UNDERSTANDING THE SERVICE TAX IN PRE GST ERA

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ABSTRACT

With the growth of economy of any nation, it becomes necessary that all the sectors should contribute. Service is an important sector in this regard. As the service sector is growing by leaps and bounce in the Indian economy, this sector is supposed to be utilized by the State as a vibrant avenue to augment its revenues by taxing this sector. In the present paper we will try to understand service tax particularly in the time frame of Pre GST era.

KEYWORDS: Service Tax, Pre GST era, India, State.

INTRODUCTION

The attainment of rapid economic development is the most important objective of all developing countries. To achieve economic development capital accumulation is necessary. In this connection, the basic question is how to raise the required finance for development. There are two sources for a government to raise resources- i) internal source & ii) external source. Although taxation may have a large share in promoting a country’s development, its actual efficiency depends on the choice of various types of taxes [1]. The government should take into account the legal system, political and social power and administrative ability before making its choice.

The economic structure of India provides for different type of revenue sources but the taxes constitutes the most important source of revenue [2]. In other words, taxation policy is one of the important instruments in the hands of the government to decide the direction of the economic growth [3]. Indian taxation system consists of two components i.e. direct taxes & indirect taxes [4]. The direct taxes consist of personal taxes levied on the income of individual assessee such as Income Tax and Wealth Tax and Corporate Taxes are levied on the income of the corporations [5]. Indirect taxes include the Commercial Taxes and Excise Duties on sale of goods and manufacturing respectively and also includes customs duty levied on international trade. However, after reforms a new breed of tax i.e. service tax is introduced in Indian taxation system1.

CONCEPT OF SERVICE TAX

As the term Service tax itself suggest that it is a tax that is levied on the services. One should understand that service tax should not be confused with the taxes on profession or trade and it is only meant for the services being rendered while exercising the profession or trade.

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1Taxman’s Service Tax, 1994 p.786.

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Moreover it is also noteworthy that tax is imposed only when it has the provision of service. “Service” here signifies intangible output of labour. It is different from “sale of goods”.

It is also important to note that state government has the power to impose tax on sale of goods; the parliament or central government does not have the power to levy tax on sale of goods hence “sale” is liable to sales tax which is imposed by the state while “services” are liable to service tax which is imposed by the parliament and or central government.

**AMENDMENTS MADE IN THE FINANCE BILL, IN RESPECT OF SERVICE TAX MATTERS**

Amendments made in finance bill in respect of Service Tax matters become effective from the date when the relevant finance bill gets the assent of the President and it became an act. Further new services which are introduced shall become taxable when these services are notified or from the date mentioned in such notification.

The law relating to service tax extends to the whole of India except the State of Jammu & Kashmir and is applicable to taxable services provided on or after the commencement of Chapter V of The Finance Act 1994[6].

**WHO PAYS SERVICE TAX-SERVICE PROVIDER OR SERVICE RECEIVER?**

In the light of the section 68 and STR² 2(1) (d), it is the liability of the person to pay service tax. As provided in this section, service tax is payable by the service provider. In certain cases as provided in STR 2(1)(d), the service tax shall be payable by the service receiver or the specified person and not by the service provider.

**RATIONALE OF LEVYING TAX ON SERVICES**

There is robust logic for contribution of the service sector towards the tax net. This is because economist doesn’t distinguish between the goods and services and take both as productive activities that enhance the income of nations. Therefore, several economists are of the view that if tax is payable on the manufactured goods in the form of excise duty then the services should also not be excused. This has become a basis for the levy of Service Tax.

**GENESIS OF SERVICE TAX IN INDIA**

Looking back into the past of 1970’s the custom duties were as high as 200 percent on many products. Excise duty was also ranged between 2-100 percent³. These excessive duties were burdening the manufacturing sector and international trade excessively. So to correct this imbalance, Dr Raja Chelliah Committee appointed by the then Finance Minister Dr Manmohan Singh strongly recommended to bring the services under the tax net. The committee suggested certain services to be taxed to make a move towards the new tax regime called “Value Added Regime”. Subsequently in the budget of 1994-95 three services i.e Telephone, General Insurance and Stock Broking were brought under the service tax net @ 5% for the whole of India except the State of Jammu & Kashmir⁴.

**RATE OF SERVICE TAX**

The rates of Service Tax have been raised in a phased manner in order to boost revenue generation of the State as below-

- The introductory rate of Service Tax was 5% in the year 1994-95.

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²STR stands for Service Tax Rules.
³RBI Bulletin, March 1994
⁴Ibid.
• This rate was raised from 5% to 8% on all taxable services w.e.f 14-5-2003.
• From 10-09-2004, the rate of Service Tax was made 10%. Besides this, 2% of Education Cess on the amount of service tax has also been introduced. Thus the effective rate of Service Tax became 10.2%.

In the budget of 2005-06, the rate has been further enhanced to 12%. Education Cess has been retained at the same rate. However from the Finance Act 2009 Service Tax rate has been reduced to earlier rate of 10%. Education Cess has been retained at same rate\(^5\). Till Finance Act 2011 the rate of service tax remained 10%. From finance Act 2012 the rate of Service Tax has again increased to 12% from previous 10%\(^6\). If we will go through close scrutiny of rate changes of service tax, we will find that there have been ups and downs time to time by the hon'ble finance ministers. Let us discuss the same by taking all data in the following table.

**DETERMINATION OF VALUE IN VARIOUS SITUATIONS**

Sub-sec (1) of section 67 specifies the value of taxable service which is chargeable to service tax in various situations. In this context, the meanings of certain expression as laid down in the Explanation to section 67 should also be noted as follows-

a. Service provider for a consideration in money -Under clause (i) of sub-Section(1), where the provision of service is for a consideration in money, the value shall be the gross amount charged by the service provider for such service provided or to be provided by him. This applies to majority of services where consideration other than in terms of money may not be involved.

b. Service provider for a consideration not wholly or partly consisting of money-In this situation, clause (ii)of sub-section(1)of sec 67 provides that the value shall be such amount in money as, with the addition of service tax charged, is equivalent to the consideration.

In a number of cases the service provider is supplied certain inputs, generally by the service receiver, which are essential for providing the services either free of cost or at concessional cost. Such supply of input in any form depresses the value of taxable service charged by the service provider to the service receiver. For example, say A Ltd. hires a truck from B Ltd. for transportation of goods from Mumbai to Ahmedabad. Normally the charges charged by B Ltd. is say Rs.15, 000. A Ltd. agrees to supply diesel to B Ltd. which is required for running of truck for transportation of goods from Mumbai to Ahmedabad. Therefore, B Ltd. agrees to charge only Rs.10,000 to A Ltd. for the purpose of transporting the goods. In this particular case, the consideration for transportation of goods is partially received in money i.e.Rs.10,000 & partially in other form i.e., diesel.

The fact that the consideration has been received in other form must be established in order to invoke the provision of this sub-rule. In case no consideration has been received in other form & the reduced amount has been charged, the provision of this rule cannot be invoked. Say for example, a coaching class normally charges Rs.10,000 for teaching the students of standard XI. A poor boy approaches the coaching class & narrates his poor condition. The owner considering his condition agrees to charge only Rs.5,000 from the boy. In such cases, the owner has not received any consideration from the boy in any other form.

\(^5\)Finance Act, 2010
\(^6\)Finance Act, 2012
Therefore, the consideration for teaching cannot be said to be partially in money & partially in any other form. The provisions of this sub-rule cannot be invoked.

The value of taxable service is to be determined as follows:

Consideration receivable Rs 10,000

(-) service tax element 10,000 × 10.30 Rs 934

110.30 Rs 9,066

MEANING OF ‘CONSIDERATION’

Value of taxable service: - Explanation (a) to sec.67 simply states that ‘consideration z’ includes any amount that is payable for the taxable services provided or to be provided. This definition is inclusive & not exhaustive. However, the word ‘consideration’ has a technical meaning & that meaning will have to be adopted for purpose of section 67. In layman’s terms, ‘consideration’ means ‘something in return’. It is an advantage moving from one to another. The consideration can be positive act or a negative act. It can be in the form of cash, goods or services. It can be past, present or future. As per section 2(d) of the Contract Act, when at the desire of the promisor, the promise or any other person has done or abstained from doing, or does or abstain from doing, or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise. Consideration is an act of forbearance, or the promise thereof, which is offered by one party to an agreement & accepted by other, as inducement to the other’s act or promise.

The legal rules regarding consideration are as follows:-

• Consideration should be at the desire of promisor:-
• Consideration can be given to/by third person.
• Consideration must be lawful.
• Past consideration valid if given at desire of promisor.
• Forbearance of abstinence can be consideration.
• Compromise or composition is consideration.
• Consideration should be certain.
• Act which promis or is any way bound to do is not a consideration.
• Payable by any one or to anyone.

MEANING OF ‘MONEY’

Explanation (b) to section 67 enlarges the scope of the term ‘money’ and provides that it includes, apart from currency and cheque, also promissory note, letter of credit, traveler’s cheque, money order. Thus, even if the consideration is paid in the form of promissory note, letter of credit, traveler’s cheque, or postal remittance, it will be considered as consideration in money and not in kind.

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<th>Table 1. Rate of Service Tax</th>
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CONCLUSION

Now on the basis of facts mentioned in the paper our approach towards detail study on Service Tax is be based on its different branches such as classification, nature of taxable services, and valuation of services. The paper discussed the concept of service tax, Amendments made in the finance bill with regard to in respect of service tax matters, persons liable to pay service tax, rationale of levying tax on services, genesis of service tax in India, Rate of Service Tax, Determination of value in various situations, Meaning of ‘Consideration’ and Meaning of ‘money’.

REFERENCES