Service tax on services received and consumed abroad

13 March 2014

Background
In this case\(^1\), the appellant is engaged in the activity of rendering IT/ITES services, apart from rendering the other taxable services. The output services were also exported to various countries. The following important issues are decided in this case, apart from the other issues:

- Whether service tax is leviable under the reverse charge mechanism, with respect to the services received abroad from the sub-contractors/branches located outside India, which are consumed outside India?
- Whether credit can be claimed with respect to service tax paid on group health insurance of employees, when the said insurance covers even the family members of the employees?
- Whether International Private Leased Circuit (IPLC) services received from a person located outside India is taxable under the reverse charge mechanism?

Service tax on services received abroad from the sub-contracts/branches located outside India

Background
The appellant had overseas branches and renders services to overseas clients through these branches. The branches in turn used the services of sub-contractors located outside India for the purpose of rendering services to clients.

The payments to the overseas branches were made by the appellant through their EEFC account in foreign currency and the overseas branches have in turn paid the sub-contractors.

Grounds of demand
The service tax authorities have demanded service tax from the appellants under the reverse charge mechanism, on the following grounds:

- The appellant has received the services from sub-contractors located outside India, through their overseas branches.

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\(^1\) Infosys Limited v. CST, Bangalore, TS-64-Tribunal-2014 (Bang)
The purpose of the appellant's services to the overseas branches has been provided to the tax authorities outside India and thus, Section 66A has no application. In the present case, the appellant has provided services through their branches abroad. Therefore, it is not a case of the appellant receiving the services, but it is a question of rendering services abroad.

Further, the appellant has not made any payments for the receipt of any services. On the contrary, the appellant has received proceeds of the services rendered abroad by their branches, after deduction of expenditure incurred for rendering of services abroad. Therefore, prima facie, the provisions of Section 66A are not at all attracted.

If the branch office has to be treated as a separate person for the purpose of Section 66A, when the contract is entered into between the branch office and the service provider, it cannot be said that such contract has been entered into by the company located in India.

For the purpose of levy of service tax in the hands of receiver, the branch office is treated as a separate person, but for the purpose of determining as to who has received the service, the branch office is treated as a part of the appellant, which is not correct.

Accordingly it is held that, as the Revenue has not been able to show that the services have been received through their branch office in India, there is no taxable event, and therefore there is no liability on the appellant to pay tax.

Cenvat Credit on ground health insurance

Background of the issue

In this case, the appellant had claimed Cenvat Credit of service tax paid on the insurance premium in respect of Group Health Insurance Scheme for its employees. The service tax authorities have denied the same on the grounds that, these services are received and used by the employees and not by the appellant company, and hence it could not be said to be an input service.

Decision of the CESTAT

In this regard the CESTAT has held that, Cenvat Credit can be availed in case the insurance policy covers the employees of the appellant. However, if the insurance policy also cover the persons other than employees (such as family members of the employees), the service tax paid on insurance to the extent attributable to persons other than the employees will have to be reversed on a proportionate basis.

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2 As per Section 66A (2) of the Finance Act, 1994
3 Which deals with service tax levy on the services received from a person located outside India
Service tax on IPLC services received from person located outside India

Background of the issue

In this case, the appellant had received the International Private Leased Circuit (IPLC) services from the overseas service providers. The service tax department has demanded service tax on the same, under the reverse charge mechanism.

Decision of the CESTAT

In this regard the CESTAT has held that, the IPLC services received is classifiable under the category of ‘telecommunication services’ and such services are taxable during the relevant period (i.e., April 2009 to September 2011) when the same is provided by person who has been granted a licence under Indian Telegraph Act, 1985. As the foreign service providers are not licensed under the said Act, the demand is not sustainable.

However, with the introduction of negative list based levy of service tax which is effective from 1 July 2012, the condition of possessing a license under the Indian Telegraph Act, 1985, by the service provider, so as to render the services a ‘taxable service’ has been done away with.

Accordingly, this decision is not applicable for the IPLC services received in India, from an overseas service provider post 1 July 2012, which would be subject to the levy of service tax under the reverse charge mechanism.

Our comments

In the IT industry, it is not an uncommon arrangement to render the on-site services to overseas clients through the sub-contractors/branch offices located outside India. In such a scenario, a question could come up as to whether the payments made to overseas sub-contractors/branch offices, are subject to the levy of service tax under the reverse charge mechanism, by contending that the service recipient is located in India and accordingly the benefit of the service has accrued in India.

In this regard, the CESTAT has answered the question in favour of the service providers located in India, and thereby providing clarity to the IT industry.

In case of Micro Labs Limited, the Karnataka High Court has held that, although a Group Insurance Health Policy is also a welfare measure, it is an obligation which is cast under the statute that the employer has to obey, and accordingly Cenvat Credit may be claimed with respect to the service tax paid on insurance premium.

However, while following the decision of the High Court, this decision has distinguished the same on the ground that, if the insurance policy also covers the family members of the employees, it cannot be said that the insurance provided to the family members of the employees is relatable to output services provided by the appellant and accordingly, Cenvat Credit to that extent is proportionately required to be reversed.

With the introduction of negative list based levy of service tax which is effective from 1 July 2012, the condition of possessing a license under the Indian Telegraph Act, 1985, by the service provider, has been done away with. Accordingly, the IPLC services received in India from the overseas service provider post 1 July 2012 would be subject to the levy of service tax.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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