

MANPOWER SERVICES UNDER REVERSE CHARGE MECHANISM

“Karm Kar Phal ki chinta mat karo” we all have grown up with this thought from the “Geeta”. In today era (In Negative list regime of service tax) for the service of Manpower same can be understood as **“Karm Kar Tax ki chinta mat Kar”** mean to say as same to be borne by the service recipient.

With effect from July 1, 2012, Section 65(68) and Section 65(105) (k) were rescinded and new definition of supply of Manpower was inserted under Rule 2(1)(g) of the Service tax Rules 1994, which is reproduced herein below:-

“Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control”

The following important elements should be considered to determine the existence of manpower services:-

- Services should be manpower supply i.e. under control of principal employer
- Security services, cleaning services, piece basis services or job basis contract can be **manpower supply services** only if the superintendence or control of principal employer.

Business Support service /Manpower Recruitment or Supply Agency's Service:

The agreements are essential for supply of manpower though the activities undertaken were intended to support the receiver business. There are agencies who are helping to the business entities in recruitment of the required employees. They are providing service of Manpower recruitment and not supply agency service. Where personnel are continue to be the employee of service provider and they are working to service receiver under receiver supervision it can be manpower supply agency service. Employer- employee relationship exists between the agency and the personnel and not between the personnel and the service receiver. The manpower service provider would be liable under Manpower recruitment or supply agency service.

If a person undertakes to produce a given result for the establishment through contract labour/labour works under his own control and supervision, and the principal employer has no control over labour, such service would not be “supply of manpower”. It may fall under category of business support service or works contract service.

Jivanbhai Makwana v. CCE [2010] 24 STT 85 (Ahd. - CESTAT):

Facts of the case - Assessee entered into a contract with a company to provide labourers as per company's requirement for housekeeping work, for loading and unloading purpose, etc. Payment to be made by said company was relating to number of labourers supplied during a specified period.

Issue involved in the Case - The question was whether the term of the contract with the client was for supply of labourers or for doing specific item of work. Also, whether the

consideration charged on the basis of number of labourers would be covered by definition of 'Manpower recruitment or supply agency's service'?

Decision in the Case - On hearing both of the sides, the Hon'ble Tribunal of the Custom Excise & Service Tax Appellate Tribunal, Ahmedabad Bench held that the term of the contract with the client was either for supply of labourers or for doing specific item of work. If it was for performance of specified items of work, the same would not be covered by the definition of service, since it covered 'manpower recruitment or supply'. In the instant case, the contract related to the number of labourers supplied. Nowhere in the contract was the actual quantum of work to be done indicated. Further, the contract also required the contractor to provide labourers as per the company's requirement for housekeeping work for loading and unloading purpose, etc. The payment to be made by the company related to the number of labourers supplied during a specific period and not to the quantum of work carried out. For example, in case of housekeeping work, it can relate to the area of the building to be cleaned which can be given in square feet basis. In the case of loading and unloading, it can be the number of trucks or the weight of the goods loading and unloading, etc., whereas both these items did not find place in the contract. Therefore, it could not be accepted that it was not a labour contract but actually a contract for specific items of work to be performed. Therefore, the Honable Tribunal decided that as the terms of the contract were very clear and that there was nothing but supply of manpower, it was covered by the definition of service under 'Manpower recruitment or supply agency's service'

Other Important Points related to Manpower supply service:-

- As per Notification No. 30/2012, dated 20-06-2012, in respect of services provided or agreed to be provided supply of manpower service by the Individual/HUF/Firm/AOP to the companies/LLP the liability to pay service tax would be in ratio of 25 % and 75 % respectively.
- Service tax liability of service recipient is different and independent to liability of service provider:-
 - He can independently avail or forgo the abatement or choose a valuation option.
 - He is liable to pay service tax liability under reverse charge despite of the fact that service provider is liable to pay or not.
- Service receiver is not eligible to claim general exemption of 10 Lakh rupees and he has to register himself and discharge his tax obligation and filling returns.
- Point of Taxation under Reverse charge will be date of payment of value of Input service provided payment made within 6 months from the date of Invoice otherwise the POT would be date of Invoice.
- Service recipient can availed CENVAT credit of service tax amount paid to the service provider as well as paid by the service recipient directly to the Government treasury under the partial reverse Charge mechanism provided the same is input service for the service recipient.
- The CENVAT credit of service tax
 - Paid to the service provider is available on the basis of Invoice issued by the provider or service provided that the payment of the value of input service and service tax made within three months from the date of Invoice.

- Paid by service receiver under partial reverse charge would be available on the basis of payment challan as per Rule 9 (1) (e) of the CENVAT Credit Rules 2004 on or after the day on which payment of the value of input service and the Service tax as indicated in the Invoice, bill or , as the case may be, challan.
- Service provider who is providing a taxable service which is covered by partial Reverse charge mechanism can also claim the CENVAT credit of Input services utilize for the providing of such output service . After utilizing the CENVAT credit for payment of output tax liability he can claim refund under Rule 5B for accumulated Balance of CENVAT credit.
- Point to be noted that, there is bar on utilization of CENVAT credit for payment of service tax whereas service recipient is liable to pay tax under reverse charge mechanism. Explanation to Rule 3(4) of CENVAT credit Rules 2004 specifically provided that “CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.” Therefore service receiver has no option but to make payment of service tax in cash.

Place of Provision in case of Manpower Supply service:-

Service tax is consumption based tax and tax is payable only if POP of service is in taxable territory. If the service receiver is located outside India, who does not have office in India and renders service to his own project situated in taxable territory (In India) service provider is not liable to pay service tax. However if such service is availed by the Indian service receiver, the 100 % Service tax is payable by the service receiver.

Question Time:-

Mr. A is in business of real estate. One of his real estate project was under construction in Gurgaon city. He hired some casual labour from Mr. B of Bangladesh. The labour was hired on per day basis and total number of worker was 100. Every worker to be paid Rs. 1000/- per day including all. Apart from this they were also paid Rs. 500/- per day for accommodation and other expenditure. They worked for 1000 /- Man days. Kindly help in calculating the liability of Mr. A under Reverse charge and which Rule of POP will apply on this?