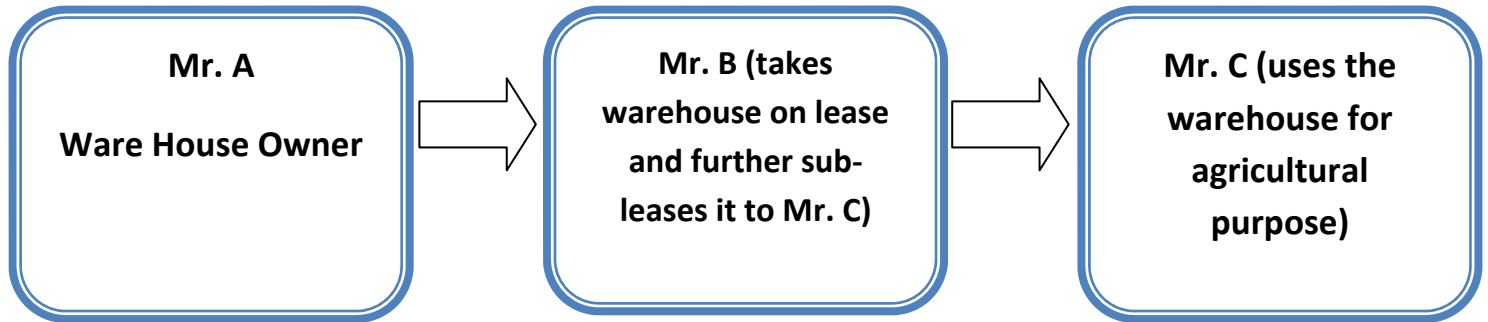


Service tax on renting of warehouse for agricultural purpose under old regime and new regime

Service tax on Warehousing of agricultural produce (under new regime i.e. from 01.04.2012 onwards)



In the present case Mr. A is the “Warehouse owner” who leases it to Mr. B for use of ware house for “agriculture purpose”. Mr. B further sub-leases the warehouse to Mr. C and Mr. C is using the warehouse for agricultural purpose. The question here for consideration before us is to determine the service tax liability of the assesses.

Under the new regime of service tax, there is negative list (Section 66D) and mega-exemption notification 25/2012-ST which deals with the services that are exempted from service tax. Section 66D (d) contains the services in relation to agriculture and agriculture produce. The relevant part of the clause is produced as under–

“Services relating to agriculture or agriculture produce by way of–

(i).... (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use”

(v) Loading, unloading, packing, storage or warehousing of agricultural produce;

Let us analyze the above clause

Clause (iv)

- **Service relating to agriculture or agricultural produce by way of renting or leasing of agro machinery**

The above service is that of renting of movable property and thus pertains to a situation where the custody of agro machinery is transferred without transfer of its effective control or

possession. For example the services of provision of tractor along with driver are covered in the negative list.

- **Services related to agriculture or agricultural produce by way of renting or leasing of vacant land with or without structure incidental to its use**

The above entry makes the renting or leasing of vacant land with or without a structure incidental to its use non-taxable if it is in relation to agriculture or agriculture produce. The three things are important here—

1. The land should be **vacant**.
2. It may be with or without structure which is incidental to its use.
3. It is used in relation to agriculture or agricultural produce.

Whereby the activity performed by Mr. A for Mr. B and Mr. B to Mr. C is not covered by the given clause. Thereby, the services of Mr. A to Mr. B and Mr. B to Mr. C are taxable as per this clause. Now, let us analyze clause (v).

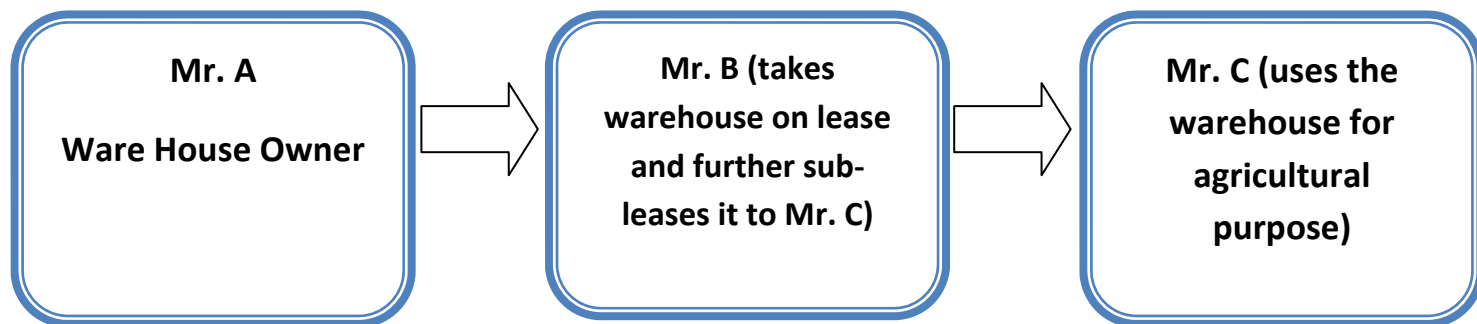
Clause v

As per clause (v) the following services are exempted from service tax if provided for agriculture or agricultural purpose –

- Loading,
- Unloading,
- Packing,
- Storage or warehousing

On the plain reading clause (v) one might form a view that even the service of renting of storage or warehouse for agriculture purpose will be exempted from service tax. But, that is not the departments view. The department vide instruction no. 01/2002-ST dated 1st August, 2002 (the relevant extract of the instruction is given at the end) has clarified that merely renting of warehouse will not be considered as service of storage or warehousing service. Thereby, merely renting of warehouse for agricultural produce is liable to service tax under the new regime.

Service tax on Warehousing of agricultural produce (under old regime i.e. before 01.04.2012)



Under the Old regime of service tax, there was a specified list of 119 services that were liable to service tax. Under the old regime there was a specified head for “Storage and warehousing services”. This head of service included the following service–

“storage and warehousing ” includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage”

On perusal of above one might form a view that the renting of warehouse for storage of agriculture produce is not within the ambit of this head of service. However, department vide instruction no. 01/2002-ST dated 1st August, 2002 has clarified that merely renting of warehouse will not be covered into this service. Thereby, the same will be liable to tax. The relevant portion of the instruction is produced as under–

“It has been stated that in some case a storage owner only rents the storage premises. He does not provide any service such as loading/unloading, stacking, security etc. A point has been raised as to whether service tax would be leviable in such cases. It is clarified that mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods. Essential test is whether the storage keeper provides for security of goods, stacking, loading/ unloading of goods in the storage area. “

Hence, renting of warehouse was liable to service tax in the earlier regime also. The same will be taxed under “Renting of Immovable Property Service”.