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Dear Professional Colleague,

## What is the relevant date for determining the rate of service tax applicable

We are sharing with you an important judgement of the Hon'ble CESTAT, Ahmedabad in the case of **Commissioner of Central Excise & Service Tax, Rajkot Versus M/s Kandla Port Trust [2013 (7) TMI 859 – CESTAT AHMEDABAD]** on following issue:

### Issue:

What will be the relevant date for determining the rate of Service Tax applicable - whether the date of providing service or the date of issue of invoice or date of making payment?

### Facts & Background:

M/s Kandla Port Trust ("**the Respondent**") is engaged in providing services of Port Service. During the course of audit, it was observed by the Department that the Respondent had ***paid service tax at the rate prevailing on the date of providing service instead of the rate prevailing at the time of raising invoices.***

Service tax had been paid at the rate of 5% instead of 8% for the invoices raised on or after 14.05.2003 and at the rate of 8% instead of 10% for the invoices raised on or after 10.9.2004. Further, Education Cess at the rate of 2% of the service tax amount for the invoices raised after 10.9.2004 was not paid.

Hence, show cause notice was issued to the Respondent on 07.4.2006, which was adjudicated by the Joint Commissioner, Rajkot who confirmed the demand of service tax of Rs. 6,02,353/- and also imposed equal amount of penalty under Section 76 read with Section 78 of the Finance Act, 1994.

Thereafter the Respondent filed an appeal before the Commissioner of Central Excise (Appeals) Rajkot, who has allowed their appeal. However, the Revenue has challenged the order passed by the Commissioner of Central Excise (Appeals).

### Held:

It was held by the Hon'ble CESTAT that ***the relevant date for determining the rate of service tax applicable is the date of providing service and not the date of raising invoice or making payment.*** The Hon'ble Ahmedabad Tribunal rejected the appeal filed by the Revenue and decided the case in favour of the Respondent.

The Hon'ble Ahmedabad Tribunal relied on the following judgements to decide the case in favour of the Respondent:

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1. *Commissioner of Central Excise & Customs, Vadodara vs. Schott Glass India Pvt. Limited [2009 (14) STR 146 (Guj.)]*
2. *Commissioner of Central Excise & Cus. vs. Reliance Industries Limited [2010 (19) STR 807 (Guj.,)]*
3. *Commissioner of Service Tax vs. Consulting Engineering Services (I) Pvt. Limited.*

## **Points to note:**

It is worthwhile to note that only rendering of service triggers the incidence of service tax and hence, it is treated as the taxable event. The Hon'ble Supreme Court in the case of **Association of Leasing & Financial Service Companies [2010-TIOL-87-SC-ST-LB]** has held that for levy of service tax, the taxable event is rendition of services.

In the instant case, the Hon'ble Ahmedabad Tribunal has passed its judgment on similar premise that taxable event in relation to service tax is rendering of service and not raising of invoices or making of payment. Hence, additional liability cannot be fastened on the assessee merely because the invoices were raised or payments were made subsequent to the increase in rate of service tax.

Further, the above judgment has been passed for a period prior to the Point of Taxation Rules, 2011 ("**the POT Rules**"). Hence, the readers are advised to consider the POT Rules for final conclusion but moot question is still valid whether the rules can override the chargeability, which results in taxable event for the chargeability of Service tax.

## **Date of determination of rate of tax, value of taxable service and rate of exchange:**

W.e.f 28<sup>th</sup> May, 2012, Section 67A of the Finance Act, 1994 was inserted vide Finance Act, 2012 to provide certainty on ***the rate of service tax, value of a taxable service and rate of exchange***, if any, which ***shall be the rate of service tax*** or value of a taxable service or rate of exchange, as the case may be, ***in force or as applicable at the time when the taxable service has been provided or agreed to be provided.***

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962.'; (52 of 1962.)

*Hope the information will assist you in your Professional endeavors. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards.

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**Released a Book - "Guide to Service Tax Voluntary Compliance Encouragement Scheme, 2013", authored by Bimal Jain, FCA, FCS, LLB**

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