

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

**Service tax burden can be passed on by contractual agreement but revenue cannot be asked to wait for recovery of tax dues**

***Delhi Transport Corporation Vs. Commissioner Service Tax [TS-411-SC-2016-ST]***

Recently, the Hon'ble Supreme Court has dismissed the review petition filed by the Delhi Transport Corporation ("**the Petitioner**" or "**DTC**"), against ruling of the Hon'ble High Court of Delhi in the case of ***Delhi Transport Corporation Vs. Commissioner Service Tax [2015-TIOL-961-HC-DEL-ST]***.

The Hon'ble Supreme Court held as under:

*"Delay condoned.*

*We have carefully gone through the Review Petition and the connected papers, but we see no reason to interfere with the order impugned.*

*The Review Petition is, accordingly, dismissed."*

It is worthwhile here to note that the Hon'ble High Court of Delhi in the mentioned judgment, upheld the Service tax liability on the Petitioner, towards "sale of space or time of advertisement" on bus- queue shelters and time keeping booths, by holding that Service tax burden can be transferred by contractual agreement but Revenue cannot be asked to recover tax dues from third party or wait till amount has been recovered from contractors.

We are sharing with you gist of the judgement of the Hon'ble High Court of Delhi for easy digest:

## **Issue:**

- Whether burden of Service tax can be transferred to other party through contractual agreement?
- Further, whether the Revenue can be asked to recover tax dues from the third party or wait till amount has been recovered from contractors?

## **Facts & Background:**

The Petitioner had entered into contracts with 7 agencies ("**the advertisers**" or "**the contractors**") to provide taxable service by providing space to such parties for display of advertisements inter alia on its buses, bus queue shelters and time keeping booths. In the contract it was provided that it shall be responsibility of the contractor/advertiser to pay direct to the authority and MCD concerned, the advertisement tax or any other taxes/levy

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payable or imposed by any authority and this amount will be in addition to the license fee quoted.

However, due to dispute, two advertisers did not reimburse the Petitioner for the Service tax component. Consequently, the Petitioner failed to pay Service tax on the services rendered by them and the Department issued SCN to DTC to pay balance amount of Service tax along with interest and penalties thereon.

## Petitioner's view:

The Petitioner relied on ***Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran [(2012) 5 SCC 306]*** and urged that having entered into the contracts of such nature where liability to pay taxes/levy is on the advertisers, it was a legitimate expectation that the Service tax liability would be borne by the advertisers. Thus, there was no justification for the Petitioner being held in default or burdened with the penalty.

## CESTAT's observation:

The CESTAT observed that there is no basis for the claim made by the Petitioner that they harboured a bona fide belief that Service tax was not payable by them and that the Petitioner was clearly and exclusively liable to Service tax on rendition of the taxable service of "sale of space or time for advertisement".

## Held:

The Hon'ble High Court of Delhi held that when there is no dispute that the services provided are taxable, the ruling of the Hon'ble Supreme Court in the case of ***Rashtriya Ispat Nigam Limited Vs. Dewan Chand Ram Saran [(2012) 5 SCC 306]***, cannot detract from the fact that in terms of the statutory provisions, it is the Petitioner liable to discharge the Service tax liability. Undoubtedly, the Service tax burden can be transferred by contractual arrangement to the other party. But, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors.

It was further held that the Petitioner is a public sector undertaking and should have been more vigilant in compliance with its statutory obligations. It cannot take cover under the plea that contractors engaged by it having agreed to bear the burden of taxation, there was no need for any further action on its part. For purposes of the taxing statute, the Petitioner is an assessee and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder. Accordingly, imposition of the Service tax liability and the levy of interest thereupon along with penalties imposed under Sections 76 and 77 of the Finance Act, 1994 ("**the Finance Act**") was upheld. However,

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in terms of erstwhile Section 80 of the Finance Act, penalty under Section 78 thereof was set aside.

*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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