



**The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)**

Gandhidham Branch of WIRC of ICAI

E - NEWSLETTER | MAY, 2016





Managing Committee

CA RAJIV SINGH
Chairman
98798 41029

CA KARTIK VARAIYA
Vice Chairman
9825071722

CA ANIMESH MODI
Secretary
909937733

CA RAJENDRA SHAH
Treasurer
9426731560

CA MEHUL THAKKER
Member,
9601662110

CA JYOTI HARSH
Member
9825351565

NEWSLETTER COMMITTEE

CA KARAN THACKER
9979878590

CA JITESH LIYA
81285 67696

CA KAVITA BULCHANDANI
9825719356

CA MEET PALAN
9978076564

CHAIRMAN'S MESSAGE



Dear Members,

I take this opportunity to pen down my message for the Third instance after my taking over of this robust and vibrant fraternity of the Gandhidham Branch. It has been a great journey since then and let me proudly boast that I am extremely fortunate to be assisted by my dedicated team of the Managing Committee and also supported by all the senior members from this Branch.

May the Mother Nature come soft and kind on all of us! Amen!

For the past one month, we are being hit by intolerably hot winds. Hundreds of people have died of sunstroke in the past one month across the country. Climate specialists foretell more horror for us that many areas of our earth will get louder every summer in all our cities, towns and villages. Worse, crisis is here to stay. By few more years, our country will need to increase its water supply by almost 50 per cent to take care of the basic needs of its citizens. Not just deforestation and industrialization are to,

blamed. It appears that we are our fundamental battle for survival. It is, therefore, time to understand that these are more than warning signals, which call for responsibility in all our actions- in our respective capacities.

We are acting quite responsibly in our capacity through strong environment-friendly initiative of our Institute, Planet Alert. We, professionally too, play an active role through environmental-friendly initiative of our Institute "Planet Alert". We, professionally too, play an active role through environmental accounting and auditing in the industrial sector of our country by working out effective measures for minimizing the consumption of resources and wastes. We can aid to process further by helping the companies achieve the economic and environmental efficiency through appropriate measurements and sustainability reporting framework. Let us remind our society that we understand this need of the hour and its urgency.

Otherwise also, our responsibility refers not just to a compliance with the code of ethics a defined by our Institute, but also with our conscience. We cannot afford to increase the crisis-quotient of our country by ignoring either of the two. We cannot be unethical by our training or by our choice. Ethics play an integral role in a professional's life. Celebrated French philosopher and Nobel Laureate Albert Schweitzer says, 'Ethics cannot be based upon our obligations toward [people], but they are complete and natural only when we feel...the desire to have compassion for and to help all creatures in so far as it is our power.' Only under such assumption, ethics can bring about true growth. Only then, ethics retain their true meaning. Schweitzer's premises of ethics have to be the guiding strength for all professionals, especially for the CA professionals who are led by values based on strong ethics and candour.

Ethics coupled with an upright mix of social responsibility have the power to save both human beings and humanity in the time dominated by various crisis. It is time to be introspective. With an appeal for the righteous perspective, let us look at the steps we have taken, accomplishments we have made and lessons we have learnt from our own failures.

Branch Activities

Our Branch believes that acquisition of knowledge is a continuous process and Chartered Accountants are the willing, interested participants in this process in order to remain professionally viable and meaningful. In this process considering the need of the hour for Indirect Taxation, a Full Day workshop was organized on 30th April, 2016. We have also organized a 4 CPE Hour Seminar on Appeal on 23rd March, 2016. And also for students we had organized "How to prepare for CA Exam", where more than 100 students had taken benefit of the same.

I certainly believe that Learning has no age. Keeping this in mind Our Branch has taken the initiative of “Technology for Senior Members above 50 years” so as to equip them with all the latest technology. The details of same will be soon given to them. I am sure that it would be a good learning experience

Boosting the CA Benevolent Fund (CABF)

‘Charity begins at home but should not end there,’ is the saying which is worth taking note of by us today - particularly when we have scores of families of deceased professional brethren and those suffering from serious ailments in our fraternity who are in dire need of financial assistance. It is our duty to support and stand by them in times of distress. And the Chartered Accountant Benevolent Fund offers an excellent opportunity to do that in an organized and systematic manner. I call upon all of you to join this benevolent initiative of WIRC and make CABF integral part of your socio-professional duty. Many members have already joined as life members of CABF, but what is needed is that all of us not only become life members but also continue to contribute in future as well. We should remember that charity, howsoever trifle to us; can be utterly precious to our brethren in need.

Certificate Course and Seminars

Let us remind you about our efforts and a massive exercise to train our members in industry as well as in the practice. So, This time, we launched an extensive Certificate Course on Service Tax to be conducted soon. Special workshops for members in industry as well as in practice will be organised for apprising them of the Excel Utilities.

May 2016 Examinations

I wish all our students all the best for their May 2016 Examinations, as I am sure they must have prepared hard for them. The key is to prepare and write examinations intelligently rather than stressing yourselves out, and with an enlightened mind.

Let me take this opportunity to extend my sincere wishes and congratulations to all our stakeholders a great May Day, also known as International Worker’s Day, as it is a celebration of the spirit, rights and solidarity of workers and employees.

Acclaimed poet John Milton hails the present month of May, since it inspires, mirth and youth and warm desire in us to act—to do something for us, our people and our society. May is also here to

warn for two reasons-first, we are about to cross the year's first half and, second, the Summer is at our doors. Therefore, it is time to introspect and prepare; it is time to assess and act; it is time to recall what we have promised at the start.

I assure all of you to be there with you always in action and spirit, while you enjoy your life and feel the gladness of the May, with your heart.

TOUCH THE SKY WITH GLORY



CA Rajiv Singh
Chairman
Gandhidham Branch of WIRC of ICAI



1. FULL DAY SEMINAR ON VAT

2. EXCEL IN EXCEL

3. INDUSTRIAL VISIT FOR STUDENTS AT TUNA PORT (WICASA)

4. SEMINAR ON START-UP INDIA

CA With A Difference

Compiled by CA Karan Thacker



CA T.V. Mohandas Pai

T.V. Mohandas Pai, a Padma Shri Award holder, is the Chairman of Manipal Global Education. He used to be a CFO (1994-2006), Member of the board of directors (May 2000- July 2011) of Infosys, and Head – Administration, Education and Research, Financial, Human Resources, and Infosys Leadership Institute.

As the CFO, he played a strategic role in transforming Infosys into one of the world's most respected and widely known software services companies. The Infosys Annual Report, under his supervision, has won the top awards consistently from the Institute of Chartered Accountants and from the South Asian Federation of Accountants.

Mohandas was an integral part of the Infosys team that enabled the first listing of an India-registered company on NASDAQ and the first sponsored secondary offering of American Depositary Shares by an Indian company. He was voted 'CFO of the Year' in 2001 by IMA India. He won the 'Best CFO in India' award from Finance Asia in 2002, and 'Best chief financial officer in India' in the Best Managed Companies poll conducted by AsiaMoney in 2004.

Mohandas has been active in working with regulators to improve the business ecosystem. He was also a Member of the Kelkar Committee, constituted by the Ministry of Finance, Government of India, for reforming direct taxes, the Non-Resident Taxation Committee, the High Powered Committee on e-Commerce and Taxation. He is a Member of the Board of Securities and Exchange Board of India (SEBI). He was a Member of the Empowered Committee for setting up the Tax Information Network of the Government of India. He also works with the Union Government and state governments in the fields of education, IT and business. He has been working with decision makers to improve the quality of education and availability of skilled manpower.

Mohandas has a keen interest in improving literacy across the country, mainly primary education. In 2000, he, along with others, founded the Akshaya Patra Foundation, Bangalore, to start a midday meal program for school children. Today, the midday meal program feeds over 1,200,000 children in 7,669 government schools across seven states in India, primarily in Bangalore's rural and urban areas, Mysore, Mangalore, Hubli, Mathura, Jaipur, Baran district of Rajasthan, Nayagarh district of Orissa, Puri, Bhilai, Guwahati, Ahmedabad and Vadodara. This program aims to feed 5,000,000 children by 2020.

Mohandas is also a Trustee of the International Financial Reporting Standards (IFRS) Foundation, the body that oversees the International Accounting Standards Board.

Mohandas holds a bachelor's degree in commerce from St. Joseph's College of Commerce, Bangalore, and a bachelor's degree in law (LLB) from Bangalore University. He is also a fellow member of Institute of Chartered Accountants of India (ICAI).

He is also one of the producers of an animated Sanskrit movie, Punyakoti.



Legal Updates

(Contributed by CA Meet Palan)

INCOME TAX

Abhishek Govil & Somya Salwan vs. CIT (Delhi High Court)

Receipts as per maintenance agreement not in nature of rental income, assessable as income from other sources

Brief of the Case

Delhi High Court held in the case of Abhishek Govil & Somya Salwan vs. CIT that the maintenance agreements expressly referred to the payments in question as "Maintenance and service charges". A plain reading of the agreements also indicates that the said charges were payable as consideration for providing services mentioned therein. Further, TDS was also deducted treating the said charges as payments to a contractor. The Assessee who are signatories to the said agreements cannot be permitted to claim the said agreements to be sham devices and contend that the substance of the maintenance agreements was different from what was expressly recorded therein. Hence, the maintenance charges could not be considered as rental income.

M/s. UniDeritend Limited vs. ACIT (ITAT Mumbai)

Subsidy for wind power project being capital receipts neither taxable u/s 41(1) / 50 nor to be deducted in actual cost u/s 43

Brief of the Case

ITAT Mumbai held In the case of M/s. UniDeritend Limited vs. ACIT that the subsidy being provided to the assessee to encourage the setting up of wind mill to promote generation of energy through non conventional sources, thus, is to be treated as capital receipt. With regard to applicability of the section 41(1) is concerned, it relates to the benefit derived by an assessee in respect of loss, expenditure or trading liability and not in respect of capital receipts. So far as the Explanation 10 to Section 43(1) is concerned, as per the policy of the government, the subsidy is not given automatically on the acquisition of asset or for the purpose of acquisition of asset. The

precondition is that the assessee must install a wind power project and that the wind power plant must be successfully operated with a minimum 12% plant load factor for at least one year. So the mere acquisition of the asset was not sufficient to claim subsidy. Hence, the grant of subsidy in this case is of such a nature that it cannot be directly relatable to the asset acquired. Also, in this case neither there was a transfer of any asset from the block nor did the block has ceased to exist, so no capital gain liability u/s 50. Accordingly, the subsidy received by the assessee is not taxable under section 41(1) neither under 43(1) and nor under section 50.

SERVICE TAX

Commissioner of Service Tax v. Kyocera Wireless (India) (P.) Ltd. 68 taxmann.com 164 [2016] (HC Karnataka)

Cenvat credit and refund thereof cannot be denied on ground of non-registration

Brief of the Case

Assessee, an exporter of software services, claimed refund of unused credit-Department denied refund on grounds that : (a) assessee was not registered; and (b) documents did not prove nexus of input service with output service - Tribunal held : (a) registration is not a pre-condition to claim credit; and (b) since authorities had nothing to say about sufficiency of documents, credit must be allowed - HELD : Cenvat credit and refund thereof cannot be denied on ground of non-registration - As regards documents, Tribunal did not give a clear finding as to whether documents were sufficient or not - In any case, since nexus between input and output services was not appropriately considered, matter was to be remanded back for verification of such nexus.

M/s. Creative Problem Solving India (Authority for Advance Ruling) (Central Excise, Customs and Service Tax

Distributorship of goods cannot be regarded as service

Brief of the Case

The question is very simple and clear as to whether the sale of the books to the Indian entities involves any 'service' and would attract the service tax liability. The answer is clearly in negative. We, therefore, hold that this service does not entail and invite any liability for service tax.

GUJARAT VAT

GVAT Tribunal – Falcon Pumps Private Limited (RA no. 10/2014 decided on 07.04.2016]

Brief of the Case

Claims of concessional rate on Inter-state sales against “C” forms can be allowed on the basis of DUPLICATE portion of “C” forms also. Production of ORIGINAL portion of “C” form is not mandatory.

Motivational Story - WILLPOWER KNOWS NO OBSTACLES

(Compiled by CA Pooja Kewalramani)



How do we react when something goes wrong or unfavorable to us?? Generally, some of us would say that " Hamari to kismat hi aisi hai "or" Ye sab iski wajah se hua hai "or if we don't get anyone to blame; we start blaming "God" for everything that went wrong. But exceptions are always there... There are few people who fight with all situations and reach their destination... And among them is 'Prema Jayakumar' a simple, soft spoken girl who lived in a 300 square feet room in S B Khan Chawl of Malad in Mumbai.

Prema is a daughter of a Class V dropout 'Jayakumar' and mother 'Lingammal' who studied only till Class III. Mr. Jayakumar was an auto rickshaw driver from 20 years and Mrs. Jayakumar used to work as a maid till a few years ago. But on 21st January, 2013 (the day when ICAI declared the results of November 2012 Final exams) a single phone call by Mr. G.Ramaswamy former President of ICAI changed the life of Prema and her family... This phone call informed Prema that she secured 1st Rank in the Chartered Accountancy Final Exams by scoring 607/800 i.e. 75.9 percentage. Hearing this Prema was extremely happy and this happiness crossed all boundaries when Sir said that 'Dhanraaj' younger brother of Prema also cleared CA Final Exams in first attempt itself with her... Finally their determination, dedication, efforts and hard work gave results and their dreams came true...But this was just the happy ending. What actually matters and worth learning is how they reached their destiny. So let's see!

The first step for success was taken by Prema in her 9th STD itself when she started learning and understanding English. Because of this step only she became capable to secure 79% and 80% marks in the 10th and 12th STD respectively. Her sharpness was noticed in the year 2008, when she ranked 2nd in Mumbai University in Final Year of Bachelor of Commerce Exam (B.com) with 90%. After B.com she was bit confused about career but her professor's guided and motivated her

to start CA. That particular moment Prema decided to start with Chartered Accountancy... She also took Masters of Commerce course (M.com) through the same college.

Dhanraaj also followed the footsteps of her sister and decided to join CA. In the year 2008, both cleared the entrance level CPT. Mr. Jayakumar being an auto rickshaw driver always supported his children morally and financially but siblings worked their level best to reduce the financial burden on parents. For this Prema used to travel all round the city and gave tuitions to the T.Y.B.com student's and Dhanraaj worked in the call center for some time. For the intermediate level Prema took private coaching and she was ranked 20 in All-India intermediate CA exams in 2009 while Dhanraaj too cleared the exams. On this success Prema got scholarship which helped her for the Final Exam coaching. She used to start at 6.30 in the morning and reach home by 10.30/11 at night. With such hard work and tight schedule, she cleared M.Com with 1st rank in Mumbai University.

Now CA final exams approached. The things became harder and harder. Both of them spent more than 14 hours a day in their modest house preparing for it. Complete dedication and cent percent efforts were put on by them. In a 300 square feet room they managed everything; the environment of a chawl never disturbed them because their focus and concentration was only on their motive. With full confidence both appeared for the November 2012 exams.

On 21st January, Prema and her brother were surprised with the phone call of Mr. G Ramaswamy. The phone which rarely rang didn't stop for a single minute. The Big 4s, Banks, Politicians, relatives all started calling and congratulating her for this success. The media people were all round the chawl to interview Prema and her family. Prema and her brother turned the dreams into reality... Now both were waiting for their articleship to complete so that they can join the corporate world. Mr. Jayakumar didn't go for driving from that day and Mrs. Jayakumar didn't had to work anywhere from that day. To make their parents rest and take the responsibilities on them was the real motive behind their hard work and they accomplished it.

This story really motivates me to believe that if you want to give your 100% to something, then you can achieve anything. A candidate with moderate amount of available resources but abundance of confidence and dedication can of course create history..This one thought of making others happier (especially parents) can move mountains. Based on this thought, all other things are just branches of the big tree.

So, Never ever give up in life. Give Ur best and leave the rest on GOD. Trust yourself and God. If God gives you a problem, this means nobody else is capable enough to solve it and you only have to do it. Think of giving happiness to others and if you are able to do so; nobody is as happy as you. Stop blaming the circumstances and start winning the situations. And yes, there is NO SHORTCUT to SUCCESS



VAT AN EXCURSION

Freight – Whether subject to VAT / CST?

Contributed By CA Jiten Thacker

The issue is straightforward, simple and **clear as gin** but will certainly **give you a high**.

➤ Leviability of CST on the freight:

As per section 2(h) of CST Act 1956, “*sale price*” means the amount payable to a dealer as consideration for the sale of goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods **at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.**

From plain reading of the definition, one may interpret that CST is payable only on ex-factory price and no CST is payable on freight and transport charges. As per inclusion clause, CST is payable on freight charges if (a) Freight charges are not shown separately in invoice or (b) contract is for C.I.F. and property in goods passes only at the destination. This exclusion clause does not operate as an exception to the first part of the definition. It merely enacts as exclusion out of the inclusive clause and takes out something which would otherwise be within the inclusive clause.

Merely charging freight amount in invoice separately does not mean that it will be excluded from the sale price. One should go through agreement between the seller and the buyer and CST may be levied if the contrary view is inferred from the sale agreement.

In case of **Hindustan Sugar Mills Ltd. V. State of Rajasthan 43 STC 13(SC)(1979)** it was clarified that definition of sale price as per section 2(h) is in two part. The first part states that sale price means the amount payable to a dealer as consideration for the sale of goods. The second part is inclusive clause, which states that ‘sale price’ includes ‘any sum charged for anything done by the dealer in respect of goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation where such cost is separately charged.’

Thus when first part applies, the second part should not be considered. The exclusion of freight applies only to second part of definition and not to the first part. i.e. exclusion is not intended to apply to a case where the cost of freight is part of the price but the dealer chooses to split up the price and claim the amount of freight as a separate item in the invoice. The ratio applied in above case was also confirmed in various Supreme Court judgements like:

Black Diamond Beverages V. CTO 1997 AIR SCW 3654 = 107 STC 219 = AIR 1997 SC 3550

Ramco Cement Distribution Co. (P.) Ltd. V. State of Tamilnadu 88 STC 151 (SC)

To understand true nature of contract whether it is F.O.B. or C.I.F., we have to ascertain when the risk is transferred from the seller to the buyer. All the expenses till the risk lies with the seller are included in the sale price and the expenses incurred after the risk is passed on to the buyer are to be excluded from the sale price.

When is risk said to have been passed from seller to the buyer:

1. If the seller takes the transit insurance the risk will be passed on the buyer when the goods are delivered to the destination as instructed by the buyer.
2. If buyer takes the transit insurance, then the risk is said to have been passed on to the buyer immediately after the goods are removed from the factory.
3. In case no transit insurance is taken, the risk will lie with party who is responsible to bear loss incurred to goods during transit.

For clarity and certainty, let us take some practical examples where G of Gandhidham sells Goods to M of Maharashtra. :

Sr. No.	Example	Solution
1.	Contract between G and M is to supply goods to M at his plant in Maharashtra @ Rs. 10,000 (plus 2% CST), inclusive of all cost. a) G prepares bill – Rs. 9000 basic price + Freight Rs. 1000 = 10,000 (Actual Freight paid to transporter is also 1,000) b) G prepares bill – Rs. 10,000 (incl. All expenses)	Terms of contract clearly say that it is C.I.F. contract. M is not where concerned about freight or any other expenses which G might have to incur. In both a) and b), the answer is same. CST will be levied on Rs. 10,000
2.	M approaches to G for purchasing goods @ Rs. 9,000. He inspects goods and arranges transportation and loading of goods. He pays freight of Rs. 1,000 to transporter directly.	Here, the contract is F.O.B. sale so no CST is payable on freight amount.
3.	In example 1(a), actual freight paid to transporter by G is Rs. 800 but he recovers Rs. 1,000 from M.	CST will be paid on full value of consideration i.e. Rs. 10,000.

4.	In example 1(a), actual freight paid to transporter by G is Rs. 1200 but he only partially recovers Rs. 1,000 from M.	CST will be levied on Rs. 10,000 only and not on Rs. 10,200 (9,000+1,200). As per definition of "sale price" as discussed above, what is chargeable is sum received by dealer. Once he has received only Rs. 10,000 incl. freight, he can not be asked to pay CST on amount which is not received by him.
5.	In example 1(a) above, G prepares invoice for Rs. 9,000 and raises separate debit note for transportation of Rs. 1,000.	It does not make any difference whether he prepares separate debit note for freight or charges freight in sale invoice. If transaction is to sale goods on C.I.F. basis and risk remains with G till the goods reach destination, CST will be levied on freight amount.
6.	In example 1 and 2, G has godown in Adipur. He brings goods to Gandhidham by paying Rs. 100 freight. Can he claim deduction of Rs. 100 from sale price and pay?	Whether contract is to sell F.O.B. or C.I.F. in either case, any sum incurred at the time or before delivery of goods is not deductible from sale price.

From above discussion we can say that what is consideration for sale is relevant and not what is net consideration retainable by the seller after the payment of freight to the transporter.

➤ **Leviability of VAT on the freight:**

Now if we go through definition of "sale price" as per section 2(24) of GVAT Act, 2003, sale price means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by dealer in respect of the goods at the time or before delivery thereof and includes...

The definition of sale price is silent about the inclusion or non inclusion of the freight element for the determination of VAT liability. But it is clearly mentioned that any sum charged for anything done by dealer in respect of the goods at the time or before delivery thereof is included in sale price.

So, all the principles as discussed above for determining liability of CST, will apply to determine sale price for VAT purpose.

➤ Service Tax on the freight (Transport of goods by road - other than GTA):

Situation may arise where in respect of F.O.B. sale, i.e. seller sells goods ex-factory, but since buyer is situated in remote area, he is not capable of negotiating with transporters. So, buyer asks seller to hire transporter and pay freight even though he has taken delivery ex-factory and carries risk of damage / loss to goods. He will reimburse the freight to the seller.

In our example, G prepares sale invoice as Rs. 9,000 towards sale price plus freight (which can be actual reimbursement of Rs. 1,000 or it can be with profit margin say Rs. 1,200). As we know, since this being F.O.B. sale, CST is clearly not payable on freight amount. But for Service tax, we will have to divide this in two parts :

1. Prior to 01/07/2012 (Pre-Negative List)
2. On or after 01/07/2012 (Post-Negative List)

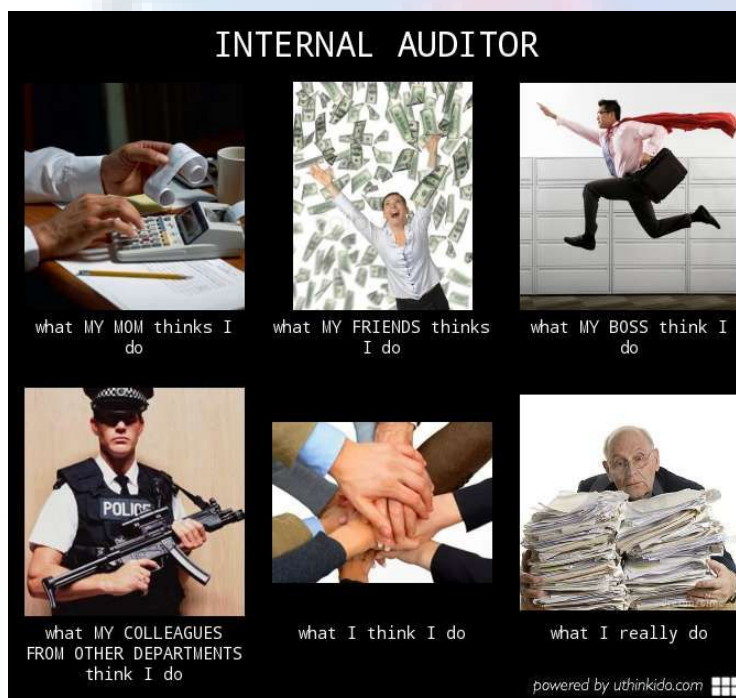
In pre-negative list era, so many people received notices as department was saying seller (in our case G) has provided "Business Support Service" and since the definition of Business Support Service includes logistics services, he is liable to pay service tax on amount of freight that too on 100% of value. (since Abatement is available only in case of GTA service). This was very innovative way of department to collect service tax on freight. (Though one may argue that he has paid freight as a pure agent of buyer so no service tax is payable but looking to the stringent conditions, practically it is very difficult to establish pure agency relationship).

On or after 01/07/2012, Negative List has made our life so easy. Now negative list includes Section 66D(p) :

Services by way of transportation of goods –
(i) by road except the services of
(A) a goods transport agency; or
(B) a courier agency

Service provided by G to M is covered in above service. Hence, there will be no liability of CST or Service tax on freight which is charged by G in his sales invoice. Of course freight paid by G to transporter is subject to service tax under GTA which is altogether a separate issue.

JUST IN GIST- CARTOON CORNER



CA : The Amount Of Money Spent On Photocopies Over A Span Of Four Years Is Sufficient Enough To Buy A New Xerox Machine

Tapori Baba



Service Tax on Ocean Freight-Double Taxation



Contributed By CA Rajiv Singh

IN the Budget 2016-17, the entry in the Negative List of services covering services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India is proposed to be omitted with effect from 1 st June, 2016 [Clause 146(b)(ii) of the Finance Bill, 2016, proposing to omit Section 66D(p)(ii) of the Finance Act, 1994]. However, such services by aircraft will remain exempted by entry No.53 of Notification No. 25/2012-ST, as amended by Notification No. 9/2016-ST dated 1 st March, 2016 w.e.f. 1 st June, 2016. The reason for continuing exemption to air freight while taxing ocean freight for import cargo is nowhere mentioned.

2. In the D.O. Letter F.No. 334/8/2016-TRU dated 29th February, 2016 issued by the Joint Secretary (TRU), it is mentioned at Para 4.1(C) that the domestic shipping lines registered in India would pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the end of business entity. It is further mentioned that service tax so paid would be available as credit with Indian manufacturer or service provider availing such services (subject to fulfilment of other existing conditions). In my view, Cenvat credit would be available to manufacturers of dutiable goods and providers of taxable service only if they avail service of shipping line or freight forwarder directly. There is no provision to pass on Cenvat credit of service tax paid by registered dealer/importer (trader). Importers/Dealers registered with Central Excise department, who can pass on Cenvat credit of CVD and 4% SAD, will not be able to pass on service tax paid on ocean freight.

3. As per the first Proviso to Section 14 of the Customs Act, 1962, transaction value in case of imported goods shall include the costs of transportation to the place of importation. Thus, all kinds of duties of Customs like Basic Customs Duty, Countervailing Duty (equivalent of Central Excise

duty), Education Cesses, 4% Additional Duty (known as SAD, which is being levied to counter-balance sales tax / VAT leviable on like article) are payable on ocean freight amount. If this proposal of the Finance Bill, 2016 is enacted, service tax will also be leviable on ocean freight in most of the situations (barring exception as discussed at Para 6).

4. The aforesaid D.O. letter further clarifies that service tax levied on such services shall not be part of value for Custom duty purpose. This clarification is in consonance with the Interpretative Note to Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which prescribes that duties and taxes in India are not includible in the value of imported goods provided that they are distinguished from the price actually paid or payable for the imported goods. Though Customs duties will not be leviable on the service tax payable on ocean freight, the amount of ocean freight will suffer Customs duties as well as service tax, which will cause double taxation on the same amount. When the ocean freight is includible in value of GOODS and it suffers all types Customs duties, the proposed levy of service tax on the same amount by treating it as SERVICE is likely to be challenged before judicial forums by contending that Customs duties and service tax are leviable on mutually exclusive values.

5. The service of transportation of goods by vessel can be provided by shipping lines. However, in many of the cases, shipping lines do not book cargo directly from importer or exporter. In such cases, international freight forwarders buy space from shipping lines or from their agent and sell the same, generally in piecemeal, on principal to principal basis. The difference between the sales value and purchase value of freight is profit or loss, as the case may be, of the freight forwarder. In this situation, it can be said that such international freight forwarders provide service of transportation of goods by vessel to the importer or exporter, as the case may be. If the freight forwarder works as intermediary and gets commission from shipping line, the place of provision of the service of intermediary is the location of intermediary, as per Rule 9 of the Place of Provision of Services Rules, 2012. However, for the purpose of this Article, it is assumed that freight forwarders provide service of transportation of goods by vessel on principal to principal basis on their own account (not as intermediary).

6. On the one hand Customs law treats ocean freight as a part of value of imported goods, on another hand service tax law framed by the same Department will treat ocean freight as a taxable service, if provided by a person to another person in taxable territory for a consideration. As per Rule 10 of the Place of Provision of Services Rules, 2012, the place of provision of services of transportation of goods, other than by way of mail or courier or goods transport agency, is the place of destination of the goods. Therefore, the service of transportation of goods by vessel to any taxable territory of India is deemed to have been provided in India. However, in case where the service provider and service receiver both are not located in taxable territory, service tax cannot

be levied on such service though the goods are destined to taxable territory. Entry at serial number 34(c) of the Notification No. 25/2012-ST exempts services received from a provider of service located in a non-taxable territory by a person located in a non-taxable territory. Even in the absence of this entry, under the present provisions it is not possible to levy service tax on the service provided in taxable territory, when service provider and service receiver both are located outside the taxable territory. Thus, if the Indian importer enters into contract with the foreign exporter to supply the cargo on CIF basis and the foreign supplier sends the cargo by engaging shipping line or freight forwarder located outside India, then the ocean freight would not attract service tax. For such CIF contracts, foreign supplier is the recipient of such service. In absence of privity of contract between Indian importer and shipping line / freight forwarder, Indian importer cannot be treated as recipient of such service. In order to obviate levy of service tax on ocean freight for import cargo, it is quite possible that some importers would start importing cargo through foreign vessels/forwarders on CIF basis instead of FOB basis.

7. Indian shipping lines / freight forwarders located in taxable territory will be required to pay service tax on ocean freight under forward charge in respect of import cargo irrespective of the fact whether they have been engaged by foreign supplier (CIF contract) or Indian importer (FOB contract). However, they can pay service tax by utilising Cenvat credit taken on inputs, input services and capital goods used for providing inbound and outbound transportation. Service tax is not leviable on ocean freight of export cargo, as the place of provision, i.e. destination, falls outside the taxable territory. Outbound transportation remained no longer 'exempted service' after amendment to Cenvat Credit Rules, 2004, vide serial numbers 2(b) and 5(h) of the Notification No. 13/2016-CE (NT) dated 1 st March, 2016. So, Cenvat credit available for outbound transportation can be utilised for payment of service tax on inbound transportation by Indian shipping lines / freight forwarders. But, in case of services of foreign shipping line / freight forwarder availed by Indian importer, service tax will be payable under Reverse Charge Mechanism by cash only. Cenvat credit cannot be utilised for payment of service tax under Reverse Charge because this service is not 'output service' of the service recipient.

8. It is felt that services by way of transportation of goods by an aircraft or a vessel from a place outside India upto the customs station of clearance in India, have been rightly kept in Negative List so as to avoid double taxation of Customs duties and service tax on freight charges. The proposal of charging service tax on ocean freight for import cargo may be re-examined by considering that when ocean freight is includible in the value of imported goods, whether service tax can be levied on the same amount?

(The views expressed by the author are his personal views)

the

PINK PAGE

HEALTH
TIPS ON
MALARIA

Compiled by CA Kavita Bulchandani

What is Malaria?

Malaria is a life threatening disease caused by parasites, that are transmitted to people through the bites of infected female *Anopheles mosquitoes*.

About 3.2 billion people-almost half of the world's population- are at risk of malaria.



www.shutterstock.com - 381760747

WORLD MALARIA
DAY- 25TH APRIL

Causes

Malaria is caused by Plasmodium parasites. The parasites are spread to people through the bites of infected female *Anopheles mosquitoes*, called 'malaria vectors'.

There are 5 parasites species that cause malaria in humans, and 2 of these species- *P. falciparum* and *P. vivax*- pose the greatest threat.

Global warming is likely to affect malaria transmission, but the severity and geographic distribution of such effects is uncertain.

Symptoms

COMMON SYMPTOMS OF MALARIA



Who is at risk?

Who is at RISK?

Children, pregnant women, and women, children, and adolescents with sickle cell anemia, thalassemia, and other blood disorders are at higher risk of malaria.



Tests and Diagnosis

Recent travel history

Enlarged spleen

Fever

Low number of platelets in the blood

Higher than normal level of bilirubin in the blood combined with normal level of white blood cells

Malaria is usually confirmed by the microscopic examination of blood films or by antigen based rapid diagnostic technique (RDT). Also polymerase chain reaction-based tests have been developed.

Prevention

Medications & Mosquito elimination and prevention of bites can be achieved through

Insecticide-treated mosquito nets

Indoor spraying with residual insecticide

Antimalarial drugs

Insecticide resistance

Diagnosis and treatment

Antimalarial drug resistance

Surveillance by municipalities and other public bodies

Elimination and vaccines against malaria

The common teaching is "fever equals malaria unless proven otherwise." With drawback of overdiagnosis, wastes of resources and drug resistance. But remember prevention is better than cure, exercise prevention and stay safe.



Motivational Seminar “How to overcome examination fear syndrome” organized by the Gandhidham Branch of WICASA on 18th April, 2016 at The Gandhidham Chamber of Commerce and Industry Hall.



Half Day CPE Seminar on the Topic, “Seminar on Issues of Appeal under the Income Tax Act” on 23-04-2016 at Hotel Jai Residency. Speaker CA Divyang Shah And CA Hardik Maniyar.



One day Workshop on Indirect Taxes organized by the Indirect Tax Committee, ICAI and Taxation Committee, Gandhidham Branch of WIRC of ICAI on 30-04-2016 at Hotel Radisson Kandla, Galpadar. Speakers, Advocate Shailesh Sheth & CA Hardik Modh



GANDHIDHAM BRANCH OF WIRC OF ICAI

(IT Training Centre Cum Sales Counter)

Office No. 205-206, Sai Krupa Complex, 2nd Floor,

Plot No. 575, Ward - 12/C, Above Guru Nanak Super Market,

Gandhidham - Kachchh, Gujarat - 370201, Ph. No. : 02836 - 230305

E-Mail - gandhidhambranch.wirc@gmail.com

Disclaimer:

Views and opinion expressed or implied in the articles are solely of the authors and do not necessarily reflect those of the branch / institute.

Vande Mataram !! Jay Hind!!