

SEMINAR ON SERVICE TAX  
IMPLICATIONS & ISSUES IN

REIMBURSEMENTS

COST SHARING ARRANGEMENTS

DEBIT NOTES, ETC



1

PRESENTED BY



RAJIV LUTHIA

CA RAJIV LUTHIA 21st November, 2015

SECTION 67(1)- Value of Taxable Service

If Consideration for service is

Wholly in  
money

not wholly  
in money

not ascertainable

Gross amount  
charged

Such amount in  
money, with the  
addition of ST charged

as may be  
determined in  
the prescribed manner

a	Gross amount charged to provide similar service to any other person	B	where the value cannot be determined in accordance with (a), then, value of such consideration which shall, be at least equal to the cost of provision of such taxable service
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Sec. 67(2) - Gross amount charged inclusive of Service Tax

- When the gross amount charged is inclusive of service tax payable, the value of such taxable service would be:

$$\text{Value of taxable service} = \frac{\text{Gross amount charged} * 100}{100 + \text{Rate of ST}}$$

- No ST on free services as there is no consideration involved.

Explanation to Sec. 67 (a) CONSIDERATION

4

Up to 13<sup>th</sup> May, 2015

W. E. F. 14<sup>th</sup> May, 2015

**Consideration**  
includes any amount that is payable for the taxable services provided or to be provided.

Includes -

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.]



## c) GROSS AMOUNT CHARGED

- **Gross amount charged** includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment
- and any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of accounts of person liable to pay service tax, where the transaction for taxable service is with any associated enterprises.

## VALUATION RULES (5 & 6)

### ➤ Inclusions:

- ❖ Any expenditure or costs incurred by the SP
  - in the course of providing taxable service

### ➤ Exclusion:

- ❖ All expenditure or cost incurred by service provider as a "*pure agent*" subject to certain conditions



## Pure Agent - Expln 1 to rule 5(2)

- enters into a contractual agreement
- neither intends to hold nor holds any title to the goods or services
- does not use such goods or services so procured
- receives only the actual amount incurred to procure such goods or services

## Exclusion from Valuation

### ➤ Conditions for exclusion from the value

- ✓ SP acts as pure agent while making payment to third party
- ✓ recipient of service receives and uses the goods or services so procured
- ✓ recipient of service is liable to make payment to third party
- ✓ recipient authorises to SP to make payment
- ✓ recipient knows payment made by SP to third party
- ✓ Payment made by SP to third party is separately indicated in the invoice
- ✓ SP to recover actual amount
- ✓ Amount recovered is in addition to the services he provides

# REIMBURSEMENTS OF EXPENSES - ISSUES



9

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## SHRI BHAGAVATHY TRADERS (2011) TIOL 1155... BANGALORE CESTAT-LB

10

### FACTS OF THE CASE:

- Engaged in the business of rendering C&F agency services to several persons including M/s Indian Oil Corporation Ltd.
- Preparing 2 invoices,
  - one for service charges and
  - another for amounts claimed as reimbursement of expenses incurred towards transportation charges, loading and unloading charges, rent, salary to the staff, electricity, telephone charges, stationery charges, courier charges, etc.
- & paying service tax only on the service charges.
- The lower authorities have included the reimbursement expenses in the value of taxable service and raised the demand of service tax on entire amount.
- The Tribunal (Referral Bench) noted various contrary decisions, few of which holding that reimbursement should not form part of gross value of service as against a decision in the case of Naresh Kumar & Co. Pvt. Ltd. Vs CST that the reimbursement expenses are to be included in the gross value of taxable services.
- Due to these contrary decisions, the matter is referred to Larger Bench.

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## SHRI BHAGAVATHY TRADERS (2011) TIOL 1155... LB OF BANGALORE CESTAT

11

### RULINGS / FINDINGS

- The concept of reimbursement will arise only when the person actually paying was under no obligation to pay the amount and he pays the amount on behalf of the buyer of the goods and recovers the said amount from the buyer of the goods.
- Only when the service recipient has an obligation legal or contractual to pay certain amount to any third party and the said amount is paid by the service provider on behalf of the service recipient, the question of reimbursing the expenses incurred on behalf of the recipient shall arise.

### HELD

- Reimbursement of expenses is to be included in the value of taxable service to the extent the obligation primarily is on the service provider to incur and pay for the same.

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## INTERCONTINENTAL CONSULTANTS & TECHNOCRATS PVT. LTD. (2012) TIOL 966...DELHI HC

12

### FACTS OF THE CASE

The appellants are consulting engineer provided services to National Highway Authority of India.

They charged service tax on the 'fee component' charged by them but did not pay service tax on the 'out-of-pocket expense' (OPE) component i.e. on air travel, hotel stay, etc. reimbursed by their client

In a writ petition, they contended that Rule 5 of the Valuation Rules to the extent it includes reimbursements of OPE in the value of taxable service is unconstitutional

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**RULINGS / FINDINGS**

- Rule 5 (1) which provides for inclusion of the expenditure or costs incurred by the service provider in the course of providing the taxable service in the value for the purpose of charging service tax is *ultra vires* Section 66 and 67 of the Finance Act, 1994 and travels much beyond the scope of those sections
- Section 67 - the value of the taxable service is the gross amount charged by the service provider for such service provided or to be provided by him, in a case where the consideration for the service is money.
- It is only the value of such service that can be brought to charge and nothing more.
- The quantification of the value of the service can therefore never exceed the gross amount charged by the SP for the service provided by him.

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- The power to make rules can never exceed or go beyond the section which provides for the charge or collection of the service tax.
- If the expenses on air travel tickets are already subject to service tax and is included in the bill, to charge service tax again on the expense would certainly amount to double taxation. It is true that there can be double taxation, but it is equally true that it should be clearly provided for and intended

**OUR VIEW**

To overcome this decision and to clarify the intention of levying Service Tax on reimbursement of expenses, Explanation to Section 67 is amended.

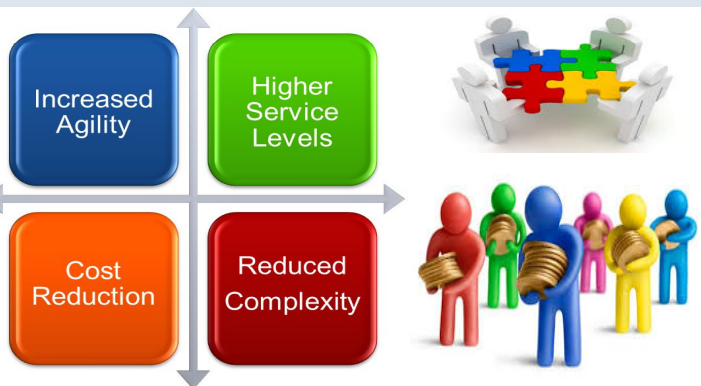
to provide that "consideration" includes any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed

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## COST SHARING ARRANGEMENTS - ISSUES

15



## Cost sharing arrangements

> To garner synergy of volume, ease of payment or similar benefits.

> Egs :

- Groups of companies under common ownership frequently take a building on lease to run their businesses. In this arrangement, a lead company pays lease rent, electricity and other charges. Periodically, these entire expenses are divided amongst the occupants in an agreed proportion.
- a parent company to have a system of centralizing a number of functions such as advertising, human resources, security services, internal audit, banking, financial and insurance services, and so on with an understanding that the costs incurred for the other group companies shall be allocated on a reasonable basis to those companies.
- In cases where the costs relates to employees of one company being deputed to another group company, the cost of such services is shared on actual
- in a case where the actual cannot be worked out the cost sharing is done on the basis of an reasonable formula being agreed upon

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## ISSUES .....

1. Whether merely because costs are shared between group companies,  
can it be said that any service has been rendered by one entity to another within the group?
2. In case it is presumed to be a "service", is it a taxable service as covered under the various taxable categories listed under the Service Tax law?
3. In case it is presumed that the same is a taxable service, what is the consideration for determination of taxable value?

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## Analysis..... Issue 1

- ✓ The sharing arrangement is more a matter of convenience and accountability rather than rendering services
- ✓ Mere sharing of exp. **doesn't tantamount to rendering services**
- ✓ Reference can be placed on CBEC in its circular no. 109/03/2009- ST dated 23/2/2009 for revenue sharing .....  
*arrangement which typically is undertaken between the theatre owners and the distributors of films, a revenue sharing model operates whereby a fixed and predetermined portion/percentage of revenues earned from the sale of cinema tickets goes to the theatre owners and the residual portion/percentage is paid over to the distributors..*

The CBEC clarified that in such a situation,.... Contract on a principal to principal basis and No service provided to each other and consequently no service tax would apply.

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## Analysis..... Issue 2 If liable which category??

- **Can the Sharing arrangement be then covered under the broader categories of Business Auxiliary Services or Business Support Services**
- The category of business auxiliary service is a predominantly a category covering services in relation to specified functions like marketing, promotion, production and incidental activities thereto.
- The category of Business support Services is a wider definition covering essentially activities which are in the nature of outsourced services or in the nature of infrastructure facilities ..... then the intention should be to provide "infrastructural support services"
- Hence to conclude one can say that the cost sharing arrangements, in general cannot be brought into the ambit of any specific categories

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## Analysis..... Issue 3 valuation.....?

- Sec. 67 will have force only if there is a consideration for services being charged. This is totally absent in the current scenario.
- Even extending the definition to the deeming provisions of the Valuation rules, one will appreciate that rule 3 will apply only in case like that pre dominantly under a barter arrangement and rule 5 will apply only when there is a "consideration" and reimbursement of expenses is a part of the same.
- If there is no consideration for services, the question of considering expenses in the value of services should not arise at all.

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## POST NEGATIVE REGIME...will cost sharing transactions liable to service tax ???...

- Section 65B(44) defines "SERVICE"
  - Any activity ( act done, work done...provision of facility) .....  
Excluding
    - Transfer of title in goods or immovable property by way of sale, gift or in any other manner; or
    - Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the constitution; or
    - A transaction in money or actionable claim;
    - Service by employee to employer in course of employment
    - Fees taken in court or tribunal established any law
  - Carried out by person for another &
  - For consideration
  - Includes declared Service...

ST liability on Cost Sharing still a VEXED question ?????????

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## DEBIT NOTES / CREDIT NOTES/ SUPPLEMENTARY INVOICES.....



22

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## VALIDITY OF DEBIT NOTES.....

Rule 4A of STR,1994 ....

Every person providing taxable service shall not later than thirty days from the date of **completion of** such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a **bill** or, as the case may be, with following requirements :-

- It shall be **serially numbered** and shall contain following details,
- the name, address and the registration number of such person
- the name and address of the person receiving taxable service
- description and value of taxable service provided or agreed to be provided
- the service tax payable thereon

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## VALIDITY OF DEBIT NOTES.....

- > Rule 9(1) (f) of CCR,2004.....  
an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004 shall be a valid documents for Cenvat.
- > Various Judicial Pronouncements have held that **where the above particulars are duly disclosed on "any document (even if named as debit note)" the same shall envisage to be a proper cenvat document .**
- > **M/s. Jyoti Industries Unit-II Versus CCE & ST, Ludhiana 2013 (11) TMI 949 it has been held that when all the information which is required to be mentioned in invoice issued by the service provider is available in the documents and just because before the word invoice, the word debit note has been added, these documents would not cease to be a valid document for the purpose of cenvat credit"**
- > **Similar view held in Atlas Documentary Facilitators Co Pvt Ltd Versus Commissioner Of Service Tax 2013 (12) TMI 440**

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## ADJUSTMENT OF EXCESS ST PAID... ON ISSUANCE OF DEBIT/CREDIT NOTES...

Issuance of Debit / Credit Notes by SP to SR on account of :

- against a service to be provided which is not so provided by him either wholly or partially for any reason
- the amount of invoice is renegotiated **due to deficient provision of service**, or any terms contained in a contract

RULE 6(3) OF STR,1994 provides that in case of above scenario, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or]

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued....

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## ADJUSTMENT OF EXCESS ST PAID... ON ISSUANCE OF DEBIT/CREDIT NOTES...

Prior to 1<sup>st</sup> April,2011....

- Adjustment of excess payment of service tax u/r 6(3) was allowed against the service tax liability of subsequent period.

**Hon'ble Delhi CESTAT in the case of CCE, Jaipur Vs. HEXACOM India Ltd ..... 2006 (1) STR 110**

✓ When the ST-3 returns specifically mention the adjustment of excess service tax payment, then such adjustment even made during later period is allowable. Full facts of such adjustment remained disclosed by assessee contemporaneously. Extended period cannot be invoked.

**Hon'ble Madras CESTAT in the case of Seimens Ltd Vs. CCE, Pondy..... 2012 TIOL 243**

✓ Prima facie stay granted even when the adjustment u/r 6(4A) of excess service tax was not made in the succeeding period, as the adjustment was made immediately after issuance of credit note.

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## ANY QUESTIONS

27



WITH KNOWLEDGE WE KNOW THE WORDS,  
BUT WITH EXPERIENCE WE KNOW THE MEANING

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28



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