), ITAT observed that the interest paid for acquisition of shares would partake of the character of cost of shares and, therefore the same was rightly capitalised along with the cost of acquisition of shares.

Bechtel International Inc vs. DDIT (ITAT Mumbai), ITA No. 39/Mum/2007, 30 October 2015

Income does not accrue if the debtor is in a precarious financial position and recovery is doubtful

Facts of the case

The assessee has entered into contract with a company for construction of power plant. The Contract was terminated halfway due to non-payment from client. The assessee raised bill on the Power Company comprising of fees for the work performed and charges for winding up of operation at the site. This bill was not credited to the Profit and Loss account of the assessee on the plea that the ultimate collection of the said amount was not certain while raising the bill. The same was disclosed by way of a note to the Computation of Income.

During Assessment, AO made addition on account of the fees for work performed as well as winding up of operation. On appeal against CIT(A), the CIT(A) held the addition for fees of the work performed and waived addition for winding up of operation on the grounds that the Power Company had never accepted the claims. On this Order, the Revenue filed an appeal before ITAT.

ITAT held in favour of the assessee observing that,

In the case under question, the Power Company was affected by the ENRON bankruptcy and hence in accordance with the Deed of Release date 12th July 2005 issued by Government of India no claims/demands for tax or tax assessments relating to the Power Companies can be made upon any assessee in excess of USD 3 million.

Therefore, the Tribunal held that income did not accrue in the hands of the assessee owing to the precarious financial condition of the debtor notwithstanding that:

a) Services were rendered and the income was recorded in the books of account of the assessee during the relevant year, and

b) Bad debts were claimed in subsequent years when the dispute was settled.

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. Notification No. 21/2016-Service Tax dated 30.03.2016 – (w.e.f. 30.03.2016)

This notification amends Rule 7 by insertion of new proviso after second proviso in Rule 7 of the Point of Taxation Rules, 2011 which pertains to determination of point of taxation in respect of service tax payable under reverse charge mechanism.

Through this proviso where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

Our Comments: It appears proviso is brought specifically for Mutual Fund Company because effective from 01.04.2016, services provided to Mutual Fund Company would be liable under forward charge. Therefore, Mutual Fund Company would be required to deposit the service tax for the services received from agents upto March,2016, even if payment is not made till 31.03.2016. Section 66B provides charge of service tax, whereas POTR provides collection mechanism. Therefore, generally though invoices are not issued by agents, still Mutual Fund Company would be liable to discharge the service tax under RCM with respect to services received upto 31.03.2016.

2. Notification No. 23/2016-Central Excise (N.T.) dated 01.04.2016 – (w.e.f. 01.04.2016)

(a) In Rule 6, in sub-rule (3), in clause (i) of CENVAT Credit Rules, 2004, in case of the manufacture of goods or provider of output service, opting not to maintain separate accounts, assessee has one of the option which is to pay an amount equal to six percent of value of the exempted goods and seven percent of value of the exempted services subject to a maximum of the total credit available in the account of the assessee at the end of period to which the payment relates.

This notification has substituted the above option as to pay an amount equal to six percent of value of the exempted goods and seven percent of value of the exempted services subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period.

(b) Distribution of credit on inputs by warehouse of manufacturer having one or more factories shall be allowed to take credit on input received under the cover of invoice issued by the warehouse of manufacturer in terms of Central Excise Rules, 2002. Now it is notified that the credit on inputs shall be entitled in terms of documents specified under rule 9 of CCR, 2004.

3. Letter F. No. 390/Review/36/2014-JC dated 17th March, 2016

The power to review the order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as adjudicating authority, under Customs Act, Central Excise Act and Finance Act, 1994 (service tax) vest with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice.

CBEC judicial cell has strictly instructed the field to abide by the provisions mentioned in law for reviewing the orders and counter check revenue figures in the disputed demands before taking a view whether a case is fit for preferring an appeal.

GIST OF RECENT JUDGMENTS WITH RESPECT TO SERVICE TAX AND CENTRAL EXCISE

Compiled by CA Bhavin S. Mehta

1. Indian Institute of Technology (IIT) is set up by an Act of Parliament hence, it is Governmental authority under para 2(s)(i) of Notification No. 25/2012-ST, even if Government does not hold 90 per cent or more equity/control in it; therefore, construction services provided to IIT are exempt under Entry 12(c) of Notification No. 25/2012-ST

[Shapoorji Palonji & Company (P.) Ltd. vs. Commissioner, Customs & Central Excise & Service Tax [2016] 67 taxmann.com 218 (Patna)]

FACTS:

Assessee was constructing 'academic block' for Indian Institute of Technology (IIT). Assessee paid service tax thereon but sought refund thereof and stopped paying service tax for the subsequent period. Assessee argued that construction/works contract of 'educational institution' is exempt under Entry 12(c) of Notification No. 25/2012-ST, as service was provided to a 'Governmental authority' being IIT. Department argued that IIT was not a Governmental authority, as Government did not have 90 per cent or more equity/control in IIT. Assessee argued that since IIT was set up under an Act of Parliament, it was governmental authority under para 2(s)(i) of Notification No.25/2012-ST and holding of 90 per cent equity/control criteria is not applicable to para 2(s)(i) ibid.

HELD

The Indian Institute of Technology, Patna, whose academic block was to be constructed by the assessee was set up by an Act of the Parliament, i.e. Indian Institutes of Technology Act, 1961 as an Institute of National Importance under Article 248 of the Constitution of India, read with 7th Schedule List I.

As per the definition of Governmental Authority as amended vide Notification No. 2/2014 dated 30th January, 2014,

"Governmental authority" means an authority or a board or any other body;

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution.

The Hon'ble Patna High Court observed that the provisions contained in sub-clause (i) and sub-clause (ii) of clause 2(s) are independent dis-conjunctive provisions and the expression '90 per cent or more participation by way of equity or control to carry out any function entrusted to municipality under Article 243 W of the Constitution' is related to sub-clause (ii) of clause 2(s) alone. The clause (i) is followed by ';' and the word 'or'. Therefore, each of the sub clauses is independent provision.

The authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90 per cent or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution.

Thus, the construction activity undertaken by the assessee in respect of the academic block of the IIT is exempt from payment of Service-tax in terms of Notification No.25/2012-ST, dated 20.06.2012 as amended.

Thus, the service tax already paid either by the assessee or IIT and collected by department cannot be levied or collected as it is not chargeable levy. Consequently, the direction from department to pay service tax is quashed.

Thus, since the levy and collection of service tax paid by the assessee or IIT has not been found to be justified, therefore, the department shall refund the amount of the service tax deposited either to the assessee or IIT, as the case may be, expeditiously. [In favour of Assessee].

2. Since company is a separate entity, service tax dues payable by director (or director's proprietorship firm) cannot be recovered from company; hence, attachment of company's bank account was released.

[Atchaya Engineering (P.) Ltd. v/s Additional Commissioner, Chennai [2016] 67 taxmann.com 273 (Madras)]

FACTS

Director of assessee-company, Atchaya Engineering (P.) Ltd. (AEPL), was proprietor of M/s. Atchaya Enterprises (AE). Department demanded service tax from AE and the said demand was challenged by AE in appeal. Pending appeal, department initiated recovery proceedings against assessee-AEPL demanding service tax dues of AE and freezed bank account of assessee-AEPL. Department submitted that assessee-AEPL was incorporated to circumvent tax payable by AE.

HELD:

The learned counsel appearing for the petitioner relied upon two judgements:

(i) *[Freezair India (P.) Ltd. vs. CCE [2013] 42 GST 383/40 taxmann.com 185 (Delhi)]*

(ii) *[Rupali Dyeing & Printing Mills vs. Union of India 2005 (187) ELT 178 (Guj.)]*

Both the cases had a similar judgment that a Company once incorporated in accordance with the law is a juristic person, a body corporate capable of being sued and with the right to sue a third person. A Company in law is a different person, altogether from the subscribers of the memorandum and the promoter directors. Principle of independent corporate existence of a registered company is of great significance and cannot be ignored except in the case of statutory mandate or when the corporate veil is required to be pierced for exceptional and good reasons.

It was decided in favour of the assessee. The ratios laid in the above judgment would squarely apply to the facts and circumstances of the present case. When the petitioner company is a separate and independent entity, the bank account of the petitioner company cannot be attached for the dues of the proprietorship concern, viz. M/s. Atchaya Enterprises.

Hence, attachment of bank account of the assessee – AEPL was raised.

3. Service Tax is not leviable on the element of withholding tax in case of remittance to Foreign Service Provider under a "Net of Tax" arrangement.

[M/s Magarpatta Township Development & Construction Co. Ltd. v/s Commissioner of Central Excise, Pune-III (TS-90-CESTAT-2016-MUM)]

FACTS:

1) Appellant had engaged the services of foreign architect for designing and planning of various commercial buildings and paid an amount to such foreign architect as consultancy charges.

2) Appellant has discharged the Service Tax liability under 'Reverse Charge Mechanism' on the amount paid by them to such consultant.

3) The Appellant had also discharged the Income Tax liability (TDS) on the amount so paid.

4) The Revenue held that appellant was liable to pay service tax on the income tax amount deducted as TDS and paid to the credit of Government of India as the same was income to the foreign client.

5) The issue for consideration before CESTAT was whether the amount of Income Tax (TDS) discharged by the appellant on the amount paid to the foreign architect is liable to service tax under 'reverse charge mechanism'.

6) The appellant contended that as per Section 67 of the Finance Act, 1994 Service Tax has to be discharged on the gross amount charged by the service provider.

7) The appellant also contended that as per Rule 7 of the Service Tax (Determination of value) Rules, 2006, the actual consultant charges need to be taxed.

8) For this purpose the appellant relied upon the judgment of the tribunal in the case of Commissioner of Central Excise, Raigad v/s Jawaharlal Nehru Port Trust P. Ltd. 2015 (40) STR 533 (Tri.-Mumbai).

HELD:

The agreement entered into by the appellant with the foreign architect states that amount to be paid to the foreign architect by the appellant should be net of tax.

As per Section 67 (1) (i) of the Finance Act, 1994 (Valuation of taxable service for charging Service Tax) the value of any taxable service in case where the provision of service is for a consideration in money, shall be the gross amount charged by the service provider for such service provided or to be provided by him.

As per Rule 7 of the Service Tax Valuation Rules, 2006, in case of services provided from outside India, the value of taxable service shall be the actual consideration charged for the services provided or to be provided.

The CESTAT had perused the bill/invoice raised by the service provider and found that the appellant had discharged the service tax on the consideration as raised in the said bill/invoice. There was nothing on record to indicate that the appellant had recovered the amount of Income Tax paid by them on such consideration and any other material to hold that the amount paid is consideration for services received from service provider.

Therefore on plain reading of Section 67 with Rule 7 of Service Tax Valuation Rules, Service Tax liability needs to be discharged on amounts which have been billed by the service provider.

In view of the above the CESTAT held that service tax shall not be payable under reverse charge mechanism on Income Tax deducted at source (TDS) and paid to the Government of India where such TDS liability was borne by the appellant.

4. Cenvat Credit : In absence of any provision in service tax law or CENVAT Credit Rules, 2004 requiring registration of service exporters, who are not liable to pay any service tax, service exporters may take credit and refund thereof even without registration

[Commissioner of Service Tax v/s Tavant Technologies India (P.) Ltd. [2016] 67 taxmann.com 193 (Karnataka)]

FACTS:

Assessee was an exporter of software services. Assessee took Cenvat credit and claimed refund thereof. Department denied credit and consequent refund on ground that assessee was not registered under Service Tax law. Department has filed an appeal raising the following substantial question of law : "Whether, the provisions contained in Rule 3 and 4 of the Service Tax Rules 1994 are mandatory or procedural in nature and the service provider can avail the benefit of availment of cenvat credit and refund of unutilized cenvat credit without registration?"

HELD:

The respondent-assessee was an exporter of software service. He had not taken registration under service Tax law and claimed credit and consequent refund of : (a) Management Consultancy services for seeking opinions on technical, management and legal matters; (b) Manpower recruitment agency services; (c) Rent-a-cab services for transport of employees; (d) Outdoor catering services for providing food to employees; (e) Security agency services; (d) Business Support Services for payroll processing, accounting, etc; (f) Software services/Training and coaching services to learn new technology/programming; (g) Renting of

immovable property; (h) Maintenance or repair services to maintain office equipments like A/C, computers, UPS; (i) Pandal and shamiana services to obtain furniture on rent; (j) Telecom services to export software vide internet, conference calls, etc.; (k) House-keeping.

The respondent had submitted a statement specifying each input service, name of output service and justifying that the provision of above services were essential for export of output service.

If the Tribunal has followed the decision of the Court in case of mPortal India Wireless Solutions (P.) Ltd. v.CST, it cannot be said that any substantial question of law would arise for consideration. However, the learned Counsel for the appellant-revenue made an attempt to contend that the view taken by this Court in the above referred decision may require reconsideration because as per him, certain provisions and more particularly of Section 69 of the Registration of service provider has not been considered.

The learned Counsel for the appellant had not been able to show that there was any liability on the part of the respondent to pay service tax which was required to be paid and which was required to be adjusted against cenvat credit or that the respondent was not entitled to the refund. He had also not been able to show any provision under Rule 5 of Cenvat Credit Rules, which provides for condition precedent for registration of the service provider. On the contrary, as per the learned Counsel for the appellant, the service which was being provided by the respondent was exempted from the payment of service tax. Under the circumstances, no substantial questions of law arise for consideration as sought to be canvassed.

In view of the above, the Hon'bel Karnataka High Court didn't find that a different view deserves to be taken than was taken by co-ordinate Bench of this Court in case of mPortal India Wireless Solutions (P.) Ltd. (supra). Hence, the appeal was dismissed.

The case was in favour of assessee.

5. Helping vehicle-buyers to avail registration with RTO under Motor Vehicle Act does not amount to Business Auxiliary or Business Support Services; hence, differential amount earned over and above actual RTO registration fees cannot be charged to service tax

[Arpanna Automotive (P.) Ltd. v/s Commissioner of Customs & Central Excise [2016] 67 taxmann.com 174 (Mumbai - CESTAT)]

FACTS:

Assessee, a motor dealer, earned commission from Financial Institutions for giving table space in assessee's premises. Department demanded service tax thereon along with interest and penalty.

Assessee also earned 'differential amount' kept back on fees charged for RTO registration from their customers. Department argued that amount collected over and above actual charges paid to RTO authorities is liable to service tax as Business Auxiliary Services or Business Support Services.

HELD:

The appellant had not discharged the service tax liability on the commission received from the financial institutions for giving table space in the appellant's premises and that the appellant has not discharged the service tax liability on the differential amount kept back on the fees charged for RTO registration from their customers.

As regards the service tax liability on the amount received as commission from financial institution and other institutions,the same is covered by the Larger Bench decision of the Tribunal in the case of Pagariya Auto Centre [2014] 44 GST 23/42 taxmann.com 371 (Mum. - CESTAT)(LB). Since appellant is not disputing tax amount and he has already discharged, CESTAT upheld the tax liability with interest.

As regards the Service Tax liability on the amount retained by appellant on the RTO fees paid and collected from the customers considered as Business Auxiliary Services or Business Support Services, as per Section 65(19) of the Finance Act 1994 :-

(19) "Business Auxiliary Service" means any service in relation to,—

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

[Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory"

The Appellant is neither promoting nor marketing any services provided by client nor providing any customer care services on behalf of the client. The appellant is helping their customer who purchase the vehicles with registration with authorities as per Motor Vehicle Act. Such registration is mandatory fees. The appellant, presently is working by hire, which are not in respect of any service covered in the definition of Business Auxiliary Service.

The judgement in the case of Wonder Cars (P.) Ltd. v. CCE [Appeal No. ST/338/2012, dated 31-12-2015] has held that amount collected as extra charges for RTO registration is not covered under 'support services of business and commerce'.

In view of the foregoing, the Service Tax liability confirmed under Business Auxiliary Service for the amount of RTO registration fees is set aside. The case was decided in favour of the assessee.

With respect to the penalty imposable, CESTAT found that the Service Tax liability of the amounts received from the various financial institutions, whether is taxable otherwise was settled by the Larger Bench, there were two different streams of the decisions contradicting each other. As the issue needs to be settled by the Larger Bench, the appellant having discharged Service Tax liability and interest thereon, this is a fit case for invoking Section 80 of the Finance Act, 1994 to set aside penalties. Invoking the provisions of the Section 80 of the Finance Act, 1994, CESTAT set aside the penalties imposed by the adjudicating authority. The case was decided in favour of the revenue.

“MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTES ACT 2016”

(LA BILL NO. XIX OF 2016)

by **Shri Dilip Parekh,** *Tax Consultant & MD of DDP Consultancy Pvt Ltd*

Silent features of Amnesty Scheme under various acts administered by the Government of Maharashtra

1. “Maharashtra Settlement of Arrears in Disputes Act, 2016” which shall came into force w.e.f. 07-04-2016.

2. The relevant acts are covered under the settlement of arrears in dispute Acts are as under :-

   (i) Bombay Sales of Motor Spirit Taxation Act, 1958

   (ii) Bombay Sales Tax Act, 1959

   (iii) Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any Purpose Act, 1985

   (iv) Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989

   (v) Central Sales Tax Act, 1956

   (vi) Maharashtra Purchase Tax on Sugarcane Act, 1962

   (vii) Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975

   (viii) Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987

   (ix) Maharashtra Tax on Luxuries Act, 1987

   (x) Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002

   (xi) Maharashtra Value Added Tax Act, 2002

3. Arrears in dispute includes

   a) Tax, Interest and Penalty

   b) Any statutory order passed under relevant Acts, for the period ending 31st March’ 2012.

c) Appeal against the statutory order is filed, and stay in full or part has been granted by the Appellate Authority, Tribunal or Court not later than 30th September' 2016.

4. Applicant who desires to avail the benefit of Amnesty Scheme should file an application to the concerned officer in his jurisdiction or nodal officer before 30th September' 2016.

5. An application should consist of following documents

(a) An application in prescribed Form (will be notified)

(b) The proof of withdrawal of appeal (copy of letter submitted to the Appellate Authority)

(c) Proof of full payment made or "Requisite Amount" or "Undisputed Arrears of Tax amount" for which waiver is sought.

(d) A separate application shall be made for each statutory order under each of the relevant act.

6. **(a) <u>Arrears in dispute pertains to any assessment period upto 31-03-2005 under the relevant Act.</u>**

(i)	Whole Tax Amount of reduced by part payment made in appeal should be paid.	Total amount of interest & penalty outstanding will be waived.
(ii)	If appeal is withdrawn on specific Issue, then whole amount of tax relating to such issues, reduced by the proportionate amount of tax involved in the issues withdrawn in appeal.	Total amount of post assessment penalty & interest accrued upto the date of payment of tax made and proportionate amount of interest and penalty of the payment of tax made on specific issues for which appeal is withdrawn.

(b) <u>Arrears in disputes pertain to any assessment period from 01-04-2005 to 31-03-2012 under the relevant acts.</u>

(i)	Whole Tax Amount and 25% of arrears of Tax as interest amount reduced by part payment made in appeal.	Balance amount of interest & penalty will be waived.
(ii)	If appeal is withdrawn on specific issue, then whole amount of tax relating to such issues, reduced by proportionate amount of tax involved in the issues withdrawn in appeal.	Total amount of post assessment penalty & interest accrued upto the date of payment of tax made and proportionate amount of interest and penalty of the payment of tax made on specific issues for which appeal is withdrawn.

7. Payment should be made in the form of challan prescribed under the relevant act in Form MTR-6 under MVAT Act. The part payment made in appeal shall first adjusted against with the Tax Amount and thereafter towards the Interest and the balance amount adjusted against Penalty.

<u>8. Acceptance of an application / Rejection of an application, Defect Notice and Filing of Appeal</u>

8.1 If concerned officer find an application is incomplete or incorrect, then a defect notice shall be issued to the applicant. On receipt of the notice, applicants shall correct the defects within 15 days from the receipt of the notice and make payment if any. If applicant fails to reply the notices, then concerned officer shall passed rejection order after giving an opportunity of being heard.

8.2 If application is complete in all respect then officer shall passed order for settlement of arrears in dispute, and applicant shall be discharged from his liability for which the order of settlement has been passed.

8.3 An appeal can be preferred against the rejection order passed within 60 days from the date of receipt of the order.

8.4 Applicants shall not be entitled to refund of any amount of arrears in disputed paid prior to the commencement of this act and paid under this Act.

AMNESTY SCHEME UNDER PROFESSION TAX ACT

- Applicant should be Un enrolled under the PT Act.
- Un enrolled person should apply between 1st April 2016 to September 2016, to avail the benefit of the Amnesty Scheme.
- Amnesty will be available to remain un enrolled to pay Profession Tax up to 31st March 2013. (According to me not clarified under the proposed amendment to Sec 3 of Profession Tax Act.)
- If person apply for the enrollment within period of Amnesty Scheme, he will not be liable to pay Penalty for remained un enrolled and interest for delay payment of tax for the period from 1st April 2013 to 31st March 2016.

Note : Please refer the Trade Circular which will be issued for the clarification.

FORTHCOMING EVENTS

1.	Workshop on Indirect Tax - Jointly with STPAM	
Dates	**Day**	**Time**
21.05.2016	Saturday	5.00 pm to 8.30pm
22.05.2016	Sunday	9.30 am to 1.00 pm
28.05.2016	Saturday	5.00 pm to 8.30pm
29.05.2016	Sunday	9.30 am to 1.00 pm
04.06.2016	Saturday	5.00 pm to 8.30pm
05.06.2016	Sunday	9.30 am to 1.00 pm

Topics & Speakers will be finalised with STPAM and will be announced soon

Venue	:	Surajbha Hall, SNDT College, Malad West
Fees	:	For Members of MCTC & STPAM : ₹ 1,750/-
Others	:	₹ 2,500/-

Enrollment Forms will be available on our website & will be mailed to members separately.

With Regards : TEAM MCTC

Disclaimer : Though utmost care is taken about the accuracy of the matter contained herein, the Chamber and/or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily of the Chamber. For full details the readers are advised to refer to the relevant act, rule and relevant statutes.

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