

SERVICE TAX

Service to be treated as “completed” on completion of all the auxiliary activities enabling the service provider to issue the invoice

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of “continuous supply of service”.

[Circular No. 144/13/2011- Service Tax 18.07.2011]

Development fee charged at airports chargeable to service tax

In response to the representations seeking clarification regarding leviability of service tax on the Development Fees (DF) charged at Airports particularly at Mumbai and Delhi by Mumbai, International Airport Pvt. Ltd. and Delhi International Airport Pvt. Ltd. , it has been clarified that service tax is chargeable on DF. Service tax is being paid on the Passenger Service fee (PSF) and User Development Fee (UDF) and a distinction was sought to be drawn between these and the DF. The DF is levied to fund for upgradation, expansion or development of the airport.

The Mumbai International Airport Pvt. Ltd. and Delhi International Airport Pvt. Ltd. are operating Mumbai and Delhi airports respectively and are providing service which is chargeable to service tax under Section 66 (105)(zzm) of the Finance Act, 1994. Similarly at other airports which are operated by Airport Authority of India, the said service is provided by Airport Authority of India and chargeable to service tax under the said section. The service tax is payable on the gross amount charged from the passengers for providing such service.

It has been clarified that it is immaterial how the gross amount charged for the service is treated in the books of the service provider and to what use it is being put to. Service tax is being levied under the Finance Act, 1994 and its leviability has to be solely determined under the provisions of this Act. The fact that gross amount charged for the service is being split into two parts, of which one portion is being used for a specific purpose by the service provider, is not relevant for the purpose of determining the value of the service. The value shall be determined only under the provisions of section. 67 of the Act. Therefore, Development Fee is chargeable to service tax under the 'airport service'.

[CBEC Letter F.No.106/Commr(ST)/2009 dated 08.07.2011]

Source: www.taxindiaonline.com

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