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Dear Professional Colleague,

No Service tax could be levied if there was a transfer of right to use goods irrespective of the fact that the transfer was non-exclusive

We are sharing with you an important judgment of the Hon'ble Authority for Advance Rulings (CE, C & ST), New Delhi in the case of *SICPA India (P.) Ltd. [(2016) 67 taxmann.com 142 (AAR - New Delhi)]*, on following issue:

Issue:

Whether granting of non-exclusive/ non-transferable right to use the system qualifies as transfer of right to use goods (consequently be outside the definition of service) when complete set of various machines/equipments were required to be installed & commissioned at site of customer and overall operation & maintenance processes shall be responsibility of customer?

Facts & Background:

On introduction of Excise Supply Chain information Management System (“ESCIMS”) by the Excise Department, Government of NCT of Delhi, to automate and regulate liquor sales in Delhi, SICPA India (P.) Ltd. (“Applicant”) entered into system delivery agreement with a customer to provide for a system comprising of a complete set of various machines/equipments, which were required to be installed and commissioned at site of customer as per ESCIMS. In terms of the Agreement:

- The Applicant was responsible for granting to the customer a revocable, non-exclusive and non-transferable right to use the system set up and installed by it at the location of the customers;
- The Applicant was also required to provide customer training and documentation with respect to the system;
- Customer was required to operate system and inform assessee regarding issues related to system;
- The Applicant was also responsible for the preventive maintenance (planned operations dedicated to minimize system breakdown) and corrective maintenance (measures to maximize uptime by reducing faults in the system as well as provision of required spare parts to make the system good) of the system, wherein the operative/routine maintenance was the responsibility of the customer;

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With regard to consideration for the agreed scope of work, the Applicant was required to get a consolidated sum based on per thousand labels printed using the system. The Applicant made an application before the Hon'ble Advance Ruling Authority ("**AAR**") for determining applicability of Service tax on stated transaction.

Applicant's contention: It was stated that activity undertaken by the Applicant was a transfer of right to use goods and same was excluded from definition of a 'service' given under Section 65B (44) of the Finance Act, 1994 ("**the Finance Act**").

Revenue's contention: It was argued by the Revenue that one of the attributes of transfer of the right to use the goods is that for the period during which the transferee has such legal rights, it has to be the exclusion to the transferor. Thus, the instant transaction will not come under the category of 'transfer of the right to use the goods', unless such right is exclusive and in the instant case, right to use goods by the customer is non-exclusive.

Held:

The Hon'ble AAR, after detailed discussion, held that:

- The phrase 'grant of license to use the system on a non-exclusive basis' is used for the reason that the proprietary/intellectual property used in the system is utilized by the Applicant in other similarly placed transaction with other customers. However, the use of system by the customer is on exclusive basis;
- Further, the Applicant is required to supply and install the system at the site of the customer as also provide training and documentation with respect to the system;
- The customer is also required to operate the system and inform the Applicant regarding issues related to the system;
- It is also mentioned in the agreement that overall operation and maintenance processes shall be the responsibility of the customer;
- All these clauses amply make it clear that possession and effecting control of the goods (i.e. system) will be with the customer.

Thus, the transaction in question qualified as a transfer of right to use goods and, consequently, be outside definition of 'service' under Section 65B (44) of the Finance Act and no Service tax could be levied on such transaction.

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

Thanks & Best Regards,

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