

J B Nagar CPE Study Circle of ICAI

Indirect Tax Study Group Meeting

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| Date | 22nd August, 2015 |
| Leader | CA Ankit Chande |
| Subject | Issues in Reverse charge mechanism |

Preamble:

Study Circle has organized this study group meeting to discuss and deliberate on issues faced by Assesseees/ Consultants in their day to day practice for reverse charge mechanism under Service Tax Legislation.

Keeping in view the purpose of Study Circle meeting and profile of learned participants, we will refrain from elementary discussion on Statutory provisions, Rules, Notifications, Circulars on the subject.

It is thought fit to discuss the issues in the form of case studies. The Case Studies put in revolve around the procedural and legal issues pertaining to reverse charge mechanism.

The Group leader invites participants to debate and deliberate on the case studies.

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

CASE STUDY : 1

M/s. Shining Builders Pvt Ltd (SBPL) are engaged in developing and selling residential flats in Mumbai. For the purpose of construction at various sites, they have availed services of M/s Glory Construction Co. who provide labourers to SBPL to construction activity. For the service rendered during the month of April, 2015, M/s GCC have raised the Invoice on 10.05.2015 as under

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| Charges for 20 Labours @ 10000/- p.m | = 2,00,000/- |
| Service tax @ 3.09% | = 6180/- |
| Total Invoice Value | = Rs.206180/- |

SBPL paid amount of said Invoice to GCC on 20.07.2015.

SBPL seeks your advice on applicability of service tax if any on said payment made to GCC and quantum thereof and eligibility of CENVAT Credit to SBPL.

CASE STUDY : 2

“HELPING HAND“ ,is a non-profit organization incorporated as a company u/s 25 of Companies Act,1956 & registered under Section 12AA of Income Tax Act,1961. The following services are availed by "Helping Hand" during the financial year 2013-14:

- a) Fees paid to advocate Rs.25,000/- for appearing before ITAT for Income Tax appeal for the Assessment year 2009-10.
- b) Rs. 2,00,000/- paid to foreign Company for technical support and assistance in making educational animation film.
- c)Rs.2,40,000/- paid for entire year to M/s Tops Security for availing security services with minimum 2 security guards to be provided .
- d) Paid Sponsorship Fees of Rs.1,00,000/-for Sponsoring an Cultural Event to be held in Mumbai to Nalanda Dance Academy.
- e) Rent paid Rs.1,80,000/- towards office premises to BMC for entire year.

You are required to advice about applicability of Service tax on such transactions & who is required to discharge ST liability in each of above transactions.

CASE STUDY : 3

“CHILL CLUB HOTEL Pvt Ltd “ is Hotel providing accommodation service to its guests. Hotel has also set up a travel desk so as to provide vehicle for the purpose of local sight-seeing to its guests. The Chill club hotel does not own any vehicle of their own

but procures the same from the outsider. The Chill Club has provided services of providing a vehicle along with driver to its client Red Chillies International Pvt Ltd & charged Rs. 30,000/- in January,2013. The Chill Club has availed the services of Mr. Sachin that of providing the said passenger vehicle and paid Rs.20,000/- in January,2013.

Discuss the applicability of service tax on these transactions for :

- Chill Club Hotel Pvt Ltd,
- Mr. Sachin
- M/s Red Chillies International Pvt Ltd.

CASE STUDY : 4

Manpower& Co is a service provider providing manpower supply services. The services are provided by Manpower & Co to Body Corporate clients and accordingly liable for payment of service tax under Full Reverse Charge Mechanism w.e.f. 01.04.2015. Since, there is no output service tax, Manpower & Co accumulates CENVAT Credit and desires to claim refund of the said amounts in terms of Rule 5B of CENVAT Credit Rules, 2004 read with Notification 12/2014-CE dated 03.03.2014.

Whether Manpower & Co can claim the said refund and what quantum?

CASE STUDY : 5

Mr. Clever is a executive Director in Smart Finance Private Limited receiving the remuneration of Rs.2,50,000/- per month for the financial year 2013-14 &

Rs.80,000/- towards directors sitting fees for attending 4 meetings in terms of the contract .

Apart from above, Mr. Clever is also owner of a office premises namely “Everest” which is let out to said company to be used as office at yearly rent of Rs.6 Lacs..

Mr. Clever also owns residential flat namely “Kalpataru” which is also let out for yearly rent of Rs.6 Lacs. This residential premises is used by Smart Finance Pvt Ltd for providing residence to its foreign director Mr. Barack Obama.

Mr. Clever does not have any other source of revenue for F.Y. 2013-14.
Discuss applicability of service tax on each of above transactions.

CASE STUDY : 6

Mr. XYZ ,an advocate practicing in Ahmadabad charges his client PQR Pvt Ltd following fees towards various services provided as under :

- a) Giving of opinions & regular advises : Rs. 50,000/-
- b) Appearance before Dept. :Rs.40,000/-
- c) rafting of VAT Audit report : Rs. 80,000/-

Mr.XYZ and PQR Pvt Ltd seeks your advice on applicability of service tax on them if any

CASE STUDY : 7

ACC cement Ltd engages PQR Transports Pvt Ltd (PTPL) to undertake transport assignments to transport coal from collieries to various plants of client. The Coal is loaded from collieries of various companies and transported to the respective plant as instructed.

PTPL does not won trucks but they arrange for the truck through local truck owners, transporters etc. who own one or two trucks. The custody of goods is given to PTPL and the entire responsibility of transportation is undertaken by PTPL. PTPL issues a consignment note to clients.

Discuss the applicability of service tax on these transactions for :

- ACC Cement Ltd
- PQR Transports Private Limited &
- Truck owners

Will there be any change in above liability in case ACC Cement Ltd engages local transporters directly to transport the goods from collieries to plant

CASE STUDY : 8

Pioneer Engineering Private Limited has availed services from Myka Plc . located at USA for US\$ 5000 and have received the Invoice from Myka Plc. dated 14.06.2015. Said Invoice was paid by Pioneer on 25.07.2015

Rate of Exchange on 14.06.2015 = \$ 64.50

Rate of Exchange on 25.07.2015 = \$ 65.00

Rate of Exchange as notified by CBEC u/s 14of Customs Act = \$ 65.50

(Note : Services are covered u/r 3 of POPS Rules,2012)

Kindly advise Pioneer about their servie tax liability an quantum thereof

CASE STUDY : 9

Super Chemicals Private Limited is a Chemical manufacturer having factory in Thane. It has given contract to M/s. Grace Enterprises for painting of its factory in the Month of October 2013 for Rs.5 lacs.

Due to the slowdown, turnover of M/s Grace Enterprise was Rs.7.5 Lacs in the previous F.Y. 2012-13. During the first two quarter of F.Y.2013-14, the turnover from painting services rendered amounted to Rs. 11 Lacs.

Apart from above, they have not rendered any other services from Oct, 2013 to March, 2014.

M/s Grace Enterprise and Super Chemicals Private Limited wants to know their liability of service tax for the year F.Y.2013-14 on the above transaction?

- Would the answer be different in case the service provider M/s. Grace Enterprises raised two Invoice viz. for Supply of paint -Rs. 3.5 lakhs and for labour job -Rs. 1.5 lakhs.
- Would the answer be different in case M/s. Grace Enterprises is given contract for painting for Rs.2 lacs and paint required for the purpose of contract will be supplied by Super chemicals Pvt Ltd free of cost.

In case M/s. Grace Enterprises fails to discharge its obligation under service tax ,if any, can entire tax be recovered from Super Chemicals Private Limited

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