

July 11, 2007

**Mr. K.R.N. Chary**  
**Commissioner**  
**Service Tax, Kolkata**  
**Government of India**  
**Raja Chambers, 3rd Floor**  
**4, K.S. Roy Road**  
**Kolkata - 700 001**

Dear Sir,

**Sub: Interactive Session on Service Tax – Recent Developments**  
**held on 23rd June 2007 at The Conclave, Kolkata**

We thank you for sparing your valuable time and holding a lively and informative interactive session with our members and guests on the above subject on June 23, 2007.

While responding to President's welcome address, you had mentioned that the Chamber should send proposals for amendment in the Act and Rules for consideration of the Central Government, Ministry of Finance to your office for forwarding the same to the concerned officials in the Ministry. We are pleased to enclose our memorandum for consideration of the Central Government for necessary amendment and/or clarification in the Act, Rules and Notifications, as may be applicable.

Please acknowledge the receipt.

Thanking you,

Yours faithfully,

**P. K. AGRAWAL**  
**Chairman, Standing Committee on Taxation**

Encl.: as stated.

## **MEMORANDUM ON SERVICE TAX**

Forwarded to the Central Government through:  
Commissionerate, Service Tax, Kolkata

### **1) SERVICE DIRECTLY RELATED TO EXPORT OF SERVICES**

Certain services are directly related to export of services, such as commission to foreign agents to collect export orders, port services, warehousing charges, terminal charges, haulage charges, commission on high sea sales etc. should be out from the scope of service tax just like export of services. Further, the requirement of prior declaration in case of refund claims for taxes paid on inputs or input services in case of export of services is a theoretical exercise. In true practical sense, it would be difficult or impossible to file such a prior declaration.

### **2) REIMBURSEMENT OF EXPENSES**

Fundamentally, reimbursement of expenses cannot be considered as a business receipt and incurring expenses on behalf of the client does not and cannot involve any rendering of service by any stretch of interpretation. The valuation rules on reimbursement are biased in favour of revenue (without any logic) and the definition of pure agent is such that it allows double taxation in genuine cases too.

It is suggested that Service Tax (Determine of Value Rules, 2006) requires amendments and all the reimbursement of expenditure charge separately by the service provider from the service receiver should be declared not to be included in the value for the purpose of service tax on the respective services.

### **3) APPLICABILITY OF TRADE AND INDUSTRY CHAMBERS FOR PAYMENT OF SERVICE TAX UNDER THE HEAD CLUB OR ASSOCIATION**

This requires special mention that the statutory definition provided in Section 65(25a) of the Act is allowing differential treatment for same category of Services Providers between the Employers' Association (Chamber of Commerce, Federation etc) and Employees' Association (Trade Union). Employers and Employees both are contributing equally to the growth of the nation and GDP of the country. Since the Chambers of Commerce perform a positive role and provide social services and bridge the gap between the government, law enforcement agencies and trade, industries & commerce, they should be exempted from the levy of service tax under this head from social justification point of view like Trade Union, Press or Media.

We understand that the different Chambers of Commerce including ASSOCHAM, Indian Chamber of Commerce had sent representation to Ministry on the above subject praying for exempting the Chambers of Commerce from payment of service tax. The basic fundamental

difference between services provided by the trade, industry, Chamber of Commerce/Associations and clubs or associations is providing recreational sports, catering and bar facility on annual or the monthly subscription to its members. Whereas, such facilities are provided by clubs and associations to its members but trade and industry chambers do not provide any service, facility, privileges or advantages to their members rather the payment of subscription is only for requiring the membership of the Chamber. The activities of the industry chambers are spread over organizing meetings, seminars, conferences etc. on numerous issues concerning economy, trade, industry, society etc. These activities are chargeable and for this reason most of the industry chambers are considered chargeable and even exempted from payment of Income Tax.

Whether collection of Security Deposits from the members is to be included in taxable services amount? There are different opinions on this issue.

#### **4) LEVY OF STATE SALES TAX AND CENTRAL SERVICE TAX**

Levy of State Sales Tax and Central Service Tax on the same category of receipts by an enterprise, prevalent at present in India, can be palpably punitive and distortionary. The tax turns out to be particularly burdensome and acute when the same transaction is treated as sales of goods by the State Sales Tax Dept. Taxation of telecommunication (on pre-paid chargeable cards sold by telecom operators) is subject to service tax and now again subjects to sales tax, because of The Hon'ble Supreme Court's Verdict. On the other hand, the Ministry of Telecommunication had urged different States not to levy sales tax for telecommunication boom in the country.

#### **5) RENTING OF IMMOVABLE PROPERTY (COMMERCIAL RENTS)**

A number of clarifications are required on the chargeability of service tax on the various reimbursement made by the landlord/lessor from its tenants/lessee while renting out commercial premises viz. a) reimbursement of electricity charges, b) reimbursement of municipal tax, c) reimbursement of other charges from rent etc.

A clarification is required whether such charges recovered by the receiver of commercial rent or lease rent will be included from the purpose of levy of service tax or not.

**P. K. AGRAWAL**  
**CHAIRMAN**

**H. V. PATODIA**  
**PRESIDENT**

