
- CASE STUDIES ON
IMPORT OF SERVICES

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IMPORT OF SERVICES

BACKGROUND

- ❑ The concept of tax on import of services was introduced for the first time in year 2002.
- ❑ Charging of service tax from the recipient of a service where the service is provided by a non-resident is a well accepted international practice under the reverse charge or tax shift mechanism. Internationally, the reverse charge is applied in the context of import of services. In India too, the reverse charge mechanism has been introduced in phases. Initially, it was introduced in the context of specified services (for e.g. Clearing & Forwarding Agent's Services & Goods Cargo Operator's Services) rendered in India. Thereafter, it was introduced in the context of services rendered by non-residents in India not having an Indian presence and, finally, it was extended to the import of services in India.
- ❑ Until 15th August, 2002, the law required the nonresident service providers themselves to pay service tax, wherever applicable. However, from 16th August, 2002, through the insertion of Rule 2(1)(d)(iv), the mechanism of reverse charge was introduced for the first time for Import of Services and if the non resident service provider did not have "any office" in India, the person receiving taxable service in India was made liable to pay service tax. However, no notification exercising powers conferred by Section 68(2) was in place when the said Rule was inserted. Such notification (Notification No.36 / 2004 dated 31st December 2004) was issued for the first time with effect from 1st January 2005.

POSITIVE REGIME SCENARIO - IMPORT OF SERVICE RULES,2006

- ❑ With effect from 18th April, 2006 new Section 66A was introduced, to govern the taxation of imports of services. Central Government has also notified **The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 from 19th April, 2006.**
- ❑ For the purpose of these rules, terms "Input" & "Input Service" & "Output Service" shall have the same meaning as defined in CENVAT Credit Rules, 2004.
- ❑ **Rule 2(e)- "India"** Includes the installation, structures & vessels located in the continental shelf of India & the exclusive Economic Zone of India for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.¹

¹ Substituted vide Notification No.16/2010-ST dated 27th February, 2010

- Rule 3 has classified all the notified taxable services except 2 services, under three categories. The criteria for treating the service as import of service is listed herein below :-

I. BASED ON LOCATION OF IMMOVABLE PROPERTY
Conditions :- provided in relation to an immovable property situated in India
II. BASED ON PLACE OF PERFORMANCE
Conditions :- <ul style="list-style-type: none"> • Performed partly or wholly in India • Where taxable service is of :- <ol style="list-style-type: none"> 1)Management, Maintenance or Repairs 2)Technical Testing & Certification <p style="margin-left: 40px;">Provided in relation to goods, material or immovable property situated in India at the time of provision of service through internet, electronic or computer network or other means, such taxable services to be treated as performed in India.</p>
III. BASED ON LOCATION OF RECIPIENT OF SERVICE
Conditions :- <ol style="list-style-type: none"> (i) Received by a recipient located in India for use in relation to business or commerce. (ii)Where taxable service is of “supply of tangible goods for use” provided to recipient located in India, the tangible goods so supplied should also be located in India during the period of its use by recipient of service.

NEGATIVE REGIME SCENARIO

(i) Charge of Service tax on & after Finance Act, 2012

- ⌚ There shall be levied a tax (hereinafter referred to as service tax) at the rate of twelve percent on the value of all services , other than those services specified in the negative list, **provided or agreed to be provided in the taxable territory** by one person to another and collected in such manner as may be prescribed
- ⌚ The new charging section, **Section 66B**, levies service tax only on services as are provided in taxable territory. Thus services that are provided in a non taxable territory are not chargeable to service tax.

- ⌚ For determining the place where the services are provided/agreed to be provided or deemed to have been provided/agreed to be provided, “**Place of Provision of Service Rules, 2012**” are made applicable vide section 66C.
- ⌚ As per section 66C(2), “Place of Provision of Service Rules, 2012” shall not be invalid merely on the ground that either the service provider or the service receiver or **both are located at a place being outside the taxable territory.**

CASE STUDIES

1. M/s Barbeques Galore Plc (Barbeques - UK) is a UK based company which is into the business of manufacturing of engineering goods. It has got its customers world over. The company has established its 100% subsidiary in India in July,2012, M/s Barbeques Galore Pvt. Ltd (Barbeques - India) to manage with its customers located in India.

Barbeques India is set up to carry out the support activities such as handling customer’s orders, to liaise with the customers, follow up with customers, recovery of payment etc.

Barbeques UK, enters into the contract and raises bills directly on the customers. Barbeques India collects the payment from the customers on behalf of the Barbeques UK and forwards the same to UK on periodical basis after deducting the cost of its expenses.

Since, the subsidiary was newly established, Barbeques UK provided advice/consultancy in the initial stage to its subsidiary in India in connection with setting up of systems, carrying out the business operation, understand the customers’ requirements and other business management advices. Barbeques UK charged one time fees of 1,00,000 pounds for the said consultancy services to its subsidiary in January,2013.

Examine the applicability of service tax provisions for the Indian subsidiary, Barbeques India in respect of the consultancy services received from its parent company? Does your answer differs if “Barbeques–India” is branch of “Barbeques – UK”



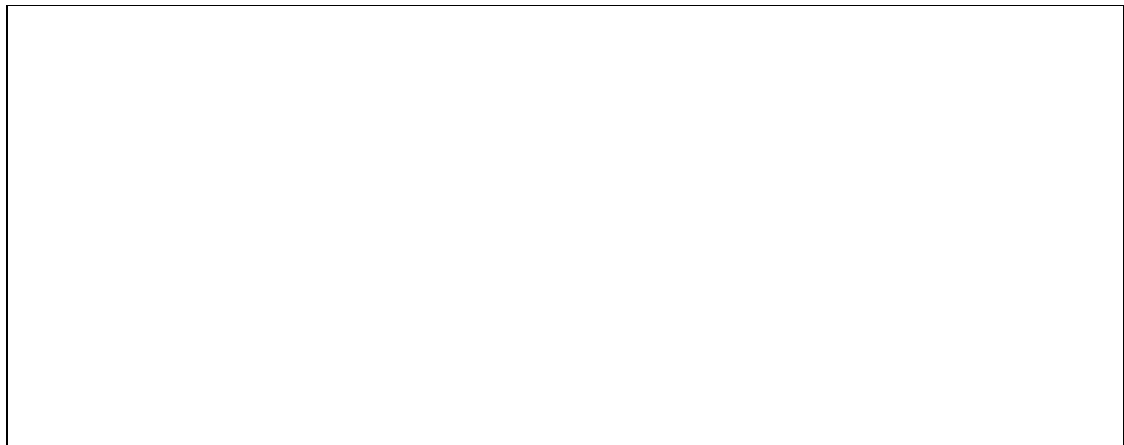
2. M/s Tata Press Ltd, an Indian company is in the business of trading of printing machines. One of its customers in Srilanka, M/s Srilanka Press Holdings Ltd, ordered for a second hand printing machine in August,2013.

M/s Tata Press Ltd ordered the printing machine from M/s Roland Ltd, a well known company in Germany dealing in such type of printing machines.

M/s Roland Ltd delivered the printing machine to the Mumbai port, in a vessel which reached the Indian customs port on 30th September,2012. The machine being second hand, it required some repairing and replacement of parts. M/s Tata Press Ltd, has appointed engineer Mr. Robinson from germany for repairing and replacing the damaged pert. Mr. Robinson carried out entire repairing activity in the premises of Mumbai port.

Mr. Robinson charged 1000 USD for repairing work. M/s Tata Press Ltd exported the said machine (without clearance) directly from Mumbai port to Srilanka.

Discuss the applicability of the service tax on the repairing charges paid to Robinson?



3. M/s Kalpataru Builders Pvt Ltd, of Mumbai are constructing a commercial complex in Dubai. For the purpose designing the complex at Dubai, company appointed Mr. James Bond of USA as an Architect. Mr. James Bond charged 20 lakhs USD as Architect Fees and raises his Invoice 14th May,2013.

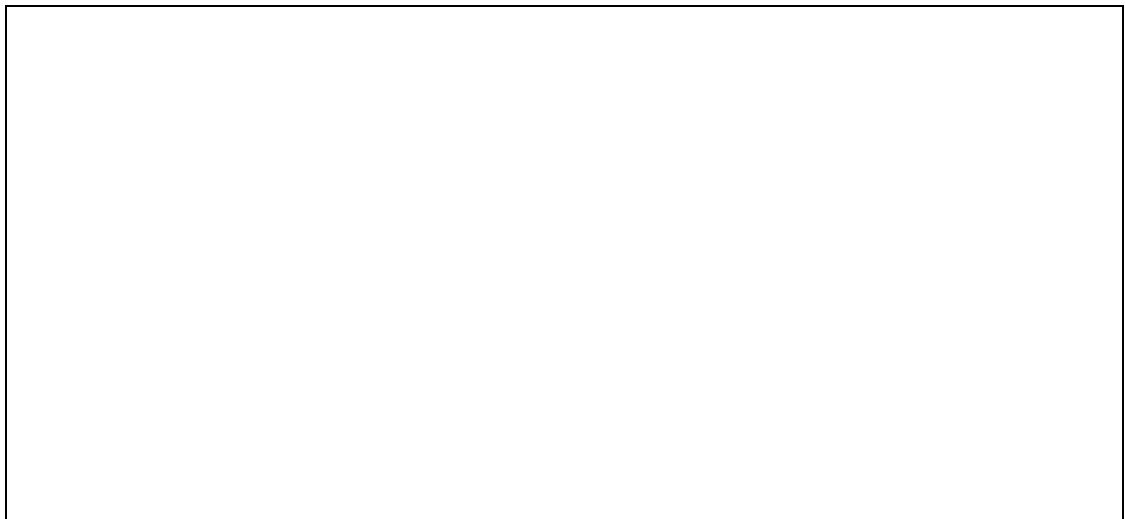
M/s Kalpataru Builders Pvt Ltd awarded the contract for construction to the contractors, M/s Nikon India, a partnership firm for Rs. 20 Crores. M/s Nikon India commenced the construction from 1st July,2013. M/s Kalpataru Builders Pvt Ltd paid Rs. 10Crore as advance to M/s Nikon India on 5th July,2013.

M/s Kalpataru Builders Pvt Ltd required finance for the said project at Dubai. Hence, they approached M/s Morgan Stanley of USA, a finance consultant who has rendered the services of getting fund & got the company finance of 90 Lakhs USD from the DBS Bank Ltd in Dubai. Morgan Stanley charged 1% as commission to the company for procuring the loan from the DBS Bank Ltd.

M/s Kalpataru Builders Pvt Ltd appointed M/s Frank & Knight of UK as a marketing agent for book the sale of shops/ offices in the complex in September,2013. A customer booked 2 shops in the said complex. Knight M/s Frank & charged 3 Lakhs USD, towards his commission charges for the sale of 2 shops.

Discuss the applicability of service tax of M/s Kalpataru Builders Pvt Ltd on the following fees paid by the company for the various services availed by it:

- a) Architect fees of 20 Lakhs USD to Mr. James Bond
- b) Contractors charges of Rs. 10 Crore to M/s Nikon India
- c) Commission of 9 Lakhs USD paid to M/s Morgan Stanley
- d) Commission of 3 Lakhs USD paid to M/s Frank & Knight.



- 4. M/s XYZ Foundation of Mumbai, organized a medical conference at Macao, China. The doctors from various countries participated in the said conference. M/s XYZ Foundation appointed Dr. Thomasson from Germany, a well –known Dermatologist for giving lecture and train the participants at the conference. M/s XYZ Foundation paid 5 Lakhs USD to Dr. Thomasson for training the participants.

M/s XYZ Foundation also appointed Psychologist Dr. Davidson from Bangalore for training the participants at conference. M/s XYZ Lite Foundation paid Rs. 3 Lakhs for his services.

50 participants have enrolled of which 10 doctors are from India and they have paid conference fees in Indian currency to M/s XYZ Foundation. The other 40 doctors from European countries paid the conference fees in USD to M/s XYZ Foundation.

Examine the service tax liability:

1. Fees paid to Dr. Thomasson of Germany
2. Fees paid to Dr. Davidson of Bangalore
3. Conference fees received from 10 local doctors
4. Conference fees received from doctors of European countries.

5. a) M/s Prime Electricals Ltd of Karnataka is in the business of manufacturing switch gears and electrical goods. The company has its factory located at Chennai. During the process of manufacturing, one of the machinery got damaged.

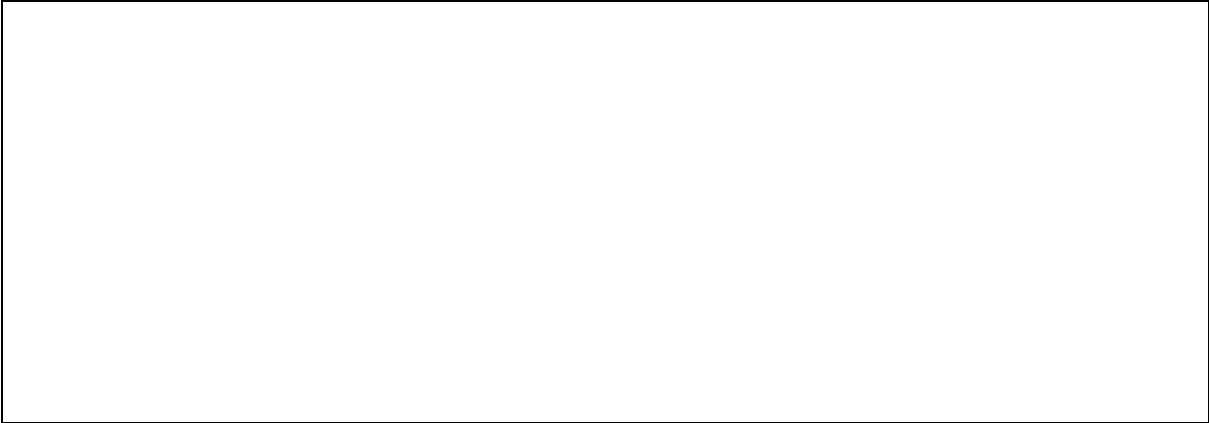
M/s Prime Electricals Ltd consulted the supplier of the machinery M/s ABC Pvt Ltd of Srilanka. As per the instructions, M/s ABC Pvt Ltd, the machine was sent to the factory of the supplier located at Srilanka for the repairing and reconditioning job.

The 95% of the repairing and reconditioning work was carried out at the dealer's factory at Srilanka and the balance 5% of the repairing work was carried out at Chennai factory of M/s Prime Electricals Ltd during the installation of the machine.

M/s ABC Pvt Ltd charged lumpsum Rs. 100000 for the said repair job.

Discuss the service tax implications on the said contract on M/s Prime Electricals Ltd.

- b) Whether your answer if M/s ABC Pvt Ltd gave 2 separate bills i.e. one for repairing work at their factory at Srilanka and the second for repairing work of the machine at the factory of M/s Prime Electricals Ltd.



6. M/s Manubhai & Kanubhai are in the business of manufacturing of stainless steel products. Majority of their raw materials are imported from China. They have entered into the contract with M/s Total Cargo Solutions of Singapore to pick up the goods from suppliers place at China and deliver the same to their factory at Navi Mumbai.

The services of M/s Total Cargo Solutions include transportation by road in China as well as in India, transportation by sea, insurance coverage, loading & unloading and custom clearance formalities. M/s Total Cargo Solutions has charges 1 Lakh USD without giving separate break-up for each element of their services.

Whether the services of M/s Total Cargo Solutions liable to service tax in India?

Would the answer be different if M/s Total Cargo Solutions give separate bifurcation for each activity including international freight?

