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. 1 ***For members & private circulation only*** **July, 2016**

President's Communiqué

Dear Members,

I take this opportunity to thank, Almighty, my parents, my family, each and every member of this August association for entrusting confidence in me. I would like to congratulate Shri Jayprakash Tiwari, our immediate Past President for an eventful last year and taking the Chamber to new heights. I am honoured to take charge as the President of the Chamber. I, on behalf of the new managing committee, assure all the members that with conviction and hard work, we shall uphold the glory of the Chamber.

I would like to begin the new year with good news! We have crossed 900 plus members and still counting! I draw inspiration from our late President of India Dr. Shri A.P.J. Abdul Kalam, "You have to dream before your dreams can come true". I request each member to support me in spreading the word about the good work and knowledge that our Chamber brings to professionals. I am sure with the joint effort of all the members we shall cross the mark of 1000 members this year.

In today's era communication is very important to stay connected. To facilitate the members, we are initiating to have a dedicated mobile number of the Chamber which will act as a channel of communication between the members and the Chamber. The mobile number will be **7039006655.**

The Inaugural Study Circle Meeting of the Chamber is scheduled on 23rd July, by the time you will receive this bulletin the event would have already been held.

As part of our forthcoming programme, I had proposed the 14th RRC of the Chamber at The Fern Samali Resort, Dapoli on the 5th-7th August. I proudly announce that we have been overwhelmed by the response as the entire resort has been booked and is full. We thank the members for the tremendous support.

I promise all the members that this year will also be as eventful as the last year and we shall conduct all the activities of the Chambers as in the past.

I seek the support and blessings of all the Members of Chamber so as to make each and every event a grand success.

-WISHING YOU A VERY HAPPY INDEPENDENCE DAY-

Best Regards,

Adarsh S. Parekh
President

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THE MALAD CHAMBER OF TAX CONSULTANTS

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DIRECT TAXES – LAW UPDATE

Compiled by CA. Haresh P. Kenia

- **SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - VERIFICATION OF TAX RETURNS FOR ASSESSMENT YEARS 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 AND 2014-15 THROUGH EVC WHICH ARE PENDING DUE TO NON-FILING OF ITR-V FORM AND PROCESSING OF SUCH RETURNS**

  CIRCULAR NO.13/2016 [F.NO.225/46/2016-ITA.II], DATED 9-5-2016

  The Central Board of Direct Taxes ('CBDT'), in exercise of powers under section 119(2)(a) of the Act, in case of returns for Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 which were uploaded electronically by the taxpayer within the time allowed under section 139 of the Act and which have remained incomplete due to non-submission of ITR-V Form verification, hereby permits verification of such returns also through EVC. Such verification process must be completed by 31-08-2016. As an alternative to EVC, the taxpayer is allowed to send a duly signed copy of ITR-V to the CPC, Bengaluru by this date by speed post. In such cases, CBDT also relaxes the time-frame for issuing the intimation as provided in second proviso to sub-section (1) of section 143 of the Act and directs that such returns shall be processed by 30-11-2016 and intimation of processing of such returns shall be sent to the taxpayer concerned as per the laid down procedure. In refund cases, while determining the interest, provision of section 244A(2) of the Act would apply.

- **INCOME DECLARATION SCHEME RULES, 2016 - DECLARATION OF DOMESTIC BLACK MONEY FROM 1-6-2016 TO 30-9-2016**

  NOTIFICATION NO. SO 1831(E) [NO. 33/2016 (F.NO.142/8/2016-TPL), DATED 19-5-2016 [AS CORRECTED BY NOTIFICATION NO. SO 1950(E) [(No.44/2016 (F.No.142/8/2016-TPL)], DATED 2-6-2016]

  The Income Declaration Scheme, 2016 incorporated as Chapter IX of the Finance Act 2016 provides an opportunity to all persons who have not declared income correctly in earlier years to come forward and declare such undisclosed income(s).

  Under the Scheme, such income as declared by the eligible persons, would be taxed at the rate of 30% plus a 'Krishi Kalyan Cess'of 25% on the taxes payable and a penalty at the rate of 25% of the taxes payable, thereby totalling to 45% of the income declared under the scheme.

  The Scheme shall remain in force for a period of 4 months from 1st June, 2016 to 30th September, 2016 for filing of declarations and payments towards taxes, surcharge & penalty must be made latest by 30th November, 2016.

  The Scheme shall apply to undisclosed income whether in the form of investment in assets or otherwise, pertaining to Financial Year 2015-16 or earlier. Where the declaration is in the form of investment in assets, the Fair Market Value of such asset as on 1st June 2016 shall be deemed to be the undisclosed income under the Scheme. However, foreign assets or income to which the Black Money Act 2015 applies are not eligible for declaration under this scheme. Assets specified in the declaration shall be exempt from Wealth tax. No scrutiny and enquiry under the Income-tax Act or the Wealth-tax Act shall be undertaken in respect of such declarations. Immunity from prosecution under the Income-tax Act and Wealth-tax Act is also provided along with immunity from the Benami Transactions (Prohibition) Act, 1988 subject to transfer of asset to actual owner within the period specified in the Rules. Non-payment of total taxes, surcharge & penalty in time or declaration by misrepresentation or suppression of facts shall render the declaration void. The circumstances in which the Scheme shall not apply or where a person is held to be ineligible are specified in section 196 (Chapter IX) of the Finance Act, 2016. Non-declaration of undisclosed income under the Scheme, will render such undisclosed income liable to tax in the previous year in which it is detected by the Income tax Department. Other penal consequences will also follow accordingly.

- **SECTION 48 OF THE INCOME-TAX ACT, 1961 – CAPITAL GAINS – COMPUTATION OF – NOTIFIED COST INFLATION INDEX UNDER SECTION 48, *EXPLANATION (V)***

  NOTIFICATION NO. SO 1948(E)[NO. 42/2016 (F. NO. 142/5/2016-TPL)], DATED 2-6-2016

  The Cost Inflation Index notified for Financial Year 2016-17 is 1125.

- **INCOME-TAX (FOURTEENTH AMENDMENT) RULES, 2016 – AMENDMENT IN RULE 8D**

  NOTIFICATION NO. SO 1949 (E) [F.NO.370142/7/2016-TPL], DATED 2-6-2016

  In exercise of the powers conferred by section 295 read with sub-section (2) of section 14A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: In the Income-tax Rules 1962, in Rule 8D,—

  I. For sub-rule (2), the following sub-rule shall be substituted, namely:—

     "(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

     (i) The amount of expenditure directly relating to income which does not form part of total income; and

     (ii) An amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

     Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."

  II. Sub-rule (3) shall be omitted.

JUDICIAL JUDGMENTS

Compiled by CA Dharmen Shah and CA Rupal Shah

Brahamputra Enterprises Pvt. Ltd., vs. DCIT, New Delhi ITA 4258 to 4264/Del/2013, 30 June, 2016

Penalty u/s. 271(1)(b) deleted for non-compliance due to non-availability of accounting staff for finalization of accounts

Facts of the case

Action u/s. 132 of the I.T. Act was carried out by the department on group companies, including the assessee, at their business premises and residential premises of the directors. Notice u/s. 153A was issued requiring the assessee to file the return of its income within 15 days of the service of the said notice. The assessee filed letter submitting that the assessee had already filed return of its income in due course of time and the original return filed by the assessee may be treated to have been filed in response to notice u/s. 153A of the Act.

In course of assessment proceedings the AO had issued notices u/s 143(2) and 142(1) dated along with questionnaire fixing a hearing date. Since neither anybody attended on the appointed date nor any application for adjournment was filed, the AO levied penalty of ₹ 10,000/- u/s. 271(1)(b) of the I.T. Act. after presenting due show cause notice.

The Tribunal held in favour of assessee observing that:

Penalty u/s. 271(1)(b) is leviable if an assessee fails to comply with a notice. However, assessee had made compliance before passing of the assessment order. There was no deliberate attempt on the part of assessee to disregard the notice issued by the department.

September being the month for finalisation of accounts, the assessee's explanation that there was non-availability of accounting staff cannot be doubted. Therefore, assessee was prevented by reasonable cause from attending the proceedings. Accordingly, penalty levied u/s. 271(1)(b) is deleted.

Sundaresan Narayan vs. CIT Mumbai, I.T.A. No. 354/Mum/2015, 22nd June, 2016

Club membership partly allowed as business expenses

Facts of the case

The assessee is management consultant in the area of real estate and infrastructure. In the profit and loss account, the assessee claimed business promotion expenses of ₹ 4,37,703/- which included Mumbai Cricket Association subscription of ₹ 4 lakhs.

The Assessing Officer disallowed the claim on the following grounds:

(a) The assessee has received fees in the year under question only from known companies.

(b) Onetime fee paid for obtaining "life time associate membership" is in the nature of capital expenditure.

(c) The club membership fee paid by the assessee cannot be considered to have been incurred wholly and exclusively for the purpose of business.

CIT(A) also confirmed the order of the AO.

The Tribunal observed that:

Normally a person joins club with different objectives. In my view, the main objective is to spend leisure time in clubs in a qualitative manner. The contacts developed through clubs also bring new clients and professional opportunity. However, this alone may not bring success. A professional is normally judged by the quality of his work and his expertise.

Since the predominant object of becoming member of a sports club is promotion of sports and spending leisure time, 2/3rd of the expenditure may be considered as personal and 1/3rd of expenditure may be considered as attributable to professional activities.

UPDATES ON SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. Clarification, certain issues in respect of scheme of speedy disbursal of refund claims of exporters of service announced *vide* the Circular No. 195/05/2016-Service Tax. [F.No.137/62/2015- service tax dated 15th June, 2016]

The Scheme is applicable only to the registered exporters of services who have filed the refund claim under Rule 5 of CENVAT Credit Rules, 2004 on or before 31-03-2015 and which were pending on 10-11-2015.

Decision to grant provisional payment is an administrative order and not a quasi-judicial order and should not be subjected to review mitigate the fear or suspicion.

The Certificate to be furnished by the Statutory Auditor (in case of companies) or the Chartered Accountant (in case of assessee other than companies) so as to secure provisional payment of 80% of the claim is not a substitute for verification by the refund sanctioning Authority. Certificate cannot be furnished by a Cost and Management Accountant or a Company Secretary.

The Certificate is required to be given in the format given in Annexure-1 to the Board Circular No. 187/6/2015 dated 10-11-2015.

Points/Disclaimer which are contained in Annexure-1 to the Circular dated 10-11-2015 are present, the certificate should not be rejected on the ground of any disclaimers which the auditors has to give owing to Guidance Notes.

2. Non-leviability of Krishi Kalyan Cess on taxable service, invoice of which is raised on or before 31st May, 2016, subject to condition prescribed [Notification No. 35/2016-ST dated 23rd June, 2016]

Krishi Kalyan Cess will not be levied on taxable services where invoice of such service is issued on or before 31-05-2016 subject to the condition that the provision of services is also completed on or before 31-05-2016.

3. Exemption from service tax on taxable services by way of transportation of goods by a vessel from outside India up to Customs Station for invoices issued on or before 31st May, 2016, subject to conditions prescribed [Notification No. 36/2016-ST dated 23rd June, 2016]

Service tax is exempt on taxable services provided by way of transportation of goods by vessel from outside India up to Customs Station for invoices raised on or before 31-05-2016 provided that the import manifest or the import report required to be delivered under section 30 of the Customs Act,1962 (52 of 1962) has been delivered on or before 31-05-2016 and the service provider or recipient produces certified copy of such import manifest or import report.

4. Specification that a person registered as a First Stage Dealer shall not be required to take registration as an importer and *vice versa* [Notification no. 30/2016- CENT dated 28th June, 2016]

Rule 9(2) of the Central Excise Rules, 2002 specifies that the Board may specify person or class of persons who may not require registration as an importer. Accordingly, the board has specified that:

i. A person who is registered as a first stage dealer shall not be required to take registration as an importer; or

ii. A person who is registered as an importer shall not be required to take registration as a first stage dealer.

LIST OF JUDGMENTS UNDER CENTRAL EXCISE AND SERVICE TAX

Compiled by CA Bhavin S. Mehta

1. **Documentation Charges, Terminal Handling Charges, Bill of Lading Fee, etc. are covered under Port Services and service tax paid thereon is eligible for refund to assessee-exporter. Exporter cannot be unduly burdened with a condition to establish that service provider was registered under Port Services** ***[Ginni International Ltd. vs. Commissioner of Central Excise, Jaipur (2016) 68 taxmann.com 278 (New Delhi-CESTAT)]***

FACTS

The assessee is engaged in manufacture and export of carton yarn. They filed a claim for refund of service tax in terms of **Notification No. 41/2007-ST dated 06-10-2007** for the period July 2008 to September 2008. The refund is claimed on the ground that they have paid service tax on various services received by them and used for export of goods manufactured by them. Assessee refund claim of ₹ 73,085 was rejected on the ground that they have claimed refund under the category of "Port Service" whereas the services received by them falls under various categories like documentation charges, terminal handling charges, bill of lading fees, etc. which are not classifiable under "Port Service". The learned Commissioner (Appeals) observed that the service providers have not classified these services under Port Services in their bills/ invoices. In fact most of the service providers have not shown classification of service. The learned Commissioner (Appeals) also observed that the service tax claimed as refund should have been paid to the Government by the service provider under Port Services. Department denied the refund stating that these services do not fall under Port Services and further the assessee has not classified services in invoice as Port Services. The dispute is regarding correct classification and categorisation of services.

APPELLANT ARGUMENTS:

The learned counsel refers to the **CBEC circular dtd. 09-07-2001** this clarifies the scope of Port services. From the said clarification it is clear that Container Handling Charges, Transhipment Wharfage on containers, Equipment Charges for Handling Containers, Storage Charges for such containers fall under the category of Port Services. It may be appreciated that Terminal Handling Charges are nothing but the charges collected by the Port for handling and/or loading of containers in the vessel for export. These are collected by the Port Authorities from the shipping lines who get this reimbursed either from the freight forwarders or from the exporters. These are Port Charges only. It is claimed that from the nature of service received by the appellants it is clear that the Terminal Handling Charges are only Port Charges which are covered under Port Services, accordingly eligible for refund.

The Department submits that the appellant cannot claim refund since such services are not classified under Port Services in the invoices and has thus not paid service tax under Port Services.

HELD

The Hon'ble CESTAT held that the notification only stipulates that the exporter claiming exemption should have actually paid the service tax on specified services and does not require such services to be classified under Port Services in the invoice. Further, regarding categorisation of the services, **Notification-41/2007-ST** provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters, on taxable services that he receives and uses for export do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt separately; independent of the process of refund and thus classifying the services separately under port services is not the prerequisite to claim refund.

Since the services involved are connected to the export of goods and the appellant has paid service tax on same, the nature of services is to be considered as port services. The refund should not be rejected.

2. **Value of SIM cards is includible in value of telecom services and is liable to service tax and mere payment of sales-tax thereon cannot be a ground to set aside demand of service tax** ***[Loop Mobile India Ltd. vs. Commissioner of Service Tax, Mumbai (2016) 69 taxmann.com 96 (Mumbai-CESTAT)]***

FACTS

The assessee provides telecommunication services. The department sought to include the value of SIM cards in value of telecom services. However, the assessee argued that it was paying sales tax on sales of SIM Cards and hence no service tax is leviable on same. The department levied Service tax and penalty.

APPELLANT'S ARGUMENTS

The appellant were selling the SIM cards to their franchisee and was paying sales tax to the State and activating the SIM cards in the hands of subscribers at a valuable consideration and paying sales tax on the activation charges.

HELD

The Hon'ble Tribunal referred to *Idea Mobile Communications Ltd. vs. CCE & C* [2011] 32 STT 262/12 taxmann.com 307 (SC) wherein it has been held that value of SIM cards is to be included in assessable value for the purpose of levy of service tax. Accordingly, levy of service tax was upheld.

With respect to computation of service tax liability on inclusive basis, the Hon'ble Tribunal referred to *CCE & C vs. Advantage Media Consultant* [2008] 14 STT 483 (Kol. - CESTAT), judgment, wherein it was held that where the gross amount charged by a service

provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged. The Hon'ble Supreme Court upheld the judgment of Kolkata Tribunal as reported in 2009 (14) STR J49 (SC).

Further, with respect to the penalty to be levied, the entire position of law as to taxability of the SIM cards and value to be considered for such tax was agitated before the various judicial forum and had to be settled by the Apex Court in the case of Idea Mobile Communication Ltd. (supra), it was held that the appellant could have entertained a *bona fide* belief as to the sale of SIM cards is not a taxable activity. In the case of Bharti Airtel Ltd. in appeal No. ST/426/2007 in final order No. ST/A/531/12, dated 04-07-2012 in an identical issue, penalties were set aside. Thus, no penalty was levied and assessee was eligible for cum-tax benefit.

3. Where CEC (company) and CF (society) enter into a joint venture to construct and run a school, such resultant school becomes a 'separate person' and therefore, though revenue earned by school may be in negative list, revenue-share received by co-venturers (CEC and CF) from school would be 'consideration for service' and liable to service tax accordingly.

Further where a co-venturer constructed a school building for Joint Venture, such construction would not be liable to service tax under section 66E(b), as same is neither intended for sale nor any consideration is received before completion [Choice Estates And Constructions Ltd. (2016) 69 taxmann.com 392-(AAR-New Delhi)]

FACTS

The assessee Choice Estates Company (CEC) is engaged in construction business (hereinafter called the applicant). Another person, Choice Foundation (CF) was engaged in running educational institutions and other charitable activities. The applicant proposed to enter in a joint venture with CF where under, the applicant would construct an educational institution and CF would run the school/ educational institution. Revenue collected by the educational institution would be shared between two. The applicant sought advance ruling on whether:

1. Service tax is applicable on the revenue share relating to the applicant?
2. Service tax is applicable on the revenue share relating to the CF?
3. Service tax is applicable on the fees collected from the students?
4. If service tax is applicable, service tax can be recovered from the students?

APPELLANT'S ARGUMENTS

The applicant submits that they along with CF are partnering together to providing education services up to Higher Secondary School, which is a service mentioned in the Negative list u/s. 66D of the Finance Act, 1994* and that the service falls within the negative list, the revenue share relating to such service taken by both the applicant and CF, is not liable to service tax. Applicant *inter-alia* submits that they along with CF propose to jointly provide educational services to students; that in consideration to educational services, fees is paid by students, which is equally shared between the applicant and CF. Applicant further submits that service recipient in the present case is the student and service providers are the applicant and CF jointly; that no service is provided *inter se* between the applicant and CF; that construction of building by the applicant and its maintenance are in the nature of self service, thus not liable to Service Tax. Applicant further submits that they are rendering educational services and taking a revenue share which cannot be equated to a service provider; that mutuality of interest is absent in case of service provider; that service provider on the other hand is only concerned with fee payable to him by the service receiver. Applicant submits that in the present partnering agreement, the contracting parties do not provide services *inter se* to each other, but merely act on principal to principal basis to jointly undertake education services and to share the economic gains resulting from such activity.

HELD

As per section 65B(37)(vii)," person" includes an association of persons or body of individuals, whether incorporated or not. In the present case, both parties have agreed to partner to combine their mutual expertise for the setting up and operation of an educational institution. Therefore, partnering of applicant with CF (hereinafter also referred to as "partnering person") would come under the ambit of "person" as defined under Section 65B (37)(VII) of the Finance Act, 1994, which includes an association of persons or body of individuals, whether incorporated or not. Applicant is a company and would fall under the definition of person as also CF being a Society under Sections 65B(37)(iii) and 65B(37) (IV) of the Finance Act, 1994 respectively. Applicant, CF and "partnering person" are all 3 separate persons. Therefore, service provided by the applicant (a person) to "partnering person" (another person) for consideration will be a service. The partnering agreement is not on principal to principal basis. It is clear from the 'Agreement' that revenue share has to be equal between the parties for meeting their respective expenses. Also "Revenue Share" clause in the said Agreement does not state that the drawal from revenue shall be only in respect of imparting education to students. In fact, the same would be for meeting respective expenses by both parties. In other words, revenue received with respect to expenditure incurred includes expenditure incurred on services etc. provided individually by the applicant and CF to the Educational Institution, to be partnered by the applicant and CF i.e. separate legal entity, is nothing but consideration and hence service tax is applicable.

Further with respect to taxability of fees received from students, is clear from Section 66D(1) of the Finance Act, 1994 that service provided by way of pre-school education and education up-to higher secondary school or equivalent is not liable to Service Tax being in the Negative List.* and accordingly service tax will not be payable by the students, as they are not providing any service.

However, the Revenue has pointed out that the above services can be classified under:

1. Construction of civil structure
2. Renting of immovable property
3. Construction of civil structure would entail services of architect, engineer etc.

However, w.r.t classification under Construction of civil structure, it was held that since civil structure is not intended for sale and further, no amount shall be received by the applicant before issuance of completion certificate by the competent authority, it will not be covered under the ambit of declared service and will not be liable to Service Tax.

Now, w.r.t classification under Renting of immovable property, it is held that since the applicant, CF and partnering person are three separate persons and therefore the applicants argument that it is self service is not upheld and consideration received is treated as consideration received for renting of immovable property and is thus liable to Service Tax

Now , w.r.t. classification of construction of civil structure availing Architect services, engineer services etc; it was held that construction of Civil Structure etc. would entail services of architect, engineer etc., which would be liable to Service Tax.

As architects, engineers etc., would be providing service to the applicant, in construction of building for consideration, the same would be liable to Service Tax. Further, service of maintenance and other infrastructural services rendered by the applicant (person) to "partnering person" (another person) would be liable to Service Tax unless same is exempted or in the Negative List.

***Omitted by the Finance Act, 2016 w.e.f. 14-05-2016 and inserted in Mega exemption Notification No. 25-ST**

4. Calcutta HC quashes ₹ 1.5 cr. service tax demand on Sourav Ganguly [(2016) 71 taxmann.com 60

(Kolkata)]

FACTS

The assessee-cricketer received amounts from following activities:

i. Writing articles in magazines;

ii. Anchoring TV shows;

iii. Brand Endorsement;

iv. Playing Cricket in IPL.

The department raised demand of service tax under 'Business Auxiliary Service' or 'Business Support Services and invoked extended period

HELD

i. Writing articles for newspapers or sports magazines or for any other form of media cannot by any stretch of imagination be said to be amounting to rendering business auxiliary service or business support service. Hence, the remuneration received by the assessee for writing articles would not attract service tax.

ii. Television shows are meant for entertainment of the viewers. The remuneration received by the assessee for anchoring TV shows cannot be brought within the service tax net under business auxiliary service or business support services.

iii. Since by amendment of the Finance, Act, 1994, a new taxable service category of 'Brand Promotion' was introduced with effect from July 1, 2010. Thus, such category of service was not taxable prior to July 1, 2010. Such service rendered by the assessee could not be taxed under the head of Business Auxiliary Service for the period prior to July 1, 2010.

iv. Service tax demand raised on amount received for Playing Cricket in IPL under the head of 'Business Support Service', was also not legally tenable. The assessee was engaged as a professional cricketer for which the franchisee was to provide fee to the assessee. The assessee was under full control of the franchisee and had to act in the manner instructed by the franchisee. Hence, it could not be said that the assessee was rendering any service which could be classified as business support service. He was simply a purchased member of a team serving and performing under KKR and was not providing any service to KKR as an individual.

v. Since assessee had been submitting all relevant details from time to time and since notice could not bring out how there was suppression of facts, etc., hence, extended period could not be invoked and demand was hopelessly time-barred.

5. Where assessee ran multiplexes in different locations having separate service tax registration, Commissioner Mumbai could not demand service tax on fees collected by assessee from locations beyond his jurisdiction, only because assessee was maintaining centralised accounting.

Amount received by assessee for promoting products of a beverage company in its multiplexes would be amount for providing 'Business Auxiliary services' on which tax was payable

Import of 'Architect services' would attract levy of service tax only from 18-4-2006 onwards, i.e., date when section 66A was brought into effect.

Where assessee did not declare services rendered and only during investigation, non-payment of service tax by assessee came to light, tax could be demanded within extended period under section 73 of Finance Act, 1994

[Inox Leisure Ltd. vs. Commissioner of Service Tax [2016] 67 taxmann.com 373 (Mumbai - CESTAT)]

FACTS

Assessee was running multiplexes throughout country in different locations having separate service tax registration with centralised accounting system. Were they had made payments to foreign architects for service of concept design and interior decoration of its multiplexes. They were receiving 'pouring fees' and 'signing fees' from CCIPL, for granting CCIPL the promotional and advertising rights in respect of beverages in the multiplexes and to have prominent signage.

The Commissioner of Service Tax, Mumbai demanded tax on the value of services provided by assessee for which it received 'pouring fees' and 'signing fees' under Business Auxiliary Services and also on import of 'Architect Services' with interest & penalties under sections 76, 77 and 78 of the Act were also imposed.

ASSESSEE'S ARGUMENTS

Assessee's contention that each multiplex theatre was duly registered within the jurisdiction of respective service tax authorities and out of nineteen premises only two premises fell within the jurisdiction of the adjudicating authority and, therefore, the demand in respect of seventeen other premises was *ultra vires*. Appellant relies upon *Kiran Singh vs. Chaman Paswan AIR 1954 SC 340.*

Service tax on import of services (Architect services) could be levied only from 18-4-2006 with the introduction of section 66(A) of the Finance Act, 1994.

Each activity performed by appellant under the scope of service for 'signing fees' is taxable under different categories of services introduced in the Act from a period subsequent to the disputed period. The assessee purchased beverages from Coca Cola (CCIPL) and sold the same from its retail counter in the registered premises by on screen advertisement and signage, the assessee was promoting its own goods and not that of any third party and, therefore, no service was rendered.

HELD

It was held in appeal that the appellant was providing services to CCIPL and received one time 'Signing fees' and 'Pouring fees' on annual basis. DGCEI (Directorate General of Central Excise Intelligence) issued the demand cum show cause notice demanding service tax on the fees collected from each location. It is not disputed that the services were provided by the appellant from a Multiplex in each location individually.

Therefore, there is merit in the contention of the assessee that the Commissioner of Service tax, Mumbai has no jurisdiction to adjudicate the case in respect of services received beyond jurisdiction. The Commissioner observed that since the centralised accounting system is a matter within the appellant's control, they cannot be permitted to claim that they made a wrong presentation and, therefore, the show cause notice should fail on jurisdiction. The Commissioner held that appellant did not inform that discharge of service tax liability was left to each individual location.

The Commissioner has erred in mixing the issue of centralised accounting and centralised registration. The Commissioner of Service Tax is appointed under a notification which authorises him to exercise powers under Service Tax Law within the jurisdiction of Mumbai. There is no notification which authorises him to exercise powers in respect of cases originating outside his jurisdiction. The adjudication order has been passed beyond the jurisdiction of the Commissioner in respect of services rendered outside Mumbai. It would have been appropriate for the Commissioner not to pass the order in respect of services rendered outside Mumbai jurisdiction.

With regard to pouring fees the Hon'ble Tribunal observed "The payment of 'pouring fees' on lump sum basis for every location in terms of the first Agreement and on lump sum basis, in terms of second supplementary Agreement dated 13-12-2005, are towards enhancing the sale of the products of CCIPL through the outlets in the Multiplexes" Therefore Tribunal held that 'pouring fees' to be consideration received for providing BAS to CCIPL.

With respect to import of 'Architect service' the Hon'ble Tribunal agreed with the appellant that such service attract levy of service tax only from 18-04-2006 onwards.

On the issue of invocation of extended time period for part of the demand for period prior to one year before the issuance of show cause notice dated 6-10-2008, the Hon'ble Tribunal held that the various locations of the appellant were duly registered under service tax. In such case, responsibility is cast on the appellant to furnish details to the authorities at prescribed frequency under Rule 7 of the Service Tax Rules and declare the services rendered, assess the tax due and make the payment of service tax by the due date. It is only in pursuance of investigation carried out by DGCEI that the non-payment of service tax came to light. In these circumstances the demand under the extended time period under Section 73 is sustainable.

■■■

FORTHCOMING EVENTS

14TH RESIDENTIAL REFFERESHER COURSE*			
Dates	**From Friday 05-08-2016 to Sunday 07-08-2016**		
Venue	The Fern Samali Resort, Dapoli		
	TIME	**SUBJECT**	**SPEAKER**
Friday, 5th August, 2016	4.00 p.m. to 8.00 p.m.	1. CARO – 2016	CA. Vipul Somaiya
		2. Reporting on Internal Financial Control	CA. Vaibhav Seth
*** Details please contact the Office bearers**			
2nd Study Circle Meeting			
Venue	SNDT, MD Shah Mahila College, Malad West.		
Dates	**TIME**	**SUBJECT**	**SPEAKER**
Sunday 21st August, 2016	10 a.m. to 1 p.m.	"Checks & Controls for Tax Audit"	CA Ramakrishna R. Lingsur
Kindly mark the above dates and we request all members to keep taking active part in all activities of the Chamber, to attend in large and make it grand success. **With Regards – TEAM MCTC**			

Welcoming of Incoming President Shri Adarsh Parekh

Felicitation of Outgoing President Shri Jayprakash Tiwari by Incoming President Shri Adarsh Parekh

Appreciation Award as Best Managing Committee member to Shri Vilas Vichare

Appreciation Award as Best Managing Committee member to Shri Viresh Shah

Election Officer Shri Rameshbhai Gandhi declaring name of Shri Adarsh Parekh as President of MCTC for the year 2016-17. Also seen, Jt. Election Officer Shri Janakbhai Rawal and Outgoing President Jaiprakash Tiwari

Members at 37th Annual General Meeting held on 3rd July, 2016

OFFICE BEARERS

Left to Right

Standing:– Viresh Shah (Hon. Jt. Secretary), Swapnil Modi (Hon. Treasurer) Vaibhav Seth (Hon. Jt. Secretary)

Sitting:– Adarsh Parekh (President), Vipul Somaiya (Vice-President)

MANAGING COMMITTEE 2016-17

Left to Right

Standing:– Vilas Vichare, Dharmen Shah, Harsh Shah, Vandana Dodhia, Jayprakash Tiwari, Darshan Shah, Utpal Patel, Ketan Soneji, Tejas Shah.

Sitting:– Manish Chokshi, Yatin Rangwala, Viresh Shah, Vaibhav Seth, Adarsh Parekh (President), Vipul Somaiya, Swapnil Modi, Kishor Vanjara, Pravin Shah.

Left to Right

Standing:– Vishal Shah, Hiten Shah, Atul Ruparelia, Ashwin Acharya, Dilip Parekh, Sachin Gandhi, Vilas Vichare, Dharmen Shah, Harsh Shah, Vandana Dodhia, Jayprakash Tiwari, Darshan Shah, Brijesh Cholera, Utpal Patel, Ketan Soneji, Tejas Shah, Janak Vaghani.

Sitting:– Ramesh Gandhi, Manish Chokshi, Yatin Rangwala, Viresh Shah, Vaibhav Seth, Adarsh Parekh (President), Vipul Somaiya, Swapnil Modi, Kishor Vanjara, Pravin Shah.

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 July, 2016

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.