

WESTERN INDIA REGIONAL COUNCIL
SEMINAR ON CRITICAL ISSUES IN SERVICE TAX

Paper : **Cenvat, Reverse/ Joint charge Mechanism, Valuation and abatement**
Faculty : **CA Naresh K. Sheth**
Day & Date : **Saturday, 04th October, 2014**

Preamble

WIRC has organized this seminar for participants having reasonable or expert knowledge of Service tax. The purpose of this seminar is to discuss and deliberate on critical issues in service tax likely to emanate in negative list based era of service taxation. The topic allotted for this session is “critical issues on reverse/ joint charge, cenvat, valuation and abatement. Keeping in view the purpose of seminar and profile of learned participants, faculty will refrain from elementary discussion on basic provisions of the Act, Rules and Notification.

It is thought fit to discuss the issues in the form of case studies. The paper consists of issues/ case studies on brewing controversies on above referred subject. These issues/ controversies might come up for testing by judicial forums at later date. There could be several dimensions to the issues raised and there could be many view points on such issues.

Faculty candidly admits that he is learning this complicated and ever evolving taxation law. The faculty would present his views on case studies/ issues to be best of his ability, knowledge and experience. The service tax authorities and/or Judiciary may or may not concur with faculty’s views on the issues to be discussed.

The case studies/ issues are now put up for consideration and discussion.

Cenvat issues

Case Study 1:

Facts & Background:

Builder acquired a plot in **June, 2008** for construction of residential complex of 50 units. The construction started in **July, 2009** and completed in **May, 2013 (building completion certificate obtained)**. The service tax registration was taken in December, 2010. The builder has received the advances for flats under construction during the period **July, 2010 to May, 2013**. The service tax thereon was paid at appropriate rate. **Three flats were sold in April 2014**.

Builder has incurred huge expenses on labor charges, Architect fees, security services, site formation etc. during the period **June, 2008 to July, 2009** (before commencement of construction) and has paid substantial service tax on such services availed by him.

There were expenses incurred during the period **July 2009 to November, 2010** (after commencement of construction but before registration). There were ongoing project and other expenses during the period **December, 2010 to May, 2013**.

Issues under Deliberation:

Whether builder is entitled to Cenvat of service tax on services availed by him during the period:

- June, 2008 to June, 2009 – Pre- construction period
- July, 2009 to June, 2010 – Where sale of under construction flats was not liable to service tax
- July, 2010 to November, 2010 – Where sales were liable to service tax but builder was not registered for service tax.
- December, 2010 to June, 2012 – where builder has paid service tax on abated value of sale of under construction flats.
- July 2012 onwards – Builder paid the service tax on abated value and was entitled to Cenvat credit
- What happens on sale of three completed flats on which no service tax is payable?

If one takes a view that the developer is not entitled to Cenvat attributable to completed flat, how to knock off/ reverse such Cenvat?

CASE STUDY 2

Facts & Background:

6th proviso is inserted w.e.f 1st **September, 2014** to Rule 4(7) of Cenvat Credit Rules, 2004 (CCR) which prescribes time limit of 6 months from **invoice date** for availing cenvat of **input services**.

Proviso 3 to Rule 4(7) of CCR provides as under:

- The value of the input service and the service tax payable (as indicated in invoice, bill or challan) thereon shall be paid within **three months** of the date of invoice, bill or challan.
- If not paid within three months as stated above, same is to be reversed or paid.
- The amount reversed or paid earlier can be claimed payment of value of the input service and the service tax subject to other provision of these Rules.

Issues under deliberation:

What will be position of cenvat claimed in following situations?

a) Bill date : 31.03.2014 b) Cenvat claimed 30.06.2014 c) Payment made on 15.10.2014	<ul style="list-style-type: none">• Cenvat is to be reversed on 01.07.2014.• Whether Cenvat can be reclaimed on 15.10.2014?
a) Bill date : 31.03.2014 b) Cenvat not claimed till 30.09.2014 c) Payment made on 15.10.2014	<ul style="list-style-type: none">• Whether Cenvat can be claimed in such scenario?

CASE STUDY 3

An assessee is providing taxable as well as exempt services. The facts matrix is as under:

Particulars	Value (Rs.)	Tax amount (Rs.)
Taxable services	10 Crores	1,23,60,000
Exempt services	5 Crores	Nil
Input services having one to one co-relation with taxable services	6 Crore	74,16,000
Input services having one to one co-relation with exempt services	2 Crore	24,72,000
Common Input services	1 Crore	12,36,000

Issues under deliberation:

Which of the following method of claiming cenvat is correct?

Method 1:

Service tax		1,23,60,000
Less: Cenvat		
One to one co-relation with taxable services	74,16,000	
One to one co-relation with Exempt services	Nil	
Proportionate cenvat of common input service tax i.e. $12,36,000 * 10 / 15$ (in the proportion of taxable to total turnover)	8,24,000	(82,40,000)
Service tax paid in cash		41,20,000

Method 2:

Service tax	1,23,60,000
Less: Cenvat	
Proportionate cenvat of Total input service tax i.e. $1,11,24,000 * 10 / 15$ (in the proportion of taxable to total turnover)	74,16,000
Service tax paid in cash	49,44,000

Method 3:

Service tax	1,23,60,000
Less: Cenvat	
Proportionate cenvat of input service tax having one to one co-relation with taxable service and common Input services i.e. $86,52,000 * 10 / 15$ (in the proportion of taxable to total turnover)	57,68,000
Service tax paid in cash	65,92,000

Reverse / Joint Charge Issues**CASE STUDY 4**

Maharashtra Cement Limited (MCL) is having cement manufacturing unit in Nagpur. Mr Patil, a truck owner, transports the cement bags from MCL factory to its dealers in Vidharabha district. Mr. Patil charges the freight on the basis of tonnage hauled. Mr. Patil does not issue the consignment note.

Whether MCL is liable to discharge service tax liability under Reverse charge mechanism on freight paid to Mr. Patil?

CASE STUDY 5

Whether following services are “legal services” liable to service tax under reverse charge Mechanism in the hands of service recipient?

- a) Notary charges.
- b) Fees to advocate for compiling and filing VAT / Income tax / Service tax / Excise returns.
- c) Fees to Chartered Accountant / tax practitioner for advising on taxation law.
- d) Legal fees paid to advocate by Co operative housing society/ charitable Trust.
- e) Legal fees paid to advocate by Gujarat Cooperative Milk Marketing Federation Limited (AMUL).
- f) A film star paying fees to advocate for:
 - Defending criminal case against him.
 - Suing film production house for his fees.
 - Technical advice and documentation for property bought / sold.

CASE STUDY 6

Whether film production company is liable to pay service tax on Reverse Charge on following payments made to:

- a) Remuneration to the managing director.
- b) Remuneration to a director of a film (who is not a director on the board of the company).
- c) Remuneration paid to actor who is a promoter director of a company.
- d) Studio hire charges paid to a studio owner who is also director of the company.
- e) The sitting fees of Rs. 20,000/- paid to financing bank for board meetings attended by nominee director representing said bank.

Valuation:

CASE STUDY 7

Facts & Background:

A company has awarded a turnkey contract to a corporate entity for construction and setting of a plant. As per terms of contract, company will supply steel free of cost to the contractor. The project started in August, 2013 and completed in September, 2014.

Issue under deliberation:

Whether a contractor is liable to include value of steel while discharging the service tax liability?

CASE STUDY 8

Facts/ Back ground:

A builder (corporate entity) awarded following contract (with material) to different contractors for its new buildings on or after 01.09.2014:

- Plastering contract
- Tiling contract
- Electrical contract
- Plumbing contract
- Glass cladding contract

Issue under deliberation

Whether all above contracts are "Original works" to be valued @ 40% (effective tax rate 4.944%) or "Other works" to be valued @ 70% (effective Tax rate 8.652%) for discharging service tax liability under Reverse charge?

CASE STUDY 9

Facts & Back ground:

A company owns a commercial complex consisting of 12 units. All these units are given on lease of 5 years to different lessees. The company has received interest free security deposits of Rs. 20 crores from lessees.

Service tax department intends to add notional interest at the rate of 18% p.a on such deposit in the value of renting services. Whether department is justified in doing so?

Abatement

CASE STUDY 10

Facts & Background

An air conditioned restaurant is partitioned and divided into two parts. Ala Carte is served in one portion and in another portion buffet lunch is served in the day time. In the evening, the other portion is used as exclusive banquet hall. In case, where there is no booking for banquet, the said portion is used as normal restaurant where food is served on Ala Carte basis. Restaurant also provides the home delivery of the food.

Issue under deliberation

What should be the ideal tax treatment in above case?

Whether entire sale (including banquet, buffet and home delivery) is a restaurant sale liable to service tax at 4.944%?	Rule 2 C (1) of Valuation Rules (12.36 % of 40% of total food value)
Restaurant sales (including buffet lunch and evening Ala Carte food served at demarcated portion and home delivery) at 4.944%	Rule 2 C (1) of Valuation Rules
Banquet sale (excluding buffet lunch and evening Ala Carte food served at demarcated portion) at 8.652%	Entry no. 4 of Abatement notification no. 26/2012 dated 20.06.2012 (Abatement of 30 % i.e. 12.36% of 70%)

<p>Restaurant sales (including evening Ala Carte and home delivery sales but excluding buffet lunch served at demarcated portion) at 4.944%</p> <p>Banquet sale (including buffet lunch) at 8.652%</p>	<p>Rule 2 C (1) of Valuation Rules</p> <p>Entry no. 4 of Abatement notification no. 26/2012 dated 20.06.2012</p>
<p>Restaurant sales (including home delivery sales but excluding buffet lunch and evening Ala Carte served at demarcated portion) at 4.944%</p> <p>Banquet sale (including buffet lunch and evening Ala Carte) at 8.652%</p>	<p>Rule 2 C (1)of Valuation Rules</p> <p>Entry no. 4 of Abatement notification no. 26/2012 dated 20.06.2012</p>
<p>Restaurant sales (excluding home delivery, buffet lunch and evening Ala Carte served at demarcated portion) at 4.944%</p> <p>Banquet sale (including buffet lunch and evening Ala Carte) at 8.652%</p> <p>Home delivery sales at 7.416%</p>	<p>Rule 2 C (1)of Valuation Rules</p> <p>Entry no. 4 of Abatement notification no. 26/2012 dated 20.06.2012</p> <p>Rule 2 C (2) of Valuation Rules applicable to Outdoor catering (12.36% of 60% of food value)</p>