

SERVICE TAX

Service tax is not chargeable on delayed payment charges collected by Stock Brokers

CBEC has clarified that service tax would not be payable on the additional amount that is collected towards the delay in making payment to the stock brokers by their customers (delayed payment charges) in respect of Stock Broker's services.

The Board has referred to two of its earlier circulars on the issue. The circulars are:

(i) *Circular No. 96/7/2007 - ST dated 23.08.2007* which clarifies that an amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form a part of the value of taxable service.

(ii) *Circular No. 121/02/2010 - ST dated 26.4.2010* which clarifies that detention charges in respect of detained containers are not in respect of service provided on behalf of client (under BAS) nor is it on account of infrastructure support services (under BSS). Such charges can at best be called as 'penal rent' for retaining the containers beyond the predetermined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

Applying the same analogy, CBEC has clarified that delayed payment charges received by the stock brokers are also therefore, not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.

It may be noted that the Board has stated that this principle will also apply to other service providers.

However, section 67 of the Finance Act 1994 provides that service tax is chargeable on taxable value which shall be the 'gross amount charged' by the service provider. Therefore, if in the account statement / invoice / bill etc issued by the service provider, only the gross amount is shown without indicating the delayed payment charges separately, the service tax would be payable on the entire amount. Delayed payment charges would not be includible in 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc.

[CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011]

Source: www.tiol.com

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